

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0045 CAF**

**GRETCHEN WILDS,  
Complainant**

v.

**BMW OF NORTH AMERICA, LLC,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Gretchen Wilds (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in her 2013 BMW 328I. Complainant asserts that she hears a rattle, humming, or buzzing noise from the front driver's side of the vehicle. BMW of North America, LLC (Respondent) argued that the vehicle does not have a defect that needs repair. The hearings examiner concludes that the vehicle does have a currently existing warrantable defect, and Complainant is eligible for 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 March 8, 2016, before Hearings Examiner Edward Sandoval. The hearing was conducted telephonically. Complainant, Gretchen Wilds, represented herself in the hearing. Her spouse, Shelly Wilds, also testified. Respondent was represented by Scott Clark, Technical Support Engineer. Also testifying for Respondent was Randal Ellis, After-Sales Area Manager.

**II. DISCUSSION**

**A. Applicable Law**

Occupations Code § 2301.606(d) provides that a “[a] proceeding under this subchapter [Subchapter M – Warranties: Rights of Vehicle Owners (Lemon Law)] 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 delivery of the motor vehicle to an owner.” If a vehicle does not qualify for repurchase or replacement relief under the Lemon Law, repair relief is available to a Complainant under Occupations Code § 2301.204(a) which 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.” This section applies only if the Complainant raised his concern while the vehicle’s warranty was still in effect.

## B. Complainant's Evidence and Arguments

Complainant purchased a new 2013 BMW 328I from BMW of Houston North in Houston, Texas on March 30, 2013.<sup>1</sup> The vehicle's mileage was 10 at the time of purchase.<sup>2</sup> Respondent's new vehicle limited bumper-to-bumper warranty provides coverage for four (4) years or 50,000 miles, whichever comes first. On March 2, 2016, the vehicle's mileage was 24,709. At this time, Respondent's basic warranty on the vehicle is still in effect.

### 1. Gretchen Wilds' Testimony

Ms. Wilds testified that she and her spouse noticed that the vehicle was making rattling, buzzing, and humming noises within the first two months after purchasing the vehicle. The noises are constant and seem to come from the driver's side steering column or gas pedal.

Ms. Wilds testified that she took the vehicle to Mini of the Woodlands for repair for the noise issue on February 1, 2014, at 10,946 miles;<sup>3</sup> February 19, 2014, at 11,609 miles;<sup>4</sup> May 9, 2014, at 14,009 miles;<sup>5</sup> and July 2, 2014, at 15,024 miles.<sup>6</sup> On each occasion, the service advisor indicated that the vehicle needed a multi-point inspection and failed to specify the fact that Complainant complained about the rattling, buzzing, and humming noises. On each occasion, Complainant was advised by the dealer representative that the vehicle was repaired. The vehicle sounded fine when Complainant and her spouse drove it, but the noises returned after about a week or so. Complainant finally stopped taking it to the dealer for repair since the noises always returned after she had been told that the vehicle was fixed. On each occasion that Complainant took the vehicle to the dealer, she was provided with a loaner vehicle while her vehicle was being repaired.

In March of 2015, Complainant moved to Seattle, Washington. The vehicle was still making rattling, buzzing, and humming noises; so, Complainant took the vehicle to BMW Seattle #110 (BMW Seattle) for repair on March 23, 2015. Complainant was told by the dealer representative that the vehicle was fixed when it was returned to her. The vehicle was in the dealer's possession for a few hours during this repair visit. Complainant was not provided a rental or loaner vehicle during this visit. The vehicle's mileage when it was turned over to the dealer on this occasion was 20,248.<sup>7</sup>

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<sup>1</sup> Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated March 30, 2013.

<sup>2</sup> Complainant Ex. 2, BMW Tire & Wheel Protection dated March 30, 2013.

<sup>3</sup> Complainant Ex. 3, Repair Order dated February 1, 2014.

<sup>4</sup> Complainant Ex. 4, Repair Order dated February 19, 2014.

