

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0000484 CAF**

**ROBERT TURNER,
Complainant**

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BEFORE THE OFFICE

v.

OF

**FORD MOTOR COMPANY,
Respondent**

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Robert Turner (Complainant) seeks repair relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in his 2017 Ford F-150 pickup truck. Complainant asserts that the vehicle has a defect or nonconformity which has resulted in numerous water leaks and a subsequent mildew/mold odor. Ford Motor Company (Respondent) argued that the vehicle has been repaired, it does not have a manufacturing defect, and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainant is eligible for repair 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 originally convened telephonically on March 12, 2021, before Hearings Examiner Edward Sandoval. Robert Turner, Complainant, appeared and represented himself at the hearing. Ford Motor Company, Respondent, was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Also present and offering testimony for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant. The hearing was continued to May 13, 2021, in order to provide the hearings examiner an opportunity to inspect and participate in a test drive the of the subject vehicle.

The hearing continuance was conducted by Hearings Examiner Edward Sandoval on May 13, 2021, at the Texas Department of Motor Vehicles' regional service center in Houston, Texas. Robert Turner, Complainant, appeared and represented himself at the continuance. Ford Motor Company, Respondent, was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, appeared telephonically and testified for Respondent. In addition, Brett Castleberry, Field Service Engineer, appeared in person and testified for Respondent. The hearing record closed on May 13, 2021.

II. DISCUSSION

A. Applicable Law

Texas Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.”

Texas Occupations Code § 2301.604 provides that “[a] manufacturer, converter, or distributor that is unable to 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 shall reimburse the owner for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect and:

- (1) replace the motor vehicle with a comparable motor vehicle; or
- (2) accept return of the vehicle from the owner and refund to the owner the full purchase price, less a reasonable allowance for the owner’s use of the vehicle, and any other allowances or refunds payable to the owner.”

Texas Occupations Code § 2301.606 provides that in order to have the options of repurchase or replacement available as remedies, Complainant must commence the Lemon Law proceeding “not later than six months after the earliest of:

- (1) The expiration date of the express warranty term; or
- (2) The dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.”

Texas Occupations Code § 2301.603 provides that a manufacturer, converter, or distributor shall make repairs necessary to conform a new vehicle to the applicable express warranty and that this Section applies “after the expiration date of a warranty if:

- (1) during the term of the warranty, the owner or the owner’s agent reported the nonconformity to the manufacturer, converter, or distributor, or to a designated agent or franchised dealer of the manufacturer, convertor, or distributor; or
- (2) A rebuttable presumption relating to the vehicle is created under Section 2301.605.”

For Complainants who fail to meet the timelines described above repair relief is available under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the

owner's designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer's, converter's, or distributor's warranty agreement applicable to the vehicle." The relief available under this section of the Code is repair of the vehicle in question.

B. Complainant's Evidence and Arguments

Complainant purchased a new 2017 Ford F-150 pickup truck on July 14, 2017, from Joe Meyers Ford–Lincoln (Meyers) in Houston, Texas.¹ The vehicle's mileage at the time of delivery was 62.² Respondent provided a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for the vehicle for three (3) years or 36,000 miles, whichever comes first. On the date of hearing the vehicle's mileage was 47,223. At the time of hearing the vehicle's bumper-to-bumper warranty had expired. In addition, Complainant purchased an extended warranty for the vehicle which provides coverage for 96 months or 150,000 miles.

Complainant stated that he first experienced an issue with a water leak and mildew/mold smell in the vehicle in January of 2018. He noticed that the vehicle's floor mats were wet. He took the vehicle to Meyers for repair for the issues on January 29, 2018. Meyers' service technician was unable to verify the concern and performed no repair for the issues.³ Complainant was informed by Meyers' representative that nothing could be done for the issue, since the technician could not find a leak or evidence that there was mold in the vehicle. The vehicle's mileage on this occasion was 7,313.⁴ The vehicle was in Meyers' possession for three (3) days on this occasion. Complainant was provided a loaner vehicle while his vehicle was being repaired.

