

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0122 CAF**

BARTLEY PITCOCK,
 Complainant

v.

GENERAL MOTORS, LLC,
 Respondent

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Bartley Pitcock (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in his 2011 Buick Enclave. Complainant asserts in his complaint that the vehicle is defective due to a persistent brake issue, an injector replacement, front motor mounts breaking, and an engine block repair. General Motors, LLC (Respondent) argues that the issues raised on the complaint have been repaired. 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 the record closed on June 24, 2015, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant, Bartley Pitcock, represented himself at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Bruce Morris, Field Service Engineer, also appeared to offer testimony for Respondent.

II. DISCUSSION

A. Applicable Law

Texas Occupations Code § 2301.603 provides:

- (a) A manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's, converter's, or distributor's express warranty.
- (b) Subsection (a) applies after the expiration date of a warranty if:
 - (1) during the term of the warranty, the owner or the owner's agent reported the nonconformity to the manufacturer, converter, or distributor, or to a designated agent or franchised dealer of the manufacturer, converter, or distributor; or
 - (2) a rebuttable presumption relating to the vehicle is created under Section 2301.605.

Texas Occupations Code § 2301.606(d) provides that “[a] proceeding under this subchapter must be commenced not later than six months after the earliest of:

- (1) the expiration date of the express warranty term; or
- (2) the dates on which 24 months or 24,000 miles have passed since the date of original deliver of the motor vehicle to an owner.”

Texas Occupations Code § 2301.204(a) provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” The relief available to Complainant under this section of the Code is repair of the vehicle in question, since the complaint was filed more than six months after the vehicle was driven 24,000 miles.

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2011 Buick Enclave from West Point Buick of Houston, Texas (West Point) on July 27, 2011. The vehicle’s mileage at the time of delivery was 96.¹ Respondent provided a bumper to bumper limited warranty for the first four (4) years or 50,000 miles from the delivery date, whichever comes first. Respondent also provided a powertrain limited warranty for the first five (5) years or 100,000 miles from the delivery date, whichever comes first.² Complainant’s wife is the primary driver of the vehicle.

Complainant testified that he’s had numerous issues with the vehicle, among which are: a persistent brake issue requiring at least five repairs, a major engine repair due to an oil leak, the replacement of a the #4 fuel injector at approximately 45,000 miles, replacing the front struts on at least two occasions, and the rear hatch would not stay closed. The vehicle is currently disassembled at a dealership and not operating. Complainant also stated that he was provided with an extended warranty by Respondent approximately 18 months prior to the hearing date.

On June 26, 2012, Complainant took the vehicle to West Point because it was leaking oil. The oil leak was fixed by replacing the gasket around the front timing cover. The driver’s seat was squeaking, so anti-squeak tape was installed on both seat tracks. The steering gear had an internal leak causing a whining noise, so the technician replaced the gear and flushed the power steering system. The vehicle’s mileage at the time was 13,451.³ Complainant’s vehicle was in the dealer’s possession for three days. Complainant was provided with a loaner vehicle while the vehicle was being repaired. Complainant has not observed any other oil leaks from the vehicle since the repairs were performed.

¹ Complainant Ex. 1, Motor Vehicle Buyers Order.

² Respondent Ex. 3, Global Warranty: Vehicle Summary.

³ Complainant Ex. 2, Repair Order dated June 26, 2012.

Complainant testified that he believes that the vehicle's mileage exceeded 24,000 sometime in April of 2013.

On October 10, 2013, Complainant returned the vehicle to West Point because when the brake pedal was applied, it made a squeaking noise. The dealer's service technician determined that the noise was coming from the vehicle's brake booster, so the brake booster was replaced. Complainant was also having a problem with the rear hatch not remaining open. Both rear gate support struts were leaking and so they were replaced. Both daytime running lights bulbs were burnt out, as well. The dealer replaced both. The vehicle's mileage on this occasion was 31,637.⁴

Complainant testified that the brake pedal stopped squeaking for a couple of months after the repairs were completed on October 10, 2013. Complainant also testified that the problem with the rear hatch was resolved and he has not had any more problems with the hatch.

