

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 18-0186436 CAF**

<b>MEGAN and JASPER KOEHN,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainants</b>	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>JAGUAR LAND ROVER NORTH</b>	§	
<b>AMERICA LLC,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Megan and Jasper Koehn (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2017 Range Rover Sport. Complainants assert that the vehicle is defective because the engine suspension default warning light will intermittently illuminate and because the vehicle’s instrumentation panel, navigation/media screen will intermittently go black. Jaguar Land Rover North America LLC (Respondent) argued that the vehicle does not have a defect and that no relief is warranted. The hearings examiner concludes that the vehicle has been repaired and does not have an existing warrantable defect and Complainants are 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 August 15, 2018, in Austin, Texas before Hearings Examiner Edward Sandoval. Megan Koehn, co-Complainant, appeared and represented Complainants at the hearing. Respondent was represented by John Chambless, attorney with Thompson, Coe, Cousins and Irons, LLP. Jonathan Fournet, Regional Technical Manager, appeared and testified for Respondent.

**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: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.<sup>6</sup>

## B. Complainant's Evidence and Arguments

Complainants purchased a new 2017 Range Rover Sport on February 22, 2017, from Land Rover San Antonio in San Antonio, Texas.<sup>7</sup> The vehicle's mileage at the time of delivery was 80.<sup>8</sup> Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for four (4) years or 50,000 miles from the date of purchase, whichever comes first.<sup>9</sup> On the date of hearing the vehicle's mileage was 25,685. The vehicle's warranty was still in effect at the time of hearing.

Megan Koehn, co-Complainant, testified that she is the primary driver of the vehicle. She stated that a few months after purchasing the vehicle, she observed that the vehicle's suspension default warning light illuminated and she began to hear a crunching noise from the vehicle when making a turn. The crunching noise was particularly bad when making a right turn in the vehicle. Ms. Koehn took the vehicle to Land Rover San Antonio for repair for the issue on May 23, 2017. Ms. Koehn was informed by the dealer's representative that the warning light illuminating and the crunching noise were occurring because of a problem with a hydraulic hose which was replaced. The vehicle was in the dealer's possession until May 30, 2017. Complainants received a loaner

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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, Retail Order for a New Motor Vehicle dated February 22, 2017.

<sup>8</sup> *Id.*

<sup>9</sup> Complainant Ex. 8, Email from Rhonda Flores Regarding Warranty Information dated August 15, 2018.

vehicle while their vehicle was being repaired. Complainants were not provided with a copy of the repair order for this repair. Ms. Koehn did not know the vehicle's mileage at the time of the repair.

Ms. Koehn testified that the vehicle seemed to be fine after the repair. However, the warning light began to illuminate again and the crunching noise returned after a few months. In addition, the vehicle's instrument panel began intermittently going black. Ms. Koehn stated that as a result of the instrument panel going black, the vehicle's radio, navigation system, and speedometer would not work. Complainants took the vehicle to Land Rover Austin for repair for the issue on December 8, 2017. The dealer's service technician verified that the vehicle's "suspension fault stop engine" warning was displayed and determined that there was a leak in the vehicle's dynamic stability control (DSC) pressure hose.<sup>10</sup> The technician replaced two hoses and performed an auto bleed procedure in order to address the issue.<sup>11</sup> In addition, the technician performed a software update to the vehicle in order to address the issue of the instrument panel going black.<sup>12</sup> The vehicle's mileage when Complainants took it to the dealer on this occasion was 13,884.<sup>13</sup> The vehicle was in the dealer's possession for ten (10) days.<sup>14</sup> Complainants received a loaner vehicle (a minivan) while their vehicle was being repaired.

