

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0333 CAF**

LETHIA JOHNSON,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
FORD MOTOR COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Lethia Johnson (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2015 Lincoln MKX. Complainant asserts that the vehicle’s collision avoidance system shuts down without advance notice and that this affects the vehicle’s entertainment, navigation, cruise control, and voice command systems. Ford Motor Company (Respondent) argued that the vehicle does not have a defect and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainant is eligible for repurchase 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 September 27, 2016, in Tyler, Texas before Hearings Examiner Edward Sandoval. Complainant, Lethia Johnson, was present and represented herself. Complainant’s husband, Edwin Johnson, testified for Complainant. Respondent was represented telephonically by Maria Diaz, Legal Analyst.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the owner must have mailed written notice of the alleged defect or

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

In addition to these 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

However, if a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has been subject to repair two or more times and: (1) at least one repair attempt was made during the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) at least one other attempt was made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the first repair attempt.⁶

B. Complainant's Evidence and Arguments

1. Edwin Johnson's Testimony

Complainant purchased a new 2015 Lincoln MKX demonstrator vehicle from Jack O'Diamonds located in Tyler, Texas on July 16, 2015, with mileage of 3,983 at the time of delivery.⁷ Respondent's bumper-to-bumper warranty for the vehicle provided coverage for four (4) years or 50,000 miles, whichever comes first.⁸ In addition, Respondent provided a powertrain warranty for the vehicle good for six (6) years or 70,000 miles.⁹ On the date of hearing the vehicle's mileage was 18,572. At this time, Respondent's warranties for the vehicle are still in effect.

Edwin Johnson, Complainant's husband, testified that the vehicle's collision avoidance system, cruise control, entertainment, navigation, cruise control, and voice command systems have not

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

⁶ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁷ Complainant Ex. 2, Vehicle Purchase Order dated June 24, 2015.

⁸ Complainant Ex. 9, Vehicle Warranty Manual, p. 7.

⁹ *Id.*

been operating correctly. Mr. Johnson feels that the problems with the different accessories are all interrelated and are caused by the failure of the vehicle's collision avoidance system.

Mr. Johnson stated that after the first time they had trouble with the vehicle's collision control avoidance system they took the vehicle to Jack O'Diamonds in Tyler, Texas, one of Respondent's authorized dealers, on September 4, 2015. Mr. Johnson was informed that a sensor was recalibrated to correct the issue. The vehicle's mileage at the time was 5,106. The vehicle was in the dealer's possession for about seven (7) days. The dealer provided Complainant with a loaner vehicle while the vehicle was being repaired.

Mr. Johnson testified that in November of 2015, Complainant was driving the vehicle on the highway when an object fell out of a truck and into the road ahead of them. The collision avoidance system failed to detect the item as it was designed to do and Complainant hit it causing damage to her vehicle. Complainant took the vehicle to Jack O'Diamonds on November 27, 2015, for repair for the damage and for repair to the collision avoidance system. The service technicians checked the system and recalibrated it. The mileage on the vehicle at the time was 7,108. The vehicle was in the dealer's possession for ten (10) days. Complainant was provided with a rental vehicle which was paid for by a third party.

Mr. Johnson stated that the problem with the collision avoidance system was not properly repaired, so they returned the vehicle to Jack O'Diamonds on December 9, 2015. The service technician determined that there were some cracked grommets holding the module which operates the collision avoidance system. The grommets were replaced and the sensor was recalibrated. The vehicle's mileage at the time was 7,658. The vehicle was in Jack O'Diamonds' possession for one (1) week. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

The vehicle's collision avoidance system continued to malfunction. Complainant took the vehicle to Jack O'Diamonds for repair for the issue on December 29, 2015. The service technician determined that three (3) of the grommets that held the cruise control module in place were cracked.¹⁰ The technician replaced the grommets and aligned the module correctly.¹¹ The vehicle's mileage when it was taken to the dealership on this occasion was 8,132.¹² The vehicle was in the dealer's possession for six (6) days on this occasion.¹³ Complainant was provided a loaner vehicle while her vehicle was being repaired.

¹⁰ Complainant Ex. 4, Repair Order dated December 29, 2015.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Mr. Johnson testified that the problem with the vehicle's collision avoidance system occurred again in May of 2016. As a result, Complainant called Respondent's customer service line in order to complain about the vehicle. Complainant was advised that she could take the vehicle to a different dealer for repair. So, on May 20, 2016, Complainant took the vehicle to Bill McRae Ford Lincoln (McRae) in Jacksonville, Texas for repair. McRae's service technician realigned a sensor in the system in order to resolve the issue.¹⁴ The vehicle's mileage when it was delivered to the dealer on this occasion was 13,054.¹⁵ The vehicle was in the dealer's possession for seven (7) days. Complainant received a loaner vehicle while her vehicle was being repaired.

A few days after getting the vehicle back, the collision avoidance system began acting up again. Complainant took the vehicle to McRae on June 6, 2016, for repair. The technician recalibrated a sensor in order to address the issue. The vehicle's mileage on this occasion was 13,560. The vehicle was in McRae's possession for seven (7) days. Complainant received a loaner vehicle while her vehicle was being repaired.

