TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 14-0202 CAF

JOHNNIE HOOPER,	§	**BEFORE THE OFFICE**
Complainant	§	
	§	
v.	§	**OF**
	§	
FORD MOTOR COMPANY,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Johnnie Hooper (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for an alleged warrantable defect in a 2013 Ford Fusion automobile manufactured by Ford Motor Company (Respondent). Complainant alleges a defective headliner, which is the composite foam-backed fabric material that is attached with adhesive to the inside roof of the vehicle. The hearings examiner finds that Complainant proved by a preponderance of the evidence that the headliner constitutes a defect or condition that substantially impairs the market value of the vehicle, and orders Respondent to repurchase Complainant's vehicle.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

There are no contested issues of jurisdiction or notice. Those issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing on the merits convened before Hearings Examiner James D. Arbogast on August 14, 2014 at the Texas Department of Transportation District Office in Houston, Texas. Complainant was represented by Katelyn Reh, Client Relations Specialist of the Lemon Law Group Partners of North Miami Beach, Florida. Respondent was represented by Terrie Stone, a Regulatory Compliance Specialist for Respondent. Ms. Reh and Ms. Stone appeared by telephone, without objection, after each obtained permission from the hearings examiner. Appearing at the hearing location and providing testimony were Complainant and his wife, Renee Hooper. The record was held open following the hearing to allow post-hearing submissions, and closed on August 20, 2014.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides administrative remedies for a consumer whose vehicle cannot be made to conform to an applicable express warranty. Tex. Occ. Code §§ 2301.601-.613. If the manufacturer of the vehicle "is unable to conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value after a reasonable number of attempts," the manufacturer shall reimburse the owner for reasonable incidental costs resulting from the loss of use of the motor vehicle, and either replace the motor vehicle with a comparable vehicle or repurchase the vehicle less a reasonable allowance for the owner's use of the vehicle. Tex. Occ. Code § 2301.604. An impairment of market value is "a substantial loss in market value caused by a defect specific to a motor vehicle." Tex. Occ. Code § 2301.601(1).

An order issued under the Lemon Law may not require a manufacturer to repurchase or replace a vehicle unless "(1) the vehicle owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity." Tex. Occ. Code § 2301.606(c). The Lemon Law provides several methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. Tex. Occ. Code § 2301.605(a).

B. Evidence and Arguments

On October 24, 2012, Complainant purchased the vehicle at issue, a new 2013 Ford Fusion S sedan, from Courtesy Ford Lincoln (Courtesy Ford) in Breaux Bridge, Louisiana.[1] The purchase price of the vehicle, including tax, title, license and registration, was $30,474.82.[2] At the time of the purchase, Complainant and his family lived in Lafayette, Louisiana.

Respondent's new vehicle limited warranty provided bumper to bumper coverage for three years or 36,000 miles, whichever comes first.[3] There was no dispute at the hearing that the vehicle was within the three year or 36,000 mile coverage window.[4]

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[1] Complainant Ex. A (purchase agreement).
[2] Complainant Ex. A.
[3] Complainant Ex. B (warranty summary).
[4] The Lemon Law complaint was filed on April 1, 2014, about 18 months after purchase. Although the exact mileage was not noted on the date of the hearing, Ms. Hooper's undisputed testimony was that the mileage was 13,000 on that date, and for purposes of this decision that figure is accepted as the mileage on the hearing date.

In April 2013, Respondent mailed a "Customer Satisfaction Program" notice, Program Number 13B02, to Complainant and other purchasers of certain 2013 Fusion models.[5] The notice advised these owners that it "may be possible that wrinkles could develop on the interior headliner of your vehicle around the moon roof opening," and advised customers to bring their vehicle in to allow the "dealer to inspect the headliner in your vehicle and either replace or modify it based on the results of the inspection."[6]

The corresponding dealer bulletin provides more detail of the headliner issue that Program Number 13B02 was intended to address.[7] The affected vehicles are described as "[c]ertain 2013 model year moon roof equipped Fusion vehicles built at the Hermosillo Assembly Plant from February 7, 2012 through November 1, 2012." The problem was described as follows:

