

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 22-0018400 CAF**

**EMPRESSA FUTE LIMITED
COMPANY,**

Complainant

v.

**FORD MOTOR COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Empressa Fute Limited Company (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged warrantable defects in a vehicle manufactured by Ford Motor Company (Respondent). A preponderance of the evidence shows that Complainant's vehicle does not qualify for repurchase relief.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

Notice and jurisdiction were not contested and are only addressed in the Findings of Fact and Conclusions of Law. The hearing in this case convened on March 23, 2023, in Conroe, Texas, before Chief Hearings Examiner Bennie Brown with the Department's Office of Administrative Hearings (OAH). Travis Foote, owner of Empressa Fute Limited Company, appeared on behalf of Complainant. Respondent appeared electronically through its representative Anthony Gregory. The hearing concluded the same day, and the record was closed.

II. APPLICABLE LAW

The Texas Lemon Law and Warranty Performance Law require a manufacturer, converter, or distributor to make repairs necessary to conform a new motor vehicle to an applicable warranty.¹ If this cannot be accomplished, the owner of the vehicle may seek relief by filing a complaint with the Department.² The case may be referred to OAH for a hearing on the merits to determine which type of relief, if any, is warranted pursuant to statute.³

A. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.⁴ A new vehicle may qualify for repurchase or replacement of the vehicle, along with reimbursement of incidental expenses resulting from the loss of use of the vehicle due to the defect(s).⁵ A vehicle qualifies for repurchase or replacement if all the following conditions are met:

- 1) the vehicle has a defect covered by an applicable warranty (applicable 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” to repair the vehicle.⁶

The above terms are further defined by the Lemon Law statute and case law.

¹ Tex. Occ. Code § 2301.603(a).

² Tex. Occ. Code § 2301.204(a); 43 Tex. Admin. Code § 215.202.

³ Tex. Occ. Code § 2301.204(d); 43 Tex. Admin. Code § 215.202(b)(4).

⁴ Tex. Occ. Code § 2301.603

⁵ Tex. Occ. Code § 2301.604.

⁶ Tex. Occ. Code § 2301.604(a).

1. Serious Safety Hazard

The Lemon Law statute defines “serious safety hazard” as a life-threatening malfunction or non-conformity 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.⁷

2. Substantial Impairment of Use or Value

a. Impairment of Use

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs use of the vehicle. 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.⁸ For example, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁹

b. 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.”¹⁰ 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

⁷ Tex. Occ. Code § 2301.601(4).

⁸ *Dutchmen Manufacturing, Inc. v. Texas Dep’t of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App. – Austin 2012).

⁹ *Id.*

¹⁰ *Id.*

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.”¹¹

3. 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.¹²

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.¹³

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

¹¹ *Id.*

¹² Tex. Occ. Code § 2301.605(a)(1).

¹³ Tex. Occ. Code § 2301.605(a)(2).

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.¹⁴

The 30 days described above do not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁵

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.¹⁶ 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.¹⁷

4. Other Requirements for Repurchase/Replacement

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;¹⁸

¹⁴ Tex. Occ. Code § 2301.605(a)(3).

¹⁵ Tex. Occ. Code § 2301.605(c).

¹⁶ *Ford Motor Company v. Texas Dep't 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.’”).

¹⁷ *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.”).

¹⁸ Tex. Occ. Code § 2301.606(c)(1); 43 Tex. Admin. Code § 215.204.

- (2) the respondent was given an opportunity to cure the defect or nonconformity;¹⁹ and
- (3) the Lemon Law complaint was filed within 6 months after the earliest of:
 - (a) the warranty's expiration date; or
 - (b) 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.²⁰

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 due to the defect.²¹ 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.²² However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."²³

¹⁹ 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 Dep't of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221, 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. 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.

²⁰ Tex. Occ. Code § 2301.606(d).

²¹ Tex. Occ. Code § 2301.604(a).

²² 43 Tex. Admin. Code § 215.209(a).

