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

## QUARTERLY CASE SUMMARIES

January 2006 - March 2006 (1st Quarter)

**JURISDICTION:**

**Consumer §681.102(4)F.S.**

*Molinaro v. General Motors Corporation, Chevrolet Division***,** 2006-0063/TPA (Fla. NMVAB March 22, 2006)

The Consumer testified that he purchased the vehicle for the purposes of resale. Title to the vehicle was held as "Louis Molinaro and Auto Marine Wholesale." Section 681.102(4), Florida Statutes (2005) 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; any person to whom such motor vehicle is transferred for the same purposes during the duration of the Lemon Law rights period; and any other person entitled by the terms of the warranty to enforce the obligations of the warranty." The Board found that Mr. Molinaro was not a "consumer" as defined by the statute; therefore, the case was dismissed.

**Motor Vehicle §681.102(15), F.S.**

*Forehand v. Ford Motor Company,* 2005-1065/JAX (Fla. NMVAB February 28, 2006)

The Consumer purchased a Ford F-550 pick-up truck for the purpose of transporting cars. The truck had a cab and a short, flat bed with a fifth-wheel hitch for the purpose of hitching the transport trailer. According to the Consumer, the truck and trailer together were a "tool" of his occupation. During the Manufacturer's prehearing inspection, the truck was weighed with an empty fuel tank, no occupants and without the transport trailer, to ascertain its actual weight. According to the Manufacturer's witness, who was present at the time, the weight was 8,520 pounds. The Consumer presented a document entitled, "2004 F-350 Super Duty Chassis Cab Base Curb Weights," on which was indicated a "Super Duty F-550, 4x4 Chassis Cab" with a wheel base of "140.8 DRW," and a total of the front and rear weight in pounds as "6,623." The Consumer testified that the transport trailer he used weighed approximately 7,000 pounds without cars on it. The Manufacturer contended that the truck was not a motor vehicle as defined in 681.102(15), because its gross vehicle weight exceeded 10,000 pounds. The Board concluded that the evidence and Consumer's consideration of the truck and trailer together as a single tool, required the truck and the unloaded transport trailer be considered together to determine the gross vehicle weight, resulting in a gross vehicle weight that exceeded the statutory limit of 10,000

pounds. Accordingly, the Consumer's truck was not a “motor vehicle” as defined by the statute, and the claim was dismissed.

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

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

*Rhone v. DaimlerChrysler Motors Company LLC*, 2005-1031/TPA (Fla. NMVAB February 2, 2006)

The Consumers complained that, intermittently when making a left turn, the engine stalled. The Manufacturer contended that the defect was cured within a reasonable number of repair attempts, based upon the history of occurrences early in the ownership of the vehicle, followed by only one occurrence in the last 11 months and 15,000 miles of driving. The Manufacturer’s witness testified that he believed the problem was a “software problem” which was fixed by software updates; however, he admitted that there was “no way to know 100 percent if the vehicle was fixed,” because the cause of the problem was never determined. Based upon the evidence that the defect last occurred after all software updates were performed, which refuted the Manufacturer's assertion that the defect was cured by the software updates, and the fact that neither the Manufacturer nor its authorized service agent was ever able to identify the cause of the nonconformity, the Board concluded that the nonconformity was not corrected within a reasonable number of attempts, and awarded a the Consumers a replacement vehicle.

*Ross v. Ford Motor Company*, 2005-0990/JAX, (Fla. NMVAB February 22, 2006)

The Consumers complained of an intermittent grinding noise and steering wheel vibration, hood latch released while driving, tailgate released while driving, cigarette lighter and tailgate release were inoperative and that the vehicle would not start, all of which were found to be nonconformities. The evidence established that the vehicle was out of service by reason of repair of the nonconformities for a total of 29 days. Under the circumstances, the Board found that 29 days out of service by reason of repair of the nonconformities constituted a reasonable number of attempts. Accordingly, the Consumers were awarded a refund.

*Ebbo v. American Suzuki Motor Corporation*, 2005-0890/FTL (Fla. NMVAB January 6, 2006)

The Board found the vehicle had an electrical condition which intermittently caused the engine to stall or not start, and that this defect was a nonconformity. The evidence established that the vehicle was out of service by reason of repair of the nonconformity for a total of 28 cumulative days. Under the circumstances, the Board found that the Manufacturer had a reasonable number of attempts to conform the subject vehicle to the warranty as contemplated by the Lemon Law. Accordingly, the Consumer was rewarded a refund.

### What Constitutes Written Notification Under §681.104(1), F.S.

*Ebbo v. American Suzuki Motor Corporation*, 2005-0890/FTL (Fla. NMVAB January 6, 2006)

The Consumer sent written notification via a certified letter to the president of American Suzuki Motor Corporation, the Manufacturer, to advise the Manufacturer that the vehicle had been out of service by reason of repair for 15 or more cumulative days. The Manufacturer, through its attorney, asserted that the Consumer's claim should be dismissed, because the Consumer did not give "proper notice" to the Manufacturer. The Manufacturer contended that the " Motor Vehicle Defect Notification " form (found in the *"Consumer Guide to the Florida Lemon Law"*) was the "required" form of written notification and the Consumer failed to send the form to the Manufacturer. The Board found that the letter addressed to the Manufacturer and sent via certified mail was sufficient to comply with the statute and that contrary to the Manufacturer's assertion, the statute did not require a consumer to utilize the " Motor Vehicle Defect Notification " form**.**

### Opportunity for a Final Repair Attempt Under §681.104(1)(a), F.S.

*Londono v. Honda Motor Company,* 2005-0977/ORL (Fla. NMVAB March 7, 2006)

The Consumer sent written notification to the Manufacturer on August 15, 2005, to provide a final opportunity to repair the vehicle. The Manufacturer received the notification on August 22, 2005. On September 1, 2005, a representative from the Manufacturer telephoned the Consumer to arrange the final repair attempt. The Consumer had a "call block" that would not accept the call. The representative finally reached the Consumer on September 5, 2005, at which time the Consumer refused to bring the vehicle in. The Manufacturer contended the case should be dismissed because 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 claim 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.

