

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 17-0051 CAF**

**ROBERT C. MUNOZ,  
Complainant**

v.

**GENERAL MOTORS LLC,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Robert Munoz (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 General Motors LLC (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect. Specifically, any existing non-conformities occurred after the applicable warranty period expired. Additionally, the complaint was not timely filed for repurchase/replacement relief. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement or warranty repair.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice of hearing<sup>1</sup> 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 Friday, February 24, 2017, in Houston, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented himself. Estella Munoz, the Complainant's spouse (Mrs. Munoz), and Dana Munoz (Ms. Munoz), the Complainant's daughter, testified for the Complainant. Kevin Phillips, represented the Respondent. Bruce Morris, Field Service Engineer, testified for the Respondent.

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<sup>1</sup> 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.”<sup>2</sup> 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.<sup>3</sup> 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.

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;<sup>4</sup> (2) the manufacturer was given an opportunity to cure the defect or nonconformity;<sup>5</sup> and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty’s expiration

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<sup>2</sup> TEX. OCC. CODE § 2301.604(a).

<sup>3</sup> TEX. OCC. CODE § 2301.604(a).

<sup>4</sup> 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.

<sup>5</sup> 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).

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.<sup>6</sup>

## 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.”<sup>7</sup> The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”<sup>8</sup>

## 3. Burden of Proof

The law places the burden of proof on the Complainant.<sup>9</sup> 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.<sup>10</sup> If any required fact appears equally likely or 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.<sup>11</sup> 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.”<sup>12</sup> However, the parties may expressly or impliedly consent

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<sup>6</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>7</sup> TEX. OCC. CODE § 2301.204.

<sup>8</sup> TEX. OCC. CODE § 2301.603(a).

<sup>9</sup> 43 TEX. ADMIN. CODE § 215.66(d).

<sup>10</sup> *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

<sup>11</sup> “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.”).

<sup>12</sup> 43 TEX. ADMIN. CODE § 215.202(a)(2).

to trying issues not included in the pleadings.<sup>13</sup> Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.<sup>14</sup>

### A. Complainant's Evidence and Arguments

On September 17, 2013, the Complainant, purchased a new 2013 Chevrolet Sonic from Westside Chevrolet Inc., a franchised dealer of the Respondent, in Katy, Texas. The vehicle had seven miles on the odometer at the time of purchase. The vehicle's bumper-to-bumper warranty coverage expired at the earlier of three years or 36,000 miles, the emissions warranty coverage for the catalytic converter expired at the earlier of eight years or 80,000 miles, and the powertrain coverage expired at the earlier of five years or 100,000 miles. On September 26, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the dealer did not change the oil properly, the vehicle made sounds, the vehicle stalled, the brakes did not work, and the vehicle jerked and exhibited sounds from underneath due to the catalytic converter. Ms. Munoz affirmed that the braking and catalytic converter issues remained for resolution in this proceeding. The Complaint appears to be the first written notice of defect that the Respondent received. In relevant part, the Complainant took the vehicle to a dealer for repair of the remaining alleged issues as follows:

Date	Miles	Issue
January 25, 2016	78,983	ABS and traction messages on, pedal soft
September 15, 2016	98,403	SES (service engine soon) light on

Mrs. Munoz testified that the vehicle jerked/pulled. Ms. Munoz added that the vehicle would not start from the outside (remotely) and would only start from the inside. Mr. Morris explained that the remote start would not work with the check engine light on. Mrs. Munoz confirmed that the vehicle had stalled and actually stopped. When the hearings examiner asked whether the existence of the complained of sound related to the catalytic converter, she explained they did not know because the engine was replaced. Ms. Munoz explained that the vehicle made a ticking sound once in a while. Mrs. Munoz stated it sounds like "tick". When asked about the brakes not working, Mrs. Munoz stated that after the dealer replaced the engine, "braking didn't brake right in the area" and "brakes were leaking. She explained that "if you do stop suddenly, you

