

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0296 CAF**

VIOLA & ROBERT FOX
Complainants

v.

FORD MOTOR COMPANY,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Viola and Robert Fox (Complainants) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for an alleged defect in their 2013 Ford Explorer. The Complainants filed a Lemon Law complaint (Complaint) alleging that the vehicle's tire pressure monitoring system (TPMS) warning lights and messages would come on and off. Ford Motor Company (Respondent) contended that the TPMS warnings are not a safety concern and do not prevent the vehicle from operating. The hearings examiner concludes that the vehicle's malfunctioning TPMS constitutes an existing warrantable defect. The vehicle does not qualify for repurchase or replacement because the record does not show two repair attempts for the TPMS issue in the first 12,000 miles or 12 months. However, the vehicle qualifies for repair relief.

I. Procedural History, Notice and Jurisdiction

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record closed on October 2, 2015, in San Antonio, Texas, before Hearings Examiner Andrew Kang. Mrs. Viola Fox represented the Complainants. Maria Diaz, Consumer Legal Analyst, represented the Respondent.

II. Discussion

A. Applicable Law

The Lemon Law, in part, requires a manufacturer of a motor vehicle to repurchase or replace a vehicle when the manufacturer is "unable to conform a motor vehicle to an applicable

express warranty.”¹ Additionally, warranty repair under Section 2301.204 of the Texas Occupations Code requires a “defect in a motor vehicle that is covered by a manufacturer’s . . . warranty agreement applicable to the vehicle.”² Accordingly, for a vehicle to be eligible for repurchase or replacement, or even warranty repair, the vehicle must have a defect under an applicable warranty (warrantable defect). The Complainants must prove the existence of a warrantable defect by a preponderance, that is, the evidence must show that a warrantable defect more likely than not exists.³

Further, for a vehicle to qualify for replacement or repurchase, a warrantable defect must either (1) create a serious safety hazard or (2) substantially impair the use or market value of the vehicle despite a “reasonable number of attempts” at repair.⁴ The Lemon Law defines “serious safety hazard” as a life threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁵ Generally, under the Lemon Law statute, a rebuttable presumption is established that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or 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.⁶

¹ TEX. OCC. CODE § 2301.604(a).

² TEX. OCC. CODE § 2301.204.

³ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

⁴ TEX. OCC. CODE § 2301.604(a).

⁵ TEX. OCC. CODE § 2301.601(4).

⁶ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for establishing a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. Section 2301.605(a)(2) only applies 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.

The statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.⁷ Furthermore, the Department adopted a decision implying that if the consumer takes the vehicle for a service visit then that visit would constitute a repair attempt unless the consumer was at fault for failure to repair the vehicle.⁸

B. Complainants' Evidence and Arguments

The Complainants, Viola and Robert Fox, purchased a new 2013 Ford Explorer from McCombs Ford West in San Antonio, Texas, on December 13, 2012. The vehicle had seven miles on the odometer at the time of purchase.⁹ The vehicle's warranty provides bumper to bumper coverage for three years or 36,000 miles.¹⁰

Mrs. Fox testified that the vehicle's TPMS warning light and messages would come on at least four or five times a week. She noted that sometimes the warning light would flash and other times the light would stay on. In some instances, the light would come back on after clearing the warning. Mrs. Fox described the issue as occurring randomly, without regard to location, driving conditions, or temperature. Mrs. Fox stated that she first noticed the issue in August of 2014. Mrs. Fox testified that she first raised the TPMS issue at the October 7, 2014, service visit. The dealer did not document the TPMS issue and the technician attributed the warning to the vehicle's tire pressure. The technician had the tires inflated, but the TPMS warning light continued to come on. Consequently, the technician replaced the tire. Mrs. Fox testified that the TPMS warning would come on even though the tires were properly inflated. She explained that sometimes the vehicle would display a "Tire Pressure Sensor Fault" message and other times a "Tire Pressure Monitor Fault" message. Mrs. Fox noted that when the vehicle displays a tire warning message, the yellow (tire pressure) warning light comes on. The vehicle's owner's manual states that the "Tire Pressure

⁷ "[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite 'reasonable number of attempts.'" *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ).

⁸ *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) ("only those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute").

⁹ Complainants' Ex. 1, purchase order.

¹⁰ Complainants' Ex. 4, 2013 Model Year Ford Warranty Guide.

