OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

January 2014 - March 2014 (1st Quarter)

NONCONFORMITY 681.102(15), F.S.

Chiofalo v. Ford Motor Company, 2013-0408/MIA (Fla. NMVAB February 17, 2014)
The Consumer complained of a vibration upon acceleration and also during speeds between 35 and 40 miles per hour in his 2013 Ford F150. The vibration did not begin until after the vehicle had been driven for about 9,000 miles. The Consumer began to feel the vibration as soon as he started the engine and depressed the gas pedal; then, it stopped and started again when the vehicle was traveling between 35 to 40 miles per hour. Since the last repair attempt, the vibration was worse when there was weight in the back of the truck.

The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle; in the alternative, the vehicle was repaired prior to the Manufacturer's final repair attempt. A Field Service Engineer for Ford Motor Company test drove the truck at the final repair attempt and again at Ford's prehearing inspection. He did not experience vibration that he considered to be "abnormal" during either of those test drives. He described the truck as having a "stiff" suspension for hauling payloads and towing; in addition, the tires were "stiff" and the driveline was "stiff." His opinion was that the dealership replaced the driveshaft in an attempt to "fine tune" it to achieve a "lower tolerance" for the vibration. The Board concluded that the vibration upon acceleration and when driving between 35 and 40 miles per hour substantially impaired the use and value of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. The nonconformity continued to exist after the final repair attempt. Accordingly, the Consumer was awarded a refund.

McConnon v. Hyundai Motor America, 2013-0413/FTL (Fla. NMVAB February 24, 2014)
The Consumer complained of a defective telephone/navigation/entertainment system in her 2012 Hyundai Vera Cruz. Before she leased the vehicle, the Consumer asked the salesman at Lehman Auto World, the Manufacturer's authorized service agent, if it was equipped with a full navigation system, as a salesman at another dealership told her the only vehicle so equipped was in North Carolina. According to the Consumer, the salesman told her if she wanted this vehicle it would be so equipped, and it was so equipped when she took delivery. The Consumer started experiencing problems immediately on her drive out of the dealership; the GPS did not work properly and the telephone voice incoming and outgoing was "terrible." Since then, two other telephone/navigation systems have been installed in her vehicle, but she continued to have the same problems. The poor quality on the telephone was affecting her ability to conduct business, especially when a customer requested that she call back. The owner of Mobile Sounds was a witness at the hearing and testified that his technician installed each of the telephone/navigation systems in Consumer's vehicle at the request of Lehman Auto World, and he was paid by Lehman Auto World. He never spoke with the Consumer regarding the installation or payment of any of

the three systems that were installed. He further testified that, in addition to each of the installations that were performed by his technicians, he personally went to the Consumer's home on multiple occasions in an attempt to rectify the problems that were occurring with the systems.

The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle; and the alleged nonconformity was the result of unauthorized modifications or alterations of the motor vehicle by persons other then the manufacturer or its authorized service agent. According to a District Parts & Service Manager for Hyundai Motor America, the Rosen and Alpine systems installed in the Consumer's car were "aftermarket" parts that were not warranted by Hyundai. He maintained that, if the Hyundai dealership arranged for the systems to be installed, it was without the Manufacturer's authorization. The Board concluded that the defective telephone/navigation system substantially impaired the use and value of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. The modification, while not authorized by the Manufacturer, was authorized by its authorized service agent; therefore, the Manufacturer's assertion that the nonconformity was the result of unauthorized modification of the vehicle was rejected. Accordingly, the Consumer was awarded a refund.

McBride v. Toyota Motor Sales USA Inc., 2013-0445/JAX (Fla. NMVAB March 10, 2014)
The Consumers complained of a mold or mildew odor from the air conditioning vents in their 2013 Toyota Sienna XLE. The Consumers first noticed the odor around the time of their 5,000 mile service, but attributed it to the fact that there had been a lot of rain in their area; they assumed the odor would go away after the rain subsided. The odor remained, however, and worsened. The odor was described as pungent, and became worse as the outside temperature and humidity increased. The odor occurred when the vehicle was first started in the morning, lasting for 40 to 60 seconds. The odor would recur if the vehicle sat without the engine running for approximately one and one-half hours, although it was not as pungent later in the day as it was first thing in the morning. Mr. McBride acknowledged that he declined to have a cleaning and filter change performed that was recommended in a Toyota Technical Service Bulletin (TSB) related to HVAC odors, because he felt that he should not have to pay $300.00 for the service, particularly since the service was intended only to improve, and not to eliminate, the odor problem. Mr. McBride pointed out that the 2011 Toyota Sienna he and his wife traded in for the 2013 Sienna did not exhibit a similar problem. Mr. McBride testified that the odor was a health problem for him, because of his allergies, and he was concerned about the health of his three-year-old and one-week-old children.

The Manufacturer, represented by Southeast Toyota Distributors, asserted the alleged nonconformity did not substantially impair the use, value or safety of the vehicle. In addition, Southeast Toyota Distributors stated, "[f]urthermore, the customer declined the dealer and manufacturer the opportunity(ies) [sic] to perform the Technical Service Bulletin that would minimize what the customer is experiencing." A Senior Field Technical Specialist with Southeast Toyota Distributors, testified that Toyota Motor Sales USA, Inc., had determined that HVAC odors were not covered under its warranty, and were therefore the responsibility of the Consumer to correct. He indicated that he has frequently smelled the odor in question in other Toyota vehicles, and believes it was not mold, but simply "stale air." He acknowledged he had no personal knowledge as to whether any tests were performed by the Manufacturer to confirm that the odor was not caused by mold. The Board concluded that the mold or mildew odor from the

air conditioning vents substantially impaired the use, value and safety of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. Accordingly, the Consumers were 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.

Zhang v. Volvo Cars of North America, 2013-0432/TPA (Fla. NMVAB March 7, 2014)
The Consumer complained of an oil leak in the intermediate section of the engine block by the front crank plug, and a loud, rattle noise from the dash in her 2012 Volvo XC60. The Board found those problems to be nonconformities. The vehicle was out of service by reason of repair of the nonconformities for a total of 28 cumulative days. The Consumer sent written notification to 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 received the notification and thereafter, the vehicle was subjected to repair by the by the Manufacturer. The Manufacturer asserted that the vehicle had not been out of service by reason of repair for 30 days; therefore, the Consumer was not entitled to relief. The statute does not specifically define how many attempts are required before it can be concluded that a Manufacturer has had a reasonable number. Section 681.104(3), Florida Statutes, creates a presumption of a reasonable number of attempts; however, a consumer is not required to prove the elements of the statutory presumption to qualify for relief under the Lemon Law. A majority of the Board concluded that the nonconformities caused the vehicle to be out of service by reason of repair a total of 28 days. After 15 or more days out of service, the Manufacturer received the written notification from the Consumer required by Section 681.104(1)(b), Florida Statutes. After receipt of said notification, the Manufacturer or its authorized service agent had at least one opportunity to inspect or repair the vehicle, also as required by the statute. Under the circumstances, 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 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.

