

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0174487 CAF**

**LINDSEY M. CLARK-FASS and
CHRISTOPHER P. FASS,
Complainants**

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BEFORE THE OFFICE

OF

v.

**GENERAL MOTORS LLC,
Respondents**

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Lindsey M. Clark-Fass and Christopher P. Fass (Complainants) filed a petition seeking relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged warrantable defects in their 2016 Cadillac Escalade. Complainants seek repurchase of the vehicle due to the vehicle lunging and accelerating abnormally. General Motors LLC (Respondent) argued that the vehicle has been repaired and that it does not currently have a defect or nonconformity. The hearings examiner concludes that the vehicle has an existing warrantable defect and Complainants are eligible for repurchase relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing on the merits convened and the record closed on September 22, 2017, in Ft. Worth, Texas before Hearings Examiner Edward Sandoval. Complainants were represented by Rebecca Thomas, attorney, and Rebecca Schanfish, attorney, at the hearing. Complainants, Lindsey M. Clark-Fass and Christopher P. Fass, were present and provided testimony. Also testifying for Complainants were Patti Owen, Ms. Clark-Fass' co-worker, and Jeremy Perkins, owner of Ennis Transmission and Auto Repair. Respondent was represented by Kevin Phillips, Business Resource Manager. Irfaun Bacchus, Field Service Engineer, and Dave Williamson, District Manager for After-Sales, also appeared to offer testimony for Respondent.

II. DISCUSSION

A. Applicable Law

Section 2301.604(a) of the Texas Occupations Code gives a motor vehicle owner the option of seeking the manufacturer's replacement or repurchase of the vehicle if: (1) the manufacturer has been unable to conform the vehicle to an applicable express warranty (2) by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle (3) after a reasonable number of attempts. "Serious safety hazard" means 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, or creates a substantial risk of fire or explosion.¹ The vehicle owner is required to mail written notice of the alleged defect to the manufacturer and provide the manufacturer with an opportunity to cure the nonconformity.²

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.³

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.⁴

B. Complainant's Evidence

Complainants purchased a new 2016 Cadillac Escalade (the vehicle) from Sewell Cadillac (Sewell) in Dallas, Texas on May 30, 2016, with mileage of 167 at the time of delivery.^{5,6} Respondent provided a bumper-to-bumper warranty for the vehicle which provided coverage for four (4) years or 50,000 miles, whichever comes first. In addition, Respondent provided a powertrain warranty for the vehicle good for six (6) years or 70,000 miles. On the date of hearing the vehicle's mileage was 18,771. Both warranties were still in effect at the time of hearing.

1. Lindsey M. Clark-Fass' Testimony

Lindsey M. Clark-Fass, co-Complainant, is the primary driver of the vehicle. She testified that her complaint with the vehicle is that it lurches when coming to a stop or accelerating. She feels that this is a safety issue as she feels that she could hit another vehicle or a pedestrian when the vehicle lurches. She does not feel safe driving the vehicle.

¹ Tex. Occ. Code § 2301.601(4).

² Tex. Occ. Code § 2301.606(c).

³ Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

⁴ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁵ Complainant Ex. 1, Retail Purchase Agreement dated May 30, 2016.

⁶ Complainant Ex. 2, Odometer Disclosure Statement dated May 30, 2016.

Ms. Clark-Fass testified that she first noticed an issue with the vehicle's transmission about a week after purchase. She noticed that the vehicle seemed to want to keep accelerating when her foot was on the brake. Also, she felt the vehicle lunge when coming to a stop or at a stop sign. As a result, she scheduled an appointment with Sewell to have the issue addressed.

Ms. Clark-Fass took the vehicle to Sewell for repair on June 30, 2016. She raised several issues concerning the vehicle at the time, including the fact that she was feeling a "jerk" when coming to a stop or accelerating in the vehicle.⁷ Sewell's service technician checked the vehicle's transmission control module (TCM) and did not find any trouble codes.⁸ The technician verified that the TCM calibrations were updated and test drove the vehicle.⁹ The technician determined that the vehicle was operating as designed.¹⁰ The vehicle's mileage on this occasion was 1,030.¹¹ The vehicle was in the dealer's possession for nine (9) days.¹² Sewell provided Complainants with a loaner vehicle while their vehicle was being repaired.

