

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 18-0180948 CAF**

**COURTNEY HUMAN,  
Complainant**

v.

**FCA US LLC,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Courtney Human (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) for alleged warrantable defects in her vehicle manufactured by FCA US LLC (Respondent). A preponderance of the evidence does not show that the subject vehicle qualifies for repurchase/replacement or warranty repair.

**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 April 27, 2018, in Carrollton, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for herself. Quinton Hernandez testified for the Complainant. Jan Kershaw, Early Resolution Case Manager, represented and testified for the Respondent. Bob Weir, Technical Advisor, 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 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>

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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 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).

<sup>15</sup> TEX. OCC. CODE § 2301.606(d)(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” 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 every required fact is more likely than not true.<sup>19</sup> 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.<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 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>

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<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).

<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).

### A. Complainant's Evidence and Arguments

On December 12, 2015, the Complainant, purchased a new 2015 Chrysler 200 from Bossier Chrysler Dodge, a franchised dealer of the Respondent, in Hillsboro, Texas. The vehicle had 1,110 miles on the odometer at the time of purchase. The vehicle's limited warranty provides basic coverage for three years or 36,000 miles, whichever occurs first, and powertrain coverage for five years or 100,000 miles, whichever occurs first. On October 23, 2017, the Complainant, provided a written notice of defect to the Respondent. On November 7, 2017, the Complainant filed a complaint with the Department alleging that the transmission shifted hard; the engine stalled; the vehicle self-accelerated; and the power (electricity) surged. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

<b>Date</b>	<b>Miles</b>	<b>Issue</b>
March 3, 2016	5,312	Transmission shifting hard
August 22, 2016	18,017	"Transmission service required" message
August 30, 2016	18,381	Transmission shifting hard
August 16, 2017	39,490	Gears get stuck
October 2, 2017	41,781	Shudders and shuts off, hard shifts, sulfur smell, will not start
February 27, 2018	50,0345	Hard shift, intermittent stutters/surges, sulfur smell

The dealer originally marked the "USED" box when identifying the vehicle in the installment sales contract but crossed through the "USED" designation and subsequently marked the "NEW" box. The sales agreement included a "DEMO DISCLOSURE" stating that "Buyer acknowledges and understands that the vehicle being purchased has been used by BOSSIER as a demonstrator." Additionally, the dealer marked the "USED" box on the sales agreement. Mr. Hernandez stated that there was confusion as to whether the vehicle was new or used but they were under the impression that the vehicle was new.

The Complainant testified she first noticed the hard transmission shifts about a month and half before she first took the vehicle in on March 3, 2016. She explained that the transmission behaved like it was stuck: from the feeder road to the freeway, the vehicle will not go or it will jerk when shifting gears. Also, when shifting from reverse to drive, the vehicle occasionally requires shifting to park, turning the vehicle off, and shifting into drive. When turning the gear selector knob, the transmission switches gears and will jerk forward and accelerate a little bit. In one instance the vehicle hit her house – the garage. She affirmed that the transmission issue still

occurred, explaining that when turning the gear selector knob and releasing the gas pedal, the vehicle felt like it was jerking, slowing, but it did not actually stop.

The Complainant stated that she first experienced the stalling issue around the same time as the transmission replacement. She clarified that issue occurred before the transmission replacement. She elaborated that the stalling occurred randomly, maybe less frequently now. Mr. Hernandez explained that the stalling did not happen every time but indicators would come on. He added that the vehicle had not stalled like the last time the wiring harness was changed. The Complainant stated that the vehicle would die. Mr. Hernandez stated that the vehicle has you put it in park. He noted that the transmission light came on intermittently. Mr. Hernandez stated that he last experienced the stalling issue before Christmas (2017). The Complainant added the stalling occurred in early December (2017).

In describing the self-acceleration issue, the Complaint stated that when shifting into drive, the vehicle will “kind of go” without a foot on the gas pedal. When the hearing examiner asked if the vehicle would accelerate to 30 mph, the Complainant answered that she did not know but she would try to stop the vehicle before it goes. Mr. Hernandez added that pushing on the gas pedal, the vehicle would go nowhere. The Complainant explained that the condition was like a delay – you put your foot down and the vehicle does not go anywhere and let off and it goes. She first noticed this issue on August 2017. She testified that the issue was ongoing and most repairs felt temporary. She had not noticed the self-acceleration since probably December 2017.

