

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0386 CAF**

**MARK J. BOUTROS,
Complainant**

v.

**FCA US LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Mark J. Boutros (Complainant) 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 his vehicle manufactured by FCA US LLC (Respondent). A preponderance of the evidence does not show that the subject vehicle has a defect covered by an applicable warranty. Consequently, the Complainant's 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 March 28, 2017, in Houston, Texas, before Hearings Examiner Andrew Kang. Amanda Wendenburg, attorney, represented the Complainant. In addition to the Complainant himself, Timothy McLean, Service Manager for Helfman Dodge Chrysler Jeep Ram, testified for the Complainant. Brittney Mollman, attorney, represented the Respondent. Tymothy (Tym) Mancini, Technical Advisor, 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 Complainant.¹⁷ The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present sufficient evidence to show that each required fact is more likely than not true.¹⁸

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

5. Attorney Fees

When repurchase or replacement is ordered, the Department's rules allow reimbursement of "attorney fees if the complainant retains counsel after notification that the respondent is represented by counsel." Such expense "must be reasonable and verified through receipts or similar written documents."²³

A. Summary of Complainant's Evidence and Arguments

On April 4, 2016, the Complainant, purchased a new 2016 Ram 2500 from Helfman Dodge Chrysler Jeep Ram, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had 26 miles on the odometer at the time of purchase. The vehicle's basic limited warranty covers the vehicle for 36 months or 36,000 miles, whichever occurs first. On August 19, 2016, the Complainant mailed a written notice of defect to the Respondent.²⁴ On August 25, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the vehicle vibrated abnormally/excessively and the rear view camera malfunctioned. The Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
05/25/16	1,796	Vibration in rear while driving at highway speeds
06/09/16	2,595	Vibration while driving 76 mph
07/20/16	4,796	Vibration while driving 73 mph and up
08/12/16	5,911	Backup camera image garbled at times; vibration in rear while driving at highway speeds
08/18/16	5,966	Backup camera distorted; feel vibration through seat

The Complainant testified that he purchased the subject vehicle as a "daily driver" and work vehicle. Before purchasing the vehicle, he test drove the vehicle to his house and back, about 15 to 20 minutes. He did not notice any issues during the test drive. He affirmed that the vehicle had no unauthorized modifications. The Complainant stated that prior to the subject vehicle, he

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).

²³ 43 TEX. ADMIN. CODE § 215.209(a).

²⁴ Complainant's Ex. 17, Notification to FCA US LLC Customer Center.

owned four other Dodge (Ram) heavy duty trucks. The largest payload carried in the vehicle weighed about 600 pounds, lower than the maximum capacity. The most he towed with the truck was a boat weighing 4,400 pounds dry and about 5,000 pounds full of water and fuel, less than the maximum capacity. The Complainant first noticed the vibration the first time he got on the highway. The vehicle would shake at highway speeds. He no longer drove the vehicle because of the vibration. The dealer's repair attempts, at least five, did not resolve the vibration issue. The dealer diagnosed the issue as road surface feedback through the rear suspension. The dealer offered to order "fancy" shock absorbers, over \$1,000 each, for the vehicle. However, the Respondent did not approve the shock absorbers. The Complainant mailed a notice of defect to the Respondent on August 19, 2017. The Respondent had an opportunity to repair on February 17, 2017. The Complainant did not know if the Respondent made any repairs, but the dealer did rotate the tires.

Mr. McLean, the service manager for Helfman Dodge Chrysler Jeep Ram, testified that the vehicle's warranty covered the suspension. When asked if the vehicle had any unauthorized parts, Mr. McLean explained that they had asked permission to replace the shock absorbers to prove whether installing better shock absorbers would affect the complained of condition but did not know of any parts not authorized by the Respondent or the dealer. Mr. McLean described the condition as a vibration existing above 42 mph through 75 mph. To a layperson, the vibration may feel like a tire out of balance. After hours of examination, aligning the tires, inflating the tires, Mr. McLean purchased a \$5,000 vibration analyzer and determined that the noise did not come from the truck itself but from the interaction of the truck and the road. He elaborated that the vibrations could be measured and determined from where they originated on the automobile, e.g., the driveshaft or engine. Here, the vibration analysis proved this (vibration from the vehicle) was not the case. He explained that none of the vibrations repeated (i.e., the vibrations did not match the vibration pattern of a vehicle component). Prior to purchasing the analyzer, using a water bottle, he could see oscillation but the vibration pattern did not repeat. Because he was not satisfied with the water test, he purchased the analyzer. On August 18 (2016), when he deemed the complained of condition to be a characteristic of design, they rode the two trucks together (comparing the subject vehicle with a like model vehicle). Mr. McLean confirmed that the repair orders noted the vibration. With regard to adjusting the tire pressure, Mr. McLean explained that higher pressure makes the vibration worse and that sidewalls have different ratings, passenger vehicles with softer sidewalls and a 3/4 ton truck, mainly because of towing ability, has a more rigid sidewall, which

