

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0192 CAF**

BRIDGET BOOTY,
 Complainant

v.

GENERAL MOTORS LLC,
 Respondent

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Bridget Booty (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in her 2014 Chevrolet Silverado. Complainant asserts that the vehicle intermittently stalls, jerks, and hesitates when she’s driving it and when it’s idling. General Motors 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.

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 in Tyler, Texas on May 18, 2016, before Hearings Examiner Edward Sandoval. Complainant, Bridget Booty, represented herself in the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Also testifying for Respondent was David Piper, Field Service Engineer. Omar Vasquez, District Manager for After-Sales, and Wyatt Bradford, Peters Chevrolet’s Service and Parts Director, were also present, but did not testify.

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 2014 Chevrolet Silverado from Peters Chevrolet (Peters) in Longview, Texas on May 16, 2014.¹ The vehicle's mileage was 9 at the time of purchase.² Respondent's new vehicle limited bumper-to-bumper warranty provides coverage for three (3) years or 36,000 miles, whichever comes first.³ In addition, Respondent has provided a five (5) year or 100,000 mile warranty for the vehicle's powertrain.⁴ On May 18, 2016, the date of hearing, the vehicle's mileage was 43,852. At this time, Respondent's bumper-to-bumper warranty on the vehicle has expired, although the powertrain warranty is still in effect.

Complainant testified that sometime in November of 2014 the vehicle began to jerk when she was driving it. On one occasion when she was driving in town, the vehicle jerked and then wouldn't accelerate.

Complainant stated that she took the vehicle to Peters for repair on November 20, 2014. Complainant was told at the time that the problem with the vehicle hesitating could not be repeated by the service technician. However, the technician did discover that the vehicle's fuel system was lean and that the engine oil dipstick was not fully installed.⁵ The technician reinstalled the dipstick and reset the engine fuel trims.⁶ The vehicle's mileage on this occasion was 10,733.⁷ Complainant was not provided with a loaner vehicle while her vehicle was being repaired.

Complainant testified that in July of 2015, the vehicle failed to accelerate while she was driving it. As a result, Complainant took the vehicle to Peters for repair on July 2, 2015. Complainant was informed by the Peters' representative that the problem could not be duplicated by the service technician and that no problem was found with the vehicle.⁸ The vehicle's mileage when it was turned over to the dealer on this occasion was 22,757.⁹ Complainant was not provided with a loaner vehicle while her vehicle was in Peters' possession.

Complainant took the vehicle to Peters for repair on July 13, 2015, because it began to jerk when idling at a stop light or stop sign. Peters' service technician was unable to duplicate the

¹ Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated May 16, 2014.

² Respondent Ex. 2, Purchase Agreement dated May 16, 2014.

³ Respondent Ex. 15, New Vehicle Limited Warranty information printed May 9, 2016.

⁴ *Id.*

⁵ Complainant Ex. 2, Repair Order dated November 20, 2014.

⁶ *Id.*

⁷ *Id.*

⁸ Complainant Ex. 3, Repair Order dated July 2, 2015.

⁹ *Id.*

concern.¹⁰ The vehicle's mileage on this occasion was 24,268.¹¹ The vehicle was in the dealer's possession for a day.¹² Complainant was provided with a loaner or rental vehicle while her vehicle was being repaired. (The vehicle's mileage exceeded 24,000 early in July.)

Complainant testified that the vehicle continued to jerk, hesitate, and stall periodically. She took the vehicle back to Peters on August 25, 2015. Peters' service technician performed a computer scan on the vehicle and found a diagnostic code stored in the vehicle's computer.¹³ As a result, the technician programmed the vehicle's power steering control module to address the diagnostic code.¹⁴ The vehicle's mileage on this occasion was 26,588.¹⁵ The vehicle was in the dealer's possession for one day.^{16,17} Complainant was provided a rental vehicle while her vehicle was being repaired.

