



same day. Korinthia Miller, attorney, represented the Complainant. The Complainant testified for himself. Kevin Phillips, business resource manager, represented the Respondent. Bruce Morris, field service engineer, testified for the Respondent. Carrie Mathies represented the Intervenor, ACAR Leasing, Ltd., d/b/a GM Financial Leasing.

## II. Discussion

### A. Applicable Law

#### 1. Repurchase/Replacement Relief Requirements

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 currently 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 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>

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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).

**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>

**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:

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

<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).

[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:

[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 or someone on behalf of the owner, or the Department has provided written notice of the alleged defect or nonconformity

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<sup>8</sup> TEX. OCC. CODE § 2301.605(a)(2).

<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.”).

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>

## 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 of the evidence. That is, the Complainant must present sufficient evidence to show that every required fact more likely than not exists.<sup>19</sup> Accordingly, the Complainant cannot prevail where the existence of any required fact appears equally likely or unlikely.

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<sup>13</sup> TEX. OCC. CODE § 2301.606(c)(1). Also, 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department's notice of the complaint to the Respondent may satisfy the requirement to provide notice of the defect or nonconformity to the Respondent.

<sup>14</sup> A repair visit to a dealer satisfies the manufacturer's “opportunity to cure” requirement when the manufacturer allows the dealer to attempt repair after written notice to the manufacturer, i.e., the manufacturer may delegate its opportunity to repair to the dealer. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 226 (Tex. App.—Austin 2012); Texas Department of Transportation, *Kennemer v. Dutchman Manufacturing, Inc.*, MVD Cause No. 09-0091 CAF (Motor Vehicle Division Sept. 25, 2009) (Final Order Granting Chapter 2301, Subchapter M Relief).

<sup>15</sup> TEX. OCC. CODE § 2301.606(d)(2).

<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).

#### 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 must 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>

#### 5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainant for reasonable incidental expenses resulting from the vehicle’s loss of use because of the defect.<sup>24</sup> Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle’s failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts or similar written documents).<sup>25</sup>

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<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).

<sup>24</sup> TEX. OCC. CODE § 2301.604.

<sup>25</sup> 43 TEX. ADMIN. CODE § 215.209(a).

### B. Summary of Complainant's Evidence and Arguments

On May 28, 2018, the Complainant, leased a new 2018 Cadillac CTS from Tom Peacock Cadillac, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had 16 miles on the odometer at the time of lease. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first. On August 23, 2018, the Complainant mailed a written notice of defect to the Respondent. On July 11, 2018, the Complainant filed a complaint with the Department alleging that the subject vehicle would lose power. On October 18, 2018, the Complainant amended the complaint to include problems with navigation, wireless Internet (wi-fi), and the mobile phone charging pad. 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>
07/03/2018	1,928	Required jump starts
07/30/2018	2,204	Wi-fi will not work
07/30/2018	2,951	Wi-fi will not work
08/15/2018	4,158	Wi-fi drops connection

The Complainant testified that on June 16, 2018, an employee of the Complainant's company noticed that the navigation stopped working and the vehicle would not unlock. Roadside assistance from the dealer jump started the vehicle, after which the vehicle was driveable. The next day, the vehicle would not start and the dealer's roadside assistance jump started the vehicle. Subsequently, other problems arose, including the charging pad not working and the wireless Internet not working. On July 1, 2018, the vehicle would not start and the dealer's roadside assistance jump started the vehicle. The vehicle required another jump start on July 2, 2018, and the dealer recommended bringing the vehicle in for service. The dealer had the vehicle for repair from July 3 to 11, 2018. After this repair visit, the charging pad would not charge the phone and the wireless Internet would drop. The Complainant testified that he reported the issues concerning the wi-fi connection dropping and the wireless charger not charging at the August 15, 2018, repair visit. Regarding the note on the July 30, 2018, repair order that the vehicle did not have a data plan, the Complainant explained that OnStar had his company's credit card information and that they have always had a data plan, which they paid for every month. The Complainant affirmed that the navigation continues to stop working. He also testified that the wireless charging and wi-fi issues remained for the last visit. The Complainant clarified that the starting problem stopped

after the July 3, 2018, repair visit. He affirmed that the phone used on the wireless charging pad, a Samsung Galaxy S8,<sup>26</sup> was on the list of compatible phones for the vehicle.