*Thomas v. DaimlerChrysler Motors Company LLC,* 2005-0974/WPB (Fla. NMVAB February 8, 2006)

The Consumer complained of an engine vibration and testified that the vibration was felt every time the vehicle was driven at speeds between 35 and 55 miles per hour. The Consumer acknowledged that the vibration caused the mirrors to shake a little, if at all and further testified that the vehicle started each time and that he had experienced no operational difficulties as a

result of the vibration. The Consumer indicated he was concerned that, over time, the vibration could lead to a more serious problem with his vehicle. 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 he did not detect any unusual vibration during a test drive and opined that the complaint involved the normal feel of the road. The witness further testified that the vehicle did not display any unusual tire wear, which would have been evident if the vehicle had a severe vibration. The Board found that the vibration did not constitute a nonconformity; consequently, the claim was dismissed.

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

*Eaton v. Ford Motor Company*, 2005-0928/FTM (Fla. NMVAB March 6, 2006)

The Consumer complained that the engine surged, bogged down and lost power while the vehicle was driven at all speeds. The Manufacturer pursued the statutory affirmative defense that the alleged nonconformity was the result of an accident, abuse, neglect or unauthorized modifications by persons other than the Manufacturer or its authorized service agent. The Manufacturer's witness testified that, during the Manufacturer's pre-hearing inspection, he noticed a modified hood, exhaust and rear gear ratio. The modified exhaust enhanced the sound of the exhaust and reduced the back pressure to enhance engine performance. The Manufacturer suggested that these were modifications typically added to vehicles to race them. The witness expressed the belief that wear on two rear used tires was the result of "abuse of some kind." The Board found the evidence presented by the Manufacturer did not support its implication that the nonconformity may have been caused by the Consumer racing the vehicle and awarded the Consumer a refund on the basis that the defect substantially impaired the use, value or safety of the vehicle.

**REFUND §681.104(2)(a)(b), F.S.:**

**Collateral Charges §681.102(3), F.S.**

*Hickman v. Ford Motor Company*, 2005-0940/TPA (Fla. NMVAB January 25, 2006)

Approximately 10 days after purchasing the vehicle the Consumer purchased an "Easy Care" service contract for the vehicle through the selling dealer for which the Consumer sought reimbursement as a collateral charge. The Manufacturer asserted that the service contract expense did not meet the definition of a collateral charge, because the service contract was purchased 10 days after the vehicle was acquired and was a "non-Ford" service contract purchased from the dealer and not the Manufacturer. Section 681.102(3), Florida Statutes (2005), defines "collateral charges" as "those additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle." The statute does not require that the collateral charges be incurred contemporaneously with the acquisition of the vehicle, or that they be products of the Manufacturer. The Board found that the service contract was a charge that was

wholly incurred as a result of the Consumer's acquisition of the vehicle; therefore, the Consumer was entitled to reimbursement for the contract as a collateral charge.

*Ross v. Ford Motor Company,* 2005-0990/JAX, (Fla. NMVAB February 22, 2006)

The Consumers sought reimbursement to replace a remote key they had lost as a collateral charge. The Board denied the Consumers' request.

*Gale v. Ford Motor Company,* 2005-0844/FTL (Fla. NMVAB February 14, 2006)

The Consumer sought reimbursement of $1,166.00 for a camper top as a collateral charge. The Manufacturer objected to reimbursement of the camper top, because it was purchased for a previous vehicle the Consumer owned, and merely transferred to the "lemon" vehicle. The Board denied the Consumer's request for reimbursement for the camper top as not constituting a collateral charge.

**Incidental Charges §681.102(8), F.S.**

*Chisholm-David v. Ford Motor Company,* 2005-0873/TPA (Fla. NMVAB January 6, 2006)

The Consumer sought reimbursement for the following postage expenses as incidental charges: $4.42 for postage for mailing her motor vehicle defect notice to the Manufacturer; $13.65 each for mailing her Prehearing Information Sheet to counsel for the Manufacturer and to the Board, and $8.80 for mailing her claim and supporting documents to the Department of Agriculture and Consumer Services. The Manufacturer stipulated to the cost of mailing the motor vehicle defect notice, but objected to all other postage amounts, arguing that Chapter 681 requires only the notice to the Manufacturer to be sent by certified mail; hence, the other postage was "not reasonable." The Board rejected the Manufacturer's contention that a portion of the postage expense was unreasonable because it was not required and awarded the expenses to the Consumer.

*Melrose Supply and Sales Corporation v. General Motors Corporation, Cadillac Division,* 2005-1070/FTL (Fla. NMVAB March 16, 2006)

The Consumer sought reimbursement for insurance paid on rental cars incurred when the vehicle was at the authorized service agent undergoing repair for the nonconformity. The Manufacturer objected to the Consumer being reimbursed for insurance on the rental cars, on the grounds that it was not a "required" expense. The Board agreed with the Manufacturer and denied the Consumer's request for reimbursement for the insurance charges paid on rental cars.

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

*Montalvan v. BMW of North America LLC.,* 2006-0034/MIA (Fla. NMVAB March 23, 2006)

The Consumer asserted that mileage attributable to the Consumer should be calculated up to the date of the first repair attempt. The Manufacturer asserted that the mileage up to the date of the arbitration hearing should form the basis for the offset calculation, because that is what the statute requires. The Board calculated the mileage up to the date of the arbitration hearing.

*Hunter v. American Suzuki Motor Corporation,* 2005-0960/PEN (Fla. NMVAB March 10, 2006)

On January 18, 2006, the case was postponed by the Consumer, because the Manufacturer had offered a settlement; however, performance of the settlement was not completed and a hearing was necessary for the Board to calculate the refund. The hearing was held on March 9, 2006. For purposes of calculating the reasonable offset for use, the Board used, as the starting point, the mileage on the Consumer's vehicle up to January 18, 2006, considering that as the date of the settlement.

**MISCELLANEOUS PROCEDURAL ISSUES:**

*Hughes v. Ford Motor Company and Saleen Performance, Inc.,* 2005-0932/FTM (Fla. NMVAB January 18, 2006)

Saleen Performance, Inc., filed its Manufacturer's Answer four days beyond the date required for timely filing. Saleen requested that the Answer be considered as timely filed, arguing that the process of forwarding information from its offices in California to its attorney in Florida, coupled with the impact of the Thanksgiving holiday and "other pressing matters" prevented the timely filing of the Answer. Additionally, Saleen asserted that there were meritorious defenses to the Consumer's claim. The Board ruled that Saleen was not permitted to raise any affirmative defenses at the hearing, because the Answer was not filed within the time required by the Board's rules of procedure.

