

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0178591 CAF**

CORY DOWELL,
Complainant

v.

FORD MOTOR COMPANY,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Cory Dowell (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2017 Lincoln Navigator. Complainant asserts that the vehicle is defective because when driving the vehicle he and his family intermittently hear wind noise and feel cabin pressure which causes ear pain and discomfort. In addition, he asserts that condensation has been developing on the interior of the vehicle's windows. Ford Motor Company (Respondent) argued that the vehicle does not have any defects and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainant is not eligible for repurchase or replacement relief. However, Complainant is are entitled to repair relief for the condensation issue.

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 was closed on December 13, 2017, in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainant, Cory Dowell, represented himself at the hearing. Respondent was represented by Dionne Grace, Consumer Affairs Legal Analyst. Also testifying for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant.

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 manufacturer has been given a reasonable number of attempts to

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

In addition to the five 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.⁶

B. Complainant's Evidence and Arguments

Complainant purchased a new 2017 Lincoln Navigator on January 16, 2017, from Park Cities Ford (Park Cities) in Dallas, Texas.⁷ The vehicle's mileage at the time of delivery was 14. Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever comes first.⁸ Respondent has also provided a powertrain warranty for the vehicle which provides coverage for the vehicle's powertrain for five (5) years or 70,000 miles.⁹ On the date of hearing the vehicle's mileage was 11,114. At the time of hearing both warranties were still in effect.

Complainant testified that his wife is the primary driver of the vehicle and that he drives it only about 5% of the time. Complainant stated that his wife began to notice a problem with the vehicle's passenger cabin air pressure a few weeks after purchasing the vehicle. She began to experience ear pain and discomfort as a result of the cabin pressure issue. Complainant testified that the problem is intermittent and seems to occur about 10% of the time. He said that when he experiences the problem, his ears vibrate like a window is partially open, but all of the vehicle's windows are shut. He also stated that all of the passengers feel the problem at the same time. The

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

⁷ Complainant Ex. 1, Texas Motor Vehicle Retail Installment Sales Contract dated January 16, 2017.

⁸ Complainant Ex. 11, Lincoln Navigator Monroney Sticker.

⁹ *Id.*

problem occurs more often when it's windy outside or when a storm is imminent. Complainant stated that whenever he feels the problem with the cabin air pressure, he makes sure that all of the vehicle's windows are closed tight and he closes the vents on the vehicle's air condition system. However, the problem still occurs. Complainant testified that the problem can be painful and can last for several minutes at a time.

Complainant testified that in addition to the problem with the cabin pressure, he has experienced excessive wind noise while driving the vehicle. He stated that he has felt wind coming through the vehicle's front doors near the front corners.

On March 14, 2017, Complainant took the vehicle to Grapevine Ford (Grapevine) in Grapevine, Texas to address his concern regarding the vehicle's cabin pressure. Grapevine's service technician inspected the vehicle and could not duplicate the concern.¹⁰ Complainant testified that he was told that the problem with the vehicle could be caused by a faulty door or window seal or from wind coming through the doors somehow. The vehicle's mileage when Complainant took it to Grapevine was 1,165.¹¹ The vehicle was in Grapevine's possession for eleven (11) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that he took the vehicle to Park Cities for repair for the issue on April 5, 2017. Park Cities' service technician took a test drive in the vehicle and performed a stethoscope test to detect any air leaks.¹² The technician was unable to duplicate the concern and did not hear any abnormal wind noises during the test drive.¹³ The vehicle was in Park Cities' possession for one (1) day.¹⁴ Complainant was provided with a loaner vehicle while his vehicle was being repaired. The mileage on the vehicle on this occasion was 1,524.¹⁵

Complainant continued to experience the problems and took the vehicle to Park Cities for repair on May 10, 2017. The service technician test drove the vehicle along with Complainant and did not experience the problem, although Complainant stated that he felt pain in his ear during the drive.¹⁶ No work was performed, as the technician felt that the problem had not been duplicated.¹⁷ The vehicle's mileage on this occasion was 2,525. The vehicle was in Park Cities' possession for six (6) days. Complainant was provided a loaner vehicle while his vehicle was being repaired.

¹⁰ Complainant Ex. 3, Repair Order dated March 14, 2017.

¹¹ *Id.*

¹² Complainant Ex. 4, Repair Order dated April 5, 2017.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Complainant Ex. 5, Repair Order dated May 10, 2017.

