

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0133 CAF**

**JUAN CARLOS AMEZQUITA,  
Complainant**

v.

**FORD MOTOR COMPANY,  
Respondent**

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**BEFORE THE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Juan Carlos Amezquita (Complainant) seek relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for an alleged defect in his 2014 Ford Explorer. Complainant asserts that the vehicle has a water leak on the driver's side rear hatch area. Ford Motor Company (Respondent) asserts that the vehicle does not have any defects and is operating as designed. The hearings examiner concludes that the vehicle does have an existing warrantable defect, and Complainant is eligible for repair relief at this time.

**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 June 21, 2016 in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by Mark Aschermann, attorney with Barron and Newburger, P.C. Testifying at the hearing were Juan Carlos Amezquita, Complainant, and his wife, Elizabeth Amezquita. Respondent was represented by Maria Diaz, Legal Analyst for Consumer Affairs.

**II. DISCUSSION**

**A. Applicable Law**

Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.” Occupations Code § 2301.603(a) provides that “[a] manufacturer, converter, or distributor shall make repairs necessary to conform a **new motor vehicle** to an applicable manufacturer’s, converter’s, or distributor’s express warranty.” (Emphasis mine.) Therefore, repurchase or replacement relief for defects in a vehicle is available only for new vehicles as defined in the Code. However, relief is available for purchasers of used vehicles under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” The relief available under this section of the Code is repair of the vehicle in question.

## B. Complainant's Evidence and Arguments

### 1. Juan Carlos Amezquita's Testimony

Complainant purchased a used 2014 Ford Explorer from AutoNation Ford (AutoNation) in Houston, Texas, on May 11, 2015, with mileage of 19,319 at the time of delivery.<sup>1</sup> Respondent provided a bumper-to-bumper warranty for the vehicle for the first three (3) years or the first 36,000 miles, whichever comes first. On the date of hearing the vehicle's mileage was 25,902. The bumper-to-bumper warranty for the vehicle was still in effect as of the date of hearing.

Complainant testified that the day after purchasing the vehicle, it rained in the area in which he lived. When Complainant got in the vehicle that morning, he saw water dripping into the rear driver's side area of the vehicle. He also saw that the vehicle's headliner was wet and that a cup holder had water in it. Complainant took the vehicle to AutoNation to repair the water leak on May 13, 2015. AutoNation's service technician saw some water in the vehicle, but could not find a water leak.<sup>2</sup> The vehicle's mileage on this occasion was 19,320.<sup>3</sup> The vehicle was in the dealer's possession for about seven (7) days. A loaner or rental vehicle was not provided to Complainant for this period of time.

Complainant testified that a few days after receiving the vehicle back from AutoNation, he saw water in the vehicle again after it had rained. He took the vehicle back to AutoNation on June 17, 2015, for repair. AutoNation's service technician could not verify the concern and was unable to find a leak.<sup>4</sup> Complainant was informed by an AutoNation representative that although the inside of the vehicle was wet, the technician could not find a leak. Complainant was not provided with any other explanation at the time. The mileage on the vehicle on this date was 20,018.<sup>5</sup> The vehicle was in the dealer's possession for one (1) day on this occasion. Complainant was not provided with a loaner or rental vehicle during this period of time.

A few days later, on June 29, 2015, Complainant took the vehicle to A. C. Collins Ford (Collins) in Pasadena, Texas for repair for the water leak issue. Collins' service technician verified the existence of a water leak and put seam sealer (a clear rubber silicone) on the vehicle's body seam at the rear driver's side to repair the issue.<sup>6</sup> The mileage on the vehicle on this occasion was

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<sup>1</sup> Complainant Ex. 1, Retail Purchase Agreement dated May 11, 2015.

<sup>2</sup> Complainant Ex. 2, Repair Order dated May 13, 2015.

<sup>3</sup> *Id.*

<sup>4</sup> Complainant Ex. 3, Repair Order dated June 17, 2015.

<sup>5</sup> *Id.*

<sup>6</sup> Complainant Ex. 4, Repair Order dated June 29, 2015.