> Differing rates of thermal expansion exist between the headliner substrate, glue, and other components bonded to the backside of the headliner, which can result in a wrinkle condition around the moon roof opening. Note that the wrinkle condition is accentuated by high and low ambient temperature cycles.[8]

The Program 13B02 dealer bulletin was supplemented on June 17, 2013, apparently because dealers were encountering problems in replacing the headliner, resulting in damage to trim panels and other interior pieces that had to be removed during the headliner replacement process. "Based upon the amount of related damage dealers are encountering while performing [the headliner] repair (e.g., trim panels damaged during removal and trim retention clips remaining in the sheetmetal), the guidelines for claiming related damage" were relaxed to allow dealers to claim reimbursement for additional labor time and trim panel costs without prior authorization from Respondent.[9]

The attempts to repair the headliner began on May 29, 2013, when Complainant delivered the vehicle to Courtesy Ford's Breaux Bridge, Louisiana location. Except for one three day period in July, the vehicle remained at Courtesy Ford for approximately five and a half months, from May 29, 2013 to November 15, 2013, where the vehicle underwent numerous attempts to repair the headliner.[10]

Three Courtesy Ford service invoices evidence the attempts to repair or replace the headliner during this period. The three service invoices are in some respects contradictory as to when the various attempts to

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[5] After the hearing, and with the permission of the hearings examiner, Respondent provided a sample of this notice, which has been designated as Respondent Ex. A. At that time Respondent also provided the corresponding service bulletin explaining the issue and program terms to its dealers, which has been designated as Respondent Ex. B. Complainant submitted no objection to these exhibits, and they are admitted into the record.

[6] Respondent Ex. A (Program 13B02 customer notice).

[7] Respondent Ex. B (Program 13B02 dealer bulletin).

[8] Respondent Ex. B.

[9] Respondent Ex. B.

[10] Complainant Ex. C (Courtesy Ford service invoices).

repair the headliner were made. The first invoice, with an open date of May 29, 2013 and a close date of July 16, 2013, evidences a single repair attempt, stating that Courtesy Ford "replaced headliner do [sic] to recall 13B02," and documenting that Respondent reimbursed Courtesy Ford for providing warranty service.[11] The second invoice, with an open date of July 19, 2013 and a close date of November 15, 2013, evidences another installed headliner, along with the replacement of over a dozen trim pieces apparently damaged during an earlier attempt to replace the headliner.[12] However, the third invoice, with an open date of August 22, 2013 and the same close date as the second invoice, November 15, 2013, evidences numerous attempts to replace the headliner on dates within the timeframe of the *first* invoice. The "description of service and parts" on this invoice states:

> MR A99: ADMINISTRATIVE TROUBLES
> CUSTOMER STATES BOTH DRIVER AND PASSENGER SIDE PILLAR POST ARE NOT HOLDING TO THE BODY OF THE VEHICLE CORRECTLY – CAN SEE LARGE GAP BEHIND COVER AND HEADLINER IS SHOWING
>
> Caused by
>
> ON 5.29.13 HEADLINER WAS ORDERED FOR VEHICLE TO BE INSTALLED, HEADLINER INSTALLED. HEADLINER HAD VARIOUS CREASES IN IT CAUSING HEADLINER NOT TO FIT CORRECTLY, ORDERED NEW HEADLINER. ON 6.25.13 HEADLINER DAMAGED ON CORNER WITH CREASE. REORDER HEADLINER, ANOTHER HEADLINER CAME IN ON 7.09.13, HEADLINER DAMAGED ON CORNERS. REORDERED HEADLINER CONTACTED PARTS ASSISTANCE CENTER ONLINE ABOUT HEADLINER DAMAGES TO PACKAGE SECURELY, PARTS
>
> Work performed by Josh Benoit (561) 0.00 hrs
> Installed DS7Z 5424357 AB :PANEL – TRIM
> Installed DS7Z 5424356 AB :PANEL – TRIM
> Installed DS7Z 5420708 A :WEATHERSTRIP ASY – DOOR
> Installed DS7Z 5420709 A :WEATHERSTRIP ASY – DOOR
> Installed DS7Z 54253A10 A :WEATHERSTRIP ASY – DOOR
> Installed DS7Z 5451916 BB :HEADLINING – ROOF
> PARTS ASSISTANCE CENTER WENT INTO WAREHOUSE AND INSPECTED HEADLINERS FOR CAMPAIGN 13B02. FOUND GOOD HEADLINER AND SECURED IN PACKAGE FOR SHIPPING, RECEIVED HEADLINER AND INSPECTED, HEADLINER IN GOOD CONDITION, NO CREASES AND PROPER SIZE. INSTALLED GOOD HEADLINER IN VEHICLE. REPLACED DRIVER AND PASSENGER FRONT DOOR BODY WEATHERSTRIP, REPLACED DRIVER REAR DOOR BODY WEATHERSTRIP, REPLACED UPPER AND CENTER C-PILLAR POST COVERS[13]