Monitor Fault” message “[d]isplays when the tire pressure monitoring system is malfunctioning. If the warning stays on or continues to come on, contact your authorized dealer.”¹¹ The owner’s manual specifies that a “Tire Pressure Sensor Fault” message is “[d]isplayed when a tire pressure sensor is malfunctioning, or your spare tire is in use. . . . If the warning stays on or continues to come on, contact your authorized dealer as soon as possible.”¹² Additionally, the owner’s manual explains that the low tire pressure warning light “[i]lluminates when your tire pressure is low. If the light remains on at start up or while driving, the tire pressure should be checked. If the light does not turn on or begins to flash, contact your authorized dealer as soon as possible.”¹³ Videos in evidence showed the low tire pressure warning light both flashing and staying on continuously.¹⁴

The Complainants took the vehicle to a dealer to address TPMS warning issues on the following dates and miles as shown below:

Date	Miles	Issue
October 7, 2014	23,721	Check tire for leak ¹⁵
December 16, 2014	25,784	Tire pressure sensor fault message, TPMS light came on ¹⁶
February 10, 2015	28,327	Tire pressure sensor fault message came on ¹⁷
March 3, 2015	29,029	Tire pressure warning light comes on and off ¹⁸
March 17, 2015	29,470	Tire pressure sensor fault message came on ¹⁹
April 9, 2015	30,144	TPMS warning fault message came on ²⁰
July 8, 2015	33,791	Tire pressure sensor fault message comes on and off ²¹

At the February 20, 2015, visit, the technician found no leaks but told the Complainant that the tires did not have enough pressure. The technician trained the TPMS sensors but the vehicle’s

¹¹ Complainants’ Ex. 21, 2013 Explorer Owner’s Manual at 140.

¹² Complainants’ Ex. 21, 2013 Explorer Owner’s Manual at 140.

¹³ Complainants’ Ex. 21, 2013 Explorer Owner’s Manual at 116.

¹⁴ Complainants’ Ex. 22, 4-23-15b.mp4, 4-23-15c.mp4, 7-19-15b.mp4, Viola’s Phone September 2015 792.mp4.

¹⁵ Complainants’ Ex. 8, Invoice No. FOCQ251085.

¹⁶ Complainants’ Ex. 11, Invoice No. FOCS259577.

¹⁷ Complainants’ Ex. 12, Invoice No. FOCS265954.

¹⁸ Complainants’ Ex. 13, Invoice No. FOCS268696.

¹⁹ Complainants’ Ex. 14, Invoice No. FOCS270559.

²⁰ Complainants’ Ex. 15, Invoice No. FOCS273645.

²¹ Complainants’ Ex. 16, Invoice No. FOCS285293.

issues continued after this repair. At the March 3, 2015, visit, the technician found a TPMS malfunction code but advised the Complainant to monitor for the warning light. Mrs. Fox testified that she continued to experience the same issue after this visit. At the March 17, 2015, visit, the dealer replaced one TPMS sensor but the problem continued after this repair. At the April 9, 2015, the dealer replaced the TPMS module but the issues continued. The Respondent's final repair attempt occurred on July 8, 2015. The field service engineer did not find any existing concerns and therefore did not actually undertake any repairs.

The Complainants also took the vehicle to a dealer for other issues and regular maintenance as follows:

Date	Miles	Issue
June 27, 2013	7,021	Regular maintenance ²²
July 22, 2013	7,855	Wrench light came on; vehicle has no power, Advance Trac light came on (reprogrammed PCM, replaced fuel pump) ²³
September 23, 2013	10,049	Regular maintenance ²⁴
January 14, 2014	14,224	Regular maintenance ²⁵
June 24, 2014	20,394	Regular maintenance ²⁶
October 13, 2014	24,000	Vehicle will not start (replaced alternator and battery) ²⁷
September 11, 2015	36,567	Regular maintenance ²⁸

Mrs. Fox stated that the wrench light issue (which relates to powertrain malfunction/reduced power) was resolved and is not the basis of the present complaint. None of the regular service visits revealed any issues with the tires. Although the dealer checked the tires and pressure at the September 11, 2015, regular maintenance visit, a TPMS warning occurred the next day during a trip to Orlando, Florida.

²² Complainants' Ex. 6, Invoice No. FOCQ193256.

²³ Complainants' Ex. 7, Invoice No. FOCS196073; Complainants' Ex. 7A, technician's notes; Complainants' Ex. 7B, Invoice No. FOCS196073.

²⁴ Complainants' Ex. 18, Invoice No. FOCQ203642.

²⁵ Complainants' Ex. 19, Invoice No. FOCQ217304.

²⁶ Complainants' Ex. 20, Invoice No. FOCQ237034.

²⁷ Complainants' Ex. 10, Invoice No. FOCS251932.

²⁸ Complainants' Ex. 17, Invoice No. FOCQ294214.

C. Respondent's Evidence and Arguments

The Respondent argued that the TPMS warnings are not a safety concern and did not prevent the vehicle from operating. The vehicle inspection report²⁹ by Kurt Kindler, Field Service Engineer, stated that the vehicle had a trouble code indicating that the receiver had previously lost the signal to one of the tire pressure sensors. However, the report explained that environmental electromagnetic interference may cause this issue. The report also noted that the vehicle did not currently have a TPMS warning light on and that Mr. Kindler could not identify any concerns, therefore the vehicle did not warrant any repairs.

