

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0174563 CAF**

JARRED HILL,
Complainant

v.

GENERAL MOTORS LLC,
Respondent

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Jarred Hill (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 qualifies for warranty repair only.

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 on August 30, 2017, in Denison, 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 and testified for the Respondent. In addition, Doug Wiseman, District Manager Aftersales, and Paul Rodarmer, Regional Customer Activities Manager, testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief

Repurchase and replacement relief only apply to new motor vehicles.²

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.”³ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”⁴

3. Burden of Proof

The law places the burden of proof on the Complainant.⁵ 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.⁶ 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.⁷ 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

² TEX. OCC. CODE § 2301.603(a).

³ TEX. OCC. CODE § 2301.204.

⁴ TEX. OCC. CODE § 2301.603(a).

⁵ 43 TEX. ADMIN. CODE § 215.66(d).

⁶ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

⁷ “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.”).

claim for relief under the lemon law.”⁸ However, the parties may expressly or impliedly consent to trying issues not included in the pleadings.⁹ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.¹⁰

A. Complainant’s Evidence and Arguments

On November 16, 2015, the Complainant, purchased a used 2012 GMC Terrain from Bonham Chrysler Dodge Jeep Ram, a franchised dealer of FCA USA, LLC, in Bonham, Texas. The vehicle was originally sold at retail on February 29, 2012. The vehicle’s odometer disclosure statement showed 65,979 miles on the odometer. However, the Complainant testified that the vehicle had approximately 1,000 miles more on the odometer at the time of purchase. The vehicle’s limited warranty provided bumper to bumper coverage for three years or 36,000 miles, whichever occurred first; powertrain coverage for five years or 100,000 miles, whichever occurred first; and major emissions component coverage for eight years or 80,000 miles, whichever occurred first. On March 23, 2017, the Complainant, provided a written notice of defect to the Respondent. On April 4, 2017, the Complainant filed a complaint with the Department alleging that the vehicle consumed oil excessively. The Complainant also alleged that the selling dealer falsified the vehicle’s mileage and represented that the vehicle had not been in an accident though service records show collision and body work.

The Complainant testified that just before 3,000 miles (after delivery), the vehicle ran badly and stopped running twice. When taking the vehicle in for service, the dealer allegedly found excessive oil use and the vehicle was doing the same 3,000 miles later. The Complainant took the subject vehicle to a GMC dealer every time except for the first two visits, which were to the selling dealer. He first noticed the issue two or three days before the first oil change at the selling dealer. When the vehicle starts running poorly, he will hear the headers tapping. He noted that the vehicle only shut down once. The vehicle will also sputter. On cross-examination, the Complainant stated that the vehicle was only towed in once. When asked about how he determined when to change the oil, the Complainant explained that he used a 3,000 mile interval but did not check the oil life

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

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

¹⁰ See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

shown by the oil life monitor. He confirmed that the vehicle's pistons, bearings, and connecting rods were replaced in January of 2017 and the fuel pump was replaced prior to that. The Complainant confirmed that the service soon light came on due to the evap canister vent valve being restricted with dirt but he declined repair. The Complainant stated that a few weeks before the hearing, the vehicle felt like it was bogging down and the motor ran rough and loud. He elaborated that the vehicle had issues even before the clogged evap canister vent valve and the vehicle sounded the same.

The Complainant affirmed that the clogged evap canister vent valve needed to be fixed. However, he believed that the vehicle consumed more than 1.2 quarts of oil every 2,000 miles. It had been completely out of oil or barely had any oil on the dipstick. He testified that after adding a full quart of oil, two or three days later, the oil was a quart and a half low, when changing the oil about two or three weeks before the hearing.

B. Respondent's Evidence and Arguments

Mr. Phillips testified that the vehicle's pistons, connecting rods, and bearings were replaced at 89,792 miles with no engine complaints since then. The fuel pump was replaced at 78,774 miles. The high pressure fuel pump was leaking into the crankcase and overfilling the engine. However, the warranty did not cover the fuel pump.¹¹ Warranty coverage of major emissions components ended at 80,370 miles. Work relating to the gas cap, fuel injectors, and evap canister were not covered.