translates to more vibration. When asked if the tires were eliminated as a source of vibration, he answered that everything (on the vehicle) was eliminated. Rather, the vibration was due to feedback through the wheels and suspension to the driver's seat. He affirmed that neither neglect nor unauthorized changes caused the vibration. Mr. McLean confirmed that the subject vehicle is a truck for the general public and not a commercial vehicle. He explained that commercial trucks are specific-use vehicles, working machines, whereas "civilian" trucks are for daily driving, towing your boat, taking your family on a road trip. The commercial chassis cab trucks start out at 3500 and go through 5500, the higher the ratings, the more rigid the vehicle. Regarding differences between prior suspension design and the current model, he testified that the old suspension was a leaf spring design, a long stack of leaf springs shackled to the frame and suspended to the axle, which goes back to the Model T and horse drawn carriages. The new suspension is more complex, including four triangulated links connecting the axle to the frame, coil over springs supporting the body on the axle, and an anti-sway bar. The leaf spring suspension just moves up and down while the new system allows some left and right movement even though using a solid axle. Mr. McLean responded that the vibration could be minimized through shock tuning and tire pressure – reduced pressure translates to a smoother ride. He added that they asked if they could try changing the shock absorbers but the area manager refused. The Respondent instructed Mr. McLean to stop attempting repair if the condition affected all trucks. He further explained that the vibration may irritate someone that never puts weight in the truck, since one could feel the vibration driving the truck unloaded. Mr. McLean testified that he himself drove a heavy duty truck, but that he tolerated the rigid, rough feeling because he could, for instance, carry a pallet of grass, a tradeoff of capability over comfort.

On cross-examination, with respect to tradeoffs in design, Mr. Mancini stated that this was mostly an engineering issue and he was informed through service information. When asked if the changes in design are explained, Mr. Mancini explained that they learn what it is, what it does, and how to fix it. When asked how he knew nothing will correct the issue, he explained that there was nothing to replace, since the manufacturer did not offer a lighter, softer coil for the vehicle.

B. Summary of Respondent's Evidence and Arguments

On cross-examination, the Complainant stated that he had driven another like 2016 Dodge Ram and that it had a similar ride to his vehicle. The Complainant stated that he did not use the

lower tire pressure specified by the manufacturer because of sluggishness in the front end but the lower pressure did not affect the vibration. He also confirmed that the backup camera issue had not recurred since a flash to the PCM.

On cross-examination, Mr. McLean testified that they (at the dealership) knew the condition was associated with the tires and the highway, which is why they kept addressing the tires. He did not believe that the aftermarket tires affected the vibration because the new tires had the same specifications as the original tires, though there may be a difference in noise. He confirmed that he noted the existence of road surface feedback through the HD suspension. Mr. McLean testified that he personally drives a 2500 truck, which has a rigid frame, through which he can feel "everything". When asked about the test drive with the water test and the more expensive shocks, he explained that at that point he knew that the vehicle did not have a broken part to replace, rather he had to do something to dampen the feedback. Mr. McLean answered that Mr. Boutros immediately confirmed that a like model vehicle drove the same as his vehicle on a test drive. In looking at the graph produced by the vibration analyzer, Mr. McLean explained that it showed lots of activity but no repeatability, indicating that the vibration did not come from a wheel, axle, or driveshaft. Components that operate at a given rpm would repeat and the same frequency and amplitude would appear over and over. When asked if commercial trucks had accommodations to address rigidity, Mr. McLean identified air suspensions and air suspension seats. He confirmed that pulling heavier loads required a stiffer, stronger frame, noting for example that trying to put 3,500 pounds in a Ram 1500 would probably bend the frame. Mr. McLean that newer models exhibited worse feedback, in his opinion, because of the change in the rear suspension. The relevant vehicles had leaf springs until 2013. Instead of leaf springs, the trucks now have coils, allowing more articulation off-road. Mr. McLean noted that he noticed the same complained of vibration in his personal truck, which is an off-road edition but with the same frame as the Complainant's truck. He characterized the condition as a side effect of the design. He added that the Complainant may not have selected the right truck.