Smith v. General Motors LLC, 2013-0342/MIA (Fla. NMVAB January 10, 2014)
The Consumer asserted that the air conditioner did not cool the back passenger compartment in his 2013 Buick LaCrosse. The Consumer set the temperature on the vehicle's air conditioner between 70 and 74 degrees, and while the front of the vehicle got cool and was comfortable, the passengers in back complained it was too hot. According to the Consumer, in order for the back passengers to be comfortable, he had to set the temperature in the vehicle to 69 degrees or lower, which made it uncomfortably cold in front. He stated the rear of the vehicle does not have its

own air conditioner vents. The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. A Field Service Engineer for General Motors explained this was a black vehicle with black interior, a sunroof, and no tinting on the windows. In addition, while the vehicle was equipped with dual climate controls in the front, the rear did not have separate temperature controls. At one of the repair attempts the air conditioner was set to 60 degrees and when the technician checked the temperature at the air duct, it read near 52 degrees. The Board found that the evidence failed to establish that the air conditioner failing to cool the back of the vehicle as complained of by the Consumer substantially impaired the use, value or safety of the vehicle so as to constitute one or more nonconformities as defined by the statute. Accordingly, the Consumer's case was dismissed.

Parramore v. Ford Motor Company, 2013-0390/TPA (Fla. NMVAB February 17, 2014)
The Consumers asserted that there were sharp edges on window seams and door moldings in their 2013 Ford Escape. Mrs. Parramore testified that on the date of delivery of the vehicle, she cut her finger on the driver's door/window molding. Shortly thereafter, she bruised her legs on a "sharp" edge on the bottom of the door while exiting the vehicle. According to Mrs. Parramore, this happened two to three times. She indicated that these occurrences left a "bad taste in her mouth." The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. The Manufacturer's witness testified there was no problem with the molding in this vehicle. According to the witness, all Ford vehicles, except for the Mustang, are designed with a metal insert in the molding; however, the end caps are made of plastic. During a July 2013 repair attempt, he ran his fingers across the inch strips on all four doors and felt no abrasions. There was a "part line" on the molding; however, it was not rough enough to injure a person. At the Manufacturer's final repair attempt, any visible plastic mold part lines in the areas pointed out by the Consumers were filed down. During the hearing, the Board inspected the vehicle in the presence of the parties. All four doors and windows were visually inspected and touched on the interior and exterior of the vehicle. No sharp molding edges were seen or felt. The Board found that the evidence failed to establish that the door and window molding edges, as complained of by the Consumers, substantially impaired the use, value or safety of the vehicle so as to constitute one or more nonconformities as defined by the statute. Accordingly, the Consumers' case was dismissed.

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

Fried v. BMW of North America LLC, 2013-0320/FTM (Fla. NMVAB January 21, 2014)
The Consumers' 2011 BMW 328ic caught fire under the hood causing damage to the inside of hood. The Consumers opined that the fire started due to the constant use of the trickle charger as suggested by the Manufacturer's authorized service agent. The Consumers acknowledged that they possess two other vehicles and that this vehicle was used infrequently. The Manufacturer asserted the alleged fire under the hood nonconformity was the result of an accident by persons other than the Manufacturer or its authorized service agent. A National Field Analyzer for BMW of North America testified that, on October 10, 2013, he inspected the vehicle and found the trickle charger clamp still attached and lined up with the burn spots on the bottom of the hood. Any damage to the inside of the hood resulted from the trickle charger cable being in close

proximity to the underside of the hood while charging. In his opinion, if the hood had been up 18 or 20 inches; no arching burns could have occurred. The Board concluded that the greater weight of the evidence established that the fire under the hood was the result of the hood being situated in close proximity to the charger parts while the vehicle was being charged, which was an accident. The accident was not caused by the Manufacturer or its authorized service agent. accordingly, the complained of defect did not constitute a "nonconformity." The Consumers' case was dismissed.

Morakis v. Mercedes-Benz USA LLC, 2013-0351/WPB (Fla. NMVAB February 7, 2014)
The Consumer complained of a condition which caused the engine to overheat and the gears to lockup, and a resulting unpleasant odor in her 2012 Mercedes-Benz GLK350. The Consumer detected the odor before she was aware the engine was overheating, as was evidenced by the fact that the air filter was replaced at the first repair attempt. The Consumer had installed a radar warning detector and a DVD player on the passenger side of the vehicle for her children to watch. According to the Consumer, she was the only person who drives the vehicle. The Manufacturer asserted the alleged nonconformity was the result of abuse by persons other than the manufacturer or its authorized service agent; and the claim by the Consumer was not filed in good faith as the Consumer modified the vehicle by wiring an aftermarket device into the network at the "EIS." The Shop Manager at Mercedes-Benz of Palm Beach testified that, while plastic radiator tanks and plastic fittings in transmission lines have been in use for 20 or 30 years, he has never seen plastic parts melted like those in the Consumer's vehicle. He was personally involved with the repairs to the vehicle in May, June and July of 2013, that he personally test drove the vehicle at each of those visits, and that the engine never overheated with him. According to him, a cause for the overheating was never found, but at the June 2013 repair attempt the radiator, transmission and torque converter were replaced, only to have the vehicle come back in July with the same pieces melted again. A Field Technical Specialist for Mercedes-Benz USA, testified that, in his opinion, someone "brake torqued" the vehicle, which meant, put the vehicle in neutral gear and gunned the engine, resulting in the extreme overheating and damaged parts. Upon consideration by the Board of the evidence presented, it was concluded that the vehicle overheating condition complained of by the Consumer was the result of abuse by persons other than the Manufacturer or its authorized service agent. Consequently, the problem the Consumer complained about did not constitute a nonconformity within the meaning of the law and the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.:

Incidental Charges §681.102(8), F.S.

Crenshaw v. Toyota Motor Sales USA Inc., Lexus Division, 2014-0023/PEN (Fla. NMVAB March 24, 2014)
The Consumer's 2014 Lexus IS 250F was declared a "lemon" by the Board. The Consumer requested reimbursement of the following as incidental charges: $154.50 for removal of the window tint (as recommended on November 7, 2013 by Lexus of New Orleans as a possible resolution to the keyless entry malfunction); $318.87 for gasoline purchased in connection with travel from his home in Pensacola to the authorized service agents; $291.85 for unreimbursed

vehicle rental charges; an additional $138.00 for rental vehicle and equipment necessary to tow the vehicle from New Orleans to Pensacola; $346.59 in hotel charges; $42.94 for copying costs; and $72.95 for postage to send written notification to the Manufacturer and documents to the Manufacturer and the Office of Attorney General. The Board granted all the incidental charges listed above that were requested by the Consumer.

MISCELLANEOUS PROCEDURAL ISSUES:

Hudson v. Kia Motors America Inc., 2013-0352/STP (Fla. NMVAB February 14, 2014)
During the hearing, the Manufacturer sought to assert the following statutory affirmative defense not timely raised in its Manufacturer's Answer: the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. Paragraph (8), *Hearings Before the Florida New Motor Vehicle Arbitration Board,* requires that any affirmative defenses not raised in the Manufacturer's Answer or in an amended Answer and filed within the prescribed time periods may not be raised at the hearing, except as otherwise provided in the rules or as permitted by the Board. The Manufacturer's representative explained that, due to "excusable neglect," Kia did not time-stamp the Notice of Arbitration and upon inquiry by its attorneys as to the date of receipt, Kia misinformed its attorneys of the date it had received the Notice of Arbitration, which resulted in the attorneys calendaring an incorrect due date for the Manufacturer's Answer. The Consumer objected to the Manufacturer's request to present its untimely asserted defense. Upon consideration by the Board, the Manufacturer was not permitted to raise the untimely asserted affirmative defense at the hearing. The Manufacturer's Attorney was allowed to cross-examine the Consumer, to present rebuttal testimony and to give a closing statement. The Board further ruled that the Manufacturer would be allowed to present evidence to support its additional defense that the Consumer had not presented the vehicle "for the required three repairs plus a final repair attempt" of one or more of the alleged nonconformities, asserted in the written Answer; however, no testimony was presented at the hearing to support that defense.

