

Assistant Vice President, represented the Intervenor, ACAR Leasing, Ltd., d/b/a GM Financial Leasing.

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

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁵

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 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.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 the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000

⁵ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

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).

miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁸

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, 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.⁹

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.¹⁰

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.¹¹ 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.¹²

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;¹³ (2) the manufacturer was given an opportunity to cure the defect or

⁸ TEX. OCC. CODE § 2301.605(a)(2).

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.605(c).

¹¹ *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.’”).

¹² *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.”).

¹³ TEX. OCC. CODE § 2301.606(c)(1).

nonconformity,¹⁴ and (3) the 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.¹⁵

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.¹⁶ The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."¹⁷

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁸ The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present sufficient evidence to show that every required fact is more likely than not true.¹⁹ If any required fact appears more likely to be untrue or equally likely to be true or untrue, then the Complainant cannot prevail.

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.²⁰ The complaint should state "sufficient facts to enable the department and the party complained against to know

¹⁴ TEX. OCC. CODE § 2301.606(c)(2). A repair visit to a dealer satisfied the "opportunity to cure" requirement when the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt a repair on the manufacturer's behalf. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

¹⁶ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁷ TEX. OCC. CODE § 2301.603(a).

¹⁸ 43 TEX. ADMIN. CODE § 215.66(d).

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

²⁰ "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.").

the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law.”²¹ However, the parties may expressly or impliedly consent to trying issues not included in the pleadings.²² Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²³

A. Summary of Complainant’s Evidence and Arguments

On May 12, 2016, the Complainant, leased a new 2016 Chevrolet Suburban from Friendly Chevrolet, a franchised dealer of the Respondent, in Dallas, Texas. The vehicle had five miles on the odometer at the time of leasing. The vehicle’s limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first. On January 28, 2017, the Complainant provided a written notice of defect to the Respondent. On September 13, 2017, the Complainant filed a complaint with the Department alleging that vehicle’s fuel tank would not fill completely; the radio malfunctioned; the entertainment system’s screens malfunctioned; and the fuel gauge fluctuated. The Complainant took the vehicle for service 12 times for the alleged issues, beginning on September 12, 2016, at 8,122 miles and ending on January 15, 2018, at 25,026 miles.²⁴

The Complainant testified that the subject vehicle held (approximately) 30 gallons of fuel but may only take 26 gallons. Sometimes the fuel gauge will go to full and sometimes three quarters. She believed this discrepancy resulted from a problem with the fuel gauge. Mr. Hairston noted that fueling may stop prematurely but that he could go to another gas station and fill the vehicle completely. The Complainant explained that the vehicle could be at a stop and the fuel gauge needle would quickly go up and down. With the fuel tank completely full, the fuel gauge will fluctuate after about 40 miles. She last noticed the fuel gauge fluctuation on the way to the hearing. The Complainant described an instance when the entire dashboard and the infotainment display went blank although the vehicle was on and music was still playing. Regarding the radio malfunction, the Complainant explained that the steering wheel audio controls did not synchronize with the infotainment display and the HUD (Heads Up Display), but that the displays had about a

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

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

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

²⁴ Complainant’s Exhibit 4, Repair Orders.

two second delay. As an example, the Complainant pointed out that she may raise the volume on the control but the volume displayed would be delayed. She answered that the radio last exhibited such malfunction on the way to the hearing. She elaborated that the delay was consistent. The Complainant recounted that when playing a DVD, with both screens powered on, the back (third row) screen was on but the front (second row) screen was blank. She closed and opened the screens, restarted the vehicle (she noted that video will not start with the vehicle in motion) and while in park, tried to play the video but the screen did not work. The dealer replaced the screen, but the malfunction continued. She last noticed the screen issue the night before the hearing. The Complainant pointed out that the vehicle did not have any aftermarket equipment. The Complainant confirmed that when her vehicle ran out of gas, the low fuel light came on but then turned off. Mr. Hairston considered the vehicle to be a danger because it broke down on the freeway due to no gasoline. The Complainant added that her prior vehicle, a 2015 Suburban, never had an issue. Regarding the vehicle running out of gas, the Complainant elaborated that the fuel gauge showed the fuel level between 1/8th and empty.

B. Summary of Respondent's Evidence and Arguments

Mr. Smith testified that the fuel gauge may fluctuate due to buffering, which keeps the fuel gauge needle from constantly bouncing around while in operation. He affirmed that the low fuel warning light turns on when the fuel level is actually low. He explained that the vehicle should have already been refueled by the time the low fuel low light comes on. Mr. Smith confirmed that the fuel gauge only approximates the actual amount of fuel. For instance, the position of the vehicle may affect the displayed fuel level. He explained that the variance relates to buffering. He pointed out that getting a more accurate reading requires standing still for two to three minutes, since the fuel sloshes with the vehicle moving. Mr. Smith stated that the dealerships did provide loaner vehicles. Mr. Smith concluded that he did not see anything defective with the vehicle.

