OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

January 2007 - March 2007 (1st Quarter)

JURISDICTION:

Motor Vehicle §681.102(15), F.S.

Gagnier v. General Motors Corporation and Home & Park Motorhomes, 2006-0709/JAX (Fla. NMVAB January 17, 2007)
The Consumer purchased a new 2006 Roadtrek 190-Popular/Chevrolet 3500 Express conversion van from Dick Gore's RV World. Conversion of the van was carried out by Home & Park Motorhomes. General Motors, through counsel, argued that the case should be dismissed because the Consumer's vehicle is a recreational vehicle and not a van conversion. The Manufacturer argued that, because the vehicle was equipped with amenities needed to provide temporary living quarters, and the fact that the recreational vehicle industry categorized the vehicle as a motor home, the case should be dismissed for lack of jurisdiction. After considering all the evidence, the Board rejected the Manufacturer's argument and found that the Consumer's vehicle was a conversion van. Accordingly, the Board had jurisdiction.

NONCONFORMITY 681.102(16), F.S.. (2005)

Schuh v. Mercedes-Benz USA Inc., 2006-0802/FTL (Fla. NMVAB January 24, 2007)
The Consumer complained of a defective air conditioner that emitted a strong musty odor when first started. The Consumer testified that when driving the vehicle, he experienced flu-like symptoms, and was diagnosed with sinusitis and conjunctivitis in his eyes. The Manufacturer contended that the alleged defect did not substantially impair the use, value or safety of the vehicle. The Manufacturer's witness testified that they performed a "Wynn's ultra sonic A/C system treatment" pursuant to a technical service bulletin addressing the Consumer's complaint. The Board found that the odor did substantially impair the use and value of the vehicle. Accordingly, the Consumer was awarded a refund.

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

What Constitutes a Reasonable Number of Attempts §681.104, F.S.; §681.1095(8), F.S.

Harrell v. Ford Motor Company, 2006-0811/TLH (Fla. NMVAB February 27, 2007)
The vehicle had a defective throttle control system that substantially impaired its use, value and safety. The Consumer testified that, although the problem with the system had not manifested recently, he was concerned that it would again in the future. The vehicle was out of service for a total of 25 days during 5 different repair attempts. The Manufacturer argued that the nonconformity was corrected within a reasonable number of attempts. Considering the seriousness of the nonconformity, the number of repairs undertaken and the days out of service, along with the Consumer's credible and reasonable concerns regarding the possibility of the recurrence of the nonconformity, the Board rejected the Manufacturer's contention that the nonconformity was corrected within a reasonable number of attempts. Accordingly, the Consumer was awarded a refund.

Diez v. Volkswagen/Audi of America, Inc., 2007-0022/MIA (Fla. NMVAB February 28, 2007)
The vehicle had an engine noise and vibration, along with intermittent stiffness and pulling when steering or turning, all of which substantially impaired its use, value or safety. The evidence established that the vehicle was out of service by reason of repair of the nonconformities for a total of 29 cumulative calendar days. After 15 or more days out of service, the Consumer notified the Manufacturer in writing as required by statute, and after receipt of the notification, the Manufacturer or its service agent had at least one opportunity to inspect or repair the vehicle. While 30 out-of-service days, inclusive of the statutory notice, raises a presumption of a reasonable number of attempts, the Consumer is not required to establish the presumption in order to obtain relief. The Board found that 29 days out of service was a reasonable number of attempts undertaken to conform the vehicle to the warranty. Accordingly, the Consumer was awarded a refund.

Foreman v. Toyota Motor Sales, USA, 2006-0780/FTL (Fla. NMVAB February 27, 2007)
The intermittent illumination of the "check engine" light warning light and accompanying intermittent engine stall substantially impaired the use, value and safety of the vehicle. The Consumer presented evidence that the vehicle was out of service by reason of repair of the nonconformity for a total of 29 days, and that, after 15 or more days out of service, the Consumer so notified the Manufacturer in writing as required by the statute. After receipt of the notification, the Manufacturer or its authorized service agent had the opportunity to inspect or repair the vehicle. The Board concluded that a reasonable number of attempts were undertaken by the Manufacturer. Accordingly, the Consumer was awarded a refund.

