

TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0003791 CAF

KATHLEEN and ZACHARY LEE,
Complainants

v.

JAGUAR LAND ROVER NORTH
AMERICA LLC,
Respondent

and

USB LEASING LT,
Intervenor

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Kathleen and Zachary Lee (Complainants) 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 their vehicle distributed by Jaguar Land Rover North America, LLC (Respondent). A preponderance of the evidence shows that the subject vehicle has warrantable defects that qualify for repurchase/replacement 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 October 23, 2019, in Houston, Texas, before Hearings Examiner Andrew Kang, and the record closed on October 31, 2019. Jim Silliman, attorney, represented the Complainants. John Chambless, attorney, represented the Respondent.

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 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 or someone on behalf of the owner, or the Department has 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

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). 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department’s notice of the complaint to the Respondent may satisfy the requirement to provide notice of the defect or nonconformity to the Respondent.

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.

of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.¹⁵

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a "defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle" 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 Complainants.¹⁸ The Complainants must prove all facts required for relief by a preponderance of the evidence. That is, the Complainants must present sufficient evidence to show that every required fact more likely than not exists.¹⁹ Accordingly, the Complainants 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 hearing 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 Complainants 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 Complainants’ Evidence and Arguments

On November 13, 2017, the Complainants, leased a new 2017 Land Rover Range Rover from Continental Auto Leasing, a dealer in Austin, Texas. The vehicle had 480 miles on the odometer at delivery. The vehicle’s limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first. On August 30, 2018, the Complainants’ attorney provided a written notice of defect to the Respondent. On December 4, 2018, the Complainants filed a complaint with the Department alleging that: the vehicle experienced problems starting; the (infotainment) touchscreen would remain black (blank) or display in purple, and/or experience significant delay turning on, preventing use of the touchscreen phone controls; screens displayed

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).

inconsistent information relating to phone use; the vehicle's cameras did not function properly and issued false alerts; the vehicle's electronic controls routinely crashed; and the side steps did not deploy or would only deploy on one side. In relevant part, the Complainants took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
May 21, 2018 June 26, 2018	8,391	Deployable steps not working properly; vehicle does not always start; reverse camera does not always work
September 26, 2018 October 9, 2018		Failure/difficulty starting, black/purple display, display delay, camera malfunction, false camera alerts, electronic controls crashing, steps not deploying, screens displaying different information for same call

Mrs. Lee testified that the touchscreen would not display the rear camera or the screen would be purplish. The steps would not deploy all the time or one of the steps would get stuck out. In one instance, her daughter stepped out and fell on her face when the step did not deploy. The step issue continued to occur and the blank screen occurred often. In addition, the vehicle would fail to start and had to be towed. Further, when the touchscreen was blank, no touchscreen controls worked. Mrs. Lee described that music would play but could not be controlled because of the blank screen. Similarly, with the screen frozen, nothing can be accessed. Regarding the steps, locking the vehicle should make the steps retract but they would stay out instead. Mrs. Lee recounted that during an incoming call, the vehicle displayed the wrong caller. The repairs did not resolve the complained of issues. Mrs. Lee affirmed that turning off the vehicle would sometimes reset the touchscreen. She added that Bluetooth did not work half of the time. She noted that she frequently used maps through Apple CarPlay but the maps would stop working and she could not restart while driving. Mrs. Lee also pointed out that the vehicle would display the wrong speed limit (e.g., 80 mph instead of 30 mph); the vehicle made a popping sound under the vehicle; and the auto windshield wipers would turn on without rain and not start when it should. For the September 2018 repair attempt, the dealership picked up the vehicle and returned it but Mrs. Lee did not recall when and she did not receive a copy of the repair order. She confirmed that the vehicle had not been brought back to a Jaguar Land Rover dealer since the returning from the 2018 repairs. Mrs. Lee stated that she had the vehicle serviced at an independent facility but had not addressed the windshield wiper issue there. She affirmed that the vehicle was available to drive except for the six weeks under repair at the dealership. Mrs. Lee acknowledged receiving a goodwill check from

the Respondent for lease payments. When asked if she knew if the Respondent's technician actually worked with the vehicle, she assumed that such technician was present at the dealership.

On redirect examination, Mrs. Lee explained that Rose Baumann, an employee of the Respondent, arranged for the vehicle's repair.