<sup>5</sup> Complainant Ex. 5, Repair Order dated May 9, 2014.

<sup>6</sup> Complainant Ex. 6, Repair Order dated July 2, 2014.

<sup>7</sup> Complainant Ex. 8, Repair Order dated March 23, 2015.

The noises dissipated for a few days after Complainant got the vehicle back, but they returned within about a week. Complainant then took the vehicle to BMW Seattle for repair for the noise issue on May 13, 2015. The dealer's service technician verified the concern.<sup>8</sup> He applied felt tape to the trim clips of the dash wood trim panel to address the issue.<sup>9</sup> The vehicle's mileage on this occasion was 21,039.<sup>10</sup> The vehicle was in the dealer's possession for a day. Complainant was not provided with a loaner or rental vehicle while her vehicle was being repaired.

Complainant testified that again the fix seemed to work for a few days, but the noises soon returned. She contacted Respondent's Customer Relations office to raise her concerns with the vehicle. Complainant testified that on September 3, 2015, she was informed by one of Respondent's customer relations representatives that she should take the vehicle back to the dealer for inspection and that if the noises were verified, Respondent would buy back the vehicle. Complainant took the vehicle back to BMW Seattle on September 14, 2015. The dealer's service technician verified the noise and installed foam between the upper cover and steering shaft in order to address the noise concern.<sup>11</sup> The vehicle's mileage on this occasion was 22,717.<sup>12</sup> The vehicle was in the dealer's possession for one day. Complainant was not provided with a loaner or rental vehicle while her vehicle was being repaired.

When Complainant received the vehicle back, she did not hear the noises anymore. However, they returned within a few days. Complainant took the vehicle back to BMW Seattle on October 6, 2015. On this occasion, the dealer's service technician verified noise from the vehicle's steering column.<sup>13</sup> The technician ordered a steering wheel cover for the vehicle in order to address the issue.<sup>14</sup> (The cover was installed in November of 2015.) The vehicle's mileage on this occasion was 22,971.<sup>15</sup> The vehicle was in the dealer's possession for the day. Complainant was not provided with a loaner or rental vehicle.

Complainant testified that even though the steering wheel cover was replaced, she still hears noises from the vehicle's driver's side passenger compartment. She stated that the noises have gotten louder. She filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) because she felt that BMW customer relations was not helping her. In addition, Respondent did not repurchase the vehicle after she was told that they would. Complainant testified that the vehicle's warranty is good for four (4) years or 50,000 miles. She also testified that Respondent did not perform a final repair attempt or inspection of the vehicle.

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<sup>8</sup> Complainant Ex. 9, Repair Order dated May 13, 2015.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Complainant Ex. 10, Repair Order dated September 14, 2015.

<sup>12</sup> *Id.*

<sup>13</sup> Complainant Ex. 11, Repair Order dated October 6, 2015.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

Complainant filed a Lemon Law complaint with TxDMV the regarding the vehicle effective October 9, 2015.<sup>16</sup> In addition, Complainant emailed a letter expressing her dissatisfaction with the vehicle to Respondent on October 6, 2015.<sup>17</sup>

## 2. Shelly Wilds' Testimony

Shelly Wilds is Gretchen Wilds' spouse. Shelly Wilds testified that she was the primary driver of the vehicle when they were living in Houston, Texas. She first noticed the rattling, buzzing, and humming noises within a month or two after the purchase of the vehicle. She stated that the noises were louder than the radio. Sometimes the noises would dissipate if she pushed on the steering wheel cover, but sometimes they would not be affected. The noises were constant and sometimes were louder than other times. Shelly Wilds testified that the vehicle's speed often didn't make a difference as to the noises occurring or the volume. She did state that rough roads, oftentimes made the noises worse. She feels frustrated that the vehicle has not been repaired and that no one from Respondent seemed to be helping Ms. Gretchen Wilds with the situation.