Mr. Mancini described the 2016 Dodge Ram 2500 as a heavy duty workhorse with increased capacity payloads, with everything heavy duty from nose to tail, including steering, suspension, and tires. He affirmed that a 2001 Dodge Ram 2500 would feel extremely different from the 2016 model. The suspension switched from a leaf style to a four link system with two links on each side, track bar, stabilizer bar (anti-sway bar), coil springs and two shocks. Leaf

springs have issues such as torque causing wind-up (bending of the leaf springs). The new suspension's four links and track bar attached directly to the frame, improve security and stability, handling, tracking, articulation, etc. but the coils are very stiff so the transmission of road feel will be noticeable. Mr. Mancini testified that during a test drive, the subject vehicle exhibited a shake on the highway, but nothing extreme or damaging. He found this to be similar to other Ram 2500 trucks he had driven. When inspecting the vehicle, Mr. Mancini found that the aftermarket tires did not have any defects but three out of the four were out of balance. To ensure that the subject vehicle's condition was not unusual, Mr. Mancini test drove a new like model truck for comparison. The comparison truck exhibited the same shake at the same speeds. Mr. Mancini explained that the subject vehicle's aftermarket tires were on the aggressive side, but he did not expect much difference from the original tires, maybe audible noise, but no tire vibration concern after road force balancing. He testified that the vehicle's vibrations were consistent, occurring in a certain window. Nothing indicated any bent or broken parts, otherwise the vehicle would have exhibited pulling or other problems. The analyzer did not pick anything up on the truck causing vibration. Rather, road feel was transmitted through the seats. Mr. Mancini confirmed that since all of the same model vehicles do the same thing, there was nothing to be fixed. He explained that the ride characteristic was a tradeoff of design.

C. Inspection and Test Drive

The vehicle had 7,625 miles before the test drive upon inspection at the hearing. The vehicle was test driven primarily on I-10. At 65 mph and higher, the vehicle exhibited the complained of vibration, which could be felt through the seats.

D. Analysis

1. Warrantable Defect

The Lemon Law does not apply to all problems that may arise from a vehicle. Instead, the Lemon Law only applies to currently existing warrantable defects, i.e., defects covered by an applicable warranty.²⁵ The Lemon Law does not require any certain level of warranty coverage. The Lemon Law only requires the manufacturer to comply with whatever coverage the

²⁵ TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

manufacturer does provide. In this case, the vehicle's warranty states that it "covers the cost of all parts and labor needed to repair any item on your truck when it left the manufacturing plant that is defective in material, workmanship or factory preparation."²⁶ Accordingly, for the warranty to apply, the complained of condition must result from a defect in material, workmanship, or factory preparation. In this case, the warranty does not cover conditions arising from the vehicle's design. Courts have affirmed that warranty language covering "defects in material or workmanship" did not cover design defects.²⁷ That is, defects in materials or workmanship (manufacturing defects) differ from defects in design. 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."²⁸ 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 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) or representations in selling the vehicle (which occur after manufacturing), are not warrantable defects. In contrast to manufacturing defects, "[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves."²⁹ Likewise, design characteristics result from the vehicle's specified design and not from any error during manufacturing, so that the same-model vehicles made according to the manufacturer's specifications should ordinarily have the same characteristics. If the complained of condition

²⁶ Respondent's Ex. 2, 2016 Ram Truck 2500/3500 Warranty Information – Diesel (emphasis added).

²⁷ *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.").

²⁸ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

²⁹ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

constitutes a design characteristic or even a design defect, the Lemon Law does not apply because the warranty only covers manufacturing defects.

2. Backup Camera

A preponderance of the evidence indicates that the issue with the backup camera has been successfully resolved. The Complainant confirmed that this issue no longer occurred after updating of the PCM.

