

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0190623 CAF**

**MARIA T. SOTO VDA DE
DEGOLLADO,
Complainant**

v.

**FCA US LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Maria T. Soto Vda de Degollado (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2017 Jeep Cherokee. Complainant asserts that the vehicle's windows would not go up or down, the heater wouldn't turn off, and the vehicle has electrical problems. FCA US LLC (Respondent) argued that Complainant has not met the repurchase or replacement requirements set forth in the Occupations Code and that no relief is warranted. The hearings examiner concludes that although the vehicle does have a currently existing warrantable defect, Complainant is not eligible for repurchase or replacement relief since she did not meet the presumption that Respondent was provided a reasonable number of repair attempts to conform the vehicle to its warranty which is required for such relief under the Texas Lemon Law.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record closed on January 23, 2019, in Pharr, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by her daughter, Maria Teresa Degollado, at the hearing. In addition, Eliana Delarosa, granddaughter, testified for Complainant. Observing was Olga Gonzalez, friend. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Torry Piechowski, Technical Advisor, testified for Respondent. Susana Vlaisavljevic, interpreter, was present and provided interpretation services for the parties.

II. DISCUSSION

A. Applicable Law

The Texas Lemon Law provides that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of under the Texas Occupations Code with a comparable vehicle if five conditions are met. First, the manufacturer has not conformed the vehicle to an applicable express warranty because the manufacturer cannot repair or correct a defect or condition in the

vehicle. Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.¹ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.² Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.³

In addition to these conditions, for vehicles purchased before September 1, 2017, 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.⁴

B. Complainant's Evidence and Arguments

1. Maria Teresa Degollado's Testimony

Complainant purchased a new 2017 Jeep Cherokee from Burns Motors (Burns), in McAllen, Texas on August 18, 2017, with mileage of 17 at the time of delivery.^{5,6} Respondent provided a bumper-to-bumper limited warranty for the vehicle which provides coverage for the vehicle for three (3) years or 36,000 miles, whichever comes first.⁷ In addition, Respondent provided a powertrain warranty for the vehicle providing coverage for five (5) years or 60,000 miles.⁸ On the date of hearing the vehicle's mileage was 40,472. At the time of hearing, Respondent's bumper-to-bumper warranty was expired.

Complainant's daughter, Maria Teresa Degollado, testified that she is the primary driver of the vehicle. Complainant purchased the vehicle for Complainant's use.

¹ Tex. Occ. Code § 2301.604(a)(1) and (2).

² Tex. Occ. Code § 2301.606(c)(1).

³ Tex. Occ. Code § 2301.606(c)(2).

⁴ Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

⁵ Complainant Ex. 2, Motor Vehicle Retail Installment Sales Contract dated August 18, 2017.

⁶ Complainant Ex. 3, Odometer Disclosure Statement dated August 18, 2017.

⁷ Complainant Ex. 14, Jeep 2017 All Vehicles Warranty Information – Gas, p. 2.

⁸ *Id.*

Ms. Degollado testified that she has experienced several electrical problems with the vehicle. These issues include the vehicle's heater refusing to turn off, the windows refusing to go up or down, the display screen not working, the interior lights flickering or turning off and on, and the lights on the gear shift turning off. She also indicated that sometimes the vehicle's accelerator doesn't seem to work correctly and she intermittently hears a noise from the rear passenger seat area. These latter two issues were not raised by Complainant on the Lemon Law complaint and will not be addressed in the decision. On the Lemon Law complaint, Complainant specifically raised the issues of the vehicle's windows not operating correctly, the heater not turning off, and "electrical problems."⁹

Ms. Degollado stated that she first experienced an issue with the vehicle within a few days of purchasing it. The vehicle's lights, both inside and out, turned off and on without her touching any of the light controls. In addition, the vehicle's headlights turned off when Ms. Degollado closed the vehicle's door when exiting the vehicle, even though it was still running. Ms. Degollado took the vehicle to Burns for repair for the issue sometime in late August of 2017. No warning lights were illuminated on the vehicle's dashboard at the time. Burns' service technician attempted to find a trouble code on the vehicle's computers, but did not discover any. Ms. Degollado did not receive an invoice for this repair visit.