Ms. Koehn testified that the vehicle operated fine for a few months before she began to notice the suspension fault warning light illuminating and a warning message appearing on the display screen indicating that she should not drive the vehicle over 35 mph. In addition, the vehicle's navigation/media screen would go black on occasion. Complainants took the vehicle to Land Rover Austin for repair for the issues on February 1, 2018. The dealer's service technician performed a recall to the vehicle to address the issue of the warning message indicating not to drive over 35 mph.<sup>15</sup> The recall required that the vehicle's chassis module be given a software update to address the issue.<sup>16</sup> The service technician indicated that the camera display screen stated that "camera system not available – consult your dealer."<sup>17</sup> The technician checked the system, but found no "hard faults" at the time.<sup>18</sup> The vehicle's mileage at the time was 16,171.<sup>19</sup> The vehicle was in the dealer's possession for about 25 days. Complainants were provided a rental vehicle (an Altima) while their vehicle was being repaired.

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<sup>10</sup> Complainant Ex. 4, Repair Order dated December 8, 2017.

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

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

<sup>13</sup> *Id.*

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

<sup>15</sup> Complainant Ex. 5, Repair Order dated February 1, 2018.

<sup>16</sup> *Id.*

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

<sup>18</sup> *Id.* The repair order did not indicate what repairs were performed to the camera system at the time, although the order did state that the technician road tested the vehicle "after repairs."

<sup>19</sup> *Id.*

The vehicle operated fine when it was returned to Complainants. However, within a month Ms. Koehn noticed that the vehicle's suspension fault warning was intermittently illuminating and that the vehicle's navigation/media screen intermittently would go black. Complainants took the vehicle to Austin Land Rover for repair for the issues on March 28, 2018. The dealer's service technician reconfigured the vehicle's air suspension module in order to address the issue of the suspension fault warning light illuminating.<sup>20</sup> The technician also updated the vehicle's incontrol pro and audio module to address the issue of the navigation screen going black.<sup>21</sup> The vehicle's mileage on this occasion was 19,452.<sup>22</sup> The vehicle was in the dealer's possession for six (6) days. Complainants were provided with a loaner vehicle (a Jaguar sedan) while their vehicle was being repaired.

Ms. Koehn testified that the vehicle's GPS screen and speedometer went black on April 18, 2018. She contacted the dealer to see if they had a loaner vehicle available so she could take her vehicle for repair. The dealer representative informed Ms. Koehn that no loaners were available and that the software update needed to resolve the issue was not yet available from the vehicle manufacturer.

Ms. Koehn sent an email to one of Respondent's representatives on April 16, 2018, informing them that she was going to proceed with a complaint under the Texas Lemon Law.<sup>23</sup> Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on May 4, 2018.<sup>24</sup>

Ms. Koehn testified that the vehicle's suspension fault warning light has not illuminated since March of 2018. She has not experienced any problems with the vehicle's speedometer going black since prior to July 24, 2018. The last time she experienced a problem with the vehicle's navigation/media screen was on July 20, 2018. Ms. Koehn indicated that she has had issues starting the vehicle. However, this issue was not included on the original Lemon Law complaint.

During cross-examination, Ms. Koehn stated that when the vehicle's suspension fault warning light illuminated she had heard a crunching noise from the vehicle's suspension. She stated that she was scared to take a sharp turn in the vehicle because she felt that the steering was too tight. The last time she heard the crunching noise was prior to the December 8, 2017 repair visit.

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<sup>20</sup> Complainant Ex. 6, Repair Order dated March 28, 2018

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

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

<sup>23</sup> Complainant Ex. 7, Email to Alfred Tillerson dated April 16, 2018.

<sup>24</sup> Complainant Ex. 3, Lemon Law Complaint dated May 4, 2018. Although the form was signed by Complainants on April 20, 2018, it was not received by the Department until May 4, 2018, which is the effective date of the complaint.

During this repair visit, Ms. Koehn also informed the dealer's service advisor that the vehicle's instrument cluster would intermittently go blank. The dealer's service technician performed a software update to resolve the issue.<sup>25</sup>

Ms. Koehn also stated that the February 1, 2018 repair was performed because a warning light illuminated indicating that there was a suspension fault and for her not to drive the vehicle 35 mph. The instrument screen would also go black on occasion and she had received a message that stated that the camera system was not available.