On June 22, 2016, Complainant wrote a letter to Respondent advising them of the problems with the vehicle's collision avoidance, entertainment, navigation, cruise control, and voice command systems.¹⁶ On July 8, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).¹⁷

Mr. Johnson testified that they were contacted by Respondent's representative and asked to take the vehicle to McRae for an inspection and repair on August 10, 2016. Respondent's representative was advised that the collision avoidance message illuminates in the vehicle after driving about 100 miles.¹⁸ Then the collision avoidance system, the Bluetooth connection, radio, cruise control, and navigation systems either don't work or don't work properly.¹⁹ Respondent's representative determined that the vehicle's sensor bracket needed replacement.²⁰ The vehicle's mileage on this occasion was 16,442.²¹ Complainant was provided a loaner vehicle during this visit while her vehicle was being repaired.

¹⁴ Complainant Ex. 5, Repair Order dated May 20, 2016.

¹⁵ *Id.*

¹⁶ Complainant Ex. 6, Letter to Ford Motor Company dated June 22, 2016.

¹⁷ Complainant Ex. 7, Lemon Law Complaint dated July 8, 2016. Complainant signed the complaint on July 5, 2016, but it was not received by Texas Department of Motor Vehicles until July 8, 2016, which is the effective date of the complaint.

¹⁸ Complainant Ex. 8, Repair Order dated August 10, 2016.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

2. Lethia Johnson's Testimony

Lethia Johnson, Complainant, testified that she was driving the vehicle on September 16, 2016, when the vehicle stopped abruptly in the middle of the road because of the activation of the collision avoidance system. At the time there were no vehicles immediately in front of her and nothing in the road. The avoidance system's warning light illuminated when the incident occurred.

Complainant testified that there was another incident that occurred after the final repair attempt in August of 2016 when she and Mr. Johnson were driving back to their home in Rusk, Texas from Temple, Texas. During the drive the collision avoidance system braked the vehicle when there was a car in the left turn lane which had stopped to make a turn. There were no vehicles immediately in front of Complainant's vehicle.

The problem is intermittent. Complainant stated that they can go months without an incident occurring.

Complainant also testified that the week before September 27, 2016, the hearing date, the various systems seemed to reset themselves overnight. The compass setting was changed also.

Sometimes the blind spot indicator lights on the vehicle's mirrors will activate indicating the presence of a vehicle in the blind spot, but no vehicle will be there. On one occasion, the vehicle's navigation system malfunctioned and gave directions to Hearne, Texas and not to Waco, Texas which was where they were driving. Finally, there have been occasions where the hands free phone system failed to recognize voice commands.

C. Respondent's Evidence and Arguments

Maria Diaz, Legal Analyst, testified for Respondent. Ms. Diaz testified that Respondent received the Lemon Law complaint from the Department in April of 2016. Ms. Diaz contacted Mr. Johnson on July 29, 2016, and arranged for an inspection and final repair attempt on the vehicle for August 9, 2016, at Bill McRae. Brent Hochgraber, Field Service Engineer, performed the final repair attempt. Mr. Hochgraber drove the vehicle for about 103 miles during the repair attempt.²² During the test drive, the vehicle's Collision Warning Fault came on.²³ Mr. Hochgraber decided that the bracket holding the vehicle's cruise control module needed replacement.²⁴ After installing the new bracket, Mr. Hochgraber drove the vehicle for about 140

²² Respondent Ex. 1, FSE Vehicle Inspection Report dated August 9, 2016.

²³ *Id.*

²⁴ *Id.*

miles without incident.²⁵ Mr. Hochgraber was unable to duplicate any problem with the vehicle's SYNC system which controls the radio, Bluetooth, and navigation systems; so no repairs were performed to the system.²⁶

During cross-examination, Ms. Diaz stated that the vehicle's cruise control and SYNC systems are separate systems. They're controlled by different modules and should not interface.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect, Complainant is entitled to have the vehicle repurchased or replaced.

The evidence establishes the existence of a defect or nonconformity in Complainant's vehicle that creates a serious safety hazard. A vehicle that stops unexpectedly while it is being driven because of a fault in the collision avoidance system creates obvious safety issues. The intermittent nature of the condition also increases the safety risk. The sudden deceleration of Complainant's vehicle is likely to surprise and confuse other drivers and can increase the risk of traffic accidents. Complainant has met her burden of proof to establish a warrantable and existing defect or condition that creates a serious safety hazard.

Complainant purchased the vehicle on July 16, 2015, and presented the vehicle to Respondent's authorized dealers for repair due to her concerns with the vehicle's collision avoidance system on: September 4, 2015; November 27, 2015; December 9, 2015; December 29, 2015; May 20, 2016; and June 6, 2016. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(2) specifies that a rebuttable presumption that a reasonable number of attempts to repair a vehicle that has a defect or nonconformity that creates a serious safety hazard have been made if "at least one repair attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner, and at least one other repair attempt was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt." The

²⁵ *Id.*

²⁶ *Id.*

evidence presented at the hearing establishes that Complainant has met the requirements of this test. As such, Complainant has established that a reasonable number of attempts to repair the vehicle were made by Respondent.