¹⁷ *Id.*

Complainant took the vehicle Park Cities for repair again on June 14, 2017. Complainant was told by the service advisor that the technician had plugged in a rear exhaust valve in the vehicle in order to seal the vehicle's cabin. However, Complainant did not feel that this resolved the issue. The vehicle's mileage on this occasion was 3,829.¹⁸ The vehicle was in Park Cities' possession for three (3) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on August 3, 2017.¹⁹ In addition, Complainant mailed a complaint letter to Respondent on September 27, 2017, outlining his dissatisfaction with the vehicle.²⁰

After receiving Complainant's letter, Respondent's representative contacted Complainant and asked for an opportunity to perform another repair on the vehicle. Complainant agreed to the request. The repair was performed on October 20, 2017, at Park Cities by Respondent's Field Service Engineer (FSE), David Green. During this repair, Complainant indicated to Mr. Green that he had experienced excessive condensation on the vehicle's windows during a long trip which could not be cleared up. This concern was in addition to the concerns regarding the cabin pressure and wind noise. Respondent's FSE test drove the vehicle along with Park Cities' shop foreman and was unable to duplicate any of the concerns.²¹ The vehicle's mileage on this occasion was 9,765.²² The vehicle was in Park Cities' possession for the day.

On November 2, 2017, the Department's case advisor, Evan Whitis, also inspected the vehicle. The inspection was performed at Park Cities. Mr. Whitis inspected the vehicle for damage and test drove it 34 miles.²³ Mr. Whitis could not reproduce the problem and could not recommend any repair for the vehicle.²⁴ The vehicle's mileage at the time was 10,164.²⁵

Complainant testified that part of the problem is that the issues are intermittent. The cabin pressure concern which causes the ear pain is frustrating. He feels that not enough has been done by the dealers to resolve the concerns. He pointed out that the dealers have not replaced any of the vehicle's seals nor have any of the doors been removed and inspected. He offered to leave the

¹⁸ Complainant Ex. 6, Repair Order dated June 14, 2017.

¹⁹ Complainant Ex. 7, Lemon Law Complaint dated August 3, 2017.

²⁰ Complainant Ex. 8, Letter to Ford Motor Company dated September 27, 2017.

²¹ Complainant Ex. 9, Repair Order dated October 20, 2017.

²² *Id.*

²³ Complainant Ex. 10, Texas Department of Motor Vehicles, Enforcement Division – Vehicle Inspection Report dated November 2, 2017.

²⁴ *Id.*

²⁵ *Id.*

vehicle with Park Cities for an extended period of time in order for the service technicians to test drive the vehicle on different days, but the offer was declined.

Complainant feels that the condensation issue that he raised during the October final repair attempt is a major concern. He testified that condensation occurs frequently. He also feels that this is related to the issue of the vehicle's cabin air pressure which he believes is caused by a faulty door and window seals. He stated that the condensation issue was particularly bad during a trip he and his family took to Florida during the summer. There was significant condensation on the windows for five (5) to six (6) hours despite his efforts to clear it up.

Complainant testified that the last time prior to the hearing that he experienced the cabin pressure issue was the weekend of December 9, 2017. He stated that he was driving northwest towards Southlake, Texas when he experienced about ten (10) seconds of ear pain. The vehicle's windows were closed, he was driving about 40 mph, and there was no precipitation. Complainant stated that it was a little windy and that it might have been a cross wind that caused the concern.

During the test drive taken on the date of hearing, Complainant stated he felt some minor ear pain. He was driving about 45-50 mph at the time and there was a cross wind. He said that the pain was constant and lasted about five (5) to ten (10) minutes. Once he turned off the vehicle's air conditioner, he did not feel the ear pain. Complainant also stated that he was able to hear excessive wind noise during the test drive. When he turned the air conditioner back on, the ear pain did not return.

C. Respondent's Evidence and Arguments

1. Dionne Grace's Testimony

Dionne Grace, Consumer Affairs Legal Analyst, testified for Respondent. She stated that Respondent had performed a final repair attempt on the vehicle on October 20, 2017. Ms. Grace pointed out that Respondent's FSE was not able to duplicate Complainant's concerns during a test drive.²⁶ The FSE indicated that he did not experience any excessive cabin air pressure.²⁷ No repairs were performed at the time, since the concern could not be duplicated.

²⁶ Respondent Ex. 2, FSE Vehicle Inspection Report dated October 20, 2017.

²⁷ *Id.*

2. Sayyed Asad Bashir's Testimony

Sayyed Asad Bashir, Automotive Technical Consultant, testified telephonically for Respondent and has never seen Complainant's vehicle. He has worked in the automotive industry for 18 years. He began working for Respondent in 2007. He's been in his current position since 2009. Mr. Bashir is an Automotive Service Excellence (ASE) Master Certified Technician.

