TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 14-0217 CAF

LAURIE and GARY MORGAN,	§	**BEFORE THE OFFICE**
Complainants	§	
v.	§	
	§	**OF**
GENERAL MOTORS LLC,	§	
Respondent	§	
	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Laurie and Gary Morgan (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged defects in their 2012 Chevrolet Traverse. Complainants assert that the vehicle's air conditioning system does not work properly. Complainant seeks the remedy of a repurchase of the vehicle. General Motors LLC (Respondent) argued that there are no defects with the vehicle and that the air conditioning system is operating appropriately. The hearings examiner concludes that the vehicle does not have an existing warrantable defect, and Complainant is not eligible for relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and closed on August 7, 2014, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainants represented themselves at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Also present at the hearing for Respondent were Bruce Morris, Field Service Engineer, and Katherine Chromicz, District Manager of After Sales.

II. DISCUSSION

A. Applicable Law

The Texas Lemon Law provides that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of under the Texas Occupations Code 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 a 2012 Chevrolet Traverse from Munday Chevrolet in Houston, Texas on May 26, 2012, with mileage of 11 at the time of delivery.[5] On the date of hearing the vehicle's mileage was 4,991. At this time, Respondent's warranty coverage for the vehicle remains in place, with "bumper to bumper" coverage for three years or 36,000 miles, whichever comes first.

Complainant Gary Morgan testified that the vehicle in question has had a problem with the air conditioning system since the date of purchase. He feels that the air conditioner doesn't blow cold air as designed. On July 25, 2012, Complainants took the vehicle to an authorized dealer for Respondent, Robbins Chevrolet in Humble, Texas, because the air conditioner wasn't working properly. It was determined that the high pressure service valve was leaking. The dealer's technician replaced the valve and recharged and retested the air conditioning system. The

[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 Ex. 1, Motor Vehicle Retail Installment Agreement and Odometer Disclosure Statement.

vehicle's mileage when he took it to the dealership was 410.[6] The dealer provided Complainants with a rental vehicle while their vehicle was being repaired.

On August 1, 2012, Complainants took the vehicle to Robbins Chevrolet because they felt that the air conditioning system was turning on and off on its own. However, the dealer's service technician determined that the system was working as designed. During this same visit, it was determined that the center air conditioning vent in the vehicle was cracked, so the vent assembly was replaced. In addition, Complainants advised the dealer's representative that the remote start which would turn on the air conditioning system from outside the vehicle was not working properly, since the air conditioner was not cooling the vehicle when the remote start was used. However, the dealer's service technician determined that the system was working as designed and no other action was taken on this complaint. The mileage on the vehicle at the time that Complainants took it to the dealership was 508.[7] The vehicle was returned to Complainants on August 14, 2012. Complainants received a rental vehicle for the last seven (7) days that the vehicle was at the dealer's premises being repaired.

On July 24, 2013, Complainants took the vehicle to Robbins Chevrolet because the air conditioner was not blowing out cold air. The air conditioning system was inspected and it was discovered that it was low on Freon. The system was recharged and checked for leaks. No leaks were found and the vehicle was returned to Complainants. Complainants were also told that they were not driving the vehicle enough and, as a result, the Freon in the air conditioning system was not being circulated enough. Complainants were provided with a rental vehicle during this visit. The mileage on the vehicle when he took it to the dealership on this occasion was 2,696.[8] The vehicle was returned to Complainant on July 25, 2013. Complainants were provided with a rental vehicle while their vehicle was being looked at.

On April 23, 2014, Complainants noticed that the vehicle's air conditioning system was not blowing out cold air and took the vehicle to Robbins Chevrolet. Again, the system was low on Freon. During this visit, the vehicle's air conditioning system's rear evaporator coil was replaced and the system was again recharged. The vehicle's mileage when he took it to the dealership was 4,330.[9] The vehicle was returned to Complainant on April 28, 2014. During this period of time, Complainants were provided with a rental vehicle.

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[6] Complainant Ex. 2, Repair Orders dated July 25, 2102; August 1, 2012; July 24, 2013; and April 23, 2014.
[7] *Id.*
[8] *Id.*
[9] *Id.*

On July 22, 2014, Complainants allowed Respondent's representative an opportunity to inspect the vehicle. Bruce Morris, Field Service Engineer conducted the inspection. The representative found a leak in the air conditioning system and replaced the low side service port core. Since then, sometimes the remote start for the air conditioner works and sometimes it doesn't. After the April 23, 2014, repairs the remote start had been working properly.

During cross examination, Complainants testified that no after-market items had been added to the vehicle. The vehicle has not been involved in any accidents and has the original tires. Complainants average driving the vehicle about six (6) miles per day and store it in their garage when it's not being utilized. During the August 1, 2012, repair attempt, Complainants were provided with a rental vehicle during the second week that the vehicle was at the dealer's location. They did not have a rental vehicle for the first week. When questioned, Complainants stated that the third repair on July 23, 2013, was almost a year from the second repair which occurred on August 1, 2012. In addition, the fourth repair was performed on April 23, 2014, twenty-one (21) months from the second repair. Complainants have never experienced a loss of control of the vehicle nor has there been a chance of fire or explosion.

C. Respondent's Evidence and Arguments

Respondent's representative, Kevin Phillips, testified that Respondent desires a dismissal of the complaint because Complainants have not met the presumption that a reasonable number of repair attempts have been performed as required under the Texas Occupation Code. The fourth repair attempt on the vehicle did not occur within a year from the date of the second repair attempt. In addition, Complainant's vehicle has been out of service for a total of twenty-one (21) days. Of the twenty-one days in question, Complainants have been provided with a loaner or rental vehicle on fourteen (14) days. So, they were without a vehicle while their vehicle was in the shop for seven (7) days. The vehicle has been repaired. There is no nonconformity and there is no substantial loss of use, value, or safety. There have been no recall notices issued by Respondent for this model vehicle for problems with the air conditioning system. Complainants purchased an extended warranty for the vehicle, but this was not purchased through Respondent, but through a third party.