Ms. Degollado testified that a warning light illuminated on the vehicle's dashboard in September of 2017 and that she took the vehicle to Burns for repair for the issue. However, she had turned off the vehicle when she arrived at Burns and when she turned it back on the warning light was no longer illuminated. Complainant did not receive an invoice for the repair visit.¹⁰

Ms. Degollado stated that a warning light illuminated on the vehicle's dashboard in January of 2018. She turned off the vehicle prior to taking it for repair and the light did not reappear when she turned the vehicle on.

Ms. Degollado stated that she took the vehicle to Burns for repair several times over the next few months. On most occasions, she received a loaner vehicle to driver while her vehicle was being repaired. The dates of the repair visits, the vehicle's mileage, the issues raised, and the repairs performed on the vehicle are listed on the table below:

⁹ Complainant Ex. 1, Lemon Law Complaint dated August 29, 2018, p.2

¹⁰ Complainant was not specific regarding what warning light illuminated on this occasion or the incident that occurred in January of 2018.

Date	Miles	Issue	Repair
02/08/18	14,175	Interior lights turned on and off; Popping noise from rear	Unable to duplicate either concern ¹¹
06/05/18	26,894	Check engine light (CEL) illuminated	Reset body control module (BCM) and HVAC module ¹²
06/18/18	28,551	CEL illuminated; No bus light warning light illuminated; Interior lights flickered; AC and radio would not turn on	Unable to duplicate any of the concerns ¹³
07/02/18	unknown	Radio stayed on after turning off vehicle; Vehicle refused to start	Replaced battery ¹⁴
07/31/18	28,895	Low battery warning light illuminated; Radio and AC screen blacked out; heater turned on and couldn't be adjusted; Windows won't go down	Removed and replaced BCM and reprogrammed module ¹⁵

Ms. Degollado stated that she was very concerned with her safety in the vehicle after the July 31, 2018 incident. On that date, she was driving the vehicle when the heater turned on without her touching the controls. She could not turn off the heater nor could she lower the vehicle's windows to disburse the heat. As this was in the middle of summer, Ms. Degollado was concerned about the incident and the possibility that she could have had a heat stroke while driving the vehicle with the heat on. She told Burns' representative at the time that she no longer wanted the vehicle.

Ms. Degollado had to travel to Minnesota on August 3, 2018, while the vehicle was still in Burns' possession for the heater issue. Since Ms. Degollado needed transportation to get to Minnesota, she rented a vehicle from her sister to drive to Minnesota. Ms. Degollado paid \$600 to her sister to reimburse her for the vehicle's usage.¹⁶

¹¹ Complainant Ex. 4, Repair Order dated February 8, 2018.

¹² Complainant Ex. 5, Repair Order dated June 5, 2018.

¹³ Complainant Ex. 6, Repair Order dated June 18, 2018.

¹⁴ Complainant Ex. 7, Repair Order dated July 2, 2018.

¹⁵ Complainant Ex. 8, Repair Order dated July 31, 2018.

¹⁶ Complainant Ex. 10, Note and Receipt from Brenda Degollado dated August 1, 2018.

Complainant filed a Lemon Law complainant with the Texas Department of Motor Vehicles (Department) on August 29, 2018.¹⁷ Complainant also mailed a letter to Respondent on September 14, 2018, in which she indicated that she was dissatisfied with the vehicle.¹⁸

Ms. Degollado testified Respondent contacted Complainant and requested an opportunity to inspect the vehicle. The inspection occurred at Burns on October 23, 2018. The issues presented to the service technician were that the vehicle's radio, air conditioner, and headlamps stayed on after turning the vehicle off.¹⁹ The technician was unable to duplicate any of the concerns at the time of the inspection.²⁰ The vehicle's mileage at the time was 35,767.²¹ The vehicle was in Burns' possession until October 26, 2018.

