



repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have mailed 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 Dodge Ram 1500 pickup truck on December 8, 2016, from AutoNation Chrysler–Dodge–Jeep–Ram (AutoNation) in Spring, Texas, with mileage of 300 at the time of delivery.<sup>7,8</sup> On the date of hearing the vehicle's mileage was 27,016. At this time, Respondent's warranty coverage for the vehicle remains in place, with bumper-to-bumper coverage for three (3) years or 36,000 miles, whichever comes first.<sup>9</sup> In addition, Respondent's powertrain warranty provides coverage for the vehicle's powertrain for five (5) years or 100,000 miles.<sup>10</sup>

Complainant testified that he feels that the vehicle is defective because the traction warning light intermittently illuminates and stays turned on for up to 30 minutes. The vehicle has been in the dealers' possession for repair for approximately 70 days (Complainant received a loaner vehicle for all but two (2) days that his vehicle was in the dealers' possession) and multiple repair visits. He feels that the problem cannot be solved at this point.

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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, Motor Vehicle Retail Installment Sales Contract and Retail Purchase Agreement dated December 8, 2016.

<sup>8</sup> Complainant Ex. 2, Odometer Disclosure Statement dated December 8, 2016.

<sup>9</sup> Complainant Ex. 15, 2015 Ram Truck 1500 Warranty Information, p. 2.

<sup>10</sup> *Id.*

Complainant testified that he first observed the traction warning light illuminate in April of 2017. He took the vehicle to Texan Chrysler–Dodge–Jeep–Ram (Texan) in Humble, Texas for repair on April 24, 2017. Texan’s service technician was unable to discover any trouble codes stored on the vehicle’s computers during the repair visit.<sup>11</sup> The light was not illuminated; so, the technician was unable to perform any repairs to the vehicle at the time. The vehicle’s mileage on this occasion was 8,777.<sup>12</sup> The vehicle was in Texan’s possession for the day during this repair. Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

The traction warning light continued to intermittently light up. Complainant decided to take the vehicle to Texan on May 15, 2017, in order to have the issue addressed. Texan’s technician discovered several diagnostic trouble codes (DTC’s) in the anti-lock brake system (ABS) for different sensors.<sup>13</sup> The technician cleared the DTC’s and test drove the vehicle, but could not recreate the issue with the traction warning light illuminating.<sup>14</sup> No repairs were performed at the time. The vehicle’s mileage on this occasion was 10,148.<sup>15</sup> The vehicle was in Texan’s possession for one (1) day. Complainant was not provided with a loaner vehicle during this repair visit.

Complainant testified that the traction warning light continued to illuminate intermittently. He decided to take the vehicle to AutoNation for repair on September 20, 2017. AutoNation’s technician determined that the vehicle’s battery wiring harness had an internal fault.<sup>16</sup> The technician replaced the vehicle’s ABS module and the battery wiring harness in order to resolve the issue.<sup>17</sup> The vehicle’s mileage on this occasion was 17,337.<sup>18</sup> The vehicle was in the dealer’s possession until November 2, 2017, on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on October 25, 2017, while the vehicle was still being repaired by AutoNation.<sup>19</sup>

Complainant stated that the traction warning light illuminated again after he had driven the vehicle approximately 1,000 miles after the September 2017 repair. Complainant took the vehicle back to AutoNation for repair on November 27, 2017. AutoNation’s service technician observed

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<sup>11</sup> Complainant Ex. 4, Repair Order dated April 24, 2017.

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

<sup>13</sup> Complainant Ex. 5, Repair Order dated May 15, 2017.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Complainant Ex. 6, Repair Order dated September 20, 2017.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Complainant Ex. 13, Lemon Law Complaint dated October 25, 2017.

that the brake booster had developed a fluid buildup.<sup>20</sup> The technician replaced the brake booster to resolve the issue.<sup>21</sup> The vehicle's mileage on this occasion was 18,789.<sup>22</sup> The vehicle was in AutoNation's possession for four (4) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that a few days after getting the vehicle back, the traction warning light illuminated. On December 27, 2017, Complainant wrote a letter to Respondent advising them of the problems he was experiencing and his dissatisfaction with the vehicle.<sup>23</sup>

