

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 22-0014728 CAF**

**BRIANA COLLAZO,  
Complainant**

**v.**

**FORD MOTOR COMPANY,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Briana Collazo (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) for alleged warrantable defects in her vehicle manufactured by Ford Motor Company (Respondent). A preponderance of the evidence does not show that the subject vehicle qualifies for repurchase/replacement or warranty repair.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice of hearing<sup>1</sup> 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 December 14, 2022, in San Antonio, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself herself. Anthony Gregory, Consumer Affairs Legal Analyst, represented the Respondent.

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<sup>1</sup> 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.<sup>2</sup> 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.”<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

##### **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

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<sup>2</sup> TEX. OCC. CODE § 2301.603.

<sup>3</sup> TEX. OCC. CODE § 2301.604(a).

<sup>4</sup> TEX. OCC. CODE § 2301.604(a).

<sup>5</sup> TEX. OCC. CODE § 2301.601(4).

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

**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.”<sup>7</sup>

**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.<sup>8</sup>

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

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

<sup>7</sup> *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.”).

<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

#### **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;<sup>14</sup> (2) the respondent was given an opportunity to cure the defect or

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<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(2).

<sup>10</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>11</sup> TEX. OCC. CODE § 2301.605(c).

<sup>12</sup> *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.’”).

<sup>13</sup> *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.”).

<sup>14</sup> 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;<sup>15</sup> 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.<sup>16</sup>

## 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.<sup>17</sup> The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”<sup>18</sup>

## 3. Burden of Proof

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

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<sup>15</sup> 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.

<sup>16</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>17</sup> TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

<sup>18</sup> TEX. OCC. CODE § 2301.603(a).

<sup>19</sup> 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.”).

<sup>20</sup> *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 and limits what may be addressed in this case.<sup>21</sup> 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.”<sup>22</sup> Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.<sup>23</sup> The parties may expressly or impliedly consent to hearing issues not included in the complaint.<sup>24</sup> Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.<sup>25</sup>

#### 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.<sup>26</sup> 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

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<sup>21</sup> “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.”).

<sup>22</sup> 43 TEX. ADMIN. CODE § 215.202(a)(3).

<sup>23</sup> *See* TEX. GOV’T CODE §§ 2001.141(b)-(c), 2001.051-2001.052; TEX. R. CIV. P. 301.

<sup>24</sup> 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

<sup>25</sup> *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

<sup>26</sup> TEX. OCC. CODE § 2301.604.

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

### **B. Summary of Complainant's Evidence and Arguments**

On August 16, 2021, the Complainant, purchased a new 2021, Ford Expedition from Red McCombs Ford, a franchised dealer of the Respondent, in San Antonio, Texas. The vehicle had 21 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first, and powertrain coverage for five years or 60,000 miles, whichever occurs first. On or about May 3, 2022, the Complainant provided a written notice of defect to the Respondent. On May 19, 2022, the Complainant filed a complaint with the Department alleging that a door was unaligned; transmission went out of sync making shifting rough; and the rear passenger seat stitching came out. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

<b>Date</b>	<b>Miles</b>	<b>Issue</b>
11/02/21	8,041	Rear seat stitching coming loose
12/20/21	8,042	Body repair
4/25/22	20,482	Hard shifting
5/11/22	21,450	<i>Door alignment</i>
8/8/22 – 8/11/22	27,732	<i>Door alignment, transmission out of sync, harsh shifting, rear seat flaps unattached, rear seat stitching coming loose</i>

Complainant testified that after having trouble with the subject vehicle's door, she took the vehicle to the dealership, which referred her to a body shop. Also, the transmission went out of sync, so the dealer had to resync to stop the hard shifting. She explained that between 4th, 5th and 6th gears, when turning, the transmission will kick up or down. Complainant did not get a loaner vehicle when leaving the car at dealer but Respondent provided a reimbursement check, which she did not feel comfortable cashing. She clarified that the current seat issue did not involve the stitching but concerned the flap. Complainant noted that the transmission issue was a known issue but was not disclosed to her at purchase. Complainant affirmed that the door now functions properly after repair by the body shop. Complainant described the out of sync transmission issue

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<sup>27</sup> 43 TEX. ADMIN. CODE § 215.209(a).