Complainant testified that he continued to experience the mildew/mold smell in the vehicle which seemed to get worse after it rained. In addition, in December of 2018, Complainant noticed that the vehicle's passenger side floor was wet. On December 17, 2018, Complainant took the vehicle to Meyers for repair for the issues. Meyers' service technician verified that the passenger side floorboard was wet and determined that there was water leaking from the vehicle's windshield due to a crack in the body seam behind the passenger side of the windshield.⁵ The technician repaired the body seam and allowed the passenger side floor carpet to dry to remove the mildew and mold smell.⁶ The vehicle's mileage at the time was 19,241.⁷ The vehicle was in Meyers' possession for seven (7) days. Complainant was provided a loaner vehicle while his vehicle was being repaired.

¹ Complainant Ex. 2, Purchase Agreement dated July 14, 2017.

² Complainant Ex. 3, Odometer Disclosure Statement dated July 14, 2017.

³ Complainant Ex. 4, Repair Order dated January 29, 2018.

⁴ *Id.*

⁵ Complainant Ex. 5, Repair Order dated December 17, 2018.

⁶ *Id.*

⁷ *Id.*

Complainant testified that when he got the vehicle back in December of 2018, the mildew/mold smell was gone. However, the odor returned after the first rain event. Complainant could not find a water leak in the vehicle, but he did detect the mildew/mold smell in the vehicle. The issue continued to become more noticeable. Complainant took the vehicle to Meyers for repair for the issue on April 15, 2019. Meyers' service technician detected the mildew/mold odor and observed that the passenger's side carpet was damp, but could not find a water leak after performing a water leak test on the vehicle.⁸ The technician found that the vehicle's evaporator case drain was "slightly" clogged and performed an HVAC service in order to address the issues raised by Complainant.⁹ The vehicle's mileage on this occasion was 23,223.¹⁰ The vehicle was in Meyers' possession for ten (10) days.¹¹ Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant testified that he again noticed a mildew/mold odor in the vehicle in August of 2019, although he could not find a water leak in the vehicle. Complainant took the vehicle to Meyers for repair for the issue on August 12, 2019. Meyers' service technician discovered water leaking into the vehicle from the vehicle's third brake lamp and behind the top passenger side of the rear glass, and from the passenger side rear duct.¹² The technician determined that the leak was due to the body seam not being properly sealed.¹³ Meyers' service technician repaired the vehicle's body seam with a body seam sealer, replaced the rear duct vent, and cleaned and sanitized the electrical components affected by the water leak.¹⁴ The vehicle's mileage on this occasion was 28,663.¹⁵ The vehicle was in Meyers' possession for nine (9) days on this occasion. Complainant was provided a loaner vehicle during this repair visit.

Complainant stated that the mildew/mold smell was not present when he received the vehicle from Meyers after the August 12, 2019 repair. However, the odor returned within about a month. As a result, Complainant took the vehicle back to Meyer for repair for the issue on September 20, 2019. Meyers' service technician verified the odor concern and discovered a water leak from the rear sliding glass area.¹⁶ Meyers' service technician replaced the vehicle's rear glass assembly, sliding power window motor regulator, and back panel insulator trim piece in order to resolve the water leak and mildew/mold issues.¹⁷ When he was unable to remove the mildew smell from the

⁸ Complainant Ex. 6, Repair Order dated April 15, 2019.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Complainant Ex. 7, Repair Order dated August 12, 2019.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Complainant Ex. 8, Repair Order dated September 20, 2019

¹⁷ *Id.*

carpeting, the technician replaced the vehicle's carpet pursuant to Respondent's instructions.¹⁸ The vehicle's mileage on this occasion was 29,916.¹⁹ The vehicle was in Meyers' possession for 21 days on this occasion. Complainant received a loaner vehicle while his vehicle was being repaired.

In July of 2020, Complainant noticed water leaking into the back of the vehicle. As a result, he took the vehicle to Meyers for repair for the issue on July 20, 2020. Meyers' service technician determined that water was leaking into the left rear of the cab from the rear cab vent.²⁰ The technician replaced the vent, cleaned and dried the carpet and pad in order to resolve the issue.²¹ The vehicle's mileage on this occasion was 40,048.²² The vehicle was in Meyers' possession for 18 days on this occasion. Complainant was provided a loaner vehicle while his vehicle was being repaired.