Upon cross-examination, Mrs. Lee affirmed that the windshield wiper issue first occurred after October 2018 and that she did not notify anyone at the Respondent due to damage to her vehicle during the first repair attempt at the dealer. She agreed that she no longer wanted the vehicle before September 2018.

Upon clarification questions, Mrs. Lee confirmed that the steps retract once the doors close. She also affirmed that Ms. Baumann arranged the second repair attempt (from September 6, 2018, to October 9, 2018). When asked if the hands-free feature functioned when the touchscreen was blank, Mrs. Lee responded that the touchscreen controlled everything, including maps, air conditioning (AC), and the cameras. The touchscreen would go blank approximately every week, though some weeks the screen may go blank multiple times or not at all. She estimated that the steps malfunctioned every few weeks. She confirmed that the phone could not be heard through the vehicle with the touchscreen blank and the hands-free option would be completely gone.

The Complainants pointed out that the vehicle had two repair attempts spanning seven weeks. The Complainants also argued that the side steps posed a safety hazard.

C. Inspection

Upon inspection at the hearing before the test drive, the vehicle's odometer displayed 25,475 miles. The test drive ended with 25,498 miles on the odometer. The touchscreen and deployable side steps appeared to operate normally.

D. Summary of Respondent's Evidence and Arguments

The Respondent argued that the Respondent, not the dealer, gets an opportunity to repair the vehicle. The Respondent pointed out that the vehicle only had one repair attempt before the Lemon Law complaint and that the Respondent did not have a final opportunity to repair the vehicle.

E. Analysis

A preponderance of the evidence shows that the subject vehicle continues to have warrantable defects that substantially impair the vehicle's use or value as detailed below.

1. Warrantable Defects and Substantial Impairment

As an initial matter, to qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to have a defect covered by the Respondent's warranty (warrantable defect).²⁷ Here, the warranty generally provides that:

Jaguar Land Rover North America, LLC, warrants that during the warranty period, if a Land Rover vehicle is properly operated and maintained, repairs required to correct defects in factory-supplied materials or factory workmanship will be performed without charge upon presentment for service; any component covered by this warranty found to be defective in materials or workmanship will be repaired, or replaced, without charge with a new or remanufactured part distributed by Jaguar Land Rover North America, LLC, at its sole option.²⁸

According to these terms, the warranty applies to defects in materials or workmanship (manufacturing defects) as opposed to design defects or normal design characteristics.²⁹ Additionally, to qualify for repurchase or replacement relief, the defect must substantially impair the use or value of the vehicle or pose a serious safety hazard as described in the discussion of applicable law. The alleged defects do not fit the Lemon Law's definition of serious safety hazard. However, the vehicle does have defects that substantially impair the use or value of the vehicle.

a. Hands-Free Functionality

Under the Department's precedents, a defect in a vehicle's hands-free functionality substantially impairs the value of the vehicle, considering that "hands-free" laws restrict the use

²⁷ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

²⁸ Complainant's Ex. 9, Passport to Service, Vehicle Warranties, Warranty Statement.

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.").

of hand-held devices while driving.³⁰ The record reflects that when the touchscreen goes blank (or freezes), none of the touchscreen controls are accessible—including those for the phone—and the hands-free features will not function.

b. AC Inoperability

Department precedents hold that AC inoperability substantially impairs a vehicle's use.³¹ In the present case, the malfunctioning (blank/freezing) touchscreen prevents the use of any touchscreen controls, including those for operating the AC.

c. Camera Malfunctions

Department decisions have determined that a malfunctioning safety feature may substantially impair a vehicle's value, although the malfunction may not meet the statutory definition of a serious safety hazard.³² As noted above, when the touchscreen goes blank or freezes, none of the touch screen controls function, including the camera controls. Moreover, even when the touchscreen itself functions, the camera system may fail to display an image or may produce false alerts.

2. Reasonable Repair Attempts

The evidence shows that the vehicle was at the dealer for repair for 36 days (from May 21, 2018, to June 26, 2018) without a loaner vehicle, thereby establishing a presumption of reasonable repair attempts for vehicle's out of service for at least 30 days.

