

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0343 CAF**

**WENDY B. RAUMAKER and
TODD A. RAUMAKER,
Complainants**

v.

**GENERAL MOTORS LLC,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Wendy B. Raumaker and Todd A. Raumaker (Complainants) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in their vehicle manufactured by General Motors LLC (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect. Consequently, the Complainants' vehicle does not qualify for repurchase/replacement or warranty repair.

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 January 17, 2017, in Austin, Texas, before Hearings Examiner Andrew Kang. Mrs. Raumaker, represented herself and Mr. Raumaker. Kevin Phillips, Business Resource Manager, represented and testified for the Respondent. In addition, Kevin Brown, Field Service Engineer, and Jose Milan, District Manager Aftersales, testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief

A vehicle qualifies for repurchase or replacement if the manufacturer cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”² In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must continue to exist after a “reasonable number of attempts” at repair.³ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed written notice of the defect to the manufacturer, (2) an opportunity to repair by the manufacturer, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

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

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁵

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders 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.”⁶

c. Reasonable Number of Repair Attempts

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.⁷

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and: (A) at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.⁸

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“[T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

⁸ TEX. OCC. CODE § 2301.605(a)(2).

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

[A] nonconformity still exists that substantially impairs the vehicle's use or market value and: (A) the vehicle is out of service for repair for a cumulative 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; and (B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.⁹

However, a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹⁰ Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.¹¹

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner or someone on behalf of the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;¹² (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹³ and (3) the

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[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.’”).

¹¹ *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

¹² TEX. OCC. CODE § 2301.606(c)(1). The Lemon Law does not define the words “mailed” or “mail”, so under the Code Construction Act, the common usage of the word applies. TEX. GOV'T CODE § 311.011. Dictionary.com defines “mail” as “to send by mail; place in a post office or mailbox for transmission” or “to transmit by email.” *Mail. Dictionary.com Unabridged*. Random House, Inc. <http://www.dictionary.com/browse/mail> (accessed: April 01, 2016). Also, 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department’s notice of the complaint to the Respondent may satisfy the requirement that someone on behalf of the owner mailed notice of the defect/nonconformity to the Respondent.

¹³ TEX. OCC. CODE § 2301.606(c)(2). A repair visit to a dealer can satisfy the “opportunity to cure” requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt the final repair on the manufacturer’s behalf. See *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.¹⁴

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a "defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle."¹⁵ The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."¹⁶

3. Burden of Proof

The law places the burden of proof on the Complainants.¹⁷ The Complainants must prove all facts required for relief by a preponderance, that is, the Complainants must present sufficient evidence to show that every required fact is more likely than not true.¹⁸ If the evidence shows an element to be as likely as unlikely, then the Complainant has not met the burden of proof.

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.¹⁹ The complaint 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."²⁰ However, the parties may expressly or impliedly consent

¹⁴ TEX. OCC. CODE § 2301.606(d)(2).

¹⁵ TEX. OCC. CODE § 2301.204.

¹⁶ TEX. OCC. CODE § 2301.603(a).

¹⁷ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁸ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

¹⁹ "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* 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.").

²⁰ 43 TEX. ADMIN. CODE § 215.202(a)(2).

to trying issues not included in the pleadings.²¹ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²²

A. Summary of Complainants' Evidence and Arguments

On February 21, 2015, the Complainants, purchased a new 2015 GMC Acadia from Covert Buick, a franchised dealer of the Respondent, in Austin, Texas. The vehicle had 115 miles on the odometer at the time of purchase. The vehicle's limited warranty covers the vehicle for three years or 36,000 miles, whichever occurs first. On May 9, 2016, the Complainants mailed a written notice of defect to the Respondent. On July 12, 2016, the Complainants filed a Lemon Law complaint with the Department alleging that the vehicle vibrated in the steering wheel, through the seat and brakes; the tires were worn; the transmission slipped and sometimes made a thud sound; the IntelliLink Infotainment system did not work: losing Bluetooth connectivity, requiring dialing manually, not understanding voice commands, reading texts/emails only about half the time, intermittently muting navigation, selecting long navigation routes; and the vehicle would make a grinding noise from the steering column with the keys out. In relevant part, the Complainants took the vehicle to a dealer for repair of these alleged issues as follows:

Date	Miles	Issue
3/10/15	1,212	Vibration at 50 mph and above
5/26/15	5,830	Navigation volume mutes
10/6/15	12,560	Navigation not working properly, directions off by 10 miles; noise in dash area after vehicle turned off
4/4/16	20,377	Navigation volume inoperable intermittently; system will navigate to random location; transmission slips; vibration while driving felt in steering wheel and seat; groaning noise in steering column
4/15/16	22,171	Rear tires worn abnormally; vibration – worse at higher speeds; motor/grinding sound from steering column; when stopped then accelerating, a jolt in transmission; transmission slipping at higher speeds; navigation off by 10 miles; navigation will intermittently mute volume
5/26/16	23,710	Voice control for phone command prompt and navigation will intermittently mute; vibration in steering column and side seats

