

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0299 CAF**

PAUL REHAK,	§	BEFORE THE OFFICE
Complainant	§	
	§	
v.	§	OF
	§	
FORD MOTOR COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

CORRECTED DECISION AND ORDER

Paul Rehak (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for an alleged defect in his 2015 Ford F250. The Complainant filed a Lemon Law complaint alleging that the vehicle would randomly pull to one side when braking. Ford Motor Company (Respondent) responded that the vehicle did not have an existing defect; that the vehicle's condition did not constitute a serious safety hazard; the vehicle was not out of service for a total of 30 days; and the vehicle did not have at least two repair attempts in the first 12,000 miles. The hearings examiner concludes that the vehicle has a warrantable defect that constitutes a serious safety hazard. Consequently, the Complainant's vehicle qualifies for repurchase/replacement.

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 August 25, 2015, in Victoria, Texas, before Hearings Examiner Andrew Kang. The Complainant, Paul Rehak, represented himself. Sonya Hall, Consumer Affairs 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 Complainant 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 Under the Lemon Law, 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

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).

attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.⁶

The statutory presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.⁷

However, regardless of the existence of a warrantable defect, the Lemon Law prohibits repurchase or replacement unless: (1) the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;⁸ (2) the manufacturer was given an opportunity to cure the defect or nonconformity;⁹ and (3) the owner filed the Lemon Law complaint within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.¹⁰

B. Complainants' Evidence and Arguments

On May 6, 2014, the Complainant bought a new 2015 Ford F-250 Super Duty from Weber Motor Company, Respondent's authorized dealer in, Cuero, Texas. The vehicle's odometer read three miles at the time of sale. The Complainant mailed written notice of the vehicle's defect to the Respondent on June 15, 2015.¹¹ The Complainant filed a Lemon Law complaint on June 19, 2015.¹²

The Complainant testified that he was the only driver of the vehicle and that he drove the vehicle several hours every day. The Complainant testified that the subject vehicle pulled to either side when braking. The Complainant explained that the pulling occurred more frequently with the

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.

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 TEX. OCC. CODE § 2301.606(c)(1).

⁹ TEX. OCC. CODE § 2301.606(c)(2).

¹⁰ TEX. OCC. CODE § 2301.606(d)(2).

¹¹ Complainant's Ex. 5, Complainant's Written Notice of Defect to the Respondent.

¹² Complainant's Ex. 4, Lemon Law Complaint.

vehicle carrying or pulling a load. The Complainant described the pulling as intermittent with a variable duration. The Complainant testified that he would notice a burning rotor smell from the front but not the back when the pulling occurred. The Complainant stated that the pulling affected the control of the vehicle. The Complainant noted that at times he had to compensate for the pulling by turning the wheel 90° in the opposite direction to keep the vehicle straight. The Complainant noted that the pulling issue caused near-collisions.

The Complainant testified that on July 18, 2014, he took the vehicle to the dealer for evaluation of the pulling issue. The technician concluded that the vehicle's trailer's brakes caused the pulling because of the increased weight. The dealer did not document this service visit. On July 28, 2014, at 7,780 miles, the Complainant took the vehicle to the dealer for regular maintenance and to address the pulling issue, but the dealer could not duplicate the problem. The invoice for this visit did not reflect the pulling complaint.¹³ On September 29, 2014, at 14,932 miles, the Complainant took the vehicle to the dealer for regular maintenance and complained of the pulling/braking issue. The invoice for this visit did not reflect the pulling/braking complaint.¹⁴ The dealer stated that the Complainant first complained about the vehicle on December 22, 2014.¹⁵ The service invoice from December 22, 2014, at 23,317 miles, showed that the vehicle received an oil and filter change but did not reflect the pulling/braking complaint.¹⁶ On April 6, 2015, at 31,066 miles, the Complainant took the vehicle to the dealer for regular maintenance and complained of the pulling/braking issue. The dealer did not find any problems with the vehicle. The invoice for this visit did not reflect the pulling/braking complaint.¹⁷ On May 5, 2015, at 34,281 miles, the Complainant took the vehicle to the dealer specifically for the braking/pulling issue without the trailer attached. The technician warned the Complainant that the vehicle was a safety hazard. The technician found that the vehicle pulled to the left whether braking or not braking. The technician's inspection of the brakes revealed a burnt and scarred left rotor, locked-up left brake calipers and a deeply scarred right rotor. The Complainant stated that the dealer had to order parts to repair the brakes and he brought the vehicle to the dealer on May 12, 2015, for the actual repair. The dealer

¹³ Complainant's Ex. 11, Invoice 10870.

¹⁴ Complainant's Ex. 12, Invoice 12130.

¹⁵ Complainant's Ex. 9, Letter from Weber Motor Company to John DuFour dated July 13, 2015.

