

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 14-0303 CAF**

**TOM RAMSAY,**  
**Complainant**

v.

**FORD MOTOR COMPANY,**  
**Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Tom Ramsay filed a complaint with the Texas Department of Motor Vehicles (Department) against Ford Motor Company (Ford), for alleged defects in his 2010 Ford F-250 truck. He seeks repurchase or replacement relief, or alternatively, repair relief due to problems with the vehicle's engine and transmission. Ford argues that Mr. Ramsay is not entitled to any type of relief in this proceeding. The hearings examiner finds that Mr. Ramsay is ineligible for repurchase or replacement relief because the complaint involves a preowned vehicle. And, because there is insufficient evidence of a currently existing warrantable defect in the vehicle, repair relief cannot be ordered at this time.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested. These issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The evidentiary hearing in this case convened and closed on October 21, 2014 in Mesquite, Texas, with Hearings Examiner Anne K. Perez presiding. Mr. Ramsay appeared and represented himself. Consumer Affairs Legal Analyst Virginia Tucker appeared via telephone and represented Ford.

**II. APPLICABLE LAW**

A manufacturer is required to make repairs necessary to conform a new vehicle to an applicable manufacturer's express warranty.<sup>1</sup> A consumer is afforded the remedies of replacement or repurchase when the manufacturer has been unable conform a new motor vehicle to an express warranty by

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<sup>1</sup> Tex. Occ. Code § 2301.603(a).

repairing or correcting a defect or condition that creates a serious safety hazard, or substantially impairs the use or market value of the vehicle after a reasonable number of repair attempts.<sup>2</sup>

If a vehicle does not qualify for replacement or repurchase, a manufacturer may be ordered to repair the defect or take other action to obtain compliance with warranty obligations.<sup>3</sup> The manufacturer's obligation extends beyond the expiration date of a warranty if, during the term of the warranty, the owner reported the defect to the manufacturer, or to a franchised dealer of the manufacturer.<sup>4</sup>

### III. DISCUSSION

#### A. Undisputed Facts

Mr. Ramsay's Lemon Law complaint concerns a 2010 Ford F-250 truck (vehicle, or truck) equipped with a 6.4L diesel engine that was manufactured by Ford. According to Ford's warranty system records,<sup>5</sup> the truck's original owner purchased the vehicle from Elliot Ford Lincoln Mercury, LP (Elliot Ford) of Mt. Pleasant, Texas, on March 18, 2010, with mileage of eleven (11). At that time, Ford issued the following express limited warranties applicable to the vehicle: (1) coverage of factory-supplied materials and workmanship for 36 months or 36,000 miles, whichever comes first;<sup>6</sup> (2) coverage of powertrain components for five years or 60,000 miles, whichever comes first;<sup>7</sup> and (3) coverage of the 6.4L Powerstroke Diesel Engine for five years or 100,000 miles, whichever comes first.<sup>8</sup>

On March 11, 2011, Elliot Ford sold the same truck, with mileage of 7,924, as a Ford certified-preowned vehicle to Mr. Ramsay.<sup>9</sup> The sale of the vehicle to Mr. Ramsey came with powertrain limited warranty coverage (of the engine, transmission, and drive train) for 100,000 miles or six years (*i.e.*, until March 18, 2016), whichever comes first.<sup>10</sup>

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<sup>2</sup> Tex. Occ. Code § 2301.604(a). "Serious safety hazard" means "a life-threatening malfunction or nonconformity" that "substantially impedes a person's ability to control or operate a motor vehicle for ordinary use or intended purposes," or "creates a substantial risk of fire or explosion." "Impairment of market value" means "a substantial loss in market value caused by a defect specific to a motor vehicle." See Tex. Occ. Code § 2301.601(1) and (4).

<sup>3</sup> Tex. Occ. Code § 2301.603(a); 43 Tex. Admin. Code § 215.208(e).

<sup>4</sup> Tex. Occ. Code § 2301.603(b).

<sup>5</sup> Respondent Ex. 1.

<sup>6</sup> Complainant Ex. 17, Ford Cars and Trucks 2010 Model Year Warranty Guide.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Complainant Ex. 2, Motor Vehicle Buyer's Order.

<sup>10</sup> Complainant Ex. 3.

