

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0156 CAF**

BRYAN MCDAVID,
Complainant

v.

**JAGUAR LAND ROVER NORTH
AMERICA LLC,**
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Bryan McDavid (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2014 Range Rover. Complainant asserts that the vehicle's brakes make a loud squeaking noise. Jaguar Land Rover North America LLC (Respondent) argued that there is no defect with the vehicle. The hearings examiner concludes that although the vehicle does have a currently existing warrantable defect, Complainant is not eligible for repurchase or replacement relief since he did not meet all of the statutory requirements for such relief under the Lemon Law.

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 January 7, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Bryan McDavid, appeared and represented himself at the hearing. Also testifying for Complainant was Melissa McDavid, Complainant's wife. Respondent was represented by John W. Chambless, II, attorney with Thompson, Coe, Cousins and Irons LLP. Testifying for Respondent was Arden Adler, Field Service Engineer.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market

¹ Tex. Occ. Code § 2301.604(a).

value of the vehicle.² Third, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

In addition to these 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.⁵

The Lemon Law also provides that a manufacturer shall make repairs necessary to conform a new motor vehicle to the manufacturer's express warranty after the expiration date of the warranty, if during the term of the warranty, the owner reported the nonconformity to the manufacturer or if a rebuttable presumption was created under Texas Occupations Code Section 2301.605.⁶

B. Complainant's Evidence and Arguments

Complainant purchased a new 2014 Range Rover from Land Rover Houston in Houston, Texas, on August 12, 2013.⁷ The vehicle's mileage at the time of delivery was 11.⁸ Respondent provided a bumper-to-bumper limited warranty for the vehicle for the first four (4) years or 50,000 miles from the date of delivery, whichever comes first.⁹ The vehicle's brake pads are warranted for one (1) year or 12,500 miles.¹⁰ The vehicle's mileage at the time of hearing was 30,974.

² *Id.*

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ 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.

⁶ Tex. Occ. Code § 2301.603(a) and (b).

⁷ Complainant Ex. 1, Purchase Order dated August 12, 2013.

⁸ *Id.*

⁹ Complainant Ex. 11, Excerpts from Land Rover Warranty Manual, p. 1.

¹⁰ *Id.*, p. 2.

Complainant testified that he feels that the vehicle is defective because the vehicle's brakes make a loud squeaking noise when they are applied. The noise occurs intermittently and seems to occur only after the brakes get warm, i.e., after the vehicle has been driven for about 15 to 20 minutes. In addition, as driving time progresses, the squeaking noise seems to get louder.

Complainant testified that he first noticed the brake noise after the vehicle had been driven about 2,000 miles after purchase. So, on January 9, 2014, Complainant took the vehicle to Respondent's authorized dealer, Land Rover Houston, for repair. The dealer's service technician determined that the vehicle's front brakes were squeaking and replaced the front brake pads and caliper support bolts.¹¹ The vehicle's mileage on this occasion was 5,173.¹² The vehicle was in the dealer's possession for two (2) days.¹³ Complainant was provided with a rental or loaner vehicle while his vehicle was being repaired.

Complainant testified that the noise disappeared for a couple of weeks, but began to come back intermittently. So, Complainant took the vehicle to Land Rover Houston for repair on August 6, 2014. The dealer's service technician contacted Respondent's technical assistance helpline for aid in repairing the vehicle.¹⁴ The repair performed after the technician spoke to the helpline representative was to replace the vehicle's rear pads and rotors.¹⁵ The vehicle's mileage when it was taken to the dealership on this occasion was 11,048.¹⁶ The vehicle was in the dealer's possession for eight (8) days. Complainant was provided with a loaner or rental vehicle while his vehicle was being repaired.

