

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 22-0005845 CAF**

**RENARD BROWN, JR.,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Renard Brown, Jr. (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) [Texas Occupations Code § 2301.204 (Warranty Performance)] for alleged warrantable defects in his vehicle manufactured/distributed/converted by Ford Motor Company (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that qualifies for warranty repair.

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 June 2, 2022, in Carrollton, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself. Anthony Gregory, Consumer Affairs Legal Analyst, represented 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); see *Vance v. My Apartment Steak House, Inc.*, 677 S.W.2d 480, 482 (Tex. 1984) (“[A] civil litigant who asserts an affirmative claim for relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

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 May 15, 2020, the Complainant purchased a new 2020 Ford F-150 from Planet Ford Dallas, a franchised dealer of the Respondent, in Dallas, Texas. The vehicle had 259 miles on the odometer at the time of purchase. The vehicle's limited warranty generally provides coverage for three years or 36,000 miles, whichever comes first.

On January 7, 2022, the Complainant filed a complaint with the Department alleging the vehicle had a number of defects leading to: a bubbling of paint on the hood area, an unusually heavy driver's side door, an occasional knocking sound coming from the engine area of the truck, and major rust underneath the engine area of the truck. The Complainant took the vehicle to a dealer as follows:

Date	Miles	Issue
08/11/2021	16,130	Rearview camera not working [replaced]
03/15/2022	21,947	Paint defect on hood; loud noise coming from under the vehicle; blemish on front bumper; door is heavy when opening; corrosion under the vehicle
05/20/2022	22,204	Blemishes on front bumper [replaced]; door is heavy when opening

Mr. Brown testified that he first noticed a bubbling in the paint of the hood two or three days after purchasing the truck. He stated that it looked as though the bubbling was caused by too much paint being applied to the hood. Upon visiting a collision repair shop to get an estimate for repainting, Mr. Brown learned the entire vehicle needed to be repainted or the hood would not match the rest of the truck. He also understood that spot painting would leave swirls behind.

Mr. Brown testified that within three days of purchasing the truck, he noticed that the driver side door felt unusually heavy when opened, as if the door had been filled with Bondo, an automotive body filler. Ms. Bertha Mayes, a witness for the Complainant, testified that she had

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

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

been told the driver side door was heavier than the passenger side door because the window controls were on the driver side.

Mr. Brown testified that he first noticed a loud knocking or clicking sound coming from the truck's engine about four or five days after purchasing the truck. He alternatively identified the sound as a tapping noise. Ms. Mayes testified that it sounded like something was going to break. Mr. Brown wondered if the sound was axle coming loose, though no such defect was ever found. He testified that the sound would come on every week or every other week when he started the truck in the morning after leaving it sitting overnight, and that the noise would go away after the vehicle ran for a while. At the time of the hearing, the last time Mr. Brown says he noticed the noise was three weeks prior to the hearing.

Mr. Brown testified that three days after purchasing the vehicle, he noticed rust under the engine area. He stated that it looked heavy and corroded, like it had been there for a while. He also stated that the rust was in the area that the loud noise seemed to be coming from in the engine area.

C. Inspection

Upon inspection, the subject vehicle's odometer displayed 22,354 miles. Complainant stated that the paint blemish was about one inch around. The hearing examiner was not able to see or feel a blemish on the hood. Likewise, Complainant and Ms. Mayes could not find any blemishes. Complainant noted that the lighting may have been affecting the visibility of the paint blemish. The driver side door did seem to be heavier than the passenger side door. The vehicle was started multiple times, and there was no knocking. Portions of the vehicle underside exhibited rust on the surface. The vehicle appeared to operate normally during the inspection.

D. Summary of Respondent's Evidence and Arguments

Mr. Gregory testified that the paint defect alleged by Complainant was a normal characteristic. Upon inspection, Mr. Gregory testified that the Respondent found no abnormality in the paint on the hood of the subject vehicle and that the Complainant took the vehicle before the door could be fully addressed.

Asad Bashir, a witness for the Respondent, testified to the standard of paint quality held by the Respondent, his employer. According to Mr. Bashir, the standard for paint is "commercially

acceptable.” He also testified that the Respondent considers whether the blemish is “fairly observable” from multiple angles in considering whether the blemish amounts to a defect.

On cross-examination, Mr. Bashir noted that surface rust can develop on unfinished parts of a vehicle. He testified that the undersides of vehicles are not painted, so as not to cause imbalance or overheating, and because of that rust can often develop on the surface of the metal. This surface rust, Mr. Bashir testified, is typical of these vehicles and does not harm or otherwise affect the use or value of the vehicle.

E. Analysis

As described in the discussion of applicable law, the law imposes the burden of proof on the Complainant to affirmatively prove every Lemon Law element by a preponderance of the evidence. In other words, the Complainant must prove that each requisite element is more likely than not to be true. Here, a preponderance of the evidence shows that the subject vehicle has a defect covered under warranty (warrantable defect) that qualifies for warranty repair relief only.