Hoeltke v. Ford Motor Company, 2013-0450/ORL (Fla. NMVAB February 21, 2014)
At the start of the hearing, the Manufacturer, through Counsel, made a "Motion to Dismiss" the case, asserting that the Board lacked jurisdiction to hear the claim. The Manufacturer, through counsel, argued that, because the Consumer had filed a personal injury action in circuit court, matters relating to accident, causation and personal injuries were necessarily at issue in the case, and the Board was without jurisdiction to make findings on those issues. Upon consideration, the Board determined that the case presented by the Consumer requested the Board to make findings regarding the alleged nonconformity, and whether a reasonable number of repair attempts were undertaken, which were matters well within its jurisdiction. *See* §681.1095(8), Fla. Stat. Therefore, the Manufacturer's Motion to Dismiss was denied.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

April 2014 - June 2014 (2nd Quarter)

JURISDICTION:

Motor Vehicle §681.102(14), F.S.

Zeski/Bylinski v. Chrysler Group LLC, 2014-0164/TLH (Fla. NMVAB June 25, 2014)
The Consumers purchased a 2011 Dodge Ram 1500. The Manufacturer asserted the Consumers were not qualified for repurchase relief under the Lemon Law, because the vehicle was not sold in Florida, and as such, did not constitute a Amotor vehicle@ as defined by Florida's Lemon Law. The Manufacturer, through its representative, argued that the sale took place when the Consumers paid the dealer in full, and took delivery of the vehicle, all of which took place in Nebraska. He argued that, prior to the Consumers paying for the truck, no sale took place, because either party could have backed out of the deal at any point. He further argued that no paperwork was signed in Florida and no money was paid by the Consumers in Florida. The Consumers asserted that the vehicle was sold in Florida. Ms. Bylinski testified that Mr. Zeski performed an internet search for the subject vehicle from their Florida home. Once he found the subject vehicle, he contacted Casey Cruse, Sales Manager at Woodhouse Chrysler in Blair, Nebraska, whom the Consumers had dealt with in the past. Mr. Cruse located the vehicle and initially began negotiating unsuccessfully with the Consumers regarding the price. On February 29, 2012, Mr. Zeski, from his house in Florida, called Mr. Cruse to again negotiate a price for the truck. That night, the Consumers came to an agreement with Mr. Cruse that the Consumers would purchase the vehicle for $17,300.00. At that time, no paperwork was signed and no money was paid. The next night, Ms. Bylinski, who was already located in Nebraska, arrived at Woodhouse Chrysler. She visually inspected the outside of the truck and then gave Mr. Cruse full payment for the truck and took delivery. The Consumers paid all taxes, including sales tax, in Florida. In addition, the title issued was a Florida title and the vehicle was registered in Florida only. Upon consideration of the evidence presented, a majority of the Board concluded that, because no sale documents were signed in Florida, no money was paid from Florida and the Consumers took delivery of the vehicle in Nebraska, the vehicle was not sold in Florida; therefore, it did not constitute a motor vehicle under the statute and the Consumers' case was dismissed.

Brancoccio v. Chrysler Group LLC, 2014-0105/ORL (Fla. NMVAB June 27, 2014)
The Consumers purchased a 2012 Dodge Charger. The Buyer's Order executed by the Consumers on August 6, 2012, did not identify the vehicle as being purchased "new" or "used." At the hearing, the Consumer testified that he was the driver of the vehicle and when he purchased it, he was told by the owner of Platinum Leasing of Sorrento, Inc., that the vehicle was a "demonstrator." He additionally produced a loan document dated August 6, 2012, stating that the "Loan Type" was a "New Car Loan." The Manufacturer contended that the Consumers were not

qualified for relief under the Lemon Law, because the vehicle was "used" when the Consumers purchased it; therefore, it was not a “motor vehicle” as defined by the Lemon Law statute. In support, the Manufacturer’s representative testified that the vehicle was originally delivered by the factory to Beck Chrysler-Plymouth-Dodge-Jeep (Beck), a franchised Chrysler dealership. On June 11, 2012, Beck sold the vehicle at retail to Mr. John Lungris as a new vehicle and title to the vehicle passed to Mr. Lungris. The odometer reflected 134 miles at that time. Shortly thereafter, on July 6, 2012, Mr. Lungris traded in the subject vehicle to Beck Chrysler to purchase another vehicle. At that time, the odometer reflected 1,144 miles. On July 25, 2012, Beck sold the vehicle to Platinum Leasing of Sorrento. On August 6, 2012, Platinum Leasing sold the vehicle to the Consumers with 2,324 miles on the odometer.
Section 681.102 (14), Florida Statutes, defines a “motor vehicle,” to include a new or demonstrator vehicle. The statute does not otherwise define what is meant by a “new” vehicle; consequently, the Board looked to definitions in Section 320.60, Florida Statutes, for guidance.

Section 320.60, Florida Statutes provides in pertinent part at paragraphs (10) and (13):

> (10) "Motor Vehicle" means any automobile, motorcycle, or truck the legal or equitable title to which has never been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser.
>
> (13) "Used motor vehicle" means any motor vehicle title to or possession of which has been transferred from the person who first acquired it from the manufacturer, distributor, importer or dealer and which is commonly known as secondhand within the ordinary meaning thereof.

The preponderance of the evidence, particularly the documents associated with the transactions: the prior sales transaction to Mr. Lungris; the trade in of the vehicle back to Beck; the sale to Platinum Leasing, and the subsequent sale of the vehicle to the Consumers, established that the vehicle was not sold to the Consumers as a new or demonstrator vehicle. Rather, when the original purchaser, Mr. Lungris, purchased the vehicle from the authorized Chrysler dealer title to the vehicle passed to him, making him the ultimate purchaser under Section 320.60(10), Florida Statutes. When the Consumers subsequently purchased the vehicle from Platinum Leasing, it was a used vehicle. Accordingly, the Board found that the vehicle was not a "motor vehicle" as defined in Section 681.102(14), Florida Statutes, and the Consumers’ case was dismissed.

NONCONFORMITY 681.102(15), F.S.

Parker v. Volkswagen/Audi of America Inc., 2014-0018/FTM (Fla. NMVAB May 20, 2014)
The Consumers complained of receiving poor gas mileage in their 2013 Volkswagen Jetta Hybrid. The Consumers purchased a hybrid vehicle specifically for fuel economy and environmental reasons. The vehicle’s advertised combined fuel economy was 45 miles per gallon; the advertised range was between 42 miles per gallon in the city, and 48 miles per gallon on the highway. According to the Consumers, their independent testing revealed that the vehicle had actually averaged 27-31 miles per gallon, initially, and more recently, 32-34 miles per gallon.

The Parkers contended that a Volkswagen rebate program related to gas mileage did not compensate them for the actual losses they were incurring for added fuel expense, in addition to the $5,000.00 premium they paid for purchasing a hybrid vehicle. The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. The Manufacturer's representative testified he had never been involved with the vehicle, but he was "confident" that the vehicle was scanned with a guided fault finding diagnostic tool (GFF) and no faults were found in the Electric Control Module (ECM) computer. The Board found that the evidence established that the poor gas mileage problem substantially impaired the value of the vehicle, thereby constituting a nonconformity as defined by the statute and the applicable rule. Accordingly, the Consumers were awarded a refund.