Mr. Phillips explained that all engines burn oil. However, the dealer replaced the pistons, connecting rods, and bearings after confirming oil consumption of 1.2 quarts per 1,000 miles. The vehicle history showed that the vehicle came in for a check engine light approximately 2,000 miles after replacement of the pistons, connecting rods, and bearings. The history showed no oil changes during the 2,000 miles between visits. Mr. Phillips pointed out that check engine lights usually relate to emissions issues rather than issues with the engine itself. The dealer found dirt restricting the evap canister vent valve, causing the check engine light to come on, which had nothing to do with the engine hardware. The manufacturer's documentation shows an acceptable oil

¹¹ With respect to emission control systems, specified major components are covered for 8 years or 80,000 miles. All other emissions components fall under the bumper to bumper coverage lasting three years or 36,000 miles.

consumption rate of up to one quart per 2,000 miles. Mr. Phillips noted that the vehicle currently has no warranty.

Mr. Rodarmer testified that the clogged evap canister vent valve can cause the conditions complained about, the loud running and oil consumption, which may be almost impossible to determine without having the clogged evap canister vent valve repaired.

After the test drive, Mr. Phillips testified that he did not feel any hesitation and only heard normal engine noise. He opined that the trip to Utah and the mileage driven appeared to confirm that the vehicle was running normally. He expressed a concern regarding the air filter, given no documentation of it being changed, since it can clog and lower performance.

C. Inspection

The vehicle's odometer displayed 104,101 miles at the time of the hearing, before the test drive. The Complainant did not know if the air filter had been replaced. The vehicle had a maintenance reminder sticker showing the next oil change due by December 15, 2017 or 105,561 miles (1,460 miles after the hearing). The Complainant confirmed that the oil was changed before a trip to Utah. The oil life monitor showed 53% of oil life remaining. The vehicle operated normally during the test drive at the hearing. The vehicle had 104,114 miles on the odometer at the end of the test drive.

D. Analysis

1. Types of Relief

As an initial matter, repurchase and replacement relief only apply to new vehicles under the Lemon Law. Because the Complainant purchased the vehicle used, the vehicle cannot qualify for repurchase or replacement and may only qualify for warranty repair.

2. Warranty Coverage

Warranty repair relief only applies to warrantable defects.¹² Consequently, to qualify for warranty repair, the vehicle must have a defect covered by warranty.¹³ Here, the vehicle's warranty

¹² TEX. OCC. CODE § 2301.603(a).

¹³ TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

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.”¹⁴ 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.”¹⁵ Accordingly, the warranty, together with any applicable specifications, determines what constitutes a warrantable defect. Unlike warrantable manufacturing defects, issues that do not arise from manufacturing, such as normal wear and tear or representations by a dealer are not warrantable defects.

3. Warrantable Defect

In this case, the record shows that the vehicle’s excessive oil consumption more likely than not constitutes a warrantable defect. As outlined previously, whether the warranty covers the excessive oil consumption depends on the terms of the warranty and the manufacturer’s specifications. Of particular importance, the manufacturer’s document titled “Oil Consumption for Passenger Cars and Light Duty Trucks” specifies that “the accepted rate of oil consumption for engines used in the vehicles referenced below is 0.946 liter (1qt) in 3200 km (2000 mi).”¹⁶ The Complainant testified that he added a quart of oil but two or three days later, a service facility found the oil 1.5 quarts low when changing the oil. The Respondent showed that the vehicle accrued approximately 50 miles per day during the Complainant’s ownership of the vehicle.¹⁷ According to the testimony above, the vehicle consumed approximately 1.5 quarts of oil in two or three days (or 100 to 150 miles). This consumption extrapolates to a rate of 20 to 30 quarts per 2,000 miles, far in excess of the manufacturer’s specified acceptable consumption rate. Moreover, the Complainant testified that the vehicle continued to consume oil excessively even after replacement of the pistons, connecting rods, and bearings, and had issues before the evap canister vent valve clogging issue. Although the Respondent presented plausible alternative explanations for the oil consumption, the Complainant’s testimony indicates that the vehicle continues to have

¹⁴ Respondent’s Exhibit 1, New Vehicle Limited Warranty.