²¹ 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

²² See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

Mrs. Raumaker testified that she first experienced the vibration in the steering within two weeks of purchasing the vehicle and she also noticed the transmission issue about the same time. The vibration starts in the steering wheel and at higher speeds, she sometimes feels the vibration in the brake pedal and seats. On a trip in April (2016), a passenger behind her felt the vibration. She last noticed the vibration on the day of the hearing but the occurrence of the vibration varied. When asked if the vibration usually occurs at the same level as experienced during the test drive, Mrs. Raumaker explained that you never know and the vibration occurred sporadically so that she did not know when it would happen. She first noticed the tire wear on a trip in April (2016). On the return trip, she had to buy two new tires because the tread on the outside shoulder had worn down to 2/32nds of an inch. However, the same type of wear has not reoccurred. Mrs. Raumaker first noticed the transmission slipping about two weeks after purchasing the vehicle. She described the condition as almost like a jerk with a loud thud. This would occur very sporadically, on hills and when stopping. Mrs. Raumaker stated that the slipping had not occurred for about a month before the hearing. After picking up the car from repair for the navigation issues, the transmission made a thud and the final repair did not address the transmission issue. Mrs. Raumaker stated that she first noticed the problem using hands-free within the first two weeks after purchase. She had problems disconnecting her Apple phone from the vehicle's Bluetooth. She subsequently purchased an Android phone, which did not improve the issues. She explained that she recently had to re-pair the phone and generally had to dial manually. Mrs. Raumaker confirmed that the phone would un-pair from the vehicle. Additionally, the vehicle will not show incoming texts. In one instance, the vehicle read an email instead of displaying the selected text message. Mrs. Raumaker first noticed problems with IntelliLink voice commands in May of 2015. When asked to describe the issue, she explained that before repair, the navigation system showed the vehicle's position inaccurately by 11 miles. The navigation system shows the vehicle's position by less than 1/8th of a mile from the actual position. One time the entire navigation system froze. Additionally, she noted that the navigation favored toll roads. She last experienced the navigation issues the day of the hearing. With regard to the phone, she also experienced problems with IntelliLink not reading. She confirmed that she had problems making calls using voice commands. She first noticed this problem within the first two weeks of purchase. She explained that the IntelliLink will not recognize her voice command or will select the wrong contact. She stated that this problem occurred all of the time. Mrs. Raumaker testified that she first noticed problems with reading

texts/emails, as well as problems with voice commands, in the first couple of weeks after purchase. She explained that IntelliLink will announce a text and the screen will display the sender and give the option to view or send a reply. The “read” button is usually dimmed and the “play” and “reply” buttons do nothing. In one instance, IntelliLink played a voice mail from a Statewide Remodeling instead of a text message from Linda Eldridge. Mrs. Raumaker last noticed problems with the IntelliLink message display/reading the day of the hearing. She noted that IntelliLink did not appear to have problems picking up calls but would randomly drop calls. Mrs. Raumaker stated she first noticed the grinding noise with the vehicle off in October of 2015, when she took the keys out of the ignition and a sound came from the steering. She last noticed this on May 26, 2016, the last time she took the vehicle for repair. When asked if any repairs improved any of the problems, Mrs. Raumaker testified that the repairs did not improve these issues. She confirmed that all of the issues were continuing and added that the grinding had to have happened after May of 2016.

B. Summary of Respondent’s Evidence and Arguments

On cross-examination, Mrs. Raumaker confirmed that the Complainants were not charged for rentals (while there vehicle was under repair). Mr. Phillips pointed out that nearly five months had passed since the last visit to a General Motors dealership. Mr. Milan testified that navigation systems are not perfect and that navigation systems have occasionally misdirected him. Mr. Milan confirmed that all transmissions make noise and make noticeable shifts. All vehicles vibrate to some extent. Mr. Milan, who drove the vehicle on the return trip of the test drive, testified that: he did not notice any abrupt transmission shifts, Mrs. Raumaker set a destination and the navigation would continue to recalculate the route (since the vehicle did not head towards the preset destination), the navigation never muted, Mrs. Raumaker made a call and was able to pick up a call and the voice prompts were never muted, he did not notice vibration in the steering or seat other than road feel and differences felt during lane changes due to road condition. He concluded that he did not notice any defects in the vehicle and confirmed that he would expect a like make model vehicle to drive the same.