Complainant took the vehicle to AutoNation for repair for the traction warning light issue on January 8, 2018. AutoNation's technician was unable to duplicate the concern, but did install a "data flight recorder" on the vehicle in an attempt to track what was occurring in the vehicle's computers when the traction light illuminated.<sup>24</sup> The vehicle's mileage on this occasion was 21,694.<sup>25</sup> The vehicle was in AutoNation's possession for repair for twelve (12) days on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

The vehicle's traction warning light continued to illuminate intermittently. On March 26, 2018, Complainant took the vehicle to AutoNation for repair for the issue. AutoNation's service technician determined that the vehicle's vacuum pumps had an internal defect and replaced them in order to resolve the issue with the traction light.<sup>26</sup> The vehicle's mileage on this occasion was 25,880.<sup>27</sup> The vehicle was in AutoNation's possession for five (5) days on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant stated that the vehicle's traction warning light illuminated again on April 5, 2018. Complainant contacted the service advisor at AutoNation, Micaela Barber, about the incident. Since the Lemon Law hearing was scheduled, Ms. Barber informed Complainant that she would investigate to see what could be done. Ms. Barber later contacted Complainant and requested that he take the vehicle to AutoNation for repair for the issue. Complainant took the vehicle to AutoNation on April 19, 2018, as requested. The vehicle was inspected by Respondent's representative during the repair visit. It was determined that the warning light illuminating was being caused by a failed locking tab on some wiring which was allowing the wiring to lose contact periodically.<sup>28</sup> In order to resolve the issue, the vehicle's dash wiring harness was

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<sup>20</sup> Complainant Ex. 7, Repair Order dated November 27, 2017.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Complainant Ex. 11, Letter to FCA US LLC dated December 27, 2017.

<sup>24</sup> Complainant Ex. 8, Repair Order dated January 8, 2018.

<sup>25</sup> *Id.*

<sup>26</sup> Complainant Ex. 9, Repair Order dated March 26, 2018.

<sup>27</sup> *Id.*

<sup>28</sup> Complainant Ex. 10, Repair Order dated April 19, 2018.

replaced.<sup>29</sup> The vehicle's mileage on this occasion was 26,904.<sup>30</sup> The vehicle was in AutoNation's possession until April 23, 2018. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that the traction warning light has not come back on since he picked up the vehicle two (2) days prior to the hearing. Complainant also testified that this was the only issue with which he was concerned. Although the Lemon Law complaint indicated that he had concerns with the vehicle's radio not working and the rear view camera turning on while he was driving, Complainant did not want to pursue those issues.

Complainant also stated that when the traction warning light has illuminated in the past, he did not notice that the vehicle drove any differently. The vehicle's brake warning light has never illuminated during any of the incidents. The vehicle's brakes have always worked. He's never lost control of the vehicle.

### C. Respondent's Evidence and Arguments

Tim Mancini, Technical Advisor, has worked in the automotive industry for the past eleven (11) years. He has five (5) Automotive Service Excellence (ASE) certifications. He has received the highest level of automotive repair training offered by Respondent. In addition, Mr. Mancini has a Bachelor's of Applied Science in automotive technology. He has been working for approximately six and a half (6 ½) years for Respondent, all in his current position.

Mr. Mancini testified that the vehicle's traction control system is like an enhanced version of the ABS. The vehicle has sensors in different locations in the vehicle which can detect wheel slippage. If slippage is detected then the traction control system will apply the vehicle's brakes quickly in a certain order to prevent any further slippage. If the traction control system is not working in a vehicle, it could constitute a safety hazard.

Mr. Mancini stated that he personally inspected the vehicle on two occasions: during the September 20, 2017 repair visit and during the April 19, 2018 repair visit. During the September 20, 2017 repair visit, Mr. Mancini determined that the vehicle's battery harness should be replaced. During the April 19, 2018 repair visit, he determined that a connector retaining lock in the vacuum pressure sensor was broken and that this was causing the traction warning light to illuminate. The issue was intermittent because the wire would connect and disconnect whenever Complainant hit a bump on the road when he was driving the vehicle. Mr. Mancini had the

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

vehicle's dash wiring harness replaced in order to resolve the issue. He feels that the issue was resolved with this repair.

#### 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.

Complainant's Lemon Law complaint indicated that he had three (3) issues with the vehicle: the traction warning light illuminating intermittently, the radio not working, and the rear view camera turning on when he was not backing the vehicle up. Complainant indicated at the time of hearing that he did not wish to pursue the last two (2) issues. So, the only issue before the hearings examiner is the concern regarding the vehicle's traction warning light illuminating.

