

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0140 CAF**

**OBADIAH OWENS,
Complainant**

v.

**FCA US LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Obadiah Owens (Complainant) filed a complaint with the Texas Department of Motor Vehicles seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his vehicle manufactured by FCA US LLC (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect. Consequently, the Complainant's vehicle does not qualify for relief in this case.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ 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 May 25, 2016, in Mesquite, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented himself. Obadiah Owens Witness testified for the Complainant. Jan Kershaw, Early Resolution Case Manager, represented the Respondent. Bob Weir, Technical Advisor, testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Warranty Repair Relief

A vehicle may qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer’s . . . warranty agreement applicable to the vehicle.”²

2. Burden of Proof

The law places the burden of proof on the Complainant.³ The Complainant must prove every required fact by a preponderance, that is, the Complainant must present evidence showing that every required fact is more likely than not true.⁴ 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 equally supports the Complainant and the Respondent, the Respondent will prevail. The Complainant prevails only if the evidence shows that all of the required facts are more likely than not true.

3. The Complaint Limits the Issues in this Case

The Complaint identifies the issues to be addressed in this proceeding.⁵ The pleadings should state “sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law.”⁶

² TEX. OCC. CODE § 2301.204.

³ 43 TEX. ADMIN. CODE § 215.66(d).

⁴ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

⁵ “In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days.” TEX. GOV’T CODE §§ 2001.051; “Notice of a hearing in a contested case must include . . . a short, plain statement of the matters asserted.” TEX. GOV’T CODE § 2001.052. *See also* TEX. OCC. CODE § 2301.204(b) (“The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.”); TEX. OCC. CODE § 2301.204(d) (“A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

⁶ 43 TEX. ADMIN. CODE § 215.202(b).

A. Complainant's Evidence and Arguments

On April 3, 2015, the Complainant, purchased a used 2015 Chrysler 200 from CarMax Auto Superstores, Inc. in Plano, Texas.⁷ The vehicle had 13,139 miles on the odometer at the time of purchase.⁸ The vehicle's limited warranty provides basic coverage for three years or 36,000 miles, whichever occurs first. However, the warranty only covers wheel alignment and wheel balancing for 12 months or 12,000 miles on the odometer, whichever comes first.⁹

On or about January 4, 2016, the Complainant or a person on behalf of the Complainant mailed a written notice of defect to the Respondent. On January 8, 2016, the Complainant filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) alleging: (1) problems with the suspension and alignment; (2) gas fumes or exhaust leaking into the cabin; (3) the vehicle pulling to one side with the steering wheel tilted to the right; (4) the seat not feeling the same; and (5) possible tampering causing gas fumes or exhaust to leak into the cabin.

⁷ Complainant's Ex. 2, Retail Installment Contract.

⁸ Complainant's Ex. 2, Odometer Disclosure Statement.

⁹ Complainant's Ex. 1, Chrysler 2015 Warranty Information.

In relevant part, the Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
05/06/15	15,945	Rear suspension uneven ¹⁰
07/16/15	20,963	Steering wheel off centered to right ¹¹
02/22/16	34,180	Fumes come into the cabin while driving ¹²
08/31/15	24,264	Vehicle not as high as used to be, rear not even ¹³
10/16/15	26,876	Vehicle seems to drift, unstable steering while driving ¹⁴
01/20/16	32,465	Getting fumes into the cabin while driving ¹⁵
12/29/15	31,184	Rear suspension is suspect ¹⁶
05/02/16	39,538	Vehicle pulls, driver's seat does not want to lift up as much as passenger seat ¹⁷

In addition to the service visits to the dealers, the Complainant took the vehicle to an independent repair facility on January 2, 2016, for a four wheel alignment.¹⁸

The Complainant testified he did not notice pulling when he first had the vehicle but when the vehicle did begin pulling, he brought the vehicle in for an alignment and software update. He stated that he first noticed pulling about a week after purchasing the vehicle. He explained that he noticed pulling when attempting to straighten the steering wheel. He elaborated that he had to hold the wheel slightly to the left to keep the vehicle straight; holding the wheel straight would cause the vehicle to pull right. The Complainant contended that the dealerships did not measure the vehicle as shown in Chrysler's "Curb Height Measurement" document.¹⁹ The Complainant further testified that when the dealer (Richardson Chrysler Jeep Dodge Ram) said that they measured the vehicle, they represented that the rear measured 28.5 inches and the front measured 28 inches.²⁰ The Complainant asserted that the as designed was not supposed to be parallel (to the ground)—

¹⁰ Complainant's Ex. 3, Invoice DOCS541836.

¹¹ Complainant's Ex. 3, Invoice DOCS548966.

¹² Complainant's Ex. 3, Invoice DOCS570311.

¹³ Complainant's Ex. 4, Invoice 340091.