Wester v. General Motors LLC, 2014-0132/TLH (Fla. NMVAB June 2, 2014)
The Consumers' 2014 Chevrolet Silverado caught fire. Mr. Wester was at home and had started the truck, but left the engine idling for a few minutes while the truck was parked on a gravel driveway. When he returned, he saw flames coming from the engine compartment. He called 911, and the fire was put out by the local fire & rescue. He contacted the Manufacturer the next day to notify it of the fire, and the truck was towed to the Manufacturer's authorized service agent. The Manufacturer declined to cover the cost of the repairs to the vehicle, because the GM investigator failed to identify a specific GM part that was responsible for the fire. The Consumer authorized the necessary repairs to the vehicle, with the costs to be covered by his insurance company. At the time of the fire, the vehicle was covered by an unperformed GM recall for "a software glitch [that] could lead to overheating of exhaust components, potentially causing engine compartment fires." At hearing, the Manufacturer asserted the fire and damage to the subject vehicle was the result of an unauthorized modification or alteration of the motor vehicle; to wit: installation of an aftermarket leveling kit by the Manufacturer's authorized service agent, which was not covered by the Manufacturer's New Vehicle Limited Warranty, and therefore could not form the basis for a claim under the Florida Lemon Law. The Manufacturer offered the testimony of a Field Performance Assessment Engineer with General Motors, who testified at length regarding why, in her opinion, the authorized service agent's installation of the aftermarket leveling kit was responsible for the fire in the Consumers' vehicle. She also opined that the fire in the Consumers' vehicle was not a result of the problem covered in the recall, noting that all of the reported recall-related fires started in the engine compartment on the passenger side of the vehicle while outside temperatures were below zero degrees Fahrenheit; whereas, the fire in the Consumer's vehicle started on the driver's side of the engine compartment during more moderate outdoor weather.

Based on the premise that the leveling kit installed by the authorized service agent was the cause of the fire, the Manufacturer argued, through counsel, that because the aftermarket leveling kit was not covered under its written limited warranty, installation or operation of the kit could not form the basis for a claim under the Florida Lemon Law. Pointing to the definition of "warranty" set out in section 681.102(22), Florida Statutes, and the use of that term in various provisions in Chapter 681, counsel for the Manufacturer argued that the Florida Lemon Law covered only those items expressly included within a manufacturer's written limited warranty.

The Board concluded that the evidence established that the fire and resulting damage substantially impaired the value and safety of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. Whether or not the fire

occurred as a result of the installation of the leveling kit by the Manufacturer's authorized service agent, the Manufacturer's legal argument was rejected, because the definition of "nonconformity" was not limited to defects covered by the Manufacturer's express limited warranty, and because that definition does not exclude modifications or alterations of the vehicle by the Manufacturer's authorized service agent. Accordingly, the Consumers were awarded a refund.

Dubrouskaya/Soriano v. Volkswagen/Audi of America Inc., 2013-0442/MIA (Fla. NMVAB April 11, 2014)

The Consumers complained that intermittently their 2012 Volkswagen Jetta emitted a very strong burning-rubber/musty/moldy odor from the air conditioner vents when the air conditioner was running, In addition, the right front passenger door was hard to close from both inside and outside the vehicle. The air conditioner odor became evident within the first 30 days after taking delivery of the vehicle. After the air conditioner filter was changed the odor was less intense for awhile, but then it had got progressively worse. If the air conditioner was manually turned to the re-circulate mode the odor was present; however, when the air re-circulated automatically, the odor was "very strong" and the Consumers had to lower the windows or stop and get out of the vehicle until the odor dissipated. The odor lasted from 30 seconds to a couple of minutes. The Manufacturer asserted the alleged nonconformities did not substantially impair the use, value or safety of the motor vehicle; alternatively, any alleged nonconformities were cured within a reasonable number of attempts. The Manufacturer's witness testified that Volkswagen issued a Technical Service Bulletin (TSB) regarding the odor emanating from the air conditioner; however, he did not believe the TSB applied to the Consumers' vehicle because their vehicle had less than 10,000 miles on the odometer, and he never had a vehicle with less than 10,000 miles come in with a complaint of an air conditioner odor. He testified that he did not remember going on a test drive of the vehicle, and he never looked at the passenger front door to see if it was difficult to close. The Board found that the intermittent air conditioner odor substantially impaired the use, value and safety of the motor vehicle, and the front passenger door being hard to close substantially impaired the value of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. Accordingly, the Consumers were 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.

Farquharson v. Ford Motor Company, 2014-0122/ORL (Fla. NMVAB May 27, 2014)
The Consumer complained that the engine suddenly shut off without warning while she was driving her 2012 Ford Focus. The vehicle was presented to the Manufacturer's authorized service agent for repair of that complaint on December 13, 2012, and May 13, 2013, when no repairs were performed. The Consumer sent written notification to the Manufacturer to provide the Manufacturer with a final opportunity to repair the vehicle. The Manufacturer received the notification on October 11, 2013. Pursuant to instruction by the Manufacturer, on November 5, 2013, the vehicle was presented to the Manufacturer's designated repair facility for the final repair attempt, which was not concluded until November 18, 2013. The engine suddenly shutting off without warning continued to exist after that repair attempt and the Board found that condition to be a nonconformity. In addition, the Board concluded that this nonconformity was subjected to repair by the Manufacturer's service agent a total of three times, one such attempt occurring after the Manufacturer's receipt of written notification of the defect from the Consumer, and the nonconformity was not repaired. Under the circumstances of this case, the Board concluded that this was a reasonable number of attempts. The Manufacturer having failed to correct the nonconformity after a reasonable number of attempts, the Consumer was entitled to a refund under the Lemon Law.

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

Perris v. American Honda Motor Company, 2014-0090/WPB (Fla. NMVAB June 23, 2014)
The Consumer complained of engine problems, including various warning lights that came on intermittently and the engine running rough in his 2014 Honda Odyssey Touring Elite. On January 31, 2014, the Consumer sent written notification to the Manufacturer to provide the Manufacturer with a final opportunity to repair the vehicle. The Manufacturer received the notification on February 15, 2014. Thereafter, the Manufacturer left a message on the Consumer's telephone on February 20, 2014, for the Consumer to bring the vehicle to the Manufacturer's designated repair facility, Hendrick Honda Pompano Beach, for the final repair attempt. Instead, the Consumer presented the vehicle to Coral Springs Auto Mall on February 23, 2014, purportedly for the final repair attempt, but he did not inform Coral Springs Auto Mall that the reason the vehicle was there was for a final repair attempt. At that time, Coral Springs Auto Mall replaced the #1 ignition coil, in response to diagnostic fault codes; however, there was no direct involvement in the repair by the Manufacturer. According to the Manufacturer's representative at the hearing, the Consumer's Motor Vehicle Defect Notification form was referred to him on February 19, 2014. He spoke with Honda's mediation department and told them that he wanted Hendrick Honda Pompano Beach to be the designated repair facility for the final repair attempt. On February 20, 2014, this information was relayed to the Consumer via phone message. The Consumer was never told to take the vehicle to Coral Springs Honda, and there was no direct involvement by the Manufacturer in the repair that was performed at that repair facility on February 23-24, 2014. According to the representative, it was his practice to

meet directly with a consumer during the Manufacturer's statutory final repair attempt, so the consumer could demonstrate or describe the problems with the vehicle. The vehicle would not leave the designated repair facility until the problems were fixed. He stated that the Consumer told the Manufacturer that he was not going to allow a final repair attempt; that he had taken the vehicle to Coral Springs Honda on February 23, 2014, and that the dealer performed the final repair attempt.

