

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0361 CAF**

CHARLOTTE D. STEFANIDES,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
JAGUAR LAND ROVER NORTH	§	
AMERICA LLC,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Charlotte D. Stefanides (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in her 2013 Land Rover Evoque. Complainant asserts that the vehicle is defective because the passenger air bag light is not working properly. Jaguar Land Rover North America LLC (Respondent) argued that the vehicle is working properly and that no relief is warranted. The hearings examiner concludes that the vehicle is working properly and Complainant is not currently 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 on March 2, 2017, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant appeared and was represented by her husband, Savvas Stefanides, in the hearing. Mr. Stefanides also testified. Respondent was represented by John Chambless, attorney with Thompson, Coe, Cousins & Irons LLP.

A continuance in the hearing was conducted on May 10, 2017, via telephone. Complainant and Mr. Stefanides appeared and testified in the continuance. Respondent was represented by Mr. Chambless. The hearing record was closed on May 10, 2017.

II. DISCUSSION

A. Applicable Law

Occupations Code § 2301.603(a) provides that “[a] manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer’s, converter’s, or distributor’s express warranty.”

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.” A Complainant must file his Lemon Law complaint within the

above time frame in order to have a possibility for repurchase or replacement of the vehicle as a remedy.

If the 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 originally raised his concern with the vehicle while the warranty was still in effect.

B. Complainant’s Evidence and Arguments

1. Charlotte D. Stefanides’ Testimony

Complainant testified that she and her father, Roger Dischert, purchased a new 2013 Range Rover Evoque on November 23, 2013, from Momentum Jaguar Volvo (Momentum) in Houston, Texas.¹ The vehicle’s mileage at the time of delivery to Mr. Dischert was 45.² Title to the vehicle was transferred to Complainant on November 5, 2015.³ Respondent provided a bumper-to-bumper warranty for the vehicle good for four (4) years or 50,000 miles, whichever comes first.⁴ On the date of hearing the vehicle’s mileage was 16,192. At this time, Respondent’s warranty is still in effect.

Complainant testified that she is, and has always been, the primary driver of the vehicle. Her father purchased the vehicle for her use. Complainant stated that her father lives in Europe and has given her a Power of Attorney to take care of his interests in the United States. The Power of Attorney allows Complainant to buy and sell vehicles on Mr. Dischert’s behalf. She stated that the vehicle is hers, even though her name was not on the original title.

Complainant testified that soon after purchasing the vehicle, the air bag warning light illuminated inappropriately. She stated that the light illuminated when there was someone in the vehicle’s passenger seat. She took the vehicle to Land Rover of Southwest Houston (Southwest) for repair for the issue on January 21, 2014. She informed the service advisor that the vehicle’s air bag message was flashing on and off while someone was sitting in the passenger seat.⁵ The vehicle’s

¹ Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated November 23, 2013. Although Complainant testified that she and her father purchased the vehicle, the only signature on the contract was her father’s, Roger Dischert. In addition, Respondent’s Ex. 1, p. 16, indicates that Mr. Dischert’s name was the only name on the vehicle title application dated November 23, 2013.

² Complainant Ex. 2, Odometer Disclosure Statement dated November 23, 2013.

³ Complainant Ex. 3, Texas Certificate of Title dated November 5, 2015.

⁴ Complainant Ex. 14, Passport to Service – 2013 Range Rover/Land Rover, p. 6.

⁵ Complainant Ex. 4, Repair Order dated January 21, 2014.

mileage on this occasion was 1,356.⁶ Complainant testified that she attempted to pick up the vehicle on January 29, 2014. However, she was told that Southwest's service technicians couldn't figure out what was wrong with the vehicle. So, Complainant left the vehicle at Southwest to allow the technicians additional time to repair the vehicle. Southwest's technicians then determined that the passenger seat was out of calibration and recalibrated it.⁷ The vehicle was in Southwest's possession until February 21, 2014. Complainant testified that she was not provided with a loaner vehicle while her vehicle was being repaired.