Mr. Ramsay's Lemon Law petition received by the Department on July 11, 2014, complains that:

- (1) The truck's engine lacks power and fails to accelerate properly;
- (2) The vehicle intermittently loses throttle response, while taking off from stop and while driving;
- (3) The truck's engine sputters on acceleration while driving at highway speed;
- (4) The vehicle's transmission "hits hard" when shifting; and
- (5) The truck's back-up camera comes on when pressing the brake pedal.<sup>11</sup>

On July 3, 2014, Mr. Ramsay sent written notice to Ford that his 2010 Ford F-250 truck was defective. His letter described the vehicle's lack of power; the transmission "hitting hard;" the "worn-out" front end; and the back-up camera coming on when the brake pedal is depressed.<sup>12</sup>

#### **B. Mr. Ramsay's Evidence**

Mr. Ramsey testified that when he purchased a barely-used truck from Elliot Ford, he was unaware that the vehicle had a history of problems. He subsequently learned that the original owners, Mr. and Mrs. George Solomon, had bought the truck brand-new from Elliot Ford. The dealer reportedly received multiple complaints about the truck's inadequate performance from the Solomons and ultimately traded the couple out of the truck. Elliot Ford then sold the truck to him. In Mr. Ramsey's words, "They sold the truck and I bought the problems."<sup>13</sup>

Mr. Ramsey testified that he noticed the truck's intermittent loss of power fairly soon after purchase. At times, he "mashes on the truck's gas pedal" in anticipation of speeding up, but the burst of power does not come. He said the truck's reduced power output can also be dangerous. On one occasion, the truck failed to accelerate properly when he was hauling cattle and trying to pass another vehicle on a two-lane road, and he could easily have been involved in an accident. From time to time, the reduction in acceleration power is also accompanied by "sputtering." Generally speaking, the truck loses power for about four or five seconds at least twice per month. The problem has occurred within the past week.

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<sup>11</sup> Complainant Ex. 1.

<sup>12</sup> Complainant Ex. 16.

<sup>13</sup> *Id.*

As to the vehicle's intermittent loss of throttle response, Mr. Ramsey said the engine's turbocharger does not consistently engage when extra power is needed, *i.e.*, when accelerating at higher Revolutions Per Minute (RPM), or when the truck is hauling a load. Conversely, the turbocharger intermittently comes on when there is no need for extra power, *e.g.*, just after he starts the vehicle's engine.

Although Mr. Ramsey has repeatedly described the truck's issues to Elliot Ford service personnel, he said "they could never find anything wrong." He recalled being told by the dealer's "shop manager" about a "safety mechanism" that causes the engine to "run rough" when the truck's fuel level gets too low. According to Mr. Ramsey, however, the truck's electronic "Distance to Empty" (DTE) readings are usually incorrect; at least once, he ran out of fuel when the DTE showed there was enough fuel to drive 25 more miles. Moreover, when he is hauling cattle the truck often "runs rough" even if the fuel gauge indicates the tank is half-full. His truck was serviced on numerous occasions by Elliot Ford, an authorized Ford dealer, and the related repair orders reflect the following information:<sup>14</sup>

Date In/Out	Mileage In/Out	Reported Concern	Diagnostic Action And Dealer's Findings
3-15-11 To 3-21-11	8,148 To 8,148	(1)Exhaust rattle on pass. side; (2) Loose vent visor; (3) Dr. seat belt twisted	(1) Done (2) Done (3) Done
6-14-11 To 7-7-11	14,687 To 14,687	At approx 60 mph, when accel. there is a lack of power	Ford Factory Recall 11B23; Per Recall, Reprogram/Recalibrate PCM; Also had Low Fuel Level Code which will limit power
6-30-11	15,847	Ext. mirror fell off	Replaced Exterior mirror glass
8-9-11 To 8-12-11	18,695 To 18,695	While trying to pass, truck lacks power, does not properly accelerate	Performed diesel engine diagnostics; KOEO & KOER tests; <sup>15</sup> EEC <sup>16</sup> Test: P115A Low Fuel Level Forced Limited Power Code; KOER Pass Code: Unable to Verify Concern; Possible Low Fuel Level Concern
11-10-11 To 11-11-11	25,227 To 25,233	When driving & taking off from stop, truck intermittently loses throttle response	Diesel engine diagnosis & EEC Test Pass Codes KOEO/KOER; Road-tested; Unable to Verify Concern
2-23-12 To 2-23-12	33,581 To 33,581	Truck sputters on acceleration & while driving at hwy. speeds	(Diagnostic Testing) Found Two Codes: (1) P0297 Overspeed Code; and (2) P115A Low Fuel Level Code 0% Fuel Reading

<sup>14</sup> The repair orders were admitted as Complainants Exs. 4-15.