Complainant testified that the vehicle's brakes did not make the squeaking noise for a couple of thousand miles after the August repair. However, the brakes started squeaking again. On November 12, 2015, Complainant took the vehicle to Land Rover Houston for repair. The dealer's service technician could not duplicate the concern, so no repair was performed.¹⁷ The vehicle's mileage on this occasion was 14,300.¹⁸ The vehicle was in the dealer's possession for four (4) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

On December 3, 2014, Complainant took the vehicle to Land Rover of Southwest Houston (Southwest) for repair for the brake noise. The dealer's service technician performed a brake pad

¹¹ Complainant Ex. 2, Repair Order dated January 9, 2014.

¹² *Id.*

¹³ *Id.*

¹⁴ Complainant Ex 3, Repair Order dated August 6, 2014.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Complainant Ex. 4, Repair Order dated November 12, 2014.

¹⁸ *Id.*

deglaze to alleviate Complainant's concern.¹⁹ Complainant was informed that the deglaze was done because the brake pads did not have enough friction material and that this was causing the squeaking noise. The vehicle's mileage when it was delivered to the dealer on this occasion was 15,480.²⁰ The vehicle was in the dealer's possession for approximately ten (10) days.²¹ Complainant was provided a loaner or rental vehicle while his vehicle was being repaired. The vehicle was returned to Complainant on December 12, 2014. That same night, the squeaking noise returned.

On January 2, 2015, Complainant took the vehicle to Southwest for repair for the brake noise. The service technician verified the concern and replaced the vehicle's rear brake pads.²² This was the second time that the rear brake pads were replaced. The vehicle's mileage when it was delivered to the dealer on this occasion was 16,801.²³ The vehicle was in the dealer's possession for twelve (12) days. Complainant was provided with a rental vehicle while his vehicle was being repaired. The vehicle was returned to Complainant on January 27, 2015. Within half a mile of leaving Southwest, the vehicle's brakes began squeaking again.

On January 22, 2015, Complainant took the vehicle to Southwest for further repair for the brake noise. The service technician verified the noise and contacted the technical assistance hotline for aid in making the repair.²⁴ The technician was advised to replace both rear rotors and brake pads and to apply brake quiet to the brakes.²⁵ The vehicle's mileage on this occasion was 17,194.²⁶ The vehicle was in the dealer's possession for six (6) days on this occasion. Complainant was provided with a rental vehicle while his vehicle was being repaired. After picking up the vehicle on January 27, 2015, the vehicle's brakes started squeaking again within a few days.

On February 9, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV).²⁷

On February 9, 2015, Complainant took the vehicle back to Southwest for the same issue. Arden Adler, Respondent's field service representative, was present at Southwest on this occasion. He assisted in diagnosing the issue and determining the proper repair for the vehicle. Mr. Adler

¹⁹ Complainant Ex. 5, Repair Order dated December 3, 2014.

²⁰ *Id.*

²¹ *Id.*

²² Complainant Ex. 6, Repair Order dated January 2, 2015.

²³ *Id.*

²⁴ Complainant Ex. 7, Repair Order dated January 22, 2015.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Complainant Ex. 12, Lemon Law Complaint dated February 9, 2015. Complainant signed the complaint on February 2, 2015. However, the complaint was actually received by Texas Department of Motor Vehicles on February 9, 2015, which is the effective date of the complaint.

verified the concern raised by Complainant.²⁸ The service technician removed the vehicle's rear rotors and cleaned the front disk hat mounting surface and applied copper coat to it.²⁹ He then replaced the front brake pads and rotors.³⁰ The vehicle's mileage on this occasion was 17,740.³¹ The vehicle was in the dealer's possession for two (2) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

The vehicle's brakes did not make any noise for a few weeks. However, the squeaking noise from the brakes began occurring again sometime in March or April of 2015.

On June 11, 2015, Complainant took the vehicle to Southwest for repair for the brake noise. The service technician verified the concern and replaced both front brake anti-rattle clips and pins.³² The vehicle's mileage on this occasion was 22,118.³³ The vehicle was in the dealer's possession for eleven (11) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired. The vehicle's brakes did not squeak for a while after the repair was performed. However, after the vehicle was driven for a couple of thousand miles, the squeaking noise returned. The vehicle's brakes still make a squeaking noise after the vehicle has been driven 10 to 45 minutes.

During cross-examination, Complainant testified that he has not owned any other Land Rovers. His prior vehicle was a Mercedes-Benz sedan which he traded in for the Land Rover. He did not experience any kind of brake noise issue with the prior vehicle.

C. Respondent's Evidence and Arguments

Arden Adler, Field Service Engineer, testified for Respondent. He has a BS in Business Management and has worked for Respondent for the past ten (10) years. He is an Automotive Service Excellence (ASE) certified master technician. In addition, he is a Jaguar Land Rover certified Level II technician.

Mr. Adler testified that he was contacted by Respondent's service department in January of 2015 regarding Complainant's vehicle. He was asked by the customer service representative to contact Complainant and set an appointment for an inspection of the vehicle. Mr. Adler contacted Complainant and scheduled an appointment for February 9, 2015, at Southwest. Mr. Adler met Complainant and then took the vehicle for a test drive with Southwest's shop foreman, Rob Roehing. They drove the vehicle for about ten (10) minutes and verified the noise that the brakes

²⁸ Complainant Ex. 8, Repair Order dated February 9, 2015.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Complainant Ex. 9, Repair Order dated June 11, 2015.

³³ *Id.*

were making. Mr. Adler indicated that the noise was a high pitched, harmonic frequency. However, it did not occur every time that he stepped on the brakes. Mr. Adler and Mr. Roehing tried to isolate the squeak. They determined that the front brakes were squeaking. So, the brake pads were replaced with sport brakes. They also cleaned the contact points on all four brakes. Mr. Adler testified that the sport brakes have a different pad composition than the original brakes on the vehicle. They both will stop the vehicle equally. Respondent's service technicians have determined that if there is a noise issue with Respondent manufactured vehicle's brakes, then they will install sport brakes on the vehicle.

Mr. Adler also stated that he was contacted by Southwest's service technicians around June 11, 2015, when Complainant last took the vehicle in for repair. No new information was provided to Mr. Adler. However, he suggested that the technicians replace the front brake anti-rattle clips and pins.

Mr. Adler further testified that there are three (3) primary causes of brake noise or squeaking: brake dust can get in the brakes and affect the lubricating points so that the parts aren't moving as freely, tire shine can get in the brakes and affect them, or the actual brake pad composition. Also, the driver's driving style can affect the brakes and cause them to wear more quickly.

The vehicle's brake pads have all been replaced at least two times. Large vehicles can create more of a demand on the vehicle's brakes. Mr. Adler testified that all brakes can squeak after about 4,000 miles.

D. Analysis

Under the 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.

The evidence presented in the hearing establishes that the vehicle in question does have a defect that substantially impairs the use or market value of the vehicle. The evidence revealed that the front brake pads were replaced twice within the first 18,000 miles that Complainant drove the vehicle. During the same period of time the rear brake pads were replaced three times. This seems to be highly unusual for a new vehicle. If Complainant were to attempt to sell the vehicle,

it would be reasonable to assume that the vehicle's value would be diminished by whoever test drove the vehicle and heard the brakes squeaking.

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 2301.605(a) specifies 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." The evidence presented at the hearing establishes that Complainant has met the requirements of this test since Complainant has presented the vehicle for repair seven (7) times between the date of purchase and the date the vehicle was driven 18,000 miles. The first two (2) repair attempts (January 9, 2014 and August 6, 2014) were performed before the vehicle had been driven 12,000 miles. As such, Complainant has met the presumption that Respondent has been provided with a reasonable number of attempts to repair the vehicle.

Finally, the evidence presented at the hearing indicates that Complainant did not mail written notice to Respondent that he was dissatisfied with the vehicle. Occupations Code § 2301.606(c) provides that "an order issued under this subchapter [Subchapter M, Lemon Law] may not require a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless: (1) the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity." Complainant never **mailed** written notice of his dissatisfaction with the vehicle to Respondent.

From the evidence presented, it is apparent that Complainant has not met the requirements for replacement or repurchase relief under the Occupations Code, since he did not mail written notice of the defect to Respondent. However, there is obviously an issue with the vehicle, since the problem complained of by Complainant manifested during a test drive taken at the time of hearing. Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for four (4) years or 50,000 miles, whichever comes first. This coverage extends to the brake rotors.³⁴ In addition, the warranty provided warranty coverage of one (1) year or 12,500 miles on the vehicle's brake pads.³⁵ On the date of hearing, the vehicle's mileage was 30,974 and it remains under this warranty. Since the issue regarding the brake noise was raised before the vehicle had been owned by Complainant for more than one (1) year and before the vehicle had been driven 12,500 miles, the issue is still covered under warranty under Section

³⁴ Complainant Ex. 11, New Vehicle Warranty, p. 2.

³⁵ *Id.*

2301.603 of the Occupation Code. As such, the Respondent is under an obligation to repair the vehicle under the terms of the express warranty and correct the issue which presented itself at the time of hearing.

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

III. FINDINGS OF FACT

1. Bryan McDavid (Complainant) purchased a new 2014 Range Rover from Land Rover Houston in Houston, Texas, on August 12, 2013, with mileage of 11 at the time of delivery.
2. The manufacturer of the vehicle, Jaguar Land Rover North America LLC (Respondent), issued a bumper-to-bumper warranty for four (4) years or 50,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 30,974.
4. At the time of hearing the vehicle's basic warranty was still in effect.
5. After purchasing the vehicle, Complainant noticed that the vehicle's brakes would intermittently make a loud squeaking noise.
6. Complainant took the vehicle to Respondent's authorized dealers for repair, on the following dates:
 - a. January 9, 2014, at 5,173 miles;
 - b. August 6, 2014, at 11,048 miles;
 - c. November 12, 2014, at 14,300 miles;
 - d. December 3, 2014, at 15,480 miles;
 - e. January 2, 2015, at 16,801 miles;
 - f. January 22, 2015, at 17,194 miles; and
 - g. February 9, 2015, at 17,740 miles.
7. On January 9, 2014, Land Rover Houston's service technician verified that the vehicle's front brakes were squeaking. So, he replaced the front brake pads and caliper support bolts.
8. On August 6, 2014, 2014, Land Rover Houston's service technician replaced the vehicle's rear brake pads and rotors.

9. On November 12, 2014, Land Rover Houston's service technician could not verify the concern. No repair was performed.
10. On December 3, 2014, Land Rover of Southwest Houston's technician performed a brake deglaze to address Complainant's concern regarding the brake noise.
11. On January 2, 2015, Land Rover of Southwest Houston's service technician replaced the vehicle's rear brake pads.
12. On January 22, 2015, Land Rover of Southwest Houston's service technician replaced rear rotors and brake pads and applied quiet brake to the brakes.
13. On February 9, 2015, Respondent's field service engineer, Arden Adler, performed a final repair attempt on the vehicle at Land Rover of Southwest Houston.
14. During the final repair attempt, Mr. Adler verified the concern and had the front brake pads and rotors replaced. In addition, he had the rear rotors removed and cleaned the disk hat mounting surfaces.
15. On February 9, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
16. On April 7, 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.
17. The hearing in this case convened and the record closed on January 7, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Bryan McDavid, appeared and represented himself at the hearing. Also testifying for Complainant was Melissa McDavid, Complainant's wife. Respondent was represented by John W. Chambless, II, attorney with Thompson, Coe, Cousins and Irons LLP. Testifying for Respondent was Arden Adler, Field Service Engineer.

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 proved 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. Complainant did not mail written notice of the defect to Respondent. Tex. Occ. Code § 2301.606(c)(1).
8. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranty. Tex. Occ. Code §§ 2301.204, 2301.603.
9. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

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**. Respondent is hereby **ORDERED** to repair Complainant's vehicle so that it conforms to Respondent's express warranty. Texas Occupations Code § 2301.204.

SIGNED February 22, 2016


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