OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

April 2007 - June 2007 (2nd Quarter)

JURISDICTION:

Warranty §681.102(23)FS

Joiner v. Ford Motor Company, 2007-0242/FTM (Fla. NMVAB June 15, 2007)
The Consumer complained of a six to eight inch split in the weather stripping around the driver's side door. The Manufacturer argued that the weather stripping on the driver's door was "not warrantable." The Board found that the weather stripping defect to be a nonconformity and rejected the Manufacturer's argument that the defective weather stripping is "not warrantable." Accordingly, the Consumer was awarded a refund.

NONCONFORMITY 681.102(16), FS. (2005)

Trudeau v. Volkswagen/Audi of America, Inc., 2007-0316/STP (Fla. NMVAB June 15, 2007)
The Consumer testified that the vehicle intermittently hesitated for several seconds upon acceleration from a stopped position and that he was afraid to try and merge into traffic because, when the vehicle hesitated, he would not be able to get out of the way of oncoming traffic. The Manufacturer argued that the alleged defect did not substantially impair the use, value or safety of the vehicle. The Manufacturer's witness testified that the hesitation problem could never be duplicated by the Manufacturer's authorized service agent. The Board found the intermittent hesitation to be a nonconformity. Accordingly, the Consumer was awarded a refund.

Guerrero v. Ford Motor Company, 2007-0033/TPA (Fla. NMVAB April 13, 2007)
The Consumer complained of an intermittent electrical malfunction in the vehicle. The Consumer had an aftermarket DVD system installed in the vehicle after the first repair attempt and testified that the problems occurred before the installation of the DVD system. The Manufacturer argued that the problems with the electrical malfunction were the result of alteration or modification by persons other that the Manufacturer or its authorized service agent, specifically, due to the installation of the DVD system. The Board rejected the Manufacturer's argument and found that the problems existed before the installation of the DVD system. Accordingly, the Consumer was awarded a refund.

REASONABLE NUMBER OF ATTEMPTS §681.104, FS:

What Constitutes a Reasonable Number of Attempts §681.104, FS; §681.1095(8), FS

Garcia v. Toyota Motor Sales, USA, 2007-0215/MIA (Fla. NMVAB June 11, 2007)
The Consumer complained of low fuel efficiency, which the Board found to be a nonconformity. The vehicle was presented for repair of the low fuel efficiency problem on two occasions before the Consumer sent written notification to the Manufacturer to give a final repair opportunity. After receipt of the notification, there was another repair attempt. The Manufacturer asserted that the low fuel efficiency could have resulted from the Consumer's driving habits; however, the Manufacturer presented no evidence to support its assertion. The Board found that, based on the position taken by the Manufacturer, three repair attempts was a reasonable number of attempts under the circumstances. The Manufacturer having failed to correct the nonconformity within a reasonable number of attempts, the Consumer was awarded a replacement vehicle.

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

Daniel v. DiamlerChrysler Motors Company LLC, 2007-0201/WPB (Fla. NMVAB May 25, 2007)
The Manufacturer received written notification from the Consumer giving a final repair opportunity on March 5, 2007. On March 14, 2007, the Manufacturer left a message on the Consumer's work phone line, instructing him to bring the vehicle in for a final repair attempt on April 3, 2007. On March 20, 2007, the Consumer's wife spoke with the Manufacturer and agreed to bring in the vehicle on that date. On March 27, 2007, the Consumer's wife changed her mind and decided not to bring in the vehicle because they believed the Manufacturer's request was untimely. The Manufacturer requested the case be dismissed because it was not given a final repair attempt. The Board found that the Manufacturer's response to the notification was within the 10 days required by the statute and that the Manufacturer was not given a final repair attempt. Accordingly, the case was dismissed.