On cross-examination, the Complainant confirmed that a loaner vehicle was provided during repairs and though he had to pay tolls, he was not charged rental fees. He also acknowledged that the vehicle last failed to start on July 3, 2018. The only remaining issues involved the navigation, charging pad, and wireless Internet issues. He affirmed that the vehicle's navigation would just stop at various time over six months. Upon clarification questions, the Complainant last recalled a navigation malfunction occurring about September 20th (2018).

The Complainant further testified that in September 2018, the Complainant's staff stopped using the vehicle's navigation. Instead, the driver would use a phone for navigation because the vehicle's navigation malfunctioned. On June 15, 2018, the Complainant's driver stopped and restarted the vehicle to get the navigation working again. The Complainant added that his driver stopped using the navigation in September. The Complainant did not use the vehicle's navigation because he did not trust it. The Complainant testified that they did not change wi-fi's name but the change occurred after the vehicle went in for service. The other person that had access to the vehicle did not change the wi-fi name. The Complainant recognized that they had mistakenly believed the company phone was an S8 and not an S5. He elaborated that the navigation malfunctioned frequently, which may occur after only driving two or three miles.

### **C. Inspection**

Upon inspection before the test drive, the odometer displayed 7,774 miles. The Complainant stated that the vehicle's wireless charging never worked. The Complainant placed his phone on the wireless charging pad but a charging message did not appear. Mr. Morris noted that the phone must be aligned carefully because the charging pad only had one coil. Mr. Morris' phone did charge when placed on the charging pad. Mr. Morris found that the wi-fi's network name was different from what the Complainant used in the past. However, Mr. Morris successfully connected his phone to the vehicle's wi-fi using the current network name. Inspection of the Complainant's phone showed that it was a Galaxy S5 without wireless charging capability. Specifically, the phone did not have a wireless charging cover to enable charging on the vehicle's

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<sup>26</sup> Note: inspection of the phone showed that it was actually a Samsung Galaxy S5.

wireless charging pad. The test drive ended with 7,778 miles on the odometer. Mr. Morris' phone was still connected to the vehicle's wi-fi at the end of the drive.

#### **D. Summary of Respondent's Evidence and Arguments**

Mr. Morris testified that at the test drive, the vehicle started and the navigation functioned. The wi-fi also worked, but Mr. Morris noted that the network name had changed from "Cadillac". Regarding the charging issue, he pointed out that the Complainant's phone was not compatible with the charging pad. However, Mr. Morris' phone did charge, with a green lightning bolt indicating that the phone was charging. Mr. Morris outlined his inspection report from his November 28, 2018, inspection, including that the vehicle did not have any diagnostic trouble codes present and the vehicle passed a battery load test and charging system test. During a test drive, he connected three devices to the vehicle's wi-fi: an iPhone, Samsung Galaxy S8, and a laptop. The iPhone would disconnect when the screen locked and reconnect with the screen unlocked. The S8 lost its connection due to issues specific to the phone. The laptop stayed connected during the entire test drive. Mr. Morris successfully charged the S8 using the vehicle's wireless charging pad. He pointed out that with the first generation design (used in the subject vehicle), placement of the phone was critical because the charging pad only had one coil. In contrast, the second generation charging pad has three coils. Mr. Morris compared the operation of the wi-fi in the same model comparison vehicle and had the same results with the iPhone, S8, and laptop as in the subject vehicle. The comparison vehicle's charging pad also performed the same as the subject vehicle. Mr. Morris confirmed that the vehicle's warranty did not cover third party connected electrical devices.

