

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 18-0179651CAF**

<b>WILLIAM HURT,</b>	§	
<b>Complainant</b>	§	<b>BEFORE THE OFFICE</b>
<b>v.</b>	§	
	§	<b>OF</b>
<b>LEXUS A DIVISION OF TOYOTA</b>	§	
<b>MOTOR SALES, INC.,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

William Hurt (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2015 Lexus GX 460. Complainant asserts that the vehicle is defective because the satellite radio will intermittently lose signal. Lexus a Division of Toyota Motor Sales, Inc. (Respondent) argued that the vehicle does not have a defect and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainant is not eligible for relief.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice 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 was closed on February 13, 2018, in San Antonio, Texas before Hearings Examiner Edward Sandoval. William Hurt, Complainant, represented himself at the hearing. Respondent was represented by Matthew R. Hennessey, Field Technical Specialist.

**II. DISCUSSION**

**A. Applicable Law**

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

<sup>2</sup> *Id.*

repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have provided written notice of the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times 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 comes first, following the date of original delivery to the owner.<sup>6</sup>

## B. Complainant's Evidence and Arguments

Complainant purchased a new 2015 Lexus GX 460 on July 11, 2015, from North Park Lexus of San Antonio (North Park) in San Antonio, Texas.<sup>7</sup> The vehicle's mileage at the time of delivery was 12.<sup>8</sup> Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever comes first.<sup>9</sup> On the date of hearing the vehicle's mileage was 19,264. The vehicle's warranty is still in effect.

Complainant testified that the vehicle's satellite radio was not working correctly. The radio intermittently loses the satellite signal. On those occasions that the loss of signal occurs, there is no sound at all from the satellite radio. Complainant was not sure if there was a similar problem with the radio's FM or AM frequencies. Sometimes the loss of signal occurs in the same geographic area, sometimes not. Complainant is not the primary driver of the vehicle and did not know when the last instance of the radio losing signal occurred.

Complainant stated that his wife is the primary driver of the vehicle. She noticed that the vehicle's satellite radio intermittently would lose signal when she was driving the vehicle in San Antonio. Complainant took the vehicle to North Park for repair for the issue on March 7, 2017.

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<sup>3</sup> *Id.*

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

<sup>7</sup> Complainant Ex. 1, Cash Retail Purchase Order dated July 11, 2015.

<sup>8</sup> Complainant Ex. 2, Odometer Disclosure Statement dated July 11, 2015.

<sup>9</sup> Complainant Ex. 9, Warranty Information from Internet.

North Park's service technician inspected the vehicle and verified the concern.<sup>10</sup> The technician contacted Respondent's technical assistance unit and was informed that Respondent's technicians were aware of the issue and working on a repair for it.<sup>11</sup> No repairs to the vehicle for the satellite radio issue were performed at the time. The vehicle's mileage when Complainant took it to North Park on this occasion was 13,152.<sup>12</sup> Complainant was provided with a loaner vehicle while the vehicle was being inspected. The vehicle was in North Park's possession for two (2) days.

Complainant testified that the satellite radio continued to intermittently lose signal. He took the vehicle to North Park for repair for the issue on May 18, 2017 (the vehicle's mileage was 14,649) and May 30, 2017 (the vehicle's mileage was 14,791).<sup>13,14</sup> Complainant was informed on both occasions that there was no repair for the issue at the time and that Respondent was working on a resolution for the issue. No repairs were performed for the issue on either occasion.

Complainant contacted Respondent's customer service center to complain about the satellite radio issue. He was informed by the customer service representative that there was no repair for the issue at the time.

Complainant mailed a letter to Respondent on September 25, 2017, outlining his dissatisfaction with the vehicle.<sup>15</sup> In addition, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on September 20, 2017.<sup>16</sup>

### C. Respondent's Evidence and Arguments

Matthew Hennessey, Field Technical Specialist, testified for Respondent. Mr. Hennessey has worked with Respondent for 20 years. He's been in his present position for the last seven (7) years. He is an Automotive Service Excellence (ASE) Certified Master Technician.

