OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

April 2002 - June 2002 (2nd Quarter)

JURISDICTION:

Consumer §681.102(4), F.S.

A&W Marketing, Inc. v. Ford Motor Company, 2002-0332/FTM (Fla. NMVAB June 21, 2002). Because the Consumer used the vehicle exclusively as a commercial vehicle, the Manufacturer contended that the Consumer was not a "consumer" under the Statute. Focusing on the last clause of section 681.102(4), Fla. Stat., the Board noted that the definition of "consumer" includes "any other person entitled by the terms of the warranty to enforce the obligations of the warranty." The Manufacturer failed to present a copy of the warranty or other evidence to establish that the consumer was not entitled to enforce the terms of the warranty. Thus, the Board found that the Manufacturer failed to meet its burden of proof and consequently rejected the Manufacturer's defense. However, because the Board found that the defect was the result of the Consumer's driving habits, the case was dismissed.

Motor Vehicle §681.102(15), F.S.

Steed v. Ford Motor Company, 2002-0369/TPA (Fla. NMVAB June 17, 2002).
The Manufacturer argued that the Consumer was not qualified for Lemon Law relief, on the ground that the subject vehicle was not originally sold as a new vehicle in Florida. The Consumer purchased the vehicle in Florida from a person who had won the vehicle in a contest, The contest was held in Georgia, and prior to the contest, a leasing company purchased the vehicle in Ohio from Ford Motor Company. The Board held that the original purchase did not occur in Florida and that the Consumer did not purchase the vehicle new in Florida. Accordingly, the case was dismissed.

Warranty §681.102(23), F.S. vs. Nonconformity §681.102(16), F.S.

Colon v. DaimlerChrysler Motors Corporation, 2002-0486/ORL (Fla. NMVAB July 25, 2002). The Consumer complained of a side-to-side wobble in the steering wheel and a vibration in the floorboard that was present when the vehicle was driven at speeds between 50 and 60 miles per hour. The Manufacturer argued that the defect was attributable to the vehicle's Goodyear tires and that tires were excluded from the coverage of the Manufacturer's written limited warranty. The Board held that the defect was a nonconformity on the basis that the manufacturer equipped the vehicle with a specific

brand and type of tire as part of a package in order to sell the vehicle with an enhanced appearance. Since the vehicle was modified by the Manufacturer, the resulting defect was covered by the statute, because it fell within the definition of "nonconformity." Accordingly, the consumer was awarded a refund.

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

What Constitutes a Repair Attempt

Clarke Advertising & Public Relations, Inc. v. General Motors Corporation, Oldsmobile Division, 2002-0264/STP (Fla. NMVAB May 13, 2002).
Although the Consumer testified that the vehicle was presented to the Manufacturer's service agent for repair of the same defect three times, only two of the repair orders listed the defect in question. On the basis of the repair orders, the Manufacturer claimed that it had not been given reasonable opportunity to repair the defect. The Board held that the greater weight of the evidence showed that the Consumer took the vehicle for repair of the same nonconformity three times before sending the written notification to the Manufacturer. Accordingly, the Consumer was awarded a refund.

What Constitutes an "Out-of-Service Day," Rule 2-30.001(2)(c), F.A.C.

Burger v. BMW of North America, LLC, 2002-0251/STP (Fla. NMVAB May 8, 2002).
The Consumer claimed that the vehicle had been out of service for repair for 30 or more days. The Manufacturer's witness testified that the repair orders did not accurately reflect the date that repairs were completed. The witness, who did not prepare the repair orders himself, testified that some of the repair orders were "held open" by the service agent after repairs were completed, because they were waiting for invoices for the rental vehicles provided to the Consumer. The Board rejected the Manufacturer's argument, noting that it was the duty of the Manufacturer, through its authorized service agent, to provide accurate and detailed written repair orders, and also noting that the repair orders were the best evidence of the dates of the repair attempts. Accordingly, the Consumer was awarded a refund.

Written notification of a final repair opportunity–When sent; §681.104(1)(a), FS

Currey v. Mitsubishi Motor Sales of America, Inc., 2002-0246/PEN (Fla. NMVAB May 6, 2002).
After presenting the vehicle to the Manufacturer's authorized service agent for repair of the same nonconformity seven times, the Consumers sent written notification to the Manufacturer to provide the Manufacturer with a final opportunity to repair the vehicle. The Manufacturer contended that the case should be dismissed, because the written notification was not "filed" within the Lemon Law rights Period. The Board rejected the Manufacturer's argument, noting that the Consumer does not need to send the written notification to the Manufacturer during the Lemon Law rights period in order to be

entitled to relief under the Lemon Law. Accordingly, the Consumers were awarded a refund.

