

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0012127 CAF**

**BETTY KIRKPATRICK and
PAUL RUNNELS,
Complainants**

v.

**FOREST RIVER, INC.,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Betty Kirkpatrick and Paul Runnels (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 recreational vehicle (RV) manufactured by Forest River, Inc. (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that substantially impairs the vehicle’s market value after a reasonable number of repair attempts. Consequently, the Complainants’ vehicle qualifies for repurchase.

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 March 12, 2020, at 9:00 a.m. in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented himself herself. Warren Murphy, Assistant Director, Parts, Service, & Warranty, 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 July 2, 2018, the Complainants, purchased a new 2018 Columbus 386FK from Ron Hoover RV & Marine, an authorized dealer of the Respondent, in La Marque, Texas. The Complainants took delivery of the vehicle on August 8, 2018. The Respondent warrants “for a period of one (1) year from the date of purchase (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.” On June 12, 2019, the Complainants filed a complaint with the Department alleging that the subject RV had: a malfunctioning control board, leaks, delamination, buckling floors, a dented vent hood, leaking slides, rollers tearing underneath slides, jacks popping, exposed wood

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).

underneath, daylight visible at bedroom slide, roof rail popping up, the underbelly opened and tape falling off, rippling paneling, marks on ceilings and walls, and unsightly roof seams. Subsequently, the vent hood, roof rail, and underbelly had been successfully repaired. On July 11, 2019, the Complainants provided a written notice of defect to the Respondent (however, as reflected in testimony, the notice was sent to the wrong address). The Department's records indicate that the Enforcement Division's Lemon Law Section sent a copy of the Complaint to the Respondent on September 11, 2019.

Mrs. Kirkpatrick testified that the Complainants had not fully tested the RV, including the plumbing, after its return from the factory repair. She noticed the control board malfunction the second day after getting the RV (from the factory). The Dealer replaced the control board about January or February of 2019, but she did not know if it worked. Mrs. Kirkpatrick last noticed the leaking when getting the RV back from the factory in February of 2020. She last noticed the delamination when the dealer pointed it out when picking up the RV (from the dealer) in April or May of 2019. Regarding, the buckling/uneven floors, Mrs. Kirkpatrick explained that the floors were sanded but not cleaned up. She last noticed the flooring issue the day before the hearing. She last noticed water leaking in on the day of the February 6, 2020, video. In relation to the slide rollers, Mrs. Kirkpatrick elaborated that they did not tear the slide underneath but made a mark due to greater weight on the left of the slide, which also caused a gap. She last noticed the roller issue before transport of the RV to the factory for repair. Mr. Runnels stated that he last noticed the jacks popping before taking the RV in for the last repair attempt. Mrs. Kirkpatrick last noticed the exposed wood, when the Respondent took the RV to the factory. The Complainants did not subsequently check this issue. Mrs. Kirkpatrick last noticed the daylight at the bedroom slide the day before the hearing. She last noticed the marks on the ceilings and walls (where stapled, caulked and not cleaned off), the day before the hearing. She last noticed the roof seam issue when the Respondent took the RV for repair. Mrs. Kirkpatrick affirmed that the RV had two repair visits, not including mobile mechanic repairs. The first repair visit lasted at least six months.²⁷ The RV was out of service for repair for a total of about 10 months.

²⁷ Note: Complainants' Ex. 3, Work Order #9793 (Invoice #488511), shows the "date in" as November 5, 2018. Complainant's Exhibit 1, Notice of Defect, reflects that the RV was at the dealer from November 5, 2018, through April 22, 2019 (a total of 168 days).

On cross-examination, Mrs. Kirkpatrick testified that the Complainants had sent the notice of defect to the wrong address, to the factory (instead of the address for notices under the warranty). Mr. Murphy noted that the list of issues (from the Complaint) the Respondent worked from did not include the Level Up control board. Mrs. Kirkpatrick explained that the Level Up control board was working when the RV was taken to the factory. Mrs. Kirkpatrick indicated that she did not see any water in the living area or slides other than the bedroom.

C. Inspection

Inspection of the subject vehicle at the hearing showed the flooring to be virtually level with differences no greater than one degree. The slides exhibited light shining in at certain areas. Spraying water on the bedroom slide resulted in a steady drip of water leaking from under the window.

D. Summary of Respondent's Evidence and Arguments

The Respondent's repair records show the RV arrived at the factory on October 21, 2019, and the Respondent completed repairs on January 20, 2020 (a total of 91 days).²⁸

E. Analysis

The subject RV satisfies the requirements for repurchase relief. As explained below, the water leak at the bedroom slide is determinative of this case and forms the basis for repurchase.

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)²⁹ that continues to exist after repair.³⁰ In part, the warranty generally states that the Respondent warrants: "for a period of one (1) year from the date of purchase (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial

²⁸ Respondent's Ex. 1, Repair Records.

²⁹ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

³⁰ TEX. OCC. CODE § 2301.605.

defects in materials and workmanship attributable to Warrantor.”³¹ According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).