Ms. Degollado picked up the vehicle from Burns on October 26. While she was driving home, the service shifter light illuminated.²² Ms. Degollado returned the vehicle to Burns immediately. When she arrived at Burns the light had turned off. However, Burns' service technician discovered a trouble code stored on the vehicle's computers.²³ The technician determined that the bezel wiring had shorted out.²⁴ The technician replaced the vehicle's bezel wiring and bezel assembly.²⁵ The vehicle's mileage on this occasion was 35,770.²⁶ The vehicle was in Burns' possession until October 29, 2018.²⁷

Ms. Degollado stated that she began experiencing problems with the vehicle failing to accelerate after October of 2018. She took the vehicle to Burns for repair on December 17, 2018. The issues presented to Burns' technician on this occasion were that the headlamps and interior lights would flicker on and off, the radio screen would go black, the AC, windows and door locks quit working, the fuel gauge readout would fluctuate wildly, the vehicle would not accelerate when pressing on the accelerator, the vehicle moved when the gearshift was put in park, and sometimes all the shift indicator lamps stayed on.²⁸ The service technician could not find any stored trouble

¹⁷ Complainant Ex. 1, Lemon Law complaint dated August 29, 2018. Although the complaint was signed on August 21, 2018, the effective date of the complaint is the date that it was received by the Department of Motor Vehicles which was August 29, 2018.

¹⁸ Complainant Ex. 9, Letter to Fiat Chrysler Automotive dated September 14, 2018.

¹⁹ Complainant Ex. 11, Repair Order dated October 23, 2018. Although Ms. Degollado testified that this repair visit was to allow Respondent's representative to inspect the subject vehicle, Respondent's testimony and supporting documents indicate that Respondent's inspection occurred on December 18, 2018.

²⁰ *Id.*

²¹ *Id.*

²² Complainant Ex. 12, Repair Order dated October 26, 2018.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Complainant Ex. 13, Repair Order dated December 17, 2018.

codes on the vehicle's computers.²⁹ The technician test drove the vehicle over three (3) days and could not duplicate any of the concerns raised by Ms. Degollado.³⁰ The vehicle's mileage on this occasion was 38,414.³¹ The vehicle was in Burns' possession until December 19, 2018.³²

Ms. Degollado stated that she is still experiencing problems with the vehicle failing to accelerate correctly. In addition, she stated that she hears a noise in the vehicle's right passenger area, the lights are still turning on and off, the Bluetooth doesn't connect all the time, the vehicle moves when the transmission is put in park, the high beams don't always work, the gearshift lights turn on and off, and the radio doesn't turn off when she turns the vehicle off. Ms. Degollado indicated that she no longer wants the vehicle. She stated that she doesn't feel safe driving the vehicle.

During cross-examination, Ms. Degollado testified that the vehicle's transmission issues didn't occur until she went to Minnesota in August of 2018. She's not as worried about the vehicle's Bluetooth issues as she is about the other issues with the vehicle.

2. Eliana Delarosa's Testimony

Eliana Delarosa, Ms. Degollado's daughter, testified in the hearing. Ms. Delarosa occasionally drives the vehicle.

Ms. Delarosa testified that she has experienced different issues with the vehicle. She stated that approximately two (2) months prior to the hearing date, she had observed the vehicle's lights illuminate on their own after the vehicle was driven over a speed bump. Ms. Delarosa also observed that the vehicle's radio sometimes won't turn off. She last observed this problem a few months prior to the hearing date.

C. Respondent's Evidence and Arguments

1. Jan Kershaw's Testimony

Jan Kershaw, Early Resolution Case Manager, testified for Respondent. She stated that she was assigned the responsibility to respond to Complainant's concerns in September of 2018. Mr. Kershaw attempted to contact Complainant by email to schedule an inspection of the vehicle by Respondent's representative. Complainant did not respond to Ms. Kershaw, so she contacted the

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

case advisor assigned to the case, Evan Whitis, to see if he could schedule an inspection of the vehicle. An inspection was thereafter scheduled for December 18, 2018, at Burns' location.

