TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0005808 CAF

MAXWELL JONES,	§	**BEFORE THE OFFICE**
Complainant	§	
	§	
v.	§	**OF**
	§	
FORD MOTOR COMPANY,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Maxwell Jones (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 vehicle manufactured by Ford Motor Company (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect. However, the vehicle only qualifies for warranty repair and not repurchase/replacement relief because the first repair attempt occurred after the 24,000-mile limit.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing[1] 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 June 19, 2019, in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on July 8, 2019, upon admission of Complainant's Exhibit 1A and Respondent's Exhibit 1. The Complainant, represented himself. Dana Marie Veatch Jones, the Complainant's spouse, testified for the Complainant. Anthony Gregory, consumer affairs legal analyst, represented and testified for the Respondent. Asad Bashir, automotive technical specialist, testified for the Respondent.

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[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]

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[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:

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[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

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[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 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

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[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 November 9, 2017, the Complainant, purchased a new 2017 Ford Transit from Sterling McCall Ford, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had 15 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first.

On January 31, 2019, the Complainant provided a written notice of defect to the Respondent. On February 8, 2019, the Complainant filed a complaint with the Department alleging that: condensation ran from the headliner (air conditioning (AC) duct) in the rear passenger area;

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[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).

and the sliding door would not close completely; further, the headliner was not properly attached; and the step (power running board) would not retract. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
November 27, 2018 December 17, 2018	34,213	Sliding door hanging up; AC water leaks
December 17, 2018 January 9, 2019	34,220	Sliding door is not flush
January 17, 2019	35,384	(manufacturer's opportunity to repair)

The Complainant explained that the headliner problem resulted from the dealer's investigation of the condensation issue when the headliner could not be reinstalled. He first noticed the condensation issue three months after acquiring the vehicle, when the weather became warm. The field service engineer (FSE) mentioned a dent on the vehicle as a cause of the dampness. However, Mrs. Jones noted that the water leaked before the dent occurred. The Complainant described the water as running down the pillars and leaking at the rear vents. This would occur on hot days. The Complainant last noticed the condensation in August of 2018. Mrs. Jones stated that she first noticed the problem with the sliding door before November 2018. The Complainant elaborated that the door started to act peculiarly in October and detached in November. They had used the vehicle for long trips, so that they could sleep in the back of the vehicle. The Complainant last noticed the problem with the door on the morning of the hearing. He explained that the door was attached but the step would not retract and the door would not latch and left a gap at the back of the door. He added that the door could be closed (from the exterior) after multiple times but could almost not be closed from the interior. The vehicle also had dents on the front passenger door and door opening from the sliding door detaching. The sliding door's track broke also. The Complainant noted that the sliding door had visible ripples that appeared to correspond to the track. Upon clarification questions, the Complainant explained that the difficulty with closing the door was sporadic and that closing the door could take 15 attempts. He also noted that though the dash indicators may show the doors to be closed, when a problem occurs with the sliding door, the retractable step may stop halfway or come in and out as if almost detecting the door (opening). Regarding the headliner, the Complainant explained that after the repair attempt for the AC on January 9, 2019, the headliner had not been attached at the windows and doorway, leaving airbags exposed. The Complainant testified that the dealer provided a loaner vehicle during repairs but

nothing comparable that had removable seats and that could be used for sleeping in. Upon cross-examination, the Complainant confirmed the existence of body damage at the top rear of the vehicle but the dealer water tested the vehicle and it did not leak.

C. Inspection

During the inspection of the subject vehicle at the hearing, the odometer displayed 36,236 miles. Various parts around the sliding door showed signs of damage, including broken plastic and dents in the metal corresponding to the movement of the door. When the Complainant tried closing the sliding door from the exterior, the door would latch but not close completely flush with the body on the first two attempts, leaving the door slightly ajar. The door closed completely on the third attempt. When the Complainant tried closing the sliding door from the interior, the door did not completely close in five attempts. The hearings examiner tried to close the sliding door from the exterior five times without the door closing completely. When the hearings examiner tried to close the sliding door from the interior, the door closed completely on the third attempt. With the sliding door latched but partially ajar (not closed flush with the body), the power running board remained extended but the door ajar warning lamp did not light. Whether the door was completely closed was difficult to determine from the interior. The interior of the vehicle exhibited some watermarks on a column, apparently due to condensation from the air ducts. The AC system did not produce any condensation after running for an extended time.

D. Summary of Respondent's Evidence and Arguments

Mr. Gregory testified that the FSE's inspection showed the door on track and operating as intended. The FSE also found modifications, including power inverters and a headrest. Running the AC did not cause water to stain the headliner. However, the FSE suspected water in the vehicle may have been from damage on the roof rather than the climate control system. Mr. Gregory noted that the vehicle did not have reasonable repair attempts because the first repair occurred at 34,213 miles. Therefore, the vehicle did not qualify for repurchase or replacement.

Mr. Bashir reviewed the repairs made by the dealer. The dealer did repair the door but could not duplicate the water leak. However, the dealer confirmed that condensation may drip when warm air hits cold air, which Mr. Bashir described as an environmental condition. He also

noted that the roof damage could have been a source of water either through a leak or allowing warmer, moist air into the vehicle.

E. Analysis

1. Warrantable Defect

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] In part, the warranty generally states that:

> Under your New Vehicle Limited Warranty if:
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> - your Ford vehicle is properly operated and maintained, and
>
> - was taken to a Ford dealership for a warranted repair during the warranty period,
>
> then authorized Ford Motor Company dealers will, without charge, repair, replace, or adjust all parts on your vehicle that malfunction or fail during normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship.[28]

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).[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 at the factory, such as incorrect assembly or the use of a broken part. Unlike manufacturing defects, issues that do not arise from manufacturing, such as the vehicle's design characteristics (which exist before manufacturing) or dealer representations and improper dealer repairs (which occur after manufacturing), are not warrantable defects. Design characteristics/defects result from the vehicle's specified design,

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

[28] Complainant's Ex. 3, New Vehicle Limited Warranty.