D. Analysis

A preponderance of the evidence shows that the vehicle has an existing warrantable defect. However, the vehicle did not have two repair attempts in the first 12 months or 12,000 miles, so the vehicle does not qualify for repurchase or replacement but does qualify for warranty repair relief. The evidence shows that even after all of the repair attempts, the vehicle's TPMS continues to malfunction. The Respondent's inspection report shows that environmental conditions may cause a TPMS warning. However, the record shows that the issue arises randomly, regardless of location. Moreover, the December 13, 2012, purchase order³⁰ and latest repair order³¹ in this case show that the Complainants' address remained the same, suggesting that the Complainants would have been driving in the same areas, and therefore encountering the same environmental conditions. However, the issue first occurred in August of 2014, roughly a year and eight months after the vehicle's purchase. Further, the Complainants provided visual evidence of the TPMS malfunctions from October of 2014 through September of 2015. However, the vehicle does not qualify for repurchase or replacement. The statutory presumption for reasonable repairs requires two repair attempts in the first 12 months or 12,000 miles. In this case, the first two TPMS repair attempts must have occurred no later than December 13, 2013, or 12,007 miles. However, the first TPMS repair attempt occurred on October 7, 2014, at 23,721 miles. Nevertheless, and regardless of whether the vehicle's warranty has expired, the Respondent has a continuing obligation to repair any warrantable issues reported to the manufacturer or the manufacturer's dealer before the

²⁹ Respondent's Ex. 1, Vehicle Inspection Report July 8, 2015.

³⁰ Complainants' Ex. 1, purchase order.

³¹ Complainants' Ex. 17, Invoice No. FOCQ294214.

warranty expired, even if the issue recurs after the warranty's expiration.³² Accordingly, the vehicle qualifies for warranty repair relief.

III. Findings of Fact

1. The Complainants, Viola and Robert Fox, purchased a new 2013 Ford Explorer from McCombs Ford West in San Antonio, Texas, on December 13, 2012. The vehicle had seven miles on the odometer at the time of purchase.
2. The bumper to bumper coverage of the vehicle's warranty lasts for three years or 36,000 miles, whichever occurs first.
3. The bumper to bumper coverage of the vehicle's warranty had expired by the time of the hearing.
4. The Complainant took the vehicle to a dealer to address the complained of tire pressure monitoring system (TPMS) issue as follows:

Date	Miles	Issue
October 7, 2014	23,721	Check tire for leak ³³
December 16, 2014	25,784	Tire pressure sensor fault message, TPMS light came on ³⁴
February 10, 2015	28,327	Tire pressure sensor fault message came on ³⁵
March 3, 2015	29,029	Tire pressure warning light comes on and off ³⁶
March 17, 2015	29,470	Tire pressure sensor fault message came on ³⁷
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July 8, 2015	33,791	Tire pressure sensor fault message comes on and off ³⁹

5. On June 8 2015, the Complainant mailed a written notice of defect to the Respondent.

³² TEX. OCC. CODE §§ 2301.204, 2301.603.

³³ Complainants' Ex. 8, Invoice No. FOCQ251085.

³⁴ Complainants' Ex. 11, Invoice No. FOCS259577.

³⁵ Complainants' Ex. 12, Invoice No. FOCS265954.

³⁶ Complainants' Ex. 13, Invoice No. FOCS268696.

³⁷ Complainants' Ex. 14, Invoice No. FOCS270559.

³⁸ Complainants' Ex. 15, Invoice No. FOCS273645.

³⁹ Complainants' Ex. 16, Invoice No. FOCS285293.

6. On June 15, 2015, the Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
7. On July 20, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainants and the Respondent, Ford Motor Company, 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.
8. The hearing in this case convened and the record closed on October 2, 2015, in San Antonio, Texas, before Hearings Examiner Andrew Kang. Mrs. Viola Fox represented the Complainants. Maria Diaz, Consumer Legal Analyst, represented the Respondent.
9. The vehicle had approximately 39,448 miles at the time of the hearing.
10. The Complainants first noticed the vehicle's TPMS malfunctioning in August of 2014.
11. The vehicle's TPMS would malfunction and display a TPMS warning light and warning messages.
12. The TPMS malfunctions occurred randomly, at least four to five times per week, without regard to location and driving conditions.
13. The vehicle's TPMS continued to malfunction even after all of the repair attempts.

IV. Conclusions of Law

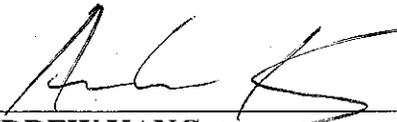
1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, 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. The Complainants timely filed a sufficient complaint with the Department. TEX. OCC. CODE §§ 2301.204, 2301.606(d); 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. The Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 215.206.66(d).
6. The Complainants did not meet the statutory requirement for a reasonable number of repair attempts. TEX. OCC. CODE § 2301.605(a)(1).
7. The Complainants' vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604.
8. The Respondent has a continuing obligation to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's franchised dealer before the warranty expired. TEX. OCC. CODE §§ 2301.204, 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall repair the vehicle's tire pressure monitoring system. Within 30 days after the date this Order becomes final under Texas Government Code § 2001.144, the parties shall complete the delivery and repair of the subject vehicle. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair, the Department may consider the Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED November 24, 2015



**ANDREW KANG
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**