On December 16, 2013, Complainant took the vehicle for repair to West Point because the brake pedal started to make a squeaking noise again. The dealer's service technician replaced the brake booster in order to address the issue. Complainant also described a heavy rattling noise coming from the front of the vehicle. The technician determined that the front motor mount was broken, so it was replaced. Complainant also informed the dealer's service advisor that when he was driving the vehicle and coming to a stop, the vehicle would sputter and act like it was going to stall. The technician was unable to duplicate the issue, so no repair was performed for this concern. Finally, Complainant indicated to the service advisor that the vehicle would make a clunking noise from the front end when turning. The technician determined that the left front lower control arm bushing was making the noise, so it was replaced.⁵

After the repairs, the squeaking noise in the brake pedal went away. However, Complainant began to hear the squeaking noise again in late January. In addition, the rattling noise from the front of the vehicle went away, but Complainant testified that the noise also began to recur in January of 2014. The clunking noise went away after the bushings on the vehicle were replaced.

On February 3, 2014, Complainant took the vehicle to West Point because there was a rattling noise under the vehicle. A steering gear bushing was worn, so the dealer removed the steering gear and replaced the bushing. The brake pedal squeak had returned, so that issue was addressed, as well. The power brake vacuum booster internally failed, so it was necessary to replace the brake booster. The vehicle's mileage was 36,600.⁶

⁴ Complainant Ex. 3, Repair Order dated October 10, 2013.

⁵ Complainant Ex. 4, Repair Order dated December 16, 2013. The vehicle's mileage at the time of the repair was recorded as 31,637. However, this was the same mileage as was recorded on the October 10, 2013, repair visit. Therefore, the hearings examiner must conclude that the recorded mileage on December 16, 2013, was recorded incorrectly.

⁶ Complainant Ex. 5, Repair Order dated February 3, 2014.

Complainant retrieved the vehicle from the dealership on February 4, 2014. However, Complainant returned two days later because he felt the issues were not resolved. Complainant indicated to the dealer's service advisor that he was hearing a rattle noise from the engine and from the front end of the vehicle. The dealer's service technician determined that the vehicle's left front strut was noisy, so it was replaced. The rattling noise from the engine was determined to be an exhaust rattle, so the exhaust was realigned. The brake booster was replaced again because the squeak in the brake pedal had not been repaired on the previous visit. The vehicle's mileage on this occasion was 36,744.⁷

Complainant testified that the rattle noise went away, but came back in January of 2015. Also, the squeaking noise from the brake pedal went away until May of 2014.

On March 19, 2014, Respondent sent a Component Coverage Letter (extended warranty) to Complainant. This provided coverage for the vehicle through 111,771 miles or March 17, 2019, (five [5] years or 75,000 miles) whichever comes first, for all components covered by manufacturer's warranty.⁸

On May 8, 2014, Complainant returned the vehicle to West Point with the same brake pedal squeak issue. The dealer's service technician observed that the vehicle's brake booster and master cylinder were noisy during operation. The brake booster and master cylinder were replaced. The right center air conditioning headliner bolt was loose, as well, which was causing a rattling noise in the vehicle's roof. The technician tightened the bolt, which corrected the issue. The vehicle's mileage at the time of repair was 40,838.⁹ Complainant received a rental vehicle during this repair. The vehicle was in the dealer's possession until May 9, 2014.

The squeaking noise in the brake pedal went away for awhile. However, the noise began to return in September of 2014. The rattling noise in the roof has not recurred.

On September 11, 2014, Complainant returned the vehicle to West Point, explaining to the dealer's service advisor that the squeak in brake pedal had not been fixed. Complainant testified that they were not going to attempt to address the squeaking issue in the pedal because there was no fix for it, although Respondent was aware of the noise. The dealer's technicians were waiting for advice from Respondent on how to deal with the issue. As a result, no repair was made to the vehicle. The vehicle's mileage on this occasion was 46,398.¹⁰

On October 28, 2014, the vehicle stalled, and died. In addition, a reduced engine power message illuminated. The vehicle was towed to West Point. The technician at West Point diagnosed the problem as the fuel injector being stuck open, so a circuit verification was performed and the #4

⁷ Complainant Ex. 6, Repair Order dated February 6, 2014.

⁸ Complainant Ex. 14, Letter dated March 19, 2014.

⁹ Complainant Ex. 7, Repair Order dated May 8, 2014.

