**TEXAS DEPARTMENT OF MOTOR VEHICLES**
**CASE NO. 17-0043 CAF**

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| **MARSHA MUSGROVE-JEFFERSON,** **Complainant** | § | **BEFORE THE OFFICE** |
| **v.** | § | **OF** |
| **GENERAL MOTORS LLC,** **Respondent** | § | **ADMINISTRATIVE HEARINGS** |

## DECISION AND ORDER

Marsha Musgrove-Jefferson (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in her vehicle manufactured by General Motors LLC (Respondent). A preponderance of the evidence does not show that the carpet separation issue is a warrantable defect. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement or warranty repair.

## I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing[1] 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 April 27, 2017, in Fort Worth, Texas, before Hearings Examiner Andrew Kang. The Complainant represented and testified for herself. Kevin Phillips, Business Resource Manager, represented and testified for the Respondent. Irfaun Bacchus, Field Service Engineer, Nicky Doss, District Manager Aftersales, and Lee Craig, Service Director,[2] also testified for the Respondent.

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[1] TEX. GOV'T CODE § 2001.051.

[2] Employed by Duncanville Chevrolet, L.L.C. d/b/a Freedom Chevrolet Buick GMC (Freedom Chevrolet).

## II. Discussion

### A. Applicable Law

#### 1. Repurchase/Replacement Relief

A vehicle qualifies for repurchase or replacement if the manufacturer cannot "conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts."[3] In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must continue to exist after a "reasonable number of attempts" at repair.[4] In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed written notice of the defect to the manufacturer, (2) an opportunity to repair by the manufacturer, and (3) a deadline for filing a Lemon Law complaint.

#### a. Serious Safety Hazard

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]

#### b. Substantial Impairment of Use or Value

##### i. Impairment of Use

In determining substantial impairment of use, the Department considers "whether a defect or nonconformity hampers the intended normal operation of the vehicle." For instance, "while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired."[6]

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[3] TEX. OCC. CODE § 2301.604(a).

[4] TEX. OCC. CODE § 2301.604(a).

[5] TEX. OCC. CODE § 2301.601(4).

[6] *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

### ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard "does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value." Instead, under this standard, "factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle."[7]

### c. Reasonable Number of Repair Attempts

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts 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.[8]

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

> [T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and: (A) at least one 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 (B) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.[9]

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[7] *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) ("[T]he Division's interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute's goal of mitigating manufacturers' economic advantages in warranty-related disputes.").

[8] TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

[9] TEX. OCC. CODE § 2301.605(a)(2).

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

> [A] nonconformity still exists that substantially impairs the vehicle's use or market value and: (A) the vehicle is out of service for repair for a cumulative 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; and (B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.[10]

However, a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.[11] Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.[12]

### d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner or someone on behalf of the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;[13] (2) the manufacturer was given an opportunity to cure the defect or nonconformity;[14] and (3) the

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[10] TEX. OCC. CODE § 2301.605(a)(3).

[11] *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) ("[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.'").

[12] *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include "those occasions when the fault for failing to repair the vehicle rests with the dealership." Conversely, "those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.").

[13] TEX. OCC. CODE § 2301.606(c)(1). The Lemon Law does not define the words "mailed" or "mail", so under the Code Construction Act, the common usage of the word applies. TEX. GOV'T CODE § 311.011. Dictionary.com defines "mail" as "to send by mail; place in a post office or mailbox for transmission" or "to transmit by email." *Mail. Dictionary.com Unabridged.* Random House, Inc. http://www.dictionary.com/browse/mail (accessed: April 01, 2016). Also, 43 TEX. ADMIN. CODE § 215.204 provides that "[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor." The Department's notice of the complaint to the Respondent may satisfy the requirement that someone on behalf of the owner mailed notice of the defect/nonconformity to the Respondent.

[14] TEX. OCC. CODE § 2301.606(c)(2). A repair visit to a dealer can satisfy the "opportunity to cure" requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt the final repair on the manufacturer's behalf. *See Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.[15]

### 2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a "defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle."[16] The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."[17]

### 3. Burden of Proof

The law places the burden of proof on the Complainant.[18] The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present sufficient evidence to show that each required fact is more likely than not true.[19] If any required fact appears equally likely or unlikely, then the Complainant has not met the burden of proof.

