

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 14-0148 CAF**

AARON JOHNSON,
Complainant

v.

GENERAL MOTORS, LLC,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Aaron Johnson (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for an alleged defect in his 2012 Chevrolet Cruze. Complainant asserts there is a grinding noise coming from underneath his vehicle and vibration in the clutch pedal. General Motors, LLC (Respondent) argues that it has not been afforded an opportunity to cure the alleged defect. The hearings examiner concludes that the vehicle has an existing warrantable defect, and while Complainant is not eligible for repurchase or replacement relief, Respondent has a duty to repair the vehicle.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

On April 23, 2014, Respondent filed a Motion to Compel Repairs (Motion) stating that Respondent had recently issued a technical service bulletin providing for adjustments that would resolve the alleged defect in the vehicle, but that Complainant had refused to allow Respondent to perform the repairs. On April 28, 2014, Complainant filed a response to the Motion, arguing that Respondent's current request to implement repairs was untimely and unreasonable. On May 5, 2014, Respondent filed a reply to Complainant's response, contending that its October 2013 receipt of Complainant's written notice of the vehicle's alleged defect triggered Respondent's statutory right to attempt a cure, and the case should be dismissed because of Complainant's refusal to allow Respondent to implement repairs.

On May 15, 2014, the hearings examiner issued Order No. 4 denying Respondent's Motion and its request for dismissal. However, Order No. 4 informed Complainant that if he continued to refuse Respondent's request to perform repairs he was unlikely to prevail in this case, since providing the manufacturer an opportunity to cure the alleged defect is a statutory condition precedent to ordering repurchase or replacement relief.

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and closed on May 23, 2014 in Houston, Texas before Hearings Examiner Anne K. Perez. Attorney Felix Chevalier represented Complainant. Respondent was represented by attorney Kristina L. Culley.

II. DISCUSSION

A. Applicable Law

The manufacturer of a motor vehicle must repurchase or replace the vehicle with a comparable vehicle if five conditions are met. First, the manufacturer has not conformed the vehicle to an applicable express warranty because the manufacturer cannot repair or correct a defect or condition in the vehicle. Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.¹ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.² Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.³

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.⁴

B. Complainant's Evidence and Arguments

Complainant purchased the 2012 Chevrolet Cruze from Monument Chevrolet of Pasadena, Texas on October 23, 2012, with mileage of four (4) at the time of delivery.⁵ On the date of hearing the vehicle's mileage was approximately 12,500. At this time, Respondent's limited warranty coverage for the vehicle remains in place, with "bumper-to-bumper" coverage for 36 months or 36,000 miles, whichever comes first, and powertrain coverage for 60 months or 100,000 miles, whichever comes first.⁶

Complainant testified that he first noticed a problem with his new vehicle about nine months after purchase. When the engine was "cold" and he started the vehicle he could hear a "rattling, clanking noise" coming from under the hood. The sounds did not occur frequently, he said, so he did not address

¹ Tex. Occ. Code § 2301.604(a)(1) and (2).

² Tex. Occ. Code § 2301.606(c)(1).

³ Tex. Occ. Code § 2301.606(c)(2).

⁴ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

⁵ Complainant Exs. 4 and 5, Motor Vehicle Buyer's Order and Odometer Disclosure Statement.

⁶ The parties stipulated to the terms of Respondent's express warranty applicable to Complainant's vehicle.

the issue with Monument Chevrolet until September 2013 when he took the car in for an oil change. He noted that the dealer kept his vehicle for a week, verified his concern, and told him that a service bulletin issued by Respondent had identified the vehicle's "dual mass flywheel" as the source of the noise. Still, the dealer informed him that "no repair was available at this time." Complainant acknowledged that he was provided with a rental car for the duration of the service visit.

Complainant testified that his vehicle's engine noise subsequently worsened. When he "cold-started" the car he heard a "loud clunk" under the hood that sounded like "metal on metal." The "clanking" was so loud that he could hear it with all the windows rolled-up. Although the noise only lasted "for a second," the metallic nature of the sounds caused him to question his vehicle's durability.