The Board found the engine problems constituted a nonconformity and that the evidence established that the Manufacturer received the statutory written notification from the Consumer on February 15, 2014. "When a manufacturer responds to the written notification of a final repair opportunity set forth in Section 681.014(1)(a), F.S., the consumer must received such response within 10 days from the date the manufacturer received the written notification from the consumer." Rule 2-30.001(3), F.A.C. The evidence further established that the Manufacturer responded to the notification from the Consumer within the required 10 days on February 20, 2014, and directed the Consumer to take the vehicle to Hendrick Honda Pompano Beach for the final repair attempt. The Consumer, instead, took the vehicle to another authorized service agent, without notice to the Manufacturer thereby effectively denying the Manufacturer the opportunity to conduct a final repair attempt. The statute clearly contemplated that the Manufacturer designate the repair facility for the final repair attempt, conditioned upon the designated facility being reasonably accessible for the Consumer, and the repair appointment being within a reasonable time after the Consumer receives the Manufacturer's response. There was no evidence presented by the Consumer that the Manufacturer failed to meet the aforesaid statutory conditions. The Manufacturer has not yet had its direct opportunity for a final repair attempt; therefore, a reasonable number of attempts have not yet been undertaken. The Consumer was not qualified for the requested relief under the Lemon Law at that time 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.

Headley v. Chrysler Group LLC, 2014-0087/STP (Fla. NMVAB April 23, 2014)
The Consumers complained of a "clunk" noise from the rear of their 2013 Jeep Grand Cherokee when it was driven at speeds of less than 25 miles per hour on some uneven surfaces. The noise could be heard only when the Jeep was driven over bumps, potholes and drainage grates. The Consumers were primarily concerned about the "value" of the vehicle; the performance of the vehicle was not affected. The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. The Manufacturer's witness characterized the noise the Consumers were experiencing as "the operational transfer of sound within the suspension" when going over a bump in the road. According to the witness, this was not a defect or indicative of a problem in any component or in the suspension. The witness had fully inspected the vehicle chassis and concluded that the shocks were installed properly and the suspension was not loose. During the hearing, the Board inspected and test drove the vehicle in the presence of the Consumers and the Manufacturer. The vehicle was driven in the hearing parking lot and surrounding local roads for a total of three miles. It was driven over speed bumps,

uneven surfaces, potholes and drainage grates and no unusual noises were heard. The Board concluded that the evidence, including the inspection and test drive during the hearing, failed to establish that the "clunk" noise complained of by the Consumers substantially impaired the use, value or safety of the vehicle so as to constitute one or more nonconformities as defined by the statute. Accordingly, the Consumers' case was dismissed.

MISCELLANEOUS PROCEDURAL ISSUES:

Shantz & Lee v. Lotus Cars USA, Inc., 2014-0015/FTL (Fla. NMVAB April 21, 2014) Paragraph (8), *Hearings before the Florida New Motor Vehicle Arbitration Board*, provides that the Manufacturer's Answer form must be filed with the Board Administrator no later than 20 days after receipt of the Notice of Arbitration, and affirmative defenses not timely raised in a timely filed Answer cannot be raised at the hearing, unless permitted by the Board. Although the Manufacturer in this instance received the Notice of Arbitration on February 19, 2014, it failed to file an Answer and Affirmative Defenses with the Board Administrator until March 17, 2014. Thus, the Answer and Affirmative Defenses were untimely filed. The hearing on this matter was held on March 26, 2014. The Board Administrator received the Manufacturer's Prehearing Information Sheet on March 21, 2014, identifying the Manufacturer's witnesses. Two days prior to the hearing, the Manufacturer filed additional documents it sought to have the Board consider. One day prior to the hearing, the Consumers filed additional documents they sought to have the Board consider. Paragraphs (10) and (22), *Hearings before the Florida New Motor Vehicle Arbitration Board,* provide that if a Prehearing Information Sheet or additional documents are not received five days before the hearing, witnesses may not be allowed to testify, and additional documents may not be considered, unless good cause is shown for the late filing. At hearing, the Manufacturer's representative explained that, due to the number of snow days in Atlanta, Georgia, Arnold Johnson of Lotus Cars USA, Inc., did not personally receive the Notice of Arbitration until February 25, 2014, even though the Notice was delivered to the Manufacturer's official address on February 19, 2014. The Manufacturer having failed to show good cause for not filing a timely Answer, Prehearing Information Sheet or documents, the Manufacturer's request to assert the defenses at the hearing was denied by the Board, the Manufacturer's witnesses were not permitted to testify and the late-filed documents were not considered. In addition, the Consumers failed to show good cause for their late filings; consequently, their late-filed documents were not considered.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

July 2014 - September 2014 (3rd Quarter)

JURISDICTION

Loffredo v. General Motors LLC, 2014-0165/ORL (Fla. NMVAB September 3, 2014)
The Manufacturer asserted that the request for arbitration was not filed within the time required by Section 681.109(4), Florida Statutes (60 days after the expiration of the Lemon Law rights period, or 30 days after the final action of a certified procedure, whichever date occurred later). The Manufacturer maintained that since the Consumers purchased the vehicle on January 31, 2012, 60 days after the expiration of the Lemon Law rights period was April 3, 2014. The Manufacturer further maintained that the certified program's March 24, 2014, letter should be considered the date of the program's final action for purposes of calculating the timeliness of the Consumer's request for arbitration, and that 30 days after the date of final action was April 24, 2014. The Manufacturer thus asserted that the Consumer's Request for Arbitration, which was filed on April 28, 2014, was untimely, and asked that the matter be dismissed.
The evidence established the Consumer took delivery of the vehicle on January 31, 2012. The Lemon Law rights period expired 24 months after that date on February 1, 2014. Sixty days after the expiration of the rights period was April 3, 2014. Accordingly, in order for the Request for Arbitration to be timely filed, it must have been filed no later than 30 days after the final action of the state-certified Manufacturer sponsored procedure. In this case, the final action of the certified procedure was April 2, 2014, the date of the March 24, 2014, letter plus 14 days within which the Consumer could accept or reject the arbitration Decision, and if nothing was indicated to the procedure by the Consumer after 14 days, it would take final action by closing the file. Thirty days after April 2, 2014, was May 2, 2014. Accordingly, the Consumers' Request for Arbitration, filed on April 28, 2014, was timely. The Manufacturer's request to dismiss was denied.

NONCONFORMITY 681.102(15), F.S.

Gruen v. Mercedes-Benz USA, LLC, 2014-0184/TPA (Fla. NMVAB July 14, 2014)
The Consumers complained that the front power windows would not stay up in their 2013 Mercedes-Benz E350. After closing a window, it would drop back down an inch or two; especially when a door was opened or closed. The Consumer's use of the vehicle was drastically diminished because he did not want to leave the window down when the car was parked, due to safety and weather concerns. He purchased the vehicle for his wife as a birthday gift and she was reluctant to drive long distances for the same reasons. He emphasized that when they purchased the vehicle, they sat through a three-hour demonstration which did not include any specific instructions on how to close the windows properly. The Manufacturer argued that the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle, and that

the alleged nonconformity was the result of neglect by the Consumers. The Manufacturer contended that the Consumers had not used the “trickle charger” that was provided by the Manufacturer's authorized service agent after the final repair attempt; that the Consumers did not drive the vehicle "enough" to keep the battery charged and that the Consumers never read the owner's manual directing them how to "manually re-set" the windows, by holding down the power button for an extra minute. The Manufacturer’s witness testified that his only personal involvement with the vehicle was after the Manufacturer's final repair attempt on April 30, 2014, when he had the trickle charger installed because a battery failure code was found. The battery was not looked at during the previous four repair attempts. The Board concluded that the failure of the front power windows to stay up substantially impaired the use and value of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. The Manufacturer failed to establish that the nonconformity was the result of neglect of the vehicle by persons other than the Manufacturer or its authorized service agent. Accordingly, the Consumers were 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.