### 4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.[20] The complaint should state "sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law."[21] However, the parties may expressly or impliedly consent

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[15] TEX. OCC. CODE § 2301.606(d)(2).

[16] TEX. OCC. CODE § 2301.204.

[17] TEX. OCC. CODE § 2301.603(a).

[18] 43 TEX. ADMIN. CODE § 215.66(d).

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

[20] "In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days." TEX. GOV'T CODE §§ 2001.051; "Notice of a hearing in a contested case must include . . . a short, plain statement of the factual matters asserted." TEX. GOV'T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) ("The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty."); TEX. OCC. CODE § 2301.204(d) ("A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.").

[21] 43 TEX. ADMIN. CODE § 215.202(a)(2).

to trying issues not included in the pleadings.[22] Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.[23]

### A. Summary of Complainant's Evidence and Arguments

On November 14, 2015, the Complainant, purchased a new 2016 Buick Lacrosse from Freedom Chevrolet, a franchised dealer of the Respondent, in Dallas, Texas. The vehicle had eight miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper-to-bumper coverage of the vehicle for four years or 50,000 miles, whichever occurs first. On September 7, 2017, the Complainant mailed a written notice of defect to the Respondent. On October 12, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the vehicle had a defective frame causing the carpet by the driver's side door to come loose. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issue as follows:

| Date | Miles | Issue |
|---|---|---|
| 11/30/15 | 764 | Carpet coming loose at left front floorboard near door |
| 04/07/16 | 5,030 | Driver side carpet deformed |
| 05/25/16 | 8,426 | Driver side carpet came undone |
| 08/01/16 | 9,705 | Driver side carpet keeps coming loose |

The Complainant testified that the carpet separated within two weeks of purchasing the subject vehicle. She last noticed the carpet separation on February 6, 2017, for the passenger side. The Complainant believed the driver side carpet separation last happened on February 22, 2017. She explained that repairs only temporarily resolved the issue and the carpet would come loose again. The Complainant noted that the first repair order incorrectly stated the mileage, but the dealer subsequently corrected the mileage. She also pointed out that the dealer broke a bracket during a carpet repair. The first repair occurred on November 30, 2015. The dealership padded the carpet. The carpet came loose again and the Complainant brought the vehicle back to the dealership on April 7, 2016. The technician found that the carpet did not fit properly. Padding was added under the carpet to raise its level and help it fit. The Complainant told the dealer that this would not work for her and the carpet was replaced. The carpet came loose again in May 2016. She took

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[22] 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

[23] *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

the vehicle to the dealer again. The repair order noted that the carpet has a slight indent where the carpet and molding meet. The technician sent a picture of the indented area to the manufacturer. The carpet was replaced a second time. The carpet came loose again in July 2016, so she took the vehicle back in on August 1, 2016. The work order stated that the carpet repair was sublet to another facility. The Complainant confirmed that a loaner vehicle was provided when her vehicle was in for repairs but she stated that the loaner vehicles were not comparable. The loaner vehicles included a Malibu, Regal, Lacrosse, and Enclave, and a base model Lacrosse not like the subject vehicle.

### B. Summary of Respondent's Evidence and Arguments

On cross-examination, the Complainant affirmed that she had negative equity in the vehicle she traded in. She also acknowledged that she had not been back to the dealer for warranty concerns this year.

Mr. Phillips contended that the loaner vehicles were comparable under the Department's rules. Mr. Phillips reviewed the vehicle's repair history, noting repair visits without any carpet issues. Mr. Phillips explained that the only thing holding the carpet was gravity and the trim piece. He stated that the warranty only applied to normal operating conditions and asserted that the vehicle did not have a defect under the warranty.

Mr. Bacchus testified that when he inspected the vehicle, the body lines lined up, and the door jambs and floorboards lined. If an issue existed, you would be able to see it because the vehicle has a unibody. He pointed out that the upholstery shop (sublet) repair was based on customer satisfaction as opposed to a defect. With regard to the photo of the indented area the dealer's technician identified, Mr. Bacchus explained that the trim piece he pulled out (during the inspection at the hearing) was the same as in the photo and that the rocker panel has a hole that the trim piece's tab aligns in but the technician did not install the trim properly, leaving the gap. Mr. Bacchus confirmed that the trim piece held down the carpet and the carpet did not have any clips holding it. So the carpet will move down when pushing down.