Lemon Law relief does not apply to all problems that may occur with a vehicle but only to warrantable defects that continue to exist (i.e., currently exist) after repairs.²⁹ The Lemon Law does not require that a respondent provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. Rather, the Lemon Law requires a respondent to conform its vehicles to whatever coverage the warranty provides. In part, the subject vehicle’s warranty states that:

The subject vehicle’s warranty states, in part:

Under your New Vehicle Limited Warranty if:

- your Ford vehicle is properly operated and maintained, and
- was taken to a Ford dealership for a warranted repair during the warranty period,

then authorized Ford Motor Company dealers will, without charge, repair, replace, or adjust all parts on your vehicle that malfunction or fail during normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship.

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

This warranty does not mean that each Ford vehicle is defect free. Defects may be unintentionally introduced into vehicles during the design and manufacturing processes and such defects could result in the need for repairs. Ford provides the New Vehicle Limited Warranty only to remedy manufacturing defects that result in vehicle part malfunction or failure during the warranty period.³⁰

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects). A defectively manufactured vehicle has a flaw so that it does not conform to the manufacturer's specifications.³¹ A manufacturing defect occurs when the vehicle varies from the manufacturer's design standards.³² In other words, a manufacturing defect is an isolated aberration, an unintended configuration occurring only in those vehicles not produced according to the manufacturer's specifications.³³ Additionally, the warranty also provides that: "The New Vehicle Limited Warranty does not cover surface rust, deterioration and damage or paint, trim, upholstery, and other appearance items that result from use and/or exposure to the elements."³⁴ Accordingly, appearance items like surface rust (as opposed to perforation) are not covered under warranty. As explained below, the facts in this case do not support the existence of a defect covered under the warranty.

1. Paint

Testimony shows that the Respondent uses a "commercially acceptable" specification for paint. For a paint flaw to be a warranted defect under this specification, the flaw must be fairly observable from different angles. Significantly, no flaws could be seen by anyone during the inspection at the hearing. Also, a field service engineer likewise could not find a flaw during a

³⁰ Complainant's Ex. 1, 2019 Model Year Ford Warranty Guide, 9.

³¹ *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.--Texarkana 1985), *aff'd* in part on other grounds, *rev'd* in part on other grounds, 715 S.W.2d 629 (Tex. 1986) ("Manufacturing defect cases involve products which are flawed, i.e., which do not conform to the manufacturer's own specifications, and are not identical to their mass-produced siblings.").

³² *Ridgway v. Ford Motor Co.*, 82 S.W.3d 26, 31-32 (Tex. App.—San Antonio 2002), *rev'd on other grounds*, 135 S.W.3d 598 (Tex. 2004) ("A manufacturing defect may be distinguished from a design defect. A manufacturing defect occurs when the product varies from the manufacturer-established design standards, causing that product to deviate from the normal safety of other products of its kind.).

³³ *Harduvel v. Gen. Dynamics Corp.*, 878 F.2d 1311, 1317 (11th Cir. 1989) ("This distinction between 'aberrational' defects and defects occurring throughout an entire line of products is frequently used in tort law to separate defects of manufacture from those of design. . . . Stated another way, the distinction is between an unintended configuration [a manufacturing defect], and an intended configuration that may produce unintended and unwanted results [a design defect].").

³⁴ Complainant's Ex. 1, 2019 Model Year Ford Warranty Guide, 13.

previous inspection. Though the paint flaws may be visible under certain conditions, the complained of flaws do not appear more likely than not to be a defect under the commercially acceptable specification. In sum, the complained of paint flaws do not amount to a warrantable defect that qualifies for relief.

2. Driver Side Door

A heavier driver side door is not a defect under the vehicle's warranty. The record reflects that the driver's door by design contains more components so that the door will normally weigh more. That is, the door's weight results from the design of the door and not a warranted manufacturing defect. Accordingly, the vehicle does not qualify for relief.

3. Knocking Sound

A sound by itself does not amount to a defect subject to Lemon Law relief. The Department's precedents hold that a noise by itself does not constitute a substantial impairment or a safety hazard. Allegations of intermittent noises were deemed to have low merit.³⁵ In this case, the vehicle did not exhibit any unusual noise during the inspection at the hearing nor at the previous inspection by a field service engineer. Further, Complainant described the noise as occurring once every week or two weeks. Consequently, the noise does not satisfy the Lemon Law's substantial impairment requirement. Nevertheless, the alleged noise appears more likely than not to constitute a defect that qualifies for repair relief.

4. Underside Rust

The subject vehicle's warranty specifically excludes coverage of surface rust resulting from normal use or exposure to the environment.³⁶ The subject vehicle's warranty does cover the vehicle's body sheet metal panels against perforation due to corrosion. However, the evidence only shows rust on the surface of the underside of the vehicle and not any corrosion-caused perforation of a body panel. Further, the record reflects that various undercarriage components are unfinished by design, so that they will normally rust. Therefore, there is no warrantable defect that qualifies for relief.