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

McVea v. American Motor Honda Company, 2006-0793/JAX (Fla. NMVAB March 1, 2007)
The Consumer complained of a pull to the right, vibration, a rattle in the vehicle chassis, and a dent in the vehicle fender, all of which were found by the Board to constitute nonconformities under the statute. The vehicle was out of service for repair of the nonconformities for a total of 31 days. The Manufacturer contended that some of those days should not be "attributable to the Manufacturer," because they were for work that was done solely for the Consumer's satisfaction and not for repair of a nonconformity. The Manufacturer also contended the Consumer was not entitled to relief because some of the defects were repaired. The Board rejected both of the Manufacturer's contentions, concluding that the days out of service were for repair of the nonconformities and that, whether the nonconformities were corrected was irrelevant. Accordingly, the Consumer was awarded a refund**.**

Gagnier v. General Motors Corporation and Home & Park Motorhomes, 2006-0709/JAX (Fla. NMVAB January 17, 2007)
The Consumer presented his vehicle to the Manufacturer's authorized service agent on May 23, 2006, for repair of a gas leak. That afternoon, the service agent informed the Consumer to bring the vehicle to Dick Gore's RV World because it was not covered by General Motors' warranty. The next day, the Consumer received a call from Dick Gore's RV World telling them that the gas leak was covered by General Motors' warranty and that Dick Gore's would deliver the vehicle to General Motor's authorized service agent. On June 27, 2006, the Consumer was notified by General Motors' authorized service agent that the vehicle repair was complete and the vehicle was ready to be picked up. General Motors stipulated to the dismissal of Home & Park Motorhomes, and stipulated that the gas leak was the result of a defect covered by the General Motors limited warranty, but argued that the vehicle was not out of service by reason of repair for 30 or more days that were "attributable to General Motors," because there was no evidence that the vehicle was in possession of General Motors or their authorized service agent from May 24 through May 31, 2006. General Motors further asserted that some of the out-of-service days should not "count against it," because they were due to their authorized service agent ordering the wrong part, thereby delaying repair of the vehicle. The Board rejected both arguments. The Board found that the time out of service contested by General Motors represented out-of-service days by reason of repair of the nonconformity. Accordingly, the Consumer was awarded a refund.

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

Sayset v. DaimlerChrysler Motors Company, LLC, 2006-0752/ORL (Fla. NMVAB February 2, 2007)
The Consumer's counsel sent a letter to the Manufacturer's legal department requesting a final repair attempt. Three days before the request was received, the Manufacturer's legal department

had received a demand letter from the Consumer's counsel threatening a lawsuit. The Manufacturer's representative argued that the demand letter did not constitute proper written notice pursuant to the statute. The Board found that two letters that were sent by the Consumer's counsel were insufficient to put the Manufacturer on notice of the need to perform a final repair attempt. Therefore, the Consumer's case was dismissed.

Gagnier v. General Motors Corporation and Home & Park Motorhomes, 2006-0709/JAX (Fla. NMVAB January 17, 2007)
The Consumer sent written notification to both Manufacturers. At the time General Motors received the notice, the vehicle was still undergoing repair by General Motors' authorized service agent. General Motors contended that the notification was received after the vehicle was out of service for 14 days, rather that 15 days or more, and that the notification was "defective" for this reason. The evidence established that the notice was received on the 15th day out of service. Since the vehicle was in possession of the Manufacturer's authorized service agent when notice was received, and the Manufacturer or the service agent had the statutory opportunity to inspect or repair the vehicle after receipt of notice, the Board rejected the Manufacturer's argument and held the notice was proper under the statute.

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.

Jean v. American Suzuki Motor Corporation, 2007-0079/FTL (Fla. NMVAB March 28, 2007)
The Consumer complained of a "massive" vibration under the driver's seat. The Consumer testified that she experienced the vibration under the seat of the vehicle since its purchase and it had become increasingly worse. The Manufacturer contended that the vibration was only slight when the vehicle was traveling over 80 miles per hour. The Board concluded that the vibration did not substantially impair the use, value or safety of the vehicle. Accordingly, the Consumer's case was dismissed.