<sup>15</sup> "KOEO" means "Key On Engine Off," while "KOER" means "Key On Engine Running."

<sup>16</sup> "EEC" means "Electronic Engine Control."

9-11-12 To 9-13-12	47,977 To 47,977	No accel. power; Delayed transmiss. engagement	Fuel level very low; P0297 Overspeed Code; P115A Low Fuel Level Code
3-5-13 To 3-7-13	59,757 To 59,757	(1) Truck runs rough; chattering noise on accel, loses power; (2) White smoke out exhaust; (3) Transmission hits hard in shifting	(1) Unable to duplicate concern, no work done. (2) Unable to duplicate concern, no work done. (3) Unable to duplicate concern, no work done.
8-29-13 To 8-30-13	75,973 To 75,973	Exhaust concern	Install Rear B&W Exh. Bracket & Reattach Exhaust; the after-market exh. bracket accommodates aftermarket gooseneck hitch
12-5-13 To 12-9-13	76,000	(1) Front end shakes if hit bump at hwy. speed; (2) Engine lacks power	(1) Deleted Operations Steering Suspension (2) No notation on repair order
2-24-14 To 2-25-14	90,996	(1) Heater blowing cold air; (2) CEL on & truck lacks power	Perform Diagnostics; See estimate for details; Radiator leaking cause of Check Engine Light; for coolant performance, also will cause heater not blowing due to loss of coolant
4-16-14 To 4-16-14	96,028	(1) Backup camera comes on if press brake pedal; (2) Buzz noise pass. door; (3) Truck lacks power; DTE wrong, shows 36 miles left but tanks empty	(1) Verified concern; BCE test; power from brake lamp circuit back feeding thru battery junc. box b/c internal short in trailer tow connector; gave estimate for repair; customer declined repair at this time; (2) Faulty power door lock actuator; gave estimate, customer declined repair; (3) Unable to duplicate concerns, no problems found at this time.

Mr. Ramsay noted that the dealer was never able to duplicate his complaints, yet the mileage figures on the repair orders show that service technicians usually did not drive his truck. Over time, he stopped bringing it in for service because knew that the dealer would not address the vehicle's problems. He said one complaint issue, involving an issue with the truck's backup camera, has resolved on its own. However, the engine's loss of power and lack of throttle response are current, ongoing problems.

### C. Ford's Evidence

Ford offered the testimony of Field Service Engineer David Green. Mr. Green testified that on September 8, 2014, he inspected Mr. Ramsay's vehicle, at mileage of 110,600, for the complaint issues and prepared an inspection report with his findings.<sup>17</sup>

<sup>17</sup> Respondent Ex. 3.

Mr. Green stated that the truck's engine was cold when he began a 50-mile test-drive, covering several different types of road surfaces (*e.g.*, residential streets, highways) and traveling at varying speeds. After about 25 miles he stopped and let the truck idle for about 20 minutes, ensuring that the engine was hot. He observed no abnormal conditions: no lack of power on acceleration, or loss of throttle response; no sputter on acceleration; and no incidence of the transmission shifting rough.

According to Mr. Green, Elliot Ford's June 14, 2011 performance of "Recall 11B23" (which involved reprogramming/recalibrating the Powertrain Control Module (PCM)) was unrelated to the truck's reported lack of power, delays in acceleration, or loss of throttle. He said he did not know the exact basis of the recall, but that all Ford recall campaigns involve issues of safety or federally-mandated emissions.