²³ 43 Tex. Admin. Code § 215.208(b)(1).

B. Warranty Repair Relief

If a vehicle does not qualify for repurchase or replacement, the vehicle may still qualify for warranty repair relief.²⁴ A vehicle may qualify for warranty repair relief if all the following conditions are met:

- 1) the vehicle has a “defect . . . that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle;”
- 2) the vehicle owner, or the owner’s designated agent, provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty’s expiration; and
- 3) the vehicle owner filed a complaint with the Department specifying the defect.²⁵

C. The Lemon Law Complaint Identifies the Relevant Issues in the Case

The complaint filed with the Department identifies the relevant issues to address at the hearing. The complaint must state “sufficient facts to enable the [D]epartment 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.”²⁶ However, the parties may expressly or impliedly consent to hearing issues not included in the complaint or pleadings.²⁷ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²⁸ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.²⁹

²⁴ 43 Tex. Admin. Code § 215.208(e).

²⁵ Tex. Occ. Code § 2301.204(a),(b); 43 Tex. Admin. Code § 215.202(b)(1), (3).

²⁶ 43 Tex. Admin. Code § 215.202(a)(3), (b)(1).

²⁷ 43 Tex. Admin. Code § 215.42; Tex. R. Civ. P. 67.

²⁸ See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App. – San Antonio 1953, writ ref’d).

²⁹ See Tex. Gov’t Code §§ 2001.051-.052, .141(b)-(c); Tex. R. Civ. P. 301.

D. Burden of Proof

The Complainant has the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.³⁰ That is, the Complainant must present sufficient evidence to show that it is more likely than not that every required fact for relief exists.³¹ Failure to prove even one required fact results in denial of relief.

III. DISCUSSION**A. Summary of Complainant's Evidence and Arguments**

On April 11, 2022, Complainant purchased a new 2022 Ford Bronco from Planet Ford, a franchised dealer of Respondent, in Spring, Texas. The purchase price of the vehicle was \$45,352.16, including tax, title, license, and registration.³² The vehicle had 25 miles on the odometer at the time of purchase.³³

The vehicle's limited warranty provides bumper-to-bumper coverage for 3 years or 36,000 miles, whichever occurs first, and powertrain coverage for 5 years or 60,000 miles, whichever occurs first.³⁴

On July 28, 2022, Complainant filed a Lemon Law complaint with the Department alleging that the subject vehicle's clutch and transmission were not operable. On August 2, 2022, the Department sent a copy of the Lemon Law complaint to Respondent, providing written notice of the alleged defects.

³⁰ 43 Tex. Admin. Code § 206.66(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 of relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

³¹ E.g., *Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

³² Complainant's Ex. 1.

³³ Complainant's Ex. 3.

³⁴ [2022-Ford-Car-Lt-Truck-Hybrid-Warranty-version-2_frdwa_EN-US_12_2020.pdf](#) at pp. 8-9, 13.

The subject vehicle is equipped with a manual transmission. On approximately June 19, 2022, the vehicle's clutch ceased working. Complainant explained that the clutch failure occurred while the vehicle was rented out and being driven on Surfside Beach and San Luis Beach in Texas.

The vehicle was initially driven on dry, packed sand and then on loose sand.³⁵ While driving in loose sand, the vehicle's "sand" mode was engaged, and no issues were experienced while driving. However, at some point while shifting into second gear, the shift did not feel right. The driver stopped and put the vehicle in reverse, but the clutch felt hard. Then there was a small pop noise, and the clutch pedal went to the floor. There was no resistance when the clutch pedal was pushed, and it did not come back up when released.³⁶

The driver was able to drive the vehicle back to the road in first gear. He stated that something was slipping because he was only driving 15 mph at 2500-3000 rpms. No warning lights ever displayed on the vehicle. The driver checked the gauges and stated that RPM never went above 3500, and the temperature was 205.³⁷