## C. Respondent's Evidence and Arguments

### 1. Scott Clark's Testimony

Scott Clark, Technical Support Engineer, testified for Respondent. His current job duties include ensuring that Respondent's authorized dealers are capable technically, that the dealers have the proper tools and training to perform repairs for Respondent's vehicles and to act as a field representative for Respondent. Mr. Clark has worked for Respondent for the past 30 years. He also worked for five (5) years for Respondent as an after-sales area manager.

Mr. Clark testified that he first became involved in the present case when Respondent received notification of the filing of the Lemon Law complaint. He was unsure as to what action to take in the case because the vehicle was located in Seattle, Washington and Mr. Clark is located in Houston, Texas. Mr. Clark contacted Andrew van Dussen, Technical Support Engineer, in Seattle to request that he perform a final repair attempt on Complainant's vehicle. The final repair attempt was performed on December 15, 2015 at BMW Seattle. Mr. van Dussen indicated in his written report that he heard two rattling noises when taking a test drive of the vehicle.<sup>18</sup> He determined that the rattling noises that he heard were coming from the driver's door storage pocket and from the driver's seat base covering making contact with the driver's seat back cover.<sup>19</sup> Upon further inspection, Mr. van Dussen indicated that the driver's side storage pocket was filled with plastic water bottles "and other various items."<sup>20</sup> He also felt that some of the

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<sup>16</sup> Complainant Ex. 12, Lemon Law complaint dated October 9, 2015. Although the complaint was signed by Complainant on October 6, 2015, it was not received by Texas Department of Motor Vehicles until October 9, 2015, which is the effective date of the complaint.

<sup>17</sup> Complainant Ex. 13, Email to BMW Customer Relations dated October 6, 2015.

<sup>18</sup> Respondent Ex. 1, Final Repair Report VIN-NP24072, undated.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

noise from under the driver's seat was due to a plastic water bottle being crushed underneath the seat.<sup>21</sup> No repairs were performed on the vehicle at the time. Mr. Clark testified that he has never seen or inspected Complainant's vehicle.

Mr. Clark also testified that Respondent's warranty for the vehicle was good for four (4) years or 50,000 miles from the original delivery date of the vehicle. So, the warranty should be in effect until March 30, 2017. In addition, he stated that the Woodlands dealership never submitted any warranty claims for repair to the vehicle for the rattling, humming, buzzing noises. Mr. Clark feels that the noises heard by Complainant are normal for the vehicle and that the noises do not affect the vehicle's use, value or the safety of the owner.

## **2. Randal Ellis' Testimony**

Randal Ellis, After-Sales Area Manager, also testified for Respondent. Mr. Ellis has worked for Respondent for 20 years. He worked as an engineering technician for approximately six (6) years. In addition, he has also worked in the product and accessory development departments for Respondent. He's also worked as a manager one of Respondent's technical hot line teams.

Mr. Ellis testified that his duties include resolving customer complaints. He must deal with customer perceptions of vehicle issues and attempt to reach a solution outside of the box. He testified that this may be why representatives of BMW Seattle offered Complainant compensation for goodwill. However, this was later rescinded.

## **D. Analysis**

In the present case, the only remedy available to Complainant is an order to repair the vehicle under the provisions of Section 2301.204 of the Occupations Code, since Complainant filed the Lemon Law complaint on October 9, 2015, more than two years and six months after she purchased the vehicle on March 30, 2013.<sup>22</sup> In order to determine whether Complainant has a remedy under this section of the 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 initially indicated that she had two concerns with the vehicle: a rattle noise in the steering column and an air bag short circuit. The air bag issue was repaired by Respondent's authorized dealer and was not an issue in the hearing. So, the only issue left to address is the noises from the steering column.