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

## QUARTERLY CASE SUMMARIES

April 2006 - June 2006 (2nd Quarter)

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

*Quinn v. BMW of North America, LLC,* 2006-0132/WPB (Fla. NMVAB April 6, 2006)
The Consumer complained that the vehicle was pulling to the right. According to the Consumer, if he looked down for a moment while driving, the vehicle pulled to the right and immediately crossed lanes. The movement of the vehicle across lanes raised safety concerns for the Consumer, because he was required to hold tightly onto the steering wheel to remain in his lane. The Consumer asserted that the pulling to the right occurred each time the vehicle was driven and that, over the course of repair attempts, the pulling problem became worse. The Manufacturer contended that the pulling did not substantially impair the use, value or safety of the vehicle. The Manufacturer's witness testified that the vehicle operated "as designed" during a series of test drives, that no abnormal pulling was detected, that the vehicle followed the normal crown of the road and indicated that any slight drifting problem felt by the Consumer may have been caused by tire wear which was a maintenance responsibility of the Consumer. The Board found the pulling to be a defect or condition that substantially impaired the use value and safety of the vehicle, and as such, it constituted a nonconformity within the meaning of the statute. Accordingly, the Consumer was awarded a refund.

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

**What Constitutes a Reasonable Number of Attempts §§681.104(2), 681.1095(8), F.S.**

*Davis v. Mazda Motor of America,* 2006-0160/ORL (Fla. NMVAB May 11, 2006)
The evidence established that the nonconformity was subjected to repair by the Manufacturer's service agent a total of three times, including one attempt after written notification was received by the Manufacturer from the Consumer. The Board conclude that, under the circumstances, these repairs were sufficient to afford the Manufacturer a reasonable number of attempts to conform the subject vehicle to the warranty as contemplated by the Lemon Law. Accordingly, the Consumers were rewarded a refund.

*Hixson v. DaimlerChrysler Motors Company LLC,* 2006-0284/JAX (Fla. NMVAB June 14, 2006)
The Consumers complained of a "helicoptering" wind noise and pressure from the moon roof and rear windows, which was found to be a nonconformity. The Manufacturer and its authorized

service agent took the position, both during the repair attempts and at the hearing, that there was no repair for the nonconformity. After two unsuccessful attempts to have the vehicle repaired, the Consumers sent written notification to the Manufacturer to give a final repair opportunity. The Manufacturer's position did not change. In light of the Manufacturer's position that there was no fix for the nonconformity, the Board found there were a reasonable number of attempts. Accordingly, the Consumers were awarded a refund.

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

*Taylor v. DaimlerChrysler Motors Company LLC*, 2006-0207/ORL (Fla. NMVAB May 25, 2006)
The Consumer sent written notification to the Manufacturer addressed to "Chrysler Financial, Post Office Box 860, Roanoke, Texas 76262, Att: Customer Service" to provide the Manufacturer with a final opportunity to repair the vehicle. The postal return receipt indicated that the written notification was received. The Manufacturer requested the dismissal of the Consumer's claim on the grounds that the Manufacturer was not afforded written notification and a final repair attempt, because the Consumer mailed the written notification to the incorrect address. The Manufacturer's witness testified that the address to which the Consumer sent the written notification was not the address for correspondence regarding warranty problems set forth in the materials provided to consumers by the Manufacturer at the time of vehicle acquisition and that Chrysler Financial is a separate entity. The Board concluded that the Consumers failed to send the required written notification to the Manufacturer. Accordingly, the case was dismissed.

*Aguirre v. Nissan Motor Corporation USA*, 2006-0219/TPA (Fla. NMVAB June 8, 2006)
The Consumer's attorney sent a letter to the Manufacturer which purported to provide the Manufacturer with a final opportunity to repair the vehicle. The letter referred to "the above listed defects and non-conformities"; however, there were none listed. The letter was also addressed to the Manufacturer's legal department and essentially was a demand for damages and attorney fees, espousing several different legal theories of recovery. The Manufacturer received the letter but did not interpret it to be notification of a final repair opportunity under the Lemon Law and did not respond. The Board concluded that the Consumer failed to provide the required written notification to the Manufacturer. The letter sent by the Consumer's attorney was not sufficient to provide the Manufacturer with the final repair opportunity required by the statute. The Consumer was not qualified for repurchase relief and the case was dismissed.

*Gonzalez v. DaimlerChrysler Motors Company LLC*, 2006-0241/WPB (Fla. NMVAB June 14, 2006)
The Consumers sent written notification to "Chrysler Customer Service, 2050 Roanoke Rd, Westlake, TX 76262," in order to provide the Manufacturer with a final opportunity to repair the vehicle. The notice was received by the Customer Service Department. According to the Manufacturer, the Customer Service Department was not the proper recipient of the Motor Vehicle Defect Notice. Rather, pursuant to the Manufacturer's warranty book, the notice should

have been sent to "DaimlerChrysler Motors Company LLC, Customer Center, P.O. Box 21-8004, Auburn Hills, MI 48321-8004." The Manufacturer stated it never received the written notification. The evidence established the notification sent by the Consumers was not sent to or received by the Manufacturer at the address for Florida designated in the Manufacturer's written warranty or owner's manual. Consequently, the Board concluded that the Manufacturer was not given the statutory opportunity for a final repair and the 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.**

*McGriff v. Toyota Motor Sales USA,* 2006-0123/STP (Fla. NMVAB May 5, 2006)
The Consumer complained that the gas mileage range indicator was inaccurate and defective, based on his own testing of the vehicle and asserted that, according to his testing, the range system for gas mileage was off by 20 to 25 percent; consequently, the software programming logic was flawed. The Consumer testified that the problem was not in the gas mileage; rather, it was with the indicator and his inability to rely on this system negatively impacted the value of his vehicle. The Manufacturer representative testified that the system calculates only an estimation of fuel economy and vehicle range and can vary based on driving habits, driving conditions, ambient temperature and the quality of the fuel. The Manufacturer's witness testified that he took several test drives of the vehicle totaling 467 miles over several days on both highways and streets with different headwinds and monitored the speedometer, the odometer and the tire pressure at the end. In the end, he came within decimal points of how many miles the indicator told him he could go and how many miles he was physically able to calculate by direct mathematical calculation. The Board found that the condition did not constitute a nonconformity; consequently, the Consumer's case was dismissed.