The vehicle was towed to Planet Ford in Spring, Texas. The vehicle's mileage was 4,344 miles. Approximately 3 weeks after the vehicle arrived at the dealership, it was inspected. The transmission was pulled out, and the clutch was taken apart. Complainant was advised that the clutch failed because it became overheated and burned up. The service advisor stated that the clutch and transmission needed to be replaced. However, Respondent denied Complainant's warranty claim. Respondent found that the repair was not covered under the vehicle's warranty because the clutch failure was due to driver misuse, not a warrantable defect.³⁸

Complainant had the vehicle towed to Gullo Ford in in Conroe, Texas. Complainant was advised that Planet Ford already had an open ticket on the vehicle and Gullo Ford would not be

³⁵ Complainant's Ex. # 3 (San Luis Beach folder).

³⁶ Complainant's Ex. # 1.

³⁷ *Id.*

³⁸ *Id.*

able to have a technician inspect the vehicle for at least 6 months. However, Gullo Ford provided an estimate to replace the clutch for \$4,602.05.³⁹ The vehicle was then towed to Huntsville Ford, but they advised that they would not perform warranty repair on the vehicle because Respondent had already denied warranty coverage.

On July 28, 2022, Complainant filed a Lemon Law complaint with the Department. On August 16, 2022, Timothy Mancini, a Field Service Engineer for Respondent, inspected the vehicle. He found that the clutch assembly, flywheel, and input shaft seal were damaged due to overheating caused by improper use or abuse of the vehicle.⁴⁰ Specifically, Mr. Mancini postulated that the vehicle had been stuck in sand and the transmission was over-revved until the damage occurred. Mr. Mancini concluded the vehicle had been buried in sand because sand was found inside the frame rails, on the engine bay, and throughout the vehicle.⁴¹

Complainant contends that the vehicle was never stuck in sand and was being driven in conditions for which it was designed.⁴² For example, the vehicle is equipped with a GOAT mode that includes a setting for “sand.” In addition, marketing for the vehicle shows it being driven off-road over rocky terrain, in sand, and through water and mud.⁴³

Although Complainant agrees that there was a small amount of sand on the vehicle’s skid plate and frame, he argues that this is due to the vehicle being driven in loose sand, not due to the vehicle being buried in sand.⁴⁴ Complainant pointed out that on the underside of the vehicle, residue from an oil leak can be observed on the back of the motor where it meets the transmission.⁴⁵ No sand is stuck to the oil residue. Therefore, Complainant argues, this is proof that the vehicle was not buried or stuck in sand because the sand would have been stuck to the oil residue.

³⁹ Complaint’s Ex. # 12.

⁴⁰ Respondent’s Ex. # 1.

⁴¹ *Id.*

⁴² Complainant’s Exs. # 2, 3.

⁴³ Complainant’s Ex. # 4.

⁴⁴ Complainant’s Ex. # 9 (photos 103207, 103256).

⁴⁵ Complainant’s Ex. # 9 (photos 103110, 103125, 103306).

Complainant ordered OEM Ford parts for the clutch replacement, and in December 2022, he had the clutch replaced.⁴⁶ No work was performed on the transmission. Respondent voided the powertrain warranty for the vehicle because the clutch replacement was not done by a Ford-approved mechanic or facility.

Complainant did not have any further issues. However, he testified that approximately two weeks prior to the hearing on the merits, the second clutch started slipping even though it had been replaced with Ford parts. Complainant stated that he is not making a claim regarding the second clutch because it was not replaced by a Ford-approved mechanic. Rather, Complainant asks that he be reimbursed for the original clutch replacement and towing expenses⁴⁷ or that the vehicle be repurchased by Respondent. In addition, Complainant asks that the vehicle's powertrain warranty be reinstated or that he be compensated for the value of the warranty.

B. Vehicle Inspection

Upon inspection at the hearing, the subject vehicle's odometer displayed 7,081 miles. During the test drive, the replaced clutch slipped twice while shifting into third and fifth gear. The vehicle's odometer displayed 7,082.5 miles at the end of the test drive.