Mr. Bashir testified that several things can contribute to cause a problem with a vehicle's passenger cabin air pressure. No vehicle is airtight and air will leak into a passenger cabin, particularly during high cross-wind events. In addition, the vehicle's air conditioning system can affect a vehicle's cabin air pressure. If the recirculate option is not being utilized on the air conditioner, outside air will be drawn into the passenger cabin. This also occurs when using the vehicle's window defroster. These can both affect the cabin air pressure.

Mr. Bashir addressed the issue regarding the condensation on the vehicle's windows. He stated that the number of people inside a vehicle and the air conditioner's usage can cause inside condensation. If the air conditioner's outside air mode is being used and there are several passengers in the vehicle, then the air conditioner can be overloaded and cause condensation. However, it's not common for moisture to build up inside a vehicle.

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 the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or 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 or condition, Complainant is entitled to have the vehicle repurchased or replaced.

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Complainant feels that the vehicle has an issue with wind noise, cabin air pressure, and internal window condensation. The evidence presented at the hearing reveals that the problems with the vehicle's passenger cabin air pressure and wind noise could not be duplicated by any of the service technicians who inspected the vehicle, the dealer's shop foreman, Respondent's FSE, or

the Department's case advisor. In addition, the hearings examiner did not experience any undue cabin air pressure during the test drive taken during the hearing, although Complainant indicated that he was experiencing it at the time. This could be a subjective issue and Complainant may have developed a sensitivity to the concern. As such, the hearings examiner must hold that Complainant has not met the burden of proof to establish that there is a defect with the vehicle that is causing unusual passenger cabin air pressure and excessive wind noise. The hearings examiner finds that there is no defect with the vehicle. Therefore, repurchase or replacement relief for Complainant is not warranted.

However, the hearings examiner has some concern regarding the condensation issue. The evidence did indicate that Complainant did experience excessive condensation on the inside windows of the vehicle during his family's trip to Florida. The evidence was unclear though about whether the vehicle's air conditioner was in recirculation mode at the time. If it wasn't in recirculation mode, this could have been a contributing factor for the condensation issue. However, Complainant testified that he was sure that the recirculation mode was on. In any event, Complainant only raised the condensation issue once and Respondent and its authorized representatives have had only one (1) repair attempt for that particular issue. Therefore, since Respondent has not been provided adequate opportunity to repair the issue, it cannot be grounds for repurchase or replacement of the vehicle either.

Complainants' request for repurchase or replacement relief is denied. However, Respondent will be ordered to inspect the vehicle once again to determine the cause of the excessive condensation issue and perform any necessary repairs for the issue. Such repairs must be completed within 20 days of this order becoming final.

III. FINDINGS OF FACT

1. Cory Dowell (Complainant) purchased a new 2017 Lincoln Navigator on January 16, 2017, from Park Cities Ford (Park Cities) in Dallas, Texas with mileage of 14 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (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. The vehicle's mileage on the date of hearing was 11,114.

4. At the time of hearing the vehicle's warranties were still in effect.
5. Complainant feels that there is a problem with the vehicle's cabin air pressure which is causing the driver and passengers to intermittently experience ear pain and which causes abnormal wind noise.
6. Complainant took the vehicle for repair to Respondent's authorized dealers in order to address his concerns regarding the vehicle's cabin pressure and wind noise on the following dates:
 - a. March 14, 2017, at 1,165 miles;
 - b. April 5, 2017, at 1,524 miles;
 - c. May 10, 2017, at 2,525 miles; and
 - d. June 14, 2017, at 3,829 miles.
7. The dealers' service technicians were never able to duplicate Complainant's concerns regarding the vehicle.
8. On August 3, 2017, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
9. On October 20, 2017, Respondent's Field Service Engineer (FSE) performed a final repair attempt on the vehicle.
10. The FSE was unable to duplicate Complainant's concerns with the air pressure inside the passenger cabin, the wind noise, or the newly raised issue of condensation developing on the inside of the vehicle's windows and windshield.
11. The Department's case advisor, Evan Whitis, inspected Complainant's vehicle on November 2, 2017, and was unable to duplicate any of Complainant's concerns with the vehicle.
12. On October 13, 2017, 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.

13. The hearing in this case convened and the record was closed on December 13, 2017, in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainant, Cory Dowell, represented himself at the hearing. Respondent was represented by Dionne Grace, Consumer Affairs Legal Analyst. Also testifying for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. 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 failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
9. Complainant is entitled to repair relief under the terms of Respondent's warranty. Tex. Occ. Code §2301.204.

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 **DISMISSED**. However, Complainant is entitled to repair relief. Therefore, it is further **ORDERED** that within twenty (20) days of the issuance of this order Respondent shall repair the vehicle so that it conforms to Respondent's warranty.

SIGNED January 10, 2018.



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