

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0002 CAF**

JO BETH FAWCETT,	§	BEFORE THE OFFICE
Complainant	§	
	§	
v.	§	OF
	§	
FORD MOTOR COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Jo Beth Fawcett seeks repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for an alleged defect in her 2014 Ford Escape. Ms. Fawcett asserts that the vehicle intermittently does not start despite repetitive repair attempts. Ford Motor Company (Ford), the manufacturer of the vehicle, argues that any defect in the vehicle was successfully repaired. The hearings examiner concludes that there is a currently existing warrantable defect in the vehicle. Accordingly, Ms. Fawcett is entitled to repurchase relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law.

The evidentiary hearing convened on January 13, 2015 in Del Rio, Texas, with Hearings Examiner Anne K. Perez presiding. Ms. Fawcett appeared and was represented by Sara Winters. Ford was represented by Consumer Affairs Legal Analyst Melinda Steiner, who appeared telephonically. At the conclusion of the hearing, the record was held open until January 21, 2015 to receive Ford's submission of roadside assistance records for Complainant's vehicle.¹

II. DISCUSSION

A. Applicable Law

The manufacturer of a motor vehicle must repurchase or replace the vehicle with a comparable vehicle if five conditions are met. First, the manufacturer has not conformed the vehicle to an applicable express warranty because the manufacturer cannot repair or correct a defect or condition in the vehicle.

¹ On January 16, 2015, Ms. Steiner sent an email to the Office of Administrative Hearings (OAH), stating that Ford's Roadside Assistance Center was unable to locate any record of calls pertaining to Ms. Fawcett's vehicle (identified by Vehicle Identification Number, and Ms. Fawcett's last name and her zip code). This issue is discussed in more detail below.

Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.² Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.⁵

B. Complainant's Evidence

Ms. Fawcett offered her own testimony, as well as the testimony of her daughter Sara Winters, her son-in-law David Winters, and home health provider Luz Maria Perez.

Ms. Fawcett purchased a new 2014 Ford Escape (the vehicle) from Del Rio Ford Lincoln (DR Ford) of Del Rio, Texas, on June 26, 2013, with mileage of 203 at the time of delivery.⁶ On the same date, Ford issued an express limited warranty for the vehicle covering defects in factory-supplied materials and workmanship for 3 years or 36,000 miles, whichever comes first; a limited powertrain warranty covering defects in the vehicle's engine, transmission, and drive train for 5 years or 60,000 miles, whichever comes first; and a roadside assist warranty for 5 years or 60,000 miles, whichever comes first.⁷ On the date of hearing the vehicle's mileage was 6,325, and all of the referenced warranties were in effect.

At the outset, Sara Winters testified that both the Fawcetts and the Winters are loyal Ford customers. Ms. Fawcett owned a 2002 Ford Explorer until trading it for the new 2014 Ford Escape. Her son Bill Fawcett drives a Ford. And, Sara's spouse David Winters has owned and driven nothing but Ford

² Tex. Occ. Code § 2301.604(a)(1) and (2).

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ Tex. Occ. Code § 2301.605(a)(1). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative 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. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

⁶ Complainant Ex. 1.

⁷ Complainant Ex. 10. Respondent's roadside assist warranty provides vehicle owners with the following types of assistance: (1) mounting a spare in the event of a flat tire; (2) jumpstarting the vehicle; (3) unlocking the vehicle if keys are lost or misplaced; (4) bringing fuel if the vehicle runs out of gas; and (5) towing a disabled vehicle to the nearest dealership.

vehicles since 1962. Moreover, both families are faithful to DR Ford, and would not think of purchasing a vehicle from another dealer. No one in the family ever wanted to be in the position of pursuing a Lemon Law complainant against Ford.

Ms. Winters provided pertinent background information about her mother's use of the vehicle. At age 89 Ms. Fawcett is confined to a wheelchair, and she no longer drives. She lives in her own home in Del Rio. She is assisted by two home health providers, Luz Maria Perez and Sandra Nieto, both of whom drive the 2014 Ford Escape while assisting Ms. Fawcett.

Ms. Perez testified that she is with Ms. Fawcett most every morning. She drives Ms. Fawcett to her doctor appointments and physical therapy, and to the hairdresser. They go grocery shopping, and run other errands almost every day. Sometimes Ms. Perez goes to a restaurant and brings home Ms. Fawcett's lunch. The two often go for a drive around Lake Amistad on Sunday afternoon. Ms. Nieto takes over for Ms. Perez in the afternoons. Ms. Nieto also drives the vehicle, and she is listed as an insured on Ms. Fawcett's automobile insurance policy.

