

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

QUARTERLY CASE SUMMARIES

July 2002 - September 2002 (3rd Quarter)

REASONABLE NUMBER OF ATTEMPTS §681.104, F.S.

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

Riquelme v. Ford Motor Company, 2002-0538/STP (Fla. NMVAB August 28, 2002).

The Manufacturer contended that the Consumer did not send written notification to give a final opportunity to repair the vehicle. The Consumer claimed that he had notified the manufacturer of the defects in a letter which he sent to "Mr. Ford." In the letter, the Consumer congratulated Mr. Ford on his new job and also complained about his vehicle's defects. The Consumer did not present a copy of the letter and only had a mail receipt as evidence. The Board found that the Consumer failed to notify the manufacturer. Accordingly, the case was dismissed.

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

Horowitz v. Mercedes-Benz USA, Inc., 2002-0386/WPB (Fla. NMVAB July 25, 2002).

The Consumer complained of more than 20 defects. Some of the defects were not nonconformities as defined by the statute. The Manufacturer contended that the days-out-of service should be apportioned so as to not count the time spent on repairing defects which were not nonconformities. The Board held that apportionment of parts of days would be contrary to Florida Administrative Code Rule 2-30.001(2)(c), which defines what constitutes an out-of-service day. The Board concluded that the vehicle had been out of service for repair of nonconformities for 46 days. Accordingly the Consumer was awarded a refund.

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

Dicarlo-Vetter v. Nissan Motor Corporation, USA, 2002-0619/TPA (Fla. NMVAB August 29, 2002).

The Manufacturer argued that it had not been provided a final attempt to repair. The Manufacturer left a message at the Consumer's work. However, the Consumer was on maternity leave so she did not get the message. The written notification contained Mrs. Dicarlo-Vetter's work number and an alternative number, but the Manufacturer failed to use the alternative number. The Board found that the Manufacturer had not responded within 10 days of receipt of the written notification, noting that it was the Manufacturer's burden to contact the consumer and arrange a final repair attempt and that a single

call to one of the two numbers listed on the written notification was not sufficient.

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.

Ouellette v. DaimlerChrysler Motors Corporation, 2002-0733/TLH (Fla. NMVAB September 17, 2002).

The Consumers complained of “rust spots” on their white vehicle. The vehicle was dirty when the Consumers purchased the vehicle, so they did not notice the spots until after they first washed the vehicle. Although some of the spots resurfaced after the manufacturer’s removal attempt, there had been no new (additional) spots. The Manufacturer argued that the spots were not caused by a defect in paint or holes in sheet metal from rust or corrosion; rather, the spots on the motor vehicle were surface rust, metal specs, or pieces of industrial fallout. In an effort to cure the defect, the Manufacturer sublet the motor vehicle to a detail shop where buffing and claying removed the majority of the spots/specks. The Board observed the vehicle and found that the spots/specks that remained did not substantially impair use, value or safety of the vehicle. Accordingly, the Board dismissed the case.

Rambin v. Nissan Motor Corporation, USA, 2002-0618/ORL (Fla. NMVAB August 30, 2002).

The Consumer complained of a vibration that was felt in the seat of the truck when it was driven at speeds above 25 miles per hour. The Manufacturer argued that the vibration was “normal” and not a defect. The Manufacturer’s witness testified that the vehicle “rides like a truck.” The Board found that the vibration substantially impaired the use and safety of the vehicle. Accordingly, the Consumer was awarded a refund.

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

Lee v. Ford Motor Company, 2002-0725/JAX (Fla. NMVAB September 23, 2002).

