

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 17-0159341 CAF**

**JIMMY NEWMAN,  
Complainant**

v.

**GENERAL MOTORS LLC,  
Respondent**

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**BEFORE THE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Jimmy Newman (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) and/or Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in his vehicle manufactured by General Motors LLC (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that does not create a serious safety hazard or substantially impair the subject vehicle's use or market value. Consequently, the Complainant's vehicle qualifies for warranty repair but not repurchase or replacement.

**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 on October 10, 2017, in Amarillo, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself. Kevin Phillips, Business Resource Manager, represented the Respondent. Steven (Jeff) Kuhr, 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.

#### 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.<sup>4</sup>

#### 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.”<sup>5</sup>

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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 § 2301.601(4).

<sup>5</sup> *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.”<sup>6</sup>

**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 the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>7</sup>

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 the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>8</sup>

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:

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<sup>6</sup> *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.”).

<sup>7</sup> TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

<sup>8</sup> TEX. OCC. CODE § 2301.605(a)(2).

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>9</sup>

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.<sup>10</sup>

The existence of 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.<sup>11</sup> 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.<sup>12</sup>

**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, someone on behalf of the owner, or the Department provided written notice of the alleged defect or nonconformity to the manufacturer;<sup>13</sup> (2) the manufacturer was given an opportunity to cure the defect or nonconformity;<sup>14</sup> and (3) the Lemon Law complaint was filed within six months after the earliest

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<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>10</sup> TEX. OCC. CODE § 2301.605(c).

<sup>11</sup> *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.’”).

<sup>12</sup> *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.”).

<sup>13</sup> TEX. OCC. CODE § 2301.606(c)(1).

<sup>14</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).

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.<sup>15</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" and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect.<sup>16</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>17</sup>

## 3. Burden of Proof

The law places the burden of proof on the Complainant.<sup>18</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>19</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>20</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>21</sup> However, the parties may expressly or impliedly consent

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<sup>15</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>16</sup> TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

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

<sup>18</sup> 43 TEX. ADMIN. CODE § 215.66(d).

<sup>19</sup> *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

<sup>20</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 factual 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>21</sup> 43 TEX. ADMIN. CODE § 215.202(a)(2).

to trying issues not included in the pleadings.<sup>22</sup> Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.<sup>23</sup>

### A. Complainant's Evidence and Arguments

On March 18, 2016, the Complainant purchased a new 2016 GMC Yukon XL from Freeman Buick-GMC, a franchised dealer of the Respondent, in Grapevine, Texas. The vehicle had 200 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first. On or about December 14, 2016, the Complainant provided a written notice of defect to the Respondent. On January 24, 2017, the Complainant filed a complaint with the Department alleging that the vehicle had electrical issues. In particular, the vehicle would not start after standing without a boost, beeped and displayed random messages on the driver information center (service airbag soon, service rear view camera, side detection system, and restraint system); the gauges would drop to zero and reset; and the XM radio would lose its signal in open areas. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
July 6, 2016	6,987	After sitting for seven days - battery dead
August 30, 2016	12,311	Air bag light comes on every 10-15 seconds
November 28, 2016	16,826	Displays multiple messages and gauges rise and drop; XM radio signal randomly drops
January 3, 2017	18,666	Displays service rear camera message; slow to start
June 12, 2017	25,240	After sitting for a week - has to be jump started

The Complainant testified that he first noticed the vehicle not starting when returning from vacation in June 2016 after leaving the vehicle parked at the airport for about a week. Less than a month later, after sitting in the garage for three days, the vehicle again would not start and needed a jump start. The vehicle last failed to start on December 26, 2016. Additionally, the vehicle started slowly on one day in February 2017. The Complainant first noticed the warning messages in August 2016. The vehicle displayed a series of messages relating to the airbags and cycle through the messages. This occurred every two to three minutes. Also, the seat buzzed and red lights appeared on the head-up display. While driving on November 26, 2016, the gauges dropped

<sup>22</sup> 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

<sup>23</sup> See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

sporadically, and various warning messages came up, similar to August 2016 instance, but without the seat buzzing and the flashing red lights on the windshield (head-up display). When asked when the Complainant last noticed the warning message issues he testified that August 26 (2017) for side detection and August 14 (2017) for the gauges. The Complainant explained that the XM radio would drop for minutes while the regular radio did not do that. After the November 28, 2016, repair visit, the vehicle displayed a message to service the rear vision system and the XM radio was still an issue. He added that when he retrieved personal items from his vehicle on the December 7, 2016, the dealer had removed the dash and seats. The Complainant testified that after repair, the issues seemed less significant. On cross-examination, the Complainant confirmed that he last brought the vehicle to address the starting issue on January 3, 2017. He also testified that he had not seen any messages, other than side detection temporarily unavailable, after June of 2017. In particular, he confirmed that he had not seen the service airbag or service rear view camera messages since June 2017.

