

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0190267 CAF**

**THOMAS HOWELL,
Complainant**

v.

**HEARTLAND RECREATIONAL
VEHICLES, LLC,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Thomas Howell (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 his recreational vehicle (RV) manufactured by Heartland Recreational Vehicles, LLC (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that substantially impairs the vehicle's use or market value after a reasonable number of repair attempts. Consequently, the Complainant's vehicle qualifies for repurchase relief.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on April 4, 2019, in Austin, Texas, before Hearings Examiner Andrew Kang. The Complainant represented and testified for himself. Ian Roberts, Consumer Affairs Manager, represented and testified for the Respondent. The hearing reconvened on May 3, 2019, by telephone, and the record closed on the same day.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

A vehicle qualifies for repurchase or replacement if the respondent 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.”² 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 currently exist after a “reasonable number of attempts” at repair.³ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed written notice of the defect to the respondent, (2) an opportunity to cure by the respondent, 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.⁴

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.”⁵

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ *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.”⁶

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 the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁷

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 the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁸

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:

⁶ *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.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

⁸ TEX. OCC. CODE § 2301.605(a)(2).

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁰

The existence of 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, someone on behalf of the owner, or the Department provided written notice of the alleged defect or nonconformity to the respondent;¹³ (2) the respondent was given an opportunity to cure the defect or nonconformity;¹⁴ and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty's

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.605(c).

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).

¹⁴ A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer satisfies the opportunity to cure requirement when the respondent allows a dealer to attempt repair after written notice to the respondent. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 226 (Tex. App.—Austin 2012); Texas Department of Transportation, *Kennemer v. Dutchman Manufacturing, Inc.*, MVD Cause No. 09-0091 CAF (Motor Vehicle Division Sept. 25, 2009) (Final Order Granting Chapter 2301, Subchapter M Relief). An opportunity to cure does not require an actual repair attempt but only a valid opportunity. *Id* at 2.

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” and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect before the warranty’s expiration.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 of the evidence. That is, the Complainant must present sufficient evidence to show that every required fact more likely than not exists.¹⁹ Accordingly, the Complainant cannot prevail where the existence of any required fact appears equally likely or unlikely.

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.²⁰ The complaint must 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 forming the basis of the claim

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

¹⁶ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

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.”).

for relief under the lemon law.”²¹ However, the parties may expressly or impliedly consent to trying issues not included in the pleadings.²² Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²³

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainant for reasonable incidental expenses resulting from the vehicle’s loss of use because of the defect.²⁴ Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle’s failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts or similar written documents).²⁵ However, the Department’s rules expressly exclude compensation for “any interest, finance charge, or insurance premiums.”²⁶

B. Summary of Complainant’s Evidence and Arguments

On June 13, 2017, the Complainant, purchased a new Heartland Road Warrior from Motor Home Specialist, LP, an authorized dealership of the Respondent, in Alvarado, Texas. The vehicle’s limited warranty provides coverage for one year. On July 26, 2018, the Complainant provided a written notice of defect to the Respondent. On August 21, 2018, the Complainant filed a complaint with the Department alleging that the subject RV had water leaks at the kitchen windows and cabinets, roof, and/or access door; a recall for an LP (liquid propane) hose rubbing; and water pooling on a sagging living room slide-out and leaking. In relevant part, the Complainant took the RV to a dealer for repair of the alleged issues as follows:

²¹ 43 TEX. ADMIN. CODE § 215.202(a)(3).

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).

²⁴ TEX. OCC. CODE § 2301.604.

²⁵ 43 TEX. ADMIN. CODE § 215.209(a).

²⁶ 43 TEX. ADMIN. CODE § 215.208(b)(1).

Dates	Issue
July 13, 2017 July 19, 2017	Water leaks onto the kitchen counter from windows and under kitchen cabinets, window on entry side leaks on kitchen counter, rear door leaking
November 21, 2017 March 7, 2018	Water leaks onto the kitchen counter from windows and under kitchen cabinets, window on entry side leaks on kitchen counter, rear door leaking
May 25, 2018 July 13, 2018	Rear main door leaks, Rain leak under kitchen cabinets, patio door fills up with water, living room slide-out roof sagging

On January 10, 2019, the RV was picked up for repairs at the Respondent's factory, which were completed on January 28, 2019.