*Lopez v. DaimlerChrysler Motors Company LLC,* 2006-0184/FTL (Fla. NMVAB May 1, 2006)
The Consumer testified that the vehicle pulled to the right all of the time, on all types of road surfaces and at any speed and that the pulling concern forced him to "fight the vehicle" all of the time to stay on the road. The Consumer asserted that the pulling to the right became worse over time and would likely be the cause of safety problems in the future. The Manufacturer's witness testified that the vehicle did not indicate any unusual tire wear or improper alignment, which would indicate a pulling problem and further that, during a series of test drives and diagnostic tests performed on the vehicle, no pulling problem was detected. A second Manufacturer's witness testified that he test drove the vehicle with the Consumer, who remarked about the vehicle pulling to the right during times when it was actually following the normal crown of the road. The Board found that the condition did not constitute a nonconformity; consequently, the Consumer's case was dismissed.

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

*Perryman v. American Suzuki Motor Corporation,* 2006-0215/PEN (Fla. NMVAB May 15, 2006)
The Consumers testified to problems they were experiencing with the vehicle's engine, specifically the "check engine" warning light was illuminating intermittently. There were 43,400 miles on the odometer when the problem was first reported to the Manufacturer's authorized service agent. Prior to the first report of an engine problem, the Consumers had the oil changed in the vehicle three or four times. The Manufacturer argued the alleged engine nonconformity was the result of abuse or neglect of the motor vehicle by persons other than the manufacturer or its authorized service agent. The Manufacturer's witness testified that during his inspection of the vehicle, he found sludge in the top of the engine. The dealership attributed the sludge to a lack of regular oil changes, due to the fact that the Consumers had not brought the vehicle in for maintenance to Bob Tyler Suzuki or any other Suzuki Authorized Service Agent, and could not produce any receipts of maintenance work performed anywhere else. The Board concluded that the engine problems the Consumers experienced were the result of a failure to perform regular engine maintenance on the vehicle, and as such they did not constitute a "nonconformity" as defined by the statute. The Board did find other defects to be nonconformities and awarded the Consumers a refund as a result of those defects.

REFUND §681.104(2)(a)(b), F.S.:

**Collateral Charges §681.102(3), F.S.**

*Hixson v. DaimlerChrysler Motors Company LLC,* 2006-0284/JAX (Fla. NMVAB June 14, 2006)
The Consumers sought reimbursement of $121.90 for the purchase of wind deflectors as a collateral charge. The Manufacturer objected to reimbursement of the wind deflectors, because the Consumers could not produce a receipt for them. The Board rejected the Manufacturer's argument and awarded the Consumers $121.90 for the wind deflectors.

*Harris v. DaimlerChrysler Motors Company LLC,* 2006-0167/FTL (Fla. NMVAB June 9, 2006)
The Consumer sought reimbursement for the following collateral charges: $70.00 for window tinting and $265.50 for the installation of an alarm. The Manufacturer stipulated to reimbursement for the alarm system, but not to the window tinting, because the Consumer could not produce an invoice substantiating the amount paid. The Board denied the Consumer's request for reimbursement for the window tinting.

**Incidental Charges §681.102(8), F.S.**

*Picrin v. Nissan Motor Corporation USA, Infiniti Division,* 2006-0088/MIA (Fla. NMVAB April 5, 2006)
The Consumer experienced two instances of engine failure and the Board found the engine failure to be a nonconformity. The Consumer sought reimbursement of $120.00 he paid to have

the vehicle towed to his home after the second instance of engine failure. The Manufacturer objected to the Consumer being reimbursed for the towing charge, arguing there was no proof this was the vehicle that was towed. The Board rejected the Manufacturer's argument and awarded the incidental charge.

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

*Rodriguez v. DaimlerChrysler Motors Company LLC,* 2006-0156/MIA (Fla. NMVAB May 11, 2006)
The Consumer was not satisfied with the net trade-in allowance reflected in the lease contract and at the time of the hearing requested that the retail price of the trade-in as reflected in the NADA Official Used Car Guide (Southeastern Edition) in effect at the time of the trade-in be used instead. The Manufacturer objected, arguing that the Consumer should have made such request prior to the time of the hearing. The Consumer's request that the NADA retail price of the trade-in be awarded, rather than the net trade-in allowance as reflected in the lease agreement, was denied by the Board.

**MISCELLANEOUS PROCEDURAL ISSUES:**

*Clark v. Kia Motors America,* 2006-0324/TLH (Fla. NMVAB June 22, 2006)
The Consumer's Prehearing Information Sheet, which listed two witnesses, was not received by the Board or the Manufacturer five days before the hearing. The Manufacturer objected to the witnesses being permitted to testify. The Consumer stated that he thought the Prehearing Information Sheet just had to be mailed five days before the hearing and that he did not know the rules required that it be received five days before the hearing. Paragraph (6) of the Board's rules at *Hearings Before the Florida New Motor Vehicle Arbitration Board,* states, with regard to the Consumer's Prehearing Information Sheet, "these forms must be completed, if applicable, with the originals to be received by the Board Administrator and a copy to be received by each involved manufacturer or manufacturer's attorney (if known) no later than 5 days before the scheduled hearing." Failure, without good cause, to submit the documents on time, may result in witnesses not being permitted to testify. The Board ruled that the Consumer's witnesses were not permitted to testify, because good cause was not shown for the failure to timely submit the prehearing sheet.

*Fabric Mart, Inc. v. Mercedes-Benz USA Inc.,* 2006-0131/MIA (Fla. NMVAB May 5, 2006)
The Manufacturer requested that the Board consider a prehearing inspection report which was not received by the Board until one day before the hearing in violation of Paragraph (22), *Hearings Before The Florida New Motor Vehicle Arbitration Boar*d, which requires that all documents be **received** by the Board and the opposing party no later than **5 days** before the hearing. The Board denied the Manufacturer's request.

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

## QUARTERLY CASE SUMMARIES

July 2006 - September 2006 (3rd Quarter)

**JURISDICTION:**

**Consumer §681.102(4)FS**

*Hitchcox v. DaimlerChrysler Motors Company LLC,* 2006-0467/WPB (Fla. NMVAB September 21, 2006)
In February 2005, the Consumers leased a new 2005 Dodge Dakota pick up truck in Vero Beach, Florida. On or about April 24, 2006, the vehicle was towed to Dependable Dodge, the Manufacturer's authorized service agent. The Consumer testified at the hearing that he left the vehicle at Dependable Dodge and notified the Lessor, DaimlerChrysler Financial Services, that he was not making any further payments on the lease. Subsequently, on or about June 27, 2006, the vehicle was sold by Dependable Dodge to CarMax, where it was sold as a used vehicle at retail on July 26, 2006, to a buyer who was not either of the Consumers. The Manufacturer contended that the Consumers were not qualified for relief under the Lemon Law, because, as a result of the voluntary repossession of the vehicle, they were not "consumers" as defined by the statute. In addition, if the vehicle were to be declared a "lemon,"the Consumers could not deliver possession or clear title of the vehicle to the Manufacturer as would be required by the statute. The Board found that the vehicle which was the subject of the Request for Arbitration filed by the Consumers was repossessed when the Consumers delivered possession of it to the dealership and ceased making payments on the lease. As a result, the Consumers were no longer lessees, nor were they entitled to enforce the obligations of the warranty. Consequently, the case was dismissed.