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

Stuhrmann v. DaimlerChrysler Motors Company, LLC, 2006-0784/FTL (Fla. NMVAB January 31, 2007)
The Consumer complained that the transmission popped out of third gear on deceleration and intermittently grinded into third gear on acceleration. In addition, the Consumer complained of a clicking noise. The Manufacturer argued that the alleged defect was the result of abuse by someone other that the Manufacturer, specifically, by racing the vehicle and/or pushing the vehicle beyond its normal means. The Manufacturer's witness testified that, on the first repair attempt, the vehicle exhibited a lot of debris powder around the bell housing, chunks of material lodged in the disintegrated disc and the bearing was melted. At subsequent repair attempts, the

gear selector was broken off from its assembly and found at the bottom of the transmission. According to the witness, it would take an extreme amount of force to break the half-inch thick metal block. In addition, slider rotors were added to the vehicle to upgrade the performance. The Board found the problem with the transmission and clicking noise was the result of abusive driving by persons other than the Manufacturer or authorized service agent. Therefore, the case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Harrell v. Ford Motor Company, 2006-0811/TLH (Fla. NMVAB February 27, 2007)
The Consumer sought reimbursement of $150.00 as an incidental charge for an expert witness who performed an inspection of the vehicle prior to the hearing and wrote a report that was submitted into evidence by the Consumer. The Manufacturer objected to reimbursement of the witness fee, because the report was not mentioned during the Consumer's testimony. The Board denied the request for the witness fee, because the report was not relied upon during the Consumer's testimony.

Parks v. Ford Motor Company, 2007-0003/JAX (Fla. NMVAB February 23, 2007)
The Consumer sought reimbursement of $628.59 as an incidental charge for fuel injector repairs. The Manufacturer objected, asserting that the repairs were vehicle maintenance issues and were not related to any nonconformity. The Board denied the Consumer's request because the costs were not directly caused by the nonconformity.

Gagnier v. General Motors Corporation and Home & Park Motorhomes, 2006-0709/JAX (Fla. NMVAB January 17, 2007)
The Consumer sought reimbursement of attorney's fees and "loss of use" damages. The Manufacturer objected to both requests. The Board denied the Consumer's request, because the award of those items is outside the scope of the Board's authority.

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

Miller v. Mercedes-Benz USA Inc., 2006-0731/FTL (Fla. NMVAB January 3, 2007)
The Manufacturer objected to the purchase price established by the Board for the purpose of calculating the reasonable offset for use, arguing that sales tax and other fees charged to the Consumer should be included. The Consumer objected to the Board using the miles on the vehicle as of the day of the hearing as the starting point for calculating the miles attributable to the Consumer to calculate the offset. The Consumer argued that the mileage on the vehicle as of the date the Manufacturer made a settlement offer to the Consumer would be a more appropriate figure to use. The Board rejected both parties' arguments.

Valdes-Recio v. Mazda Motor of America Inc., 2007-0045/MIA (Fla. NMVAB March 5, 2007) The Consumer, at the time of purchase, had a trade-in vehicle with a $9,502.00 debt owed on the vehicle. The Manufacturer objected to deducting the debt from the purchase price of the vehicle in determining the reasonable offset for use. The Board denied the Manufacturer's objection and excluded from the purchase price the $9,502.00 as debt from another transaction in order to calculate the reasonable offset for use. The debt was also deducted from the amount of the trade-in allowance awarded to the Consumer.

MISCELLANEOUS PROCEDURAL ISSUES:

Alexander v. General Motors Corporation, 2007-0008/ORL (Fla. NMVAB February 14, 2007) The Consumer testified that she did not receive any of the attachments that came with the Manufacturer's prehearing information sheet. The Board received neither the Manufacturer's prehearing sheet nor any of the attachments. The Consumer argued that she would be prejudiced by the introduction of any documents attached to the prehearing sheet that she had not received or reviewed. The Board did not allow into evidence any documents that the Consumer had not received prior to the hearing, pursuant to paragraph (10), *Hearings Before the Florida New Motor Vehicle Arbitration Board,* the Board's rules of procedure.