[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.").

which exists before the vehicle is manufactured, and not from any error during manufacturing.[30] Because the warranty only covers manufacturing defects, any characteristics of the design, or other non-manufacturing problems, do not qualify for relief.

a. Sliding Door

The sliding door clearly has a nonconformity that continues to exist. The inspection at the hearing showed that the door did not always close completely even after multiple attempts to shut the door. Moreover, when the door latches but does not close flush (leaving the door slightly ajar), the power running board remains extended but the "door ajar" warning light does not illuminate. Significantly, relying on the "door ajar" warning light may falsely lead the driver to believe the sliding door is completely shut and the power running board is retracted.

b. AC System Condensation

The condensation appears to occur normally due to environmental factors (heat and humidity) and limitations in the air conditioning system's design and not due to any manufacturing defects. Accordingly, the condensation issue does not support any relief. Further, the detached headliner associated with the dealer's investigation of the AC condensation issue is not a warrantable manufacturing defect since the dealer caused this issue rather than the Respondent's manufacture of the vehicle.

2. Reasonable Repair Attempts

The vehicle does not meet the presumption for reasonable repair attempts. Specifically, to qualify for repurchase or replacement, the vehicle must have had a reasonable number of repair attempts before the earlier of the warranty expiration or 24 months or 24,000 miles after delivery. However, the first repair attempt for a nonconformity did not occur until November 27, 2018, at 34,213 miles (34,198 miles after delivery). That is, the first repair occurred about 10,000 miles past the 24,000 mile limit, making the vehicle ineligible for repurchase or replacement under the Lemon Law. Nevertheless, the vehicle qualifies for warranty repair relief because of the continued existence of a warrantable defect.

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[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).

III. Findings of Fact

1. On November 9, 2017, the Complainant, purchased a new 2017 Ford Transit from Sterling McCall Ford, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had 15 miles on the odometer at the time of purchase.

2. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first.

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

Date	Miles	Issue
November 27, 2018 December 17, 2018	34,213	Sliding door hanging up; AC water leaks
December 17, 2018 January 9, 2019	34,220	Sliding door is not flush
January 17, 2019	35,384	(manufacturer's opportunity to repair)

4. On January 31, 2019, the Complainant provided a written notice of defect to the Respondent.

5. On February 8, 2019, the Complainant filed a complaint with the Department alleging that: condensation ran from the headliner in the rear passenger area; the headliner was not properly attached; the sliding door would not close completely; and the step (power running board) would not retract.

6. On March 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 June 19, 2019, in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on July 8, 2019, upon admission of Complainant's Exhibit 1A and Respondent's Exhibit 1. The Complainant, represented himself. Dana Marie Veatch Jones, the Complainant's spouse, testified for the Complainant. Anthony Gregory, consumer affairs legal analyst, represented and testified for the Respondent. Asad Bashir, automotive technical specialist, testified for the Respondent.

8. The vehicle's odometer displayed 36,236 miles at the time of the hearing.

9. The warranty expired upon the odometer reaching 36,015 miles.

10. During the inspection of the subject vehicle at the hearing, the odometer displayed 36,236 miles. Various parts around the sliding door showed signs of damage, including broken plastic and dents in the metal corresponding to the movement of the door. When the Complainant tried closing the sliding door from the exterior, the door would latch but not close completely flush with the body on the first two attempts, leaving the door slightly ajar. The door closed completely on the third attempt. When the Complainant tried closing the sliding door from the interior, the door did not completely close in five attempts. The hearings examiner tried to close the sliding door from the exterior five times without the door closing completely. When the hearings examiner tried to close the sliding door from the interior, the door closed completely on the third attempt. With the sliding door latched but partially ajar (not closed flush with the body), the power running board remained extended but the door ajar warning lamp did not light. Whether the door was completely closed was difficult to determine from the interior. The interior of the vehicle exhibited some watermarks on a column, apparently due to condensation from the air ducts. The AC system did not produce any condensation after running for an extended time.

11. The sliding door is difficult to close completely flush, requiring as many as 15 attempts to close completely.

12. The dashboard "door ajar" indicator will turn off with the sliding door latched but not closed flush with the body of the vehicle.

13. With the door latched but not closed flush, the power running board may remain extended, posing a risk of collision.

14. Whether the door was completely closed was difficult to determine from the interior.

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's vehicle does not qualify for replacement or repurchase. The Complainant did not meet the requirement for a reasonable number of repair attempts. The vehicle did not have sufficient repair attempts before 24,000 miles following the original delivery of the vehicle. TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).

7. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).

8. The Complainant's vehicle qualifies for warranty repair. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainant or an agent of the Complainant notified the Respondent or Respondent's agent of the alleged defect(s). TEX. OCC. CODE §§ 2301.204 and 43 TEX. ADMIN. CODE § 215.202(b)(3).

9. 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.

10. 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 **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the subject vehicle's sliding door, including body damage directly caused by the door's malfunctioning, to the applicable warranty as specified here. Upon this Order becoming final under Texas Government Code § 2001.144:[31] (1) the Complainant shall deliver the vehicle to the Respondent within 20 days; and (2) the Respondent shall complete the repair of the vehicle within **20 days** after receiving it. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED August 28, 2019

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

[31] 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.