Days Out of Service & Post-Notice Opportunity to Inspect or Repair§681.104(1)(b), FS; §681.104(3)(b)1., FS

Ferrara v. BMW of North America, LLC, 2007-0135/FTL (Fla. NMVAB April 20, 2007)
The Board found numerous nonconformities in the Consumer's vehicle for which the vehicle was out of service for repair for a total of 28 days. On January 26, 2007, the Consumer sent written notification to the Manufacturer that the vehicle was out of service for 15 days or more and called the Manufacturer's authorized service agent and scheduled an appointment for a repair on February 7, 2007. The Manufacturer received the notification on January 29, 2007. The Consumer then received a call or email canceling the February 7th appointment and changing it to February 12. On February 12, the Consumer received a call cancelling the

appointment, because the Manufacturer's representative was unavailable due to a family emergency. The Consumer was contacted again on February 19 to reschedule the appointment and the Consumer refused. The Manufacturer argued it was not given an opportunity for a post-notice inspection or repair. The Board concluded that the Consumer deprived the Manufacturer of a post-notice inspection or repair; therefore, the case was dismissed.

Ponder & Keener v. Volkswagen/Audi of America, Inc., 2007-0266/PEN (Fla. NMVAB June 7, 2007)
The Consumer complained of a defective electrical system, intermittent engine stalling and harsh-shifting transmission which the Board found were nonconformities. The vehicle was out of service for the nonconformities for a total of 32 days. The Manufacturer argued that the Board should not include in a "days out of service" calculation any days the Consumers were provided with a rental car. The Board rejected the Manufacturer's argument and counted all 32 days out of service. Whether the Consumers were provided with a rental car during the time their vehicle was out of service for repair was irrelevant inasmuch as the statute provided for no reduction of out of service time for that reason. Accordingly, the Consumers were awarded a refund.

What Constitutes Written Notification Under §681.104(1)(a), FS; §681.104(1)(b), FS

Palacios & Passariello v. American Suzuki Motor Corporation, 2007-0151/MIA (Fla. NMVAB April 20, 2007)
The Consumer testified that he sent a motor vehicle defect notification form together with a letter titled "Consumer complaint written notification to American Suzuki, Bill Seidle's Suzuki, Service and Product," to the Manufacturer on February 2, 2007. No final repair attempt was undertaken. The Manufacturer argued that it never received written notification and therefore, the case should be dismissed. The Board found that the Consumers failed to provide written notification to the Manufacturer and therefore, failed to provide the Manufacturer with a final repair attempt. Accordingly, the case was dismissed.

MANUFACTURER AFFIRMATIVE DEFENSES §681.104(4), FS

Defect does not substantially impair use, value or safety of vehicle §681.104(4)(a), FS

Pastick v. GM-Cadillac Division, 2007-0293/TPA (Fla. NMVAB June 13, 2007)
The Consumer complained that the "Automatic Volume Control" feature did not automatically adjust the volume level of the sound system when the noise level in the vehicle changed. The volume did not increase at all and the feature was not what the Consumer was accustomed to compared to prior Cadillacs he had owned. The Consumer could manually adjust the volume; however, he claimed that not having the automatic volume control impaired his enjoyment of the vehicle. The Manufacturer contended that the alleged defect or condition did not substantially impair the use, value or safety of the vehicle. The Manufacturer's witness testified that all 2006 Cadillac models had a new "Audio Volume Control" which worked off a microphone installed

under the dashboard rather than the speed-generated system installed on pervious Cadillac models. The Board found the Consumer's complaint did not substantially impair the use, value or safety of the vehicle. Accordingly, the Consumer’s case was dismissed.

REFUND §681.104(2)(a)(b), FS:

Collateral Charges §681.102(3), FS

Sullivan v. Toyota Motor Sales, USA, 2007-0217/WPB (Fla. NMVAB June 14, 2007)
The Consumer requested reimbursement for installation of leather interior as a collateral charge. The Consumer produced an invoice from Kelly’s Custom Trim, Inc., which was marked “paid” on the invoice and billed to Bev Smith Toyota. The Manufacturer objected to reimbursement for the leather and argued the leather was added to the purchase price of the vehicle, and not paid separately by the Consumer. There was no reference to the leather on the Buyer’s Order for the vehicle. The Board rejected the Manufacturer’s argument and awarded the Consumer reimbursement for the leather.

TRW Contracting, Inc. v. DaimlerChrysler Motors Company, LLC, 2007-0205/MIA (Fla. NMVAB June 18, 2007)
The Consumer requested reimbursement for a lock for the tailgate as a collateral charge. The Manufacturer objected because the receipt was first presented at the hearing. The Board rejected the Manufacturer’s objection and awarded the Consumer reimbursement for the lock.