**Motor Vehicle §681.102(15), FS**

*Allen v. Ford Motor Company,* 2006-0341/JAX (Fla. NMVAB July 28, 2006)
The Manufacturer contended that the Consumers were not qualified for relief under the Lemon Law, because the gross vehicle weight of the truck exceeded 10,000 pounds. According to the Manufacturer's witness, during the prehearing inspection, the truck was weighed using a scale at a local timber company. At that time, the flat bed was not on the truck and the gas tank was three-eighths full. The vehicle weight was 7,720 pounds. The Manufacturer's witness, who was the service manager for the dealership, had no firsthand knowledge as to the weight of the flat bed or of the tools she alleged the Consumer carried in the truck, but testified that the weight of both would cause the truck's gross vehicle weight to exceed 10,000 pounds. The Consumer testified that he had previously transferred the flat bed to another truck, because of the problems

he was having with the Ford truck. He had the Ford truck weighed on a Certified Automated Truck Scale, without the flat bed, with a full gas tank and with three occupants who normally rode in the truck, and the gross vehicle weight was 9,980 pounds. The Board found that the Manufacturer's evidence regarding the weight over the 7,720 pounds registered on the timber company scale was of doubtful origin and was not sufficient to overcome the Consumer's testimony and more credible Certified Automated Truck Scale certificate that the gross vehicle weight was 9,980 pounds. The gross vehicle weight of the truck was less than 10,000 pounds; therefore, the truck was declared a "motor vehicle" within the meaning of the law and the Manufacturer's request for dismissal was denied.

*Murphy v. Ford Motor Company*, 2006-0436/TPA (Fla. NMVAB August 11, 2006)
The Consumer testified that the truck's gross vehicle weight was 13,000 or 13,500 pounds and he believed that it was registered at 10,500 pounds. The Manufacturer urged dismissal on the grounds that the subject truck was not a "motor vehicle" as defined by Section 681.102(15), Florida Statutes (2005), because its gross vehicle weight was more than 10,000 pounds. The Board found that the gross vehicle weight of the truck exceeded the limit set forth in the statute and dismissed the case.

**NONCONFORMITY 681.102(16), FS. (2005)**

*Eiroa v. Mercedes-Benz USA Inc*, 2006-0386/MIA (Fla. NMVAB August 11, 2006)
The Consumer complained of a stain on the front passenger seat. The Consumer testified he noticed the stain when he took delivery of the vehicle. The Manufacturer's authorized service agent dyed the seat to cover the stain, but within three or four days the stain started to bleed through the dye. The Manufacturer contended that the stain on the passenger seat was a "cosmetic" issue and therefore "insubstantial," and that the Consumer did not qualify for relief under the Lemon Law. According to the Manufacturer's witness, the stain, which was the size of his palm, was not covered under warranty and the seat was recovered as a "goodwill" gesture only. The Board found the problem with the seat to be a nonconformity and the Consumer was awarded a refund.

**REASONABLE NUMBER OF ATTEMPTS §681.104, FS:**

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

*Cromer v. DaimlerChrysler Motors Company LLC*, 2006-0329/FTL (Fla. NMVAB July 20, 2006)
The Consumer complained of a brake noise. In February 2006, the vehicle was presented to the Manufacturer's designated repair facility for the final repair attempt. At that time, the Consumer did not complain about the brake noise and no repairs were made to the brakes. The Manufacturer argued that the case should be dismissed, because it was not afforded a final repair

attempt to address the brake noise. The Board concluded that the Manufacturer had not yet had a final opportunity to correct the brake noise nonconformity; therefore, the Consumer was not entitled to refund relief under the Lemon Law and the case was dismissed.

**Days Out of Service §681.104(3)(b), FS; Rule 2-30.001(2)(c), Fla. Admin. Code**

*Eiroa v. Mercedes-Benz USA Inc,* 2006-0386/MIA (Fla. NMVAB August 11, 2006)
The Consumer complained of a stain on the front passenger seat. The Consumer brought his vehicle in on one occasion from April 17, 2006, to May 11, 2006, for repairs made to the seat. The Manufacturer asserted that, when it was realized the seat would have to be recovered and the leather had to be ordered, the Consumer was called to pick up his vehicle but he refused. The Consumer agreed that he had been called, but did not remember when. The Manufacturer argued that the days the vehicle remained at the shop after the Consumer was called should not count as "days out of service" under the statute. However, the Manufacturer's witness could not produce any documentation of a call to the Consumer, nor could he produce any documentation of when the leather was ordered, when it came in, or when the seat was recovered. The Consumer testified he picked up the vehicle the day the work was completed. A rental receipt showed the dealership paid for a rental through May 11, 2006, the day the repair order was closed. The Board rejected the Manufacturer's argument, and counted each day from April 17 through May 11, 2006, as an out-of-service day.

*The Mercury Trust v. Porsche Cars North America, Inc,* 2006-0168/FTL (Fla. NMVAB July 26, 2006)
The Consumer presented evidence that his vehicle was out of service for repair of one or more nonconformities for 117 days. The Manufacturer stipulated the vehicle was out of service repair of nonconformities for a total of 56 days, but argued the Board should consider that a reasonable number of attempts considering the quality of the vehicle, the cost of the vehicle, and the "outstanding" service given to the Consumer. The Manufacturer explained that most of the days out were due to the engine oil leak nonconformity and in order to provide the best service to the Consumer, the engine was sent to Germany for inspection by the Manufacturer's engineers. Upon inspection, it was determined the oil leak could not be fixed and a new engine should be installed in the Consumer's vehicle. The Board found that the mitigating circumstances relied upon by the Manufacturer did not fall within the circumstances enumerated in the statute that would act to extend the 30-day presumption period. Accordingly, the Manufacturer's argument regarding the "reasonableness" of the number of days the vehicle was out of service was rejected. The Manufacturer stipulated the vehicle was out of service by reason of repair of the nonconformities for 56 days, and the evidence established the total out-of-service time was 117 days. Accordingly, the Consumer was awarded a refund.