Bruce Morris, Field Service Engineer, has worked 28 years in the automotive service industry. He has 24 certifications through the National Institute for Automotive Service Excellence (ASE). He is a World Class General Motors Certified technician. He's a former instructor for Universal Technical Institute in automotive and diesel technologies.

Mr. Morris inspected Complainants' vehicle on July 22, 2014, pursuant to a request by Respondent. He indicated that during the inspection, Complainants advised him that they had not experienced any problems since the repair on the vehicle on April 22, 2014. During the inspection, Mr. Morris determined that the air conditioning system was operating within specifications. In addition, the air was blowing cold out of the vents when the vehicle had been running for five (5) minutes. He inspected the system and found evidence of leak trace dye near the Schrader valve. He replaced the Schrader valve, although there was no evidence of a leak. However, he replaced the valve to ensure that there was no problem that might have been missed. He then recharged the system and the air conditioner was still operating normally. He determined that there were no issues with the air conditioning system. As far as the remote start issue regarding the air conditioner, the vehicle in question has a manual air conditioning system. When the vehicle is turned off the settings don't adjust, so that when the vehicle is turned back on using the remote, the settings are the same as when the vehicle was turned off. However, the recirculation option automatically turns off when the car is turned off. So, that when the remote control is used to start the vehicle, the recirculation option doesn't turn on and the air from the air conditioner will remain warmer since the air is being pulled in from the outside.

D. Analysis

Under Texas' Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the 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 is 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.

Complainants purchased the vehicle in question on May 26, 2012 and presented the vehicle to an authorized dealer of Respondent due to their concerns with the air conditioning system on the following dates: July 25, 2012, August 1, 2012, July 24, 2013, and April 23, 2014. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.604(a) goes on to specify that a rebuttable presumption that a reasonable number of attempts to repair have been made if "two or more repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner, and two other repair

attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt." Complainants have not met the requirements of this test. Complainants did present the vehicle for repairs to an authorized dealer for Respondent on two occasions within the first year or 12,000 miles from purchase. However, they did not establish that two repair attempts were made within the next year or 12,000 miles from the date of the second repair attempt of the vehicle. As such, Complainants were unable to establish that a reasonable number of attempts to repair the vehicle were made by Respondent.

In addition, the problems with the air conditioning system do not constitute a "serious safety hazard" as defined in the Occupations Code. Section 2301.601(4) of the Code provides that "'serious safety hazard' means a life-threatening malfunction or noncomformity that: (A) substantially impedes a person's ability to control or operate a motor vehicle for ordinary use or intended purposes; or (B) creates a substantial risk of fire or explosion." The problems with the air conditioning testified to by Complainants did not substantially impede their ability to control or operate their vehicle for ordinary uses nor did they create a substantial risk of fire or explosion. Therefore, the hearings examiner finds that the issues with the air conditioning system do not constitute a serious safety hazard as defined in the Code.

Since Complainants have not established that a reasonable number of repair attempts have been performed and since there is no evidence that the air conditioning issues constitute a serious safety hazard, the hearings examiner must conclude that there is no defect with the vehicle's air conditioning system as defined in the Occupations Code and, as such, there are no grounds to grant repurchase or replacement relief for Complainants.

Respondent's express warranty applicable to Complainant's vehicle provides "bumper to bumper" coverage for 3 years or 36,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 4,991 and it remains under this warranty. As such, the Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

Complainant's request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Laurie and Gary Morgan (Complainants) purchased a new 2012 Chevrolet Traverse on May 26, 2012 from Munday Chevrolet in Houston, Texas, with mileage of 11 at the time of delivery.

2. The manufacturer of the vehicle, General Motors LLC (Respondent) issued a bumper to bumper warranty for 3 years or 36,000 miles, whichever occurs first.

3. The vehicle's mileage on the date of hearing was 4,991.

4. At the time of hearing the vehicle was still under warranty.

5. Complainants have had issues with the vehicle's air conditioning system since the date of purchase. They feel that the air conditioner doesn't blow cold air as it's supposed to do.

6. Complainants took the vehicle to Respondent's authorized dealers in order to address their concerns with the air conditioning system, on the following dates:

   a. July 25, 2012, at 410 miles;
   b. August 1, 2012 to August 14, 2012, at 508 miles;
   c. July 24, 2013, at 2,696 miles; and
   d. April 23, 2014 to April 28, 2014, at 4,330 miles.

7. Complainants were provided with a rental vehicle during all four service visits. However, during the August 2012 service visit, they were given a rental vehicle for only seven (7) of the fourteen (14) days that the vehicle was at the dealership.

8. On three of the visits to the dealership, the vehicle's air conditioning system was recharged because it was low on Freon. The exception being the August 2012 visit where it was determined that the system was operating correctly.

9. On April 14, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

10. On July 22, 2014, the vehicle was inspected by Respondent's representative. Although the air conditioning system was determined to be operating correctly, the Schrader valve in the system was replaced because there was evidence of leak dye in the vicinity of the valve, although there was no evidence of a leak.

11. On June 20, 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.

12. The hearing convened on August 7, 2014, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainants represented themselves in the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager; Bruce Morris, Field Service Engineer; and Katherine Chromicz, District Manager of After Sales. 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 bears the burden of proof in this matter.

6. 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.

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

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.**

SIGNED September 15, 2014.

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