¹⁰ Complainant Ex. 8, Repair Order dated September 11, 2014.

fuel injector was replaced. The vehicle's mileage at the time was 48,357.¹¹ Complainant was provided with a loaner vehicle during this repair visit.¹² The vehicle was in the dealer's possession until October 29, 2014.¹³

At the conclusion of this visit, Complainant testified that he was told by the dealer's service manager that he was not to take the vehicle to West Point again. Complainant feels that he was told this because he had not been providing positive feedback on customer service surveys sent to him by the dealer. Complainant did ask the service manager if there was any additional information on the brake issue and was informed that there was not.

Complainant filed his Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on January 8, 2015. Complainant never mailed a letter to Respondent advising them of his dissatisfaction with the vehicle, although he completed many on-line surveys regarding the vehicle and work performed by the dealer on the vehicle.

On January 12, 2015, Complainant took the vehicle to Sterling McCall Buick (Sterling McCall) for the squeaky brake pedal issue. The dealer's service technician replaced the master cylinder and bled the hydraulic system. The vacuum brake booster was also replaced. There was a mechanical clanking noise coming from the front end, so the dealer replaced both front struts. A test drive verified that the noise was gone. The dealer also removed and reinstalled the sunroof frame and headliner after putting in noise reduction material to fix a noise issue. During a multi-point inspection the technician discovered that there was an oil leak from the front of the engine. The engine's front cover was replaced in order to repair the leak.¹⁴ In addition, a leak in the right axle boot was also discovered by the technician. As a result, the right front wheel drive shaft was replaced in order to address this issue. The vehicle's mileage on this occasion was 51,346.¹⁵

After these repairs, the brake pedal squeak went away, as did the clanking noise. The rattle from the rear of the sunroof also went away after the repairs were performed.

Complainant returned the vehicle to Sterling McCall on January 30, 2015, because whenever the driver of the vehicle depressed the brake, the pedal would go to the floorboard. In addition, the Service Brake System message began to light up intermittently after the vehicle was returned to Complainant at the conclusion of the previous repair visit. The technician found air trapped in the brake lines and on the Anti-Lock Brake System (ABS) module.¹⁶ The brake system was bled several times and a subsequent test drive revealed that the brakes were operating normally. The vehicle's mileage on this occasion was 51,819.¹⁷

¹¹ Complainant Ex. 9, Repair Order dated October 28, 2014.

¹² *Id.*

¹³ *Id.*

¹⁴ Complainant Ex. 10, Repair Order dated January 12, 2015.

¹⁵ *Id.*

¹⁶ Complainant Ex. 11, Repair Order dated January 30, 2015.

¹⁷ *Id.*

On February 26, 2015, Complainant returned the vehicle to Sterling McCall to address a rattling noise coming from under the vehicle and a squeaking noise coming from the steering column. To fix the rattling noise, the dealer's service technician replaced both lower control arm bushings. To fix the steering column, the steering gear was replaced and the hydraulic system bled. The technician also performed a flush with Dexron VI and adjusted the front toe and center steering wheel. The vehicle's mileage on this occasion was 52,805.¹⁸

After these repairs the rattling and squeaking noises both went away. In addition, the squeaking noise from the brake pedal has not recurred since mid-January of 2015. Complainant testified that the vehicle's brakes never failed. Complainant feels that the vehicle is substandard because of all of the issues that he's had with it.

On April 8, 2015, Complainant's wife informed Complainant that the vehicle was acting up and she was experiencing performance problems with it. The following morning, the car would not start. The vehicle was towed to Sterling McCall. Water was found in the fuel system. Because damage resulting from contaminated fuel is not covered under the vehicle's warranty, Complainant filed an insurance claim through Progressive. The vehicle is currently not operable.

During cross examination, Complainant testified that he purchased the vehicle new. The injector issue which caused the vehicle to stall and die on the side of the road has been repaired. The front motor mount has been repaired and there have been no further issues with it. Complainant indicated on the complaint form that the engine block had been replaced, but the engine was actually removed in order to repair the engine cover. This has not had further repair since the issue initially occurred at approximately 13,000 miles. The most repeatable issue with the vehicle has been the issue with the brake pedal squeaking. The bushings and struts have been replaced a couple of times also. Complainant verified that the first time the brake issue occurred was when the vehicle had attained 31,637 miles.

Complainant verified that he did not send a letter to Respondent regarding his dissatisfaction with the vehicle. In February of 2013, he did send a response to a survey to Respondent. The vehicle currently has 53,000 to 54,000 miles on it.