**MANUFACTURER AFFIRMATIVE DEFENSES §681.104(4), FS**

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

*Pass v. Volkswagen of America Inc*, 2006-0450/FTL (Fla. NMVAB September 21, 2006)
The Consumer complained that the windshield glass was distorted and testified that the distortion went laterally across the bottom three inches of the windshield. The Manufacturer contended the vehicle did not have a defect or condition that substantially impaired its use, value or safety. According to the Manufacturer, all windshields have some distortion at their curvature points, so the slight distortion in the windshield of the Consumer's vehicle was not a defect in material. The Manufacturer replaced the windshields in other vehicles when the distortion was in the "line of sight" of the driver. However, replacing the windshield in this case would not resolve anything, because the distortion in this windshield was not in the Consumer's "line of sight." The Board found that the condition did not constitute a nonconformity; consequently, the Consumer's case was dismissed.

**Accident, Abuse, Neglect, Unauthorized Modification §681.104(4)(b), FS**

*Murphy v. Ford Motor Company*, 2006-0436/TPA (Fla. NMVAB August 11, 2006)
The Consumer complained of engine problems approximately two months after he installed a "superchip" performance enhancing modification to the vehicle. The Consumer testified that when the Manufacturer's authorized service agent advised him that the chip might be causing the engine problems, he removed it immediately and never reinstalled it. The Manufacturer argued that the alleged engine problems were the result of unauthorized modifications or alterations of the motor vehicle by persons other than the Manufacturer or its authorized service agent. The Manufacturer's witness testified that the superchip could cause engine damage by increasing the truck's combustion power beyond the design limits. Diagnostic codes indicated that the superchip was still in use even after the Consumer stated he removed it. Even if the superchip had been removed as the Consumer testified, it could have caused permanent component damage resulting in the engine problems worsening over time. The Board concluded that the engine problems were the result of modifications or alterations of the subject vehicle by persons other than the Manufacturer or its authorized service agent; therefore, the case was dismissed.

*Devany v. DaimlerChrysler Motor Company LLC*, 2006-0340/JAX (Fla. NMVAB August 21, 2006)
The Consumer complained of difficulties with the steering of her vehicle and the vehicle being out of alignment and pulling to the right. The Consumer was involved in a rollover accident, resulting in extensive damage to, and repair of, the vehicle. The Manufacturer contended that any alleged vehicle defects were the result of the Consumer's rollover accident and as such were not nonconformities as defined by the statute. The Manufacturer presented a detailed body repair invoice reflecting extensive damage to the Consumer's vehicle as a result of the accident. The Board found that the steering and alignment problems alleged by the Consumer did not constitute nonconformities within the meaning of the law, because they were the result of an

accident by a person other than the manufacturer or its authorized service agent. Accordingly, the Consumer was not entitled to repurchase relief and the case was dismissed.

*Oporto v. Volkswagen/Audi of America Inc*, 2006-0404/MIA (Fla. NMVAB September 1, 2006)
The Consumer complained of an engine vibration. He denied making any modifications to the engine, but admitted to having the exhaust system modified. The Manufacturer raised the affirmative defense that the alleged engine vibration was the result of an unauthorized modification or alteration of the motor vehicle by persons other than the Manufacturer or its authorized service agent. According to the Manufacturer's witness, the Consumer had a rear part of the exhaust system replaced and had aftermarket springs installed in the suspension. None of these parts were installed by the Manufacturer or any of their authorized service agents. The Manufacturer argued that, if a part in the exhaust system was not installed correctly, it would cause a vibration, and the installation of aftermarket springs without replacing the entire suspension would make the problem worse. The Board concluded that the engine vibration was the result of an unauthorized modification or alteration of the motor vehicle by persons other than the Manufacturer or its authorized service agent; accordingly, the case was dismissed.

**REFUND §681.104(2)(a)(b), FS:**

**Collateral Charges §681.102(3), FS**

*Pinder v. Mercedes-Benz USA Inc*, 2006-0370/FTL (Fla. NMVAB August 11, 2006)
The Consumer requested $281.00 for GAP coverage as a collateral charge. The Manufacturer objected to reimbursement of the charge for GAP, arguing it was an insurance. The Board rejected the Manufacturer's argument and awarded the GAP coverage as a collateral charge.

**Incidental Charges §681.102(8), FS**

*Byron v. Land Rover of North America*, 2006-0517/JAX (Fla. NMVAB September 20, 2006)
The Consumers sought reimbursement of an expert witness fee as an incidental charge. The Consumers presented the testimony of an expert witness, who operated a local vehicle repair facility, which was not a Manufacturer-authorized repair facility. The witness appeared at the hearing for a total of four hours at the rate of $77.00 per hour, for a total of $308.00. The Board concluded the fee was reasonable and fell within the statutory definition of "incidental charges" and awarded the Consumers their expert witness appearance fee of $308.00.

*Baker v. DaimlerChrysler Motors Company LLC*, 2006-0381/MIA (Fla. NMVAB August 22, 2006)
The Consumer sought reimbursement of $15.00 as an incidental charge for parking at the

arbitration hearing. The Manufacturer objected to the $15.00 for parking, arguing that a reasonable settlement was offered to the Consumer prior to the hearing, rendering the hearing unnecessary in the Manufacturer's opinion. The Board rejected the Manufacturer's argument and awarded the incidental charge.

**MISCELLANEOUS PROCEDURAL ISSUES:**

*Matecki v. Saab Cars USA Inc.*, 2006-0395/FTM (Fla. NMVAB August 21, 2006)
The Manufacturer's Answer was filed more than 20 days after the date the Manufacturer received the Notice of Arbitration, and therefore was not timely filed. Consequently, the Board ruled that the Manufacturer was not permitted to raise any affirmative defenses at the hearing. The Manufacturer's witness was given the opportunity to present rebuttal testimony on behalf of the Manufacturer.