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.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 2007 - September 2007 (3rd Quarter)

JURISDICTION:

Warranty §681.102(23)F.S.

Legow v. American Honda Motor Company, 2007-0419/FTL (Fla. NMVAB September 5, 2007)
Prior to the Consumer's purchase of the vehicle, the Manufacturer installed a tire system manufactured by Michelin Tires called the "PAX" system. This was a specialized tire system that could only be repaired by authorized PAX system service facilities. The Consumer experienced pulling to the right when driving on flat road surfaces, along with several tire punctures and premature tire wear. The Manufacturer contended that the alleged tire defect was not covered by American Honda's limited warranty. A Manufacturer witness testified that the PAX tire system installed on the vehicle by Honda was warranted by Michelin and not Honda. Applying the statutory definition of "nonconformity" (§681.102(16), Fla. Stat.), the Board found the problem to be a nonconformity covered by the statute. The PAX system was installed by the Manufacturer with the Consumer having no choice as to the type of the tire system. Modifications authorized and/or installed by the Manufacturer that cause the nonconformity are covered by the statute. Accordingly, the Consumer was awarded a refund.

NONCONFORMITY §681.102(16), F.S.

Schaffer v. Nissan North America, Inc., Infiniti Division, 2007-0381/WPB (Fla. NMVAB August 13, 2007)
The Consumer complained of a defect in the electrical system which intermittently caused the low tire pressure warning light to illuminate. The Consumer testified that the low tire pressure warning light would blink for 30 seconds to one minute, then become a steady light. Not knowing if he had a flat tire, the Consumer had pulled off the highway to check his tires on several occasions. The Consumer did not feel safe driving the vehicle when this happened. The Manufacturer contended that any problem with the system was not substantial. The Board found the defect in the electrical system to be a substantial impairment of the use, value or safety of the vehicle; therefore, a nonconformity. Accordingly, the Consumer was awarded a refund.

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

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

Aboul-Ezz v. Volkswagen/Audi of America, Inc., 2007-0464/ORL (Fla. NMVAB August 29, 2007)
The Consumer complained of an intermittent illumination of a warning light indicating that either a headlight, a taillight or a brake light had gone out, which the Board found to be a nonconformity. The Consumer sent written notification to Volkswagen/Audi of America on February 20, 2007, to provide a final opportunity to repair the vehicle. At the hearing, the Consumer testified that, upon advice of counsel, he did not take the vehicle back to the Manufacturer 's authorized service agent at any time after December 29, 2006. The Manufacturer's witness testified that the Consumer declined to bring the vehicle in for the final repair attempt after the Manufacturer contacted him. The Manufacturer contended it was not afforded the opportunity for a final repair attempt. The Board concluded that the Consumer failed to afford the Manufacturer a final opportunity to correct the nonconformity; consequently, the case was dismissed.

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

Braunstein v. Hyundai Motor America, 2007-0489/STP (Fla. NMVAB September 25, 2007)
The Consumer complained of intermittent engine problems, an air conditioner malfunction and a malfunction with the sliding doors which the Board found to be nonconformities. The Manufacturer contended that any time the vehicle was in the repair facility, but no work was performed, because a nonconformity could not be duplicated, should not be considered a day out of service. The Board rejected the Manufacturer's argument and found the Consumer's vehicle to be out of service a total of 31 days. Accordingly, the Consumer was awarded 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.

Miller v. Mazda Motor of America Inc., 2007-0368/ORL (Fla. NMVAB July 2, 2007)
The Consumer complained of a paint chip on the top right edge of the driver's door. The paint chip was approximately one inch in length and rectangular in shape. The Manufacturer asserted that the paint chip did not substantially impair the use, value, or safety of the vehicle. At the hearing, the Manufacturer's witness testified that the paint chip was approximately the size of a "pinky fingernail" and was not visible when the door was closed. The Board found that the paint chip was not a nonconformity and the case was dismissed.