In addition to Ms. Perez and Ms. Nieto, the following family members occasionally drive the vehicle: Ms. Winters; David Winters; Ms. Fawcett's two sons, Robert and Bill Fawcett; and Ms. Fawcett's other daughter. According to Mr. Winters, between everyone involved the vehicle is driven, on average, between 10 and 15 miles per day.

Ms. Winters testified that prior to the first documented service visit in February 2014, the vehicle failed to start one time "early on." Afterwards Ms. Perez brought it in for service by DR Ford. Although technicians kept the vehicle for several hours they found nothing wrong. Neither Ms. Perez nor Ms. Winters recalled the date of this incident, and the dealer did not provide Ms. Perez with a repair order when the vehicle was released.

Ms. Winters and Ms. Perez agreed that the vehicle's failure to start occurs intermittently. Both testified that typically, the vehicle's push-button start system works perfectly for a period of weeks, or even months. Then, without warning, when Ms. Perez (or another authorized driver) enters the vehicle and presses the engine/start button, the engine is "completely dead." The symptoms never include a "slow crank," as erroneously described in one repair order. It is purely a no-start condition.

On one occasion when the vehicle would not start, Ms. Perez said a male helper successfully jumpstarted the engine, and the issue did not return for several weeks. On Sunday September 21, 2014, a similar incident occurred. Ms. Winters was trying to take her mother to church but the vehicle would not start. She called her son, and he jumpstarted the vehicle. Ms. Winters left the vehicle running throughout the service to ensure that they would not be stranded at church.

According to Ms. Winters, the family soon learned that the no-start problem could be remedied by a jumpstart. However, DR Ford technicians indicated that using this quick fix made it more difficult to diagnose the source of the condition. As a result, Ms. Winters began calling Ford Roadside Assistance when the vehicle failed to start. The purpose of having the vehicle towed to the dealership without a jumpstart was two-fold: (1) technicians would be able to perform diagnostic testing on the vehicle while the problem was occurring; and (2) towing records and repair orders would establish the existence of a defect in the vehicle.

Regarding DR Ford's five documented repair attempts, Ms. Winters was not certain whether the vehicle was towed or driven (after a jumpstart) to the dealer in four instances, but she distinctly recalled the circumstances of one service visit. On February 25, 2014, Ms. Perez called her to report that the vehicle would not start. After Ms. Winters telephoned Ford Roadside Assistance, a tow company by the name of "Southern Comfort" arrived at Ms. Fawcett's house, picked up the vehicle, and delivered it to DR Ford. Ms. Winters testified that on several other occasions, Ford Roadside Assistance dispatched this same company to Ms. Fawcett's house when the vehicle failed to start, and in every instance it was towed directly to DR Ford. The tow operator never provided Ms. Fawcett's family with a receipt for towing services, and when Ms. Winters subsequently asked DR Ford for a record of the tows she was told that none existed. Ms. Winters tried to locate Southern Comfort to obtain the records for the Lemon Law hearing, but found no local listing for the company. Despite the lack of records, both Ms. Winters and Ms. Perez testified with certainty that the vehicle was towed from Ms. Fawcett's residence to DR Ford on at least five occasions.

Ms. Winters experienced similar frustration when attempting to obtain roadside assistance records from Ford. She testified that on December 9, 2014 (after Ford's Field Service Engineer determined there was nothing wrong), the vehicle once again failed to start. The incident occurred as Ms. Perez and Ms. Fawcett were leaving the house for physical therapy. Ford Roadside Assistance was called, and a tow operator delivered the vehicle to DR Ford. On this occasion, technicians simply jumpstarted the engine and released the vehicle. The dealer did not provide Ms. Fawcett with a repair order but she was able to reschedule her physical therapy for later that day. Afterwards, Ms. Winters requested a copy of the December 9, 2014 towing paper work from Judy Rizzo, a Ford Roadside Assistance Center employee. Ms. Rizzo informed Ms. Winters that she would have to seek the requested documents from Ms. Steiner, Ford's representative in the Lemon Law hearing. Ms. Winters followed that instruction. On January 5, 2014, she sent Ms. Steiner a written request for the vehicle's roadside assistance records but no records were ever provided.⁸

⁸ At hearing, Ms. Steiner agreed that Ford makes direct payment to third party contractors for their provision of roadside assist services to Ford warranty customers. Thus, Ford would have made disbursements to Southern Comfort for towing Ms. Fawcett's vehicle to DR Ford. The suggestion that Ford would not maintain an internal record of such disbursements, or that locating the records would be difficult for Ford "because the towing company issues a receipt to the vehicle owner or to the dealership where the vehicle is towed" (as suggested by Ms. Steiner), defies logic. Nonetheless, Ms. Steiner subsequently represented (posthearing) that a search conducted by Ford's Roadside Assistance Center on January 16, 2015, found no records related to Ms. Fawcett's vehicle.