¹⁴ Complainant's Ex. 4, Invoice 344056.

¹⁵ Complainant's Ex. 4, Invoice 351516.

¹⁶ Complainant's Ex. 5, Invoice 242046.

¹⁷ Complainant's Ex. 5, Invoice 247897.

¹⁸ Complainant's Ex. 6, Invoice 18711.

¹⁹ Complainant's Ex. 7, Front Suspension/Wheel Alignment/Standard Procedure Curb Height Measurement.

²⁰ Complainant's Ex. 5, Invoice 242046.

the rear of the car was supposed to be slightly higher than the front. The vehicle was not parallel when he dropped it off at the dealer, but when he got it back, the vehicle was straight (the front measurement equaled the back measurements). The vehicle was lower so the rear felt lower. He explained that prior to repair, getting out of the seat felt like getting out of an SUV, but now, his feet just hit the ground. When the hearings examiner asked if the Complainant asserted that an issue existed with the ways the dealers serviced the vehicle, he answered that problem was more serious. He ran into the same issue over and over and it cannot be fixed, which points to a defect. When the hearings examiner asked if the Complainant asserted that all Chrysler 200s had a design defect, he explained that his research appeared to show design flaws with the vehicle, not just one car but thousands. He believed that the vehicle had design flaws and (as a result) the Respondent's CEO discontinued the model only two years after its redesign. The Complainant recalled eight or nine repair visits. When asked by the hearings examiner if any repairs improved the vehicle, the Complainant answered that the repairs actually made it worse. With regard to the fumes, the Complainant explained that he did not have any issues until after December 30, 2015. He elaborated that everything got worse after a service visit to Richardson Chrysler Jeep Dodge Ram on December 29, 2015. After getting the vehicle back, the wheel tilted sharply to the right and the driver's seat did not go all the way up anymore. He further contended that the seat currently in the car was not the same seat in the car when brought in to Richardson. The seat originally had a blue stain, which was not there after leaving this dealer. The Complainant asserted that the dealer changed the seat and he could no longer use the air conditioning/heater (because of fumes). With regard to the fumes, his vision would get blurry but the symptoms would go away after rolling down the windows. He described, for example, that the day before the hearing, after turning on the air conditioning, his body felt heavy while he also felt light-headed and dizzy. He did not know what was coming from the vents but he drove with the vents closed. He passed out after arriving at home and did not wake up until the morning of the hearing. He initially thought that he had been suffering from allergies, but he never had allergies. He even had his blood tested for carbon monoxide (CO) poisoning but nothing was found. In another instance, when picking up his son on a Saturday, his son "passed out" despite having lots of sleep. On another drive, his fiancé's two small children were very tired and sleepy by the time they arrived at home. The Complainant stated that two repair visits did not improve the fume issue. The Complainant concluded that the vehicle is lower and looks normal but does not feel normal driving.

B. Respondent's Evidence and Arguments

During cross-examination, the Complainant acknowledged that after alignment, the suspension felt better but that vehicle still veered when holding the steering wheel straight. Mr. Weir explained that he looked at the vehicle and spoke with the service manager, but the issue to look for was not any clearer. Mr. Weir testified that he test drove the vehicle and put it through some "good maneuvers", and drove through a mud puddle to see if the rear wheels would follow the front wheels. He explained that if a problem existed, it would have become apparent quickly. Additionally, he had the vehicle aligned in May (2016). He pointed out that the vehicle's air intake sits right in front of the windshield and explained, for instance, if driving behind a truck, the truck's exhaust will come in the air intake. Ms. Kershaw noted that vehicles can easily go out of alignment from, for example, objects on the road. The suspension can only be evaluated according to manufacturer's specifications, as opposed to whatever the suspension looked like at the time of purchase. The Richardson invoice²¹ shows that the ride height, front and rear, and tires match the vehicle's design. Mr. Weir testified that he spent two hours in the car, measured the height at the wheel wells, and found nothing wrong needing repair.

C. Inspection and Test Drive

The vehicle had 40,946 miles at the hearing before the test drive. During the test drive, the vehicle would pull slightly to one side with the steering wheel straight. The Complainant stated he felt a little (drowsy) during the middle of the test drive. None of the other occupants experienced anything unusual. The vehicle did not lean or dip to one side during the test drive. However, Mr. Weir noted that the experience driving with four occupants in the vehicle would differ from just the driver alone. The Complainant confirmed that he usually experienced the leaning/dipping when driving alone. Except for the off-center steering, the vehicle appeared normal in all respects. The vehicle had 40,968 miles at the end of the test drive.

D. Analysis

The record indicates that the vehicle has no warrantable defects. As an initial matter, the Complainant purchased the vehicle used, so the law only provides for possible warranty repair²²

²¹ Complainant's Ex. 5, Invoice 247897.