<sup>13</sup> 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

<sup>14</sup> See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

will *stop* [stated emphatically]. It's not just a stop . . . it's gonna stop fully . . . down to the push stop." The hearings examiner asked, in an emergency stop, if she would have to push the brake pedal to the floor. Ms. Munoz interjected, "not to the floor but you really have to brake." When asked when she first noticed the noise issue, Ms. Munoz testified that she heard it after having the engine replaced. She took the vehicle for service and that the dealership explained that the catalytic converter went out. She clarified that the noise was related to the catalytic converter and that with the radio off, you could hear "t-t-t-t-t-t-t-t". She stated that she last heard the noise the day before the hearing and added that even when going 75 mph or faster, the car vibrates. When asked if any repairs improved the noise, she explained that the vehicle had no repairs since the motor (replacement). When asked if she noticed any performance related changes, Ms. Munoz responded that the vehicle vibrates when speeding up past 75 mph. Mrs. Munoz confirmed that she experienced the vehicle stalling in January 2016. She affirmed that the vehicle did not stall again to the point of stopping completely. Regarding the brake issue, Ms. Munoz elaborated that if having to stop suddenly, you really had to press on the brake. Even when slowing down for a stop sign, the vehicle will skip or jerk. When asked when she first noticed the issue, she answered that the vehicle had been like this for a while, but she noticed the issue more after the check engine light came on. The vehicle did not jerk when she first got the vehicle, but she still had to really push on the brake, though not as hard. She last noticed the braking issue the day before the hearing when the vehicle jerked while stopping at a traffic light. She confirmed that the whole vehicle jerked, elaborating that it pulled back like it was skipping. Mrs. Munoz acknowledged that she experienced the same. She detailed that "when I brake, not only did I brake fast, I went fast forward. Like the car, like she said, it stops, but at the same time it jerks when it stops." With respect to the catalytic converter, Ms. Munoz testified that the (check engine) light came on and the car was jerking, so she took the vehicle in for service and the dealership diagnosed the problem as the catalytic converter. She confirmed that the catalytic converter was not repaired and that the check engine light had come on and remained on. When asked when the check engine light came on, she estimated that the light came on a couple of months ago, probably longer. She added that the dealership quoted a price (to address the check engine light/catalytic converter).

### **B. Respondent's Evidence and Arguments**

On cross-examination, Mr. Munoz confirmed that the vehicle collided, on the side by the light, with a motorcycle on September 13 (2016). He also confirmed that an 18 wheeler sideswiped the vehicle on the driver side doors. Ms. Munoz affirmed that the vehicle has had a flat but did not know if the tires were original. Mrs. Munoz confirmed that four tires had been replaced. Ms. Munoz stated that they were in this proceeding because of the catalytic converter and the brakes. Munoz confirmed that the vehicle did not have warranty service for the brakes in the first 36,000 miles. When asked if the catalytic converter was the original, she responded that everything on the vehicle was the original, except the engine, AC, and starter. She acknowledged getting a repair estimate for the catalytic converter and declining installation of a new catalytic converter.

Mr. Morris testified that upon his inspection, he found: damage on the bumper, that the engine had been replaced, a catalyst low efficiency trouble code had been stored. He stated that the vehicle needed a new catalytic converter and that it was not a life-long part. Mr. Morris explained that a flashing service engine soon (check engine) light meant that an event was happening and required stopping immediately. He noted that, for example, a transmission issue could have the check engine light turn on. In this case, the inspection showed an issue with the catalytic converter. When asked whether the catalytic converter fell within the warranty (eight years or 80,000 miles), he answered that the applicable repair order showed that the vehicle had (roughly) 98,000 miles. In sum, Mr. Phillips testified that the catalytic converter needed to be replaced, but the alleged conditions were not addressed within the warranty period.

### **C. Inspection and Test Drive**

Upon inspection at the hearing, the odometer displayed 110,385 miles before the test drive. The front tires were almost worn down to the wear indicators. The rear tires were worn smooth at the center. One of the tires appeared to have some of the belt exposed. The check engine light remained on and not flashing. The vehicle did not exhibit any unusual braking issues during the test drive, which ended with 110,392 miles on the odometer.

## D. Analysis

### 1. Repurchase/Replacement Relief

The Complainant did not timely file his Lemon Law complaint. Consequently, the vehicle does not qualify for repurchase or replacement relief. Under the Lemon Law, the complaint must have been filed “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.”<sup>15</sup> In this case, the Complainant purchased the vehicle on September 17, 2013, with seven miles on the odometer. The bumper-to-bumper warranty coverage expired at the earlier of three years or 36,000 miles. The emissions warranty coverage for the catalytic converter expired at the earlier of eight years or 80,000 miles. The repair history shows that the vehicle had 21,956 miles on May 29, 2014, and 30,461 miles on August 21, 2014. Accordingly, six months after 24,000 miles passed at some point after November 29, 2014, and before February 21, 2015. Therefore, the applicable filing deadline occurred before February 21, 2015. However, the Complainant filed the complaint on September 26, 2016, substantially more than a year late. Consequently, the law does not allow repurchase or replacement relief.

