

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0006719 CAF**

**MICHAEL A. McMULLEN,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Michael A. McMullen (Complainant) filed a petition seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his new 2017 Ford F-250 Super Duty pickup truck. Complainant asserts that the vehicle's steering wheel will intermittently vibrate severely when the vehicle is driven over a bump at high speed. Ford Motor Company (Respondent) argued that the vehicle has been repaired and Complainant is not entitled to repurchase or replacement relief. The hearings examiner concludes that the vehicle does have an existing warrantable defect or nonconformity and Complainant is eligible for repurchase relief.

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 July 15, 2019, in Corpus Christi, Texas before Hearings Examiner Edward Sandoval. Complainant, Michael A. McMullen, was present and represented himself in the hearing. Respondent, Ford Motor Company, was represented in the hearing by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir Automotive Technical Consultant, also testified for Respondent.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the owner must have mailed written notice of the alleged defect or

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

In addition to these conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the repair 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.⁵

If a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has 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..⁶

“Serious safety hazard” means a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.⁷

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2017 Ford F-250 Super Duty pickup truck (the vehicle) from AutoNation Ford (AutoNation) in Corpus Christ, Texas.⁸ The vehicle had mileage of 5 at the time of purchase on October 5, 2017.⁹ Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first. Respondent also provided a powertrain warranty for the vehicle providing coverage for the vehicle’s powertrain for five (5) years or 60,000 miles. At the time of hearing, the vehicle’s mileage was 22,244. Respondent’s warranties for the vehicle were still in effect on the hearing date.

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a) (3) provides a third method for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. This section requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

⁶ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁷ Tex. Occ. Code § 2301.601(4).

⁸ Complainant Ex. 2, Retail Purchase Agreement dated October 5, 2017.

⁹ *Id.*

Complainant testified that he's the primary driver of the vehicle. He stated that he has experienced a severe vibration in the vehicle's steering wheel when driving over a bump at a high rate of speed. (Complainant refers to the vibration as a "death wobble".) This has caused him to almost lose control of the vehicle and has caused him not to want to drive the vehicle.

Complainant stated that he's experienced the concern with the severe vibration in the steering wheel on at least five (5) occasions. Complainant first took the vehicle to AutoNation for repair for the issue on January 25, 2019. AutoNation's service technician determined that the severe vibration was described in Respondent's Technical Service Bulletin (TSB) #18-2268.¹⁰ The technician determined that the steering wheel damper had a weak spot and replaced it pursuant to instructions found in the TSB.¹¹ The vehicle's mileage at the time was 18,885.¹² Complainant testified that the vehicle was in AutoNation's possession for a couple of days. Complainant did not receive a loaner vehicle while his vehicle was being repaired.

Complainant testified that the vehicle seemed to drive fine after he picked it up from AutoNation. However, in early March of 2019, Complainant again experienced the severe vibration. He was driving the vehicle between 60 and 70 mph on the highway and hit a bump. The steering wheel started shaking severely and Complainant almost lost control of the vehicle. He had to slow down to about 30 mph before the steering wheel stopped shaking. Complainant took the vehicle back to AutoNation for repair for the issue on March 6, 2019. AutoNation's technician referred to TSB #18-2268 and installed alignment bushings to reduce the caster to nominal specifications.¹³ The vehicle's mileage on this occasion was 20,080.¹⁴ The vehicle was in Russell's possession for two (2) days on this occasion. Complainant was provided with a loaner vehicle during this repair visit.

Complainant mailed a notice to Respondent on March 8, 2019, advising them that he was dissatisfied with the vehicle.¹⁵ Complainant also filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on March 8, 2019.¹⁶

Respondent's representative contacted Complainant in order to make arrangements for the vehicle to be inspected by a field service engineer (FSE). Complainant left the vehicle at the AutoNation location on March 18, 2019. Complainant received a loaner vehicle from the dealer, but only kept it for two (2) to three (3) days. The vehicle was inspected by Respondent's FSE on April 11, 2019.

¹⁰ Complainant Ex. 3, Repair Order dated January 25, 2019.

¹¹ *Id.*

¹² *Id.*

¹³ Complainant Ex. 4, Repair Order dated March 6, 2019.

¹⁴ *Id.*

¹⁵ Complainant Ex. 8, Written Notification to Manufacturer dated March 8, 2019.

¹⁶ Complainant Ex. 1, Lemon Law Complaint dated March 8, 2019.