Complainant's first hand testimony and submitted videos establish the existence of an unusual noise in the passenger's compartment. As such, the hearings examiner must hold that Complainant has met her burden of proof to establish that there is a defect or condition in the

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<sup>21</sup> *Id.*

<sup>22</sup> Complainant Ex. 7, Lemon Law Complaint Form signed August 21, 2015.

vehicle that has not been repaired by Respondent or its authorized dealers. As such, Respondent is under an obligation to repair the vehicle in order to conform it to Respondent's express warranty.

Respondent's warranty applicable to Complainant's vehicle provides coverage for four (4) years or 50,000 miles whichever comes first. The warranty is still in effect, since the vehicle's mileage on March 2, 2016, was 24,709. Therefore, Respondent is still obligated to repair whatever may be causing the noises heard by Complainant.

Complainant's request for repair relief is granted. Respondent is hereby ordered to determine the cause of the rattling, humming, buzzing noises and perform any necessary repairs to conform the vehicle to the express warranty.

### III. FINDINGS OF FACT

1. Gretchen Wilds (Complainant) purchased a new 2013 BMW 328I on March 30, 2013, with mileage of 10 from BMW of Houston North, in Houston, Texas.
2. The manufacturer of the vehicle, BMW of North America LLC (Respondent), issued an express warranty for the vehicle for four (4) years or 50,000 miles.
3. On March 2, 2016, the vehicle's mileage was 24,709.
4. At the time of hearing the vehicle's bumper-to-bumper warranty was still in effect.
5. Within two months after purchasing the vehicle, Complainant began hearing rattling, buzzing, and humming noises from the front driver's side of the passenger compartment.
6. Complainant's vehicle was serviced by Respondent's authorized dealer, Mini of the Woodlands, for the rattling, buzzing, and humming noises on the following dates:
  - a. February 1, 2014, at 10,946 miles;
  - b. February 19, 2014, at 11,609 miles;
  - c. May 9, 2014, at 14,009 miles; and
  - d. July 2, 2014, at 15,024 miles.
7. On each of the repair visits cited in Finding of Fact #5, the dealer's service technician performed a multi-point inspection of the vehicle to address the issue. There is no record of any repairs performed by the service technician in order to address Complainant's concern.

8. Complainant's vehicle was serviced by Respondent's authorized dealer, BMW Seattle #110, for the rattling, buzzing, and humming noises on the following dates:
  - a. March 23, 2015, at 20,248 miles;
  - b. May 13, 2015, at 21,039 miles;
  - c. September 14, 2015, at 22,717 miles; and
  - d. October 6, 2015, at 22,971 miles.
9. On March 23, 2015, the dealer's service technician performed an unspecified repair to address the rattling, buzzing, and humming noise issue.
10. On May 13, 2015, the dealer's service technician applied felt tape to all the trim clips of the dash wood trim panel in order to deal with Complainant's concern regarding the rattling, buzzing, and humming noises.
11. On September 14, 2015, the dealer's service technician removed the vehicle's upper steering column cover and installed foam between the upper cover and the steering shaft to eliminate the vibration that the technician felt was causing the noises.
12. On October 6, 2015, the dealer's service technician verified the noise concern and ordered a steering column cover for the vehicle's steering wheel. The cover was installed about a month later.
13. On October 9, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On December 15, 2015, Respondent performed a final repair attempt on the vehicle and, although he heard two rattling noises, determined that the noises were caused by outside influences, i.e., plastic water bottles and coins. No repairs were performed at the time.
15. On November 25, 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.
16. The hearing in this case convened and the record closed on March 8, 2016, before Hearings Examiner Edward Sandoval. The hearing was conducted telephonically. Complainant, Gretchen Wilds, represented herself in the hearing. Her spouse, Shelly Wilds, also testified. Respondent was represented by Scott Clark, Technical Support Engineer. Also testifying for Respondent was Randal Ellis, After-Sales Area Manager.

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

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. Respondent is further **ORDERED** to determine the cause of the rattling noise from the front driver's side of the passenger's compartment and to **PERFORM ALL NECESSARY REPAIRS** in order to conform the vehicle to Respondent's express warranty.

**SIGNED March 14, 2016**

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