The Complainant affirmed the existence of a burning electrical smell associated with the power (electrical) surge issue. She noticed the large navigation display shutting down and glitches and the vehicle would struggle to start. In conjunction with the electrical issue, the vehicle would exhibit the smell, the screen would flash and have lines appear, and the car would shut down. She testified the electrical issue last occurred about a month or two ago. She explained that Mr. Hernandez noticed this when driving her to class. Mr. Hernandez elaborated that the screen went black, lights dimmed, and the vehicle would lose power and pick up and slow down by itself. This happened after the visit to McKinney Dodge, but the vehicle has not done this after that day, maybe one time after. On the way to the hearing, Mr. Hernandez noticed some sticky shifting but did not know if it related to the battery or not.

On cross-examination, Mr. Hernandez testified he first noticed the electrical concerns right before the battery discharge – the Complainant elaborated: June or July. Mr. Hernandez believed the vehicle was taken for service in August. That was when he noticed the smell and the battery had problems, but he could not remember the dates. When asked if she said anything to the dealer about the electrical issue, the Complainant answered no. Mr. Hernandez testified that he believed he said something to the dealership. The Complainant added that the dealership did not write it down. When asked if the dealership explained that the vehicle was not covered under warranty, Mr. Hernandez explained not until after. When asked if she knew when the vehicle reached 24,000 miles, the Complainant answered that she did not. When asked about any stalling since December, Mr. Hernandez testified that the vehicle did not stall, but did hesitate and surge, though not as often. Mr. Hernandez commented that every time the dealer repaired the vehicle, it worked fine for a while but would revert back.

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

Mr. Weir explained that the driver cannot get ahead of the transmission. The harness repair was a recall. The vehicle had the proper level transmission but not the software to go with it. However, this did not address what happens when a driver gets on (the accelerator) too quickly. When a driver slows down but gets back on the accelerator too quickly, it will “bang.” A voltage problem would have set a code. He did not see a problem with the way the vehicle ran. He could not get the vehicle to stall. Regarding the adaptive transmission, Mr. Weir explained that they do a quick learn which blows out all the bad memory of the driver and the transmission but then must put (the driver's habits) back in. The quick learn lasts about two weeks. Mr. Hernandez stating that the vehicle operates satisfactorily for a couple of weeks after repair indicates something other than a transmission problem. The hearings examiner inquired if having multiple drivers would affect a learning (adaptive) transmission and Mr. Weir answered, yes.

### **C. Inspection**

At the hearing, the vehicle had 52,249 miles on the odometer upon inspection before the test drive. The vehicle was initially driven in stop and go traffic on the freeway. The vehicle generally shifted smoothly during the test drive. The Complainant suggested driving in the parking lot, noting that rough shifts occurred in association with shifting between park, reverse, and drive.

To try to duplicate the concern, while in the parking lot, the hearings examiner pressed on the accelerator pedal while the transmission was still shifting gears, causing a hard shift. The hearings examiner asked the Complainant if this hard shift was the concern and she affirmed it was. The vehicle also briefly increased rpms without accelerating.

## D. Analysis

### 1. New Versus Used Discrepancy

The Texas Occupations Code, which governs the sale of motor vehicles, defines “new motor vehicle” as “a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.”<sup>24</sup> Accordingly, whether a dealer may have used a vehicle as a demonstrator does not make the vehicle “used” under the law. Instead, a vehicle becomes “used” after its first sale to a retail customer. Here, the dealer appears to have mistakenly identified the vehicle as used on the sales agreement because the dealer used the vehicle as a demonstrator. On the other hand, the dealer corrected the installment sale contract to identify the vehicle as “new.” Nothing in the record indicates a retail sale prior to the sale to the Complainant. In sum, the Complainant purchased the subject vehicle new.