3. Vibration Due to Suspension Design

In this case, the parties do not dispute that the Complainant's Ram 2500 truck vibrates at highway speeds. The salient issue is whether the complained of vibration constitutes a warrantable defect. Here, the evidence indicates that the complained of vibration is a normal characteristic of the vehicle's design. The record reflects that Ram 2500 trucks used leaf spring suspensions until 2013. Since then, Ram 2500s have incorporated a new multi-link rear suspension with coil springs. Testimony shows that the new suspension improved certain aspects of performance, such as greater articulation and stability. At the same time, the stiffness of the suspension transmits more vibration from contact with the road. Mr. McLean and Mr. Mancini's testimony established that a truck's towing/hauling capability and ride quality have an inverse relationship, that is, greater towing/hauling capacity necessarily reduces ride comfort, since the suspension must be stiffer to accommodate additional weight.

After extensive efforts to find the source of the vibration, Mr. McLean concluded that the vibration resulted from the vehicle's interaction with the road surface. Mr. McLean eliminated any vehicle component as the source of vibration by using a vibration analyzer. As Mr. McLean explained, vehicle components operating within certain rpms (e.g., the wheels, axle, and driveshaft) have identifiable repeating patterns (frequency and amplitude). However, the vibration analyzer only showed random vibration (consistent with the randomness of the road surface), but no regular patterns associated with a vehicle component. Accordingly, Mr. McLean found no broken parts to replace, i.e., the vibration did not result from a defect in material. Nevertheless, to try to resolve the Complainant's concern, Mr. McLean sought to install aftermarket shock absorbers to dampen the vibration, in essence, modifying the vehicle's design from its original specifications. Mr. Mancini, like Mr. McLean, found no bent or broken parts. Significantly, the record reflects that other Ram 2500 trucks exhibited the same vibration as the subject vehicle. Mr.

McLean, Mr. Mancini, and the Complainant all testified that they experienced the same vibration in other Ram 2500 trucks as they did in the subject vehicle. In sum, the vehicle's vibration appears to arise from the design common to all Ram 2500s and not from any manufacturing defect specific to the subject vehicle.

As explained above, Lemon Law relief only applies to warrantable defects. The Lemon Law itself does not set any standards for vehicle quality. Rather, the Lemon Law only requires compliance with whatever terms the warranty provides. In this instance, the applicable warranty only covers manufacturing defects. However, the complained of vibration is not a manufacturing defect but a characteristic of design. Regardless of how undesirable, problematic or severe the vibration may be, the warranty does not cover vibration due to the truck's design. Because the vehicle's warranty provides no coverage for the vibration, the Lemon Law does not provide a remedy.

III. Findings of Fact

1. On April 4, 2016, the Complainant, purchased a new 2016 Ram 2500 from Helfman Dodge Chrysler Jeep Ram, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had 26 miles on the odometer at the time of purchase.
2. The vehicle's basic limited warranty covers the vehicle for 36 months or 36,000 miles, whichever occurs first.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
05/25/16	1,796	Vibration in rear while driving at highway speeds
06/09/16	2,595	Vibration while driving 76 mph
07/20/16	4,796	Vibration while driving 73 mph and up
08/12/16	5,911	Backup camera image garbled at times; vibration in rear while driving at highway speeds
08/18/16	5,966	Backup camera distorted; feel vibration through seat

4. On August 19, 2016, the Complainant mailed a written notice of defect to the Respondent.
5. On August 25, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the vehicle vibrated abnormally/excessively and the rear view camera malfunctioned.

6. On December 2, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant 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 March 28, 2017, in Houston, Texas, before Hearings Examiner Andrew Kang. Amanda Wendenburg, attorney, represented the Complainant. In addition to the Complainant himself, Timothy McLean, Service Manager – Helfman Dodge Chrysler Jeep Ram, testified for the Complainant. Brittney Mollman, attorney, represented the Respondent. Tymothy (Tym) Mancini, Technical Advisor, testified for the Respondent.
8. The vehicle's odometer displayed 7,625 miles at the time of the hearing.
9. The vehicle's warranty was in effect at the time of the hearing.
10. The vehicle's warranty applies to defects in material, workmanship or factory preparation.
11. The vehicle exhibited the complained of vibration at highway speeds during the test drive at the hearing.
12. Other vehicles of the same model as the subject vehicle exhibited the same complained of vibration.
13. The complained of vibration resulted from the design of the vehicle, specifically, the design of the rear suspension.
14. The complained of vibration did not result from any defective parts.

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 Complainant 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 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 § 2301.604(a).
7. 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 Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED May 10, 2017



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