<sup>28</sup> 43 TEX. ADMIN. CODE § 215.208(b)(1).

as starting slow but progressively shifting harder. Complainant confirmed that she was the primary driver but her husband also drove the subject vehicle. Upon clarifying questions, Complainant answered that: she notified the service advisor about the 3rd row flap at every service visit; she did not pay for the body repair; she believed that she addressed the door and the service by the dealer in the written notice of defect.

### **C. Inspection**

Upon inspection at the hearing, the odometer displayed 37,827 miles. Complainant explained that the transmission would shift roughly between 4th, 5th and 6th gears and could be felt when turning. She also noted that roughness could also be felt when coasting. Complainant moved the gear selector knob between gears with no noticeable harshness. Later, switching between gears on the selector resulted in a rougher shift. The flap on the back of the passenger side 3rd row seat was detached. The vehicle was test driven with an ending mileage of 37,834 miles.

### **D. Summary of Respondent's Evidence and Arguments**

Mr. Gregory asserted that the vehicle did not qualify for repurchase or replacement under the Lemon Law. Respondent presented evidence that the vehicle has not had sufficient repair attempts to meet the statutory presumption for reasonable repairs. Additionally, The transmission shifted normally, and the seat stitching did not come loose but the seat cover needed to be rezipped. However, the seat flap had become unattached.

### **E. Analysis**

To qualify for repurchase or replacement, the vehicle must have a defect covered under warranty (warrantable defect) that creates a serious safety hazard or substantially impairs the use or market value of the vehicle after a reasonable number of attempts. As explained in the discussion of applicable law, the law imposes the burden of proof on the Complainant. Accordingly, the Complainant must affirmatively prove every Lemon Law element by a preponderance of the evidence. In this case, the complaint includes three issues: misaligned door, out of sync transmission (hard shifting), and rear seat stitching coming loose. The door alignment was resolved leaving only the transmission and seat stitching issues. Additionally, Complainant addressed the unattached rear seat flaps at the hearing, although the complaint did not include this issue. Because there were no objections to this issue, the seat flaps issue will be addressed here. However, as



explained below, this issue cannot support any relief. Overall, a preponderance of the evidence does not show that the subject vehicle qualifies for relief.

### 1. Warrantable Defect

Lemon Law relief does not apply to all problems that may occur with a vehicle but only to defects covered under warranty (warrantable defects) that continue to exist (i.e., currently exist) after repairs.<sup>29</sup> 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:

Your NEW VEHICLE LIMITED WARRANTY gives you specific legal rights. You may have other rights that vary from state to state. 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.<sup>30</sup>

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).<sup>31</sup>

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<sup>29</sup> TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

<sup>30</sup> Complainant's Ex. 2, 2021 Model Year Ford Warranty Guide.

<sup>31</sup> 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.").

A defectively manufactured vehicle has a flaw so that it does not conform to the manufacturer's specifications, and is not identical to other same model vehicles.<sup>32</sup> A manufacturing defect occurs when the vehicle varies from the manufacturer's design standards, causing that vehicle to differ from other vehicles of the same kind.<sup>33</sup> 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.<sup>34</sup> Stated another way, a defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Accordingly, manufacturing defects occur during manufacturing and exist when the vehicle leaves the manufacturing plant. In contrast, design issues result from the manufacturer's design of the vehicle, even though manufactured without any flaws.<sup>35</sup> Design characteristics, including design defects, exist in the vehicle's specifications and do not arise from any error during manufacturing.<sup>36</sup> Accordingly, a design characteristic exists in all vehicles of the same design, but the vehicle's intended configuration may produce unintended and unwanted results.<sup>37</sup> Unlike manufacturing defects, issues that do not arise from manufacturing, such as the vehicle's design characteristics or dealer representations and improper dealer repairs,

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<sup>32</sup> *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.").

<sup>33</sup> *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.).

<sup>34</sup> *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].").

<sup>35</sup> *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) ("Defective design cases, however, are not based on consumer expectancy, but on the manufacturer's design of a product . . . even though not flawed in its manufacture.").

<sup>36</sup> In contrast to manufacturing defects, "[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves." *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

<sup>37</sup> *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].").

are not warrantable defects. Because the warranty only covers manufacturing defects, the Lemon Law does not provide relief for design characteristics, design defects, or any other non-manufacturing problem. Even though an issue may be unintended and unwanted, the Lemon Law provides no relief unless the issue constitutes a manufacturing defect.