Complainant testified that he continued to detect a mildew/mold odor in the vehicle after a rain event. Complainant took the vehicle to Meyers for repair for the issue on August 21, 2020. Meyers' service technician discovered water leaking into the vehicle from the vehicle's roof area.²³ The technician then found that the vehicle's body seam sealer was "severely" cracked and peeling away from the body.²⁴ The vehicle was sent to Meyers' body shop for repair where the technicians removed the old sealer and repainted the vehicle's roof.²⁵ The vehicle's mileage on this occasion was 40,805.²⁶ The vehicle was in Meyers' possession for one (1) month on this occasion. Complainant was provided a loaner vehicle while his vehicle was being repaired.

Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department) on September 11, 2020.²⁷

Complainant continued to detect the mildew/mold odor. He took the vehicle back to Meyers for repair on October 13, 2020. Meyers service technician determined that the vehicle's seam sealer had not been installed correctly.²⁸ The technician determined that the vehicle's back glass needed to be removed and the old seam sealer needed to be taken off and new seam sealer installed

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Complainant Ex. 9, Repair Order dated July 20, 2020.

²¹ *Id.*

²² *Id.*

²³ Complainant Ex. 10, Repair Order dated August 21, 2020.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Complainant Ex. 1, Warranty Performance Complaint dated September 11, 2020.

²⁸ Complainant Ex. 11, Repair Order dated October 13, 2020.

correctly.²⁹ The vehicle's mileage was 41,060 on the date of the inspection.³⁰ The vehicle was in Meyers' possession until November 20, 2020 on this occasion. Complainant was provided a loaner vehicle while his vehicle was being repaired.

The vehicle was taken back to Meyers' for repair for the water leak and mildew/mold odor issues on November 20, 2020. However, Meyers' service technician could not detect any odor and did not find any water leaks.³¹ The technician did not perform any repairs on this occasion. The vehicle's mileage was 42,745 at the time of this repair visit.³² The vehicle was in Meyers' possession for 21 days on this occasion. Complainant was provided a loaner vehicle.

Complainant testified that he still can detect a mildew/mold odor in the vehicle after a rain event or when he takes the vehicle through a car wash. He has not observed any water leaks, however. He said that the odor is strongest in the rear driver's side of the vehicle.

C. Respondent's Evidence and Arguments

1. Anthony Gregory's Testimony

Anthony Gregory, Consumer Affairs Legal Analyst, represented and testified for Respondent at the hearing. Mr. Gregory stated that Respondent provided a three (3) year or 36,000 mile bumper-to-bumper new vehicle limited warranty for the vehicle, as well as a five (5) year or unlimited mileage corrosion warranty for the vehicle. Mr. Gregory also stated that Complainant had purchased a 96 month or 150,000 mile extended warranty for the vehicle.

Mr. Gregory indicated that Respondent had one of its field service engineers, Brett Castleberry, inspect the vehicle on September 23, 2020. Mr. Castleberry did not find any issues with the vehicle during his inspection. Mr. Gregory feels that Complainant is not entitled to repair relief at this time.

2. Sayyed Asad Bashir's Testimony

Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent. Mr. Bashir has worked in the automotive industry for 21 years. Prior to being hired by Respondent, Mr. Bashir worked for eight (8) years with independent automotive repair facilities. He was hired by Respondent in 2007. Mr. Bashir worked two (2) years as a claims adjuster for Respondent before

²⁹ *Id.*

³⁰ *Id.*

³¹ Complainant Ex. 12, Repair Order dated November 20, 2020.

³² *Id.*

being hired as an automotive technical consultant. Mr. Bashir has worked in his present position since 2009. Mr. Bashir is an Automotive Service Excellence (ASE) Certified Master Technician.