Ms. Winters indicated that another incident on December 29, 2014 (two weeks prior to hearing) confirmed the need to pursue a Lemon Law complaint.⁹ That morning Ms. Winters used the vehicle to take her mother to a doctor appointment. The weather was cold and windy, and when they arrived the parking lot was full. In order to get her mother inside quickly, Ms. Winters “double-parked” the vehicle (blocking the exit of other parked cars). She hurriedly unloaded Ms. Fawcett’s wheelchair and escorted her inside. Ms. Winters was gone for less than 10 minutes but when she came out the vehicle would not start. She called DR Ford to obtain the number for Ford Roadside Assistance. However, when service advisor Mario Dominguez learned that Ms. Fawcett’s vehicle was blocking traffic he dispatched a service technician to jumpstart the vehicle. Once again, DR Ford failed to document the vehicle’s failure to start in a repair order. And, by jumpstarting the vehicle the dealer prevented Ms. Winters from utilizing Ford Roadside Assistance, which might also have provided a record of the no-start event.

DR Ford’s service records for the vehicle reflect the following information:¹⁰

Dates & R.O. No.	Mileage	Reported Concern	Diagnostic Action And Dealer’s Findings
In 2-25-14 Out 3-7-14 R.O. 162670	In 3,373 Out 3,373	Check charging system, had to jump-start	Verified concern & found vehicle hard to start; Checked OASIS for any related concerns; Installed rotunda tester for 50 mins., recharged & retested & failed; Removed air intake & filter, removed battery tray & replaced battery
In 3-24-14 Out 4-10-14 R.O. 163495	In 3,632 Out 3,632	Vehicle had to be jump-started	Verified concern; vehicle not starting properly & system only has 6 volts; Checked fuses, relays, connection at fuse box, all ok; Installed IDS scan tool, found B1372:32, C2006:19, B1367:31, U3003:13; Called Hotline; Tested & charged battery to full w/rotunda tester; Performed Pinpoint Test B (Workshop Man. § 414-00); Checked high current PSCM connector for water intrusion/pin fit, ok; Performed battery drain check & voltage drop, ok; checked generator connections, connectors, all ok; Checked voltage drop at generator from both positive & ground; Viewed PID Gen-VDS on Datalogger, found 2-volt difference; Performed component test on generator clutch, ok; Recovered Freon from system; Replaced non-operating generator CC42; Battery at 12.1volts while off & 14.21 while running

⁹ Complainant Ex. 8. Ms. Fawcett’s Lemon Law complaint was received by the Texas Department of Motor Vehicles on September 4, 2014. On August 19, 2014, she provided Ford with written notice of the vehicle’s defective condition. See Complainant Ex. 9.

¹⁰ The repair orders were admitted as Complainants Exs. 3-8. Invoiced information has been summarized for clarity and ease of reference. The testimony of Field Service Engineer Kurt Kindler and Ms. Winters indicates that R.O. No. 167102 (Complainant Ex. 6) improperly combines two service visits, resulting in multiple errors. The following information is correct: (1) on July 29, 2014, at 3,842 miles, service technicians verified the reported concern, “Engine will not crank,” as noted in the repair order; (2) the vehicle was in service from July 29, 2014, to August 9, 2014 (11 days); and (3) on October 29, 2014, at 5,562 miles, Mr. Kindler inspected the vehicle at DR Ford, and the repair order describes the testing he performed on the vehicle’s battery and charging system, as well as the results of the testing.