On cross-examination, Mr. Morris testified that someone had changed the vehicle's wi-fi network name (which previously was "Cadillac").

#### **E. Analysis**

As an initial matter, to qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to have a currently existing defect covered by the Respondent's warranty (warrantable defect).<sup>27</sup> The Lemon Law does not require that a

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<sup>27</sup> TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

manufacturer provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. The Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. In part, the vehicle's warranty provides that: "The warranty covers repairs to correct any vehicle defect, not slight noise, vibrations, or other normal characteristics of the vehicle due to materials or workmanship occurring during the warranty period."<sup>28</sup> According to these terms, the warranty only applies to defects due to materials or workmanship (manufacturing defects).<sup>29</sup> A manufacturing defect is generally an isolated aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it at the factory, such as incorrect assembly or the use of a broken part. Unlike manufacturing defects, issues that do not arise from manufacturing, such as design characteristics or design defects are not warrantable defects. Design characteristics result from the vehicle's specified design, which exists before the vehicle is manufactured, and not from any error during manufacturing.<sup>30</sup> Because the warranty only covers manufacturing defects, any flaws in the design, or other non-manufacturing problems, do not qualify for relief.

#### 1. Failure to Start

The failure to start issue has not recurred after the July 3, 2018, repair and appears to have been successfully resolved. Because the failure to start is not a currently existing defect, it cannot support any relief.

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<sup>28</sup> Complainant's Ex. 7, New Vehicle Limited Warranty.

<sup>29</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.").

<sup>30</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).

## 2. Navigation

The navigation system last malfunctioned about September 20, 2018. However, the Complainant's staff discontinued using the vehicle's navigation in September 2018 because of the malfunctioning, alternatively using phone-based navigation. The record does not appear to show any actual repair attempts for this issue. Further, none of the repair orders in this case mention navigation as an issue. However, the Complainant included the navigation issue in the notice of defect and in the amendment to the complaint and the Respondent addressed this issue at the Respondent's November 28, 2018, inspection. Accordingly, the navigation issue does not have sufficient repair attempts to qualify for repurchase or replacement. Further, the availability of alternative navigation systems, as evidenced by the Complainant's staff's use of phone-based navigation, indicates that the navigation problem does not constitute a substantial impairment of use and therefore cannot support repurchase or replacement. Similarly, under the Department's prospective purchaser standard, the navigation issue does not substantially impair the vehicle's value. Nevertheless, the record indicates that the problem is more likely than not a warrantable defect. The vehicle's history shows no repair attempts for the navigation issue, so this issue would appear to remain unresolved. Given that the Complainant provided notice of this issue to the Respondent, the navigation issue supports warranty repair relief.

## 3. Wi-Fi

The wi-fi connection issue appears to have resulted from the configuration of the vehicle's wi-fi, specifically the network name, but does not result from a warrantable defect. At some point, someone changed the network name (possibly during the July 3, 2018, repair visit), so the Complainant's devices did not recognize the vehicle's wi-fi network name. However, the inability to recognize the wi-fi because of the changed name is not a manufacturing defect. The vehicle's wi-fi functioned normally when connecting with the vehicle's current network name. Additionally, the record shows that certain devices, because of issues specific to those devices, may have intermittent connection issues not due to any warrantable defects.

## 4. Wireless Charging

The wireless charging appears to be functioning properly and any failure to charge the Complainant's company phone is due to the phone itself, which is not equipped for wireless charging. The Complainant mistakenly believed that his company phone was a Samsung Galaxy

S8 with built in wireless charging. However, inspection of the phone showed that it was actually a Samsung Galaxy S5 without the wireless charging cover necessary for use with the vehicle's wireless charging pad.

