

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0013443 CAF**

JOSE PEREZ,
Complainant

v.

GENERAL MOTORS LLC,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Jose Perez (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) alleged warrantable defects in his vehicle manufactured by General Motors LLC (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that 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 by teleconference on March 1, 2022, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, was represented by Stephen Walker and Gabriel Perez, attorneys. Clifton Green, Business Resource Manager, represented the Respondent. Bruce Morris, Field Service Engineer, also testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.² 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.”³ 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.⁴ 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.⁵

b. Substantial Impairment of Use or Value

i. Impairment of Use

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs use. Under this standard, the factfinder considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle” from the perspective of a reasonable prospective purchaser. For instance, “while a vehicle with a non-functioning air

² TEX. OCC. CODE § 2301.603.

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.604(a).

⁵ TEX. OCC. CODE § 2301.601(4).

conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁶

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.”⁷

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.⁸

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

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

⁷ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“We find that this interpretation of the standard required for demonstrating substantial impairment is reasonable and consistent with the statute’s plain language which requires a showing of loss in market value. . . . [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.”).

⁸ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

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:

[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.¹⁰

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.¹¹

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.¹² 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.¹³

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;¹⁴ (2) the respondent was given an opportunity to cure the defect or

⁹ TEX. OCC. CODE § 2301.605(a)(2).

¹⁰ TEX. OCC. CODE § 2301.605(a)(3).

¹¹ TEX. OCC. CODE § 2301.605(c).

¹² *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.’”).

¹³ *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.”).

¹⁴ 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 satisfies the requirement to provide notice of the defect or nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).

nonconformity;¹⁵ and (3) the Lemon Law complaint was filed within six months after the earliest 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.¹⁶

2. Warranty Repair Relief

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”; the vehicle owner provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty's expiration; and the owner filed a complaint with the Department specifying the defect.¹⁷ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”¹⁸

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁹ 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.²⁰ Accordingly, the Complainant cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely.

¹⁵ TEX. OCC. CODE § 2301.606(c)(2). A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer may satisfy the opportunity to cure requirement when the respondent authorizes 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. A respondent forgoes its opportunity to repair by replying to a written notice of defect with a settlement offer instead of arranging a repair attempt. *Id* at 2.

¹⁶ TEX. OCC. CODE § 2301.606(d)(2).

¹⁷ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁸ TEX. OCC. CODE § 2301.603(a).

¹⁹ 43 TEX. ADMIN. CODE § 215.66(d).

²⁰ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

4. The Complaint Identifies the Relevant Issues in this Case

The complaint identifies the relevant issues to address in this case.²¹ 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 for relief under the lemon law.”²² However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.²³ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²⁴ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.²⁵

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.²⁶ 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

²¹ “In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case.” TEX. GOV’T CODE § 2001.051; “Notice of a hearing in a contested case must include . . . either: (A) a short, plain statement of the factual matters asserted; or (B) an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.” 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.”).

²² 43 TEX. ADMIN. CODE § 215.202(a)(3).

²³ 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

²⁴ *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

²⁵ *See* TEX. GOV’T CODE §§ 2001.141(b)-(c), 2001.051-2001.052; TEX. R. CIV. P. 301.

²⁶ TEX. OCC. CODE § 2301.604.

or similar written documents).²⁷ However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."²⁸

B. Summary of Complainant's Evidence and Arguments

On April 19, 2019, the Complainant, purchased a new 2019 Buick Encore from Beck & Master Buick-GMC Gulf, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had 5,494 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first.

On or about October 4, 2019, the Complainant provided a written notice of defect to the dealer. On June 11, 2020, the Complainant filed a complaint with the Department alleging that the brakes lock up and the vehicle loses power once the brakes are applied and a "StabiliTrak" message turns on and the vehicle is limited to 35 MPH. On July 13, 2020, the Department provided notice of the complaint to the Respondent.

In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
04/27/2019	5,942	The StabiliTrak light comes on while driving. The vehicle is limited to 35 MPH.
06/03/2019	7,567	The StabiliTrak light comes on and the vehicle slows down. The brakes are locking up and the vehicle has a burnt smell.
06/25/2019	8,327	The service StabiliTrak message is showing up. The vehicle loses power once the brake is applied.
07/29/2019	10,463	The brakes are locking up while driving. The service StabiliTrak message is showing up.
09/01/2020	33,877	When pressing the brakes when driving the vehicle comes to a complete stop and the service StabiliTrak message comes on.
03/05/2021	46,420	The vehicle's brakes needed to be replaced.

The Respondent had an opportunity to cure at the September 1, 2020, repair visit.

The Complainant confirmed that the vehicle is his full-time vehicle. He recalled that the first time he noticed the brake issue was Easter Sunday 2019. He described that the StabiliTrak

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

²⁸ 43 TEX. ADMIN. CODE § 215.208(b)(1).

came on and acted strangely. He explained that he was able to slow down but he felt kick back. He testified that two weeks after that incident, he was trying to slow down on the highway and suddenly the brakes engaged and the vehicle would not go forward.