2. Torry Piechowski's Testimony

Torry Piechowski, Technical Advisor, testified for Respondent. Mr. Piechowski has worked in the automotive industry for nine (9) years. He has worked for Ford Motor Co. in the past. Mr. Piechowski has worked for Respondent for the past two and a half years. Mr. Piechowski has Automotive Service Excellence (ASE) certifications. In addition, he has been trained in all of Respondent's model lines.

Mr. Piechowski stated that he performed the final inspection of the vehicle on December 18, 2018, at Burns' location. He initially reviewed the vehicle's repair history before looking at the vehicle. Mr. Piechowski stated that he was informed that Complainant had concerns with the vehicle's air conditioner not working, the interior lights flickering, the radio not working, and the CEL illuminating.³³ He did not find any diagnostic trouble codes (DTC's) stored on any of the vehicle's computers. In addition, Mr. Piechowski test drove the vehicle under various conditions and was unable to duplicate any of the concerns Complainant had with the vehicle. As a result, Mr. Piechowski did not recommend that any repairs be performed to the vehicle.

Mr. Piechowski testified that the issues with the vehicle moving back and forth after the transmission is placed in park and the acceleration issue were never raised by Complainant on any of the invoices provided for service visits for the vehicle. Mr. Piechowski also stated that the noise issue was not raised as a concern during the final inspection of the vehicle.

Mr. Piechowski testified that the vehicle's BCM was replaced by Burns' service technician on July 31, 2018. The BCM is responsible for the operation of several items on the vehicle, including the vehicle's windows, radio, and lights. He feels that the vehicle's issues were addressed by the replacement of the BCM.

Mr. Piechowski feels the vehicle is safe to drive and that there is nothing wrong with it.

D. Analysis

Under Texas' 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

³³ Respondent Ex. 1, Inspection Report dated December 18, 2018.

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.

1. Interior/Exterior Lights Issue

Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty “after a reasonable number of attempts” in order to grant repurchase or replacement of a vehicle under the Lemon Law. Section 2301.605(a)(1) goes on to specify that a rebuttable presumption that the manufacturer has made a reasonable number of attempts to repair a vehicle if “the same nonconformity continues to exist after being subject to repair four or more times . . . and 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 the other two attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.” Complainant has not met the requirements of this test for the issue regarding the interior and exterior lights flickering (electrical problem), as only one repair attempt was performed for the issue on February 8, 2018 when the vehicle had already been driven 14,175 miles. Although Ms. Degollado testified that she had taken the vehicle for an additional repair for the light issue sometime in August of 2017, she was vague as to when the repair was performed. Even if she had been more specific, the additional repair attempt would not be sufficient to overcome the four repair attempt requirement. As such, Complainant was unable to establish that a reasonable number of attempts to repair the vehicle were made by Respondent. Since Respondent was not provided an adequate opportunity to repair the vehicle, the hearings examiner cannot award repurchase or replacement relief for the issue regarding the vehicle’s lights flickering.

2. Other Issues

Complainant raised several other issues with the vehicle which Complainant did not attempt to have repaired until after the vehicle was driven over 26,000 miles. Complainant raised issues with the vehicle’s heater and air conditioner not operating properly (Ms. Degollado at one time was unable to turn off the heater), the vehicle’s windows not going up or down, the air conditioner and radio screen going black, the lights on the gear shaft not working, and the CEL illuminating. These issues could all be classified as part of the “electrical problems” raised in the Lemon Law complaint. The issues regarding the windows not operating correctly and the heater not responding to the controls, although electrical in nature, were raised by Complainant on the

Lemon Law complaint. In order to establish a presumption that Respondent has had a reasonable number of repair attempts to repair the vehicle, the repair attempts to the vehicle have to have occurred prior to the vehicle having been driven 24,000 miles or within two (2) years from the date of purchase, whichever comes first. In the present case, the hearings examiner must hold that Respondent was not provided with a reasonable opportunity to repair any of the above cited issues, since they were all raised after the vehicle had been driven 26,000 miles. Therefore, they cannot provide a basis for repurchase or replacement of the vehicle.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for five (5) years or 60,000 miles. On the date of hearing, the vehicle's mileage was 40,472 and the bumper-to-bumper warranty was expired.