In this case, the record does not indicate that the transmission issue is more likely than not a manufacturing defect as opposed to a design issue. Additionally, the evidence shows that the stitching was not coming loose. Rather, the seat's zipper was unzipped. Therefore, the transmission and stitching issues cannot support any relief. However, the evidence shows that the seat flaps pins were broken and not operating as designed.

**2. Serious Safety Hazard or Substantial Impairment of Use or Market Value**

None of the issues fall within the Lemon Law's definition of a serious safety hazard. Further, none of these issues, under the reasonable prospective purchaser standard, substantially impair the use or market value of the vehicle. Accordingly, the vehicle cannot qualify for repurchase or replacement.

**3. Reasonable Repair Attempts**

The repair history shows no more than two repair attempts for the same issue in the first 24,000 miles. Accordingly, the vehicle does not meet the statutory presumption for reasonable repair attempts. Further, the facts in this case do not warrant finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts. As a result, the vehicle cannot qualify for repurchase or replacement.

**4. Complaint and Written Notice Requirement**

As explained in the discussion of applicable law, issues must be included in the complaint to qualify for repair relief and the respondent must have been provided written notice to qualify for repurchase or replacement. Because the rear seat flap issue was not included in the Complaint, repair relief is not available for this issue. Further, the record does not indicate whether written notice of the flap issue was provided to meet the requirements for repurchase or replacement. Accordingly, the flap issue cannot support any relief.

## 5. Conclusion

As explained above, to qualify for repurchase or replacement, a vehicle must have a warrantable defect that creates a serious safety hazard or substantial impairment of use or value, reasonable repair attempts, as well as written notice of the defect. However, none of the existing issues (out of sync transmission, rear seat stitching coming loose, and unattached rear seat flaps) meet all the requirements for repurchase or replacement. If a vehicle does not qualify for repurchase or replacement, repair relief may still apply, if it otherwise meets the requirements for repair relief. However, the transmission and stitching issues are not warrantable defects subject to repair. Though the unattached rear seat flap issue is a warranted nonconformity, the complaint did not include this issue to make it eligible for repair relief. In sum no relief may be granted.

## III. Findings of Fact

1. On August 16, 2021, the Complainant, purchased a new 2021, Ford Expedition from Red McCombs Ford, a franchised dealer of the Respondent, in San Antonio, Texas. The vehicle had 21 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, and powertrain coverage for five years or 60,000 miles, whichever occurs first.
3. The vehicle's limited warranty generally provides that:  
  
Your NEW VEHICLE LIMITED WARRANTY gives you specific legal rights. You may have other rights that vary from state to state. 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.
4. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
11/02/21	8,041	Rear seat stitching coming loose
12/20/21	8,042	Body repair
4/25/22	20,482	Hard shifting
5/11/22	21,450	Door alignment
8/8/22 – 8/11/22	27,732	Door alignment, transmission out of sync, harsh shifting, rear seat flaps unattached, rear seat stitching coming loose

5. On or about May 3, 2022, the Complainant provided a written notice of defect to the Respondent. The notice did not address the unattached rear seat flaps.
6. On May 19, 2022, the Complainant filed a complaint with the Department alleging that a door was unaligned; transmission went out of sync making shifting rough; and the rear passenger seat stitching came out.
7. On August 9, 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 December 14, 2022, in San Antonio, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself herself. Anthony Gregory, Consumer Affairs Legal Analyst, represented the Respondent.
9. The vehicle's odometer displayed 37,827 miles at the time of the hearing.
10. The warranty's powertrain coverage was in effect at the time of the hearing. The warranty's bumper to bumper coverage expired upon reaching 36,021 miles on the odometer.
11. The vehicle operated normally during the test drive at the hearing.
12. The door was successfully repaired.
13. The transmission shifted normally.
14. The seats stitching did not come loose.
15. The seat flap had come unattached.

#### 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 door, transmission, or seat stitching has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a). The Complainant did not prove that the vehicle has a warrantable defect that 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. The seat flap does not support replacement or repurchase. The Complainant or a person on behalf of the Complainant did not provide sufficient notice of the alleged defect(s) to the Respondent. This Order may not require repurchase or replacement of the vehicle without written notice of the defect/nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
8. 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.

9. The Complainant's vehicle does not qualify for warranty repair. Complainant did not prove that the door, transmission, or seat stitching had a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainant did not specify the alleged seat flap defect in the complaint. 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**.

**SIGNED February 28, 2023**



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