Mr. Hennessey testified that he inspected and test drove the vehicle on May 30, 2017. The vehicle had been taken to North Park by Complainant for repair for the issue regarding the intermittent loss of the satellite radio signal. Mr. Hennessey test drove the vehicle in the area around the dealership and was able to duplicate the problem. Mr. Hennessey attached a satellite radio antenna directly to the radio and drove in the same area and again lost signal to the radio. He then test drove a vehicle similar to Complainant's in the same area and lost the satellite signal

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<sup>10</sup> Complainant Ex. 3, Repair Order dated March 7, 2017.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Complainant Ex. 4, Repair Order dated May 18, 2017.

<sup>14</sup> Complainant Ex. 5, Repair Order dated May 30, 2017.

<sup>15</sup> Complainant Ex. 7, Letter to Toyota Motor Sales, U.S.A., Inc. dated September 25, 2017.

<sup>16</sup> Complainant Ex. 6, Lemon Law Complaint dated September 20, 2017.

again. Mr. Hennessey verified that there was a problem with the satellite radio losing signal, but stated that it was not due to Respondent's product. He testified that it seems to be a design issue of the radio which is manufactured by a third party. The problem also seems to be affected by external forces, specifically the fact that AT&T has been putting up new cell phone bands in the area which interfere with the frequencies used by the satellite radio system. Mr. Hennessey stated that there may be a repair for the issue, but that it may take two (2) to three (3) years to resolve.

Mr. Hennessey also testified that there does not seem to be an issue with the regular FM or AM frequencies. He tested them while he was driving the vehicle and they operated normally.

#### D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Both parties agree that the satellite radio intermittently loses signal.

Respondent's warranty provides that it "covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Lexus . . . ." According to these terms, the warranty only apply to defects in materials or workmanship (manufacturing defects).<sup>17</sup> 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

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<sup>17</sup> 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.").

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 characteristics of the vehicle's design (which exists before manufacturing) or dealer representations and 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.<sup>18</sup> In sum, because the warranty only covers manufacturing defects, the Lemon Law does not apply to design characteristics or design defects. In addition, the Lemon Law does not apply to issues that are caused by external forces which is the case with this issue.

Since the satellite radio's loss of signal is caused by external forces and/or its actual manufacture by a third party, the hearings examiner must find that there is no defect with the vehicle itself. Therefore, repurchase or replacement relief for Complainant is not warranted.

On the date of hearing, the vehicle's mileage was 19,264 and it remains covered under Respondent's warranty. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

Complainant's request for repurchase or replacement relief is denied.

### III. FINDINGS OF FACT

1. William Hurt (Complainant) purchased a new 2015 Lexus GX 460 on July 11, 2015, from North Park Lexus of San Antonio (North Park) in San Antonio, Texas with mileage of 12 at the time of delivery.
2. The manufacturer of the vehicle, Lexus a Division of Toyota Motor Sales, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 19,264.
4. At the time of hearing the vehicle's warranty was still in effect.
5. Complainant has observed that the vehicle's satellite radio intermittently loses signal.
6. Complainant took the vehicle for repair to Respondent's authorized dealer, North Park, in order to address his concerns regarding the vehicle's satellite radio on the following dates:

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<sup>18</sup> *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

- a. March 7, 2017, at 13,152 miles;
  - b. May 18, 2017, at 14,649 miles; and
  - c. May 30, 2017, at 14,791 miles.
7. North Park's service technicians recreated the issue with the vehicle's satellite radio on all three (3) occasions listed in Findings of Fact #6.
  8. North Park's technicians did not attempt any repairs on the radio as it was determined that the problem was not with the radio, but was interference of the radio signal from an outside source.
  9. On September 20, 2017, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
  10. On November 15, 2017, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and 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.
  11. The hearing in this case convened and the record was closed on February 13, 2018, in San Antonio, Texas before Hearings Examiner Edward Sandoval. William Hurt, Complainant, represented himself at the hearing. Respondent was represented by Matthew R. Hennessey, Field Technical Specialist.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
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. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 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. Complainant bears the burden of proof in this matter.
6. Complainant failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

### ORDER

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

**SIGNED March 6, 2018.**



**EDWARD SANDOVAL  
CHIEF HEARINGS EXAMINER  
OFFICE OF ADMINISTRATIVE HEARINGS  
TEXAS DEPARTMENT OF MOTOR VEHICLES**