3. Respondent's Opportunity to Repair

As noted in the discussion of applicable law, to qualify for repurchase or replacement, the Lemon Law does not require that a respondent actually attempt a repair on the vehicle, but only requires that the respondent be provided an opportunity to repair. The Department deems a

³⁰ *Johnston v. BMW of North America, LLC*, Case No. 15-0262 CAF (Office of Administrative Hearings Mar. 3, 2016) (Decision and Order) (“[U]nder the reasonable prospective purchaser standard, the nonconformity substantially impairs the market value of the vehicle, especially when considering that more and more jurisdictions prohibit the use of mobile devices unless hands-free.”); e.g., TEX. TRANSP. CODE § 545.4251.

³¹ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“[W]hile a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”).

³² *Mullens v. American Honda Motor Co., Inc.*, Case No. 19-0004709 CAF (Office of Administrative Hearings July 23, 2019) (Decision and Order).

respondent to have had an opportunity repair if the respondent arranges for repair by a dealer after receiving a notice of defect. In this case, the Complainants, through their attorney, submitted a notice of defect on August 30, 2018. Thereafter, Ms. Baumann arranged for a dealer to repair the vehicle. Consequently, the Respondent is deemed to have had an opportunity to repair.

4. Reimbursement of Attorney's Fees

As outlined in the discussion of applicable law, the Department's rules only allow reimbursement of a complainant's attorney's fees if the complainant retains counsel after notice that the respondent has representation by counsel. In this case, the bill for legal services rendered to the Complainants shows legal research and preparation of a notice letter by Mr. Silliman on June 22, 2018.³³ However, the Respondent's counsel filed a notice of appearance on February 6, 2019. Consequently, the attorney's fees incurred by the Complainants are not reimbursable.

III. Findings of Fact

1. On November 13, 2017, the Complainants, leased a new 2017 Land Rover Range Rover from Continental Auto Leasing, a dealer in Austin, Texas. The vehicle had 480 miles on the odometer at delivery.
2. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first. The warranty generally states that:

Jaguar Land Rover North America, LLC, warrants that during the warranty period, if a Land Rover vehicle is properly operated and maintained, repairs required to correct defects in factory-supplied materials or factory workmanship will be performed without charge upon presentment for service; any component covered by this warranty found to be defective in materials or workmanship will be repaired, or replaced, without charge with a new or remanufactured part distributed by Jaguar Land Rover North America, LLC, at its sole option.

³³ Complainants' Ex. 11, Bill for Legal Services.

3. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
May 21, 2018 June 26, 2018	8,391	Deployable steps not working properly; vehicle does not always start; reverse camera does not always work
September 26, 2018 October 9, 2018		Failure/difficulty starting, black/purple display, display delay, camera malfunction, false camera alerts, electronic controls crashing, steps not deploying, screens displaying different information for same call

4. On August 30, 2018, the Complainants' attorney provided a written notice of defect to the Respondent.
5. On December 4, 2018, the Complainants filed a complaint with the Department alleging that: the vehicle experienced problems starting; the (infotainment) touchscreen would remain black (blank) or display in purple, and/or experience significant delay turning on, preventing use of the touchscreen phone controls; screens displayed inconsistent information relating to phone use; the vehicle's cameras did not function properly and issued false alerts; the vehicle's electronic controls routinely crashed; and the side steps did not deploy or would only deploy on one side.
6. On February 8, 2019, 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.
7. The hearing in this case convened on October 23, 2019, in Houston, Texas, before Hearings Examiner Andrew Kang, and the record closed on October 31, 2019. Jim Silliman, attorney, represented the Complainants. John Chambless, attorney, represented the Respondent.
8. The vehicle's odometer displayed 25,475 miles at the time of the hearing.
9. The vehicle's warranty was in effect at the time of the hearing.
10. The vehicle operated normally during the test drive at the hearing.