### 2. Warranty Repair Relief

As an initial matter, warranty repair relief does not apply to all problems that may occur, but only to defects covered by the warranty. The warranty specifies that: “The warranty covers repairs to correct any vehicle defect, not slight noise, vibrations, or other normal characteristics of the vehicle due to materials or workmanship occurring during the warranty period.”<sup>16</sup> In this case, the following warranty periods apply: the bumper-to-bumper warranty covered the vehicle for three years or 36,000 miles, whichever came first; the emission control system warranty covered the catalytic converter for eight years or 80,000 miles, whichever came first. Consequently, the Complainant or Complainant’s agent must have reported the nonconformity to the dealer or manufacturer before the applicable warranty period expired.<sup>17</sup>

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<sup>15</sup> TEX. OCC. CODE § 2301.606(d).

<sup>16</sup> Respondent’s Ex. 7, New Vehicle Warranty (emphasis added).

<sup>17</sup> TEX. OCC. CODE § 2301.603(b).

**a. Brakes**

The brakes do not qualify for warranty repair. Ms. Munoz testified that they did not bring the vehicle in for warranty service of the brakes in the first 36,000 miles. The repair history shows the first service visit for the brakes occurring on January 25, 2016, at 78,983 miles – 78,976 miles after delivery. However, the warranty's (bumper-to-bumper) coverage of the brakes expired at 36,000 miles, after delivery.

**b. Catalytic Converter**

The catalytic converter does not qualify for warranty repair. The relevant repair order listing the service engine soon light (due to the catalytic converter) shows an open date of September 15, 2016, at 98,403 miles - 98,396 miles after delivery. However, the warranty's coverage of the catalytic converter expired at 80,000 miles, after delivery.

**III. Findings of Fact**

1. On September 17, 2013, the Complainant, purchased a new 2013 Chevrolet Sonic from Westside Chevrolet Inc., a franchised dealer of the Respondent, in Katy, Texas. The vehicle had seven miles on the odometer at the time of purchase.
2. The vehicle's bumper-to-bumper warranty coverage expired at the earlier of three years or 36,000 miles, the emissions warranty coverage for the catalytic converter expired at the earlier of eight years or 80,000 miles, and the powertrain coverage expired at the earlier of five years or 100,000 miles.
3. In relevant part, the Complainant took the vehicle to a dealer for repair as shown below:

<b>Date</b>	<b>Miles</b>	<b>Issue</b>
January 25, 2016	78,983	ABS and traction messages on, pedal soft (brakes)
September 15, 2016	98,403	Service engine soon light on (catalytic converter)

4. On September 26, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the dealer did not change the oil properly, the vehicle made noise, the vehicle stalled/lost power, the brakes did not work, brake fluid leaked, the vehicle jerked and exhibited sounds from underneath (due to the catalytic converter). Of the issues identified in the complaint, only the brake and catalytic converter issues remained for resolution in this proceeding.

5. The Complaint appears to be the first written notice of defect that the Respondent received.
6. On December 9, 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 Friday, February 24, 2017, in Houston, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented himself. Estella Munoz and Dana Munoz testified for the Complainant. Kevin Phillips, represented the Respondent. Bruce Morris, Field Service Engineer, testified for the Respondent.
8. The vehicle's odometer displayed 110,385 miles at the time of the hearing.
9. All of the relevant warranty coverages had expired before the hearing. The bumper-to-bumper coverage expired at 36,007 miles, before November 7, 2014, when the vehicle reached 37,744 miles. The emissions (catalytic converter) coverage expired at 80,007 miles, before February 13, 2016, when the vehicle reached 81,242 miles.
10. The inspection of the vehicle at the hearing showed substantial wear on all four tires, with the front tires near the wear indicators and the rear tires worn smooth in the center. In addition one of the tires appeared to have some of the belt exposed. The check engine light remained on and not flashing. The vehicle did not exhibit any unusual braking issues and the vehicle otherwise operated normally during the test drive at the hearing.
11. The bumper-to-bumper coverage, applicable to the brakes, expired prior to any service visit for the braking issue.
12. The emissions coverage, applicable to the catalytic converter, expired prior to any service visit for the catalytic converter issue.

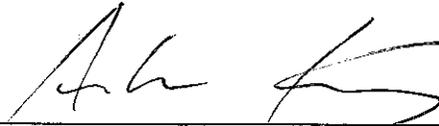
#### IV. Conclusions of Law

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 filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052; 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
7. The Complainant did not timely file the complaint for repurchase or replacement relief. The proceeding must have been 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. TEX. OCC. CODE § 2301.606(d).
8. The Complainant's vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.604(a) and 2301.606(d).
9. The Complainants' vehicle does not qualify for warranty repair. TEX. OCC. CODE §§ 2301.204 and 2301.603.

**V. Order**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 and 2301.204 is **DISMISSED**.

**SIGNED April 17, 2017**



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