Complainant's wife was the primary driver of the vehicle. They have taken the vehicle on trips to San Antonio and New Orleans. It's not used for business. He has not had any accidents or fires in the vehicle. The vehicle does not have any cracked glass or bumps or scratches in the doors or bumpers of the vehicle. He's had one flat tire in the vehicle due to a nail in the tire. The tires were replaced at 40,000 to 50,000 miles. The vehicle does not have any undercarriage damage. The vehicle does not have any after-market equipment.

¹⁸ Complainant Ex. 12, Repair Order dated February 26, 2015.

The vehicle was last fueled the night before the vehicle did not start. The gas tank was not completely empty when it was filled. Complainant has not approached the gas station about the gas issue. Complainant's insurance company has denied his claim for repair of the vehicle. The claims adjuster denied the claim because the damage was not indicative of a one-time event.

In October of 2014, the vehicle left Complainant stranded. This occurred only once. There have been no issues with the brake pedal since late January of 2015.

C. Respondent's Evidence and Arguments

Bruce Morris is a Field Service Engineer who has 29 years of experience working with cars. He is also a World Class GM Certified Technician and a world class Automotive Service Excellence (ASE) technician.

Mr. Morris was assigned to inspect Complainant's vehicle. The initial appointment to inspect the vehicle was scheduled for February 19, 2015. However, Complainant contacted Respondent and advised them the vehicle's brakes were no longer making any noise and it was not necessary for the vehicle to be inspected.

On June 10, 2015, Mr. Morris inspected Complainant's vehicle because it would not start. Mr. Morris determined that the engine was damaged after contaminated fuel was introduced to the fuel system. The fuel was contaminated with water. One test of the fuel yielded results showing that 40% of the sample was a non-fuel substance. There were numerous particles floating in the fuel sample, which was cloudy. The rust on the tops of the pistons and fuel injectors shows a clean spray pattern, meaning that water was introduced during combustion.¹⁹ This is consistent with Complainant's story of his wife getting gas and being able to drive home because the fuel and water would have been mixed at the pump, causing performance issues before separating overnight due to different densities. When Complainant attempted to start the vehicle the following morning, the water settling on top of the fuel would have been splashed across the top of the pistons and fuel injectors. As for the coolant in the fuel sample, the coolant in the cylinder heads and front cover had likely drained into the oil pan during engine disassembly; this disassembly occurred before the fuel sample was taken by the insurance adjuster.²⁰ The vehicle's New Vehicle Limited Warranty does not cover damage resulting from water or fluid contamination. Because damage due to contaminated or poor quality fuel is not covered, Respondent argues that this issue is not eligible for repair relief.²¹

With regards to the brake issue, it is Respondent's position that it has been fixed and therefore no relief can be granted. Complainant admitted that the brake issue had not reoccurred since it was

¹⁹ Respondent Ex. 6, Vehicle Legal Inspection dated February 19, 2015.

²⁰ Respondent Ex. 4, Repair Order dated June 8, 2015.

²¹ Respondent Ex. 7, New Vehicle Limited Warranty pp. 10, 11.

last addressed on January 30, 2015.²² This makes sense because the most recent brake booster, which did not have the squeaky design flaw, was installed on that visit according to Mr. Morris. It is also Respondent's position that the brake squeak was a design flaw, not a defect. Moreover, the vehicle's New Vehicle Limited Warranty states, "The warranty covers repairs to correct any vehicle defect, not slight noise, vibrations, and other normal characteristics of the vehicle . . ."²³

D. Analysis

In the present case, the evidence indicated that Complainant filed the Lemon Law complaint on January 8, 2015. At the time that he filed the complaint, Complainant indicated that the vehicle's mileage was 49,500.²⁴ The Lemon Law requires that a complaint be filed not later than six months after the earliest of the expiration date of the express warranty term or the date on which 24 months or 24,000 miles have passed since the date of original delivery of the vehicle to an owner. Texas Occupations Code § 2301.606(d). In order for Complainant to have the possible remedy of repurchase or replacement of a vehicle, the complaint must be filed within the time frame specified. If the complaint is not filed within the required time frame, then the only possible remedy for a Complainant would be an order to repair the vehicle under the provisions of Section 2301.204 of the Texas Occupations Code, as long as the owner of the vehicle reported the nonconformity to the manufacturer, converter, or distributor during the term of the warranty. Texas Occupations Code § 2301.603.