### 2. Warrantable (Manufacturing) Defects

Lemon Law relief does not apply to all issues that a consumer may have with a vehicle but only to defects covered by warranty (warrantable defects).<sup>25</sup> 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. In part, the warranty generally states that: “The Basic Limited Warranty covers the cost of all parts and labor needed to repair any item on your vehicle when it left the manufacturing plant that is defective in material, workmanship or factory preparation.” According to these terms, the warranty only applies to defects in materials or workmanship, or factory preparation (manufacturing defects).<sup>26</sup> A manufacturing defect is an

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<sup>24</sup> TEX. OCC. CODE § 2301.002.

<sup>25</sup> TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204

<sup>26</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

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 characteristics of the vehicle's design (which exists before manufacturing). Design characteristics result from the vehicle's specified design and not from any error during manufacturing.<sup>27</sup> In sum, the warranty only covers manufacturing defects and the Lemon Law does not apply to design characteristics or design defects. Consequently, even though an issue may be undesirable or problematic, the Lemon Law provides no relief unless the issue constitutes a manufacturing defect.

### 3. Basic Warranty Term

The vehicle's basic warranty coverage expired at the earlier of three years or 36,000 miles after the Complainant took delivery of the vehicle. The Complainant purchased the vehicle on December 12, 2015, at 1,110 miles, so the basic coverage ended at 37,110 miles.

### 4. Lemon Law Filing Deadline

The Complainant has the burden of proving every required element by a preponderance of the evidence. One of the requirements for repurchase or replacement under the Lemon Law is that the complaint must have been 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 vehicle's delivery. In this case, the Complainant took delivery of the vehicle on December 12, 2015, at 1,110 miles. Accordingly, the complaint must have been filed no later than the earlier of June 12, 2018, or six months after the vehicle's odometer reached 25,110 miles. Since the complaint was filed by June 12, 2018, the relevant question is whether the complaint was filed within six months after the vehicle's odometer reached 25,110 miles. Based on the vehicle's repair history, the vehicle had 18,381 miles on August 30, 2016, and 39,490 miles at August 16, 2017, a total of 21,109 miles

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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> 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).

over 351 days, for an average of slightly more than 60 miles per day.<sup>28</sup> Assuming a linear relationship, the vehicle would have had 25,057 miles on December 19, 2016 and 25,117 miles on December 20, 2016 (24,007 miles after delivery). Using the average mileage, the complaint should have been filed about June 19, 2017 (six months after December 19, 2016). The complaint was filed on November 7, 2017, at 41,781 miles. More importantly, the Complainant testified that she did not know when 24,000 miles had passed and therefore could not prove the complaint was timely filed. Accordingly, a preponderance of the evidence does not show that the vehicle qualifies for repurchase or replacement.

## **5. Specific Complaint Issues**

### **a. Hard Transmission Shifts**

The evidence reflects that the hard transmission shifts did not result from any manufacturing defects. Instead, these issues resulted from a combination of the design of the vehicle in conjunction with the drivers' inputs. Testimony showed that, when servicing the vehicle, the dealer would perform a quick learn, essentially resetting the transmission's memory (transmission control module), which lasts about two weeks. Significantly, Mr. Hernandez testified every time the dealer serviced the vehicle, it would operate fine for a while but would revert back. The fact that the vehicle performed normally for a couple of weeks after service implicates an issue other than the vehicle itself. The transmission would operate normally after clearing it of all the learned driver inputs, but would revert to the hard shifting after the "quick learn" (i.e., after relearning the drivers' tendencies) In other words, the drivers' inputs affected the performance of the transmission. Mr. Weir explained that the driver could not "get ahead" of the transmission or else the transmission would react harshly. Essentially, if the driver drives in a way the transmission is not "expecting," the transmission will react harshly. The test drive demonstrated this when the hearing examiner accelerated before the transmission finished shifting gears, resulting in a rough shift, which the Complainant identified as the concern, and a brief increase in rpms before finally accelerating. Moreover, having more than one driver affects the way the vehicle's adaptive transmission learns, further affecting the performance of the transmission. In sum, the hard shifting is not a manufacturing defect but a result of the transmission's design in conjunction with the drivers' inputs, which does not qualify for any relief.