Complainant took the vehicle back to Peters on September 24, 2015, because of her concerns with the vehicle hesitating. On this occasion, Peters' service technician determined that the vehicle was operating as designed.¹⁸ Peters' representative informed Complainant that the vehicle was equipped with hill start assist and electronic throttle and that these could be causing Complainant's concerns. Complainant did not believe this to be the case, since the vehicle did not jerk or hesitate when the warning light for the hill start assist illuminated. The vehicle's mileage on this occasion was 28,317.¹⁹

Complainant took the vehicle to Peters for repair on February 16, 2016, because she felt that the vehicle was hesitating and jerking when she drove it. Peters' service technician determined that the vehicle was behaving normally and operating as designed.²⁰ The vehicle's mileage on this occasion was 38,941.²¹ The vehicle was in Peters' possession until February 23, 2016, for the hesitation issue and other concerns.²² Complainant was provided with a rental vehicle while her vehicle was being repaired.

¹⁰ Complainant Ex. 4, Repair Order dated July 13, 2015.

¹¹ *Id.*

¹² *Id.*

¹³ Complainant Ex. 5, Repair Order dated August 25, 2015.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Complainant received a second repair order from Peters on August 26, 2015, indicating that it was a continuation of the prior repair order regarding the engine bucking and jerking. In this repair order (Complainant Ex. 6), the service technician indicated that he did experience the same problem as Complainant for a "brief duration." The service technician indicated in the repair order that GM was "aware of the concern but . . . have not formulated a repair procedure."

¹⁸ Complainant Ex. 7, Repair Order dated September 24, 2015.

¹⁹ *Id.*

²⁰ Complainant Ex. 8, Repair Order dated February 16, 2016.

²¹ *Id.*

²² *Id.*

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) regarding the vehicle effective February 29, 2016.²³ In addition, Complainant mailed a letter expressing her dissatisfaction with the vehicle to Respondent on February 18, 2016.²⁴

Complainant testified that she last experienced a problem with the vehicle on April 21, 2016. On that date, Complainant drove to and from Dallas from her home in Longview. The vehicle made a noticeable jerk once on the way to Dallas and once on the way back to Complainant's home. The incidents arose after the vehicle had been driven an hour and a half to two hours continuously.

During cross-examination, Complainant testified that her complaint regarding the vehicle is that the engine hesitates, stalls, and jerks. She's the primary driver of the vehicle. She does not haul heavy equipment in the vehicle. She does most of her driving on the highway. Complainant has not had any accidents in the vehicle. The vehicle has not had any flats. The tires currently on the vehicle are the original tires. There has been no undercarriage damage to the vehicle. Complainant testified that she has not used any contaminated fuel for the vehicle and that she has used regular, unleaded fuel in the vehicle. The vehicle has never died and left Complainant stranded.

C. Respondent's Evidence and Arguments

David Piper, Field Service Engineer, testified for Respondent. He started working for Respondent in 1988. He graduated from the General Motors Technical School in 1990. In 2014, Mr. Piper became a Field Service Engineer for Respondent. He is an Automotive Service Excellence (ASE) certified technician.

Mr. Piper performed a final repair attempt on the vehicle on March 21, 2016, at Peters. Mr. Piper test drove the vehicle 68 miles during the final repair attempt with the drive lasting about an hour and a half.²⁵ He found that the vehicle's computer did not have any stored diagnostic codes regarding the vehicle's powertrain.²⁶ Mr. Piper was not able to recreate Complainant's concern during the final repair attempt.²⁷ He determined that there was not a problem with the vehicle.²⁸

²³ Complainant Ex. 9, Lemon Law complaint dated February 29, 2016. Although the complaint was signed by Complainant on February 23, 2016, it was not received by Texas Department of Motor Vehicles until February 29, 2016, which is the effective date of the complaint.

²⁴ Complainant Ex. 10, Letter to General Motors dated February 18, 2016.

²⁵ Respondent Ex. 14, Repair Order and Vehicle Inspection Report dated March 21, 2016, p. 3.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

No repairs were performed on the vehicle at the time. Mr. Piper testified that he felt comfortable driving the vehicle.