The evidence presented at the hearing indicates that Complainant purchased the vehicle on July 27, 2011. The vehicle's mileage at the time of purchase was 96. The vehicle's basic warranty was for four (4) years or 50,000 miles. The evidence indicates that the vehicle's mileage surpassed 24,000 sometime in April of 2013. As such, the only remedy available to Complainant is repair of the vehicle, since the complaint that is the basis of this action was made a year and a half after the vehicle surpassed 24,000 miles.

In order to determine whether Complainant has a remedy under this section of the Texas Occupations Code, there first has to be evidence of a defect or condition in the vehicle that has not been repaired by Respondent.

Complainant's Lemon Law complaint raised four issues: a recurring brake issue, an injector replacement, a broken front motor mount, and an engine block repair. The most persistent issue with the vehicle was the squeaking noise that occurred whenever the brake pedal was depressed. Respondent's testimony indicates that there was a design flaw with the vehicle's brake booster and that this was finally corrected during the repair performed on January 12, 2015. Complainant agreed that the noise has not recurred since that repair. In addition, the evidence also indicates that this did not constitute a safety issue, since the brakes never failed and the

²² Respondent Ex. 1, E-mail dated April 12, 2015.

²³ Respondent Ex. 8, New Vehicle Limited Warranty, p. 4.

²⁴ Complainant Ex. 9, Lemon Law Complaint dated January 8, 2015.

squeaking noise was not a symptom of impending brake failure. The other issues raised by Complainant (the injector replacement, broken front motor mount, and engine block repair) have all been repaired by Respondent and are no longer in issue.

It appears that Complainant is generally dissatisfied with the vehicle due to the numerous repairs that have been performed on the vehicle. However, the Lemon Law does not contemplate relief based solely on an owner's dissatisfaction with a vehicle. The Lemon Law requires that there be a nonconformity or defect in a vehicle which a manufacturer has not been able to repair which is not the case in this situation.

Complainant may argue that since the vehicle is not operable at the present time, then there is a defect with it. However, the issue as to why the vehicle is not currently running was not raised in the Lemon Law complaint. In addition, there is a dispute regarding how the vehicle's engine and fuel pump were damaged. Respondent states that the fuel in the vehicle was contaminated with water which damaged the engine and fuel pump requiring their replacement. Complainant's insurance company disputed the assertion and stated that the damage was caused by a vehicle defect. If the damage was caused by contaminated fuel, then any necessary repairs are not covered under warranty since the warranty specifically exempts coverage for any damage caused by contaminated fuel. The only real evidence regarding this issue was provided by Respondent who provided expert testimony that the vehicle's fuel was contaminated. (Testimony regarding the insurance adjustor's determination is hearsay, and does not carry any weight.) As such, the current needed repairs to the engine would not be covered under warranty.

Based on all of the evidence provided at the hearing, the hearings examiner must conclude that Complainant has not met his burden to establish that the vehicle has a defect or nonconformity which has not been repaired by Respondent. As such, no relief can be ordered at this time. However, if a problem that was previously covered and repaired under Respondent's warranties recurs, Respondent is under an obligation to repair the vehicle under the terms of the vehicle's warranties.

Respondent's basic warranty applicable to Complainant's vehicle provided coverage for four (4) years or 50,000 miles whichever came first. However, this warranty is no longer in effect. Respondent's powertrain warranty provides coverage for five (5) years or 100,000 miles from the date of original purchase, whichever comes first. This warranty is still in effect until July 27, 2016. In addition, Complainant was provided an extended service contract good for five (5) years or 75,000 miles. Respondent is liable to repair the vehicle whenever there is any other problem covered by the powertrain warranty or the extended service contract.

Complainant's request for repair relief is denied.