The Consumer and a friend installed a CD changer in the trunk of a Ford Escort by drilling holes through the lefthand side of the trunk floor and screwing the changer into the trunk. Shortly thereafter, the problems with the vehicle’s emissions control system developed. The “service engine soon” warning light would come on and stay on, and the engine would run rough, stalling on one occasion. None of the problems were experienced prior to the installation of the CD changer. Each time the vehicle was taken-in for repair, the Manufacturer’s service agent discovered evidence of a leak in the emissions system and attempted to repair it; however, the warning light would come on again within several days to a couple of weeks later. During the final repair attempt, the service agent attempted to remove the rear vacuum cannister and discovered that the screws from the CD changer had gone through the trunk and into the cannister, creating a vacuum leak. The service agent repaired the puncture and charged the Consumer for the repair because the defect was outside of the warranty. The problem did not recur after the last repair. The Board found that the defect was the result of unauthorized modification by the Consumer. Accordingly, the case was dismissed.

Butler v. Ford Motor Company, 2002-0682/ORL (Fla. NMVAB September 16, 2002).

The Consumer complained that the transmission intermittently failed to shift properly, the vehicle stalled intermittently, and the “overdrive” indicator light flashed. The Consumer testified that the problem first occurred after an oil leak required the replacement of the rear main transmission seal. The Consumer admitted that he modified the vehicle as follows: the air intake was opened to allow an increased air flow to enhance performance; the exhaust was modified with straight pipes to improve the engine sound; and new tires and wheels were installed for a smoother ride. The Consumer denied causing a “superchip” performance enhancing modification to be added to the vehicle. However, the Manufacturer’s witness testified that a seal on the vehicle’s Power Control Module had been broken and there were screwdriver marks on the seal. The witness further testified that the purpose of the seal was to prevent tampering. He speculated that the only reason to modify the vehicle’s air intake was to increase air flow to allow the “superchip” in the Power Control Module to enhance the vehicle’s power. Thus, the Manufacturer’s contention was that the modifications caused the problems experienced by the Consumer. The Board agreed, finding that the defects were the result of modifications by persons other than the Manufacturer. Accordingly, the case was dismissed.

Turner v. DaimlerChrysler Motors Corporation, 2002-0679/STP (Fla. NMVAB September 13, 2002).

The Consumer complained of an engine knock and the eventual engine failure. The Board found that the defect was the result of the Consumer’s failure to change the oil until after the accrual of 21,000 miles on the vehicle’s odometer. Accordingly, the case was dismissed.

Marin v. American Honda Motor Company, 2002-0478/MIA (Fla. NMVAB August 12, 2002).

The Consumers complained of electronic problems. The “check engine” and “traction control” warning lights illuminated. On the third attempt to repair, the Manufacturer’s authorized service agent determined that the vehicle’s onboard computer was damaged by flood water and advised the Consumers to file a claim with their insurance carrier for the necessary repairs. The Consumers subsequently filed a claim with their insurance carrier and paid for the replacement of the vehicle’s computer, carpeting and jute with the proceeds. However, the Consumer testified that to his knowledge the vehicle had never suffered any flood damage. The Manufacturer contended that the alleged electronic defect was the result of accident, abuse or neglect by person other than the Manufacturer or its authorized service agent and not covered under the Manufacturer’s warranty. The Manufacturer’s witness testified that driving through flooded streets could cause the damage without the driver’s knowledge. The witness further testified that Hurricane Floyd hit the Consumer’s locale around the time of the damage to the vehicle and also caused flood damage to many other vehicles in the area. The Board found that the weight of the evidence established that the damage was caused by accidental flood water intrusion, and consequently, the electronic problems were not a nonconformity under the Lemon Law. Accordingly, the case was dismissed.

Fambro v. American Suzuki Motor Corporation, 2002-0493/TLH (Fla. NMVAB July 3, 2002).