In addition, the evidence presented at the hearing indicates that Complainant also provided Respondent with a final opportunity to cure the defect. Complainant informed Respondent via letter dated June 22, 2016, of the issues with the vehicle and providing them with an opportunity to cure of which Respondent availed themselves. The vehicle was inspected and a final repair attempt was performed on August 9, 2016, by Respondent's representative who determined that the bracket holding the vehicle's cruise control module was bent and replaced it. However, the problem with the vehicle's collision avoidance system still persisted after the final repair attempt.

Although Respondent has been provided several opportunities to repair the vehicle and to ensure that it operates properly, they have not been able to do so. As such, Complainant has met her burden of proof to establish that the vehicle has a warrantable and existing defect or condition that creates a serious safety hazard.

Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case. Complainant's request for repurchase relief is hereby granted.

III. FINDINGS OF FACT

1. Lethia Johnson (Complainant) purchased a new 2015 Lincoln MKX on July 16, 2015, from Jack O'Diamonds in Tyler, Texas with mileage of 3,983 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty for the vehicle for four (4) years or 50,000 miles, whichever occurs first. In addition, Respondent provided a six (6) year or 70,000 mile warranty for the vehicle's powertrain.
3. The vehicle's mileage on the date of hearing was 18,572.
4. At the time of hearing the vehicle's bumper-to-bumper warranty was still in effect.
5. Complainant is concerned because the vehicle's collision avoidance system shuts down without advance notice and that this affects the vehicle's entertainment, navigation, cruise control, and voice command systems.

6. Complainant took the vehicle to Respondent's authorized dealers in order to address her concerns with the vehicle's collision avoidance, entertainment, navigation, cruise control, and voice command systems on the following dates:
 - a. September 4, 2015, at 5,106 miles;
 - b. November 27, 2015, at 7,108 miles;
 - c. December 9, 2015, at 7,658 miles;
 - d. December 29, 2015, at 8,132 miles;
 - e. May 20, 2016, at 13,504 miles; and
 - f. June 6, 2016, at 13,560 miles.
7. Respondent, through its authorized dealers, undertook a reasonable number of attempts to conform Complainant's vehicle to an applicable express warranty, but the nonconformity in the vehicle continues to exist.
8. Complainant provided written notice of the defect to Respondent on June 22, 2016, and Respondent was given the opportunity to perform a final repair on the vehicle on August 9, 2016.
9. On July 8, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
10. On August 18, 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.
11. The hearing in this case convened and the record closed on September 27, 2016, in Tyler, Texas before Hearings Examiner Edward Sandoval. Complainant, Lethia Johnson, was present and represented herself. Complainant's husband, Edwin Johnson, testified for Complainant. Respondent was represented telephonically by Maria Diaz, Legal Analyst.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).

2. A hearing 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's vehicle has an existing nonconformity that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief under Texas Occupations Code § 2301.604(a).
9. Based on the above Findings of Fact and Conclusions of Law, Respondent is required to repurchase Complainant's 2015 Lincoln MKX. Tex. Occ. Code § 2301.604(a)(1).

IT IS THEREFORE ORDERED that:

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by 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 this final order;

2. Respondent shall repurchase the subject vehicle in the amount of **\$37,457.56** which shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of return, 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, Complainant is responsible for providing Respondent with clear title to the vehicle;

Purchase price, including tax, title, license and registration	\$40,044.11
Delivery mileage	3,983
Mileage at first report of defective condition	5,106
Mileage on hearing date	18,572
Useful life determination	120,000

Purchase price, including tax, title, license and registration	\$40,044.11			
Mileage at first report of defective condition	5,106			
Less mileage at delivery	<u>-3,983</u>			
Unimpaired miles	1,123			
Mileage on hearing date	18,572			
Less mileage at first report of defective condition	<u>-5,106</u>			
Impaired miles	13,466			
Reasonable Allowance for Use Calculations:				
Unimpaired miles				
	<u>1,123</u>			
	120,000	X	\$40,044.11	= \$374.75
Impaired miles				
	<u>13,466</u>			
	120,000	X	\$40,044.11	X .5 = <u>\$2,246.81</u>
Total reasonable allowance for use deduction:				<u>\$2,621.55</u>
Purchase price, including tax, title, license and registration	\$40,044.11			
Less reasonable allowance for use deduction	-\$2,621.55			
Plus filing fee refund	<u>\$35.00</u>			
TOTAL REPURCHASE AMOUNT	\$37,457.56			

11. Within twenty (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, 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 Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);.
4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department;²⁷
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous. Upon Respondent's first retail sale of the reacquired vehicle, the disclosure statement shall be completed and returned to the Department.
6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.

²⁷ Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, ph. (512) 465-4076.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent shall repair the warrantable defect in the reacquired vehicle identified in this Decision.

SIGNED October 7, 2016



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