¹⁶ Complainant's Ex. 13, Invoice 13844.

¹⁷ Complainant's Ex. 14, Invoice 16045.

repaired the vehicle under warranty, replacing the left calipers, brake line, rotor, pads, and the right rotor; and bleeding the brake system.¹⁸ The repair improved the pulling issue, but the vehicle would still pull to the right. The Complainant also noticed that the brakes would remain engaged even after releasing the brake pedal. On May 18, 2015, at 35,556 miles, the Complainant took the vehicle to the dealer for the same brake issue.¹⁹ The vehicle began pulling to either side again. The Complainant stated that the dealer ordered parts for the repair, which took place on June 3, 2015. On June 3, 2015, at 35,985 miles, the Complainant took the vehicle to the dealer for the repair. The dealer verified that the vehicle pulled to either side and isolated the concern to the right brake caliper sticking. The dealer repaired the vehicle under warranty, apparently replacing the caliper assembly.²⁰ The Complainant testified that he experienced problems with the vehicle the same day he picked it up. On June 24, 2015, at 38,039 miles, the Complainant took the vehicle to the dealership where a Ford Field Service Engineer (FSE) inspected the vehicle. The FSE could not duplicate the braking/pulling issue. The Complainant noted that he had the suspension lift on the vehicle uninstalled prior to this service visit at the request of the dealer; the vehicle also had the original size tires reinstalled. The Complainant also noted that the wheels themselves remained the same. The Complainant explained that the lift was installed sometime in July 2014 but he first noticed the problems with the vehicle after eight days with the stock tires.

During the test drive at the hearing, the vehicle's steering wheel made a sudden quarter (90°) turn without any apparent cause. The vehicle's steering wheel also made two slight turns during the test drive, but the contour of the road appeared to have caused the slight turns.

C. Respondent's Evidence and Arguments

In response to the complaint, the Respondent argued that the alleged defect does not currently exist, does not constitute a serious safety defect and the vehicle has not been out of service for a cumulative 30 days, and also that the vehicle did not appear to have two repair attempts in the first 12,000 miles (citing repairs on May 5, 2015; June 3, 2105; and June 24, 2015). The Respondent's response to the complaint indicated that the vehicle's warranty was not in effect

¹⁸ Complainant's Ex. 6, Invoice 16702.

¹⁹ Complainant's Ex. 7, Invoice 16969.

²⁰ Complainant's Ex. 8, Invoice 17265.

at the time of the response on August 18, 2015, with the vehicles mileage at or above 37,496. At the inspection on June 24, 2015, the Ford FSE test drove the vehicle with the dealer's technician. The FSE observed that the vehicle exhibited a slight pull on crowned road surfaces but noted no pull on flat road surfaces. Accordingly, the FSE did not perform or recommend any repairs.

The Respondent contended that the dealer did not see the Complainant until December 2014 for the complained of issue (based on the repair orders). The Respondent also suggested that a suspension lift and larger tires retrofitted to the vehicle may have caused the vehicle's issues. The Complainant testified that the vehicle had a suspension lift along with larger tires installed by a third party sometime in July 2014:

D. Analysis

1. Reasonable Number of Repair Attempts

The record indicates that the vehicle had a reasonable number of repair attempts. Although the Respondent contended that the Complainant first raised the braking/pulling issue on December 22, 2014, consistent with the letter from the dealer's owner, Michael C. Weber, III,²¹ the Complainant testified that he had raised the braking/pulling issue every time he brought the vehicle to the dealer for maintenance, even though the invoices may not have documented the braking/pulling concern. Significantly, the dealer acknowledged that the Complainant raised the braking/pulling issue on December 22, 2014, but the invoice for that service visit did not document the braking/pulling issue. Accordingly, the evidence shows that the dealer's invoices did not document every instance the Complainant addressed the braking/pulling issue. Given the Complainant's testimony, the Complainant appears to have brought the vehicle in for at least eight repair attempts as follows: *July 18, 2014*, at an undetermined mileage; *July 28, 2014*, at 7,780 miles; *September 29, 2014*, at 14,932 miles; *December 22, 2014*, at 23,317 miles; April 6, 2015, at 31,066 miles; May 5, 2015, at 34,281 miles (with repairs actually occurring on May 12, 2015); May 18, 2015, at 33,556 miles (with repairs actually occurring on June 3, 2015, at 35,985 miles); and June 24, 2015, at 38,039 miles. Accordingly, the vehicle had two repair attempts in the first 12,000 miles and another two in the next 12,000 miles, thereby satisfying the statutory presumption for a reasonable number of repair attempts.

²¹ Complainant's Ex. 9, Letter from Weber Motor Company to John DuFour dated July 13, 2015.