20,298.<sup>7</sup> The vehicle was in Collins' possession for four (4) days. Complainant was provided with a loaner vehicle during this repair visit.

Complainant testified that a few months later, in September of 2015, he observed water leaking into the vehicle. As a result, she took the vehicle to Collins for repair. Complainant testified that the technician verified that a leak existed and applied more seam sealer to the vehicle. The vehicle was in the dealer's possession for two (2) days while the repair was being performed. Complainant was provided a loaner vehicle while his vehicle was being repaired.

A couple of months later, Complainant again saw water in the vehicle. He took the vehicle to AutoNation for repair on November 18, 2015. AutoNation's service technician verified the complaint and sealed the outer left upper corner of the body seam.<sup>8</sup> The vehicle's mileage when it was turned over to the dealer for repair on this occasion was 23,063.<sup>9</sup> The vehicle was in the dealer's possession for three (3) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

A couple of days after receiving the vehicle back from AutoNation, Complainant took the vehicle back for further repair for the water leak. The repair attempt was performed on November 23, 2015. Complainant was unsure what work was performed at the time.<sup>10</sup> The mileage on the vehicle when it was taken to AutoNation on this occasion was 23,195.<sup>11</sup> Complainant testified that the vehicle was in AutoNation's possession for about a month on this occasion. Complainant was provided with a loaner vehicle while the vehicle was in the dealer's possession.

Complainant testified that another repair attempt for the leak issue was performed on December 14, 2015, at AutoNation. The dealer's service technician could not duplicate the problem and did not perform any repair for that issue.<sup>12</sup> The vehicle's mileage on this occasion was 23,271.<sup>13</sup> The vehicle was in the dealer's possession for ten (10) days.<sup>14</sup> Complainant was provided with a loaner vehicle while his vehicle was being repaired.

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

<sup>8</sup> Complainant Ex. 5, Repair Order dated November 18, 2015.

<sup>9</sup> *Id.*

<sup>10</sup> The repair order for this visit did not have any explanation regarding the issue, except for Complainant's concern and the fact that there was a history of a water leak. It does not indicate if the leak was verified or if any repair was performed.

<sup>11</sup> Complainant Ex. 6, Repair Order dated November 23, 2015.

<sup>12</sup> Complainant Ex. 7, Repair Order dated December 14, 2015.

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

<sup>14</sup> *Id.*

Complainant mailed a letter to Ford Motor Company on December 28, 2015, in which he expressed his dissatisfaction with the vehicle.<sup>15</sup> Complainant also filed a Lemon Law/Warranty Performance complaint with the Texas Department of Motor Vehicles (Department) on January 6, 2016.<sup>16</sup>

On January 26, 2016, Complainant took the vehicle to Mac Haik Ford (Mac Haik) in order to allow Respondent to perform a final repair attempt on the vehicle. Respondent's technician did see water inside the vehicle and had Mac Haik's technician apply sealer to the vehicle's body seam.<sup>17</sup> The vehicle's mileage on this occasion was 23,300.<sup>18</sup> Complainant was provided with a loaner vehicle while his vehicle was undergoing the final repair attempt.

Complainant testified that he again observed water in the vehicle in March of 2016. On March 9, 2016, Complainant took the vehicle to AutoNation for repair for the water leak. AutoNation's technician was unable to verify the existence of a water leak.<sup>19</sup> The vehicle's mileage when it was delivered to the dealer for the inspection was 24,400.<sup>20</sup> The vehicle was in AutoNation's possession for nine (9) days on this occasion. Complainant was provided with a rental vehicle during this repair attempt.<sup>21</sup>

On April 6, 2016, Complainant's counsel wrote a Deceptive Trade Practices Act (DTPA) demand letter to Respondent and to AutoNation on Complainant's behalf.<sup>22</sup>

Complainant testified that the vehicle has not been repaired. The same problem keeps recurring and water leaks into the vehicle every time it rains. The headliner has water stains and there's water condensation in the vehicle tail light.