C. Summary of Respondent's Evidence and Arguments

Mr. Mancini testified on behalf of Respondent. He confirmed that he inspected the vehicle on August 16, 2022, and the vehicle was somewhat disassembled due to the previous inspection by the dealership. The transmission had been removed from the vehicle, and the clutch assembly had been disassembled. Upon inspection, Mr. Mancini found a significant fluid leak from the front of the transmission assembly due to a damaged input shaft seal. He also noted that the clutch assembly and fly wheel were blue in color, which is caused by extreme heat. In his opinion, the

⁴⁶ Complainant's Exs. # 10, 15, 17, 18.

⁴⁷ Complainant's Exs. # 13, 14.

heat and some debris, which appeared to be sand, contributed to the failure of the seal, which caused fluid to leak from the transmission.

He observed pockets of sand on the vehicle's frame rails and in the bell housing area, which is the opening where the transmission and failed seal is located. He opined that for sand to enter this area, the sand must have been pretty high and may have been accompanied with water. He explained that the only way to get that amount of heat is if the clutch was slipping significantly. It appears the vehicle was most likely stuck in sand and/or abused, which contributed to the overheating and damage to the transmission. He determined that this was not a warrantable failure. He recommended that the clutch assembly, flywheel, and input shaft seal be replaced as well as the transmission because there may be internal damage to the transmission.

Mr. Mancini agreed that if the vehicle had been stuck in sand, there should have been sand stuck to the oil leak residue on the bottom of the motor. He speculated that the area may have been cleaned prior to his inspection. When asked if it was possible that the input shaft seal had failed first, he explained that it was unlikely because a seal failure would have caused a slow drip of fluid and would not have caused the clutch to overheat as it did in this case.

D. Analysis

Complainant had the burden of proof to show that the subject vehicle qualified for relief. Based on the evidence presented, Complainant failed to establish the facts necessary for relief.

To qualify for relief, Complainant must prove, by a preponderance of the evidence, that the vehicle's problems arose from a manufacturing defect and that the problems continue to exist after a reasonable number of repair attempts.⁴⁸ The threshold issue in this case is whether the clutch failure was due to a warrantable manufacturing defect or due to misuse or abuse of the vehicle. The evidence reveals that the clutch assembly and fly wheel were damaged and were blue in color, which is caused by extreme heat. This heat also damaged the input shaft seal which allowed fluid

⁴⁸ Tex. Occ. Code § 2301.604(a), .605.

to leak from the transmission. The extreme heat was caused by over-revving the transmission. Therefore, it is more likely than not that the damage to the vehicle was due to user misuse and not due to a manufacturing defect. Consequently, the clutch failure in this case does not qualify for relief as a warrantable defect.

Even if a manufacturing defect did exist, however, the Lemon Law statute only provides relief for currently existing defects. Once the original clutch was replaced, the issue was resolved, and no further relief was available under the statute. Therefore, the subject vehicle does not qualify for repurchase or any other relief under the Lemon Law statute. Complainant's request for relief is denied.

IV. FINDINGS OF FACT

1. On April 11, 2022, Empressa Fute Limited Company (Complainant) purchased a new 2022 Ford Bronco from Planet Ford, a franchised dealer of Ford Motor Company (Respondent), in Houston, Texas.
2. The purchase price of the vehicle was \$45,352.16, including tax, title, license, and registration.
3. The vehicle had 25 miles on the odometer at the time of purchase.
4. The vehicle's limited warranty provides basic coverage for 3 years or 36,000 miles, whichever occurs first, and powertrain coverage for 5 years or 60,000 miles, whichever occurs first.
5. The subject vehicle is equipped with a manual transmission and a "sand" mode for driving.
6. On June 19, 2022, the subject vehicle was rented out and driven on Surfside Beach and San Luis Beach in Texas.
7. The vehicle was driven on dry, packed sand and then on loose sand. While driving on loose sand, the vehicle's "sand" mode was engaged.
8. At some point while driving, the clutch failed. The clutch pedal went to the floor and did not have any resistance when pushed. The pedal did not come back up when released.
9. The vehicle was towed to Planet Ford in Spring, Texas. The vehicle's mileage was 4,344 miles. Approximately 3 weeks after the vehicle arrived at the dealership, it was inspected.