[11] Complainant Ex. C (5/29/13-7/16/13 invoice).
[12] Complainant Ex. C (7/19/13-11/15/13 invoice).
[13] Complainant Ex. C (8/22/13-11/15/13 invoice).

The Hoopers testified that over the period covered by these invoices, between May 29, 2013 and November 15, 2013, they would return to Courtesy Ford on numerous occasions, only to discover the headliner had not been properly repaired or replaced. The vehicle was out of the shop during this period only once, from July 16 to July 19, 2013. During this three day period when the Hoopers had possession of the vehicle, Ms. Hooper testified that the headliner was "literally hanging down," and there was significant damage to the interior of the vehicle apparently caused by the attempt to repair the headliner. This damage included a broken sun visor and scratches or other damage to various trim and panel assemblies on the doors, "A" pillars (the pillars between the windshield and the front doors) and other assemblies. The Hoopers testified that they contacted Courtesy Ford, which picked up the vehicle a few days later and returned it to the shop for further repairs.

The vehicle remained at Courtesy Ford from July 19, 2013 to November 15, 2013. During this time, Ms. Hooper testified that she returned to Courtesy Ford at least five times to pick up the vehicle after being informed that the headliner had been repaired, only to discover that the repairs had not been successful. Both Mr. and Ms. Hooper testified that, over the entire period between May and November 2013, the headliner had been unsuccessfully replaced at least eight times.

The Hoopers testified that in late September or early October 2013, they changed their primary residence from Louisiana to the Houston, Texas area. Throughout October and mid-November 2013, the Hoopers lived in an extended stay hotel, until they purchased a home in Humble, Texas just before Thanksgiving in November 2013. Although the Hoopers still own their house in Louisiana (which is for sale) and a vacation property in Florida, both testified that they became Texas residents no later than November 2013, with the purchase of their home.

It was around this time, on November 15, 2013, that the Hoopers took possession of the vehicle back from Courtesy Ford. No further attempts have been made since then to replace or repair the headliner, and Ms. Hooper testified that upon retrieving the vehicle on November 15, 2013, the headliner was in substantially the same condition as that observed by the hearings examiner on the day of the hearing.

More than a month before the vehicle was returned to Complainant, Complainant provided notice to Respondent of the allegedly defective headliner (among other issues not relevant to this hearing) via an October 9, 2013 letter from Complainant's representative.[14] This notice requested a repurchase of the vehicle, among other forms of relief. On October 30, 2013, Respondent acknowledged receipt of this notice, requesting additional information as well as the opportunity to perform a final repair attempt on the vehicle.[15] Although Complainant's representative made several attempts to follow up, apparently

[14] Complainant Ex. D.

[15] After the hearing, Complainant submitted several documents evidencing communications between the parties, beginning with the notice letter. The additional communications from Complainant's representative to Respondent are dated November 6, 2013, December 3, 2013, and December 13, 2013. Complainant also submitted the Texas registration receipt discussed below. All of these documents are admitted into the record without objection as Complainant Ex. E.

Respondent did not further communicate with Complainant or his representative prior to the filing of the Lemon Law Complaint.[16]

On January 12, 2014, Complainant obtained a Texas registration for the vehicle from the Harris County Tax Assessor-Collector, listing his Humble, Texas address.