## 2. Elizabeth Amezcuita's Testimony

Elizabeth Amezcuita is Complainant's wife. She is a secondary driver of the vehicle. She testified that every time that it rains in the area where she and Complainant live, water drips into the vehicle. The rear seat driver's side seat belt gets wet because water drips onto it. Ms. Amezcuita also stated that she detects a type of residue odor in the vehicle due to the fact that the

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<sup>15</sup> Complainant Ex. 10, Letter to Ford Motor Company dated December 28, 2015.

<sup>16</sup> Complainant Ex. 9, Complainants' Lemon Law complaint dated January 6, 2016. Although the complaint was signed by Complainant on December 28, 2015, it was not received by Texas Department of Motor Vehicles until January 6, 2016, which is the effective date of the complaint.

<sup>17</sup> Complainant Ex. 8, Repair Order dated January 26, 2016.

<sup>18</sup> *Id.*

<sup>19</sup> Complainant Ex. 10, Repair Order dated March 9, 2016.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Complainant Ex. 11, Letter to Ford Motor Company and AutoNation Ford Gulf Freeway dated April 6, 2016.

interior has gotten wet so often. However, she has not noticed any mold in the vehicle. Ms. Amezcuita stated that the vehicle's headliner has visible water stains. She feels that the problems with the vehicle have been an inconvenience to her and her family.

### C. Respondent's Evidence and Arguments

Maria Diaz, Legal Analyst for Consumer Affairs, first became involved with Complainant's Warranty Performance complaint when she was forwarded Complainant's attorney's demand letter on January 4, 2016. After several attempts to contact Complainant, Ms. Diaz was finally able to speak to Ms. Amezcuita and made arrangements for a final repair attempt to be performed on the vehicle.

The final repair attempt was conducted on January 26, 2016, at Mac Haik. Brian Jay, Field Service Engineer for Respondent, performed the final repair attempt. He found water droplets near the rear D-pillar speaker.<sup>23</sup> As a result, of Mr. Jay's findings, Mac Haik's service technician applied seam sealer to the vehicle's body seam to repair the leak.<sup>24</sup> The vehicle was checked for further leaks after the repair was performed and none could be found.<sup>25</sup> The vehicle was in the dealer's possession for four (4) days during the final repair attempt.<sup>26</sup> Complainant was provided with a rental vehicle while the final repair attempt took place.

Ms. Diaz spoke to Ms. Amezcuita on February 22, 2016, and was informed that water was still leaking into the vehicle. On March 9, 2016, Complainant took the vehicle to AutoNation for further repair for the leak issue, but no problem could be found.

Ms. Diaz also testified that the vehicle was provided with a three (3) year or 36,000 mile bumper-to-bumper warranty. The vehicle is still under that warranty until October 28, 2016.

During cross-examination, Ms. Diaz testified that the vehicle is supposed to be watertight. If the vehicle is out of warrantable standards, then it needs to be repaired. Also, Ms. Diaz stated that the prior owner of the vehicle had not raised any issues regarding a water leak in the vehicle. The first time the issue arose was when Complainant took the vehicle for repair for the issue in May of 2015.

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<sup>23</sup> Respondent Ex. 1, FSE Vehicle Inspection Report dated January 26, 2016.

<sup>24</sup> Complainant Ex. 8, Repair Order dated January 26, 2016.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

#### **D. Analysis**

In order to determine whether Complainant has a remedy under Section 2301.204 of the Occupations Code, there first has to be evidence of a defect or condition in the vehicle that has not been repaired by Respondent. Complainant's testimony establishes that water leaks into the vehicle every time it rains. The leak is somewhere near the driver's side tailgate area of the vehicle. The evidence provided by the parties establishes that at the time of hearing the vehicle does have a water leak which has not been repaired by Respondent.

The hearings examiner must hold that Complainant has met his burden of proof to establish that there is a defect or condition in the vehicle that has not been repaired by Respondent or its authorized dealers. As such, Respondent is under an obligation to repair the vehicle in order to conform it to Respondent's express warranty.

