

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0044 CAF**

**ALEXEN FISHER and
BRIDGETT LAMOND FISHER,
Complainants**

v.

**GENERAL MOTORS, LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Alexen Fisher and Bridgett Lamond Fisher (Complainants) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for an alleged defect in their 2014 Chevrolet Silverado 1500 manufactured by General Motors, LLC (Respondent). The hearings examiner concludes that the vehicle does not have a warrantable defect. Consequently, the Complainants' vehicle does not qualify for repurchase or replacement relief or warranty repair.

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 on September 9, 2015, in Fort Worth, Texas, before Hearings Examiner Andrew Kang. Kent Talbot, attorney, represented Complainants. The Complainants testified on their own behalf. Kristina Culley, attorney, represented the Respondent. Irfaun Bacchus, Field Service Engineer, and John Metcalf, District Manager Aftersales, testified for the Respondent. The record closed on October 13, 2015, the deadline for filing written submissions.

II. Discussion

A. Applicable Law

The Lemon Law, in part, requires a manufacturer of a motor vehicle to repurchase or replace a vehicle when the manufacturer is "unable to conform a motor vehicle to an applicable

express warranty.”¹ Additionally, warranty repair under Section 2301.204 of the Texas Occupations Code requires a “defect in a motor vehicle that is covered by a manufacturer’s . . . warranty agreement applicable to the vehicle.”² Accordingly, for a vehicle to be eligible for repurchase or replacement, or even warranty repair, the vehicle must have a defect under an applicable warranty (warrantable defect). The Complainants must prove the existence of a warrantable defect by a preponderance, that is, the evidence must show that a warrantable defect more likely than not exists.³

B. Complainants’ Evidence and Arguments

On December 9, 2013, the Complainants, Alexen Fisher and Bridgett Lamond Fisher, purchased a new 2014 Chevrolet Silverado 1500 from Vandergriff Chevrolet in Arlington, Texas. The vehicle had 20 miles on the odometer at the time of purchase.⁴ The vehicle’s limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first.⁵ The repair orders reflect the following service visits:

| Date | Miles | Issue |
|--------------------|-------|--|
| July 23, 2014 | 7,088 | Vehicle vibrates at 80 mph ⁶ |
| July 25, 2014 | 7,981 | Vehicle has vibration around 75-80 mph ⁷ |
| September 15, 2014 | 8,225 | Vehicle damaged while on the dealer’s lot ⁸ |
| December 4, 2014 | 8,557 | Vibration felt at 70-75 mph ⁹ |

Mr. Fisher testified that the July 25, 2014, repair order covered four service visits. The Respondent’s final repair attempt occurred on December 4, 2014. On August 12, 2014, the Complainants mailed a written notice of defect to the Respondent.¹⁰ On October 14, 2014, the

¹ TEX. OCC. CODE § 2301.604(a).

² TEX. OCC. CODE § 2301.204.

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

⁴ Complainants’ Ex. 1, Purchase Agreement.

⁵ Complainants’ Ex. 2, New Vehicle Limited Warranty.

⁶ Complainants’ Ex. 3, Invoice No. CVCS430916.

⁷ Complainants’ Ex. 5, Invoice No. 842990.

⁸ Complainants’ Ex. 4, Invoice No. 847920.

⁹ Respondent’s Ex. 2, Vehicle Legal Inspection.

¹⁰ Complainants’ Ex. 7, Notice of Defect.

Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

Mr. Fisher identified the sole issue as vehicle vibration. Mr. Fisher testified that he first noticed the vibration in July of 2014 when taking his son home. Mr. Fisher brought the vehicle to a dealer for service within two days of noticing the vibration. Mr. Fisher subsequently took the vehicle to another dealer because he felt vibration on a trip to Georgia. Mr. Fisher confirmed that he did not take the vehicle home during the service visit spanning July 25, 2014, to September 4, 2014. Mrs. Fisher explained that, during the July 25, 2014, service visit, the dealership contacted the Complainants to retrieve the vehicle, but they did not actually take the vehicle home because Mr. Fisher continued to feel vibration and consequently returned the vehicle to the dealership, so the vehicle essentially stayed at the dealership from July 25, 2014, to September 4, 2014. Mr. Fisher stated the vehicle felt unsafe because he could feel the truck, and steering wheel, shaking. Mr. Fisher confirmed that he did not subsequently take the vehicle to have a dealer address the vibration. Mr. Fisher subsequently brought the vehicle in for an inspection and final repair attempt by the Respondent. After the final repair attempt, Mr. Fisher could still feel vibration, although slight. Mr. Fisher added that the vibration worsened as he continued to drive the vehicle. Mr. Fisher affirmed that a single repair order (Complainants' Ex. 5, Invoice No. 842990) covered four service visits. Mr. Fisher also noted that the mileage at the September 4, 2014, service visit should have been 8,169 miles and not 7,981 miles as shown on the complaint. Mrs. Fisher testified that she experienced the vibration as a passenger. Mr. Fisher testified that he had 23 years of professional experience driving a tractor trailer as well as experience driving charter buses and limousines. He estimated that he drove roughly 85,000 or miles a year. Mr. Fisher further testified that he had not experienced a problem similar to the subject vibration in other vehicles. Mr. Fisher testified that he noticed the vibration more on blacktop (asphalt) than on concrete.

C. Respondent's Evidence and Arguments

Irfaun Bacchus, a field service engineer for the Respondent, performed the vibration diagnosis and final repair in this case on December 4, 2014. Mr. Bacchus test drove the Complainants' vehicle over 60 to 70 mph. Mr. Bacchus stated that he experienced slight vibration in the steering wheel and floorboard at 70 mph and above. He further testified that the vibration was not excessive and posed no danger. Mr. Bacchus stated that three tires exceeded the 15 lb.

road force specification. So they indexed one tire and replaced two to get all four tires within 15 lbs. of road force. Mr. Bacchus explained that road force variance is a property expressed in pounds as measured by the Hunter tire balancer machine simulating the tires moving on the road. Mr. Bacchus noted that a defective tire, a pothole, tire damage, or improper inflation could increase the road force. Mr. Bacchus described indexing the tire as moving the tire and rim to match where the machine indicates the out-of-balance would best fit the tire assembly (i.e., positioning the tire on the rim to minimize the road force). Two of the tires could not be brought within 15 lbs. and were therefore replaced. After the repairs, the PicoScope vibration analyzer showed a drastic difference—the vibration fell to 5 milli-g (from a pre-repair high of 18.4 milli-g).¹¹ The PicoScope vibration analyzer with an accelerometer on the floorboard measured the vibration. Mr. Bacchus did not notice any abnormal vibration while test driving the vehicle. Mr. Bacchus noted that all vehicles vibrate and that road conditions and the vehicle itself and its suspension affect vibration. Further, no tire will get to zero lbs. of road force. Mr. Bacchus testified that a truck will have more road feel due to the leaf spring suspension and thicker axles. Mr. Bacchus also testified that a slight vibration did not present a safety concern or affect market value and would not cause damage.

John Metcalf, a district manager aftersales for the Respondent, was involved with the repair process and was present for the final repair attempt. As a passenger on a pre-repair test drive, Mr. Metcalf experienced slight vibration at highway speed but did not notice such vibration below highway speed. He felt the vibration in the seat and floorboard. After the repairs, Mr. Metcalf did not notice the complained of vibration. However, Mr. Metcalf confirmed that all vehicles have some vibration and that all vibration cannot be eliminated. Mr. Metcalf also testified that he did not believe that the vibration would cause damage or present a safety issue. Mr. Metcalf did not feel that the vibrations were a non-conformity and testified that the warranty did not cover the vibrations. Mr. Metcalf noted that during the test drive at the hearing, the vehicle exhibited the typical characteristics of a truck.