The Lemon Law Complaint was signed on February 17, 2014, but not submitted until April 1, 2014, describing the alleged problem as "[h]eadliner is loose, doesn't fit properly." Following a prehearing conference, Complainant allowed the vehicle to be inspected by one of Respondent's field technicians. However, Complainant refused Respondent the opportunity to repair the headliner after this inspection, taking the position that the prior history of failed repair attempts, along with the notice to Respondent while the vehicle remained at Courtesy Ford for repair, are sufficient to satisfy the provisions of the Lemon Law requiring that the manufacturer be given notice and the opportunity to repair the vehicle.

The hearings examiner viewed the vehicle during the hearing on August 14, 2014. The headliner was observed to be ill-fitting in several respects. In some places, it was cut short so that it did not properly join with the surrounding trim pieces, leaving a gap of unevenly cut fabric with loose threads exposed in the cabin. In other places, it appeared to be incompletely adhered to the roof of the vehicle, so that certain parts were secured tightly to the roof while other areas were sagging, and wrinkles were evident over parts of the headliner. A number of the trim pieces used to cover the edges of the headliner appeared loose or slightly damaged, apparently because of repeated removal and replacement during the multiple headliner replacements.

Based on the history of repeated failed attempts to properly replace the headliner and the current condition of the headliner, Complainant argues that Respondent has failed to conform the vehicle to warranty, and that he is entitled to replacement of the vehicle under the Lemon Law.

Respondent argues that it is not liable under the Lemon Law for several reasons. First, Respondent notes that Complainant purchased the vehicle in Louisiana while he was a resident of Louisiana, and notes that all repair attempts occurred in Louisiana. Respondent therefore argues that Texas does not have jurisdiction to conduct this Lemon Law proceeding concerning a vehicle that was not purchased or serviced in Texas. Second, Respondent argues that the evidence establishes only one warrantable repair attempt, followed by a number of non-warranty repairs intended to fix issues caused by the dealer and not to correct a manufacturing defect, so that Complainant has not met the statutory presumption of a reasonable number of attempts to conform the vehicle to warranty. Finally, Respondent argues that because Complainant refused to allow Respondent the opportunity to repair the vehicle after it was

[16] Complainant Ex. E.

inspected following a pre-hearing conference, Respondent has not been afforded the requisite opportunity to repair under the Lemon Law.

C. Analysis

Under Texas' Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Complainant must establish that he is among the class of persons entitled to enforce a manufacturer's warranty with respect to a motor vehicle in this forum. In addition, Complainant must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Complainant must also serve written notice of the nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect, Complainant is entitled to have the vehicle repurchased or replaced.

1. Complainant's Ability to Seek Relief in Texas

The vehicle at issue was purchased from a dealer in Louisiana, at a time when Complainant was a Louisiana resident. All of the attempts to repair the allegedly defective headliner were undertaken in Louisiana. Under these facts, Respondent argues that the vehicle is not subject to Texas Lemon Law relief.

Whether Complainant may seek relief in Texas turns on whether Complainant meets the definition of an "owner," meaning a "person who is entitled to enforce a manufacturer's warranty with respect to a motor vehicle." Tex. Occ. Code § 2301.601(2). Among other definitions, an "owner" may be a person who is "a resident of this state and has registered the vehicle in this state." Tex. Occ. Code § 2301.601(2)(C). Complainant argues that, despite the fact that the vehicle was not purchased or serviced in Texas, he qualifies as an "owner" entitled to seek enforcement of Respondent's warranty.

Because the Lemon Law Complaint was filed after Complainant became a Texas resident and after he registered the vehicle at issue in Texas, Complainant is correct that he may seek Lemon Law relief in this forum pursuant to Section 2301.601(2)(C) of the Occupations Code. There is no requirement that a vehicle must be purchased (or for that matter serviced) in Texas before an owner may seek Lemon Law relief in Texas, if the owner meets the registration and residency requirements of Section 2301.601(2)(C).[17]

[17] Whether a motor vehicle was purchased from a licensed Texas dealer may be relevant if the person seeking Lemon Law relief is either not a resident of Texas, or has not registered the vehicle in Texas, under the alternate statutory definitions of "owner." *See* Tex. Occ. Code §§ 2301.601(2)(A) (purchase of vehicle from Texas license holder) and 2301.601(2)(B) (lease of vehicle from Texas license holder).