Monument Chevrolet's repair orders for Complainant's vehicle reflect the following information:⁷

Date In & Date Out	Mileage	Reported Concern	Dealer's Findings
09-10-2013 to 09-17-2013	10,290	On cold start there is a grinding noise from under the vehicle	Started vehicle on cold start and found loud grind/clunk noise. Inspected and called Tech Asst. Found TSB #PIP5150 explaining Dual Mass Flywheel to be cause of noise. Verified noise from flywheel. Per TSB, no repair available at this time.
10-08-2013 to 10-09-2013	11,178	Vehicle makes a grinding noise from engine area on start-up. Vibration in clutch pedal when grinding noise starts	TSB not yet updated, still no repair at this time. Per TSB this is not a durability concern.

Complainant testified that he was frustrated at the dealer's inability to fix his vehicle. He reasoned that the sounds of "metal on metal" from the engine on start-up signified the existence of significant problems, yet he was being told that no repair was available. Complainant was very upset. Between the engine noise and concerns about a more serious problem, his use and enjoyment of his brand-new vehicle was severely diminished. He decided to retain legal representation. On October 13, 2013, Complainant's attorney notified Respondent in writing that Complainant's 2012 Chevrolet Cruze was defective and demanded that Respondent repurchase the vehicle.⁸

On cross-examination, Complainant admitted that he has continued to drive the subject vehicle on a daily basis despite the engine noise on start-up. Complainant did not learn that a technical update issued

⁷ The service invoices were admitted as Complainants Exs. 1 and 2. For clarity and ease of reference, quotes from the invoices are summarized and corrected for spelling errors.

⁸ Complainant Ex. 3.

by Respondent in April 2014 (GM Bulletin No. PI1175B)⁹ provided a repair solution for “Starter or Flywheel Knock Noise on Start Up” in 2012-2014 Chevrolet Cruze models, until May 16, 2014, the date that his vehicle underwent an inspection performed by Respondent’s field service engineer. With respect to GM Bulletin No. PI1175B, Complainant testified that he was also unaware of Respondent’s April 17, 2014 request for an opportunity to repair Complainant’s 2012 Chevrolet Cruze, in a letter sent to Complainant’s attorney.¹⁰

Complainant acknowledged that GM Bulletin No. PI1175B recommends replacement of both the starter and fuse block in 2012-2014 Chevrolet Cruze models. However, he does not want his vehicle to undergo these repairs. Although he admittedly lacks any training or expertise in automotive technology, Complainant conveyed skepticism that the suggested repairs would fix a problem with the vehicle’s dual mass flywheel. Ultimately, he expressed a loss of confidence in “the product” because it took Respondent six months to formulate a repair. Now he just wants his money back.

C. Respondent’s Evidence and Arguments

Bruce Morris testified that he works as a contract field service engineer for Respondent. He has been in the automotive industry for 29 years and holds multiple certifications issued by the National Institute for Automotive Service Excellence. He has performed diagnostic inspections and repairs on many different vehicle models manufactured by Respondent, including the Chevrolet Cruze, and he performed an inspection of Complainant’s vehicle on May 16, 2014.

Mr. Morris stated that his inspection of Complainant’s vehicle revealed a knocking noise coming from the dual mass flywheel area under the hood at start-up. He has inspected other Chevrolet Cruze vehicles that exhibited a similar noise coming from the same area of the vehicle. He testified that in his opinion, the repairs recommended by GM Bulletin No. PI1175B, if applied to Complainant’s vehicle, would completely resolve the issue of noise from the engine area.

Mr. Morris observed that Monument Chevrolet’s September 10, 2013 repair order for the subject vehicle describes Complainant’s concern as a “grinding noise coming from under the vehicle” and refers to an earlier GM service bulletin, No. PIP5150. He acknowledged that GM Bulletin No. PIP5150 did not provide a repair solution for the problem. Nonetheless, the update establishes that by September 2013 Respondent was not only aware of complaints regarding engine noise in 2012-2014 Chevrolet Cruze models, but Respondent had identified the dual mass flywheel as the source of the problem and its engineers were actively working on a solution.