The FSE could not verify any concerns during the inspection and performed no repairs for the issue.¹⁷ The vehicle's mileage on this occasion was 20,332.¹⁸

Complainant testified that he has to drive to Portland, Texas for work. Every day he drives across a highway bridge to get to and from work. Complainant stated that he doesn't feel safe driving the vehicle on the highway, so he has stopped driving it. He's been allowing his son to drive the vehicle to work, since it's near their home and he doesn't have to drive on the highway. Complainant testified that his son had a similar incident with the vehicle's steering wheel vibrating severely in May of 2019. On this occasion, the steering wheel wouldn't work for a few seconds while it was vibrating. The steering wheel eventually started responding and Complainant's son was able to finish his trip without further incident.

Complainant testified that the vehicle's steering wheel jerks up and down about two (2) to three (3) inches when the problem occurs. He holds onto the steering wheel as tightly as possible to prevent losing control of the vehicle. He's almost had at least one (1) accident when driving the vehicle and the steering wheel starts vibrating.

During cross-examination, Complainant explained about the March 2019 incident where he almost lost control of the vehicle. Complainant stated that he was driving over the Harbor Bridge at approximately 60 to 65 mph when he drove over an expansion joint. The steering wheel started vibrating and Complainant almost lost control of the vehicle. He did not regain full control of the vehicle until the vehicle's speed dropped to about 45 mph.

C. Respondent's Evidence and Arguments

1. Anthony Gregory's Testimony

Anthony Gregory, Consumer Affairs Legal Analyst, testified for Respondent. He stated that he does not know what a "death wobble" is. He also stated that Respondent's TSB #18-2268 was written to address the issue of a "sustained steering wheel oscillation." Respondent is aware that there may be occasions where a heavy duty pickup truck's steering wheel may vibrate and the TSB is an attempt to provide information to dealers' technicians on how to address the issue.

Mr. Gregory stated that he doesn't believe that Complainant's vehicle should be eligible for repurchase, since it was not presented to a dealer for repair four (4) or more times within the first two (2) years or 24,000 miles of ownership. He also stated that the vehicle was operating as designed.

¹⁷ Complainant Ex. 5, Repair Order dated April 11, 2019.

¹⁸ *Id.*

2. Sayyed Asad Bashir's Testimony

Mr. Bashir, Automotive Technical Consultant, testified for Respondent. Mr. Bashir has worked in the automotive industry for the last 19 years. Prior to 2007, Mr. Bashir worked for independent automotive repair shops. He was hired by Respondent in 2007 and worked for two (2) years in Respondent's extended warranty program. In 2009, Mr. Bashir was hired for his present position. Mr. Bashir is an Automotive Service Excellence (ASE) Certified Master Technician.

Mr. Bashir testified that he has never seen or driven the subject vehicle. He reviewed the vehicle's repair orders and case histories prior to the hearing.

Mr. Bashir stated that a technical service bulletin (TSB) is designed to be an addendum or addition to Respondent's workshop service manual (WSM). Mr. Bashir stated that TSB #18-2268 was referred to in the repair orders submitted by Complainant. The TSB was designed to address the issue of a sustained steering wheel oscillation which can occur when driving a vehicle at speeds above 45 mph. The oscillation referred to in the TSB is the steering wheel moving back and forth after a driver hits a bump. The movement (oscillation) usually continues until the vehicle's speed decreases.

Mr. Bashir stated that a vehicle's steering wheel damper is supposed to help curtail oscillation in the steering wheel. This is why it was replaced during the repair visit that occurred on January 25, 2019. When Complainant took the vehicle back to the dealer for repair on March 6, 2019, the technician inspected the damper and determined that it was fine. The technician then reduced the front caster angle in order to address the issue of the steering wheel oscillation.

Mr. Bashir stated that he believes the vehicle is operating as designed.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that 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.

The evidence presented at the hearing reveals that intermittently the vehicle will have a severe vibration in the steering wheel when the driver goes over a bump at a high rate of speed. Complainant testified that he has experienced this issue on at least two (2) occasions. In addition,

Complainant's son experienced a similar problem when driving the vehicle in May of 2019. The vibration issue has been so severe that Complainant almost lost control of the vehicle on at least one occasion. The hearings examiner must hold that Complainant has carried the burden of persuasion to establish the existence of a defect or nonconformity in the vehicle that creates a serious safety hazard as the issue substantially impedes Complainant's ability to control or operate the vehicle for its ordinary or intended purposes.

Complainant also presented evidence to indicate that Respondent or its authorized representative was provided with a reasonable number of repair attempts to repair the defect or nonconformity with the vehicle. Complainant presented the vehicle for repair to Respondent's authorized representatives on two (2) occasions prior to the filing of the Lemon Law complaint: January 25, 2019 (at 18,885 miles) and March 6, 2019 (at 20,080 miles). 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." Section 2301.605(a)(2) specifies that a rebuttable presumption that a reasonable number of attempts to repair a serious safety hazard is established if Respondent has had two (2) repair attempts prior to the vehicle having been driven 24,000 miles or within the first 24 months of ownership. The evidence presented at the hearing establishes that Complainant has met the requirements of this test since he took the vehicle for repair the requisite number of times within the specified time frame and the problem continued to exist. As such, Complainant has established that a reasonable number of attempts to repair the vehicle were made by Respondent.