Ms. Clark-Fass stated that soon after receiving the vehicle back from Sewell she began experiencing the same issues regarding the vehicle lunging. She did not take the vehicle back for service immediately because she thought that the vehicle would begin adapting and the problem would stop. Ms. Clark-Fass testified that she became very concerned when she was driving the vehicle in a parking lot and the vehicle lunged towards another vehicle even though she was stepping on the brake. Ms. Clark-Fass stated that she came close to hitting the other vehicle. As a result, she took her vehicle to Sewell for repair on October 3, 2016. Sewell's service technician did not find any trouble codes and determined that the TCM was up to date.¹³ The technician test drove the vehicle to have the transmission relearn the clutch values in order to address Complainants' concerns.¹⁴ The vehicle's mileage when it was taken to the dealership on this occasion was 5,727.¹⁵ The vehicle was in Sewell's possession until October 10, 2016, on this occasion.¹⁶ Complainants were provided a loaner vehicle while their vehicle was being repaired.

Ms. Clark-Fass testified that the vehicle continued to jerk or lunge when coming to a stop or accelerating. On November 2, 2016, she took the vehicle to Sewell for repair. Sewell's service technician did not find any trouble codes on the TCM.¹⁷ He then test drove the vehicle and determined that the transmission was operating as designed.¹⁸ The vehicle's mileage when it was delivered to the dealer on this occasion was

⁷ Complainant Ex. 3, Repair Order dated June 30, 2016.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Complainant Ex. 4, Repair Order dated October 3, 2016.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Complainant Ex. 5, Repair Order dated November 2, 2016.

¹⁸ *Id.*

6,653.¹⁹ The vehicle was in the dealer's possession for one (1) day.²⁰ Complainants received a loaner vehicle while their vehicle was being repaired.

Ms. Clark-Fass testified that the vehicle continued to lunge on occasion when she was coming to a stop or accelerating. She did not feel safe in the vehicle. As a result, Ms. Clark-Fass took the vehicle to Sewell on November 15, 2016, for repair for the issue. She informed Sewell's service advisor that the engine's RPM's flared up whenever the vehicle lunged and that it seemed to occur almost every time after the car had been sitting for awhile and cooled down.²¹ Sewell's service technician duplicated a delayed 1-2 shift during a test drive of the vehicle.²² The technician contacted Respondent's technical assistance center (TAC) for help in repairing the vehicle.²³ The technician was instructed to perform a drive procedure to have the transmission relearn the C4 clutch values.²⁴ The technician performed the relearn and then determined that the vehicle was operating as designed.²⁵ The vehicle's mileage when it was delivered to the dealer on this occasion was 7,954.²⁶ The vehicle was in the dealer's possession until November 30, 2016, on this occasion. Complainants were provided with a loaner vehicle while their vehicle was being repaired.

Complainants were still experiencing issues with the vehicle lunging at a stop and during acceleration and felt that the vehicle had not been fully repaired. On January 4, 2017, Complainants' attorney wrote a letter to Respondent advising them of Complainants' dissatisfaction with the vehicle.²⁷ On May 1, 2017, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).²⁸

Ms. Clark-Fass testified that she was contacted by Respondent's representative and was asked to allow a final repair attempt on the vehicle. Complainants agreed to the final repair attempt which was performed on May 8, 2017, at Sewell. At the time that the vehicle was taken to Sewell for the final repair attempt the check engine light (CEL) had illuminated.²⁹ This was addressed at the time of the repair. Sewell's service technician replaced the vehicle's cylinder No. 7 injector to address the issue raised by the illumination of the CLE.³⁰ The technician duplicated a concern regarding the transmission's harsh 1-2 shift which he felt would cause a jerk or a lurch when shifting gears.³¹ The technician reprogrammed the vehicle's engine

¹⁹ *Id.*

²⁰ *Id.*

²¹ Complainant Ex. 6, Repair Order dated November 15, 2016.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Complainant Ex. 7, Letter to Sewell Automotive Companies, Inc. and Cadillac Customer Assistance Center dated January 4, 2017.

²⁸ Complainant Ex. 8, Lemon Law Complaint dated May 1, 2017.

²⁹ Complainant Ex. 9, Repair Order dated May 8, 2017.

³⁰ *Id.*

³¹ *Id.*

control module (ECM) and the TCM.³² In addition, the technician performed a “fast service learn” on the transmission.³³ The vehicle’s mileage on this occasion was 13,600.³⁴ The vehicle was in Sewell’s possession until May 15, 2017.³⁵ Complainants were provided with a loaner vehicle while their vehicle was being repaired.

Ms. Clark-Fass feels that the vehicle was not repaired after the final repair attempt performed by Respondent. She stated that the vehicle still jerks or luges at least once a day when she’s driving it. This sometimes occurs when she has her foot on the brake pedal. Ms. Clark-Fass is concerned with the safety of anyone who may be a passenger in the vehicle, in particular her children.