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 February 29, 2016, more than six months after July 1, 2015, which was the date on which the vehicle's mileage surpassed 24,000.²⁹

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

Complainant's first hand testimony establishes that the vehicle intermittently jerks, stalls, and hesitates. Although Respondent's agents have indicated that the vehicle is operating as designed, the first hand testimony indicates that there is a problem with the vehicle that causes it to jerk or hesitate on occasion, particularly when the vehicle has been driven long distances. Given the intermittent nature of the problem, it's not inconceivable that Respondent's agents have been unable to duplicate the problem. However, the evidence indicates that the problem does exist. The hearing examiner must therefore hold that Complainant has met her burden of proof to establish that there is a defect or condition in the 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 bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. The vehicle's bumper-to-bumper warranty has expired, since the vehicle's mileage on the date of hearing was 43,852. However, Respondent is still responsible to make repairs to the vehicle for any issue raised before the expiration of the warranty. *See* Tex. Occ. Code § 2301.603(b)(1). Therefore, Respondent is still obligated to repair whatever may be causing the vehicle to jerk, stall, and hesitate heard by Complainant.

Complainant's request for repair relief is granted. Respondent is hereby ordered to determine the cause of the vehicle jerking, stalling, and hesitating and perform any necessary repairs to conform the vehicle to Respondent's express bumper-to-bumper warranty.

²⁹ Complainant Ex. 9, Lemon Law Complaint Form dated February 29, 2016.

III. FINDINGS OF FACT

1. Bridget Booty (Complainant) purchased a new 2014 Chevrolet Silverado on May 16, 2014, with mileage of 9 from Peters Chevrolet, in Longview, Texas.
2. The manufacturer of the vehicle, General Motors LLC (Respondent), issued an express bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles.
3. On May 18, 2016, the date of hearing, the vehicle's mileage was 43,852.
4. At the time of hearing the vehicle's bumper-to-bumper warranty was expired.
5. In November of 2014, Complainant began to experience a problem with the vehicle stalling, jerking, and hesitating when she was driving it.
6. Complainant's vehicle was serviced by Respondent's authorized dealer, Peters Chevrolet, for the stalling, jerking, and hesitating issues on the following dates:
 - a. November 20, 2014, at 10,773 miles;
 - b. July 2, 2015, at 22,757 miles;
 - c. July 13, 2015, at 24,268 miles;
 - d. August 25, 2015, at 26,588 miles;
 - e. September 24, 2015, at 28,317 miles; and
 - f. February 16, 2016, at 38,941 miles.
7. On November 20, 2014, Peters' service technician determined that the vehicle's oil dipstick was not fully installed, so he reinstalled it and reset the vehicle's fuel trims.
8. On July 2, 2015 and July 13, 2015, Peters' service technicians could not duplicate Complainant's concerns with the vehicle.
9. On August 25, 2015, Peters' service technician programmed the vehicle's power steering control module in an effort to address Complainant's concerns regarding the vehicle stalling, jerking, and hesitating.
10. On September 24, 2015 and February 16, 2016, Peter's service technicians could not find a problem with the vehicle and determined that the vehicle was operating as designed.
11. On February 29, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

12. On March 21, 2016, Respondent's field service engineer performed a final repair attempt on the vehicle and could not duplicate Complainant's concerns. No repairs were performed at the time.
13. On April 15, 2016, 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.
14. The hearing in this case convened and the record closed in Tyler, Texas on May 18, 2016, before Hearings Examiner Edward Sandoval. Complainant, Bridget Booty, represented herself in the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Also testifying for Respondent was David Piper, Field Service Engineer. Omar Vasquez, District Manager for After-Sales, and Wyatt Bradford, Peters Chevrolet's Service and Parts Director, were also present, but did not testify.

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 vehicle stalling, hesitating, and jerking and to **PERFORM ALL NECESSARY REPAIRS** in order to conform the vehicle to Respondent's express warranty.

SIGNED June 10, 2016



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