The Complainant testified that within the first week of purchasing the vehicle, he noticed wet carpet and water on the counters. The vehicle also had a problem at purchase, resulting in the Complainant staying in the RV for two days, June 13-15, 2017, at an onsite campground while the vehicle was repaired. Since purchasing the vehicle, the Complainant testified that there was not a single day that water did not leak inside the vehicle. The vehicle had been taken in for repair on four occasions for the water issue. The vehicle had been under repair for about 200 days. The Complainant stated that when raining, water would leak into the vehicle. The inside of the vehicle would be flooded with water on the counters, in the carpet, and under the cabinets. The Complainant testified that leaking water caused the metal to corrode and rust in the lower compartment. Most of the wood not recently replaced had visible water damage, including mold and rot. Water was last seen leaking into the vehicle on April 4, 2019. The Complainant also noticed water in the main section of the lower compartment. The Complainant last noticed the carpet was wet about March 24, 2018, before the vehicle was taken for repairs. No repair stopped water from leaking into the vehicle.

The Complainant testified that a propane hose in the stove had a recall because the hose could rub causing it to rupture. However, the Complainant did not know if the hose in his vehicle was rubbing because viewing the propane hose required removal of the stove top.

The Complainant stated that the living room slide-out had also leaked. When raining with the slide-out extended, water would flow into the vehicle. Additionally, with the slide-out extended in the rain, water would pool on top of the slide-out and leak into the vehicle. Water did not leak into the vehicle with the slide-out in. The Complainant also stated that he did not occupy the RV full-time. The Complainant testified that he had not received documentation for all repairs on the

vehicle. Additionally, during rebuttal testimony, the Complainant added that the front door did not touch the seal, leaving a gap where water could enter the vehicle.

C. Inspection

The inspection of the RV at the hearing revealed some water on the “basement” (exterior compartment) floor. The plumbing in the basement was dry and the seals of the compartment doors to the basement were dry. The seal at the bottom of the middle compartment door was wet. The vinyl on the floor near the entry was lifting. The carpet in the RV was dry. In the garage, with the trim piece over the door removed, light shone through the outer edge of the door frame where the opening for the door frame appeared to have been cut too large.

D. Summary of Respondent’s Evidence and Arguments

On cross examination, Mr. Roberts testified that the vehicle was taken to the rain bay on two separate occasions to test for leaks. Mr. Roberts stated that the reason he did not see the documents was because the service department did not release them. He eventually saw the documents on May 3, 2019. Mr. Roberts clarified that he had only received the second rain bay test documents. The Respondent had not received the first rain bay documentation from the service department. The vehicle was taken into the rain bay the first time, which revealed water leaking into the vehicle from the windows. The vehicle was then taken into the rain bay for a second test after repairs for the leaks. The vehicle did not exhibit any leaks during the second rain bay test; however, Mr. Roberts stated that the vehicle was damaged after leaving the rain bay. The vehicle was repaired for the damage but he was unaware if the vehicle went through a third rain bay test after the vehicle was damaged to test the new repairs.

Additionally, on cross examination, Mr. Roberts testified that they found water damage on the floor of the bedroom slide-out. The damaged slide-out was rebuilt and no further leaks were observed during the rain bay tests. Mr. Roberts also testified that with respect to the plywood flooring the Respondent sanded down the floor to fix the floor that was lifting. Mr. Roberts stated that the plywood in their vehicles were only replaced when the plywood rots through. He also stated that the inspection of the vehicle was limited to the areas listed by the Complainant on the repair request and issues clearly visible to the technicians. The Respondent did not inspect the compartment where the Complainant found mold and corroded metal from water damage.

E. Analysis

To qualify for Lemon Law relief, the vehicle must continue to have a warrantable defect,²⁷ after reasonable repairs, that substantially impairs the vehicle.²⁸ In the present case, a preponderance of the evidence shows that the subject RV continues to have a warrantable defect that substantially impairs the use or value of the vehicle. The vehicle's warranty generally provides that: "the recreational vehicle manufactured and assembled by Heartland RV shall be free from defects in material and/or workmanship supplied and attributable to Heartland RV in the construction of the recreational vehicle." Additionally, the warranty expressly excludes: "Additional components which have been installed in a recreational vehicle, including but not limited to microwave ovens, ranges, refrigerators, leveling jacks, furnaces/heaters, DVD/CD players, air conditioning, icemakers, vacuum cleaners, televisions, hot water heaters, generators, power converters, batteries, and other items not specifically manufactured by Heartland RV, LLC." Under these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects) due to the Respondent.²⁹ A manufacturing defect is generally an isolated 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. Unlike manufacturing defects, issues that do not arise from manufacturing, such as design characteristics or design defects are not warrantable defects. Design characteristics result from the vehicle's specified design, which exists before the vehicle is manufactured, and not from any error during manufacturing.³⁰ In sum, the warranty only applies to manufacturing defects attributable to the Respondent.