2. Serious Safety Hazard

The vehicle clearly has a “serious safety hazard” which the law defines as “a life threatening malfunction or nonconformity that: . . . substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes.”²² The Complainant testified that the braking/pulling issue has caused near-collisions. Further, the Complainant testified that he would have to forcibly counter steer the vehicle to counteract the pulling but also that the vehicle may stop pulling without warning, forcing the driver to suddenly readjust the steering.

3. Existing Warrantable Defect

The Complainant testified that the pulling issue recurred after the last warranty repair addressing the pulling issue. Moreover, during the test drive at the hearing, the steering wheel made a sudden quarter turn for no apparent reason, indicating that the pulling issue continued to exist.

III. Findings of Fact

1. On May 6, 2014, the Complainant bought a new 2015 Ford F-250 Super Duty from Weber Motor Company, Respondent’s authorized dealer in, Cuero, Texas. The vehicle’s odometer read three miles at the time of sale.
2. The vehicle’s bumper to bumper warranty was in effect on May 5, 2015, at 34,281 miles.
3. The vehicle’s bumper to bumper warranty had expired by August 18, 2015, at 37,496 miles.
4. The Complainant brought the vehicle for service regarding the braking/pulling issue on the following dates:
 - a. July 18, 2014 (mileage unknown);
 - b. July 28, 2014, at 7,780 miles;
 - c. September 29, 2014, at 14,932 miles;
 - d. December 22, 2014, at 23,317 miles;
 - e. April 6, 2015, at 31,066 miles;
 - f. May 5, 2015, at 34,281 miles (with repairs actually occurring on May 12, 2015);
 - g. May 18, 2015, at 35,556 miles (with repairs actually occurring on June 3, 2015, at

²² TEX. OCC. CODE § 2301.601(4).

35,985 miles); and

- h. June 24, 2015, at 38,039 miles (the Respondent's final repair attempt).
5. On June 15, 2015, the Complainant mailed a notice of the vehicle's defect to the Respondent.
6. On June 19, 2015, the Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles.
7. On July 14, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the 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.
8. The hearing in this case convened and the record closed on August 25, 2015, in Victoria, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented himself. Sonya Hall represented the Respondent.
9. The vehicle's odometer read 45,281 miles at the time of the hearing.
10. The vehicle's pulling caused the Complainant to have near-collisions.
11. The vehicle's pulling impedes the driver's ability to control the vehicle.
12. The vehicle's steering wheel made a sudden quarter turn during the test drive at the hearing.
13. The vehicle continued to exhibit the pulling condition after the last warranty repair addressing the braking/pulling issue.

14. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$64,374.73
Delivery mileage	3
Mileage at first report of defective condition	7,780
Mileage on hearing date	45,281
Useful life determination	120,000

Purchase price, including tax, title, license and registration	\$64,374.73			
Mileage at first report of defective condition	7,780			
Less mileage at delivery	<u>-3</u>			
Unimpaired miles	7,777			
Mileage on hearing date	45,281			
Less mileage at first report of defective condition	<u>-7,780</u>			
Impaired miles	37,501			
Reasonable Allowance for Use Calculations:				
Unimpaired miles				
	<u>7,777</u>			
	120,000	X	\$64,374.73	= \$4,172.02
Impaired miles				
	<u>37,501</u>			
	120,000	X	\$64,374.73	X .5 = <u>\$10,058.82</u>
Total reasonable allowance for use deduction:				\$14,230.84
Purchase price, including tax, title, license and registration	\$64,374.73			
Less reasonable allowance for use deduction	-\$14,230.84			
Plus filing fee refund	<u>\$35.00</u>			
TOTAL REPURCHASE AMOUNT	\$50,178.89			

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 Complainant 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 Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 215.206.66(d).
6. The Complainant showed that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).
7. The Complainant's vehicle qualifies for replacement or repurchase. TEX. OCC. CODE § 2301.604.

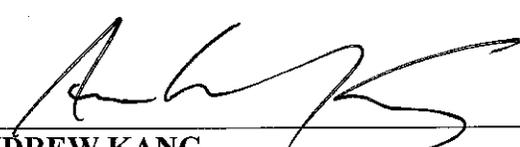
V. Order

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 **GRANTED**. It is further **ORDERED** that the Respondent shall repair the warrantable defect in the reacquired vehicle identified in this Decision. **IT IS THEREFORE ORDERED** that:

1. The Respondent shall accept the return of the vehicle from the Complainant. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;
2. The Respondent shall repurchase the subject vehicle in the amount of **\$50,178.89**. The refund shall be paid to the Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to the Respondent, then the full refund shall be paid to the Complainant. At the time of the return, the Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, the Complainant is responsible for providing the Respondent 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, the Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to the Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by the Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. The Respondent, 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. The Respondent, 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. The Respondent, 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 September 29, 2015



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