2. Reasonable Number of Attempts to Repair the Vehicle

A manufacturer may be liable to replace or repurchase a vehicle if it is unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts" to repair the alleged defect. Tex. Occ. Code § 2301.604(a). "A rebuttable presumption that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty is established if: (1) the same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, convertor and distributor or an authorized agent or franchised dealer of a manufacturer, converter, and distributor and: (A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt." Tex. Occ. Code §§ 2301.605(a) and 2301.605(a)(1).[18]

It is undisputed that there were more than four attempts to repair the headliner. The final of the three Courtesy Ford invoices alone documents four separate headliner replacement attempts. All of these repair attempts took place well within the two year and 24,000 mile requirements of Section 2301.605(a)(1).[19]

Respondent argues that while there were multiple attempts to fix the problem with the headliner, there was only a single attempt to conform the vehicle to warranty. Respondent notes that of the three Courtesy Ford invoices, only the earliest states that the parts and service related to the first attempted headliner repair are charged to "warranty." The later invoices documenting subsequent attempts to repair or replace the headliner are charged to "service policy." Respondent explained that repairs charged to "warranty" are reimbursed by Respondent to the dealer, but that the cost of repairs charged to "service policy" are assumed by the dealer, typically to address issues not caused by a warrantable defect but rather by damage or faulty workmanship caused by the dealer itself. Respondent thus argues that there was but a single repair attempt to correct a defect or condition under warranty. All the later repair attempts were not to address a warrantable manufacturing defect, argues Respondent, but rather to address damage or poor workmanship caused by the dealer's failed repair attempts, which is not covered under Respondent's warranty.

Respondent's argument ignores the fact that the headliner was not properly repaired or replaced during that first repair visit, so that the defective headliner continued as a nonconforming defect or condition throughout all subsequent repair attempts. There is no question that the issue with the headliner was a

[18] Alternate statutory formulas for establishing the rebuttable presumption, applicable in circumstances involving serious safety hazards or extended service visits when a comparable loaner vehicle is not provided, exist but are not relevant to this decision. *See* Tex. Occ. Code §§ 2301.605(a)(2), 2301.605(a)(3), and 2301.605(c).

[19] The vehicle was purchased in October 2012 and the final repair visit ended just over a year later in November 2013, at which time the vehicle had a mileage of 5668. Complainant Ex. C (7/19/13-11/15/13 invoice).

defect or condition covered by Respondent's warranty, as shown by Respondent's Program Number 13B02 bulletin to owners and the fact that Respondent reimbursed dealers for repairs made under that program as warranty repairs. The lack of a properly installed headliner *remained* a defect or condition covered by warranty through all the failed attempts to conform the vehicle to warranty. In other words, "the same nonconformity continues to exist after being subject to repair four or more times by the manufacturer ... or an authorized agent or franchised dealer," giving rise to the presumption of a reasonable number of attempts to conform the vehicle to warranty. Tex. Occ. Code § 2301.605(a). That Respondent did not reimburse its dealer for subsequent attempts to remedy an unsuccessful warranty repair does not change the fact that the same warrantable defect has been subject to multiple repair attempts but has not yet been corrected. For this reason, the hearings examiner finds that a reasonable number of attempts to conform the vehicle to warranty have been undertaken.

3. Notice to Respondent and Opportunity to Cure

A hearings examiner may not issue an order requiring "a manufacturer ... to make a refund or to replace a motor vehicle unless: (1) the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer ... and (2) the manufacturer ... has been given an opportunity to cure the alleged defect or nonconformity." Tex. Occ. Code § 2301.606(c). There appears to be no dispute that the October 9, 2013 letter from Complainant's representative to Respondent constitutes sufficient mailed written notice to Respondent under this section.

However, Respondent argues that while the headliner was replaced multiple times by the dealer, Respondent itself has not been given an opportunity to cure the allegedly defective headliner. Respondent notes that while Complainant made the vehicle available for *inspection* by Respondent following a pre-hearing conference, Complainant refused to make the vehicle available for *repair* at that time, or at any other time after the filing of the Lemon Law Complaint.