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

Wuelfing v. General Motors Corporation, Oldsmobile Division, 2002-0290/STP (Fla. NMVAB May 13, 2002).
The Manufacturer claimed that it left three messages for the Consumers in an attempt to respond to the Consumers' written notification. Mrs. Wuelfing testified that she returned the Manufacturer's calls and left three messages herself, which were never returned. Mrs. Wuelfing also testified that she followed up with a message indicating that she planned to present the vehicle for a final repair attempt on a specific date. The Manufacturer did not return that message either, and the Consumer left the vehicle with the Manufacturer's designated repair facility for the final repair attempt. The Board found that the Consumers met all the requirements for the presumption of reasonable attempts to repair, and accordingly, awarded the Consumers a refund.

DEFINITION OF NONCONFORMITY §681.102(16), F.S.

Haramboure-Moreno v. BMW of North America, LLC, 2002-0297/ORL (Fla. NMVAB May 22, 2002).
The Consumer complained of excessive oil consumption. The vehicle required the addition of a quart of oil about every 1,500 miles. The Manufacturer claimed that the oil consumption was not a nonconformity because the level of consumption was within the Manufacturer's specifications of normal oil consumption. The Manufacturer's witness testified that a Manufacturer's bulletin stated that oil consumption is excessive only if it exceeds one quart per 750 miles of driving. The Board noted that the Manufacturer's bulletin was not provided to consumers and that the bulletin was in conflict with the owner's manual, which directed that the vehicle's oil be changed after every 15,000 miles of driving. The Board found that the Consumer was forced to add approximately 10 quarts of oil between regular oil changes, thus there was a defect that substantially impaired the use and value of the vehicle. Accordingly, the Consumer was awarded a refund.

Rule 2-30.001(2)(a), F.A.C., Definition of "Condition"

Tharpe v. General Motors Corporation, Chevrolet Motor Division, 2002-0465/TLH (Fla. NMVAB June 19, 2002).
The Consumers complained of a transmission problem. In an attempt to repair the problem the original factory transmission was replaced by a transmission from a "Driver's Ed." car. However, the replacement transmission also failed, so the Manufacturer's service agent replaced the "Driver's Ed." transmission with a "re-manufactured" transmission. The Manufacturer claimed that the "re-manufactured" transmission had cured the problem, but the Consumer testified that on the trip home from the dealership the "re-manufactured" transmission "hesitated" and the "check engine" warning light

came on. The "check engine" light had remained illuminated since that time. The Manufacturer defended, claiming that the original factory transmission did not have a defect and that the dealership replaced it out of "courtesy" for the Consumer. The Manufacturer also claimed that the problem was cured by the "re-manufactured" transmission. The Board found the greater weight of the evidence established that the continual failures and malfunctions of the transmission were a condition that substantially impaired use, value or safety and awarded the Consumers 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.

Lindsey v. Ford Motor Company, 2001-1083/PEN (Fla. NMVAB April 12, 2002). The Consumers complained of a moon-roof leak and a noise coming from the roof area. The Manufacturer argued that the defects did not substantially impair the use, value, or safety of the vehicle, on the grounds that the roof leak was insignificant little drops of H_2O and the noise was a rattle from a luggage rack that could be cured with paper shims. The board found that the defects substantially impaired the use and value of the vehicle. Accordingly, the Consumers were awarded a refund.

Rosi v. General Motors Corporation, Chevrolet Division, 2002-0121 (Fla. NMVAB May 1, 2002).
The Consumers complained of a vibration and a misaligned cargo door. The Manufacturer argued that there were no nonconformities because the Manufacturer's agent could not duplicate the Consumers' concerns. At the arbitration hearing, the Board inspected the vehicle and observed that the cargo door was misaligned. The Board found that the defects complained of substantially impaired the use, value and safety of the vehicle. Accordingly, the Consumers were awarded a refund.

Factor v. Ford Motor Company, 2002-0172/TPA (Fla. NMVAB May 17, 2002).
Consumer complained of an intermittent vibration that is felt in the vehicle's seat. The Manufacturer argued that the vibration did not substantially impair the use, value, or safety of the vehicle. The Board test drove the vehicle and found the vibration to be slight. However, the Board found that the short test drive did not adequately compare to the consumer's daily driving, which involved significantly longer distances. The Board concluded that given the substantial distance that the Consumer drives each day, the vibration did in fact substantially impair the use of the vehicle. Accordingly, the Consumer was awarded a refund.

McCrary v. DaimlerChrysler Motors Corporation, 2002-0274/ORL (Fla. NMVAB May 28, 2002).
The Consumer complained of a foul odor emanating from the air conditioner, that caused the Consumer to suffer flu-like symptoms. The Manufacturer argued that the odor did not substantially impair the use, value or safety of the vehicle. The Manufacturer offered testimony that the odor was caused by a mold

and was "normal" in many vehicles in Florida, due to the humid climate. The Board found that the odor did not substantially impair the use, value or safety of the vehicle when viewed from the standpoint of a reasonable person in the Consumer's circumstances. Accordingly, the case was dismissed.