³⁵ *E.g.*, Texas Department of Transportation, *Alvarez v Ford Motor Company*, MVD Cause No. 08-0440, Final Order Denying § 2301.604 Relief (Motor Vehicle Division Dec. 11, 2008); State Office of Administrative Hearings *Alvarez v Ford Motor Company*, Docket No. 601-08-4215.CAF, Proposal for Decision (Oct. 9, 2008).

³⁶ Complainant's Ex. 1, 2019 Model Year Ford Warranty Guide, 13.

III. Findings of Fact

1. On May 15, 2020, the Complainant, purchased a new 2020 Ford F-150 from Planet Ford Dallas, a franchised/authorized dealer of the Respondent, in Dallas, Texas. The vehicle had 259 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first.
3. The subject vehicle's warranty states, in part:

Under your New Vehicle Limited Warranty if:

- your Ford vehicle is properly operated and maintained, and
- was taken to a Ford dealership for a warranted repair during the warranty period,

then authorized Ford Motor Company dealers will, without charge, repair, replace, or adjust all parts on your vehicle that malfunction or fail during normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship.

This warranty does not mean that each Ford vehicle is defect free. Defects may be unintentionally introduced into vehicles during the design and manufacturing processes and such defects could result in the need for repairs. Ford provides the New Vehicle Limited Warranty only to remedy manufacturing defects that result in vehicle part malfunction or failure during the warranty period.

4. The Complainant took the vehicle to a dealer as shown below:

Date	Miles	Issue
08/11/2021	16,130	Rearview camera not working [replaced]
03/15/2022	21,947	Paint defect on hood; loud noise coming from under the vehicle; blemish on front bumper; door is heavy when opening; corrosion under the vehicle
05/20/2022	22,204	Blemishes on front bumper [replaced]; door is heavy when opening

5. On or about January 4, 2022, the Complainant or a person on behalf of the Complainant or the Department provided a written notice of defect to the Respondent.
6. On March 25, 2022, the Complainant filed a complaint with the Texas Department of Motor Vehicles alleging that the vehicle had defects that resulted in: a bubbling effect in

the paint on the hood; an unusually heavy driver side door; an occasional knocking noise coming from the engine; and substantial rust on the underside of the vehicle.

7. On April 5, 2022, 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 on June 2, 2022, in Carrollton, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself. Anthony Gregory, Consumer Affairs Legal Analyst, represented the Respondent.
9. The vehicle's odometer displayed 22,354 miles at the time of the hearing.
10. The vehicle's warranty was in effect at the time of the hearing.
11. The hearing examiner could not see or feel a blemish on the hood. Likewise, Complainant and Ms. Mayes could not find any blemishes. The driver side door did seem to be heavier than the passenger side door. The vehicle was started multiple times, and there was no knocking. Portions of the vehicle underside exhibited rust on the surface. The vehicle appeared to operate normally during the inspection.
12. The Respondent uses a "commercially acceptable" specification for paint. For a paint flaw to be a warranted defect under this specification, the flaw must be fairly observable from different angles. Though the paint flaws may be visible under certain conditions, no flaws could be seen by anyone during the inspection at the hearing. Also, a field service engineer could not find a flaw during a previous inspection.
13. The driver side door by design contains more components so that the door will normally weigh more. The door's weight results from the design of the door.
14. The vehicle did not exhibit any unusual noise during the inspection at the hearing nor at the previous inspection by a field service engineer. Further, Complainant described the noise as occurring once every week or two weeks.

15. The vehicle's warranty does cover the vehicle's body sheet metal panels against perforation due to corrosion. The vehicle only exhibited rust on the surface of the underside of and not any corrosion-caused perforation of a body panel. Various undercarriage components are unfinished by design, so that they will normally rust.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. TEX. OCC. CODE § 2301.704.
3. The Complainant filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052. 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the paint blemish, heavy door, and, underside rust were defects covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a). The Complainant did not prove that the knocking noise creates a serious safety hazard or substantially impairs the use or market value of the vehicle. TEX. OCC. CODE § 2301.604(a). The vehicle did not have a reasonable number of repair attempts. TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).
7. Reimbursement of incidental expenses does not apply because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.

8. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
9. The Complainant's vehicle qualifies for warranty repair. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainant or an agent of the Complainant notified the Respondent or Respondent's agent of the alleged defect(s). TEX. OCC. CODE §§ 2301.204 and 43 TEX. ADMIN. CODE § 215.202(b)(3).
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.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the subject vehicle to the applicable warranty; specifically, the Respondent shall resolve the knocking noise issue. Upon this Order becoming final under Texas Government Code § 2001.144:³⁷ (1) the Complainant shall deliver the vehicle to the Respondent within 20 days; and (2) the Respondent shall complete the repair of the vehicle within **20 days** after receiving it. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

³⁷ 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.

SIGNED August 2, 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