Complainant's request for repair relief is granted. Respondent is hereby ordered to determine the location of the vehicle's water leak and perform any necessary repairs to conform the vehicle to the express warranty.

### **III. FINDINGS OF FACT**

1. Juan Carlos Amezcuita (Complainant) purchased a used 2014 Ford Explorer on May 11, 2015, from AutoNation Ford in Houston, Texas with mileage of 19,319 at the time of delivery.
2. Respondent provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle.
3. The vehicle's mileage on the date of hearing was 25,902.
4. At the time of the hearing, the bumper-to-bumper warranty for the vehicle was still in effect.
5. The day after purchasing the vehicle in question, Complainant noticed that there was water leaking into the rear driver's side of the vehicle.
6. Prior to the filing of the Lemon Law complaint, Complainant's vehicle was serviced by Respondent's authorized dealers, on the following dates because of Complainant's concerns regarding water leaking into the vehicle:

- a. May 13, 2015, at 19,320 miles;
  - b. June 17, 2015, at 20,018 miles;
  - c. June 29, 2015, at 20,298 miles;
  - d. September of 2015, at unknown miles;
  - e. November 18, 2015, at 23,063 miles;
  - f. November 23, 2015, at 23,195 miles; and
  - g. December 14, 2015, at 23,271 miles.
7. On May 13, 2015, AutoNation's service technician found water in the vehicle, but could not find a leak. He did not perform any repairs to the vehicle on this date.
  8. On June 17, 2015, AutoNation's service technician could not duplicate Complainant's concern and performed no repair to the vehicle.
  9. On June 29, 2015, Complainant took the vehicle to A. C. Collins Ford in Pasadena, Texas for repair for the leak issue.
  10. On June 29, 2015, Collins' service technician verified that the vehicle's body seam was cracked and allowed water to enter the vehicle. Seam sealer (clear rubber silicone) was applied to the crack to repair the issue.
  11. Sometime in September of 2015, Collins' service technician verified the existence of a water leak in the vehicle and applied seam sealer to the area where the leak was found in order to effectuate the repair.
  12. On November 18, 2015, AutoNation's service technician verified the existence of a water leak in the left rear upper corner of the vehicle's lift gate and sealed the vehicle's body seam and inner seam.
  13. On November 23, 2015, AutoNation's service technician did not indicate if any repairs were performed to the vehicle.
  14. On December 14, 2015, AutoNation's service technician could not duplicate the concern and performed no repairs on the vehicle for the leak issue.
  15. On January 6, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

16. On January 26, 2016, Respondent's field service engineer performed a final repair attempt on Complainant's vehicle and verified the existence of a water leak. Seam sealer was applied to the joints that were leaking in order to repair the leak.
17. On March 9, 2016, Complainant took the vehicle to AutoNation because water was leaking into the vehicle in the rear driver's side tailgate area. The dealer's service technician could not duplicate the problem, so no repairs were performed at the time.
13. On April 1, 2016, 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.
14. The hearing in this case convened and the record closed on June 21, 2016 in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by Mark Aschermann, attorney with Barron and Newburger, P.C. Testifying at the hearing were Juan Amezcuita, Complainant, and his wife, Elizabeth Amezcuita. Respondent was represented by Maria Diaz, Legal Analyst for Consumer Affairs.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204(a) (Warranty Performance).
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. Complainant 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. Complainant bears the burden of proof in this matter.




6. Complainant proved by a preponderance of the evidence that the vehicle has a verifiable defect or condition that is covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. Respondent is further **ORDERED** to determine the location of the vehicle's water leak and to **PERFORM ALL NECESSARY REPAIRS** in order to conform the vehicle to Respondent's express warranty.

**SIGNED July 11, 2016**

  
EDWARD SANDOVAL  
CHIEF HEARINGS EXAMINER  
OFFICE OF ADMINISTRATIVE HEARINGS  
TEXAS DEPARTMENT OF MOTOR VEHICLES