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

Mr. Kuhr testified that at the June 12, 2017, visit, he found no fault codes and could not duplicate the Complainant's concerns. However, as a preventative measure, he did all the repairs suggested in documents he found addressing certain battery draws and electrical issues. He did not hear any rattles that day though he did hear some retaining clips, which he put back together. The battery passed all test. However, he replaced the battery cables, which exhibited a voltage drop. In addition, he completed several bulletins addressing past, not current, concerns and reprogrammed the modules, radio and human interface. Mr. Kuhr explained that XM radio has a known issue with radio frequency (electromagnetic) interference. Sources of interference may include windmills, cellular antennas, electrical substations, and so forth. Mr. Kuhr stated that a wiring connector in the passenger side rear quarter below the vehicle broke loose from impact or a harsh bump and fell down for some unknown reason. The connector fell on the exhaust and melted through the insulation, causing the gauges to drop to zero and most of the warning messages. With regard to the "side detection temporarily unavailable" message, Mr. Kuhr pointed out that unless the message says "service", the issue is not electrical and instead could be due to water, dirt, bugs, or anything blocking a radar sensor in the bumpers. To be an electrical issue, the message must say "service" which would have a fault code. A message that says "unavailable" does not have a fault

code. On cross-examination, Mr. Kuhr answered that the gauges dropping related to a connector that the dealer repair prior to his repair. On redirect, Mr. Kuhr affirmed the possibility that the dealer may have disturbed the wiring when taking apart the dash.

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

The subject vehicle had 30,521 miles on the odometer upon inspection at the hearing, before the test drive. At the end of the test drive, the odometer displayed 30,531 miles. The vehicle appeared to operate normally.

### **D. Analysis**

As detailed below, the subject vehicle continues to have a warrantable nonconformity as evidenced by the malfunctioning gauges. However, the other complained of issues appear to have been resolved or are not covered by the warranty.

#### **1. Warrantable Defects**

The Lemon Law does not apply to all problems a consumer may have with a vehicle. Rather, the Lemon Law only applies to defects covered by warranty (warrantable defects).<sup>24</sup> If the manufacturer's warranty does not cover the complained of condition; the Lemon Law does not provide any relief. The Lemon Law does not require that a manufacturer provide any particular warranty coverage nor does the Lemon Law specify any standards for vehicle characteristics. The Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. Consequently, to qualify for replacement or repurchase or for warranty repair, the vehicle must have a defect covered by warranty.<sup>25</sup> In this 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." Accordingly, the warranty applies to defects in materials or workmanship. On the other hand, the warranty does not cover conditions arising from the vehicle's design. Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover

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<sup>24</sup> TEX. OCC. CODE § 2301.603(a).

<sup>25</sup> TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

design issues.<sup>26</sup> That is, defects in materials or workmanship (manufacturing defects) differ from characteristics of the design. A manufacturing defect is an isolated 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. Unlike manufacturing defects, issues that do not arise from manufacturing, such as characteristics of the vehicle's design (which occurs before manufacturing) or improper dealer repairs (which occur after manufacturing) are not warrantable defects. 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 may ordinarily exhibit the same characteristics. 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."<sup>27</sup> If the complained of condition constitutes a design characteristic or even a design defect, the Lemon Law does not apply because the warranty only covers manufacturing defects.

**a. Failure to Start**

The starting problem appears to have been successfully resolved. The vehicle last failed to start on December 26, 2016, and had a slow start in February 2016, but the record shows no substantiated recurrence of a starting problem after the manufacturer's final repair in June 2017.<sup>28</sup>

**b. Gauges**

The record reflects that the glitch in the gauges, though not as severe, continues to exist. Specifically, the video from August 14, 2017, showed the needles on the gauges momentarily

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<sup>26</sup> *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.").

<sup>27</sup> *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

<sup>28</sup> The Complainant stated that when retrieving his vehicle from valet parking on July 22, 2017, a parking lot attendant stated that a vehicle had to be jump started, but the Complainant did not know whether that vehicle was his vehicle. This statement has limited probative value due to hearsay and speculation.

moving approximately an eighth of a turn and returning back to its previous position. Testimony showed that damage to the wiring caused the similar (but more extreme) glitch that occurred prior to repair.