Incidental Charges §681.102(8), FS

Island Mountain Travel, Inc. v. Land Rover of America, 2007-0077/FTL (Fla. NMVAB April 17, 2007)
The Consumer requested reimbursement for the loss of use of the vehicle as an incidental charge to which the Manufacturer objected. The Consumer's request for reimbursement of loss of use damages was denied by the Board as being outside the scope of the Board's authority.

Uriah v. Ford Motor Company, 2007-0107/FTL (Fla. NMVAB May 14, 2007)
The Consumer sought reimbursement of $124.40 in airfare for a friend to fly down from Sanford and drive the Consumer's truck to the Manufacturer ‘s authorized service agent in Sanford, $46.64 for gas to drive the vehicle to Sanford, $57.50 in bus fare for the friend to get home after driving the vehicle back to Fort Lauderdale, $8.50 to have the truck weighed, which was at the direction of employees at Plantation Ford, because they thought the transmission nonconformity might have been caused by the vehicle being “overweight,” and $20.96 for photocopies for the hearing as incidental charges. The Manufacturer objected to reimbursement of the airfare, gas, bus fare, weight charge, and photocopies. The Board rejected the Manufacturer’s objection and awarded the airfare, gas, bus fare, weight charge, and photocopies, to the Consumer as incidental charges.

Humphrey v. DaimlerChrysler Motors Company, LLC, 2007-0131/FTL (Fla. NMVAB June 14, 2007)
The Consumer requested $1,296.92 in rental charges as an incidental charge. The Manufacturer objected to the Consumer being reimbursed for the rental car charges, arguing that the Consumer should have filed her Request for Arbitration sooner than she did, and also that the rental charges were not related to any of the dates on which the vehicle was undergoing repair of the intermittent stalling nonconformity. The Consumer testified that she relied on local family members to assist with transportation needs when the vehicle was at the service agent being repaired; however, she was afraid to drive the vehicle any farther out of town than Orlando. Each of the four times she rented a vehicle was for short family vacation trips out of state, for which she could not use her family's second vehicle, because it only sat two passengers and could not accommodate the family members who traveled with her. The Board rejected the Manufacturer's objection and awarded the rental car charge to the Consumer.

Reasonable Offset for Use §681.102(20), FS

Renneker v. GM-Chevrolet Motor Division, 2007-0012/ORL (Fla. NMVAB June 8, 2007)
In calculating the reasonable offset for use, the Manufacturer argued that the sales tax charged to the Consumers in connection with the acquisition of the vehicle should be included in the purchase price. The Board rejected the Manufacturer's argument and did not include the sales tax when determining the purchase price for calculating the reasonable offset for use.

MISCELLANEOUS PROCEDURAL ISSUES:

Collins v. GM-Chevrolet Motor Division, 2007-0143/ORL (Fla. NMVAB May 7, 2007)
The Manufacturer's representative testified she received the Consumers' Prehearing Information Sheet and attachments, with the exception of the DVD, on April 27, 2007, three days before the hearing, via facsimile from the Board Administrator, upon request. Accordingly, the Manufacturer objected to all attachments to the Consumers' Prehearing Information Sheet as untimely. The Consumer testified that she mailed the Prehearing Information Sheet and all attachments to Steven Wright at General Motors Corporation in Michigan in a timely manner, and confirmed by telephone that Mr. Wright received the items at least five days before the hearing. The Board rejected the Manufacturer's request, because the Consumers' Prehearing Information Sheet was timely received by the Manufacturer.

Givens v. Ford Motor Company, 2007-0145/STP (Fla. NMVAB April 12, 2007)
The Manufacturer sought to introduce the testimony of a witness who was not listed on the Manufacturer's Prehearing Information Sheet. The Manufacturer explained that the witness was present as a substitute for the listed witness on the Prehearing Information Sheet and would testify concerning the final repair attempt. The Consumers objected. Upon consideration, the Board ruled that the witness was not permitted to testify, because the Manufacturer's other

witness could testify concerning the final repair attempt.