Regarding the August 9, 2011 service visit, when Mr. Ramsay reported that the truck lacked power and was not accelerating properly, Mr. Green noted that diagnostic testing performed on the vehicle's engine identified Code P115A. Ford's "workshop manual" describes Code P115A as follows:<sup>18</sup>

Description	Possible Causes	Diagnostic Aids	Action
<b>Fuel level information is sent from the instrument cluster to the powertrain control module (PCM) on the communication link. If an excessively low fuel level input message is received by the PCM from the instrument cluster, the PCM limits the fuel rail pressure (FRP) and sets diagnostic trouble code (DTC) P115A</b>	<b>Empty Fuel tank</b>  <b>Instrument Cluster</b>	<b>This is an informational DTC and is set as the result of limited operating strategy (LOS) or failure mode effects management (FMEM) operating strategy that maintains limited vehicle function in the event of a PCM or component concern</b>	<b>Go to Pinpoint Test OH</b>

Mr. Green explained that if the vehicle's instrument cluster sends an "excessively low fuel" message to the PCM, the PCM stores Code P115A and limits the amount of fuel going into the engine. As long as the PCM stores this code the engine's power output will not support speeds above idle-range (20 mph).

<sup>18</sup> Respondent Ex. 1.

Mr. Green said the rationale for this action is to force the driver to refuel, thereby preventing damage to the vehicle's diesel fuel system. He noted that when a gasoline-powered vehicle runs empty, adding gas to the fuel tank solves the problem. When a diesel-powered vehicle runs out of fuel, however, air entering the high-pressure diesel fuel lines can harm the fuel system and related components. If this happens, the engine will not start and the vehicle will have to be towed in for service. He said the diesel engine will remain disabled until all the air has been primed from the fuel system.<sup>19</sup>

Mr. Green agreed that Code P115A (the DTC for low fuel level) can be stored because of a problem with the instrument cluster. He indicated, however, that if this happened the code would continue to recur after being cleared by technicians. He said Mr. Ramsay's truck did not exhibit this circumstance.

Mr. Green indicated that diagnostic testing performed on the truck also identified Code P0297, a DTC that serves a similar "safety function." If the driver exceeds the vehicle's recommended maximum speed (in this case, 95 mph),<sup>20</sup> the instrument cluster sends an "overspeed" message to the PCM, where the message is stored. Until the code is cleared by technicians the PCM will limit the amount of fuel going into the engine, reducing the driver's ability to accelerate.

#### **D. Test Drive at Hearing**

Mileage was at 114,558 when Mr. Ramsay, Mr. Green, and the hearings examiner participated in a test-drive of the truck. During that period, Mr. Green utilized a diagnostic scan tool and laptop to obtain information from the vehicle's operating systems. With Mr. Ramsay driving mostly at highway speeds, the following exchange took place:

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<sup>19</sup> Mr. Ramsay vehemently disagreed with Mr. Green's statement about the consequences of a diesel-powered vehicle running out of fuel. Mr. Ramsay said he always takes three to five gallons of diesel fuel along when he is driving. He has run out of fuel on two or three occasions because the DTE display in the truck's message center was inaccurate. At least twice he has added fuel to the tank while stranded beside a road, and the truck's diesel engine turned over after several tries and started "because with an injector pump and a fuel pump that is what modern diesel engines are designed to do." In response, Mr. Green testified that Mr. Ramsey "got lucky." For the record, Ford's "Super Duty 2010 Owner's Guide" contains a section titled "Running Out of Fuel" with instructions that are consistent with Mr. Ramsey's stated practice. See Complainant Ex. 18 at 375. In addition, the Owner Guide's explanation of the DTE ["Miles to E"] makes clear that the mileage figure displayed is: (1) only an estimate (calculated using a running average of fuel economy achieved during the previous 500 miles); (2) based on normal driving conditions; and (3) subject to error, e.g., if refueling takes place while the ignition is on the DTE will not correctly detect the added fuel. *Id.*, at 25-26.

<sup>20</sup> Ford's "Super Duty 2010 Owner's Guide" states that if the truck is equipped with an "Overspeed Chime," the chime will sound when the vehicle's speed reaches 75 mph. See Complainant Ex. 18 at 20.

**Mr. Ramsay:** It did it [delayed power output from engine in response to pressure on accelerator] a little bit then. It didn't "grab" like it should have.

**Mr. Green:** I mean, it's normal to have a slight delay like that.

**Mr. Ramsay:** Feel that jerk?

**Mr. Green:** Right. But that was you getting in and out of the throttle.

**Mr. Ramsay:** No, it wasn't. I didn't mash the throttle.

**Mr. Green:** No, you didn't mash the throttle but if you're tipped into the throttle and then you back off, you're going to feel a difference.