As demonstrated at the inspection during the hearing, the subject RV has an existing leak at the bedroom slide. The repair history shows that the wood paneling under the bed had previously been damaged by water leaking in the same area. Given these considerations, the leak substantially impairs the market value of the RV under the Department’s reasonable prospective purchaser standard.

2. Reasonable Repair Attempts

The evidence reflects that the repair visit at the dealer occurred on November 5, 2018, through April 22, 2019 (a total of 168 days). The repair visit at the factory occurred on October 21, 2019, through January 20, 2020 (a total of 91 days). The RV was out of service for repair for a cumulative total of 259 days, greater than the 30 days needed to establish a presumption of reasonable repair attempts.

3. Notice of Defect/Report of Defect

The work order for the November 5, 2018, dealer repair visit does not show any issue with leaking at the bedroom slide. The Complainants sent a notice of the defect to the Respondent on July 11, 2019; however, as reflected in testimony, the notice was sent to the wrong address. The Department’s records indicate that the Enforcement Division’s Lemon Law Section sent a copy of the Complaint to the Respondent on September 11, 2019. The first documented repair attempt for water leaking at the bedroom slide occurred during the October 21, 2019, factory repair visit, as shown in the Respondent’s factory repair records. The available evidence indicates that the Complaint is the first report of the water leaking at the bedroom slide.

III. Findings of Fact

1. On July 2, 2018, the Complainants, purchased a new 2018 Columbus 386FK from Ron Hoover RV & Marine, an authorized dealer of the Respondent, in La Marque, Texas. The Complainants took delivery of the subject recreational vehicle on August 8, 2018.

³¹ Complainant’s Ex. 5, Fifth Wheel Owner’s Manual, Warranty.

2. The Respondent warrants “for a period of one (1) year from the date of purchase (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.”
3. The vehicle was at the dealer for repair from November 5, 2018, to April 22, 2019 (a total of 168 days). The work order for the dealer repairs did not address the water leak at the bedroom slide.
4. The vehicle was at the factory for repair from October 21, 2019, to January 20, 2020 (a total of 91 days). The repairs addressed, among other things, the water leak at the bedroom slide.
5. The vehicle was out of service for repair for a total of 259 days.
6. On June 12, 2019, the Complainants filed a complaint with the Department alleging that the subject RV had: a malfunctioning control board, leaks, delamination, buckling floors, a dented vent hood, leaking slides, rollers tearing underneath slides, jacks popping, exposed wood underneath, daylight visible at bedroom slide, roof rail popping up, the underbelly opened and tape falling off, rippling paneling, marks on ceilings and walls, and unsightly roof seams. Subsequently, the vent hood, roof rail, and underbelly had been successfully repaired.
7. On July 11, 2019, the Complainants provided a written notice of defect to the Respondent; however, the notice was sent to the wrong address.
8. The Department’s Enforcement Division sent a copy of the Complaint to the Respondent on September 11, 2019. The copy of the Complaint to the Respondent was the first report of the water leak at the bedroom slide.
9. On November 22, 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.

10. The hearing in this case convened on March 12, 2020, in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented himself herself. Warren Murphy, Assistant Director, Parts, Service, & Warranty, represented the Respondent.
11. The vehicle's warranty expired on August 8, 2019.
12. Inspection of the subject vehicle at the hearing showed the flooring to be virtually level with differences no greater than one degree. The slides exhibited light shining in at certain areas. Spraying water on the bedroom slide resulted in a steady drip of water leaking from under the window.
13. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license & registration	\$87,363.48
Date of delivery	08/08/18
Date of first report of defective condition	09/11/19
Date of hearing	03/12/20
Days out of service	259
Useful life determination	3,650

Purchase price, including tax, title, license & registration				\$87,363.48
<i>Unimpaired Days:</i> Date of first report of defective condition less date of delivery	09/11/19	-	08/08/18	= 399
<i>Impaired Days:</i> Date of hearing less date of first report of defective condition Less days out of service for repair	03/12/20	-	09/11/19	= 183 -259 <u>-76</u>
<i>Reasonable Allowance for Use Calculations:</i> Unimpaired days	399	÷	3,650	× \$87,363.48 = \$9,550.14
Impaired days	-76	÷	3,650	× \$87,363.48 × 50% = (\$909.54)
Total reasonable allowance for use deduction				\$8,640.61
Purchase price, including tax, title, license & registration				\$87,363.48
Less reasonable allowance for use deduction				-\$8,640.61
Plus filing fee refund				\$35.00
Plus incidental expenses				\$0.00
TOTAL REPURCHASE AMOUNT				\$78,757.87

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 Department 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. A warrantable defect that substantially impairs the market value of the vehicle continues to exist after a reasonable number of repair attempts. TEX. OCC. CODE § 2301.604(a).

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 **\$78,757.87**. The refund shall be paid to the Complainants and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to the Respondent, then the full refund shall be paid to the Complainants. At the time of the return, the Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, the Complainants are responsible for providing the Respondent with clear title to the vehicle;
3. The parties shall complete the return and repurchase of the subject vehicle within **20 days** after the date this Order becomes final under Texas Government Code § 2001.144.³² 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 with clear title, 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;

³² 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 May 12, 2020



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