Mr. Bacchus testified that he did not find that the vehicle had either a performance code or circuit code set. He did not believe any repairs were necessary. Mr. Bacchus explained that same wire from the engine control module that transmits the fuel level also connects to multiple gauges, so a problem here would cause issues with other gauges. However, the lack of such problems reflects that the issue stem from fuel sloshing and buffering. Mr. Bacchus opined that the fuel gauge may fluctuate as much as 1/4th depending on the angle of the vehicle.

C. Inspection and Test Drive

Upon inspection before the test drive, the vehicle had 25,253 miles on the odometer and the fuel gauge showed slightly over $7/8$ ths of a tank. The vehicle was test driven on local roads and on highways. The Complainant initially drove the vehicle and Mr. Bacchus drove the vehicle after the Complainant. The Complainant stated that after filling up, the fuel gauge fluctuations will begin after 60 to 70 miles (or about $3/4$ ths of a tank) and will not stop. The Complainant asked about the fuel tank not filling completely and Mr. Smith replied that he never experienced the issue with the subject vehicle. Mr. Bacchus noted that the pressure in the tank could cause the gas pump to prematurely shut-off but that refueling could continue after waiting for the pressure to recede. The Complainant explained that her concern regarding the radio involved a delay between changing radio stations with the steering wheel controls and the station shown on the HUD and the infotainment screen. Mr. Bacchus changed stations about every half-second and the displays appeared to change normally. The Complainant explained that she changed stations faster than that and Mr. Bacchus said that the display simply needed time, since the radio, DIC (Driver Information Center) and HUD were all changing simultaneously. Mr. Bacchus noted that he only inspected the vehicle for the fuel gauge issue (the manufacturer's final opportunity to repair only related to the fuel gauge issue). The Complainant explained that when the vehicle ran out of gas leaving her stranded, the fuel gauge went down and up, and the low fuel light came on and went off. Mr. Bacchus put the vehicle through a series of sudden weaving maneuvers and hard turns to make the fuel slosh. Mr. Bacchus stopped the vehicle in a parking lot to observe the fuel gauge, which moved minimally. At 25,263 miles, the fuel gauge displayed $7/8$ ths of a tank. Mr. Smith pointed out that if the front or rear rose higher than the other, the fuel gauge would exhibit a change in fuel level, since the vehicle's tank had a more linear (front to back) orientation than side to side. Later in the test drive, the fuel gauge fluctuated, but by less than $1/16$ th. At the end of the test drive, the vehicle displayed 25,282 miles on the odometer with the fuel gauge about halfway between the $3/4$ and $7/8$ ths marks. The DVD and displays operated normally. However, Mr. Bacchus noted that a problem with the media player display may relate to the dash display because of shared MOST bus connections. The changes in volume and stations appeared to be normal.

D. Analysis

Lemon Law relief does not apply to all problems that a consumer may have with a vehicle, but only to defects covered by warranty (warrantable defects).²⁵ The Lemon Law does not require a manufacturer to 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. 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." According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).²⁶ 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. Unlike manufacturing defects, issues that do not arise from manufacturing, such as the vehicle's design characteristics (which exist before manufacturing) are not warrantable defects. Design characteristics result from the vehicle's specified design and not from any error during manufacturing.²⁷ In sum, because the warranty only covers manufacturing defects, the Lemon Law does not apply to design characteristics.

1. Fuel Gauge Fluctuation

As previously described in the discussion of applicable law, the Complainant bears the burden of proving every required element by a preponderance. In this case, a preponderance of the evidence does not show that the fuel gauge fluctuations are a warrantable defect. Significantly, the

²⁵ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

²⁶ Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover design issues. *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.").

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

owner's manual contemplates that fuel gauge variances may normally occur. Specifically, the section titled "Fuel Gauge" states:

When the ignition is on, the fuel gauge indicates about how much fuel is left in the tank.

....

When the indicator nears empty, the low fuel light comes on. There still is a little fuel left, but the vehicle should be refueled soon.

Here are four things that some owners ask about. None of these show a problem with the fuel gauge:

- At the service station, the fuel pump shuts off before the gauge reads full.
- It takes a little more or less fuel to fill up than the gauge indicated. For example, the gauge may have indicated the tank was half full, but it actually took a little more or less than half the tank's capacity to fill the tank.
- The gauge moves a little while turning a corner or speeding up.
- The gauge takes a few seconds to stabilize after the ignition is turned on, and goes back to empty when the ignition is turned off.