**Mr. Ramsay:** See that? Did you see that delay? There was a two or three second delay right then.

**Mr. Green:** Well, that's the engine trying to get up to speed. I mean, it's not instantaneous.

**Mr. Ramsay:** Okay, I'm just saying, that's what I'm talking about.

**Hearings Examiner:** That's what you're talking about? The loss of power?

**Mr. Ramsay:** Yea.

**Mr. Green:** That right there was 100% perfectly normal. I mean, we could find a dealer and get you in a like vehicle, and you would feel the same thing in any one of them.

**Mr. Green:** I did get a recording of that experience [by way of the scan tool] though, and we can make sure there's nothing that looks out of the ordinary.

**Mr. Ramsay:** See - it took it two or three seconds just then "to catch."

**Mr. Green:** Well, what's happening there is ... it's a turbocharged engine, as you know. It takes the turbocharger a minute to speed up once the engine speeds up, the turbocharger is lagging behind it ... which is what they call turbo lag. And, it's normal to have a one to three second slight delay ... but the engine was still accelerating. You're still accelerating, you've just got a lot more power after the passage of one to three seconds.

**Mr. Ramsay:** Well, that's it. Let's go back.

**Mr. Green:** Well, I fully understand what you're talking about now. But I can assure you that it is normal.

**Mr. Ramsay:** Well, that's not the worst. The worst was when I had to go 20 miles at 20 mile per hour.

**Mr. Green:** Well, but we discussed what that was related to. I believe you said that was when your engine was overheating and you were hauling cattle.

**Mr. Ramsay:** It just did it [delayed power output from engine in response to pressure on accelerator] again. It just did it again. But you have no indication ... [on the scan tool]?

**Mr. Green:** No. I mean every time you hit the throttle I can feel it accelerate, and I can see the tachometer - the RPM gauge - go up. I mean, there is a slight delay from when the tachometer goes up to where you feel the big pull, but that's because there's a certain amount of turbo lag, which is perfectly normal on a turbocharged engine, and more so on a larger turbo like this vehicle.

**Hearings Examiner:** What is turbo lag?

**Mr. Green:** Turbo lag ... What the turbocharger is ... it's an exhaust-driven fan. So when you increase the engine RPM, you're increasing the heat and the exhaust and the amount of exhaust going out the tailpipe. And you're starting to drive that turbo faster and faster. The faster that turbo spins, the more air it's going to force into the engine. But because it's not a mechanical link - it's driven off the heat from the exhaust - there's

a slight delay from when the engine RPM increases to when the turbo speed increases, but you're still going to have power ...

**Mr. Ramsay:** See, it [the engine] didn't do it [exhibit lack of power] then. It did not lag then. It caught up just like that, as soon as I hit it [the accelerator].

**Mr. Green:** Well, it depends on the operating conditions in the vehicle. If the turbo was already at speed and you get into the throttle, then you're going to feel that full pull right off the bat. But if you're in idle condition, or just at a steady cruise and you significantly increase the vehicle's speed, you're going to have a slight amount of delay.

**Mr. Ramsay:** See, it [the engine's power output] delayed just then for two or three seconds.

**Mr. Green:** Well, would you say we were at a nice little idle cruise there for a good couple of hundred feet, before you got back into it [pressed on the accelerator]?

**Mr. Ramsay:** I don't know what that means.

**Mr. Green:** You weren't on the accelerator for an extended period of time back there and then you got back into it, and there was a slight delay before you felt the power.

**Mr. Ramsay:** I don't know what difference that makes.

**Mr. Green:** Because like I was saying ...

**Mr. Ramsay:** See, it did it just then, did you feel that shift?

**Mr. Green:** You're heavy on the throttle and then you're backing off the throttle, I can see it in the data [on a laptop attached to the diagnostic scan tool], and when you do that the transmission is going to stay in a lower gear until you let up on the throttle, and then it will shift into its higher gear. I mean, if you were more smooth on the throttle you wouldn't feel that much of a jerk. It's when you're changing throttle very quickly ... Would you like to drive another vehicle? Because I have a couple of dealers around here.