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

## QUARTERLY CASE SUMMARIES

October 2006 - December 2006 (4th Quarter)

**JURISDICTION:**

**Motor Vehicle §681.102(15), FS**

*Lundergan v. DaimlerChrysler Motors Company LLC*, 2006-0617/TPA (Fla. NMVAB November 2, 2006)
The Manufacturer contended that the Consumer's truck was not a "motor vehicle" as defined by the statute, because its gross vehicle weight exceeded 10,000 pounds. As proof, the Manufacturer presented a "Certificate of Registration," an "Application for Vehicle/Vessel Certificate of Title and or Registration" and an Orange County Florida "TagTalk System Motor Vehicle Information" form, all of which declared the truck's gross vehicle weight as 12,200 pounds. The Manufacturer's representative testified that the vehicle's net weight on all three documents was listed as 7,267 pounds. The representative asserted that the vehicle normally holds approximately 35 gallons of fuel or approximately 600 pounds in addition to the normal cargo and occupants for a total gross vehicle weight of more than 10,000 pounds. The Consumer testified that she normally carried two passengers in the truck, along with 2,000 pounds of feed and saddles as cargo in the truck bed. The Board concluded that, taking into consideration the net weight of the truck, the weight of the fuel, the 2,000 pounds of cargo the Consumer testified to normally carrying in the truck bed, and the weight of two normal occupants, the gross vehicle weight of the truck was more than 10,000 pounds. The case was dismissed.

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

*Thatcher v. Ford Motor Company*, 2006-0514/FTM (Fla. NMVAB October 9, 2006)
The Consumer complained that, intermittently, the air conditioner ducts emitted a very foul "sulphur and egg stink" odor. This odor was emitted whether the air conditioner was on or off. 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 he drove the vehicle with the Consumer on at least three occasions and no unusual odors were detected. In addition, he also drove alone for approximately 126 miles and could not duplicate the intermittent odor. The Board concluded that the intermittent foul "sulfur and egg" odor was a defect or condition that substantially impaired the use and value of the vehicle, and as such, it constituted a nonconformity within the meaning of the statute. Accordingly, the Consumer was awarded a refund.

*Kaplan v. Mazda Motor of America Inc.*, 2006-0662/FTL (Fla. NMVAB December 1, 2006)
The Consumer complained that the vehicle's rear wheels were unable to sustain an alignment, thus leading to excessive rear tire wear. The Manufacturer contended the rear tire wear was due to abusive driving of the vehicle by persons other than the Manufacturer or its authorized service agent. The Consumer's evidence showed that the vehicle was first presented to the Manufacturer's service agent for repair of this problem two months after purchase, during which the two rear tires were replaced and a four-wheel alignment was performed. A few months after that repair, the Consumer experienced a flat rear tire. She re-inflated the tire with "fix-a-flat" and drove the vehicle home and her father took the vehicle to the Manufacturer's authorized service agent to have it repaired. At that time, the service agent refused to repair the vehicle and told the Consumer's father to leave. The same thing happened when the father again attempted to seek repair a couple of days later. The Consumer sent written notification to the Manufacturer to give the Manufacturer its final repair attempt. At the final repair attempt, the Manufacturer refused to repair the vehicle. The Consumer had not driven the vehicle since having the flat tire. At the hearing, the Manufacturer's witness testified that an improper alignment could have caused the tire wear, but he believed that "wheel/tire spin" was the cause. The Board concluded that the inability of the rear wheels to hold an alignment, thus causing excessive rear tire wear, was a defect or condition that substantially impaired the use, value and safety of the vehicle, thereby constituting a nonconformity within the meaning of the statute. The Manufacturer's assertion that the defect was caused by abusive driving was rejected as unsupported by the evidence and the Consumer was awarded a refund.

*Patrick v. DaimlerChrysler Motor Company LLC*, 2006-0598/PEN (Fla. NMVAB November 6, 2006)
The Consumers complained of a vibration in the vehicle. The Manufacturer raised the affirmative defense that the alleged vibration was the result of an unauthorized modification or alteration of the motor vehicle by persons other than the Manufacturer or its authorized service agent. Specifically, the Manufacturer alleged the vibration was caused by the aftermarket tires the Consumers put on the vehicle. The Consumers had replaced the tires on the recommendation of the Manufacturer's authorized service agent. The Manufacturer's witness testified that the vibration he duplicated during the prehearing inspection was caused by the left front aftermarket tire. The Board found the vibration to be a substantial impairment of the vehicle's use and value and rejected the Manufacturer's argument. The Consumers were awarded a refund.

*Kabeche v. Volkswagen/Audi of America Inc.*, 2006-0500/FTL (Fla. NMVAB October 3, 2006)
The Consumer complained of many electrical problems with the vehicle. The Manufacturer contended that many of the problems were caused by an outside influence, more specifically a rodent chewing through the wiring harness and some of the wires; however, that was not confirmed. The Manufacturer's witness acknowledged that he did not know whether a rodent chewed through the harness or whether the vehicle was at the authorized service agent's facility when the harness was damaged. The Board concluded that the Manufacturer's assertion was not supported by the evidence, that the electrical problems constituted nonconformities and that,

therefore, the Consumer was entitled to 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.**

*Rollinger v. DaimlerChrysler Motor Company LLC*, 2006-0631/ORL (Fla. NMVAB November 13, 2006)
The Consumer complained of the paint chipping off the vehicle. The Consumer presented the vehicle for repair of the poor quality paint job on three separate occasions, including the final repair attempt. The Consumer testified that on all those occasions, the Manufacturer was "ready and willing" to provide a new paint job. The Consumer refused to allow the Manufacturer to repaint the vehicle, however, and insisted instead on either a "factory paint job" or a new vehicle. The Manufacturer admitted that the paint job on the vehicle did not conform to the warranty. The Manufacturer contended, however, that it was not afforded a reasonable number of attempts to cure the nonconformity, because the Consumer refused to allow the Manufacturer's authorized service agent to repaint the vehicle. The Board concluded that the Manufacturer had not been afforded a reasonable number of attempts to correct the nonconformity. The Consumer's consistent refusals to permit repairs denied the Manufacturer even the opportunity to determine whether a repaint would conform the vehicle to the warranty as contemplated by the Lemon Law. Accordingly, the case was dismissed.

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

*Melamed v. Ford Motor Company*, 2006-0650/FTL (Fla. NMVAB December 15, 2006)
The Consumers complained of a condition with the transmission which caused the "check transmission" warning light to illuminate, the vehicle to hesitate before going into gear, to intermittently bang when changing gears, and a transmission fluid leak. The Consumers also complained of a leak in the sunroof. In April 2006, the Consumers sent written notification to the Manufacturer to provide the Manufacturer with a final opportunity to repair the vehicle. The Manufacturer received the notification and responded to the Consumers by letter which stated, in part, the following: "We ask that you contact Phil Smith Ford of Pompano in Pompano Beach, Florida, to schedule a convenient final repair attempt appointment." The Consumers contacted Phil Smith Ford, and on June 2, 2006, the vehicle was presented to that repair facility for the final repair attempt. At that time, no repairs were made. At the hearing, the Manufacturer asserted that the case should be dismissed, because it was not accorded a final repair attempt. In support of this assertion, the Manufacturer argued that the Consumers did not notify the Manufacturer that they were bringing the vehicle in for the final repair. The Board rejected this argument as inconsistent with the law. The Board concluded that the law did not require the Consumers to contact the repair facility to set up the Manufacturer's final repair attempt, but they did, and they delivered the vehicle on the date designated, not by the Manufacturer, but by its

authorized service agent. If the Manufacturer did not know the date established by its service agent, it was not the Consumers' duty to convey that information. The Consumers were awarded a refund.