¹⁵ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

¹⁶ Respondent’s Exhibit 4, Oil Consumption for Passenger Cars and Light Duty Trucks.

¹⁷ Respondent’s Exhibit 3, Odometer Reading Timeline.

a warrantable defect even after the last repair attempt. In sum, the record as a whole includes sufficient evidence to find that the excessive oil consumption constitutes a warrantable defect.

III. Findings of Fact

1. November 16, 2015, the Complainant, purchased a used 2012 GMC Terrain from Bonham Chrysler Dodge Jeep Ram, a franchised dealer of FCA USA, LLC, in Bonham, Texas. The vehicle was originally sold at retail on February 29, 2012. The vehicle's odometer disclosure statement showed 65,979 miles on the odometer. However, the Complainant testified that the vehicle had approximately 1,000 miles more 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; powertrain coverage for five years or 100,000 miles, whichever occurs first; and major emissions component coverage for eight years or 80,000 miles, whichever occurs first.
3. On March 23, 2017, the Complainant, provided a written notice of defect to the Respondent.
4. On April 4, 2017, the Complainant filed a complaint with the Department alleging that the vehicle consumed oil excessively. The Complainant also alleged that the selling dealer falsified the vehicle's mileage and represented that the vehicle had not been in an accident though service records show collision and body work.
5. On June 8, 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.
6. The hearing in this case convened on August 30, 2017, in Denison, 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 and testified for the Respondent. In addition, Doug Wiseman, District Manager

Aftersales, and Paul Rodarmer, Regional Customer Activities Manager, testified for the Respondent.

7. The vehicle's odometer displayed 104,101 miles at the time of the hearing, before the test drive. The Complainant did not know if the air filter had been replaced. The vehicle had a maintenance reminder sticker showing the next oil change due by December 15, 2017 or 105,561 miles. The Complainant confirmed that the oil was changed before a trip to Utah. The oil life monitor showed 53% of oil life remaining. The vehicle operated normally during the test drive at the hearing. The vehicle had 104,114 miles on the odometer at the end of the test drive.
8. The warranty's bumper to bumper coverage expired prior to the Complainant's purchase of the vehicle. The powertrain coverage expired at some point after February 22, 2017, (91,024 miles) but no later than February 29, 2017 (five years after original delivery). Coverage of major emissions components expired at 80,000 miles after original delivery, sometime between May 19, 2016, (78,763 miles) and January 31, 2017 (89,792 miles).
9. The accepted rate of oil consumption for the vehicle is one quart per 2,000 miles.
10. The vehicle continued to consume oil excessively after the final repair to the vehicle.
11. Two or three days after the Complainant added a quart of oil to the vehicle, the oil level was 1.5 quarts low, when changing the oil about two or three weeks before the hearing.
12. The vehicle accumulated an average of approximately 50 miles per day during the Complainant's ownership of the vehicle.
13. The vehicle consumed approximately 1.5 quarts of oil over 100 to 150 miles, exceeding the Respondent's specification for acceptable oil consumption.

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 hearing 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. Replacement and repurchase relief only apply to new vehicles. TEX. OCC. CODE § 2301.603.
 7. 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.
 8. 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.
 9. The Respondent has a continuing obligation after the expiration date of the warranty to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's designated agent or franchised dealer before the warranty expired. 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 vehicle's oil consumption 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 § 2001.144.¹⁸ Within 20 days after receiving the vehicle from the

¹⁸: (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,

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 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 October 30, 2017



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

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.