²⁷ Lemon Law relief only applies to defects covered by warranty (warrantable defects). TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

²⁸ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

²⁹ Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover design issues. *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.").

³⁰ 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." *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

1. LP Hose

The record shows that the recalled LP hose is a component of the stove. However, the warranty specifically excludes ranges from coverage. Therefore, the defective LP hose cannot support any relief under the Lemon Law.

2. Water Leaks Associated with the Kitchen Windows and Cabinets, Roof, and Doors

The evidence clearly shows that the vehicle has continued to leak water even after the last repair (performed by the Respondent in January 2019). The Complainant provided photos and videos taken in March of 2019, showing gaps allowing water penetration and water actually leaking into the interior at various points around windows and doors.³¹ Moreover, inspection of the RV at the hearing revealed water marks on wood and water pooled in the basement compartment. Significantly, the basement contained electrical wiring that may contact the water. Accordingly, under the reasonable prospective purchaser test, the water leaks substantially impair the subject RV's value. Further, the quantity of water shown to be leaking in as well as the proximity to electrical wiring substantially impair the use of the vehicle. The repair history shows that the RV had been out of service for repair more than 30 days. In conclusion, the water leaks warrant granting of repurchase/replacement relief.

3. Slide-Out

The record shows water continuing to pool on the slide-out after the last repair attempt (in January 2019).³² However, the evidence is unclear whether water continued to leak at the slide-out. Accordingly, a preponderance of the evidence does not show a substantial impairment in the use of value of the vehicle.

III. Findings of Fact

1. On June 13, 2017, the Complainant, purchased a new Heartland Road Warrior from Motor Home Specialist, LP, an authorized dealership of the Respondent, in Alvarado, Texas.
2. The vehicle's limited warranty provides coverage for one year.

³¹ Complainant's Exhibits 12, 14, 15, 18, and 19.

³² Complainant's Exhibit 17.

3. The warranty generally provides that: “the recreational vehicle manufactured and assembled by Heartland RV shall be free from defects in material and/or workmanship supplied and attributable to Heartland RV in the construction of the recreational vehicle.” The warranty expressly excludes: “Additional components which have been installed in a recreational vehicle, including but not limited to microwave ovens, ranges, refrigerators, leveling jacks, furnaces/heaters, DVD/CD players, air conditioning, icemakers, vacuum cleaners, televisions, hot water heaters, generators, power converters, batteries, and other items not specifically manufactured by Heartland RV, LLC.”
4. The Complainant took the vehicle to a dealer for repair as shown below:

Dates	Issue
July 13, 2017 July 19, 2017	Water leaks onto the kitchen counter from windows and under kitchen cabinets, window on entry side leaks on kitchen counter, rear door leaking
November 21, 2017 March 7, 2018	Water leaks onto the kitchen counter from windows and under kitchen cabinets, window on entry side leaks on kitchen counter, rear door leaking
May 25, 2018 July 13, 2018	Rear main door leaks, Rain leak under kitchen cabinets, patio door fills up with water, living room slide-out roof sagging

5. On January 10, 2019, the RV was picked up for repairs at the Respondent’s factory, which were completed on January 28, 2019.
6. On July 26, 2018, the Complainant provided a written notice of defect to the Respondent.
7. On August 21, 2018, the Complainant filed a complaint with the Department alleging that the subject RV had water leaks at the kitchen windows and cabinets, roof, and/or access door; a recall for an LP (liquid propane) hose rubbing; and water pooling on a sagging living room slide-out and leaking.
8. On November 28, 2018, the Department’s Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them 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.
9. The hearing in this case convened on April 4, 2019, in Austin, Texas, before Hearings Examiner Andrew Kang. The Complainant represented and testified for himself. Ian

Roberts, Consumer Affairs Manager, represented and testified for the Respondent. The hearing recessed on April 4, 2019, and reconvened on May 3, 2019, by telephone, and the record closed on the same day.