While Complainant did deny Respondent an opportunity to cure following the pre-hearing inspection, that was not Respondent's only opportunity to cure. The "plain language of section 2301.606 establishes that written notice to the manufacturer and '*an* opportunity to cure' are the only prerequisites for an order to refund or replace a defective vehicle" and this "provision unambiguously requires only one notice and one opportunity to cure." *Dutchmen Mfg., Inc. v. Texas Dept. of Transp., Motor Vehicle Div.*, 383 S.W.3d 217, 224 (Tex. App. – Austin 2012) (emphasis in original). As that case further explained, after a manufacturer is given notice of the defects and the vehicle is delivered to the dealer for repair, the manufacturer may not demand a second opportunity to cure if its authorized dealer is unable to resolve the warranty claims. This analysis recognizes that after notice of a warranty claim is provided to the manufacturer, delivery of the vehicle to an authorized dealer for repair service is itself an opportunity for the manufacturer to repair the vehicle:

> Dutchmen complains that following the plain language of the statute in this way ignores "how warranty service is performed in the real world." It contends that manufacturers would have no incentive to let dealers attempt repairs first once the manufacturer has received notice that the vehicle needs repair and that manufacturers would have "to bring every vehicle to Detroit, which would be highly inefficient and inconvenient for consumers." We note that nothing in the lemon law constrains a manufacturer's ability to contract with its authorized dealer to require the dealer to keep the manufacturer informed about the progress of repairs after an owner has provided written notice of defects. Similarly, nothing in the lemon law constrains a manufacturer's ability to contact an owner who has notified a manufacturer that it will attempt to obtain warranty repair from a dealer to learn whether those repairs have been completed to the owner's satisfaction.

Dutchmen, 383 S.W.3d at 224 n. 6.

The written notice to Respondent from Complainant's representative alleging the issues with the headliner was dated October 9, 2013. Respondent acknowledged receipt of that notice three weeks later in its October 30, 2013 response, at which time Respondent's employee requested a final repair attempt and stated that "I will contact you with the schedule for our Field Service Engineer in your area."[20] On that date, the vehicle had been continuously at Courtesy Ford since July 19, 2013, and would remain at Courtesy Ford for an additional 16 days, until Complainant reclaimed the vehicle on November 15, 2013. However, after issuing its October 30, 2013 response, there is no evidence in the record that Respondent actually did contact Complainant's representative to schedule a field service engineer inspection, or otherwise take advantage of the opportunity to repair the vehicle as it remained in the possession of Respondent's dealer and authorized warranty repair facility for an additional two weeks.

In sum, following the written notice of the claimed warranty defect, Respondent had five weeks to ascertain that the vehicle was already at a location offering authorized warranty service, and had the opportunity to send a service representative to inspect and attempt to repair the headliner during that time at its convenience. That Respondent failed to take advantage of this opportunity to repair the vehicle does not change the fact that the opportunity to repair did exist. The hearings examiner finds that these facts establish that Respondent had an adequate opportunity to repair following written notice of the defect, so that Lemon Law relief may be granted under Section 2301.606(c).

[20] Complainant Ex. E (October 30, 2013 letter from Catherina Reid, Research Analyst/Office of the General Counsel, to Mr. Felix Chevalier, Lemon Law Group Partners).

4. Substantial Impairment of Use or Market Value

During the inspection of the vehicle at the hearing, the hearing examiner observed several issues with the headliner. The headliner appeared improperly cut in parts, so that it did not properly reach the edge of the roof in places to properly join or be covered by trim pieces, with loose threads visible at the cuts. Parts of the headliner appeared to be loose from and not properly adhered to the roof, and wrinkles were apparent in several places.

Lemon Law relief is appropriate only if a manufacturer is unable to conform a vehicle to warranty by repairing a defect "that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle." Tex. Occ. Code § 2301.604(a). "Impairment of market value" is further defined to mean "a substantial loss in market value caused by a defect specific to a motor vehicle." Tex. Occ. Code § 2301.601(1). A manufacturer "may plead and prove as an affirmative defense to a remedy under this subchapter that a nonconformity . . . does not substantially impair the use or market value of the motor vehicle." Tex. Occ. Code § 2301.606(b).