⁹ Respondent Ex. 3.

¹⁰ Respondent Ex. 1.

Mr. Morris explained that subsequently, on November 13, 2013, Respondent issued GM Bulletin No. PIP5150A¹¹ superseding GM Bulletin No. PIP5150. The November 13, 2013 service bulletin provided dealer service technicians with additional instructions related to the “Rattle from Engine Area at Start-up” in 2012-2014 Chevrolet Cruze models:

This noise may be caused by the dual mass flywheel (DMF). During start up the engine starter speed allows the DMF to achieve high torsional displacements while passing through its resonance range. The (DMF) damper springs have reached the end of the available travel and come in contact with the damper spring end stops. The Clutch, DMF and Transmission are functioning normally and this is not a DMF durability concern. Engineering has identified that the starter motor is running the crankshaft at a speed that excites the DMF springs and is the root cause of the noise. Long-term repair will be a new updated starter motor and the fuse block currently going through CC&A parts supply chain process. In the meantime the replacement of dual mass flywheels or starters is not recommended as it will not be a long-term repair.

This PI will be updated when a repair has been validated. Please feel free to share this information with customers as needed.¹²

The above excerpt from GM Bulletin No. PIP5150A was further explained by Mr. Morris. He stated that in the 2012-2014 Chevrolet Cruze models, the dual mass flywheel is actually composed of a flywheel, a pressure plate, and another spring-loaded pressure plate on the outside. The pressure plates and related parts are bolted to the engine. The grinding noise heard coming from under the vehicle’s hood on start-up relates to engine speed: before reaching idle speed the engine is turning too slowly, and the lack of speed allows “all these components to clank together.”

When a technical problem such as this one arises, Mr. Morris testified, Respondent’s engineers usually research and test a number of potential solutions prior to settling on an optimal repair. Mr. Morris stated that in this case, GM Bulletin No. PII175B provides the repair solution that was ultimately validated by Respondent. This bulletin recommends placing a starter with higher torque in 2012-2014 Chevrolet Cruze models to increase the rate of speed at which the flywheel components move. And, the recommended new block fuse supplies the larger electrical load required by the new higher-torque starter.

On cross-examination, Mr. Morris reiterated his opinion that the repairs recommended in GM Bulletin No. PII175B, if applied to Complainant’s vehicle, would resolve the grinding noise coming from the engine area. He further maintained that this repair solution resolves all problems with the dual mass flywheel in 2012-2014 Chevrolet Cruze models. As a result, he concluded that the durability and

¹¹ Respondent Ex. 2.

¹² *Id.*

marketability of Complainant's vehicle have suffered no adverse effects. He likewise confirmed that there are no safety concerns with the vehicle.

D. Analysis

In order to prevail in his request to have the vehicle repurchased, Complainant must show that the defect or condition creates a serious safety hazard or substantially impairs the use or market value of his vehicle. In addition, Complainant must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements are met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect, Complainant is entitled to have the vehicle repurchased or replaced.

The evidence establishes that the engine noise on start-up in Complainant's vehicle constitutes a warrantable defect. Complainant's vehicle was serviced for the problem twice during the warranty period by Monument Chevrolet, an authorized dealer of Respondent. Respondent therefore has a continuing duty to repair this warrantable condition.

However, the evidence does not support Complainant's request for repurchase relief. At the outset, a manufacturer may not be ordered to repurchase or replace a vehicle in the absence of two statutory condition precedents: (1) the owner has mailed written notice of the alleged defect to the manufacturer; and (2) the manufacturer has been given an opportunity to cure the alleged nonconformity. *See* Tex. Occ. Code § 2301.606(c)(1) and (2). Complainant met the first of these requirements by providing written notice of the vehicle's nonconformity to Respondent on October 13, 2013. On the other hand, when Respondent formally requested an opportunity to cure the alleged defect on April 17, 2014, Complainant refused to allow Respondent access to the vehicle for repair purposes.