²² TEX. OCC. CODE § 2301.204.

but not repurchase or replacement.²³ Warranty repair relief does not apply to every problem a complainant may experience with a vehicle. To qualify for warranty repair, the vehicle must have a warrantable defect. If the vehicle does not have a currently existing warrantable defect, warranty repair does not apply.

The standard for whether a vehicle has a warrantable defect depends on the terms of the applicable warranty. In this case, the warranty states that it covers “any item on your vehicle when it left the manufacturing plant that is defective in material, workmanship or factory preparation” (i.e., manufacturing defects).²⁴ This, coverage “lasts for 36 months from the date it begins or for 36,000 miles on the odometer, whichever occurs first. But the following items are covered only for 12 months or for 12,000 miles on the odometer, whichever occurs first: . . . wheel alignment and wheel balancing.”²⁵

As indicated above, the warranty applies to manufacturing defects. A manufacturing defect is an unintended condition that occurs when the vehicle varies from its intended design. That is, a defect is an aberration occurring only in those vehicles not produced according to the manufacturer’s specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of an out-of-specification part. As a result, a defective vehicle differs from a properly manufactured vehicle. A manufacturing defect occurs during the assembly process and exists when it leaves the manufacturer as reflected by the warranty’s coverage of “any item on your vehicle when it left the manufacturing plant that is defective in material, workmanship or factory preparation.” Therefore, problems arising outside of the manufacturing/assembly process, such as improper dealer repairs or even design issues, are not warrantable manufacturing defects.

Unlike manufacturing defects, design characteristics result from the vehicle’s design itself and not from any error in the manufacturing/assembly process, so that the same-model vehicles made according to the manufacturer’s specifications will normally have the same characteristics. Accordingly, a condition commonly occurring in the same model vehicles suggests the existence of a design issue as opposed to a manufacturing defect. Moreover, since design characteristics are

²³ TEX. OCC. CODE § 2301.603.

²⁴ Complainant’s Ex. 1, Chrysler 2015 Warranty Information - All Vehicles at 5.

²⁵ Complainant’s Ex. 1, Chrysler 2015 Warranty Information - All Vehicles at 6.

inherent to the design, such characteristics cannot be repaired, but would require redesigning the vehicle to address the issue.

A preponderance of the evidence does not show that the complained of issues are warrantable manufacturing defects. With regard to the alignment (and associated pulling), the vehicle did not have any warranty coverage at any point during the Complainant's ownership of the vehicle. With respect to all other issues, the record reflects that the issues do not relate to any warrantable manufacturing defects but instead arise from the vehicle's design and/or influences outside of the manufacturing process.

1. Alignment, Pulling

The warranty's alignment coverage expired before the Complainant purchased the vehicle. The warranty covered the alignment for the earlier of 12 months or 12,000 miles. However, the vehicle had 13,139 miles at the time the Complainant purchased the vehicle. Consequently, any alignment issues during the Complainant's ownership cannot qualify for repair relief.

2. Suspension, Vehicle Height

The warranty does not guarantee that the vehicle will look or feel the same as when purchased. Rather the warranty only addresses manufacturing defects, i.e., nonconformity with the manufacturer's design/specifications. Even if the vehicle had changed in height from when the Complainant purchased the vehicle, the warranty only provides a remedy if vehicle fails to conform to the manufacturer's specifications. In other words, the existence of a change by itself does not warrant repair relief. Rather, the relevant inquiry is whether the vehicle falls outside the manufacturer's specifications. In this case, both dealer technicians and Mr. Weir measured the vehicle and found it to be within manufacturer's specifications. Additionally, the Complainant identified the vehicle's design as a source of issues, which if true would exclude the issues from warranty coverage. The Complainant cited his research that his vehicle model appeared to have a design flaw that did not affect just one car but affected thousands of vehicles. As previously explained, the warranty does not apply to design issues. Accordingly, any suspension or vehicle height issues arising from the vehicle design do not qualify for relief.

The invoice from the independent repair facility noted that "[t]he rear left angle of the body frame of the car is slightly lower and curved. . . . Advised to see a body collision shop for the frame

as this is not normal. . . . Told the customer could be unseen damage or defect.”²⁶ The invoice indicates the possibility of either prior damage or a defect. However, this observation only reinforces the uncertain reason for the curved frame. In other words, the independent repair facility could not specify the frame’s condition as damage occurring during the vehicle’s prior ownership or a manufacturing defect. However, as explained in the discussion on the burden of proof, the evidence must show that, for any given issue, a defect more likely than not exists. In this instance, the independent repair facility’s evaluation fails to show a greater likelihood of a defect as opposed to damage occurring during prior ownership of the vehicle. In sum, a preponderance of the evidence does not reflect the existence of a warrantable manufacturing defect.