In its current condition, the headliner does not represent a serious safety hazard, nor does it impair the use of the vehicle. However, the current condition of the headliner does substantially impair the market value of the vehicle. While the defect is largely cosmetic, a typical customer would demand a substantial discount on the purchase price to account for the improperly installed headliner, at least in the amount of the cost of materials and labor to replace the headliner. The fact that Respondent issued a "Customer Satisfaction Program" notice to replace the defective headliners in all affected vehicles, while not dispositive, supports a finding that a correctly installed headliner is important to customer satisfaction. The hearings examiner therefore finds that the nonconforming headliner substantially impairs the market value of Complainant's vehicle.

D. Conclusion

When a complainant establishes that relief under the Lemon Law is appropriate, the manufacturer may be required to repurchase the motor vehicle, or replace the motor vehicle with a comparable motor vehicle. Tex. Occ. Code § 2301.604. Based on the evidence and arguments presented, the hearings examiner finds that a repurchase is the appropriate remedy in this case.

While a complainant who is entitled to relief under the Lemon Law may also be entitled to reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect, these costs must be verified through receipts or similar written documents. Tex. Occ. Code § 2301.606; 43 Tex. Admin. Code § 215.209. Complainant did not submit any documentation to verify any reasonable incidental costs, and therefore no reimbursement for incidental expenses may be awarded.

III. FINDINGS OF FACT

1. Johnnie Hooper (Complainant) purchased a new 2013 Ford Fusion S sedan on October 24, 2012 from Courtesy Ford Lincoln (Courtesy Ford) in Breaux Bridge, Louisiana. The purchase price of the vehicle, including tax, title, license and registration, was $30,474.82.

2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a new vehicle limited warranty providing bumper to bumper coverage for three years or 36,000 miles.

3. In April 2013, Respondent issued a "Customer Satisfaction Program" notice, Program Number 13B02, alerting customers to possible wrinkling issues with the headliners installed on certain model year 2013 Fusion vehicles. A related bulletin to dealers described the issue as "[d]iffering rates of thermal expansion exist between the headliner substrate, glue, and other components bonded to the backside of the headliner, which can result in a wrinkle condition around the moon roof opening."

4. Complainant delivered the vehicle to Courtesy Ford in Breaux Bridge, Louisiana on May 29, 2013, for service including replacement of the headliner pursuant to Customer Satisfaction Program Number 13B02. At that time, the vehicle had a mileage of 5020. The vehicle remained at Courtesy Ford for approximately five and a half months, from May 29, 2013 to November 15, 2013, except for the three day period from July 16 to July 19, 2013.

5. Courtesy Ford performed multiple attempts to repair or replace the headliner between May 29, 2013 and November 15, 2013, with the headliner being repaired or replaced between six and eight times. However, each attempt failed to conform the headliner to Respondent's warranty.

6. While the vehicle was still at Courtesy Ford undergoing repairs, Complainant and his family moved from Louisiana to Humble, Texas, purchasing a home there in November, 2013.

7. Complainant provided to Respondent mailed written notice of the issues with the headliner in an October 9, 2013 letter.

8. Respondent acknowledged receipt of the written notice in a letter dated October 30, 2013.

9. Complainant retrieved the vehicle from Courtesy Ford on November 15, 2013. At that time, the headliner still did not conform to Respondent's warranty. The headliner appeared improperly cut in parts, so that it did not properly reach the edge of the roof in places to properly join or be covered by trim pieces, with loose threads visible at the cuts. Parts of the headliner appeared to

be loose from and not properly adhered to the roof, and wrinkles were apparent in several places.

10. Because the vehicle was located at Courtesy Ford, one of Respondent's franchised dealers and authorized warranty service facilities, for approximately five weeks after Complainant provided written notice of the headliner issues and for approximately two weeks after Respondent acknowledged receipt of this notice, Respondent had an opportunity to repair the vehicle and conform it to warranty.

11. On January 12, 2014, Complainant obtained a Texas registration for the vehicle from the Harris County Tax Assessor-Collector, listing his Humble, Texas address. By that date and to the date of the hearing, Complainant was a resident of Texas and had registered the vehicle at issue in Texas.

12. Complainant filed a Lemon Law Complaint with the Texas Department of Motor Vehicles, signed February 17, 2014 but received April 1, 2014, describing the issue with the headliner and seeking repurchase or replacement of the 2013 Ford Fusion.