**c. Side Detection Temporarily Unavailable**

The “Side Detection Temporarily Unavailable” message does not appear to arise from any warrantable defect. Testimony showed that external factors (such as water, bugs, dirt, construction, etc.) may affect the function of the side detection system’s radar. That is, any external conditions that interfere with the radar may cause the “Side Detection Temporarily Unavailable” message. However, such external interference is not a manufacturing defect in the vehicle. Further, the absence of any associated trouble codes tends to support that external factors caused the “Side Detection Temporarily Unavailable” message rather than any non-conformity in the vehicle.

**d. XM Radio**

The record indicates that the temporary loss of XM Radio service is not a warrantable defect. The evidence shows that XM Radio is susceptible to electromagnetic interference, from outside sources such as cell towers, windmills, electrical substations, etc. In other words, the loss of service does not arise from any manufacturing defect but may normally occur with the vehicle as designed.

**2. Criteria for Repurchase or Replacement**

To qualify for repurchase or replacement, the Lemon Law not only requires the existence of a warrantable defect, but the defect must create a serious safety hazard or substantially impair the vehicle’s use or market value. Here, the record shows that the vehicle continues to have a warrantable defect - the momentary glitch in the gauges. However, this brief and sporadic glitch does not rise to the level of a serious safety hazard or a substantial impairment of use or market value as defined by law. Accordingly, this nonconformity qualifies for warranty repair but not repurchase/replacement relief.

### III. Findings of Fact

1. On March 18, 2016, the Complainant purchased a new 2016 GMC Yukon XL from Freeman Buick-GMC, a franchised dealer of the Respondent, in Grapevine, Texas. The vehicle had 200 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first.
3. The Complainant took the vehicle to a dealer for repair as shown below:

<b>Date</b>	<b>Miles</b>	<b>Issue</b>
July 6, 2016	6,987	After sitting for seven days - battery dead
August 30, 2016	12,311	Air bag light comes on every 10-15 seconds
November 28, 2016	16,826	Displays multiple messages and gauges rise and drop; XM radio signal randomly drops
January 3, 2017	18,666	Displays service rear camera message; slow to start
June 12, 2017	25,240	After sitting for a week - has to be jump started

4. On or about December 14, 2016, the Complainant provided a written notice of defect to the Respondent.
5. On January 24, 2017, the Complainant filed a complaint with the Department alleging that: the vehicle had electrical issues, would not start after standing without a boost, beeped and displayed random messages on the driver information center (service airbag soon, service rear view camera, side detection system, restraint system); the gauges would drop to zero and reset; and the XM radio would lose its signal in open areas.
6. On June 26, 2017, 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 factual matters asserted.
7. The hearing in this case convened on October 10, 2017, in Amarillo, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself. Kevin Phillips, Business Resource

Manager, represented the Respondent. Steven (Jeff) Kuhr, Field Service Engineer, testified for the Respondent.

8. The vehicle's odometer displayed 30,521 miles at the time of the hearing.
9. The vehicle's warranty was in effect at the time of the hearing.
10. The vehicle operated normally during the test drive at the hearing.
11. The vehicle has not failed to start after the June 12, 2017, repair.
12. The vehicle's gauges continue to exhibit a glitch in which the needles momentarily and sporadically drop by about one-eighth of a turn. The vehicle previously exhibited a similar but more severe malfunction prior to repair.
13. After the June 12, 2017, repair the vehicle displayed the "Side Detection Temporarily Unavailable" message but has not displayed other warning messages, such as those relating to servicing the airbag or rear vision camera. Environmental conditions may interfere with the side detection system's ability to detect vehicles and cause the "Side Detection Temporarily Unavailable" message.
14. XM radio service is susceptible to radio frequency (electromagnetic) interference.

#### **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's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the vehicle has a warrantable defect that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. TEX. OCC. CODE § 2301.604(a).
7. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
8. The Complainant's vehicle qualifies for warranty repair. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. 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 Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the operation of the vehicle's gauges to the applicable warranty. The Complainant shall deliver the subject vehicle to the Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.<sup>29</sup> Within 20 days after receiving the vehicle from the Complainant, the Respondent shall complete repair of the subject vehicle. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the

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<sup>29</sup>: (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Order.

Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

**SIGNED December 8, 2017**



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