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

*Whatley v. Ford Motor Company*, 2006-0653/ORL (Fla. NMVAB November 15, 2006)
The Consumers sent written notification to the Manufacturer that listed a vibration as a continuing defect. Thereafter, the Consumers submitted a Request for Arbitration to the Board also alleging a vibration defect. After the Request for Arbitration was approved, the Consumers experienced problems with the vehicle's transmission and sought to present evidence of this defect at the arbitration hearing. The Manufacturer did not receive written notification giving a final opportunity to repair the transmission. At the hearing, the Manufacturer, through counsel, argued that the written notification concerning the vibration was not sufficient to put the Manufacturer on notice that the Consumers were attempting to assert their Lemon Law rights with respect to a transmission problem. The Manufacturer further asserted that the unrelated vibration problem was corrected at the third repair attempt. The Board found the vibration defect was a nonconformity; however, it was corrected within a reasonable number of attempts. The alleged transmission defect was found to be unrelated to the vibration; therefore, the Consumers' notification concerning the vibration was not sufficient to provide the Manufacturer with a final opportunity to repair that alleged defect and the issue was not yet properly before the Board. The case was dismissed.

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

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

*Lam v. Hyundai Motor America*, 2006-0544/FTL (Fla. NMVAB October 4, 2006)
The Consumers complained that the driver's side window was defective, causing wind noise and rain to get into the vehicle. In June 2005, the driver's side window was replaced by an independent repair facility which was not an authorized service agent of the Manufacturer. The window was replaced, because the vehicle was damaged as a result of a break-in. The problems with the window occurred after the window was replaced. The Manufacturer contended that the Consumer's complaint about the window was not a nonconformity under the statute, because it was the result of an abuse by persons other than the Manufacturer or its authorized service agent. The Board found the evidence established that the defect in the driver's side window was the result of either damage sustained when the vehicle was broken into or by the subsequent repair performed by the independent repair facility and that both events were the result of actions by persons other than the Manufacturer or its authorized service agent. The Board concluded therefore that the defect did not constitute a nonconformity under the statute and the case was dismissed.

*Jordan v. Volkswagen/Audi of America Inc.*, 2006-0698/FTM (Fla. NMVAB December 18, 2006)
The Consumer complained that, following an automobile accident in which the driver's side of the vehicle was impacted, the right headlight, right tail light, and glove box light intermittently either came on by themselves when the car was not running, or failed to turn off after the engine was turned off. The Consumer testified that the problem resulted from the accident. The Manufacturer contended that the problem was the result of an accident by persons other than the Manufacturer or its authorized service agent. The Board concluded that the problem with the lights was the result of an accident by persons other than the Manufacturer or its authorized service agent; therefore, it did not constitute a nonconformity within the meaning of the law. Accordingly, the Consumer's case was dismissed.

**REFUND §681.104(2)(a)(b), F.S.:**

**Incidental Charges §681.102(8), F.S.**

*Kennedy v. DaimlerChrysler Motors Company LLC*, 2006-0516/TLH (Fla. NMVAB November 27, 2006)
The Consumer sought reimbursement of $43.34 for postage and $100.00 for the insurance deductible paid by the Consumer to repair the truck tailgate after the truck shifted from park to reverse and backed into a piece of farm equipment. The Consumer also sought reimbursement for mileage placed on a second vehicle used to pick him up from, and return him to, the Manufacturer's authorized repair facility when the subject vehicle was dropped off for repairs. The Manufacturer objected to reimbursement of any postage charge for the use of certified mail beyond that "required" by statute and objected to the reimbursement for mileage on the second vehicle. The Board awarded the Consumer $43.34 for postage, since the statute does not restrict the amount of postage which can be reimbursed, and $100.00 for the insurance deductible. However, Consumer's request for reimbursement for the mileage added to his second vehicle that was used to pick him up from, and return him to, each of the repair attempts was denied.

*Patrick v. DaimlerChrysler Motors Company LLC*, 2006-0598/PEN (Fla. NMVAB November 6, 2006)
The Consumers sought reimbursement of $504.68 for new tires which were replaced upon the recommendation of the Manufacturer's service agent to attempt to correct the vibration nonconformity, $239.25 for a week-long car rental in June 2006 and $90.96 for one day's use of a rental truck by the Consumers to make an out-of-town delivery in August 2006, while their truck was undergoing the final repair attempt for the nonconformity. The Manufacturer objected to reimbursement for the rental car charges, arguing that they were not incurred as a direct result of the alleged nonconformity, because the cars were not rented during times when the Consumers' vehicle was being repaired. The Consumers acknowledged that the week-long trip could have been taken in their second car. The Board awarded the Consumers $504.68 for the new tires and $90.96 for the one-day truck rental. The Consumers' request for reimbursement of $239.25 for

the week-long car rental was denied as unreasonable.

*Kaplan v. Mazda Motor of America Inc.,* 2006-0662/FTL (Fla. NMVAB December 1, 2006) The Consumer sought reimbursement of $790.00 for an expert witness, plus whatever the expert would charge for being present at the hearing; and $13,313.12 in rental car expenses from October 14, 2005, to the date of the hearing. The Manufacturer objected to the Consumer being reimbursed for the expert witness fee, and for the rental car expense. The Board reduced the amount of the reimbursement for the expert witness to $290.00, which was the cost of the expert's towing charge. With regard to the amount the Consumer sought for rental car charges, that amount was reduced to $1,960.56, which represented the rental car charges incurred from September 21, 2006, the date on which the Consumer signed the Request for Arbitration, until the date of the hearing. In addition, the Manufacturer was directed to reimburse the any subsequent rental car charges, at the current daily rental rate, which the Consumer would incur up to the date of the Manufacturer's compliance with the Decision. The request for the reimbursement of rental car charges incurred prior to the date on which the Consumer signed the Request for Arbitration, was denied as unreasonable.