13. On July 25, 2014, the Office of Administrative Hearings issued a notice of hearing to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing, legal authority and jurisdiction under which the hearing was to be held, particular sections of the statutes and rules involved, and matters asserted.

14. The hearing convened before Hearings Examiner James D. Arbogast on August 14, 2014, at the Texas Department of Transportation District Office in Houston, Texas. Complainant was represented by Katelyn Reh, Client Relations Specialist of the Lemon Law Group Partners of North Miami Beach, Florida. Respondent was represented by Terrie Stone, a Regulatory Compliance Specialist for Respondent. Ms. Reh and Ms. Stone appeared by telephone, without objection, after each obtained permission from the hearings examiner. Appearing at the hearing location and providing testimony were Complainant and his wife, Renee Hooper. The record was held open following the hearing to allow post-hearing submissions, and closed on August 20, 2014.

15. A warrantable defect or condition which substantially impairs the market value exists in Complainant's vehicle, in the form of an improperly installed headliner.

16. The appropriate calculations for repurchase are:

Purchase price, including tax, title, fees, add-on accessories, less rebate, if any			$30,474.82		
Mileage at first report of defective condition	5,020				
Less mileage at delivery	0				
Unimpaired miles	5,020				
Mileage on hearing date	13,000				
Less mileage at first report of defective condition	-5,020				
Impaired miles	7,980				
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
5,020 / 120,000		X	$30,474.82	=	$1,274.86
Impaired miles					
7,980 / 120,000		X	$30,474.82 X .5	=	$1,013.29
Total reasonable allowance for use deduction:					$2,288.15
Purchase price, including tax, title, license and registration			$30,474.82		
Less reasonable allowance for use deduction			-$2,288.15		
Plus filing fee refund			$35.00		
TOTAL REPURCHASE AMOUNT			$28,221.67		

For the purposes of this calculation, the mileage at delivery is determined to be 0, and the mileage on the date of hearing is determined to be 13,000.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).

2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conduction a hearing in this proceeding, including the preparation of findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.

3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.206(2).

4. Complainant and Respondent received adequate and timely notice of the hearing. Tex. Gov't Code §§ 2201.051 and 2001.052; 43 Tex. Admin. Code § 215.206(2).

5. Adequate and timely written notice of the defect complained of by Complainant was provided to Respondent, and Respondent was given an opportunity to cure the defect or nonconformity. Tex. Occ. Code § 2301.606(c).

6. Complainant bears the burden of proof in this matter.

7. Complainant's vehicle has a nonconformity that substantially impairs the market value of the vehicle. Tex. Occ. Code § 2301.604(a).

8. A reasonable number of attempts have been undertaken to repair the nonconformity but have failed to repair the defect or condition so that it conforms to Respondent's applicable express warranty. Tex Occ. Code §§ 2301.604(a) and 2301.605.

9. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief under Texas Occupations Code § 2301.604(a).

10. Based on the above Findings of Fact and Conclusions of Law, Respondent is required to repurchase Complainant's 2013 Ford Fusion at the price of $28,221.67. Tex. Occ. Code § 2301.604(a)(2); 43 Tex. Admin. Code § 215.208(b)(1) and (2).

11. Complainant is not entitled to reimbursement of incidental expenses. Tex. Occ. Code § 2301.604(a); 43 Tex. Admin. Code § 215.209.

IT IS THEREFORE ORDERED that:

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in this final order;

2. Respondent shall repurchase the subject vehicle in the amount of **$28,221.67**. Complainant is not entitled to reimbursement of incidental expenses. The refund shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainant is responsible for providing Respondent with clear title to the vehicle;

3. Within twenty (20) calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31st calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);

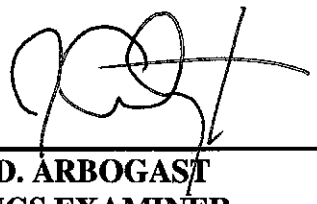
4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department;[21]

5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous. Upon Respondent's first retail sale of the reacquired vehicle, the disclosure statement shall be completed and returned to the Department; and

6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.

[21] Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, Phone (512) 465-4076.

SIGNED September 26, 2014.



JAMES D. ARBOGAST
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES