

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0263 CAF**

LINDA M. HILL,
Complainant

v.

GENERAL MOTORS LLC,
Respondent

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**BEFORE THE OFFICE
OF
ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Linda M. Hill (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for an alleged defect in her 2014 GMC Sierra 1500. The Complainant filed a Lemon Law complaint (Complaint) alleging that the vehicle would make a loud noise, from behind the dashboard, like a large pebble hitting the windshield; the vehicle had recalls for overheating exhaust components, transmission oil cooler connection and for incorrect gross combined vehicle weight rating; and the vehicle vibrated at highway speeds. General Motors LLC (Respondent) contended that the warranty did not cover the vehicle's vibration. The Respondent also argued that the popping noise had been repaired and no longer existed. The hearings examiner concludes that the vehicle's vibration issue is not a warrantable defect and the record does not contain sufficient evidence to prove by a preponderance whether the recall issues currently remain unresolved. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement. However, the popping noise appears to remain unresolved after a reasonable number of repair attempts and is therefore subject to repair 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 September 22, 2015, in Mesquite, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented herself. And Mr. Renzo Hill also testified for the Complainant. Kevin Phillips, represented the Respondent. David Piper, Field Service Engineer, and Doug Wiseman, District Manager Aftersales, testified for the Respondent.

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).

Further, for a vehicle to qualify for replacement or repurchase, a warrantable defect must either (1) create a serious safety hazard or (2) substantially impair the use or market value of the vehicle despite a “reasonable number of attempts” at repair.³ The Lemon Law defines “serious safety hazard” as a life threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁴ The Department applies a reasonable purchaser standard for determining whether the defect substantially impairs the value of the vehicle.⁵ The Lemon Law provides three ways to establish a rebuttable presumption that a reasonable number of repair attempts have been undertaken.⁶ The first applies generally,⁷ the second applies to serious safety hazards,⁸ and the third applies to vehicles out of service for repair for at least 30 days.⁹

¹ TEX. OCC. CODE § 2301.604(a).

² TEX. OCC. CODE § 2301.204.

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ “[F]actfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.” *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

⁶ TEX. OCC. CODE § 2301.605(a).

⁷ TEX. OCC. CODE § 2301.605(a)(1).

⁸ TEX. OCC. CODE § 2301.605(a)(2).

⁹ TEX. OCC. CODE § 2301.605(a)(3).

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and: (A) two of the 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 (B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.¹⁰

However, the statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹¹ Furthermore, the Department adopted a decision implying that if the consumer takes the vehicle for a service visit then that visit would constitute a repair attempt unless the consumer was at fault for failure to repair the vehicle.¹²

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;¹³ (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹⁴ and (3) the owner filed the Lemon Law complaint within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.¹⁵

¹⁰ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for establishing a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. Section 2301.605(a)(2) only applies 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.

¹¹ “[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’” *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ).

¹² “[O]nly those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.” *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication).

¹³ TEX. OCC. CODE § 2301.606(c)(1).

¹⁴ TEX. OCC. CODE § 2301.606(c)(2).

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

The law places the burden of proof on the Complainant.¹⁶ The Complainant must prove each fact required for relief by a preponderance, that is, the Complainant must present enough evidence to show that all of the required facts are more likely than not true.¹⁷ For example, the Complainant must show that a warrantable defect more likely than not exists. For any required fact, if the evidence weighs in favor of the Respondent or if the evidence supports the Complainant and the Respondent equally, the Complainant cannot prevail. The Complainant prevails only if the evidence shows that all of the required facts are more likely than not true.

B. Complainant's Evidence and Arguments

On December, 11, 2013, the Complainant, Mrs. Linda M. Hill, and her husband, Mr. Renzo Hill, Jr., purchased a new 2014 GMC Sierra 1500 from Southwest Buick GMC, a franchised dealer of the Respondent, General Motors LLC, in Greenville, Texas. The vehicle had 2,279 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper-to-bumper coverage for three years or 36,000 miles, whichever occurs first.

At the hearing, Mrs. Hill outlined various issues with the vehicle. First, Mrs. Hill stated that the vehicle made a loud, randomly occurring, noise from the dash, which she described as like a rock hitting the windshield. Mrs. Hill first noticed this noise in January 2014. Second, she noted that the airbags did not deploy in a collision.¹⁸ Third, Mrs. Hill recited that the vehicle had various recall repairs; she could not tell whether the recall repairs had been successful or not. Fourth, and most significantly, Mrs. Hill found the vehicle to vibrate at highway speeds. Mrs. Hill stated the vibration could be felt in the seats and that she could see water vibrating at highway speeds. She stated that the vehicle shook so much she wanted to pull over. Mrs. Hill noted that she previously owned a Chevrolet Silverado in 2009.

Mrs. Hill took the vehicle to a dealer to address the issues as shown below:

¹⁶ 43 TEX. ADMIN. CODE § 215.206.66(d).

¹⁷ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

¹⁸ The complaint did not include the airbag issue. The complaint identifies and limits the issues to be addressed at the hearing. *See* TEX. OCC. CODE § 2301.204; TEX. GOV'T CODE §§ 2001.051-2001.052.

Date	Miles	Issue
January 22, 2014	3,372	Recall for overheating exhaust components; noise in the dash behind the radio ¹⁹
May 2, 2014	6,504	Recall for transmission oil cooler connection ²⁰
June 13, 2014	8,397	Noise coming from behind the dash that sounds like a rock hitting the windshield; recall for incorrect gross combined vehicle weight rating ²¹
October 20, 2014	11,655	Regular maintenance ²²
February 11, 2015	16,461	Noise in dash area, sounds like a rock hitting windshield ²³
February 13, 2015	16,628	Service advisor heard noise in dash during test drive on Repair Order 303276 ²⁴
April 7, 2015	19,732	Vibration felt in truck driving around 60 to 70 mph ²⁵
April 13, 2015	20,082	Vibration felt in truck at highway speed ²⁶
July 13, 2015	22,874	Vibration from vehicle while driving; loud pop noise from center of dash like a rock hitting the windshield ²⁷

Mrs. Hill questioned why the dealer would review her vehicle's vibration issue if the warranty excluded vibration. Mrs. Hill testified that the vibration popping noise continued even after the repair attempts. Mrs. Hill added that she had the vehicle taken to an independent repair facility for noise from the rear of the vehicle,²⁸ but she did not know if this related to the vehicle's vibration. She first noticed this noise after filing her Lemon Law Complaint. Mrs. Hill also noted that after a collision in August 2014, her insurer concluded that the vehicle's vibration did not result from the collision.²⁹ In closing, Mrs. Hill expressed her concern that she did not feel safe driving the vehicle.

¹⁹ Complainant's Ex. 4, Invoice No. BUCS22466.

²⁰ Complainant's Ex. 5, Invoice No. BUCS24424.

²¹ Complainant's Ex. 6, Invoice No. BUCS25361.

²² Complainant's Ex. 8, Invoice No. 300729.

²³ Complainant's Ex. 12, Invoice No. 303276.

²⁴ Complainant's Ex. 11, Invoice No. 303360.

²⁵ Complainant's Ex. 9, Invoice No. GCCS128938.

²⁶ Complainant's Ex. 10, Invoice No. GCCS129087.

²⁷ Complainant's Ex. 7, Invoice No. 306954.

²⁸ Complainant's Ex. 13, Invoice No. 18678.

²⁹ Complainant's Ex. 18, letter from State Farm Mutual Automobile Insurance Company, dated March 19, 2015.

C. Respondent's Evidence and Arguments

David Piper, Field Service Engineer, testified that he and Doug Wiseman, District Manager Aftersales, test drove the vehicle to measure the vibration frequency and amplitude. Mr. Piper's inspection of the vehicle did not reveal any abnormal imbalance or excessive road force in the wheel assemblies and the vehicle did not exhibit the popping noise during the test drive.³⁰ Mr. Piper testified that the vibration analysis of Mrs. Hill's vehicle did not appear abnormal. He also testified that the vehicle did not feel abnormal during the test drive. Mr. Piper compared Mrs. Hill's vehicle with that of a new stock vehicle from the dealer's lot, as close to the same as Mrs. Hill's vehicle with the same size wheels and same engine. The analysis of the new vehicle showed that the new vehicle actually vibrated more than Mrs. Hill's vehicle.³¹ Mr. Piper explained that they do not have a published specification for vibration, but in the field, they aim to keep vibration under 15 millig (thousandths of gravitational force). Mr. Piper stated that Mrs. Hill's vehicle never exceeded 10 millig. The new comparison vehicle reached 10.8 millig. Mr. Piper also checked if the dealer had correctly balanced the tires and found them within specifications. Mr. Piper testified that during the test drive at the hearing, he did not hear any popping noise from the front or notice any abnormal vibration. He did note that the vehicle exhibited a leaf spring clicking, popping noise from the rear axle but explained that dirt between the leaf springs can cause this, which would not be covered under warranty. Mr. Piper confirmed that every vehicle will vibrate and that individual customers' perception of vibration/noise may vary but vibration does not necessarily indicate a defect.

In response to clarifying questions, Mr. Piper confirmed that the vehicle's design resulted in the vehicle's characteristics so he would expect any similar model vehicle to exhibit similar characteristics. Mr. Piper also explained that the prior model, the GMT900, (2013 model year), had a completely different ride. Mr. Piper further explained that the new 2014 model has a different frame, a different structure, with nothing the same from the 2013 to the 2014 model. Accordingly, the 2014 model will have characteristics that the prior model year trucks did not have. The 2014 is much quieter and stiffer so that the occupants will "feel everything" as compared to the 2013 model.

³⁰ Respondent's Ex. 3, Vehicle Inspection Report, July 14, 2015.

³¹ Respondent's Ex. 3, Vehicle Inspection Report, July 14, 2015.

Mr. Wiseman testified that he did not experience any abnormal noise or vibration during the test drive at the hearing but did hear the squeaking leaf spring. Mr. Wiseman confirmed that technicians have an incentive to diagnose and repair a vehicle to get paid and that a technician may perform a repair for customer satisfaction purposes. Mr. Wiseman also confirmed that he did not experience anything abnormal during the test drive at the vehicle's field service inspection. Mr. Wiseman testified that he did not believe that the vehicle's warranty covered the conditions of the subject vehicle. He also noted the possibility that the vehicle's collision may have voided the warranty.

During cross-examination, Mrs. Hill confirmed, among other things, that she never had the vehicle towed; she had not seen the check engine; service engine or airbag light on; she never experienced a loss of control of the vehicle; and that she did not test drive her vehicle before purchasing it.

D. Analysis

The Lemon Law does not apply to all problems that may occur with a vehicle, such as conditions arising from the design of the vehicle or other issues arising from outside 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).³² 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."³³ 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).³⁴ In contrast, design characteristics result from the vehicle's design itself and not from any error in the

³² TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

³³ Complainant's Exhibit 1, 2014 GMC Limited Warranty and Owner Assistance Information at 4.

³⁴ 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).

manufacturing process, so that the same-model vehicles made according to the manufacturer's specifications will normally have the same characteristics.

1. Vibration

The issue here centers on whether the complained of vibration constitutes a warrantable defect and not whether the vehicle vibrates. 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. Mrs. Hill found such 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 for that model vehicle. Specifically, a comparison of the subject vehicle with a new, same-type vehicle showed that the subject vehicle had comparable levels of vibration as the new vehicle. The new vehicle actually exhibited somewhat more vibration (10.8 millig) than Mrs. Hill's vehicle (10 millig). Furthermore, the vibration of both vehicles fell within the accepted maximum of 15 millig. Accordingly, the vehicle's vibration appears normal for vehicles of that same design and not the result of a manufacturing defect. Although the vehicle's vibration may be undesirable, the record indicates that this vibration results from the vehicle's design and not from a manufacturing defect. Because the vibration does not arise from a manufacturing defect, the vehicle's warranty does not apply. Additionally, the terms of the warranty appear to specifically exclude vibration. Accordingly, the vibration is not a warrantable defect.

2. Recall Issues

With respect to the recall issues, a preponderance of the evidence does not show that those issues continued to exist after repair. Additionally, the incorrect weight rating issue (which did not require any repair) was corrected by a supplement to the owner's manual. Moreover, the repair history does not show at least four repair attempts for any of the recall issues. Consequently, the recall issues do not warrant repurchase/replacement or repair relief.

3. Popping Noise

The popping noise does not appear to be a slight noise as defined by the warranty since evidence indicates that the noise appeared loud enough to startle the Complainant. Further, testimony showed that the popping noise was not resolved after four repair visits for this issue. However, the popping noise issue does not appear substantial enough to qualify for replacement

relief. Additionally, the notice of defect did not actually identify any alleged defects and therefore does not appear to satisfy TEX. OCC. CODE § 2301.606(c)(1).³⁵ Nevertheless, warranty repair relief still applies. Accordingly, the manufacturer has an obligation to repair the popping noise issue under TEX. OCC. CODE §§ 2301.204 and 2301.603.

III. Findings of Fact

1. On December, 11, 2013, the Complainant, Mrs. Linda M. Hill, and her husband, Mr. Renzo Hill, Jr., purchased a new 2014 GMC Sierra 1500 from Southwest Buick GMC, a franchised dealer of the Respondent, General Motors LLC, in Greenville, Texas. The vehicle had 2,279 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. The notice of defect, dated April 6, 2015, did not identify any alleged defects.
5. On May 18, 2015, the Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
6. On July 24, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, General Motors LLC, 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.
7. The hearing in this case convened and the record closed on September 22, 2015, in Mesquite, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented herself. And Mr. Renzo Hill also testified for the Complainant. Kevin Phillips, represented the Respondent. David Piper, Field Service Engineer, and Doug Wiseman, District Manager Aftersales, testified for the Respondent.

³⁵ Complainant's Ex. 23, letter from Lemon Law Group Partners PLC, dated April 6, 2015.

8. The Complainant took the vehicle to a dealer to address the complained of issues as follows:

Date	Miles	Issue
January 22, 2014	3,372	Recall for overheating exhaust components; noise in the dash behind the radio ³⁶
May 2, 2014	6,504	Recall for transmission oil cooler connection ³⁷
June 13, 2014	8,397	Noise coming from behind the dash that sounds like a rock hitting the windshield; recall for incorrect gross combined vehicle weight rating ³⁸
October 20, 2014	11,655	Regular maintenance ³⁹
February 11, 2015	16,461	Noise in dash area, sounds like a rock hitting windshield ⁴⁰
February 13, 2015	16,628	Service advisor heard noise in dash during test drive on Repair Order 303276 ⁴¹
April 7, 2015	19,732	Vibration felt in truck driving around 60 to 70 mph ⁴²
April 13, 2015	20,082	Vibration felt in truck at highway speed ⁴³
July 13, 2015	22,874	Vibration from vehicle while driving; loud pop noise from center of dash like a rock hitting the windshield ⁴⁴

9. The vehicle's odometer showed 25,573 miles at the time of the hearing.
10. The vehicle's warranty excludes vibration from coverage.
11. The vehicle exhibited a comparable level of vibration as a new, same model vehicle.
12. The vehicle's vibration is an inherent characteristic of the vehicle's design and not a manufacturing defect.
13. The vehicle exhibited vibration at highway speeds during the test drive at the hearing; however, the vibration appeared normal for this model vehicle.
14. The vehicle did not continue to exhibit any warrantable recall issues after repair.

³⁶ Complainant's Ex. 4, Invoice No. BUCS22466.

³⁷ Complainant's Ex. 5, Invoice No. BUCS24424.

³⁸ Complainant's Ex. 6, Invoice No. BUCS25361.

³⁹ Complainant's Ex. 8, Invoice No. 300729.

⁴⁰ Complainant's Ex. 12, Invoice No. 303276.

⁴¹ Complainant's Ex. 11, Invoice No. 303360.

⁴² Complainant's Ex. 9, Invoice No. GCCS128938.

⁴³ Complainant's Ex. 10, Invoice No. GCCS129087.

⁴⁴ Complainant's Ex. 7, Invoice No. 306954.

15. The vehicle continued to exhibit the popping noise after four repair attempts.

IV. Conclusions of Law

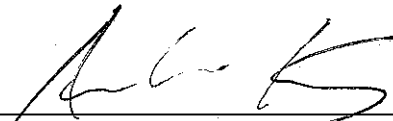
1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, 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 Complainant 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 Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 215.206.66(d).
6. The Complainant's did not mail a sufficient notice of defect to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
7. The Complainant's 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 Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall repair the vehicle's popping noise originating from the front dash. Within 30 days after the date this Order becomes final under Texas Government Code § 2001.144, the parties shall complete the delivery and repair of the subject vehicle. However, if the Department determines the Complainant's refusal or

inability to deliver the vehicle caused the failure to complete the required repair, the Department may consider the Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED November 20, 2015



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