10. Planet Ford determined that the clutch failed because it became overheated and burned up. There was also a leak from the transmission. Planet Ford recommended replacement of the clutch and transmission.
11. Respondent denied the warranty claim stating that the clutch failure was not due to a warrantable defect but due to driver misuse.
12. The vehicle was towed to Gullo Ford in Conroe, Texas, but they were unable to have a technician inspect the vehicle for at least 6 months.
13. The vehicle was towed to Huntsville Ford, but they would not perform any warranty repairs because Respondent had denied warranty coverage.
14. On July 28, 2022, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) alleging that the vehicle's clutch and transmission were inoperable.
15. On August 2, 2022, the Department sent a copy of the Lemon Law complaint to Respondent, providing written notice of the alleged defect.
16. On August 16, 2022, Timothy Mancini, a Field Service Engineer for Respondent, inspected the vehicle. He found that the clutch assembly, flywheel, and input shaft seal were damaged due to overheating caused by improper use or abuse of the vehicle.
17. Mr. Mancini postulated that the vehicle had been stuck in sand and the transmission was over-revved until the damage occurred. Mr. Mancini concluded the vehicle had been buried in sand because sand was found inside the frame rails, on the engine bay, and throughout the vehicle.
18. Mr. Mancini concluded that this was not a warrantable defect.
19. In December 2022, Complainant paid out-of-pocket and had the clutch replaced with OEM Ford parts. No work was performed on the transmission.
20. Respondent voided the powertrain warranty for the vehicle because the clutch replacement was not done by a Ford-approved mechanic or facility.
21. On January 2, 2023, the Department's Office of Administrative Hearings (OAH) issued a Notice of Hearing directed to all parties, providing not less than 10 days' notice of the hearing date and advising the parties of their rights under the applicable rules and statutes.
22. The Notice of Hearing advised the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the

factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the Department.

23. On March 23, 2023, a hearing on the merits was convened in Conroe, Texas, before OAH Chief Hearings Examiner Bennie Brown. Complainant was represented by Travis Foote. Respondent appeared through its representative Anthony Gregory. The hearing concluded, and the record closed the same day.
24. The vehicle's odometer displayed 7,081 miles at the time of the hearing.
25. The clutch assembly and fly wheel were damaged and were blue in color, which is caused by extreme heat. This heat also damaged the input shaft seal which allowed fluid to leak from the transmission.
26. The extreme heat was caused by over-revving the transmission.
27. The damage to the vehicle was caused by user misuse, not a manufacturing defect.
28. The vehicle no longer had an existing problem after the replacement of the original clutch.

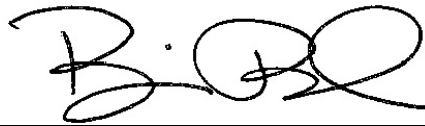
V. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204, 601-.613.
2. A Hearings Examiner with 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. Proper and timely notice of the hearing was provided. Tex. Gov't Code ch. 2001.051-.052; 43 Tex. Admin. Code § 215.206(2).
5. The Complainant bears the burden of proof in this proceeding. 43 Tex. Admin. Code § 206.66(d).
6. The Complainant failed to show, by a preponderance of the evidence, that the subject vehicle had a warrantable manufacturing defect that continued to exist after a reasonable number of repair attempts. Tex. Occ. Code § 2301.604(a), .605.

VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-.613 is **DENIED**.

SIGNED May 22, 2023

A handwritten signature in black ink, appearing to read 'B. Brown', written over a horizontal line.

**BENNIE BROWN
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**