Complainant purchased the vehicle on December 8, 2016, and presented the vehicle to Respondent's authorized dealers for repair due to the issue with the traction control light illuminating on the following dates: April 24, 2017; May 15, 2017; September 20, 2017; November 27, 2017; January 8, 2018; March 26, 2018; and April 19, 2018. Occupations Code § 2301.603 provides that "a manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's, converter's, or distributor's express warranty." Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer's warranty. If a vehicle has been repaired then no relief can be possible. The Lemon Law requires that in order for a vehicle to be determined to be a "lemon" the "nonconformity continues to exist" after the manufacturer has made repeated repair attempts.<sup>31</sup> In the present case, the evidence reveals that the vehicle has been repaired and that it currently conforms to the manufacturer's warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

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<sup>31</sup> Tex. Occ. Code § 2301.605.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for five (5) years or 100,000 miles. On the date of hearing, the vehicle's mileage was 27,016 and it remains under the warranties. As such, the Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

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

### III. FINDINGS OF FACT

1. Henrik Mikuta (Complainant) purchased a new 2015 Dodge Ram 1500 pickup truck on December 8, 2016, from AutoNation Chrysler-Dodge-Jeep-Ram (AutoNation) in Spring, Texas, with mileage of 300 at the time of delivery.
2. The manufacturer of the vehicle, FCA US LLC (Respondent), issued a bumper-to-bumper warranty for three (3) years or 36,000 miles, whichever occurs first and a separate powertrain warranty for five (5) years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 27,016.
4. At the time of hearing the vehicle's warranties were still in effect.
5. The vehicle's traction warning light illuminates intermittently for no apparent reason.
6. Complainant took the vehicle for repair to Respondent's authorized dealers on the following dates because the traction control light was intermittently illuminating:
  - a. April 24, 2017, at 8,077 miles;
  - b. May 15, 2017, at 10,148 miles;
  - c. September 20, 2017, at 17,337 miles;
  - d. November 27, 2017, 18,789 miles;
  - e. January 8, 2018, at 21,694 miles; and
  - f. March 26, 2018, at 25,088 miles.
7. On April 24, 2017, Texan Chrysler-Dodge-Jeep-Ram's (Texan) service technician indicated to Complainant that there were no stored trouble codes in the vehicle's computers and that the traction light was not illuminated and, as such, he could not perform any repair to the vehicle for the issue.

8. On May 15, 2017, Texan's technician discovered some stored trouble codes which he cleared, but then could not recreate the problem with the traction light illuminating. No repairs were performed at the time.
9. On September 20, 2017, AutoNation's service technician replaced the vehicle's anti-lock braking system (ABS) module and the battery harness in order to address the concern with the traction warning light illuminating.
10. On October 25, 2017, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. On November 27, 2017, AutoNation's service technician replaced the vehicle's brake booster because it had developed a fluid buildup.
12. On January 8, 2018, AutoNation's service technician was unable to recreate the problem with the vehicle's traction warning light illuminating; so, he installed a data flight recorder in the vehicle to track any trouble codes that might be created.
13. On March 26, 2018, AutoNation's service technician determined that the vehicle's vacuum pumps had an internal defect and replaced them in order to address the concern with the traction warning light illuminating.
14. Complainant took the vehicle to AutoNation for repair on April 19, 2018, pursuant to a request from AutoNation's service advisor.
15. On April 19, 2018, Respondent's technical advisor, Tim Mancini, determined that a connector retaining lock containing a wire from the vehicle's vacuum pressure sensor was broken and was causing the traction warning light to illuminate intermittently.
16. During the April 19, 2018 repair visit, Mr. Mancini had the vehicle's dash harness replaced in order to resolve the issue with the traction warning light.
17. The vehicle has been repaired and the vehicle's traction warning light is no longer illuminating.
18. On February 12, 2018, 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.

19. The hearing in this case convened and the record was closed on April 25, 2018, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant, Henrik Mikuta, represented himself at the hearing. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Tim Mancini, Technical Advisor, was present and testified for Respondent.

#### 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 repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED** May 2, 2018.

A handwritten signature in black ink, appearing to read 'Edward Sandoval', is written over a horizontal line.

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