Mr. Bashir testified that he has never seen the vehicle. He stated that the vehicle's seam sealer is supposed to ensure that water does not leak into a vehicle. It's unusual for a vehicle to have so many repairs for the seam sealer and/or water leaks. Mr. Bashir also stated that the extended warranty is actually a service contract and water leaks are usually excluded from the coverage.

3. Brett Castleberry's Testimony

Brett Castleberry, Field Service Engineer, testified for Respondent at the May 13, 2021 continuance. Mr. Castleberry stated that he inspected the vehicle on September 23, 2020. He stated that at the time of the inspection, the vehicle's windshield had been removed by Meyers' staff in preparation for repairs to be performed. Despite the windshield being removed, Mr. Castleberry did detect a "slight" mildew smell at the time of the vehicle inspection.³³ Mr. Castleberry indicated that he could not perform an in depth inspection of the vehicle due to the state it was in when he visited Meyers.

D. Analysis

The issue to be addressed is whether Complainant's vehicle has a defect or condition that causes water to leak into the vehicle leading to the formation of mildew or mold in the vehicle. The evidence establishes that there have been several incidents of water leaking into the vehicle, which were verified by Respondent's authorized dealer's service technicians. With all of the water leaks in the vehicle, there is question as to whether the technicians properly remediated the attendant mildew and/or mold issue. In addition, Respondent's FSE was not able to perform an adequate inspection of the vehicle on September 23, 2020, since the vehicle's windshield had been taken off in preparation for repair. Given the overall evidence, the hearings examiner must hold that the vehicle does not currently conform to Respondent's warranty and should be repaired to ensure that there is no water leak and that there is no mildew or mold growing inside the vehicle or under the carpet. Respondent will be ordered to repair the vehicle so that it meets their warranties.

Complainant's request for repair relief is granted.

³³ Respondent Ex. 1, FSE Vehicle Inspection Report dated September 23, 2020.

III. FINDINGS OF FACT

1. Robert Turner (Complainant) purchased a new 2017 Ford F-150 pickup truck on July 14, 2017, from Joe Meyers Ford–Lincoln (Meyers) in Houston, Texas with mileage of 62 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Ford Motor Company (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper warranty coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first.
3. Complainant purchased a 96 month or 150,000 mile extended warranty for the vehicle.
4. The vehicle's mileage on the date of the initial hearing was 47,223.
5. At the time of hearing the vehicle's new vehicle limited warranty had expired. However, the extended warranty was still in effect.
6. In January of 2018, Complainant noticed that the vehicle's interior smelled of mold or mildew. Complainant subsequently noticed water leaks inside the vehicle.
7. Prior to filing the Warranty Performance complaint, Complainant took the vehicle for repair to Respondent's authorized dealer, Meyers, to address his concerns with the water leaks and mildew smell on the following dates:
 - a. January 29, 2018, at 7,313 miles;
 - b. December 17, 2018, at 19,241 miles;
 - c. April 15, 2019, at 23,223 miles;
 - d. August 12, 2019, at 28,663 miles;
 - e. September 20, 2019, at 29,916 miles;
 - f. July 20, 2020, at 40,048 miles; and
 - g. August 21, 2020, at 40,805 miles.
8. On January 29, 2018, Complainant indicated to Meyers' service advisor that there was mold under the passenger's side floor mat and that the passenger's side carpet was damp; however, the service technician was unable to verify the concern.
9. On December 17, 2018, Meyers' service technician verified a mildew odor in the vehicle and discovered a water leak from the passenger's side windshield area.