Complainant's request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Maria T. Soto Vda de Degollado (Complainant) purchased a new 2017 Jeep Cherokee on August 18, 2017, from Burns Motors (Burns), in McAllen, Texas, with mileage of 17 at the time of delivery.
2. The manufacturer of the vehicle, FCA US LLC (Respondent), issued a bumper to bumper warranty which provides coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first and a separate powertrain warranty which provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 40,472.
4. At the time of hearing the vehicle's bumper-to-bumper warranty had expired, but the powertrain warranty was still in effect.
5. Complainant's daughter, Maria Teresa Degollado, is the primary driver of the vehicle.
6. Complainant is dissatisfied with the vehicle because the heater wouldn't operate properly, the windows wouldn't go up or down, the display screen would go black, the interior lights flickered off and on, and the lights on the gear shift turned off.
7. Complainant took the vehicle to Respondent's authorized dealers in order to address her concerns with the vehicle, on the following dates:

- a. February 8, 2018, at 14,175 miles;
 - b. June 5, 2018, at 26,894 miles;
 - c. June 18, 2018, at 28,551 miles;
 - d. July 2, 2018, at unknown miles; and
 - e. July 31, 2018, at 28,895 miles.
8. On February 8, 2018, Burns' service technician was unable to duplicate Complainant's concerns regarding the vehicle's interior lights turning on and off or the popping noise from the right passenger side of the vehicle.
 9. On June 5, 2018, Burns' service technician reset the vehicle's BCM and HVAC modules to address the concern regarding the vehicle's CEL illuminating.
 10. On June 18, 2018, Burns' service technician was unable to duplicate any of Complainant's concerns regarding the vehicle's CEL illuminating, no bus light warning light illuminating, interior lights flickering, or AC and radio not operating.
 11. On July 2, 2018, Burns' service technician replaced the vehicle's battery in order to address the vehicle's failure to start issue. The issue with the vehicle's radio not turning off was not addressed.
 12. On July 31, 2018, Burns' service technician replaced and reprogrammed the vehicle's BCM in order to address Complainant's concerns regarding Complainant not being able to turn off the vehicle's heater or lowering the windows, the low battery warning light illuminating, and the control screen for the radio and AC going black.
 13. Since Ms. Degollado had to go out of state and the vehicle was in Burns' possession for repair, she rented a vehicle from her sister for \$600 in order to drive to Minnesota.
 14. On August 29, 2018, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
 15. On October 23, 2018, Burns' service technician was unable duplicate Complainant's concerns regarding the vehicle's radio, AC, and lights staying on after the vehicle was turned off.
 16. On October 26, 2018, Burns' service technician replaced the vehicle's bezel wiring and assembly in order to address Complainant's concern regarding the vehicle's service shifter warning light illuminating.

17. On December 18, 2018, Respondent's Technical Advisor, Torry Piechowski, performed a final inspection off the vehicle. Mr. Piechowski was unable to duplicate Complainant's concerns regarding the vehicle's air conditioner not working, the interior lights flickering, the radio not operating, or the CEL illuminating.
18. On October 16, 2018, 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.
19. The hearing in this case convened and the record closed on January 23, 2019, in Pharr, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by her daughter, Maria Teresa Degollado, at the hearing. In addition, Eliana Delarosa, granddaughter, testified for Complainant. Observing was Olga Gonzalez, friend. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Torry Piechowski, Technical Advisor, testified for Respondent. Susana Vlavisavljevic, interpreter, was present and provided interpretation services for the parties.

IV. CONCLUSIONS OF LAW


1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A 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 the vehicle has a verifiable 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. Complainant did not meet the presumption that a reasonable number of repair attempts were undertaken by Respondent prior to the filing of the Lemon Law complaint. Tex. Occ. Code § 2301.605(a)(1).
8. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
9. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
10. Complainant is not entitled to reimbursement of incidental expenses as outlined in Findings of Fact #13. Tex. Occ. Code § 2301.604(a); 43 Tex. Admin. Code § 215.209.

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**.

SIGNED March 25, 2019.



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