D. Analysis

The Lemon Law does not apply to all problems a person may experience with a vehicle, such as characteristics arising from the design of the vehicle or other issues arising from outside

¹¹ Respondent's Ex. 2, Vehicle Legal Inspection.

the manufacturing process. Instead, the Lemon Law's replacement/repurchase relief, as well as warranty repair, only apply to warrantable defects (defects covered by an applicable warranty).¹² The vehicle's warranty states that it "covers repairs to correct any vehicle defect, not slight noise, vibrations, or other normal characteristics of the vehicle related to materials or workmanship occurring during the warranty period."¹³ Accordingly, for the warranty to apply, the complained of issue must result from a defect in materials or workmanship, a manufacturing defect, rather than the vehicle's design. Further, the warranty does not apply to "slight noise, vibrations, or other normal characteristics." A manufacturing defect occurs when the vehicle varies from the manufacturer's intended design (such as incorrect assembly or the use of a substandard part).¹⁴ In contrast, design characteristics result from the vehicle's design itself and not from any error in the manufacturing process, so that the same-model vehicles made according to the manufacturer's specifications will normally have the same characteristics.

The issue here hinges on whether the complained of vibration constitutes a warrantable defect. In this case, the evidence indicates that the complained of vibration is a normal characteristic of the vehicle's design. During the test drive, the vehicle exhibited vibration at highway speeds. The Complainants found this same level of vibration to be excessive. On the other hand, that vibration did not appear abnormal to other witnesses. However, objective measures showed that the vehicle's level of vibration is normal and not a defect. Specifically, after the final repair attempt, all four of the vehicle's tires had less than 15 lbs. of road force variance and the PicoScope noise, vibration, harshness analyzer showed vibration of about 5 milli-g, down from a pre-repair high of 18.4 milli-g. The objective measurements show that the vibration fell within specifications. Additionally, Mr. Bacchus testified that all vibration cannot be eliminated and that trucks, due to their heavier axles and leaf spring suspension will have a rougher ride. During the test drive at the hearing, the vehicle exhibited some vibration at highway speeds, but such vibration did not appear abnormal. Accordingly, the vehicle's vibration appears normal and not the result of a manufacturing defect. Although the vehicle's vibration may be undesirable, the record indicates that the existing vibration results from the vehicle's design and not from a manufacturing defect.

¹² TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

¹³ Complainants' Ex. 2, New Vehicle Limited Warranty.

¹⁴ See *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).

Because the vibration does not arise from a manufacturing defect, the vehicle's warranty does not apply. Additionally, the terms of the warranty specifically exclude vibration from coverage. Accordingly, the vibration is not a warrantable defect.

III. Findings of Fact

1. On December 9, 2013, the Complainants, Alexen Fisher and Bridgett Lamond Fisher, purchased a new 2014 Chevrolet Silverado 1500 from Vandergriff Chevrolet in Arlington, Texas. The vehicle had 20 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first.
3. The vehicle's warranty was in effect at the time of the hearing.
4. On August 12, 2014, the Complainants mailed a written notice of defect to the Respondent.
5. On October 14, 2014, the Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
6. On November 25, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainants and the 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. On May 22, 2015, the Department's Office of Administrative Hearings issued an order resetting the hearing date to September 9, 2015.
7. The hearing in this case convened on September 9, 2015, in Fort Worth, Texas, before Hearings Examiner Andrew Kang. Kent Talbot, attorney, represented Complainants. The Complainants testified on their own behalf. Kristina Culley, attorney, represented the Respondent. Irfaun Bacchus, Field Service Engineer, and John Metcalf, District Manager Aftersales, testified for the Respondent. The record closed on October 13, 2015, the deadline for filing written submissions.
8. The vehicle's odometer displayed 11,783 miles at the time of the hearing.
9. The vehicle exhibited vibration at highway speeds during the test drive at the hearing.

10. The existing vibration is a normal characteristic of the vehicle.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 (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. The Complainants timely filed a sufficient complaint with the Department. TEX. OCC. CODE §§ 2301.204, 2301.606(d); 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 Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 215.206.66(d).
6. The Complainants did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).
7. The Complainants' vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604.
8. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranties. TEX. OCC. CODE §§ 2301.204, 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED December 11, 2015



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