The Complainant stated that he took the vehicle in to the dealer for repairs and roughly three weeks after the repair was completed he experienced the issue with the brakes engaging and not releasing even when he pressed on the accelerator. He mentioned that the vehicle will slow to a crawl and then it will not accelerate anymore in either forward or reverse. He explained that he had to turn the vehicle off in order to rest the brakes. He testified that the issues with the brakes are not predictable and there is no pattern to the issues.

The Complainant explained that during the first repair visit the dealer replaced the brake pedal position sensor and on the second visit the dealer replaced the electronic control or vacuum booster. He noted that the dealer was not able to replicate the issues. He claimed that he was still having issues after the repair attempt. He added that he took the vehicle to the dealer for a third time and the dealer had a field service engineer look at the vehicle. He stated he was not sure what repairs were made, but the issues were not fixed. He further stated that he took the vehicle to the dealer for repairs a fourth time and the dealer could not duplicate the issue so they did not repair anything. He confirmed that the issues remained after the repair attempts.

The Complainant explained that the vehicle drives normally when the brakes are not engaged, but he described a time when the vehicle was limited to 35 miles per hour while the brakes were engaged. He further described that he would press the accelerator and the RPMs would rise but the vehicle would not accelerate while the brakes were locked and he would smell burnt brakes. The Complainant estimated that the issue with braking when trying to accelerate happens about 70% of the time when there is an issue and the other 30% of the time the issue is the brakes do not working properly. He explained that there are situations where both issues occur at the same time, but they are less common than one issue happening on its own.

The Complainant recalled an incident where he was approaching a railroad crossing as the lights were flashing and he tried to slow down but the brakes did not function properly and the vehicle did not slow. He continued that he tried to accelerate through the crossing but the brakes locked up. He explained he had to quickly accelerate to force the vehicle to cross the railroad tracks and his windshield was cracked by the crossing arm.

The Complainant testified that he provided two opportunities for the Respondent to inspect the vehicle. He explained that they came to his house and inspected the vehicle. He recalled that they were not able to duplicate the issues.

The Complainant established that he most recently noticed the issues the day before the hearing. He stated that the issue sometimes resolves when the vehicle is turned off and turned back on. He testified that he still drives the vehicle because it is the only vehicle that he has and he needs it to get to work.

On cross-examination, the Complainant confirmed that the vehicle was working properly on the day of the hearing. He stated that his daily commute is about 15 miles in total. He added that he drives the vehicle for personal use and frequently has passengers in the vehicle. He affirmed that other members of his family had experienced issues with the brakes. He was unsure who sent the inspector to look at the vehicle. The Complainant testified that he did not take a photo or video every time there was an issue with the brakes. He further testified that there was a period of time where he was trying to accelerate and the vehicle would not go faster than 35 MPH because the brakes were active. The Complainant stated that he still uses the vehicle frequently as his daily driver. He added that he uses the vehicle outside of his daily commute including a long trip over 200 miles.

The Complainant stated that the issues occur very randomly and it occurs roughly three times a month. He expressed a preference for repurchase of the vehicle.

C. Summary of Respondent's Evidence and Arguments

Clifton Green, Business Resource Manager for the Respondent, testified that the vehicle is not showing a significant safety impairment or safety concern. He added that there has not been a loss of use of the vehicle and the Respondent believes that the vehicle is operating as designed.

Bruce Morris, Field Service Engineer for the Respondent, testified that he inspected the vehicle on September 1, 2020, when the vehicle had 33,877 miles on the odometer. He explained that he performed a visual inspection of the vehicle and noticed several paint chips and scuffs on the vehicle. He recalled that he found no diagnostic codes on the vehicle. He added that he visually inspected the brakes and did not notice anything unusual. He explained that he drove the vehicle

for 72 miles on various roads and in various traffic conditions and the brakes were working properly. He concluded that the vehicle was functioning as designed at the time of his inspection.

On cross-examination, Mr. Morris agreed that the brakes should engage when the brakes are pressed and it is a safety concern if they do not. He also agreed that the brakes should not engage when the gas is pressed and not the brakes.

Mr. Morris stated that there is normally evidence of hotspots on the brakes when they have locked up. He also stated that the electronic brake control module is very sensitive and if the StabiliTrak light turns on it should be noted in the diagnostic codes.

D. Analysis

A preponderance of the evidence shows that the subject vehicle qualifies for repurchase. 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, even after repair.³⁰ In part, the warranty generally states that: "The warranty covers repairs to correct any vehicle defect, not slight noise, vibrations, or other normal characteristics of the vehicle due to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new, remanufactured, or refurbished parts."³¹ According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³²

In the present case, the vehicle continues to have a defect even after reasonable repair attempts. The evidence reflects that the brakes/StabiliTrak malfunctioned the day before the hearing. The repair history shows a total of six repair attempts with four repair attempts within the

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

³⁰ TEX. OCC. CODE § 2301.605.