Ms. Doss testified that she was shocked when the dealer mentioned the issue for a third or fourth time. Ms. Doss contacted the field engineer about available options to try to satisfy the

customer. She agreed that the vehicle did not have a defect. She explained that the customer did not like the puffiness of the added padding and requested removing the padding.

Mr. Craig affirmed that the carpet repair was not due to a defect but was for customer satisfaction. He testified that the carpet separation did not occur with him. He believed the carpet's condition did not substantially impair the use, value, or safety of the vehicle.

### C. Inspection

At the inspection during the hearing, the vehicle's odometer displayed 18,256 miles. About two inches of carpeting by the front driver's side door had come loose from under the trim. Similarly, two bulges of carpet also came out from under trim by the front passenger seat. After repositioning the carpet in its normal place, each of the hearing attendees entered the vehicle through the front driver's side door, sat on the driver's seat, and exited the vehicle. The carpeting remained in the normal position after all attendees had entered and exited. The carpet come loose from the trim when Mr. Bacchus stomped on the floor. The hearings examiner noticed that the carpet would separate when stepping on the carpet near the trim. Mr. Bacchus removed the front driver side trim holding the carpeting down by the door. The vehicle showed no visible or tangible signs of defects in the unibody by the front driver side door sill.

### D. Analysis

The relevant inquiry here is whether the carpet issue constitutes a warrantable defect. More specifically, whether: (1) the carpet separation arises from a manufacturing defect specific to Complainant's vehicle or (2) the carpet separation arises from a design characteristic and may normally occur with any same model vehicle under the same conditions. The evidence clearly demonstrates that the carpet may separate from the trim but the evidence also shows that the carpet separation arises from the design of the vehicle and not a manufacturing defect. Consequently the vehicle does not qualify for repurchase/replacement or warranty repair.

The Lemon Law does not apply to all problems that may occur with a vehicle, but only applies to warrantable defects.[24] However, the manufacturer's warranty does not cover the complained of condition; therefore, the Lemon Law does not provide any relief. The Lemon Law

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[24] TEX. OCC. CODE § 2301.603(a).

does not require that a manufacturer provide any particular warranty coverage nor does the Lemon Law specify any standards for vehicle characteristics. The Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. Consequently, to qualify for replacement or repurchase or for warranty repair, the vehicle must have a defect covered by warranty.[25] In this case, the vehicle's warranty specifies that: "The warranty covers repairs to correct any vehicle defect, not slight noise, vibrations, or other normal characteristics of the vehicle due to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new, remanufactured, or refurbished parts."[26] Accordingly, the warranty applies to conditions resulting from a defect in materials or workmanship. On the other hand, the warranty does not cover conditions arising from the vehicle's design. Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover design defects.[27] That is, defects in materials or workmanship (manufacturing defects) differ from characteristics of the design. The courts have explained that a "manufacturing defect is one created by a manufacturer's failure to conform to its own specifications, i.e., the product would not have been defective if it had conformed to the manufacturer's design specifications."[28] In other words, a manufacturing defect is an aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. As a result, a defective vehicle differs from a properly manufactured vehicle. Unlike manufacturing defects, issues that do not arise from manufacturing, such as characteristics of the vehicle's design (which occurs before manufacturing) are not warrantable defects. Design characteristics result from the vehicle's specified design and not from any error during manufacturing, so that the same-model vehicles

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[25] TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

[26] Complainant's Ex. 1, 2016 Buick Limited Warranty (emphasis added).

[27] *E.g., Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 ("The manufacturer's express warranty in the case sub judice provides: 'Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship . . . .' The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty."); *see GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) ("the language in the contract of May 12, 1980, expressly limited TCR's recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.").

[28] *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

made according to the manufacturer's specifications may ordinarily exhibit the same characteristics. In contrast to manufacturing defects, "[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves."[29] If the complained of condition constitutes a design characteristic or even a design defect, the Lemon Law does not apply because the warranty only covers manufacturing defects.