In 4-14-14 Out 4-23-14 R.O. 164066	In 3,699 Out 3,699	Vehicle will not start after sitting a couple of days	Verified concern & found vehicle not starting after it sits for a day or two; Performed visual inspection, checked charging system, found low battery voltage (7.3 volts); Test-drove vehicle to wake up all modules; Waited 45 mins. to perform drop test; Contacted Hotline (since generator was previously replaced) & told engineer that drop test revealed draw of 3 AMPs for 5 seconds intermittent & then dropping down 0.010 AMPs; Started with Smart Junction Box (SJB) & removed all fuses one by one while monitoring Fluke OHM Meter for 5 mins. on each fuse removed, but draw still present; Removed fuses from rear fuse box, checked all wires/connectors under rt. Rear quarter panel, all ok; Checked ACM & amplifier & disconnected them, but draw still present; removed all battery fuses one by one, disconnected top main connector & draw was now 0.100 AMPs; Draw still present w/both SJB & rear fuse box disconnected; Removed parts to disconnect PCM & draw is now gone; Waited 30 mins. & checked Fluke OHM Meter, concern found internal on PCM; Performed PMI on new PCM & programmed keys
In 5-15-14 Out 6-2-14 R.O. 164980	In 3,751 Out 3,751	Engine will not crank over	Verified concern & found vehicle not starting with key; Checked fuses & relays, all ok; Checked OASIS for any related concerns, none; Installed IDS, found no DYCs on any modules; Tested battery, ok; Passed network test; Found that instrument cluster will not read at times; Performed Pin Point Test B; Erased & reprogrammed two keys; checked & vehicle now starting properly
In 7-29-14 Out 10-2-14 R.O. 167102	In 3,842 Out 3,842	Engine will not crank over	Verified concern & found vehicle with slow crank; Checked battery connector, no corrosion or acid leak present; Starter connection ok; No OASIS concerns present; Contacted Hotline, performed voltage drop test; removed all fuses one by one, no concerns; FSE checked vehicle & found no concerns; Vehicle left overnight; battery is fully charged & charging system is at 14.20 volts with loads

DR Ford's repair orders indicate that Ms. Fawcett's vehicle was out of service for almost 70 days. However, Ms. Winters testified that Ms. Fawcett was provided with a rental vehicle for most of that time.

C. Respondent's Evidence

Respondent presented the testimony of Field Service Engineer Kurt Kindler.

Mr. Kindler testified that on October 29, 2014, he inspected Ms. Fawcett's vehicle at 5,562 miles in response to the Lemon Law complaint. His examination focused on the complained-of no-start condition. He checked the battery's resting voltage, and said the 12.1 volts was about right for a battery

that was not in use. While at rest the vehicle's charging system tested at 14.5 volts, indicating that when the vehicle is in use the system is properly charging the battery. He observed no problems with the push-button start system on the date of his inspection. Mr. Kindler also tested for parasitic draws that could be draining the battery while the vehicle is not in use, but he found nothing of concern. Lastly, he completed a test-drive during which the vehicle operated normally.

According to Mr. Kindler, the mileage (5,562) indicates that Ms. Fawcett's vehicle is not being driven enough to maintain the charging system, leading to repetitive battery failure. He explained that the biggest drain on the battery comes from starting the vehicle, whereas the process of driving allows the alternator to charge the battery. If a vehicle is driven for only a short period of time, the alternator does not have time to fully replenish the drain on the battery caused by starting the vehicle. Over time, the battery's voltage will continue to decrease and ultimately result in a no-start condition.

Mr. Kindler could not say how long a vehicle must be driven once started, to prevent this scenario from occurring. Still, his inspection revealed no other potential causes for the vehicle's no-start condition. In the absence of other evidence, he said the intermittent problem with Ms. Fawcett's vehicle was the most likely the result of insufficient use. He noted that Ford's owner manual says a battery charger should be used if the vehicle is out of service for 30 or more days. Based on the same rationale, he recommended that Ms. Fawcett use a battery charger on her vehicle when it is not in use.

D. Inspection at Hearing

On the date of hearing the vehicle was at 6,325 miles. The engine turned over when Ms. Winters pressed the vehicle's push-start button. The intermittent no-start condition was not present on inspection.

E. Analysis

Ms. Fawcett seeks repurchase relief under the state's Lemon Law provisions. As such, she bears the burden of proof to establish by a preponderance of evidence that: (1) a defect exists in the vehicle; (2) the nonconformity creates a serious safety hazard, or substantially impairs the use or market value of the vehicle; (3) Ford has not conformed the vehicle to an applicable express warranty by correcting the defect; (4) Ford has been given a reasonable number of attempts to repair the defect; and (5) Ms. Fawcett provided written notice of the nonconformity to Ford, and allowed Ford a final opportunity to cure the defect. Ms. Fawcett has carried her burden to establish each of these statutory elements. She is therefore eligible for repurchase relief.