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

Kimbrough v. General Motors Corporation-Chevrolet Motor Division, 2007-0273/STP (Fla. NMVAB August 6, 2007)
The Consumer complained that the vehicle's engine exhibited intermittent hesitation to start and occasional failure to start. Three months after the Consumer purchased the vehicle, Mad Mark's Stereo Warehouse installed an aftermarket alarm system. The alarm system was removed one year later. The Manufacturer contended that the alleged defect was the result of an alteration or modification by persons other than the Manufacturer or its authorized service agents; specifically, the installation and removal of the aftermarket alarm. At the hearing, the Manufacturer presented evidence showing that the problem complained of by the Consumer first happened after the alarm was installed. After the alarm was removed, the wiring into the ignition system showed signs of having been cut and sliced many times, interrupting the electrical connection to the engine. The Board found that the problem complained of by the Consumer did not constitute a nonconformity as it was the result of an alteration or modification by a person other than the Manufacturer or its authorized service agents. Accordingly, the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Alonso v. General Motors Corporation-Chevrolet Motor Division, 2007-0366/JAX (Fla. NMVAB July 18, 2007)
The Consumers sought reimbursement of $500.00 for damage to a rental car they were using while their vehicle was in the shop for repair of the nonconformity. The Manufacturer objected, citing that the damage was caused by the Consumers; therefore, the Manufacturer should not be held responsible for the damage. The Board denied the reimbursement to the Consumers, because they were personally responsible for causing the damage to the rental car and the damage was not a direct result of the nonconformity.

Garrett v. BMW of North America, LLC, 2007-0432/FTL (Fla. NMVAB September 6, 2007)
The Consumer sought reimbursement of $1,287.37 for a rental car. The Manufacturer objected, arguing that the Consumer's vehicle was available to drive and the Consumer elected to rent a vehicle when she did not have to. The Board denied the Manufacturer's objection and awarded the Consumer $1,287.37 for a rental car as an incidental charge.

Ferran v. Kia Motors America, 2007-0426/MIA (Fla. NMVAB August 16, 2007)
The Consumer sought reimbursement of $30.00 for a rental car and $213.85 for new tires and an alignment performed to address a nonconformity as incidental charges. The Manufacturer objected to the rental car charge because the representative did not know if Kia had already reimbursed the Consumer for that charge. The Manufacturer also objected to the tires and alignment because they were a "maintenance item" and not covered under the Manufacturer

warranty. The Board found that both charges were directly caused by the vehicle nonconformities; therefore, they were awarded to the Consumer.

Collateral Charges §681.102(3), FS

Langevin v. Chrysler LLC, 2007-0353/ORL (Fla. NMVAB September 12, 2007)
The Consumer sought reimbursement of $15.00 for a bed liner and $50.00 for window visors as collateral charges. The Consumer could not produce receipts for either item and the Manufacturer objected for that reason. The Board denied the Manufacturer's objection and awarded the Consumer $15.00 for a bed liner and $50.00 for window visors as collateral charges.

Oliver v. Ford Motor Company, 2007-0267/JAX (Fla. NMVAB August 13, 2007)
The Consumer requested reimbursement of $956.24 for a roll and lock bed cover as a collateral charge. The Manufacturer objected, because the Consumer only produced an estimate of the cost and not a paid receipt. According to the Consumer, the store that sold him the bed cover was no longer in business; therefore, he could not get a receipt from them. The Board denied the Manufacturer's objection and awarded the Consumer $956.24 for the bed cover.

Reasonable Offset for Use §681.102(20), FS

Davis Diversified Inc., v. Land Rover of North America, 2007-0474/ORL (Fla. NMVAB September 13, 2007)
The Consumer was awarded a refund. Total purchase price of the vehicle for the purpose of calculating the statutory reasonable offset for use was $57,921.58 ($62,305.58 reduced by the debt from another transaction of $4,384.00 as reflected in the purchase contract). The Manufacturer asserted that the purchase price should not be reduced by the debt, because it was debt on the trade-in vehicle and to do so would be to treat consumers with debt on a trade-in vehicle differently from consumers without such debt. Upon consideration by the Board, the Manufacturer's objection was denied.