In addition, the evidence presented at the hearing indicates that Complainant provided Respondent with written notice of the defect and a final opportunity to cure the defect. Complainant informed Respondent via letter dated March 8, 2019, of the issue with the severe vibration in the vehicle's steering wheel and providing Respondent with an opportunity to cure. Respondent had its field service engineer inspect and test drive the vehicle on April 11, 2019. No repairs were performed at the time.

Although Respondent has been provided adequate opportunity to repair the vehicle and to ensure that it operates properly, they have not been able to repair the vehicle so that it conforms to their written warranty. As such, Complainant has met his burden of proof to establish that the vehicle has a warrantable and existing defect or nonconformity which creates a serious safety hazard.

Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case. Complainant's request for repurchase relief is hereby granted.

III. FINDINGS OF FACT

1. Michael A. McMullen (Complainant) purchased a new 2017 Ford F-250 Super Duty pickup truck on October 5, 2017, from AutoNation Ford (AutoNation) in Corpus Christi, Texas with mileage of 5 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty for the vehicle providing coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent provided a five (5) year or 60,000 mile warranty for the vehicle's powertrain.
3. The vehicle's mileage on the date of the hearing was 22,244.
4. At the time of hearing the warranties for the vehicle were still in effect.
5. Complainant has intermittently experienced severe vibration in the vehicle's steering wheel when driving over a bump at a high rate of speed causing him to almost lose control of the vehicle.
6. Complainant's vehicle was serviced by Respondent's authorized dealers on the following dates because of Complainant's concerns with the vehicle:
 - a. January 25, 2019, at 18,885 miles; and
 - b. March 6, 2019, at 20,080 miles.
7. On January 25, 2019, AutoNation's service technician replaced the vehicle's steering wheel damper, which had a weak spot, in order to resolve Complainant's concern.
8. On March 6, 2019, AutoNation's service technician installed alignment bushing to the vehicle in order to get the caster to Respondent's nominal specifications in order to resolve the issue.
9. On March 8, 2019, Complainant provided written notice to Respondent of his dissatisfaction with the vehicle.
10. On March 8, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. On April 11, 2019, Respondent's field service engineer, Brian Jay, inspected the vehicle at the AutoNation dealership to investigate Complainant's concerns.

12. During the inspection described in Findings of Fact #11, Mr. Jay determined that there was no problem with the vehicle and recommended no repairs to the vehicle.
13. In May of 2019, Complainant's son experienced a problem with the vehicle's steering wheel vibrating severely after driving over a bump in the vehicle.
14. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$48,293.54
Delivery mileage	5
Mileage at first report of defective condition	18,885
Mileage on hearing date	22,244
Useful life determination	120,000

Purchase price, including tax, title, license and registration					\$48,293.54
Mileage at first report of defective condition		18,885			
Less mileage at delivery		<u>-5</u>			
Unimpaired miles		18,880			
Mileage on hearing date		22,244			
Less mileage at first report of defective condition		<u>-18,885</u>			
Impaired miles		3,359			
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
		<u>18,880</u>			
	120,000		X	\$48,293.54	= \$7,598.18
Impaired miles					
		<u>3,359</u>			
	120,000		X	\$48,293.54	X .5 = <u>\$675.91</u>
Total reasonable allowance for use deduction:					\$8,274.09
Purchase price, including tax, title, license and registration				\$48,293.54	
Less reasonable allowance for use deduction				<u>-\$8,274.09</u>	
Plus filing fee refund				<u>\$35.00</u>	
TOTAL REPURCHASE AMOUNT				\$40,054.45	

15. On May 13, 2019, 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.

16. The hearing in this case convened and the record closed on July 15, 2019, in Corpus Christi, Texas before Hearings Examiner Edward Sandoval. Complainant, Michael A. McMullen, was present and represented himself in the hearing. Respondent, Ford Motor Company, was represented in the hearing by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir Automotive Technical Consultant, also testified for Respondent.

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's vehicle has an existing defect or condition that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief and repurchase of his 2017 Ford F-250 Super Duty pickup truck under Texas Occupations Code § 2301.604(a).

IT IS THEREFORE ORDERED that:

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;
2. Respondent shall repurchase the subject vehicle in the amount of **\$40,054.45**. The refund shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of the return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainant is responsible for providing Respondent with clear title to the vehicle;
3. Within 20 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31st calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. 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. 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 calendar days of the transfer.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent, Ford Motor Company, shall repair the warrantable defect in the reacquired vehicle identified in this Decision.

SIGNED July 17, 2019



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