10. During the repair visit described in Findings of Fact #9, Meyers' service technician performed a body seam repair to seal a crack in the seam and dried and cleaned the passenger's side carpet to alleviate the mildew odor.
11. On April 15, 2019, Meyers' service technician performed an HVAC system service to resolve an evaporator case drain clog which he felt was causing water to leak into the passenger side of the vehicle. In addition, the technician cleaned and disinfected the passenger side carpet to address the mildew smell in the vehicle.
12. On August 12, 2019, Meyers' service technician discovered water leaking from the vehicle's third brake lamp, from behind the top of the passenger's side rear glass, and from the passenger side rear duct which was caused because the body seam was not sealed properly.
13. During the repair visit described in Findings of Fact # 12, Meyers' service technician repaired the vehicle's body seam with a body seam sealer, replaced the rear duct vent, and cleaned and sanitized the electrical components affected by the water leak.
14. On September 20, 2019, Meyers' service technician verified a mildew odor in the vehicle and determined that it was caused by a water leak from the vehicle's rear sliding glass.
15. During the repair visit described in Findings of Fact #14, Meyers' service technician replaced the vehicle's rear glass assembly, sliding power window motor regulator, and back panel insulator trim piece. When he was unable to remove the mildew smell from the carpeting, the technician replaced the vehicle's carpet pursuant to Respondent's instructions.
16. On July 20, 2020, Meyers' service discovered water leaking into the vehicle's left rear cab area through a vent. The technician replaced the vent and cleaned and dried the affected carpet and pad.
17. On August 21, 2020, Meyers' service technician discovered water leaking into the vehicle from the roof area and that the body seam sealer was cracked and peeling. The vehicle was sent to a body shop where the technicians removed the sealer and repainted the vehicle.
18. On September 11, 2020, Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).

19. Respondent's field service engineer, Brett Castleberry, inspected the vehicle on September 23, 2020, but could not perform an adequate inspection, since the vehicle's windshield had been removed by the dealer's service personnel. However, he did detect a slight mildew odor during the inspection.
20. On October 13, 2020, Complainant took the vehicle to Meyers for repair for the water leak and mildew/mold odor issues. The vehicle's mileage on this occasion was 41,160.
21. During the repair visit described in Findings of Fact #20, Meyers' service technician determined that the seam sealer had not been done correctly on the prior repair visits and cleaned out the old seam sealer and resealed the seam to address Complainant's issues with the vehicle.
22. Complainant took the vehicle to Meyers for repair for the water leak and mildew/mold smell on November 20, 2020. The vehicle's mileage was 42,745 at the time.
23. No repair for the Complainant's concerns was performed during the repair visit described in Findings of Fact #22, as the technician could not discover a water leak in the vehicle, nor did he detect an odor.
24. Complainant still smells mildew/mold in the vehicle after it rains or after he takes it through a car wash.
25. The only remedy available to Complainant is repair of the vehicle, since he filed the complaint on September 11, 2020, more than six (6) months after 24 months from the date of purchase (July 14, 2017).
26. On December 7, 2020, 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.
27. The hearing in this case originally convened telephonically on March 12, 2021, before Hearings Examiner Edward Sandoval. Robert Turner, Complainant, appeared and represented himself at the hearing. Ford Motor Company, Respondent, was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Also present and offering testimony for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant.

The hearing was continued to May 13, 2021, in order to provide the hearings examiner an opportunity to inspect and participate in a test drive the of the subject vehicle.

28. The hearing continuance was conducted by Hearings Examiner Edward Sandoval on May 13, 2021, at the Texas Department of Motor Vehicles' regional service center in Houston, Texas. Robert Turner, Complainant, appeared and represented himself at the continuance. Ford Motor Company, Respondent, was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, appeared telephonically and testified for Respondent. In addition, Brett Castleberry, Field Service Engineer, appeared in person and testified for Respondent. The hearing record closed on May 13, 2021.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204 (Warranty Performance) and §§ 2301.601-2301.613 (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 proved by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition in the vehicle, *i.e.*, a water leak in the vehicle and a subsequent mildew/mold odor. Tex. Occ. Code § 2301.204.
7. Complainant is entitled to repair relief under the terms of Respondent's warranty. Tex. Occ. Code § 2301.204.

8. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. Respondent shall make any repairs needed to conform the vehicle to the applicable warranty. (The specific issues to be addressed are a water leak in the vehicle and a subsequent mildew/mold odor.) Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.³⁴ Within 40 days after receiving the vehicle from Complainant, Respondent shall complete repair of the subject vehicle. However, if the Department determines Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider 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 July 12, 2021



EDWARD SANDOVAL
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARING
TEXAS DEPARTMENT OF MOTOR VEHICLES

³⁴ (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Order.