Mr. Brown inspected the vehicle on May 26, 2016. He found no diagnostic trouble codes in any of the vehicle’s modules. However, he found the prompt volume turned completely off and the notification volume one level above silent. Mr. Brown test drove the vehicle. During the test drive, Mr. Brown tested the vehicle’s Bluetooth using his own phone and found that the vehicle’s

Bluetooth worked as designed as compared to other like vehicles. Mr. Brown pointed out that the IntelliLink system's microphone is located above the driver's seat in the headliner, which may impede the system's voice recognition ability. The vehicle's IntelliLink system is an older design implemented with the introduction of the Acadia platform with some minor updates and calibration changes but otherwise unchanged hardware. With the 2017 model, the IntelliLink system received multiple modifications to accommodate wireless communication, Bluetooth, and other hands-free systems. Unlike the subject vehicle, the next generation IntelliLink system, with enhanced hands-free technology and microphone placement, no longer used the vehicle communication interface module (OnStar) for Bluetooth connectivity. While driving to test for the navigation issue, Mr. Brown drove in the wrong direction to make the navigation system recalculate the route and provide additional audible prompts and the navigation did not mute. Mrs. Raumaker selected a destination for the test drive and the navigation successfully routed the vehicle to the destination, thought Mrs. Raumaker commented that there were better routes to the destination. Mr. Brown did not experience any abnormal vibration during the test drive. However, he noted that the transmission can be made to clunk by pressing the gas pedal while coasting due to gear lash from the clearances between components in the transaxle (i.e., pressing the gas pedal causes the components to take up the slack). However, some clearance is necessary to allow lubricant to contact the components and prevent overheating and locking up. Mr. Brown did not observe any abnormal vibration during his test drive. However, incorrect alignment and not a manufacturing defect caused the tire damage. The toe was far out. Tool marks indicated that the alignment had been adjusted recently. With respect to the grinding noise from the steering column, Mr. Brown found another GMC Acadia Denali and duplicated the same noise. Mr. Brown determined that noise originated from the steering wheel's power telescoping actuators powering down. With regard to reading of texts/emails, how a carrier delivers a text affects whether IntelliLink can read it. If the text has no special characters or pictures then IntelliLink can read it. Moreover, a phone's software incompatibility may cause issues. This occurred with an Apple update causing significant problems.

Mr. Phillips testified that the tire wear was not considered a defect. The warranty did not cover tire and wheel damage/wear. The misalignment occurred outside of the warranty period and was not covered.

C. Inspection and Test Drive

The vehicle's odometer displayed 34,897 miles before the test drive at the hearing. Any vibration exhibited by the vehicle did not appear excessive or otherwise abnormal. During the test drive, Mrs. Raumaker successfully placed and received a call using voice commands through IntelliLink with her phone connected by Bluetooth. The navigation may have had some lag in displaying the vehicle's position but any lag did not appear substantial. The transmission did not appear to exhibit any unusual characteristics.

D. Analysis

The issues in this case appear to arise out of the design of the vehicle rather than warrantable defects subject to the Lemon Law. The Lemon Law does not apply to all problems that may occur with a vehicle, but only to warrantable defects, that is, defects covered by warranty. In the present case, the vehicle's warranty specifies that the "warranty 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."²³ A warranty that covers defects related to materials or workmanship does not apply to characteristics of a vehicle's design. Courts have affirmed that language covering "defects in material or workmanship" did not cover design issues.²⁴ That is, defects in materials or workmanship (manufacturing defects) differ from design issues. The courts have explained that "[a] manufacturing defect is one created by a manufacturer's failure to conform to its own specifications, i.e., the product would not have been defective if it had conformed to the manufacturer's design specifications."²⁵ In other words, a manufacturing 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

²³ Complainant's Ex. 3, Warranty.

²⁴ *E.g., Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 ("The manufacturer's express warranty in the case sub judice provides: 'Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship' The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty."); see *GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) ("the language in the contract of May 12, 1980, expressly limited TCR's recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.").

²⁵ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

error in making it, such as incorrect assembly or the use of a broken part. As a result, a defective vehicle differs from a properly manufactured vehicle. Issues that do not arise from manufacturing, such as the design of the vehicle (which occurs before manufacturing), are not warrantable defects. Design characteristics result from the vehicle's design and not from any error in manufacturing, so that the same-model vehicles made according to the manufacturer's specifications should ordinarily have the same characteristics.

1. Vibration in steering wheel, through seat and brakes

The complained of vibration does not appear to be a warrantable defect. As experienced during the test drive at the hearing, any vibration from the vehicle did not appear distinguishable from vibration due to road conditions. The road conditions appeared to be as much or more of a factor than any condition inherent to the vehicle. In sum, the vibration appears as likely to be caused by road conditions as a defect. Accordingly, a preponderance of the evidence does not show that the vibration constitutes a warrantable defect.