During cross-examination, Ms. Clark-Fass stated that the vehicle has not sustained any damage during their ownership of it, except a small patch for a windshield ding. There is no body damage nor any damage to the interior. The vehicle has its original tires, although one has been patched. Complainants have never seen a transmission warning message on the vehicle. Complainants’ concern with the lunging or jerking issue is more noticeable after a cold start of the vehicle.

Ms. Clark-Fass stated that she wanted to recover attorney fees from Respondent. During the hearing, the parties were advised that attorney fees would not be recoverable in this case. No testimony was taken on the issue.

2. Jeremy Perkins’ Testimony

Jeremy Perkins, owner of Ennis Transmission and Auto Repair, testified telephonically for Complainants. He has worked in the automotive industry for 15 years. He has owned his own transmission repair business for the last three (3) years.

Mr. Perkins testified that he test drove Complainants’ vehicle in September of 2017. Mr. Perkins stated that he feels that the vehicle’s transmission shifts erratically and that the vehicle’s drive train feels as if it’s disengaged. Mr. Perkins took the vehicle home overnight and on the way to his shop the following morning, the vehicle went out of gear and died. He was left stranded and Complainants had to have the vehicle towed to their home.

During the hearing there appeared to be trouble with Mr. Perkins’ phone. Mr. Perkins’ phone call was disconnected after providing direct testimony for Complainants. Neither the hearings examiner nor Respondent’s representative was able to direct questions to him.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

3. Patti Owen's Testimony

Patti Owen, Ms. Clark-Fass' co-worker, testified in the hearing. Ms. Owen stated that she had observed the vehicle behave abnormally on a couple of occasions. She was a passenger in the vehicle in February of 2017 during an office outing. She felt the vehicle "malfunction" and felt that it had jumped forward while at a stop while riding in the vehicle with Ms. Clark-Fass driving.

Ms. Owen further testified that on a second occasion she accompanied Ms. Clark-Fass to a continuing education course. Ms. Clark-Fass was again driving the vehicle and the vehicle again jumped while at a stop. Ms. Owen felt that the Complainants' vehicle on this occasion could have hit the vehicle in front of them. She was unnerved by the incident and did not feel safe in the vehicle.

4. Christopher P. Fass' Testimony

Christopher P. Fass, co-Complainant, also testified in the hearing. He stated that he drives the vehicle about 10 to 15 per cent of the time and usually on weekends. Mr. Fass stated that he could recall two (2) specific incidents when he was driving the vehicle and it seemed to lunge or jerk forward. However, Mr. Fass stated that it happens almost every time he or Ms. Clark-Fass drive the vehicle.

In June of 2016, Mr. Fass was driving the vehicle in Terrell, Texas. He was at a stop light with his foot on the brake. While waiting for the light to change, Mr. Fass felt the vehicle lunge forward. He stated that the vehicle moved about a foot during this incident. He felt that the rear end of the vehicle actually went up during the incident.

In September of 2016, Mr. Fass was driving the vehicle and was in the process of leaving a business's parking lot. While driving under 10 miles per hour, the vehicle lunged very hard while the transmission was shifting. The vehicle lunging surprised him and he had to step on the brake to keep from going too fast.

Mr. Fass stated that the vehicle lunges on drives of different lengths. He does not feel that the vehicle has been repaired. He doesn't feel comfortable having Ms. Clark-Fass and their children in the vehicle. He does not feel that the vehicle is safe to drive.

C. Respondent's Evidence

1. Irfaun Bacchus' Testimony

Irfaun Bacchus, Field Services Engineer, testified in the hearing for Respondent. He has been in the automotive industry for fifteen (15) years. He is an Automotive Service Excellence (ASE) Master Certified Technician.

Mr. Bacchus testified that he performed a final repair attempt on Complainants' vehicle on May 12, 2017, at Sewell. By the time that Mr. Bacchus arrived at Sewell for the repair, Sewell's technician had updated the ECM and TCM calibrations on the vehicle.³⁶ In addition, the technician had test driven the vehicle approximately 30 miles and had performed the requirements of Technical Service Bulletin 16-NA-411 which dealt with the issues of hard transmission shifts during both upshifting and downshifting.³⁷ Mr. Bacchus verified that the calibrations were installed properly and test drove the vehicle.³⁸ He verified that the clutches were all learned and that the shifting was acceptable.³⁹ Mr. Bacchus feels that the vehicle is operating as designed.