11. A defect in a vehicle's hands-free functionality substantially impairs the value of the vehicle, considering that "hands-free" laws restrict the use of hand-held devices while driving. The record reflects that when the touchscreen goes blank (or freezes), none of the touchscreen controls are accessible—including those for the phone—and the hands-free features will not function.
12. AC inoperability substantially impairs a vehicle's use and value. In the present case, the malfunctioning (blank/freezing) touchscreen prevents the use of any touchscreen controls, including those for operating the AC.
13. The malfunctioning camera system substantially impairs the vehicle's value. When the touchscreen goes blank or freezes, none of the touch screen controls function, including the camera controls. Moreover, even when the touchscreen itself functions, the camera system may fail to display an image or may produce false alerts.
14. The vehicle was at the dealer for repair for 36 days (from May 21, 2018, to June 26, 2018) without a loaner vehicle provided to the Complainants.
15. Ms. Rose Baumann, an employee of the Respondent, arranged for a dealer to repair the vehicle after the Complainants provided a notice of defect on August 30, 2018.
16. In this case, the bill for legal services rendered to the Complainants shows legal research and preparation of a notice letter by the Complainants' attorney on June 22, 2018. However, the Respondent's attorney filed a notice of appearance on February 6, 2019.

17. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license & registration	\$137,281.07
Total paid at inception of lease	\$7,263.84
Monthly payment amount	\$2,263.84
Number of payments made at time of decision issuance	25
Delivery mileage	480
Mileage at first report of defective condition	8,391
Mileage on hearing date	25,475
Useful life determination	120,000

Purchase price, including tax, title, license & registration		\$137,281.07
Mileage at first report of defective condition	8,391	
Less mileage at delivery	-480	
Unimpaired miles	7,911	
Mileage on hearing date	25,475	
Less mileage at first report of defective condition	-8,391	
Impaired miles	17,084	
<i>Reasonable Allowance for Use Calculations:</i>		
Unimpaired miles	7,911 ÷ 120,000 × \$137,281.07	= \$9,050.25
Impaired miles	17,084 ÷ 120,000 × \$137,281.07 × 50%	= \$9,772.12
Total reasonable allowance for use deduction		<u>\$18,822.38</u>
<i>Lessee's Calculation:</i>		
Total paid at inception of lease		\$7,263.84
Total amount for monthly payments		\$56,596.00
Less allowance for use		-\$18,822.38
Refund filing fee		\$35.00
Plus incidental expenses		\$0.00
TOTAL REPURCHASE AMOUNT TO LESSEE		<u>\$45,072.46</u>
<i>Lessor's Calculation:</i>		
Purchase price, including tax, title, license & registration		\$137,281.07
5% allowance by Rule 215.208(B)(ii)		\$6,864.05
Less total paid by Lessee		-\$63,859.84
TOTAL REPURCHASE AMOUNT TO LESSOR		<u>\$80,285.28</u>

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 Complainants 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 Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
 6. The Complainants provided sufficient 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 Complainants timely filed the complaint commencing this proceeding. TEX. OCC. CODE § 2301.606(d).
 9. The Complainants' vehicle qualifies for replacement or repurchase. Warrantable defects that substantially impair the use or market value of the vehicle continue to exist after a reasonable number of repair attempts. TEX. OCC. CODE § 2301.604(a).
 10. The Complainants' do not qualify for reimbursement of attorney's fees. 43 TEX. ADMIN. CODE § 215.209(a).
 11. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

V. Order

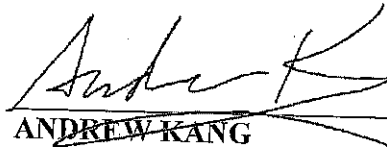
Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **GRANTED**. It is further **ORDERED** that the Respondent shall repair the warrantable defect(s) in the reacquired vehicle identified in this Order. **IT IS THEREFORE ORDERED** that:

1. The Respondent shall accept the return of the vehicle from the Complainants. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the 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. The Respondent shall repurchase the subject vehicle in the amount of **\$125,357.74**. The refund shall be allocated as follows: **\$45,072.46** to the Complainants and **\$80,285.28** to the lessor. Refunds shall be made to the Complainants, lessor, and any lienholders as their interest may appear. At the time of the return, the Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted refund to the lessor does not pay all liens in full, the lessor is responsible for providing the Respondent with clear title to the vehicle. The lessor shall transfer title of the vehicle to the Respondent, as necessary to effectuate the Complainants' rights. The lease shall be terminated without penalty to the Complainants;
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 § 2001.144.³⁴ However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to the Complainants' refusal or inability to deliver the vehicle, the Office of Administrative Hearings may deem the granted relief rejected by the Complainants 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;

³⁴ 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.

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
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 December 30, 2019



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