Complainant drove the vehicle for a while without incident. Then, in the summer of 2014, the air bag warning light illuminated improperly. Complainant testified that she took the vehicle to Southwest on September 5, 2014, to have the issue repaired. The technician indicated on the repair order that he configured a new ECU (electrical control unit) for the vehicle to address Complainant's concern.⁸ The vehicle's mileage on this occasion was 6,058.⁹ Complainant testified that the vehicle was in Southwest's possession until September 10, 2014.¹⁰ Complainant was not provided with a loaner vehicle at the time.

Complainant stated that the air bag warning light illuminated with someone sitting in the passenger seat soon thereafter. She took the vehicle to Southwest for repair for this and other issues on November 6, 2014. No repair for the air bag warning light issue was performed at the time as a replacement part had to be special ordered by Southwest's technician.¹¹ The vehicle's mileage at the time of the repair visit was 12,052.¹² The vehicle was in Southwest's possession for thirteen (13) days. Complainant testified that she was not provided with a loaner vehicle during this period of time.

Complainant returned the vehicle to Southwest for repair on December 1, 2014.¹³ The special ordered part (the passenger side seat cushion) had arrived at the dealership and was installed on the vehicle.¹⁴ The vehicle's mileage on this occasion was 7,490.¹⁵ Complainant testified that the vehicle was in Southwest's possession until April 3, 2015.¹⁶ Complainant testified that she was not provided with a loaner vehicle during this period of time. During the period of time that the

⁶ *Id.*

⁷ *Id.*

⁸ Complainant Ex. 6, Repair Order dated September 5, 2014.

⁹ *Id.*

¹⁰ Complainant's testimony is in conflict with the information on the repair order which indicates that the vehicle was returned to Complainant the same day.

¹¹ Complainant Ex. 7, Repair Order dated November 6, 2014.

¹² *Id.* The mileage listed on the repair order is probably incorrect, since the mileage listed on the December 1, 2014, repair order a month later is significantly less than the mileage indicated on this repair order.

¹³ Complainant Ex. 8, Repair Order dated December 1, 2014.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* The repair order indicates that the vehicle was ready for pick up on December 31, 2014. A repair order dated January 7, 2015, indicates that the vehicle's windshield was replaced and some body repair work was performed on the vehicle which required that Southwest retain the vehicle in their possession for a few months.

vehicle was in Southwest's possession according to Complainant's testimony, another repair was performed to resolve the air bag warning light issue. On February 3, 2015, the seat cushion was calibrated by Southwest's technician.¹⁷ The vehicle's mileage was 13,422.¹⁸

Complainant testified that although she was told that the air bag warning light was repaired, she felt that it was not. She stated that the light illuminated the very next time someone sat in the passenger's seat. Complainant took the vehicle to Southwest for repair on November 17, 2015. Southwest's technician determined that the vehicle's passenger occupancy sensor in the passenger seat cushion had shorted.¹⁹ The technician replaced the seat cushion.²⁰ The vehicle's mileage on this occasion was 18,749.²¹ Complainant testified that she attempted to pick up the vehicle from Southwest on December 3, 2015, but that it seemed to be experiencing electrical problems, so she left it at Southwest. Complainant testified that she picked up the vehicle on January 7, 2016. Complainant stated that after picking up the vehicle on January 7, 2016, it died in the middle of the highway while she was driving it to her home. The vehicle had to be towed to Southwest for further repair. Complainant did not pick up the vehicle until late April or early May of 2016.

Complainant returned the vehicle to Southwest for repair to the air bag warning light on June 2, 2016. Southwest's technician configured a new ECU for the vehicle and replaced the passenger side air bag occupancy sensor.²² The vehicle's mileage on this occasion was 14,140.²³ The vehicle was in Southwest's possession until June 10, 2016. Complainant was not provided with a loaner vehicle while her vehicle was being repaired.