In the present case, as a matter of design, the carpeting was not secured with any clips or other fasteners. Instead, the door sill trim held the carpet in a loose friction fit, which kept the vertical portion of the carpet upright but did not prevent the carpet from moving. Even with the trim properly in place, the carpet would move behind the trim when pressing a hand on the carpet. In sum, the design of the vehicle allowed the carpet to move. Although the carpeting withstood ordinary entry and exit from the vehicle, the inspection at the hearing showed that the carpet will nevertheless separate with either sufficient pressure or with pressure placed in particular locations. In other words, although the carpet might not separate with every step on the carpet, the carpet can still separate on occasion, which would appear consistent with the frequency of separation reflected in the record. Moreover, the loose friction fit does not appear to be a manufacturing defect specific to the subject vehicle but a design characteristic shared by the same model vehicles. Significantly, while at Freedom Chevrolet, the Complainant observed that when rubbing across the carpet in another Buick Lacrosse, the carpet appeared to be separating from the trim the same way as in her vehicle. Although the trim's loose friction fit does not secure the carpet under all circumstances, this condition is not a warrantable defect subject to relief under the Lemon Law. In this case, the problem arises from the design of the vehicle rather than any manufacturing defect.

## III. Findings of Fact

1. On November 14, 2015, the Complainant, purchased a new 2016 Buick Lacrosse from Freedom Chevrolet, a franchised dealer of the Respondent, in Dallas, Texas. The vehicle had eight miles on the odometer at the time of purchase.

2. The vehicle's limited warranty provides bumper-to-bumper coverage of the vehicle for four years or 50,000 miles, whichever occurs first.

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[29] *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

3. In relevant part, the Complainant took the vehicle to a dealer for repair as shown below:

| Date | Miles | Issue |
|---|---|---|
| 11/30/15 | 764 | Carpet coming loose at left front floorboard near door |
| 04/07/16 | 5,030 | Driver side carpet deformed |
| 05/25/16 | 8,426 | Driver side carpet came undone |
| 08/01/16 | 9,705 | Driver side carpet keeps coming loose |

4. On September 7, 2017, the Complainant mailed a written notice of defect to the Respondent.

5. On October 12, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the vehicle had a defective frame causing the carpet by the driver's side door to come loose.

6. On January 23, 2017, 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 factual matters asserted.

7. The hearing in this case convened and the record closed on April 27, 2017, in Fort Worth, Texas, before Hearings Examiner Andrew Kang. The Complainant represented and testified for herself. Kevin Phillips, Business Resource Manager, represented and testified for the Respondent. Irfaun Bacchus, Field Service Engineer, Nicky Doss, District Manager Aftersales, and Lee Craig, Service Director, also testified for the Respondent.

8. The vehicle's odometer displayed 18,256 miles at the time of the hearing.

9. The vehicle's warranty was in effect at the time of the hearing.

10. Inspection at the hearing showed that about two inches of carpeting by the front driver's side door had come loose from under the trim. Similarly, two bulges of carpet also came out from under trim by the front passenger seat. After repositioning the carpet in its normal place, each of the hearing attendees entered the vehicle through the front driver's side door, sat on the driver's seat, and exited the vehicle. The carpeting remained in the normal position after all attendees had entered and exited. The carpet come loose from the trim

when Mr. Bacchus stomped on the floor. The hearings examiner noticed that the carpet would separate when stepping on the carpet near the trim. Mr. Bacchus removed the front driver side trim holding the carpeting down by the door. The vehicle showed no visible or tangible signs of defects in the unibody by the front driver side door opening.

11. By design, the door sill trim holds the carpeting in place with a loose friction fit.

12. The loose friction fit allows the carpeting to move when pressed down.

13. Although the loose friction fit generally prevents the carpet from completely separating from the trim, sufficient pressure or pressure in particular places will still cause the carpet to come apart from the trim.

14. Another Buick Lacrosse exhibited the same carpet separation as the subject vehicle.

## IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613; TEX. OCC. CODE § 2301.204.

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 filed a sufficient complaint with the Department. 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 § 206.66(d).

6. The Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204, 2301.603(a) and 2301.604(a).

7. The Complainant's vehicle does not qualify for warranty repair. TEX. OCC. CODE §§ 2301.204 and 2301.603.

8. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE §§ 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**.

**SIGNED June 21, 2017**

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