MISCELLANEOUS PROCEDURAL ISSUES:

Alonso v. General Motors Corporation-Chevrolet Motor Division, 2007-0366/JAX (Fla. NMVAB July 18, 2007)
At the start of the hearing, the Manufacturer moved to dismiss the case, based on the Consumers' settlement of their prior County Court claim against the Manufacturer. Counsel for the Manufacturer argued that as part of that settlement, the Consumers had signed a written release of any further claims against General Motors regarding their 2005 Chevrolet Trailblazer. The Manufacturer's attorney asserted that the release language barred the lemon law claim. Section 681.115, Florida Statutes (2006), provides, "any agreement entered into by a consumer that waives, limits, or disclaims the rights set forth in this chapter, or that requires a consumer not to disclose the terms of such agreement as a condition thereof, is void as contrary to public policy." Based upon the foregoing, the motion to dismiss was denied.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

October 2007 - December 2007 (4th Quarter)

JURISDICTION:

Consumer §681.102(4) F.S.; Lessee §681.102(11) F.S.

Duffield v. Mercedes-Benz USA Inc., 2007-0666/ORL (Fla. NMVAB December 17, 2007)
The arbitration hearing took place on December 5, 2007. On November 3, 2007, the Consumer's lease ended and the Consumer testified that she turned in the 2006 Mercedes-Benz CLK 350 on November 1, 2007. The Manufacturer argued that the case should be dismissed, because the Consumer no longer possessed the vehicle and did not have the ability to provide the Manufacturer with clear title to and possession of the vehicle should she prevail on the merits of the case. The statute defines a "Consumer" as 'The purchaser, other than for purposes of resale, or the lessee, of a motor vehicle primarily used for personal, family, or household purposes...," and defines a lessee as "any consumer who leases a motor vehicle for 1 year or more pursuant to a written lease agreement which provides that the lessee is responsible for repairs to such motor vehicle or any consumer who leases a motor vehicle pursuant to a lease-purchase agreement." Since the Consumer no longer possessed the motor vehicle which was the subject of the claim, she was not, for purposes of these proceedings, a lessee as defined by the statute. Therefore, the case was dismissed

Motor Vehicle §681.102(15), F.S.

Dagge v. Ford Motor Company, 2007-0601/FTM (Fla. NMVAB November 9, 2007)
The Consumer purchased a new 2008 Ford F250 Super Duty pickup truck in Florida. The Manufacturer contended that the truck was not a "motor vehicle" under the lemon law, because its gross vehicle weight exceeded 10,000 pounds. The truck was weighed by the Manufacturer at a certified scale with a half tank of fuel and two occupants. The steer axle weight was 5,100 pounds and the drive axle weight was 6,580 pounds for a total of 11,680 pounds. The Board found the gross vehicle weight to be 11,680 pounds, exceeding the limit set forth in the statute. Accordingly, the truck was not a "motor vehicle" and the Consumer's case was dismissed

Bick v. Western Golf Cart, 2007-0384/FTM (Fla. NMVAB October 3, 2007)
The Consumer purchased a new 2005 Western Elegante golf cart in Florida. The vehicle was electric-powered with a 48-volt system and a high-speed motor. The Consumer testified that she used it exclusively for playing golf, driving it only on golf courses and not on roads. The statutory definition of "motor vehicle" specifically excludes "off-road vehicles." The Board

concluded that the Consumer's vehicle was an “off-road vehicle” and therefore not a motor vehicle under the statute. Accordingly, the Consumer's case was dismissed.

NONCONFORMITY 681.102(16), F.S.