The testimony indicates that fuel gauge fluctuations may normally occur because of buffering. Buffering smooths out the continual movement of the fuel gauge needle that would otherwise occur due to the fuel moving (sloshing) in the tank. That is, buffering reduces the frequency of the fuel gauge needle's movement. However, as a side-effect, buffering may lead to unexpected jumps/fluctuations in the displayed fuel level since eliminating the smaller intervening changes give the appearance of a sudden larger change in fuel level. Though the Complainant never experienced the same or similar fuel fluctuation issue with her 2015 Suburban, the record contains no evidence showing that the subject vehicle has the same design as the 2015 model. During the test drive, Mr. Bacchus put the vehicle through some sudden weaving maneuvers and hard turns to make the fuel slosh. The needle on the fuel gauge moved minimally. Also, while driving on the freeway, the fuel gauge moved up and down less than 1/8th, possibly about 1/16th. The limited fluctuation during the test drive appears consistent with the fact that the fuel tank was nearly full (about 7/8ths). That is, with the tank 7/8ths full, the fuel level cannot move higher than an additional 1/8th. This is also consistent with the Complainant's testimony that the fluctuations become more significant after the fuel level falls to 3/4ths (the fluctuation increased as the fuel

had more empty space within which to move). The Complainant's testimony and test drive appears consistent with the physical movement of the fuel in the tank, as opposed to some electrical malfunction, causing the fuel gauge fluctuation, that is, with more fuel in the tank, the fuel gauge exhibited little or no fluctuation but the fluctuation increased as the fuel had more empty space within which to move. In sum, the fuel gauge fluctuations appear as likely to be due to the design of the vehicle as a warrantable defect.

2. Fuel Filling

The record reflects that a fuel dispenser may shut-off before a full tank because of pressure in the fuel tank, e.g. from fuel vapor. However, fueling may continue after waiting for the pressure to recede. This comports with Mr. Hairston's testimony that he could fill the vehicle's fuel tank completely after going to a different gas station even though the fuel dispenser shut-off prematurely when initially trying to fill the tank. In conclusion, the fuel filling issue is not a warrantable defect, but a consequence of the fuel dispenser's shut-off mechanism.

3. Entertainment System

a. Radio

The radio issue relates to the speed at which various displays respond to the audio control buttons on the steering wheel. The Complainant found the displays not to change simultaneously with inputs to the steering wheel controls. During the inspection and test drive at the hearing the displays did not exhibit any noticeable delay when pressing the steering wheel control buttons to change the radio station and volume at about half second intervals. However, the Complainant explained that she experienced a delay when changing the stations or volume much faster. She pointed out that other (different model) vehicles did not have the same delay as her vehicle. However, the evidence does not show that the controls/displays in a same model vehicle as the subject vehicle would perform differently as shown here. Accordingly, the evidence does not show that the radio issue is a warrantable defect.

b. Video Displays

The Complainant testified that second row video screen malfunctioned the day before the hearing. Mr. Bacchus noted that the display issues may relate to the MOST bus. Here, the record indicates that the video screen malfunction more likely than not constitutes a warrantable defect.

However, the manufacturer, as opposed to a dealer, did not appear to have an opportunity to repair this issue.

III. Findings of Fact

1. On May 12, 2016, the Complainant, leased a new 2016 Chevrolet Suburban from Friendly Chevrolet, a franchised dealer of the Respondent, in Dallas, Texas. The vehicle had five miles on the odometer at the time of leasing.
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 for service 12 times for the alleged issues, beginning on September 12, 2016, at 8,122 miles and ending on January 15, 2018, at 25,026 miles.
4. On January 28, 2017, the Complainant provided a written notice of defect to the Respondent.
5. On September 13, 2017, the Complainant filed a complaint with the Department alleging that vehicle's fuel tank would not fill completely; the radio and video screens malfunctioned; and the fuel gauge fluctuated.
6. On November 21, 2017, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them 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 January 26, 2018, in Carrollton, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for herself. In addition, James Hairston testified for the Complainant. Kevin Phillips, Business Resource Manager, represented and testified for the Respondent. Ronnie Smith, Service Production Manager of Friendly Chevrolet, and Irfaun Bacchus, Field Service Engineer, also testified for the Respondent. Johnny

Gonzales, Assistant Vice President, represented the Intervenor, ACAR Leasing, Ltd., d/b/a GM Financial Leasing.

8. The vehicle's odometer displayed 25,253 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's entertainment system's second row video screen went blank the day before the hearing.

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 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.
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**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the vehicle's second row video screen 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 § 2001.144.²⁸ 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 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 March 27, 2018



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

²⁸ (1) This Order becomes final if a party does not file a motion for rehearing within 25 days after the date of this Order, or (2) if a party files a motion for rehearing within 25 days after the date of this Order, this Order becomes final when: (A) an order overruling the motion for rehearing is signed, or (B) the Department has not acted on the motion within 55 days after the date of this Order.