Mr. Bacchus testified that the engine in the vehicle has an eight (8) speed transmission in order to provide more fuel economy. This transmission will shift more often than an ordinary transmission and sometimes the shifts may seem harsh. Also, sometimes the transmission can skip gears which can also cause a hard shift. Mr. Bacchus does not feel that this is an issue with Complainants' vehicle. He stated that the shifting can be annoying, but it is a normal characteristic of the vehicle and not a defect. Mr. Bacchus stated that he would feel comfortable driving the vehicle on a regular basis.

2. Dave Williamson's Testimony

Dave Williamson, District Manager for After-Sales for Cadillac, testified for Respondent in the hearing. Mr. Williamson has been in the automotive industry for 35 years. He has been in his current position for the last seven (7) years.

Mr. Williamson testified that he test drove the vehicle the week of the hearing. He did not observe any warning lights illuminate in the vehicle when he was driving it. Mr. Williamson feels that the vehicle does not have a defect and is operating as designed.

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.

³⁶ Respondent Ex. 1, Vehicle Legal Inspection dated May 12, 2017.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

1. Lunging and Jerking Issue

Ms. Clark-Fass credibly testified that the vehicle has lunged or jerked abnormally and unexpectedly on several occasions while she was driving it. The evidence further demonstrates that the defect in Complainant's vehicle creates a serious safety hazard. A vehicle that unexpectedly lunges or jerks substantially impedes the owner's ability to control or operate the vehicle for ordinary use or intended purposes. The intermittent nature of the condition also increases the safety risk. Ms. Clark-Fass testified that she has almost hit other vehicles as a result of her vehicle lunging unexpectedly. Complainants have met their burden of proof to establish a warrantable and existing defect or condition that creates a serious safety hazard.

Complainants have taken the vehicle to an authorized dealer of Respondent on four (4) occasions and reported the problem in order to have it repaired. Their testimony was consistent with, and documented by, all of the repair orders submitted as evidence. Based on the evidence as a whole, the hearings examiner concludes that a reasonable number of attempts have been undertaken to conform Complainants' vehicle to the applicable express warranty.

The record also establishes that Complainant provided written notice of the defect to Respondent, and Respondent was given the opportunity to inspect the vehicle. On May 8, 2017, Complainants' vehicle was inspected by Respondent's field service engineer who performed a final repair attempt on the vehicle.

When a complainant establishes that relief under the Lemon Law is appropriate, the manufacturer may be required to repurchase the motor vehicle, or replace the motor vehicle with a comparable motor vehicle. Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case.

2. Attorney Fees Issue

Complainants' also requested that the hearings examiner order that their attorney fees be reimbursed by Respondent. Complainants were the only party represented by an attorney in the hearing. Respondent did not retain an attorney to represent them in the Lemon Law complaint process. Attorney's fees are considered an incidental expense and are addressed in 43 Texas Administrative Code § 215.209. This section specifies that attorney fees are only considered as recoverable incidental expenses if Complainants retained counsel after being notified that Respondent had done so. In the present case, Respondent did not retain an attorney to address the complaint, so the hearings examiner will not order Respondent to reimburse Complainants' for the attorney fees.

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.

Complainants' are not entitled to have Respondent reimburse them for attorney fees.

III. FINDINGS OF FACT

1. Lindsey M. Clark-Fass and Christopher P. Fass (Complainants) purchased a new 2016 Cadillac Escalade on May 30, 2016, from Sewell Cadillac (Sewell) in Dallas, Texas with mileage of 167 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a bumper-to-bumper warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever occurs first, and a powertrain warranty which provides coverage for six (6) years or 70,000 miles.
3. At the time of hearing, the vehicle's mileage was 18,771.
4. At the time of hearing the warranties for the vehicle were still in effect.
5. Complainants' vehicle has a defect that causes it to intermittently lunge or jerk while at a stop or during acceleration or deceleration.
6. Complainants took the vehicle to Respondent's authorized dealer in order to address their concerns with the vehicle's transmission, on the following dates:
 - a. June 30, 2016, at 1,030 miles;
 - b. October 3, 2016, at 5,727 miles;
 - c. November 2, 2016, at 6,653 miles; and
 - d. November 15, 2016, at 7,954 miles.
7. On June 30, 2016, Sewell's service technician checked the vehicle's transmission control module (TCM) and did not find any trouble codes. He determined that the calibrations for the vehicle had the latest updates and that the vehicle's transmission was operating as designed.
8. On October 3, 2016, Sewell's service technician found no trouble codes and determined that the TCM was up to date. He test drove the vehicle in order to relearn the transmission's clutch values.
9. On November 2, 2016, Sewell's service technician did not find any trouble codes in the TCM, test drove the vehicle, and determined that the transmission was operating as designed.