³¹ Respondent's Ex. 8, Limited Warranty and Owner Assistance Information.

³² 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.").

first 24 months or 24,000 miles, which complies with the general presumption for reasonable repair attempts. Moreover, the braking/StabiliTrak defect constitutes a serious safety hazard since the defect substantially impedes the ability to control or operate the vehicle, which fails to brake, brakes unexpectedly, and fails to accelerate, thereby creating a risk of a life-threatening collision. Accordingly, the vehicle also meets the statutory presumption for reasonable repair attempts for serious safety hazards, which only requires two attempts within the first 24 months or 24,000 miles. Further, under the reasonable purchaser standard, the defect substantially impairs the use and value of the vehicle.

III. Findings of Fact

1. On April 19, 2019, the Complainant, purchased a new 2019 GMC Encore from Beck & Master Buick-GMC Gulf, a franchised/authorized dealer of the Respondent, in Houston, Texas. The vehicle had 5,494 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
04/27/2019	5,942	The StabiliTrak light comes on while driving. The vehicle is limited to 35 MPH.
06/03/2019	7,567	The StabiliTrak light comes on and the vehicle slows down. The brakes are locking up and the vehicle has a burnt smell.
06/25/2019	8,327	The service StabiliTrak message is showing up. The vehicle loses power once the brake is applied.
07/29/2019	10,463	The brakes are locking up while driving. The service StabiliTrak message is showing up.
09/01/2020	33,877	When pressing the brakes when driving the vehicle comes to a complete stop and the service StabiliTrak message comes on.
03/05/2021	46,420	The vehicle's brakes needed to be replaced.

4. The Respondent had an opportunity to cure at the September 1, 2020, repair visit.
5. On June 11, 2020, the Complainant filed a complaint with the Department alleging that the brakes lock up and the vehicle loses power once the brakes are applied and a "StabiliTrak" message turns on and the vehicle is limited to 35 MPH.

6. On July 13, 2020, the Department provided notice of the complaint to the Respondent.
7. On October 7, 2020, 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.
8. The hearing in this case convened by teleconference on March 1, 2022, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, was represented by Stephen Walker and Gabriel Perez, attorneys. Clifton Green, Business Resource Manager, represented the Respondent. Bruce Morris, Field Service Engineer, also testified for the Respondent.
9. The vehicle's odometer displayed 69,457 miles at the time of the hearing.
10. The warranty expired 50,000 miles after purchase with 55,494 miles on the odometer.
11. The vehicle continues to have a defect after repairs. The brakes/StabiliTrak malfunctioned the day before the hearing.
12. The braking/StabiliTrak defect constitutes a serious safety hazard since the defect substantially impedes the ability to control or operate the vehicle, which fails to brake, brakes unexpectedly, and fails to accelerate, thereby creating a risk of a life-threatening collision.
13. Under the reasonable purchaser standard, the defect substantially impairs the use and value of the vehicle.

14. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license & registration	\$22,981.71
Delivery mileage	5,494
Mileage at first report of defective condition	5,942
Mileage on hearing date	69,457
Useful life determination	120,000

Purchase price, including tax, title, license & registration	\$22,981.71								
Mileage at first report of defective condition	5,942								
Less mileage at delivery	-5,494								
Unimpaired miles	448								
Mileage on hearing date	69,457								
Less mileage at first report of defective condition	-5,942								
Impaired miles	63,515								
Reasonable Allowance for Use Calculations:									
Unimpaired miles	448	÷	120,000	×	\$22,981.71	=	\$85.80		
Impaired miles	63,515	÷	120,000	×	\$22,981.71	×	50%	=	\$6,082.01
Total reasonable allowance for use deduction						\$6,167.81			
Purchase price, including tax, title, license & registration	\$22,981.71								
Less reasonable allowance for use deduction	-\$6,167.81								
Plus filing fee refund	\$35.00								
Plus incidental expenses	\$0.00								
TOTAL REPURCHASE AMOUNT	\$16,848.90								

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 or a person on behalf of the Complainant 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 Complainant timely filed the complaint commencing this proceeding. TEX. OCC. CODE § 2301.606(d).
9. The Complainant's vehicle qualifies for replacement or repurchase. A warrantable defect that creates a serious safety hazard or substantially impairs the use or market value of the vehicle continues to exist after a reasonable number of repair attempts. TEX. OCC. CODE § 2301.604(a).
10. 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.
11. 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 **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 Complainant. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the 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. The Respondent shall repurchase the subject vehicle in the amount of **\$16,848.90**. The refund shall be paid to the Complainant 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 Complainant. 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 Complainant is 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 § 2001.144.³³ However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to the Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by the Complainant 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;
 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,

³³ 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.

address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 days of the transfer.

SIGNED May 3, 2022

A handwritten signature in black ink, appearing to read "Andrew Kang", is written over a horizontal line.

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