**Mr. Ramsay:** Nah.

## **D. Analysis**

### **1. Application of the Lemon Law**

At the outset, Mr. Ramsay does not qualify for the remedy of repurchase or replacement because his complaint involves the purchase of a preowned vehicle. Pursuant to Texas Occupations Code § 2301.603(a), a manufacturer is obligated to make repairs necessary to conform a new motor vehicle to an applicable express warranty. While a manufacturer's express limited warranty coverage of a new vehicle remains in effect throughout the warranty term irrespective of a change in vehicle ownership, replacement or repurchase relief is afforded only to the owner of a new motor vehicle purchased at retail. *See* Tex. Occ. Code §§ 2301.601(2) and 2301.604(a). Consistent with these statutory provisions, the period of limitations applicable to the remedy of repurchase or replacement is based on "...the date of original delivery of the motor vehicle to an owner."<sup>21</sup>

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<sup>21</sup> Tex. Occ. Code § 2301.606(d)(2).

Conversely, the Department may require a manufacturer to provide repair relief when a consumer's complaint involves a preowned vehicle. *See* Tex. Occ. Code § 2301.204. If a vehicle does not qualify for replacement or repurchase, the manufacturer may be ordered to repair the defect or take other action to obtain compliance with warranty obligations. *See* Tex. Occ. Code § 2301.603(a); 43 Tex. Admin. Code § 215.208(e). Moreover, the manufacturer's obligation extends beyond the expiration date of a warranty if, during the term of the warranty, the owner reported the defect to the manufacturer, or to a franchised dealer of the manufacturer. *See* Tex. Occ. Code § 2301.603(b).

## 2. Warranty Coverage

At the time of hearing, each of Ford's express limited warranties applicable to Mr. Ramsey's pre-owned vehicle was expired. Dates and mileage figures obtained from the repair orders, as well as Mr. Green's September 8, 2014 mileage inspection finding, establish the "window of time" during which Ford's various warranties applicable to the vehicle expired:

- (1) **"Bumper to Bumper."** Warranty coverage of the truck's factory-supplied materials and workmanship expired on a date between February 23, 2012 (when mileage was at 33,581) and September 11, 2012 (when mileage was at 47,977);
- (2) **6.4L Powerstroke Diesel Engine.** Warranty coverage of the truck's diesel engine expired on a date between April 16, 2014 (when mileage was at 96,028) and September 8, 2014 (when mileage was at 110,600); and
- (3) **Powertrain.** Warranty coverage of the truck's powertrain components expired on a date between April 16, 2014 (when mileage was at 96,028) and September 8, 2014 (when mileage was at 110,600).<sup>22</sup>

## 3. Basis for Denial of Repair Relief

Mr. Ramsey requests that Ford be ordered to make repairs to his truck's diesel engine and/or transmission. As set forth above, Ford's express limited warranty coverage of the vehicle's 6.4L Powerstroke Diesel Engine and the truck's powertrain components expired on a date between April 16, 2014 (when mileage was at 96,028) and September 8, 2014 (when mileage was at 110,600).

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<sup>22</sup> The powertrain limited warranty coverage applicable to Mr. Ramsey's purchase of a Ford certified-preowned vehicle exceeds (in both time and mileage) Ford's express powertrain limited warranty applicable to the vehicle at the time of original purchase.

Given these facts, it is Mr. Ramsey's burden to demonstrate that: (1) the truck's diesel engine or transmission has a currently-existing defect; (2) the defect is subject to coverage under Ford's express limited warranty applicable to the diesel engine, or to the powertrain components; and (3) the defective condition was reported to Ford, or to a franchised dealer of Ford, prior to the expiration date of the applicable warranty term.

The evidence presented by Mr. Ramsay is insufficient to establish his entitlement to repair relief at this time. Excepting a problem with the back-up camera that resolved on its own, all of his complaint issues involve the truck's diesel engine and transmission: reduced power from the engine; lack of acceleration power and delayed response to attempted acceleration; "sputtering" during acceleration; loss of throttle response; and the transmission shifting roughly.

The testimony of Mr. Ramsay and Mr. Green established that the vehicle at issue, a Ford F-250 equipped with a turbo diesel engine, is meant to be a "working" truck. Unlike a standard vehicle, the truck's turbocharged engine provides an abundance of horsepower and torque, thus it is capable of towing heavy loads. The hauling capacity of a Ford F-250 (or the larger F-350) is a major "selling point" for consumers who purchase this type of truck.