Souza v. Chrysler Group LLC, 2014-0118/WPB (Fla. NMVAB September 11, 2014)
The Consumer’s 2013 Dodge Dart SXT was found by the Board to have two nonconformities: a defective transmission and an engine “no start” condition. The vehicle was presented to the Manufacturer’s authorized service agent for repair of the nonconformities on August 28, 2013 through September 11, 2013, when the transmission control module (TCM) and powertrain control module (PCM), were replaced; and December 11, 2013, when the TCM was reset. The Manufacturer stipulated that it was afforded a final opportunity to repair the vehicle on April 14, 2014. At that time, the vehicle was towed to the authorized service agent. The TCM was replaced for the second time, and the PCM was updated; however, the nonconformities continued to exist. The Board concluded the Manufacturer had a reasonable number of attempts to conform the subject vehicle to the warranty, but failed to do so. The Consumer was awarded a refund.

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

Mallen v. BMW of North America LLC, 2014-0183/MIA (Fla. NMVAB August 15, 2014)
On February 11, 2014, the Manufacturer received written notification from the Consumer, through counsel, giving the Manufacturer a final opportunity to repair the Consumer’s 2013 BMW 325i-CV. The Manufacturer’s response to the notification directed the Consumer to take the vehicle to Vista BMW of Pompano on March 4, 2014, and to “ask for Mr. Nicholas Gambardella.” The Consumer did as instructed on March 4, 2014, and was told by personnel at Vista Motors of Pompano to take the vehicle to Vista Motors of Coconut Creek, where Nicholas Gambardella was the Service Manager. The Consumer took the vehicle to Vista Motors of Coconut Creek; however, that authorized service agent did not know why he was bringing the

vehicle, so he left the car there until March 7, 2014, when he was called and told to pick up the car and make another appointment. The repair order for that date indicates, “BMW representative was unable to look at vehicle cust [sic] to reschedule.” The Manufacturer asserted it was “denied” its “right” to a statutory final repair attempt. No evidence was presented by the Manufacturer to support its contention that it was denied the opportunity for a final repair attempt. The evidence established that, pursuant to instruction by the Manufacturer, the Consumer delivered the motor vehicle to the Manufacturer’s designated repair facility, and to a second facility, for the final repair attempt on March 4, 2014. The Manufacturer failed to avail itself of the opportunity to complete the repairs within the 10 days required by statute; therefore, the requirement that the Manufacturer be given a final attempt to cure the nonconformity did not apply.

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.

Laudon v. Mercedes-Benz USA, LLC, 2014-0217/STP (Fla. NMVAB August 4, 2014)
The Consumer complained of an "uncomfortable" driver's seat in his 2014 Mercedes-Benz E350. The Consumer testified that a few months after he purchased the vehicle, he started having back pain from the "sagging" seat bottom and from the seat back support. He further stated that he sat in three other like vehicles and the seats were the same as the seat in his vehicle. The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. In support of that assertion, the Manufacturer’s witness testified that he offered the Consumer a seat replacement from another E class vehicle; however, after the Consumer sat in the seats of three like vehicles, he was not comfortable in those seats and did not want a replacement seat from an E class vehicle. He emphasized that he could not offer the Consumer a seat from a different model because Mercedes-Benz has determined it would impair the safety of the vehicle. He further adjusted the lumbar portion on the back of the seat and the Consumer acknowledged that it was improved. The Manufacturer did not dispute that the seat was "uncomfortable" to the Consumer. The question of whether a defect or condition was a nonconformity was not purely subjective based solely on the viewpoint of a consumer; rather, it must also be viewed objectively from the standpoint of a reasonable person in a consumer's circumstances. When viewed in that light, the Board concluded that the "uncomfortable" driver's seat complained of by the Consumer did not substantially impair the use, value or safety of the vehicle so as to 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(7), F.S.

Perez v. Ford Motor Company, 2014-0143/FTL (Fla. NMVAB July 8, 2014)
The Board concluded that the poor body fit and finish as evidenced by the misaligned rear door and tailgate, the gaps, cracks, or holes in the body or seam areas where the tailgate met the body of the vehicle, the paint overspray and areas of mismatched paint color were a condition that substantially impaired the value of the Consumer's 2014 Ford Explorer and declared the vehicle a "lemon." Prior to the hearing, the Consumer took the Explorer to Wreck Check, where the vehicle was inspected by a certified auto body damage assessment and repair expert, to determine whether there had been prior damage to the vehicle. At the hearing, the expert testified to his various certifications and stated that he inspected the vehicle twice. The Consumer requested reimbursement of the following as incidental charges: $100.00 for the two inspections of the vehicle by the expert, and $750.00 for the expert's appearance and testimony at the hearing; $62.97 for car rental insurance associated with a rental car provided during the Manufacturer's final repair attempt; $180.87 for rental car charges, when the Consumer's wife was not able to use her husband's car, $74.80 for copying, and $20.55 for photographs all in connection with the claim filed with the Manufacturer's certified procedure (BBB Autoline); $36.22 for express mail and copying related to the filing of the Request for Arbitration with this Board. The Manufacturer objected to reimbursement of all requested charges on the grounds that they were "indirect expenses" not caused by the nonconformity. The request for reimbursement of $62.97 for car rental insurance associated with a rental car provided during the Manufacturer's final repair attempt was denied by the Board as unreasonable. All the other requests were awarded by the Board.

Sidran v. Chrysler Group LLC, 2014-0209/MIA (Fla. NMVAB September 17, 2014)
The Consumers' 2013 Chrysler Town & Country was deemed a "lemon" by the Board. The Consumers requested reimbursement of $40.00 to obtain the online NADA valuation information for their trade-in as an incidental charge. The Manufacturer objected to reimbursement of the cost to obtain the online valuation information. The Board included the $40.00 for the online valuation information for the Consumers' trade-in from the NADA as a reasonable incidental charge. The Manufacturer's objection was denied.

Mallen v. BMW of North America LLC., 2014-0183/MIA (Fla. NMVAB August 15, 2014)
The Consumer's 2013 BMW 325i-CV was deemed a "lemon" by the Board. The Consumer requested reimbursement of the cost of gas for the trips to the authorized service agent for repair and an unspecified amount for lost work time as incidental charges. The Manufacturer objected to reimbursement for the cost of gas and for the unspecified amount for lost work time as unsubstantiated and unreasonable. The Consumer's request was denied by the Board.

Aull v. BMW of North America LLC., 2014-0233/TLH (Fla. NMVAB August 13, 2014)
The Consumers request reimbursement of $60.98 to fill up the gas tank of the rental car before returning it, $66.38 for putting gas into their personal vehicle after returning a rental car, and $3,246.20 for lost wages in the form of a missed bonus as incidental charges. Mr. Aull testified

that, because this vehicle was out of service, he was limited in his ability to travel to Mobile, Alabama, for his job. Mr. Aull opined that, as a result, he missed out on a potential bonus of $3,246.20. The Manufacturer objected to the two different gas requests as being unreasonable. The Manufacturer objected to the lost bonus request as being too speculative in nature. The Consumers' request for reimbursement of $60.98 to fill up the gas tank of the rental car before returning it and $66.38 for putting gas into their personal vehicle after returning a rental car was denied as unreasonable by the Board. The request for reimbursement of a lost bonus was denied by the Board as too speculative and as such, unreasonable. §681.102(7), Fla. Stat.

Net Trade-in Allowance §681.102(18), F.S.