Hernandez v. American Honda Motor Company, 2007-0625/FTL (Fla. NMVAB November 28, 2007)
The Consumer complained of paint peeling off the rear bumper of his 2005 Acura TL. Several repaints and even replacement of the bumper failed to correct this problem. The Consumer asserted that the defect substantially impaired the value of the vehicle. The Manufacturer contended that the alleged defect did not substantially impair the use, value, or safety of the vehicle. The Manufacturer presented the testimony of the Pre-owned Vehicle Service Manager of Acura of South Florida. The witness testified that, if the vehicle was traded in to his dealership for resale, it would not cost the dealership very much to fix the bumper; therefore, the value would not be substantially impaired. The Board gave no weight to this testimony and found the paint peeling to substantially impair the value of the vehicle. Accordingly, the Consumer was awarded a refund.

Mueller v. Ford Motor Company, 2007-0535/FTL (Fla. NMVAB October 4, 2007)
The Consumer complained of intermittent, loud noises from the 2006 F150 pickup truck's suspension/steering/transmission. The Consumer testified that sometimes when the 4x4 engaged, the noise sounded like "loud screaming/grinding" coming from the front of the vehicle. The grinding noise occurred two or three times a week, and the loud "screaming" noise occurred once every other week. The Manufacturer contended that the problem with the vehicle was the front hubs and after they were replaced, the problem was corrected. The Board found the problem to be a nonconformity which still existed; therefore, the Consumer was awarded a refund.

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

What Constitutes a Reasonable Number of Attempts §681.104, F.S.; §681.1095(8), F.S.

Sarasohn v. Toyota Motor Sales, USA, 2007-0579/WPB (Fla. NMVAB December 14, 2007)
The Consumer complained of poor gas mileage in this Highlander Hybrid utility vehicle. The Board found that the poor gas mileage substantially impaired the value of the vehicle, and as such, constituted a nonconformity. The vehicle was presented to the Manufacturer’s authorized service agent for repair of the poor gas mileage on June 5, 2007, when no repairs were performed; thereafter, the Manufacturer’s authorized service agent would not accept the vehicle for repair. The Consumer sent written notification of the defect to the Manufacturer and the vehicle was brought in a second time thereafter, when it was only test driven by the

Manufacturer. The evidence did not reflect that any testing was performed to determine a cause for the low gas mileage the Consumer was recording. Considering the Manufacturer's unwillingness to attempt repair, the Board concluded that a reasonable number of attempts was undertaken; accordingly, the Consumer was awarded a refund.

Isbell v. Chrysler LLC, 2007-0428/PEN (Fla. NMVAB November 9, 2007)
The Consumers complained of defective door latches, a leaking top and an engine/electrical system stalling problem in their '07 Jeep Wrangler. The Board found all three defects to be nonconformities. The stalling nonconformity was corrected within a reasonable number of repair attempts; however, the leaking top remained uncorrected after five attempts, and the door latches after three. The Board concluded that under the circumstances, the Manufacturer was provided a reasonable number of attempts to repair the remaining nonconformities and failed to do so. Accordingly, the Consumers were awarded a refund.

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

Salameh v. Ford Motor Company, 2007-0553/JAX (Fla. NMVAB October 22, 2007)
The Consumer complained of a defective transmission, a distorted navigation system voice, a water leak, and inoperable power windows in their 2006 Ford Explorer demo. All were found to be nonconformities by the Board. The Manufacturer argued that the dates shown on their authorized service agent's repair orders should be used to calculate days out of service. The Consumer argued that the out-of-service dates should also include the days during which the vehicle was at the authorized service agent waiting for a replacement part and the days the authorized service agent claimed it did not know the vehicle was at its facility. The Board was more persuaded by the Consumer's argument. Therefore, all of the Consumer's calculated out-of-service days were counted to bring the total to 49 days out of service. The Consumer was awarded a refund.