On August 1, 2016, Complainant mailed a letter to Respondent notifying them of her dissatisfaction with the vehicle.^{24,25} Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on August 4, 2016.²⁶

Complainant testified that she took the vehicle to Southwest for repair to the air bag warning light on September 7, 2016. Respondent's representative inspected the vehicle on this occasion.²⁷ Southwest's technicians replaced the passenger side seat occupancy sensor and module and the

¹⁷ Complainant Ex. 10, Repair Order dated February 3, 2015.

¹⁸ *Id.*

¹⁹ Complainant Ex. 11, Repair Order dated November 17, 2015.

²⁰ *Id.*

²¹ *Id.* The vehicle's mileage on the repair order appears to be incorrect as the vehicle's mileage at the time of hearing on March 2, 2017 was at least 2,500 miles less than the amount reported on the repair order.

²² Complainant Ex. 12, Repair Order dated June 2, 2016.

²³ *Id.*

²⁴ Complainant Ex. 18, Undated Letter to Jaguar Land Rover North America, LLC.

²⁵ Complainant Ex. 15, United States Post Office Registered Mail receipt dated August 1, 2016, p. 3.

²⁶ Complainant Ex. 17, Lemon Law Complaint dated August 4, 2016. Complainant signed and dated the complaint on August 1, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until August 4, 2016, which is the effective date of the complaint.

²⁷ Complainant Ex. 13, Repair Order dated September 7, 2016.

passenger seat harness.²⁸ The seat occupancy sensor was then programmed and calibrated.²⁹ The vehicle's mileage on this occasion was 15,228.³⁰

Complainant stated that after the repairs performed on the vehicle, the air bag warning light continued to illuminate improperly.

During cross-examination, Complainant stated that she was not sure if they used her Power of Attorney to purchase the vehicle, since Mr. Dischert was living in Houston at the time. She also indicated that there was no co-buyer listed on the purchase documents. Mr. Dischert was listed as the sole purchaser and transferred the vehicle to Complainant on November 5, 2015.³¹ Complainant also stated that her own money was used for the down payment on the vehicle even though it was purchased in Mr. Dischert's name.

Complainant stated that she attempted to provide written notice of her dissatisfaction with the vehicle and to file a Lemon Law complaint with the Department on November 1, 2015. She sent the notice and the complaint via USPS first class mail. They were not sent via certified or registered mail. She did not immediately follow up with a phone call to either Respondent or the Department to ascertain if they were received. The notice and complaint were re-mailed to Respondent and the Department on August 1, 2016.

Complainant also testified that she never received a loaner vehicle from the dealer when she took the vehicle for repair. She indicated that a loaner was never offered. She stated that her husband or anyone living at his address is not allowed to rent a vehicle from Enterprise Rent-A-Car because he has brought suit against them in the past.

Complainant also stated that she has never had the vehicle appraised or asked about its trade-in value. She stated that she is scared to drive the vehicle because of the issue with the air bag warning light.

2. Savvas Stefanides' Testimony

Saavas Stefanides, Complainant's husband and attorney, testified in the hearing. He stated that he became involved in the complaint sometime after February 1, 2016, when he contacted Respondent. He arranged for Respondent to have an opportunity for a final repair attempt on the vehicle. This occurred on September 7, 2016, at Southwest.

Mr. Stefanides stated that he was present when Complainant and Mr. Dischert purchased the

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Complainant Ex. 3, Texas Certificate of Title issued on November 5, 2015.

vehicle. The title of the vehicle was not placed in Complainant's name at the time of purchase.

Mr. Stefanides indicated that Complainant was provided with a loaner vehicle (Ranger Rover) from Southwest while her vehicle was being repaired on two occasions: once for 12 days and once for 18 days.

Mr. Stefanides also testified that the vehicle's mileage was listed incorrectly on some of the repair orders received by Complainant. He thinks that this is evidence of the vehicle having an electrical issue which is causing the air bag warning light to illuminate.

During cross-examination, Mr. Stefanides testified that he and Complainant made all payments on the vehicle, even though the title was in Mr. Dischert's name.

Mr. Stefanides also testified that he drove Complainant to the post office on November 1, 2015, to mail the notice to Respondent and the complaint to the Department. He advised Complainant to mail them via certified mail, but she didn't do so. Neither the notice nor the complaint were ever returned to Complainant as being undeliverable. Mr. Stefanides testified that the notice and complaint were later remailed on November 1, 2016.