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<sup>28</sup> Approximately 60.140 miles per day.

**b. Stalling**

As explained in the discussion of applicable law, to qualify for relief, the defect must continue to exist after repair. However, the Complainant's testimony shows that the vehicle did not continue to stall after the relevant final repair. Consequently, the stalling issue does not support granting of relief.

**c. Sudden Acceleration**

The Complainant testified that last instance of the sudden acceleration probably occurred in December of 2017, before the relevant repairs. Accordingly, the evidence does not reflect that this issue continues to exist after repairs. Moreover, the Complainant and Mr. Hernandez both described the problem as a delayed acceleration occurring after pressing the accelerator. The concern described here appears consistent with problems arising from the adaptive transmission reacting to unexpected driver inputs as with the hard shifting, which constitutes a design issue and not a manufacturing defect.

**d. Power (Electrical) Surges**

Testimony by the Complainant and Mr. Hernandez showed that they first took the vehicle to a dealer for the electrical issue on August 16, 2017, at 39,490. However, the relevant warranty coverage previously expired at 37,110 miles. Consequently, the power/electrical issue does not qualify for any relief.

**III. Findings of Fact**

1. On December 12, 2015, the Complainant, purchased a new 2015 Chrysler 200 from Bossier Chrysler Dodge, a franchised dealer of the Respondent, in Hillsboro, Texas. The vehicle had 1,110 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides basic coverage for three years or 36,000 miles, whichever occurs first, and powertrain coverage for five years or 100,000 miles, whichever occurs first.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
March 3, 2016	5,312	Transmission shifting hard
August 22, 2016	18,017	"Transmission service required" message
August 30, 2016	18,381	Transmission shifting hard
August 16, 2017	39,490	Gears get stuck
October 2, 2017	41,781	Shudders and shuts off, hard shifts, sulfur smell, will not start
February 27, 2018	50,0345	Hard shift, intermittent stutters/surges, sulfur smell

4. On October 23, 2017, the Complainant, provided a written notice of defect to the Respondent.
5. On November 7, 2017, the Complainant filed a complaint with the Department alleging that the transmission shifted hard; the engine stalled; the vehicle self-accelerated; and the power (electricity) surged.
6. On February 7, 2018, 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 April 27, 2018, in Carrollton, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for herself. Quinton Hernandez testified for the Complainant. Jan Kershaw, Early Resolution Case Manager, represented and testified for the Respondent. Bob Weir, Technical Advisor, testified for the Respondent.
8. The vehicle's odometer displayed 52,249 miles at the time of the hearing.
9. The vehicle's basic warranty coverage expired at 37,110 miles. The vehicle's powertrain warranty was in effect at the time of the hearing.
10. During the test drive at the hearing, the vehicle exhibited a rough shift when pressing accelerator while the transmission was changing gears. The Complainant identified this hard shift as a concern.

11. The vehicle has an adaptive transmission that “learns” the driver’s driving behavior. Having multiple drivers affects the transmission’s learning of driving behavior. The transmission may react harshly to “unexpected” driver inputs.
12. The electrical issues occurred after the basic warranty coverage expired.
13. The stalling and sudden acceleration issues did not continue to occur after repairs.

#### **IV. Conclusions of Law**

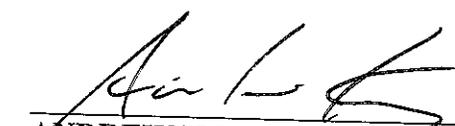
1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.
2. A hearings examiner of the Department’s Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the 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 defect covered by the Respondent’s warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
7. The Complainant’s vehicle does not qualify for replacement or repurchase. The Complainant did not timely file the complaint for repurchase or replacement relief. The proceeding must have been commenced not later than six months after the earliest of: (1) the expiration date of the express warranty term; or (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner. TEX. OCC. CODE § 2301.606(d).

8. The Complainant's vehicle does not qualify for warranty repair. The Complainant did not prove 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**.

**SIGNED June 26, 2018**

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