Sidran v. Chrysler Group LLC, 2014-0209/MIA (Fla. NMVAB September 17, 2014)
When the Consumers purchased the 2013 Chrysler Town & Country deemed a "lemon" by the Board, they traded in a used 2000 Chevrolet Astro Van for which a net trade-in allowance of $500.00 was received, according to the purchase contract. The net trade-in allowance reflected in the purchase contract was not acceptable to the Consumers and pursuant to Section 681.102(18), Florida Statutes, they requested that the Manufacturer produce the NADA Official Used Car Guide (Southeastern Edition) (NADA Guide) in effect at the time of the trade-in. The Manufacturer notified the Consumers that their trade-in was "not listed in the January 2014 NADA Official Used Car Guide (Southeastern Edition)." (The lemon vehicle was purchased on January 21, 2014). In response, the Consumers filed with the Board a document printed from the NADA website, which reflected an August 2014 valuation for a 2000 Chevrolet Astro Van. The Manufacturer objected to consideration of a valuation obtained from the NADA website, arguing that only the bound, paperback book titled "NADA Official Used Car Guide (Southeastern Edition)" could be considered by the Board for purposes of determining the net trade-in allowance, and the absence of the Consumers' trade-in from the January 2014 bound, printed volume of the NADA Guide meant that the trade-in allowance reflected in the purchase contract must be used to calculate the Consumers' refund.

The Manufacturer's objection to the use of the online NADA retail value, which was in effect at the time of the trade-in, to determine the net trade-in allowance, was denied by the Board. The Consumers were authorized to submit the NADA valuation of their trade-in which was in effect on the date of the trade-in as reflected on the NADA website. According to the NADA information provided by the Consumers, in January 2014, their trade-in vehicle had a base retail price of $3,725.00. Adjustments for high mileage and accessories as testified to by the Consumers resulted in a net trade-in allowance of $4,250.00.

MISCELLANEOUS PROCEDURAL ISSUES:

Mathews v. American Honda Motor Company/Acura, 2014-0222/WPB (Fla. NMVAB September 11, 2014)
During the hearing, the Consumer sought to have the Board view a video and two photos of the dashboard display, which he had taken with his cell phone on his way to the hearing, which purported to demonstrate an occurrence of the nonconformity. The Manufacturer objected that

those items had not been timely-provided before the hearing. Upon consideration, the Board agreed to view the photos and the video.

OFFICE OF THE ATTORNEY GENERAL
FLORIDA NEW MOTOR VEHICLE ARBITRATION BOARD

QUARTERLY CASE SUMMARIES

October 2014 - December 2014 (4th Quarter)

NONCONFORMITY 681.102(15), F.S.

Rowlands v. Ford Motor Company, 2014-0329/WPB (Fla. NMVAB December 17, 2014)

The Consumer complained that the "point of interest" feature in the vehicle's navigation system did not work correctly, and that his 2013 Ford Fusion Hybrid was not performing according to the fuel economy ratings provided with the vehicle at the time of purchase. The Consumer testified that he specifically purchased the vehicle because of the design of the navigation system's "point of interest" (POI) feature, which should allow him to use steering wheel controls to operate the feature, and view the results on a small screen located next to the speedometer. The Consumer explained that he considered this design to be an important safety measure for him, because he drives long distances and it would allow him to see the information without diverting his attention from the road. However, the Consumer explained that when using the steering wheel controls, the POI information did not display next to the speedometer; rather, in order to see the information, the Consumer had to look over to the larger main screen at the center of the dashboard. The Consumer asserted that having to look at the main screen while driving in order to use the POI feature was a safety hazard, necessitating that he either stop the vehicle or drive at very slow speeds in order to access the information. The Consumer presented the testimony of an expert witness, who stated that he inspected the vehicle and found that the POI feature was not working appropriately. The Consumer also complained that the vehicle's fuel mileage was less than what he was led to expect when he purchased the vehicle. He testified that, in contrast to the 47 miles per gallon (MPG) shown on the vehicle's window sticker at the time of purchase, he was getting 38 MPG driving 40% in the City and 60% on the highway. The Consumer noted that, subsequent to his purchase of the vehicle, the Manufacturer had made a downward adjustment of the fuel economy rating for the Ford Fusion Hybrids, and as a result he received a $775.00 check from the Manufacturer in August, 2014, as a measure of "goodwill" to compensate for the vehicle's reduced fuel economy.

The Manufacturer asserted the alleged nonconformities do not substantially impair the use, value or safety of the motor vehicle. The Manufacturer's witness testified that while he agreed with the Consumer that the POI feature did not work appropriately when using the steering wheel controls, he testified that the feature worked well with the voice commands. With regard to the fuel economy issue, he explained that the fuel economy ratings were approximations based on comparisons, and that there was a calculation error made by Ford that had now been corrected. He also asserted that there are other factors that weigh in to the actual fuel consumption of a particular vehicle.

The Board found that the evidence established that the "point of interest" feature in the vehicle's navigation system that did not work correctly, and the erroneous Fuel Economy rating provided to the Consumer at the time of the purchase of the vehicle, both substantially impaired

the use, value and safety of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. The Consumer was awarded a refund.

Finder v. BMW of North America LLC, 2014-0315/FTL (Fla. NMVAB November 4, 2014)

The Consumer complained of water intrusion into his 2012 X5d BMW, electrical problems with the vehicle due to the water intrusion, and a malfunctioning liftgate. According to the Consumer, there was a gap between the car and the liftgate that was not noticeable in other vehicles, which allowed water intrusion into the vehicle. The water intrusion caused water to accumulate in the rear compartments of the vehicle, resulting in corrosion of the electrical parts. The Consumer introduced photographs he asserted clearly showed that there was a gap between the car and the liftgate and also reflected the corrosion of some of the electrical parts. In addition, the Consumer testified that the trunk was not closing properly and that the liftgate was defective: after closing the liftgate, it would beep twice and reopen.

The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. According to the Manufacturer's witness, the vehicle was repaired, and was then water tested by driving the vehicle through a car wash: no water intrusion resulted.

The Board found that the evidence established that the water intrusion, electrical problems with the vehicle due to the water intrusion and a malfunctioning liftgate substantially impaired the use, value and safety of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. The Consumer was awarded a replacement vehicle.

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

Huynh v. FCA US LLC, 2014-0250/JAX (Fla. NMVAB October 27, 2014)

The Consumer complained that the automatic doors in his 2014 Dodge Grand Caravan intermittently did not work. The Consumer testified that, on an intermittent basis, the sliding doors would not open or close when he pushed the button to do so. In addition, and also intermittently, the rear liftgate would not close when the button was pushed.

The Manufacturer asserted the alleged nonconformity did not substantially impair the use, value or safety of the vehicle; alternatively, if there was a nonconformity, it was repaired with a reasonable number of attempts. The Manufacturer's witness acknowledged that there had been problems with the operation of the automatic doors and the rear liftgate, but testified that the problems were corrected at the last repair attempt in September 2014, when the hold open latch was replaced. He added that even when the automatic operation of the sliding doors and rear lift gate was not working, they could be opened and closed manually. The Manufacturer's representative also asserted the problems with the sliding doors and the rear liftgate were different defects, and therefore could not be considered part of a single condition.