Mr. Stefanides feels that nothing electrical works properly on the vehicle. He stated that the air bag warning light continues to illuminate improperly. He also stated that the vehicle has not been driven since November of 2016, except to take it for inspection and to the hearing location.

C. Respondent's Evidence and Arguments

John Chambless, attorney, represented Respondent in the hearing. He did not offer testimony. However, he did enter Respondent's exhibits as evidence.

D. Analysis

1. Ownership of Vehicle

The first issue to be discussed is whether this case should be decided under §§ 2301.601 through 2301.613 of the Occupations Code (Lemon Law) or under § 2301.204 of the Code (Warranty Performance).

The evidence presented in the hearing indicates that the vehicle was initially purchased by Mr. Dischert on November 23, 2013. Complainant's name is not on the vehicle purchase order or the sale contract. Complainant did not actually obtain title to the vehicle in her name until November 5, 2015. Since Complainant's name was not on the original title of the new vehicle and not on

the purchase contract, she cannot be considered to be the original owner of the vehicle, despite the fact that she was the primary driver of the vehicle and paid for the vehicle out of her pocket. As the hearings examiner has held that Complainant was not the original owner of the new vehicle, this decision must be rendered under the provisions of § 2301.204 of the Occupations Code.

2. Filing of the Complaint

Even if it could be argued that Complainant was the original purchaser of the vehicle, she still would not have an option for replacement or repurchase relief because she did not file a timely Lemon Law complaint.

A Lemon Law complaint must be filed within six months after the vehicle has been in service for two (2) years or 24,000 miles, whichever comes first.³² The evidence indicates that the vehicle was purchased on November 23, 2013 and Complainant filed the Lemon Law complaint on August 4, 2016. The deadline by which Complainant had to file the Lemon Law complaint was May 23, 2016.

Although Complainant testified that she mailed an earlier complaint to the Department on November 1, 2015, she did not mail it via certified or registered mail. The complaint was not received by the Department nor was it returned to Complainant. There is no evidence that a complaint was ever mailed to the Department beyond Complainant and Mr. Stefanides testifying that it was mailed on November 1, 2015. Since the complaint was never received by the Department it cannot be deemed to have met the deadline imposed by § 2301.606(d). Therefore, the decision must be rendered under Occupations Code § 2301.204, allowing repair of the vehicle as the only relief available to Complainant.

3. Air Bag Light Issue

As indicated above, the only remedy available to Complainant is an order to repair the vehicle under the provisions of Section 2301.204 of the Occupations Code.

In order to determine whether Complainant has a remedy under Section 2301.204, there has to be evidence of a warrantable defect or condition in the vehicle that has not been repaired by Respondent.

Complainant has the burden of proof to establish the existence of a defect in the vehicle. According to the vehicle's owner's handbook, the passenger air bag warning light is only

³² Tex. Occ. Code § 2301.606(d)

supposed to illuminate if the passenger seat has a low weight occupant or object placed in it.³³ It is not supposed to illuminate if there is an adult passenger in the seat or if the seat is completely empty.³⁴ During the inspection of the vehicle at the time of hearing, the hearings examiner sat in the passenger seat when the vehicle was started and the air bag warning light did not illuminate. In addition, the light did not illuminate when the hearings examiner stepped out of the vehicle. This corresponds with the information provided in the owner's handbook. As such, the hearings examiner holds that Complainant's concern with the vehicle has been repaired. Complainant is not entitled to additional relief at this time.

Respondent's bumper-to-bumper warranty applicable to Complainant's vehicle provides coverage for four (4) years or 50,000 miles whichever comes first. On the date of the original hearing, the vehicle's mileage was 16,192 and the vehicle has been in service for over three (3) years. The vehicle's warranty was still in effect at the time of hearing. In addition, 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).

Complainant's request for repair relief is denied. However, if the problem recurs then Respondent will be under an obligation to repair the vehicle under the terms of the warranty.