On March 28, 2018, Ms. Koehn took the vehicle for repair because the vehicle's air suspension warning light illuminated, the instrument screen was going black intermittently, and the vehicle was sometimes hard to start. Prior to taking the vehicle to the dealer for repair on this occasion, Ms. Koehn did not hear the crunching noise that she had been hearing prior to the December 8, 2017 repair.

### C. Respondent's Evidence and Arguments

Jonathan Fournet, Regional Technical Manager, testified for Respondent. Mr. Fournet has worked in the automotive industry for 17 years. He has worked as independent technician and for Cadillac as a light duty mechanic. Mr. Fournet did receive Automotive Service Excellence (ASE) Certified Master Technician status, but has allowed the certification to lapse. He's worked for Respondent for the past ten (10) years. Mr. Fournet has been in his present position for one and a half (1 ½) years.

Mr. Fournet testified that he performed a final repair attempt on the vehicle on July 23, 2018, at Land Rover Austin, at the behest of Respondent's legal team. During the vehicle inspection, Mr. Fournet noticed some minor damage to the vehicle's bumper and a windshield crack. Mr. Fournet stated that everything on the vehicle seemed to be working at the time. He checked the vehicle for leaks and did not find any. He also checked the vehicle's brakes and had new rear brake pads and the brake sensor installed on the vehicle. The brake pads and sensor were replaced under Respondent's goodwill.

Mr. Fournet stated that he did find any diagnostic trouble codes (DTC's) for the vehicle's instrument cluster and media screen stored on the vehicle's computers. He determined that the module controlling these systems had failed. As a result, he installed a new infotainment master

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<sup>25</sup> Complainant Ex. 4, Repair Order dated December 8, 2017.

control (IMC) module on the vehicle to resolve the issue regarding the navigation/media screen going black.<sup>26</sup>

Mr. Fournet also looked into the vehicle's suspension issues. He found a stored DTC on the vehicle's computers for the suspension. He determined that there was a voltage drop on the vehicle's air suspension compressor temperature sensor.<sup>27</sup> Mr. Fournet had the dealer's technicians replace the vehicle's suspension compressor and wiring harness in order to resolve the issue.<sup>28</sup> The vehicle was in the dealer's possession for about two (2) weeks because the replacement parts had to be ordered and shipped to the dealer. The vehicle's mileage at the time of the final repair attempt was 25,337.<sup>29</sup>

Mr. Fournet testified that Ms. Koehn heard a crunching noise from the vehicle in 2017 because air was getting in the suspension's hydraulic lines. This can create the noise that she was hearing. He also stated that he feels that the vehicle's suspension and the navigation/media screens have been repaired and that there is no problem with them now.

#### **D. Analysis**

Under the Lemon Law, Complainants bear the burden of proof to establish by a preponderance of evidence that a defect or condition exists which creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainants 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, Complainants are 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, Complainants are entitled to have the vehicle repurchased or replaced.

##### **1. Suspension Fault Warning Light Illuminating**

The first issue to be addressed is the issue of the vehicle's suspension fault warning light illuminating. The evidence presented at the hearing did not substantiate that the issue currently exists. The suspension fault warning light last illuminated prior to the March 28, 2018 repair according to Ms. Koehn's testimony. There was a subsequent repair for the issue on July 24, 2018, but there was no evidence that the warning light had illuminated prior to this repair. The

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<sup>26</sup> Complainant Ex. 11, Repair Order dated July 23, 2018.

<sup>27</sup> Respondent Ex. 1, Field Inspection Report.

<sup>28</sup> *Id.*

<sup>29</sup> Complainant Ex. 11, Repair Order dated July 23, 2018.

evidence indicates that the issue seems to have been repaired. As such, Complainants have not met the burden of proof to establish that this issue establishes sufficient grounds to order repurchase or replacement of the vehicle.