Hilliard v. Ford Motor Company, 2002-0345/JAX (Fla. NMVAB June 14, 2002).
The Consumers complained that the brakes on the vehicle wore out approximately every four months, requiring replacement of brake components. The Consumers used the vehicle to transport children to and from day care centers, and the Manufacturer claimed that the excessive wear was a normal result of the Consumer's stop-and-go use. The Board agreed with the Manufacturer and dismissed the case.

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

Big Woody's, Inc. v. Ford Motor Company, 2002-0387/ORL (Fla. NMVAB June 14, 2002).
The Consumer complained of a fuse intermittently blowing out. The fuse in question controlled the power control module. When the fuse would blow, the vehicle would not start. The Manufacturer alleged that the defect was the result of unauthorized modifications or alterations by unauthorized service agents. The Manufacturer's witness testified that the vehicle's power control module had a stored trouble code which indicated that a high performance chip, which was installed at the direction of the Consumer, had been installed in the power control module. The witness testified that placement of the chip in the power control module voided the warranty on the module. Although the Manufacturer's witness never observed the chip in the power control module, he testified that a section of the power control module's plastic cover had been cut away, which would allow for easy removal and reinsertion of the high performance chip. The Consumer claimed that the problem occurred even after the chip was removed from the vehicle completely. The Board found that the Manufacturer's witness's testimony was more credible than the Consumer's. Accordingly, the Board held that the defect resulted from unauthorized alteration and dismissed the case.

REFUND §681.104(2)(a)(b), F.S.:

Shope v. DaimlerChrysler Motors Corporation, 2002-0111/ORL (Fla. NMVAB May 3, 2002).
Because the Consumer financed numerous items within the motor vehicle loan, such as a lawnmower, the Board included only 62 percent of the amount paid on the loan as attributable to the vehicle in the refund calculation. The Board found that 62 percent of the original loan was attributable to the motor vehicle purchase and therefore only 62 percent of the Consumer's payments on the loan should be included in the refund or replacement calculation.

Walker v. Ford Motor Company, 2002-0016/WPB (Fla. NMVAB May 30, 2002).
The Consumer acquired the vehicle, at issue in this case, as a result of an agreement between the consumer and manufacturer to replace a previous vehicle. The replacement agreement amounted to an even swap of the two vehicles. The Consumer sought recovery of all expenses associated with the

acquisition of both vehicles, claiming that the leases were part of a single transaction. The Board denied the Consumer's request and refunded only the Consumer's costs associated with the vehicle that was then before the Board.

Incidental Charges §681.102(8), F.S.

Reed v. Kia Motors America, 2002-0421/ORL (Fla. NMVAB June 24, 2002).
The Board denied the Consumer's request that the refund include compensation for the "missed opportunity" to qualify for a cash bonus from her employer. The Consumer contended that because of the days that she missed from work when she presented the vehicle to the Manufacturer for the Final Repair attempt and to attend the BBB hearing, she lost an opportunity for a cash bonus from her employer. The Board also denied the Consumer's request for a deduction in the mileage offset for the miles driven to the Manufacturer's authorized service agent and to the BBB.

Net Trade-in Allowance §681.102(19), F.S.

Blady v. American Isuzu Motors, Inc., 2002-0158/ORL (Fla. April 22, 2002).
The Manufacturer's representative testified that the trade-in allowance reflected in the purchase contract and retail installment contract included a $3,000.00 rebate, which was disguised as a down payment in order to entice the lender. The Manufacturer argued that the trade-in allowance should be reduced by the $3,000.00 rebate. The Board rejected the Manufacturer's argument and used the number written on the purchase contract to calculate the Consumer's trade-in allowance.

MISCELLANEOUS ISSUES

Mejia v. Toyota Motor Sales, U.S.A., 2001-1222/FTM (Fla. NMVAB April 19, 2002).
A hearing was continued after it was begun due to the inability of the interpreter. The Consumer was instructed to obtain an interpreter who could accurately interpret during a hearing. The hearing was reconvened on another day.

Griffin v. BMW of North America, LLC, 2002-0136/TPA (Fla. NMVAB May 22, 2002).
After the Board ruled that the motor vehicle was a lemon, the Manufacturer's counsel moved for disqualification of all the Board members on the basis of bias, prejudice, or interest. The Manufacturer's counsel argued that because the Manufacturer presented the only evidence that established the cause of the vehicle's problems, the Board would have to be biased to rule against the Manufacturer. The Board denied the motion, finding that the Manufacturer's grounds were legally insufficient.