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

Deweese v. General Motors Corporation, Hummer Division, 2007-0685/TLH (Fla. NMVAB December 17, 2007)
The Consumers complained of a faulty supercharger system in their 2006 Hummer H2. After three or more unsuccessful attempts by the Manufacturer's authorized service agent to repair the defect, the Consumers sent a Motor Vehicle Defect Notification form to "UAW/GM CHR, 200 Walker Street, Detroit, MI, 48207." At the hearing, the Consumer testified that this address was provided to her by her sister, who was employed by General Motors. This was not the regional or zone address for Florida, which was provided to consumers by the manufacturer in the vehicle owner's manual; rather, it was the address for the on-site United Auto Workers office. The Manufacturer did not receive the notification form and did not have the opportunity for a final repair attempt or a post-notice opportunity to inspect or repair the vehicle. Once the vehicle has

been subjected to at least three repair attempts for the same nonconformity, or has been out of service by reason of repair of one or more nonconformities for 15 or more days, a consumer is required by statute to give written notice directly to the Manufacturer. The Board found that the Consumers did not provide the Manufacturer the notice required by statute. Accordingly, the Consumers' case was dismissed.

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.

Perle v. Mazda Motor of America Inc., 2007-0623/WPB (Fla. NMVAB December 13, 2007)
The Consumers complained that the seat heaters in their 2007 Mazda RX8 either did not heat the seats or did not get the seats hot enough. The Manufacturer contended that the seat heaters were working as designed. The Manufacturer's witness testified that the seat heaters would only come on when the ambient temperature was lower than about 82 degrees and were programmed to turn off when the internal temperature of the seat reached about 99 degrees. The Board concluded that, while the heaters did not work in the way the Consumers preferred, this was not a defect or condition that substantially impaired the use, value, or safety of the vehicle and the claim was dismissed.

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

Valdes v. Chrysler LLC, 2007-0526/ORL (Fla. NMVAB November 16, 2007)
The Consumer complained that the left front tire, wheel and wheel assembly separated from the frame of the 2006 Dodge Ram pickup truck and fell off. The Manufacturer contended that the alleged nonconformity was the result of an accident, abuse, neglect or unauthorized modifications of the vehicle by persons other than the Manufacturer or its authorized service agent. The Consumer's son testified he was driving between 30-40 miles per hour when this occurred and it caused approximately $8,600.00 in body repair damages which was paid for by the Consumer's insurance carrier. The Manufacturer pointed out that there were no complaints by the Consumer of a defect prior to this incident, there was no police report, and the authorized service agent refused to accept the vehicle for repair. The Board concluded that the complaint by the Consumer did not constitute a nonconformity as the wheel and tire separation was the result of an accident by persons other than the Manufacturer or its authorized service agent. Accordingly, the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Thornton v. Chrysler LLC, 2007-0570/TLH (Fla. NMVAB October 29, 2007)
The Board found the Consumer's 2007 Sebring to be a "lemon," as a result of an unrepaired hesitation/fluttering/shuddering nonconformity, and awarded the Consumer a refund. The Consumer requested reimbursement for excessive gas charges he claimed were the result of the nonconformity, because the vehicle was not getting the gas mileage reflected on the window sticker**.** The Manufacturer objected to the reimbursement for gas charges as being too speculative and added that the gas mileage projections on the window sticker were just estimates and not exact figures. The Board denied the request by the Consumer as being too speculative and not directly caused by the nonconformity.

Kivo v. Ford Motor Company, 2007-0599/JAX (Fla. NMVAB October 24, 2007)
The Consumers purchased a Ford Expedition which the Board found to be a "lemon." The Consumers requested reimbursement of $60.00 paid to upgrade a rental required during the course of repairs from a standard size car to a pickup truck as an incidental charge. The Manufacturer objected to the rental car upgrade, but stated no reason. The Board awarded the $60.00 to the Consumers as a reasonable incidental charge.

Barry v. Mercedes-Benz USA Inc., 2007-0556/WPB (Fla. NMVAB November 19, 2007)
The Consumers' 2006 E350 automobile had a foul, musty, mildew odor emanating from the air conditioner and the Board declared the vehicle a "lemon." The Consumers requested reimbursement of $115.00 for a mold test on the vehicle which was performed by Consolidated Environmental Engineering, LLC. The Manufacturer objected to the Consumers being reimbursed for the cost of the mold test. The Board awarded reimbursement to the Consumers as a reasonable incidental charge.