10. On November 15, 2016, Sewell's service technician was able to duplicate a delayed 1-2 shift from the transmission and performed the procedure to have the transmission relearn the C4 clutch values. He then determined that the transmission was operating as designed.
11. Respondent, through its authorized dealers, undertook a reasonable number of attempts to conform Complainants' truck to an applicable express warranty, but the nonconformity in the vehicle continues to exist.
12. Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on May 1, 2017.
13. Complainants provided written notice of the defect to Respondent on January 4, 2017.
14. Respondent was given the opportunity to perform a final repair attempt on the vehicle on May 12, 2017.
15. The final repair attempt was performed by Irfaun Bacchus, Respondent's field service engineer, at Sewell.
16. During the final repair attempt, Mr. Bacchus was informed that the dealer's technicians had updated the vehicle's engine control module (ECM) and TCM and had performed the steps described in Technical Service Bulletin (TSB) 16-NA-411 which outlined steps to take when a customer is complaining about harsh transmission shifts.
17. Mr. Bacchus test drove the vehicle during the final repair attempt, found that the transmission downshifts were smooth, and determined that the vehicle was operating as designed.
18. On June 20, 2017, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainants 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.
19. The hearing on the merits convened and the record closed on September 22, 2017, in Ft. Worth, Texas before Hearings Examiner Edward Sandoval. Complainants were represented by Rebecca Thomas, attorney, and Rebecca Schanfish, attorney, at the hearing. Complainants, Lindsey M. Clark-Fass and Christopher P. Fass, were present and provided testimony. Also testifying for Complainants were Patti Owen, Ms. Clark-Fass' co-worker, and Jeremy Perkins, owner of Ennis Transmission and Auto Repair. Respondent was represented by Kevin Phillips, Business Resource Manager. Irfaun Bacchus, Field Service Engineer, and Dave Williamson, District Manager for After-Sales, also appeared to offer testimony for Respondents.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.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. Complainants 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 and 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainants bear the burden of proof in this matter.
6. Complainants' vehicle has an existing defect or condition that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
7. After a reasonable number of attempts, Respondent, General Motors LLC, has been unable to repair the nonconformity in Complainants' 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, Complainants are entitled to relief under Texas Occupations Code § 2301.604(a).
9. Based on the above Findings of Fact and Conclusions of Law, Respondent, General Motors LLC, is required to repurchase Complainant's 2016 Cadillac Escalade at the price of \$74,030.87. Tex. Occ. Code § 2301.604(a)(2); 43 Tex. Admin. Code § 215.208(b)(1) and (2).
10. Complainants are not entitled to have Respondent reimburse them for attorney fees. 43 Tex. Admin. Code § 215.209(a)(6).

IT IS THEREFORE ORDERED that:

1. Respondent shall accept the return of the vehicle from Complainants. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainants. 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. Respondent shall repurchase the subject vehicle in the amount of **\$73,995.87**. In addition, Complainants are entitled to reimbursement of the lemon law filing fee in the amount of **\$35.00**. The total refund of **\$74,030.87** shall be paid to Complainants 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 Complainants. At the time of the 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, Complainants are responsible for providing Respondent with clear title to the vehicle;

Purchase price, including tax, title, license and registration	\$80,527.67
Delivery mileage	167
Mileage at first report of defective condition	1,030
Mileage on hearing date	18,771
Useful life determination	120,000

Purchase price, including tax, title, license and registration					\$80,527.67
Mileage at first report of defective condition					1,030
Less mileage at delivery					<u>-167</u>
Unimpaired miles					863
Mileage on hearing date					18,771
Less mileage at first report of defective condition					<u>-1,030</u>
Impaired miles					17,741
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
	<u>863</u>				
	120,000	X	\$80,527.67	=	\$579.13
Impaired miles					
	<u>17,741</u>				
	120,000	X	\$80,527.67	X .5	= <u>\$5,952.67</u>
Total reasonable allowance for use deduction:					\$6,531.80
Purchase price, including tax, title, license and registration					\$80,527.67
Less reasonable allowance for use deduction					-\$6,531.80
Plus filing fee refund					<u>\$35.00</u>
TOTAL REPURCHASE AMOUNT					\$74,030.87

3. 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 Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainants 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 vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. 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. 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.

ORDER

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

SIGNED October 13, 2017.



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