The Consumer complained of a brake vibration and a complete failure of the vehicle’s engine. The

Manufacturer's service manager informed the Consumer that the vehicle could not be repaired under the Manufacturer's warranty. At the hearing, the Manufacturer argued that the engine failure was not covered under the warranty, because it was not caused by a Manufacturer defect. Rather, the Manufacturer argued, the engine failure was caused by water ingestion through the air intake system by some sudden catastrophic event. The Manufacturer's witness testified that the condition of the engine and air filter indicated that some sort of sudden and significant intake of water, through the air intake system and into the cylinders, caused the engine to fail. She further testified that she felt rust powder on the cylinder walls and noted two dislodged and bent valves which, according to her, were displaced by the sudden ingestion of water. The witness also showed the Board an air filter, which apparently was removed from the Consumer's vehicle, and a photograph, depicting the air filter resting unattached in the area of the engine compartment where the filter would be attached to the intake system. According to the witness, some of the fabric-like strips on the filter were bent or curved, indicating that they had been wet. She testified that normal rain puddles and a car wash would not cause damage such as that seen in the Consumer's vehicle. The witness's photograph, however, did not depict any water, mud, or debris in the area of the air intake or around the air filter that would indicate the vehicle had been immersed in a large puddle of water or subjected to a catastrophic event that would result in water being sucked into the air intake. However, the Board was not convinced by the Manufacturer's testimony and found that the evidence failed to support the Manufacturer's defense. The Board noted that the exact cause of the problem may never be known, but it could just as likely be the result of a defect in design which allowed water intrusion into the engine. The Board held that the defects substantially impaired the use and value of the vehicle and awarded a refund.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Adelman v. Mercedes-Benz USA, Inc., 2002-0051/FTL (Fla. NMVAB August 12, 2002).

The Consumer requested that he be reimbursed for lost wages due to the nonconformity. Although the Board found the defect to be a nonconformity and awarded a refund accordingly, the Consumer's request for reimbursement for lost wages was denied. The Board found that the Consumer's lost wages were not a direct result of the nonconformity.

Reasonable Offset for Use §681.102(20), F.S.

Hall v. Ford Motor Company, 2002-0569/TLH (Fla. NMVAB August 1, 2002).

The Board determined that a loud tapping noise in the engine substantially impaired the value of the motor vehicle and accordingly awarded a refund. In calculating the offset for the consumer's use, the Board deducted the mileage attributable to the Consumer's trips to the closest dealer for repairs and for test drives by the manufacturer's service agent. The Board found that the non-consumer mileage was 666 miles.

PROCEDURAL ISSUES

Consumer's Failure to Appear at the Hearing ¶¶(33) and (34), *Hearings Before the Florida New Motor Vehicle Arbitration Board.*

Klonis v. Toyota Motor Sales, USA., 2001-1113/FTL (Fla. NMVAB July 23, 2002).

The Consumer could not get a visa to leave Columbia. The hearing was continued until the consumer could appoint her fiancé as her attorney-in-fact to appear on her behalf. Then the hearing was continued again so that the Consumer could present a "proper Power of Attorney" appointing her fiancé as her attorney-in-fact. Although a hearing notice was subsequently mailed to the Consumer's last known address, neither the Consumer nor her attorney-in-fact attended the hearing. Consequently, the Board dismissed the case.

Scarpa v. Jaguar Cars, 2002-0489/TPA (Fla. NMVAB September 19, 2002).

The Consumer failed to attend the first hearing and the case was dismissed. However, the Consumer represented that he did not receive the notice of the initial hearing, so the dismissal was set aside. A second notice of hearing was mailed out, but the Consumer had a conflict and requested a continuance. The Manufacturer stipulated to the continuance, and a third notice of hearing was mailed to the Consumer. The Consumer again represented that he had a conflict and requested another continuance. The Manufacturer objected to another continuance. The Board Chairperson asked that the Consumer provide written confirmation of the mandatory nature of the Consumer's conflict. The Consumer refused to present the written confirmation. Therefore, the hearing was held. When the Consumer failed to attend, the Board dismissed the case.

MISCELLANEOUS ISSUES

Orr v. Toyota Motor Sales, USA, 2002-0570/ORL (Fla. NMVAB September 13, 2002).

The Consumer brought a non-lawyer as an advocate to the hearing. The Manufacturer objected, claiming that it would amount to the un-licensed practice of law. The Board held that the advocate could not represent the consumer. Further, the Board refused to hear the advocate's testimony on the ground that the Consumer had not timely notified the Board of the witness prior to the hearing.