III. FINDINGS OF FACT

1. Bartley Pitcock (Complainant) purchased a new 2011 Buick Enclave from West Point Buick of Houston, Texas (West Point) on July 27, 2011. The vehicle's mileage at the time of delivery was 96.
2. Respondent provided a bumper to bumper limited warranty for the first four (4) years or 50,000 miles from the delivery date, whichever comes first. Respondent also provided a powertrain limited warranty for the first five (5) years or 100,000 miles from the delivery date, whichever comes first.
3. The vehicle's mileage on the date of hearing was 54,500.
4. Complainant's vehicle reached 24,000 miles sometime in April of 2013.
5. At the time of hearing the basic bumper to bumper warranty for the vehicle was no longer in effect.
6. Complainant took the vehicle to Respondent's authorized dealer, West Point Buick (West Point) in Houston, Texas, in order to address his concerns with the vehicle on the following dates:
 - a. June 26, 2012, at 13,451 miles;
 - b. October 10, 2013, at 31,637 miles;
 - c. December 16, 2013, at unknown miles;
 - d. February 3, 2014, at 36,600 miles;
 - e. February 6, 2014, at 36,744 miles;
 - f. May 8, 2014, at 40,838 miles;
 - g. September 11, 2014, at 46,398 miles; and
 - h. October 28, 2014, at 48,357 miles.
7. On June 26, 2012, the dealer's service technician determined that an oil leak was from the engine front cover. The repair was to reseal the cover, evac and recharge the air conditioning system.
8. On October 10, 2013, the dealer's service technician replaced the vehicle's brake booster in order to address a squeaking noise from the brake pedal. In addition, the vehicle's rear gate support struts were replaced because the hatch was not staying open.

9. On December 16, 2013, the dealer's service technician replaced the brake booster in order to address a squeaking noise from the brake pedal. The vehicle's front motor mount was determined to be broken and was replaced. The vehicle's left front lower control arm bushing was replaced because it was making noise when the vehicle was turning.
10. On February 3, 2014, the dealer's service technician replaced the vehicle's brake booster in order to address the squeaking noise from the brake pedal. In addition, the vehicle's steering gear and bushings were replaced in order to address a rattle noise.
11. On February 6, 2014, the dealer's service technician replaced the vehicle's brake booster in order to address the squeaking noise from the brake pedal. The left front strut was replaced in order to address a rattle noise from the front end of the vehicle. Also, the exhaust was aligned to address a rattle noise from the engine.
12. On May 8, 2014, the dealer's service technician replaced the vehicle's brake booster and master cylinder in order to address the squeaking noise from the brake pedal.
13. On September 11, 2014, the dealer did not perform any repairs to address the squeaking noise from the vehicle's brake pedal since the issue was being investigated further by Respondent.
14. On October 28, 2014, the dealer's service technician replaced the vehicle's #4 injector because the vehicle had died while being driven by Complainant.
15. On January 8, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
16. On January 12, 2015, Complainant took the vehicle to Sterling McCall Buick GMC (Sterling McCall), Respondent's authorized dealer, for repairs. The mileage at the time was 51,346.
17. On January 12, 2015, the dealer's service technician replaced the vehicle's brake booster and master cylinder in order to address the squeaking noise from the brake pedal. The front struts were also replaced to address a clanking noise from the front of the vehicle when turning. The engine's front cover was replaced to address an oil leak issue. The vehicle's right front axle was replaced because the axle boot was leaking fluid.
18. On January 30, 2015, Complainant took the vehicle to Sterling McCall for repairs. The mileage at the time was 51,819.
19. On January 30, 2015, the dealer's service technician bled the brake system in order to address an issue of air in the vehicle's brake lines.

20. On February 26, 2015, Complainant took the vehicle to Sterling McCall for repairs. The mileage at the time was 52,805.
21. On February 26, 2015, the dealer's service technician replaced the vehicle's steering gear, bled the hydraulic system, and replaced both lower control arm bushings to address a squeaking noise when turning the steering wheel.
22. The brake system has not squeaked since the repair on January 12, 2015.
23. The vehicle was taken to Sterling McCall on April 9, 2015, because the vehicle wouldn't start. The mileage at the time was 54,000.
24. Fuel contamination is the likely cause of the engine damage based on the presence of rust and the results of the fuel sample.
25. On March 30, 2015, 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.
26. The hearing in this case convened and the record closed on June 24, 2015, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant, Bartley Pitcock, represented himself at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Bruce Morris, Field Service Engineer, also appeared to offer testimony for Respondent.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204 (Warranty Performance).
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 meet the statutory requirements for repurchase or replacement relief. Tex. Occ. Code § 2301.606(d)(2).
7. Complainant failed to prove by a preponderance of the evidence that the vehicle currently has a verifiable defect or condition that is covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
8. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.

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 § 2301.204 is hereby **DISMISSED**.

SIGNED July 2, 2015



**EDWARD SANDOVAL, HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**