Complainant emphasizes that notice of the vehicle's defect was provided to Respondent in October 2013 but Respondent waited six months before offering to repair the vehicle. Complainant argues that the substantial defect in the vehicle prevented him from properly using and enjoying his new car for an extended length of time. Although Respondent is entitled to an opportunity to cure the defect, Complainant contends, the attempt to cure must occur within a reasonable period of time, and in Complainant's case that period is long past. Because Complainant is currently opposed to giving Respondent an opportunity to update his car in accordance with GM Bulletin No. PI1175B, Complainant argues that Respondent should be required to repurchase his vehicle.

Complainant did not cite to any statutory authority or case law imposing time limitations on a manufacturer's duty to conform a vehicle to an applicable express warranty. Complainant's argument seems to be based on equity, but the purpose of this proceeding is to determine whether Complainant

qualifies for statutory relief under Texas Lemon Law provisions. Texas Occupations Code chapter 2301, subchapter M does not establish the time limitation on manufacturers that Complainant seeks to impose.

Additional unmet statutory requirements undermine Complainant's request for repurchase relief. Complainant presented no evidence demonstrating that the nonconformity in his vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle, as required by Texas Occupations Code § 2301.604(a). Although Complainant testified that the market value of his 2012 Chevrolet Cruze was likely reduced by noise coming from the engine area on start-up, Mr. Morris testified that the repairs outlined in GM Bulletin No. PI1175B would completely eliminate noise coming from the vehicle's dual-mass flywheel, and that the durability and marketability of Complainant's vehicle remained intact. No evidence established that safety is a concern.

Texas Occupations Code § 2301.604(a) also requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." While Complainant showed that his car was serviced twice for engine noise within the first 12,000 miles, two repair attempts are insufficient under the statute. Four repair attempts that meet the statute's time or mileage criteria are required to establish Texas Occupations Code § 2301.604(a)'s rebuttable presumption that a reasonable number of attempts were undertaken to conform the vehicle to an applicable express warranty.

While the evidence shows that Respondent has not breached its express warranty on the vehicle, Respondent nonetheless has a duty to repair the warrantable defect identified by Mr. Morris during his inspection of Complainant's car. Accordingly, Respondent is ordered to apply the adjustments in GM Bulletin No. PI1175B to Complainant's vehicle. Complainant's request for repurchase relief is denied.

III. FINDINGS OF FACT

1. Aaron Johnson (Complainant) purchased a new 2012 Chevrolet Malibu Eco on October 23, 2012 from Monument Chevrolet of Pasadena, Texas, with mileage of four (4) at the time of delivery.
2. The manufacturer of the vehicle, General Motors, LLC (Respondent) issued a limited warranty for the vehicle, with bumper-to-bumper coverage for 36 months or 36,000 miles, whichever comes first, and powertrain (engine, transmission, and drive train) coverage for 60 months or 100,000 miles, whichever comes first.
3. The vehicle's mileage on the date of hearing was 18,380.