3. Fumes/Exhaust in Cabin, Tampering

The Complainant testified that the exhaust/fume issue began on December 30, 2015, the day after the service visit to Richardson Chrysler Jeep Dodge Ram on December 29, 2015. Regarding the December 29, 2015, service visit, the Amended Complaint states “I begin to get really sick after I got my car back. Gas fumes or exhaust leak into cabin possible tampering.” As explained in the discussion of the warranty, any nonconformity caused outside of the manufacturing process is not a warrantable (i.e., manufacturing) defect. Any dealer actions would have occurred outside of the manufacturing process and therefore cannot support any warranty repair relief. Moreover, the evidence is equivocal as to the nature of the issue: although the Complainant testified about various instances of feeling sleepy while driving, during the test drive, the other occupants did not feel any such effect; the Complainant had himself tested for CO but none was found; and Mr. Weir explained the possibility of exhaust from the outside coming through the vehicle’s air intake. In sum, a preponderance of the evidence does not show that the fumes/exhaust constitutes a warrantable manufacturing defect.

4. Change in Seat

The Amended Complaint alleged that after getting the car back from the December 29, 2015, visit to Richardson Chrysler Jeep Dodge Ram, “[t]he seat in the car did not feel the same. I am inquiring a possible drive seat change to my car as the look and feel is not the same.” As with the fumes/exhaust issue, any dealer actions would have occurred outside of the manufacturing

²⁶ Complainant’s Ex. 6, Invoice 18711.

process and therefore cannot support any warranty repair relief. Furthermore, though the Complainant found the seat to have changed, the final repair attempt on May 2, 2016, did not reveal any issues and the seat did not appear out of the ordinary during the inspection at the hearing.

III. Findings of Fact

1. On April 3, 2015, the Complainant, purchased a used 2015 Chrysler 200 from CarMax Auto Superstores, Inc. in Plano, Texas. The vehicle had 13,139 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides basic coverage for three years or 36,000 miles, whichever occurs first. However, the warranty only covers wheel alignment and wheel balancing for 12 months or 12,000 miles on the odometer, whichever comes first.
3. The warranty coverage for wheel alignment and wheel balancing expired prior to the Complainant's purchase of the vehicle. The warranty's basic coverage otherwise remains in effect.
4. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
05/06/15	15,945	Rear suspension uneven ²⁷
07/16/15	20,963	Steering wheel off centered to right ²⁸
02/22/16	34,180	Fumes come into the cabin while driving ²⁹
08/31/15	24,264	Vehicle not as high as used to be, rear not even ³⁰
10/16/15	26,876	Vehicle seems to drift, unstable steering while driving ³¹
01/20/16	32,465	Getting fumes into the cabin while driving ³²
12/29/15	31,184	Rear suspension is suspect ³³
05/02/16	39,538	Vehicle pulls, driver's seat does not want to lift up as much as passenger seat ³⁴

²⁷ Complainant's Ex. 3, Invoice DOCS541836.

²⁸ Complainant's Ex. 3, Invoice DOCS548966.

²⁹ Complainant's Ex. 3, Invoice DOCS570311.

³⁰ Complainant's Ex. 4, Invoice 340091.

³¹ Complainant's Ex. 4, Invoice 344056.

³² Complainant's Ex. 4, Invoice 351516.

³³ Complainant's Ex. 5, Invoice 242046.

³⁴ Complainant's Ex. 5, Invoice 247897.

5. On or about January 4, 2016, the Complainant or a person on behalf of the Complainant mailed a written notice of defect to the Respondent.
6. On January 8, 2016, the Complainant filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) alleging: problems with the suspension and alignment; gas fumes or exhaust leaked into the cabin; the vehicle pulled to one side with the steering wheel tilted to the right; the seat did not feel the same; and possible tampering causing gas fumes or exhaust to leak into the cabin.
7. On April 4, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, FCA US 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.
8. The hearing in this case convened and the record closed on May 25, 2016, in Mesquite, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented himself. Obadiah Owens Witness testified for the Complainant. Jan Kershaw, Early Resolution Case Manager, represented the Respondent. Bob Weir, Technical Advisor, testified for the Respondent.
9. The vehicle's odometer displayed 40,946 miles at the time of the hearing.
10. During the inspection and test drive at the hearing, the vehicle exhibited a slight pull to the right, apparently from misalignment, but otherwise operated normally and appeared normal.
11. Issues regarding the suspension, fumes/exhaust, and the seat did not arise out of the manufacturing process.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.204 and 2301.601-2301.613.

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 filed a sufficient 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. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.604(a).
7. The Complainant's vehicle does not qualify for replacement or repurchase or warranty repair relief. TEX. OCC. CODE §§ 2301.204 and 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 and 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 §§ 2301.204 and 2301.601-2301.613 is **DISMISSED**.

SIGNED July 22, 2016



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