III. FINDINGS OF FACT

1. Roger Dischert (Charlotte Stefanides' [Complainant] father) purchased a new 2013 Land Rover Evoque on November 23, 2013, from Momentum Jaguar Volvo (Momentum) in Houston, Texas, with mileage of 45 at the time of delivery.
2. The manufacturer of the vehicle, Jaguar Land Rover North America LLC (Respondent), issued a bumper-to-bumper warranty for the vehicle good for four (4) years or 50,000 miles, whichever occurs first.
3. Mr. Dischert transferred the vehicle to Complainant on November 5, 2015.
4. The vehicle's mileage on the date of hearing was 16,192.
5. At the time of hearing the vehicle's warranty was still in effect.
6. Complainant has been the primary driver of the vehicle since the date it was originally purchased by Mr. Dischert.

³³ Respondent Ex. 4, Range Rover Evoque Owner's Handbook, p. 6.

³⁴ *Id.*

7. Complainant's complaint was that the vehicle's air bag warning light illuminated improperly.
8. Complainant took the vehicle to Respondent's authorized dealer, Land Rover of Southwest Houston (Southwest), on the following dates in order to address her concerns with the air bag warning light illuminating improperly:
 - a. January 21, 2014, at 1,356 miles;
 - b. September 5, 2014, at 6,058 miles;
 - c. November 6, 2014, at 12,052 miles;
 - d. December 1, 2014, at 7,490 miles;
 - e. February 3, 2015, at 13,422 miles;
 - f. November 17, 2015, at 18,749 miles; and
 - g. June 2, 2016, at 14,140 miles.
9. On January 21, 2014, the vehicle's air bag warning light was turning on and off. Southwest's technician recalibrated the passenger seat cushion to address the issue.
10. On September 5, 2014, the air bag light was staying on with a passenger in the front seat and Southwest's technician configured a new electrical control unit (ECU) to resolve the issue.
11. On November 6, 2014, the air bag warning light was staying on with a passenger in the front seat. Southwest's technician special ordered a part (passenger seat cushion) needed to repair the vehicle.
12. On December 1, 2014, Southwest's technician installed the special ordered part indicated in Findings of Fact #11 which required replacement of the passenger seat cushion.
13. On February 3, 2015, Southwest's technician recalibrated the vehicle's front passenger seat cushion to address the issue of the air bag warning light illuminating with a passenger in the front seat.
14. On November 17, 2015, Southwest's technician determined that the vehicle's passenger occupancy sensor had shorted and replaced the seat cushion to address the issue of the air bag warning light turning on improperly.
15. On June 2, 2016, Southwest's technician replaced the vehicle's passenger seat cushion in order to address the issue of the air bag light illuminating improperly.
16. On August 4, 2016, Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).

17. On September 7, 2016, Respondent performed a final repair attempt on the vehicle and replaced the vehicle's passenger seat occupancy sensor and module and the vehicle's passenger seat harness in order to address the issue of the air bag warning light illuminating improperly.
18. On January 13, 2017, 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.
19. The hearing in this case convened on March 2, 2017, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant appeared and was represented by her husband, Savvas Stefanides, in the hearing. Mr. Stefanides also testified. Respondent was represented by John Chambless, attorney with Thompson, Coe, Cousins & Irons LLP. A continuance in the hearing was conducted on May 10, 2017, via telephone. Complainant and Mr. Stefanides appeared and testified in the continuance. Respondent was represented by Mr. Chambless. The hearing record was closed on May 10, 2017.

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 Warranty Performance 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 failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect

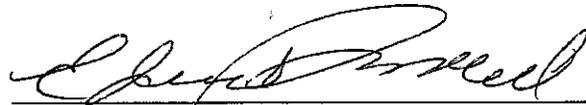
or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.204.

7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not currently qualify for repair relief. Tex. Occ. Code § 2301.204.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainants' petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **DISMISSED**. However, should the problem recur, Respondent is still required to repair the issue.

SIGNED July 6, 2017



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