4. At the time of hearing the vehicle was still under warranty.
5. About nine months after purchase, Complainant noticed a “rattling, clanking noise” coming from under the hood of his vehicle when he “cold-started” the engine. The noise lasted only a second or two, but the problem occurred more frequently over time.
6. The engine noise on start-up raised several concerns for Complainant. He questioned whether his new vehicle was durable and whether the problem reduced the car’s market value.
7. Complainant’s vehicle was serviced for a “grinding” noise from the engine area by Monument Chevrolet, one of Respondent’s authorized dealers, on the following dates:
 - a. September 10, 2013 to September 17, 2013, at 10,290 miles; and
 - b. October 8, 2013 to October 9, 2013, at 11,178 miles.
8. Complainant was provided with a rental car throughout the September 10, 2013 service visit at Monument Chevrolet.
9. Complainant’s report of a grinding noise from the engine area of his vehicle was verified by the dealer during both service visits. Complainant was informed by dealer that Respondent had issued a service bulletin (Bulletin No. PIP5150) identifying the vehicle’s “dual mass flywheel” as the source of the noise. Still, on both occasions the dealer told Complainant that “no repair was available at this time.”
10. Complainant was frustrated at the dealer’s inability to fix his brand-new car. He was also upset because the loud noise coming from the vehicle’s engine area sounded like “metal-on-metal.” Convinced there were serious problems with his car, Complainant retained legal representation.
11. On October 13, 2013, Complainant notified Respondent in writing that Complainant’s 2012 Chevrolet Cruze was defective and demanded that Respondent repurchase the vehicle.
12. On November 13, 2013, Respondent issued GM Bulletin No. PIP5150A superseding GM Bulletin No. PIP5150. With respect to the “Rattle from Engine Area at Start-up” in 2012-2014 Chevrolet Cruze models,” GM Bulletin No. PIP5150A confirmed that lack of engine speed was causing noise from the vehicle’s dual mass flywheel. The November 13, 2013, bulletin stated that long-term repair of the issue would require placement of an updated starter motor and fuse block, but the repair solution was still being validated by Respondent’s engineers. No temporary repairs were recommended.

13. On January 22, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On March 28, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
15. In April 2014 Respondent issued GM Bulletin No. PI1175B, providing a final repair solution for "Starter or Flywheel Knock Noise on Start Up" in 2012-2014 Chevrolet Cruze models. GM Bulletin No. PI1175B recommended placing a starter with higher torque in 2012-2014 Chevrolet Cruze models to increase the rate of speed at which the flywheel components move. Also recommended was placement of a new block fuse, in order to supply the electrical load required by the new higher-torque starter.
16. On April 17, 2014, Respondent sent a letter to Complainant's attorney, requesting an opportunity to repair Complainant's 2012 Chevrolet Cruze consistent with the recommendations in GM Bulletin No. PI1175B.
17. Complainant's 2012 Chevrolet Cruze was inspected by Respondent's field service engineer on May 16, 2014. Respondent's engineer verified there was a "knocking noise" from the engine area of Complainant's vehicle on start-up, but Complainant refused to authorize the repairs recommended by GM Bulletin No. PI1175B.
18. Complainant's vehicle does not have any verifiable defects that create a safety hazard or substantially impair the use or market value of the vehicle.
19. Between April 17, 2014 and May 23, 2014 (the date of hearing), Complainant refused to make his vehicle available to Respondent for repair purposes.
20. Respondent has a continuing duty to repair the warrantable defect in Complainant's vehicle identified by Respondent's field service engineer on May 16, 2014.
21. The hearing convened on May 23, 2014, in Houston, Texas before Hearings Examiner Anne K. Perez. Attorney Felix Chevalier appeared on behalf of Complainant. Respondent was represented by attorney Kristina L. Culley. The hearing adjourned and the record closed that same day.

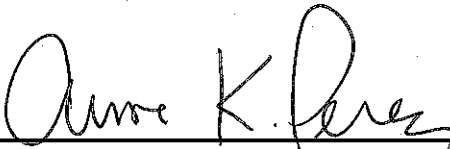
IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant failed to prove by a preponderance of the evidence that the vehicle has a verifiable defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
6. Noise emitted from the engine area of Complainant's vehicle (described in Finding of Fact Nos. 5 and 17) constitutes a warrantable defect.
7. Respondent has a duty to repair the warrantable defect in Complainant's vehicle described in Finding of Fact Nos. 5 and 17 and Conclusion of Law No. 6.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**. It is further **ORDERED** that Respondent shall repair the warrantable defect in Complainant's vehicle identified in this Decision.

SIGNED June 26, 2014.



**ANNE K. PEREZ, HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**