2. Tire Wear

As an initial matter, the warranty states: "Tire wear due to misalignment beyond the warranty period is not covered." The warranty specifies that it covers "Wheel Alignment/Balance" for 7,500 miles, after which it becomes a maintenance item. However, the Complainants had the vehicle aligned on April 3, 2016, at 20,326 miles (12,826 miles after warranty coverage expired). Thereafter, the Complainants had the worn tires replaced on April 13, 2016, at 21,759 miles. Consequently, the Lemon Law does not apply to the alleged tire wear.

3. Transmission Slipping

The characteristics described as the transmission slipping, jolts and thuds, do not appear to indicate slipping but instead appears to be conditions that may normally occur as a result of the tolerances in the components of the transmission/transaxle. Consequently, the Lemon Law does not apply in this instance.

4. IntelliLink: Bluetooth Connectivity, Voice Commands, Text/Email Reading, Navigation Muting, and Navigation Routing

The issues regarding the IntelliLink system appear to stem from limitations in the vehicle's technology as opposed to any manufacturing defect. The evidence reflects that the subject vehicle

uses older technology with greater limitations, consistent with the vehicle's IntelliLink system's performance as described by Mrs. Raumaker. As with any technology, like computers, the IntelliLink system has limitations in its design and problems in its functionality. Although these issues may be undesirable and troublesome, the Lemon Law only provides a remedy for warrantable (manufacturing) defects and not any design issues.

5. Grinding noise from steering column

The evidence indicates that the grinding noise from the steering column after turning the ignition off results from the normal operation of actuators shutting down, as confirmed with other same model vehicles. Accordingly, the noise does not constitute a warrantable defect.

III. Findings of Fact

1. On February 21, 2015, the Complainants, purchased a new 2015 GMC Acadia from Covert Buick, a franchised dealer of the Respondent, in Austin, Texas. The vehicle had 115 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty generally provides bumper-to-bumper coverage of the vehicle for three years or 36,000 miles, whichever occurs first. However, the warranty covers wheel alignment and balancing for 7,500 miles.
3. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
3/10/15	1,212	Vibration at 50 mph and above
5/26/15	5,830	Navigation volume mutes
10/6/15	12,560	Navigation not working properly, directions off by 10 miles; noise in dash area after vehicle turned off
4/4/16	20,377	Navigation volume inoperable intermittently; system will navigate to random location; transmission slips; vibration while driving felt in steering wheel and seat; groaning noise in steering column
4/15/16	22,171	Rear tires worn abnormally; vibration – worse at higher speeds; motor/grinding sound from steering column; when stopped then accelerating, a jolt in transmission; transmission slipping at higher speeds; navigation off by 10 miles; navigation will intermittently mute volume
5/26/16	23,710	Voice control for phone command prompt and navigation will intermittently mute; vibration in steering column and side seats

4. On or about May 9, 2016, the Complainants mailed a written notice of defect to the Respondent.
5. On July 12, 2016, the Complainants filed a Lemon Law complaint with the Department alleging that the vehicle vibrated in the steering wheel, through the seat and brakes; the tires were worn; the transmission slipped and sometimes made a thud sound; the IntelliLink Infotainment system did not work: losing connectivity, requiring dialing manually, not understanding voice commands, reading texts/emails only about half the time, intermittently muting navigation, selecting long navigation routes; and the vehicle would make a grinding noise from the steering column with the keys out.
6. On August 29, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainants and the 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.
7. The hearing in this case convened and the record closed on January 17, 2017, in Austin, Texas, before Hearings Examiner Andrew Kang. Mrs. Raumaker, represented herself and Mr. Raumaker. Kevin Phillips, Business Resource Manager, represented and testified for the Respondent. In addition, Kevin Brown, Field Service Engineer, and Jose Milan, District Manager Aftersales, testified for the Respondent.
8. The vehicle's odometer displayed 34,897 miles at the time of the hearing.
9. The vehicle's bumper-to-bumper warranty was in effect at the time of the hearing but coverage for wheel alignment and balancing had expired.
10. Road conditions appeared to be as much of a factor in the vehicle's vibration as any possible defect in the vehicle.
11. The vehicle's wheels were aligned at 20,326 miles.
12. The transmission jolt/noise resulted from the normal tolerances between components of the transmission.

13. Issues regarding the IntelliLink infotainment system arise from limitations in the design of the technology.
14. The noise in the steering column resulted from the normal operation of actuators shutting down.
15. The vehicle operated normally during the test drive at the hearing.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613; TEX. OCC. CODE § 2301.204.
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 Complainants 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 Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainants did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).
7. The Complainants' vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604.
8. The Complainants' vehicle does not qualify for warranty repair. TEX. OCC. CODE §§ 2301.204 and 2301.603.
9. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED March 20, 2017



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