The Board found the evidence established that the intermittent failure in operation of the automatic doors and rear liftgate substantially impaired the use and value of the vehicle, thereby constituting one or more nonconformities as defined by the statute and the applicable rule. Contrary to the Manufacturer's assertion, the problems with the automatic doors and rear liftgate were not separate defects, but constituted a condition as defined in Rule 2-30.001(2)(a), F.A.C. The issue remaining was whether the nonconformity was corrected within a reasonable number

of attempts. The evidence established it took a total of eight attempts to finally correct the automatic door and rear liftgate nonconformity. A majority of the Board concluded that, under the circumstances, this was not a reasonable number of attempts to correct this nonconformity as contemplated by the Lemon Law. Accordingly, the Manufacturer was found to have failed to correct the nonconformity within a reasonable number of attempts, and the Consumer was found qualified for the requested relief under the Lemon Law. A refund was awarded.

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.

Brochu v. Ford Motor Company, 2014-0135/TPA (Fla. NMVAB December 22, 2014)

The Consumer complained of poor fuel economy in his 2013 Ford Fusion hybrid. The Consumer testified that he was getting approximately 37 miles per gallon in combined city and highway driving, rather than the 47 miles per gallon he had expected when he purchased the vehicle, based on advertisements he had seen prior to purchase, as well as the window sticker on his vehicle at the time of purchase. He acknowledged that he has not experienced any problems with the operation of the vehicle, but was dissatisfied with his fuel mileage. The Consumer did acknowledge that, after he was instructed on how to use the "Eco Mode" function, he has "picked up" approximately one and a half miles per gallon. According to the Consumer, he conducted no independent testing for gas mileage; rather, he relied exclusively on the vehicle's "trip computer" to determine his combined city and highway driving gas mileage. The Consumer received a letter and check in the amount of $775.00 from Ford Motor Company as compensation for Ford's revision of the estimated average fuel cost for the Ford Fusion hybrid, which occurred when the fuel mileage estimate originally established by the Manufacturer was revised downward as a result of re-testing.

The Manufacturer asserted that the alleged nonconformity did not substantially impair the use, value or safety of the motor vehicle. The Manufacturer's representative testified that he test drove the vehicle for 100 miles and averaged a combined 48.5 miles per gallon. He additionally "ran a key" test on the engine and there were no diagnostic fault codes. According to the representative, many variables influence fuel economy, including driver input. He testified that he personally averages only a combined 40.5 miles per gallon on his Ford Fusion hybrid, when he drives more aggressively.

The Board found that the greater weight of the evidence presented by the parties did not establish that the poor fuel economy complained of by the Consumers substantially impaired the use, value or safety of the vehicle so as to constitute one or more nonconformities as defined by the statute. Accordingly, the Consumer's case was dismissed.

REFUND §681.104(2)(a)(b), F.S.

Incidental Charges §681.102(7), F.S.

Silva v. Mercedes-Benz USA, LLC, 2014-0117/FTL (Fla. NMVAB October 1, 2014)

The Consumer's 2013 Mercedes-Benz Sprinter was declared a "lemon" by the Board. The Consumer requested reimbursement of the following as incidental charges: $3,364.00 for a car rental during a 58 day period from February 12, 2014 to September 13, 2014; and $1,350.00 for lost wages. The Consumer testified that he earned $150.00 per day as a driver and he lost nine days of work, and had to rent a van from his employer at the rate of $58.00 per day for 58 days.

The Manufacturer objected to the claim for lost wages and to the amount of the car rental. As to the claim for lost wages, counsel for the Manufacturer cited to two prior Decisions of the Board and argued that the Board had always denied claims for lost wages. As to the claim for the car rental, counsel for the Manufacturer argued that the amount requested was unreasonable, because the Consumer expected the Manufacturer to reimburse him for approximately $1,500.00 per month in car rental when his monthly car payment was $703.00 per month.

The Board award included reimbursement of the following as reasonable incidental charges: $2,378.00 for car rental for the period of time the car was out of service. The Board found that the $58.00 per day, the Consumer's employer was charging for the rental of the van, was a reasonable rate and determined that the Consumer was entitled to be reimbursed for the 41 days the vehicle was out of service. The Consumer's request for reimbursement of the car rental expense of the additional 17 days the car was not out of service was denied as unreasonable. The Consumer's request for reimbursement for lost wages was denied by a majority of the Board as the Consumer did not provide copies of his paystubs to substantiate the amount of the claimed loss. The Manufacturer's contention that the Board has not awarded lost wages was rejected as erroneous. §681.102(7), Fla. Stat.

Collateral Charges §681.102(3), F.S.

Serrano v. General Motors LLC, 2014-0288/MIA (Fla. NMVAB November 20, 2014)

The Consumer's 2012 Chevrolet Silverado 1500 was declared a "lemon" by the Board. The Consumer requested reimbursement of $100.00 for tinted windows; $1,018.08 for a Fog Lamp Light Kit and Radio; $132.95 for a Rearview Camera; $203.25 for a Hitch; $46.82 for a Handle Package; $63.40 for a Receptacle; $321.00 for an Auto Alarm; $26.00 for Front Seat Covers; and $2,000.00 for Rims and Tires, as collateral charges.

The Manufacturer objected to the receipt presented for the Rims and Tires due to the fact that it was a handwritten document that did not describe the wheels and tires with specificity. The Manufacturer objected to the fog lamp kit and the hitch receipts on the grounds that they were merely quotes and there was no evidence before the Board that the Consumer actually paid for those items. The Manufacturer further objected to all three receipts on the grounds that they were not prepared contemporaneously with the purchase of the items. The Board awarded the Consumer $100.00 for tinted windows; $1,018.08 for the Fog Lamp Light Kit and Radio; $132.95 for the Rearview Camera; $203.25 for the Hitch; $46.82 for the Handle Package; $63.40 for the Receptacle; $321.00 for the Auto Alarm; and $26.00 for the Front Seat Covers, as reasonable

collateral charges. The request for reimbursement of $2,000.00 for Rims and Tires was denied by the Board for lack of appropriate documentation as to the purchase. §681.102(3), Fla. Stat.

Sabates v. BMW of North America LLC, 2014-0289/FTL (Fla. NMVAB October 16, 2014)

The Consumer's 2012 Mini Cooper S was declared a "lemon" by the Board. The Consumer requested $2,114.70 for Mini Tire' N Wheel Protection as a collateral charge.

The Manufacturer objected to the request for reimbursement of the Wheel Protection Plan on the grounds that the Consumer could request to have the Protection Plan pro-rated and pay only for the time during which she owned the vehicle.

The Manufacturer's objection to the reimbursement of the cost of the Tire and Wheel Protection was denied by the Board and the Consumer was awarded the full $2,114.70 for Mini Tire' N Wheel Protection as a collateral charge.

MISCELLANEOUS PROCEDURAL ISSUES

Oliveros v. Toyota Motor Sales, U.S.A., Inc., 2014-0314/TPA (Fla. NMVAB October 20, 2014)

The Manufacturer's Answer was untimely filed on October 3, 2014, two days beyond the date required for timely filing. Pursuant to paragraph (8), *Hearings Before the Florida New Vehicle Arbitration Board*, "the Manufacturer's Answer form must be filed with the Board Administrator no later than 20 days after receipt of the Notice of Arbitration," and any affirmative defenses raised in the Manufacturer's untimely Answer "cannot be raised at the hearing, unless permitted by the Board." At the hearing, the Manufacturer's representative had no explanation for why the Answer was not timely filed. The Consumer, through Counsel, stated that he would leave to the Board's discretion the question of whether the Manufacturer would be allowed to assert its affirmative defenses at the hearing. Upon consideration, the Manufacturer was not permitted to raise untimely-asserted affirmative defenses at the hearing. The Manufacturer's representative was permitted to cross-examine the Consumer, present evidence of any additional defenses, and give a closing statement.