Given this background, Mr. Ramsey's use of the vehicle appears to be within normal, expected parameters. His truck is equipped with an aftermarket goose neck hitch suitable for hauling livestock in a trailer. Although he testified that he once hauled a load of cattle weighing upwards of 12,000 pounds, the record evidence does not establish load capacity specifications for a Ford F-250 with a turbo diesel engine, nor does it show that Mr. Ramsey exceeded those specifications. And the fact that he has occasionally run out of fuel is not surprising, given the inherent unreliability of the message center's DTE display. Accordingly, the storage of a "Low Fuel Level" code in the truck's PCM is not a factor suggesting misuse of the truck. Similarly, the fact that he may have driven the vehicle at speeds above 95 mph (perhaps trying to pass another car on the road) should in no way be construed against him. On the other hand, the PCM's storage of both the two codes explains, at least in part, why Mr. Ramsay has experienced reduced engine power and loss of throttle response. But the suggestion that these codes were stored because Mr. Ramsey mishandled the truck is expressly rejected.

That said, the test-drive at hearing suggests that Mr. Ramsey's perception of the diesel engine's underperformance may be a consequence of his driving style. As previously noted, both he and Mr. Green were active participants. The test drive allowed Mr. Ramsey to identify in "real time" each instance of reduced power output from truck's engine, lack of throttle response, and delayed power on acceleration. Also, their dialogue during the test-drive revealed that Mr. Green understood for the first time, the nature of Mr. Ramsey's complaints.

In the end, Mr. Ramsay's ability to meet the required standard of proof in this case was undermined by the credibility of Mr. Green's testimony. During the test drive, Mr. Green addressed the effects of diesel engine speed, natural delays that are the result of "turbo lag," and the effect of throttle pressure on the transmission's gear functions. Although Mr. Ramsay did not appear swayed by these explanations, the hearings examiner finds that Mr. Green credibly addressed the issues Mr. Ramsey indicated were most troubling to him. Further, Mr. Green's testimony was consistent with the findings of dealer service technicians, who performed diagnostic testing on the truck's engine without substantiating Mr. Ramsey's reports concerning a general lack of power and throttle response. In conclusion, there is insufficient evidence of a currently existing defective condition in the truck's engine or transmission, and this finding requires the denial of repair relief.<sup>23</sup>

### I. FINDINGS OF FACT

1. On March 18, 2010, George Solomon and his spouse purchased a 2010 Ford F-250 truck (vehicle, or truck) equipped with a 6.4L diesel engine from Elliot Ford Lincoln Mercury, LP (Elliot Ford) of Mt. Pleasant, Texas, with mileage of eleven (11).
2. The vehicle was manufactured by Ford Motor Company (Ford).
3. Elliot Ford is a franchised dealer of Ford.

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<sup>23</sup> It should be noted, however, that Mr. Ramsay repeatedly reported problems with the truck's 6.4L Powerstroke Diesel Engine to Elliot Ford, a franchised dealer of Ford, prior to the expiration of the manufacturer's original warranty coverage of the engine. In addition, Mr. Ramsey reported problems involving powertrain components to Elliott Ford prior to the expiration of Ford's powertrain limited warranty coverage applicable to the truck. Although no alleged defect was found to exist at this time, Mr. Ramsay is not foreclosed from seeking repair relief for engine and powertrain issues reported to the manufacturer, or to a franchised dealer of the manufacturer, prior to expiration of the applicable warranty period.

4. On March 18, 2010, Ford issued the following express limited warranties applicable to the vehicle: (1) coverage of factory-supplied materials and workmanship for 36 months or 36,000 miles, whichever comes first; (2) coverage of powertrain components for five years or 60,000 miles, whichever comes first; and (3) coverage of the 6.4L Powerstroke Diesel Engine for five years or 100,000 miles, whichever comes.
5. On March 11, 2011, Elliot Ford sold the same truck to Tom Ramsay as a Ford certified preowned vehicle, with mileage of 7,924 at the time of delivery.
6. Mr. Ramsey's purchase of the truck came with Ford's express powertrain limited warranty coverage (of the engine, transmission, and drive train) for 100,000 miles or six years (*i.e.*, until March 18, 2016), whichever comes first.
7. Ford's express warranty coverage of the truck's 6.4L Powerstroke Diesel Engine expired on a date between April 16, 2014 (when mileage was at 96,028) and September 8, 2014 (when mileage was at 110,600).
8. Ford's express warranty coverage of the truck's powertrain components expired on a date between April 16, 2014 (when mileage was at 96,028) and September 8, 2014 (when mileage was at 110,600).
9. On the date of hearing, the vehicle's mileage was 114,558.
10. On the date of hearing, coverage of the vehicle under each of Ford's express limited warranties described in Finding of Fact Nos. 4 and 6 was expired.
11. Mr. Ramsey brought the truck in for service at Elliot Ford, reporting lack of power from the engine, on the following dates:
  - a. On June 14, 2011, at 14,687 miles;
  - b. On December 5, 2013, at 76,000 miles; and
  - c. On February 24, 2014, at 90,996 miles.
12. Mr. Ramsey brought the truck in for service at Elliot Ford, reporting that upon acceleration, there was sputtering, or lack of power, or lack of throttle response, or delayed acceleration, on the following dates:
  - a. On August 9, 2011, at 18,695 miles;
  - b. On November 10, 2011, at 25,227 miles;
  - c. On February 23, 2012, at 33,581 miles;
  - d. On September 11, 2012, at 47,977 miles;
  - e. On December 5, 2013, at 76,000 miles; and
  - f. On April 16, 2014, at 96,028 miles.