10. The warranty expired on June 13, 2018.
11. The inspection of the RV at the hearing revealed some water on the “basement” (exterior compartment) floor. The plumbing in the basement was dry and the seals of the compartment doors to the basement were dry. The seal at the bottom of the middle compartment door was wet. The vinyl on the floor near the entry was lifting. The carpet in the RV was dry. In the garage, with the trim piece over the door removed, light shone through the outer edge of the door frame where the opening for the door frame appeared to have been cut too large.
12. The recalled LP hose is a component of the stove.
13. Water continued to leak into the RV after the manufacturer’s repair attempt in January 2019.

14. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license & registration	\$80,283.16
Date of delivery	06/13/17
Date of first report of defective condition	07/13/17
Date of hearing	04/04/19
Days out of service	179
Useful life determination	3,650

Purchase price, including tax, title, license & registration				\$80,283.16
<i>Unimpaired Days:</i> Date of first report of defective condition less date of delivery	07/13/17	-	06/13/17	= 30
<i>Impaired Days:</i> Date of hearing less date of first report of defective condition Less days out of service for repair	04/04/19	-	07/13/17	= 630 -179 <u>451</u>
<i>Reasonable Allowance for Use Calculations:</i> Unimpaired days Impaired days	30	÷	3,650	× \$80,283.16 = \$659.86 451 ÷ 3,650 × \$80,283.16 × 50% = \$4,959.96
Total reasonable allowance for use deduction				\$5,619.82
Purchase price, including tax, title, license & registration				\$80,283.16
Less reasonable allowance for use deduction				-\$5,619.82
Plus filing fee refund				\$35.00
Plus incidental expenses				\$0.00
TOTAL REPURCHASE AMOUNT				\$74,698.34

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 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, a person on behalf of the Complainant, or the Department provided written notice of the alleged defect(s) to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
7. The Respondent had an opportunity to cure the alleged defect(s). TEX. OCC. CODE § 2301.606(c)(2).
8. The Complainant timely filed the complaint commencing this proceeding. TEX. OCC. CODE § 2301.606(d).
9. The Complainant's vehicle qualifies for replacement or repurchase. A warrantable defect that substantially impairs the use or market value of the vehicle continues to exist after a reasonable number of repair attempts. TEX. OCC. CODE § 2301.604(a).
10. 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.
11. The Respondent has a continuing obligation after the expiration date of the warranty to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's designated agent or franchised dealer before the warranty expired. 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 **GRANTED**. It is further **ORDERED** that the Respondent shall repair the warrantable defect(s) in the reacquired vehicle identified in this Order. **IT IS THEREFORE ORDERED** that:

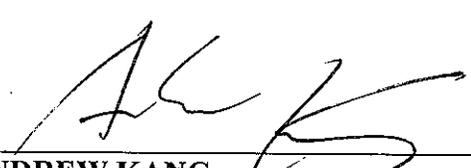
1. The Respondent shall accept the return of the vehicle from the Complainant. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the Complainant. If from the date of the hearing to the date of repurchase the

- 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 the final order;
2. The Respondent shall repurchase the subject vehicle in the amount of **\$74,698.34**. The refund shall be paid to the Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to the Respondent, then the full refund shall be paid to the Complainant. At the time of the return, the 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, the Complainant is responsible for providing the Respondent with clear title to the vehicle;
 3. The parties shall complete the return and repurchase of the subject vehicle within **20 days** after the date this Order becomes final under Texas Government Code § 2001.144.³³ However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to the Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by the Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
 4. The 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. The 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

³³ This Order does not become final on the date this Order is signed, instead: (1) this Order becomes final if a party does not file a motion for rehearing within 25 days after the date this Order is signed, or (2) if a party files a motion for rehearing within 25 days after the date this Order is signed, this Order becomes final when: (A) an order overruling the motion for rehearing is signed, or (B) the Department has not acted on the motion within 55 days after the date this Order is signed. Accordingly, this Order cannot become final (1) while a motion for rehearing remains pending; or (2) after the grant of a motion for rehearing.

6. The 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 days of the transfer.

SIGNED July 2, 2019



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