## **2. Instrument Panel, Navigation/Media Screen**

The second issue has to do with the vehicle's instrumentation panel, navigation/media screen intermittently going black. The evidence indicates that this issue has also been repaired. Ms. Koehn testified that she has not had any issues with the screen or the instrument panel since prior to the final repair attempt on July 24, 2018. The issue regarding the instrument panel navigation/media screen going black has been repaired and the defect no longer exists. As such, Complainants have not met the burden of proof to establish that this issue establishes sufficient grounds to order repurchase or replacement of the vehicle.

On the date of hearing, the vehicle's mileage was 25,685 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.

Complainants' request for repurchase or replacement relief is denied.

## **III. FINDINGS OF FACT**

1. Megan and Jasper Koehn (Complainants) purchased a new 2017 Range Rover Sport on February 22, 2017, from Land Rover San Antonio in San Antonio, Texas with mileage of 80 at the time of delivery.
2. The manufacturer of the vehicle, Jaguar Land Rover North America LLC (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 25,685.
4. At the time of hearing the vehicle's warranty was still in effect.
5. Complainants feel that the vehicle is defective because the engine suspension default warning light will intermittently illuminate and because the vehicle's instrumentation panel and navigation/media screen will intermittently go black.
6. Megan Koehn is the primary driver of the vehicle.

7. Ms. Koehn has experienced several instances where the vehicle's suspension fault warning light has illuminated and where the navigation/media screen and instrument panel have gone black.
8. Complainants took the vehicle for repair for the issues to Respondent's authorized dealers on the following dates:
  - a. May 23, 2017, at unknown miles;
  - b. December 8, 2017, at 13,884 miles;
  - c. February 1, 2018, at 16,171 miles; and
  - d. March 28, 2018, at 19,452 miles.
9. On May 23, 2017, Land Rover San Antonio's service technician replaced a hydraulic hose in order to resolve the issue of the suspension fault warning light illuminating.
10. On December 8, 2017, Land Rover Austin's technicians replaced two (2) pressure hoses to resolve the issue of the suspension fault warning light illuminating and performed a software update to the vehicle's virtual instrument cluster to resolve the issue of the instrument cluster going black.
11. On December 8, 2017, Land Rover Austin's technicians performed a software update to the vehicle to address the issue of the instrument panel going black.
12. On February 1, 2018, Land Rover Austin's technicians performed a recall to the vehicle which required that an update be performed to the vehicle's chassis module to address the issue of the suspension fault warning light illuminating and the warning to not drive the vehicle over 35 mph.
13. On February 1, 2018, Land Rover Austin's technicians also investigated as to why a warning had illuminated indicating that the camera system was not available, but could not find any hard faults on the vehicle's computer system.
14. On March 28, 2018, Land Rover Austin's technicians reconfigured the vehicle's air suspension module in order to resolve the issue of the air suspension fault warning light illuminating.
15. Also on March 28, 2018, Land Rover Austin's technicians performed an update to the navigation/media control module in order to address the issue of the navigation screen going black.



16. On May 4, 2018, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
17. On July 24, 2018, Respondent's technician performed a final repair attempt on the vehicle at Land Rover Austin.
18. During the final repair attempt, Respondent's technician installed a new infotainment master control (IMC) module on the vehicle to resolve the issue of the navigation/media screen and the instrument cluster going black.
19. Also during the final repair attempt, Respondent's technician replaced the vehicle's suspension compressor and wiring harness in order to resolve the issue with the air suspension fault warning light illuminating.
20. The air suspension warning light last illuminated prior to the March 28, 2018 repair.
21. The vehicle's navigation/media screen and instrument cluster have not had any issues since the final repair attempt performed on July 24, 2018.
22. On May 25, 2018, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainants 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.
23. The hearing in this case convened and the record was closed on August 15, 2018, in Austin, Texas before Hearings Examiner Edward Sandoval. Megan Koehn, co-Complainant, appeared and represented Complainants at the hearing. Respondent was represented by John Chambless, attorney with Thompson, Coe, Cousins and Irons, LLP. Jonathan Fournet, Regional Technical Manager, appeared 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. Complainants 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. Complainants bear the burden of proof in this matter.
  6. Complainants 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. Complainants' 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 Complainants' petition for replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED September 17, 2018.**



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