13. Mr. Ramsey brought the truck in for service at Elliot Ford, reporting that the truck was "running rough," shifting "hard," or there was delayed engagement of the transmission, on the following dates:
  - a. On September 11, 2012, at 47,977 miles; and
  - b. On March 5, 2013, at 59,757 miles.
14. On June 14, 2011, when the vehicle's mileage was at 14,687, diagnostic testing performed on the truck's diesel engine identified a "Low Fuel Level" input message (Code P115A) stored in the Powertrain Control Module (PCM). Storage of this code in the PCM limits the amount of fuel going into the engine, and prevents the vehicle from traveling above idle speed.
15. On three additional occasions, August 9, 2011 (at 18,695 miles), February 23, 2012 (at 33,581 miles), and September 11, 2012 (at 47,977 miles), diagnostic testing performed on the truck's diesel engine identified the "Low Fuel Level" input message stored in the PCM. Again, the PCM's storage of Code P115A limits the amount of fuel going into the engine and sharply diminishes the vehicle's acceleration power.
16. Diagnostic testing performed on the truck's diesel engine on February 23, 2012 (at 33,581 miles), and again on September 11, 2012 (at 47,977 miles), identified an "Overspeed" input message (Code P0297) stored in the PCM. Similar to the "Low Fuel Level" code, the PCM's storage of Code P0297 limits the amount of fuel going into the engine and reduces the driver's ability to accelerate.
17. Diagnostic testing and electronic engine control testing performed on the truck's diesel engine during the November 10, 2011 service visit did not confirm the reported intermittent loss of throttle response.
18. Service technicians were unable to duplicate the reported lack of power in the truck's diesel engine during service visits occurring on December 5, 2013, February 24, 2014, and April 16, 2014.
19. Service technicians were unable to duplicate reports that the truck's engine was "running rough" and the transmission "hits hard" when shifting during the March 5, 2013 service visit.
20. A currently-existing warrantable defect in the truck's engine or transmission cannot be identified at this time.
21. On July 3, 2014, Mr. Ramsay provided written notice to Ford of the alleged defects in his 2010 Ford F-250.
22. On July 11, 2014, Mr. Ramsay filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department), alleging the presence of a warrantable defect in the engine and/or transmission of his 2010 Ford F-250.

23. On September 10, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed 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; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
24. The evidentiary hearing in this case convened and closed on October 21, 2014 in Mesquite, Texas, with Hearings Examiner Anne K. Perez presiding. Mr. Ramsay appeared and represented himself. Consumer Affairs Legal Analyst Virginia Tucker appeared via telephone and represented Ford.

### I. CONCLUSIONS OF LAW

1. The 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 conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Mr. Ramsay timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Mr. Ramsay's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
5. Mr. Ramsay failed to prove by a preponderance of the evidence that the vehicle has a warrantable defect or condition that was reported to Ford, or to a franchised dealer of Ford, prior to the expiration of the warranty term. Tex. Occ. Code § 2301.604.
6. Mr. Ramsay's vehicle does not qualify for repair relief. Tex. Occ. Code § 2301.603.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Mr. Ramsay's petition for relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**.

**SIGNED December 16, 2014.**



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**ANNE K. PEREZ**  
**HEARINGS EXAMINER**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**TEXAS DEPARTMENT OF MOTOR VEHICLES**