Ms. Winters and Ms. Perez credibly testified that the vehicle's push-button start system works perfectly for a period of weeks, or even months, and then the engine will suddenly fail to start without warning. When the no-start condition occurs the vehicle's engine is "completely dead." The problem has

occurred on multiple occasions, and has resulted in the vehicle being towed to DR Ford for service on at least five occasions. In several other instances the issue was temporarily resolved by jumpstarting the engine. Five service visits at mileage of less than 4,000 by an authorized dealer of Respondent have failed remedy the problem, *i.e.*, a reasonable number of attempts to repair the vehicle were undertaken. The engine's no-start condition has also reoccurred twice since the date of Ford's inspection and final opportunity to cure the defect. The fact that that the vehicle's no-start symptoms were not observable on the date of hearing is not dispositive because the defective condition is intermittent.

Mr. Kindler's explanation of the problem – that the vehicle's no-start condition is the result of insufficient use – is unpersuasive, and inconsistent with the instructions he noted from the vehicle's owner's manual. The evidence established that Ms. Fawcett's vehicle is driven, on average, 10-15 miles per day, almost every day. The instructions in the owner's manual, however, suggest that it is long periods of non-use (30 days or more) that drain the vehicle's battery. On balance, the evidence indicates that a problem other than insufficient use is causing the vehicle's no-start condition. A preponderance of the evidence establishes that there is an existing, warrantable defect in the vehicle. Ford received proper notice of the defect but the manufacturer has been unable to effect a cure despite a reasonable number of attempts.

The vehicle's intermittent no-start condition substantially impairs Ms. Fawcett's ability to use the vehicle for its ordinary, intended purposes. Moreover, the problem is one that causes substantial inconvenience, and this negative aspect of ownership reduces the vehicle's market value in relation to other, comparable vehicles. In simpler terms, the problem with Complainant's vehicle makes it undesirable to drive, or to own.

Based on the evidence as a whole, the hearings examiner concludes that repurchase of the vehicle is the appropriate remedy in this case. Ms. Fawcett's request for repurchase relief is hereby granted.

II. FINDINGS OF FACT

1. Jo Beth Fawcett purchased a new 2014 Ford Escape (the vehicle) from Del Rio Ford Lincoln (DR Ford) of Del Rio, Texas, on June 26, 2013, with mileage of 203 at the time of delivery.
2. Ford Motor Company (Ford) manufactured the vehicle.
3. On June 26, 2013, Ford issued an express limited warranty for the vehicle covering defects in factory-supplied materials and workmanship for 3 years or 36,000 miles, whichever comes first; a limited powertrain warranty covering defects in the vehicle's engine, transmission, and drive train for 5 years or 60,000 miles, whichever comes first; and a roadside assist warranty for 5 years or 60,000 miles, whichever comes first.

4. DR Ford is an authorized dealer of Ford.
5. At the time of hearing, the vehicle's mileage was 6,325.
6. At the time of hearing, the vehicle was covered by all of Ford's limited warranties described in Finding of Fact No. 3.
7. Ms. Fawcett does not operate the vehicle. The vehicle's primary drivers are two home health providers, who use the vehicle to assist Ms. Fawcett. Several members of Ms. Fawcett's family also drive the vehicle on an occasional basis.
8. The vehicle is driven, on average, 10-15 miles per day.
9. The vehicle is used almost every day, and has never sat for an extended period of time (*i.e.*, 30 days or more) without being driven.
10. Sometime prior to February 2014, the Fawcett family noticed that the vehicle failed to start on an intermittent basis. Typically, the vehicle's push-button start works perfectly for a period of weeks, or even months. Then, without warning, the vehicle engine is completely dead when the push-button start is pressed.
11. Jumpstarting the engine temporarily resolves the vehicle's no-start condition, but the problem consistently recurs.
12. DR Ford serviced the vehicle for the engine's no-start condition on the following dates:
 - a. February 25, 2014, at 3,373 miles;
 - b. March 24, 2014, at 3,632 miles;
 - c. April 14, 2014, at 3,699 miles;
 - d. May 15, 2014, at 3,751 miles; and
 - e. July 29, 2014, at 3,842 miles.
13. On October 29, 2014, Ford was given an opportunity to cure the vehicle's intermittent no-start condition, but no repairs were performed.

14. On December 9, 2014, the vehicle failed to start. Ms. Fawcett called Ford Roadside Assistance and had the vehicle towed from her residence to DR Ford. Service technicians jumpstarted the vehicle. The service visit was not documented in a repair order, and the vehicle was released to Ms. Fawcett that same day.
15. On December 29, 2014, the engine failed to start while the vehicle was parked in an area that blocked the exit of cars parked in "handicapped" spaces. DR Ford dispatched a service technician to the location to jumpstart the vehicle. DR Ford did not provide Ms. Fawcett with a repair order documenting the technician's service call.
16. The vehicle engine's intermittent no-start condition was not successfully repaired during the service visits listed in Finding of Fact No. 12.
17. The vehicle engine's intermittent no-start condition is a continuing, persistent problem.
18. The vehicle engine's intermittent no-start condition substantially impairs Ms. Fawcett's ability to use the vehicle for its ordinary, intended purposes.
19. The engine's intermittent no-start condition causes Ms. Fawcett substantial inconvenience, and this negative aspect of ownership reduces the vehicle's market value in relation to other, comparable vehicles.
20. The vehicle engine's intermittent no-start condition is a warrantable defect covered by either Ford's limited powertrain warranty, or its basic limited warranty.
21. On August 19, 2014, Ms. Fawcett provided written notice to Ford of the vehicle engine's intermittent no-start condition.

22. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$33,937.00
Delivery mileage	203
Mileage at first report of defective condition	3,373
Mileage on hearing date	6,325
Useful life determination	120,000

Purchase price, including tax, title, license and registration					\$33,937.00
Mileage at first report of defective condition					3,373
Less mileage at delivery					<u>-203</u>
Unimpaired miles					3,170
Mileage on hearing date					6,325
Less mileage at first report of defective condition					<u>-3,373</u>
Impaired miles					2,952
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
	<u>3,170</u>				
	120,000	X	\$33,937.00	=	\$896.50
Impaired miles					
	<u>2,952</u>				
	120,000	X	\$33,937.00	X .5	= <u>\$417.43</u>
Total reasonable allowance for use deduction:					\$1,313.93
Purchase price, including tax, title, license and registration					\$33,937.00
Less reasonable allowance for use deduction					-\$1,313.93
Plus filing fee refund					<u>\$35.00</u>
TOTAL REPURCHASE AMOUNT					\$32,658.07

23. On September 4, 2014, Ms. Fawcett filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
24. On October 23, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to Ms. Fawcett and Ford, 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.
25. The hearing on the merits convened on January 13, 2014 in Del Rio, Texas, with Hearings Examiner Anne K. Perez presiding. Ms. Fawcett appeared and was represented by Sara Winters. Ford was represented by Consumer Affairs Legal Analyst Melinda Steiner, who appeared telephonically. The record closed on January 21, 2015.

III. CONCLUSIONS OF LAW

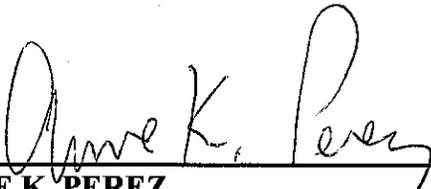
1. The Department has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613.
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Ms. Fawcett 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 and 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Ms. Fawcett bears the burden of proof in this matter.
6. Ms. Fawcett's vehicle has an existing defect or condition that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
7. Ms. Fawcett's vehicle has an existing nonconformity that substantially impairs the use and market value of the vehicle. Tex. Occ. Code § 2301.604(a).
8. After a reasonable number of attempts, Ford has been unable to repair the nonconformity in Ms. Fawcett's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
9. Based on the above Findings of Fact and Conclusions of Law, Ms. Fawcett is entitled to relief under Texas Occupations Code § 2301.604(a).
10. Based on the above Findings of Fact and Conclusions of Law, Ford is required to repurchase Ms. Fawcett's 2014 Ford Focus at the price of \$32,658.07. Tex. Occ. Code § 2301.604(a)(2); 43 Tex. Admin. Code § 215.208(b)(1) and (2).

IT IS THEREFORE ORDERED that:

1. Ford shall accept the return of the vehicle from Ms. Fawcett. Ford shall have the right to have its representatives inspect the vehicle upon the return by Ms. Fawcett. 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 the final order;
2. Ford shall repurchase the subject vehicle in the amount of \$32,658.07. Ms. Fawcett is not entitled to reimbursement of incidental expenses. The refund shall be paid to Ms. Fawcett and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Ford, then the full refund shall be paid to Ms. Fawcett. At the time of the return, Ford 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, Ms. Fawcett is responsible for providing Ford with clear title to the vehicle;
3. Within 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, Ford 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 Ms. Fawcett's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Ms. Fawcett and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. Ford, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. Ford, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and

6. Ford, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 calendar days of the transfer.

SIGNED February 23, 2015.



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