### III. Findings of Fact

1. On May 28, 2018, the Complainant, leased a new 2018 Cadillac CTS from Tom Peacock Cadillac, a franchised dealer of the Respondent, in Houston, Texas. The vehicle had 16 miles on the odometer at the time of lease.
2. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
07/03/2018	1,928	Required jump starts
07/30/2018	2,204	Wi-fi will not work
07/30/2018	2,951	Wi-fi will not work
08/15/2018	4,158	Wi-fi drops connection

4. On August 23, 2018, the Complainant mailed a written notice of defect to the Respondent, citing problems with starting the vehicle, navigation, wireless Internet (wi-fi), and wireless charging.
5. On July 11, 2018, the Complainant filed a complaint with the Department alleging that the subject vehicle would lose power (fail to start).
6. On October 18, 2018, the Complainant amended the complaint to include problems with navigation, wireless Internet, and the mobile phone charging pad.
7. On October 8, 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.

8. The hearing in this case convened on December 19, 2018, in Houston, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. Korinthia Miller, attorney, represented the Complainant. The Complainant testified for himself. Kevin Phillips, business resource manager, represented the Respondent. Bruce Morris, field service engineer, testified for the Respondent. Carrie Mathies represented the Intervenor, ACAR Leasing, Ltd., d/b/a GM Financial Leasing.
9. Upon inspection at the hearing, before the test drive, the odometer displayed 7,774 miles.
10. The vehicle's warranty was in effect at the time of the hearing.
11. During the inspection at the hearing, the Complainant noted that the vehicle's wireless charging never worked. The Complainant placed his phone on the wireless charging pad but a charging message did not appear. Mr. Morris noted that the phone must be aligned carefully because the charging pad only had one coil. Mr. Morris' phone did charge when placed on the charging pad. Mr. Morris found that the wi-fi's network name was different from what the Complainant used in the past. However, Mr. Morris successfully connected his phone to the vehicle's wi-fi using the current network name. Inspection of the Complainant's phone showed that it was a Galaxy S5 without wireless charging capability. Specifically, the phone did not have a wireless charging cover to enable charging on the vehicle's wireless charging pad. The test drive ended with 7,778 miles on the odometer. Mr. Morris' phone was still connected to the vehicle's wi-fi at the end of the drive. The vehicle otherwise operated normally during the test drive at the hearing.
12. The failure to start was successfully resolved. This issue did not recur after the July 3, 2018, repair.
13. The vehicle's navigation system last malfunctioned about September 20, 2018.
14. The Complainant's staff used phone-based navigation as an alternative to the vehicle's navigation system.
15. The vehicle's repair history does not show any actual repair attempts for the navigation system malfunction.
16. The Respondent considered the navigation issue at the Respondent's November 28, 2018, inspection.

17. A change in the vehicle's wi-fi network name prevented the Complainant's devices from connecting to the vehicle's wi-fi. However, when using the current network name, devices will connect normally to the vehicle's wi-fi.
18. Some devices may have connection issues due to issues specific to the device and not due to the vehicle's wi-fi.
19. The vehicle's wireless charging pad functioned normally with compatible devices.
20. The Complainant's company phone did not have the wireless charging cover necessary for charging on the vehicle's wireless charging pad.

#### **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 failure to start is not a currently existing defect that supports replacement or repurchase. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
7. The navigation issue does not support replacement or repurchase. The Complainant did not prove that the navigation issue creates a serious safety hazard or substantially impairs the use or market value of the vehicle. TEX. OCC. CODE § 2301.604(a). The navigation issue

- did not meet the requirement for a reasonable number of repair attempts. TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).
8. The wi-fi and wireless charging issues do not support replacement or repurchase. The Complainant did not prove that either the wi-fi issue or the wireless charging issue is a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
  9. The Complainant does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
  10. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
  11. The Complainant's vehicle qualifies for warranty repair. The Complainant proved that the navigation system has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainant or an agent of the Complainant notified the Respondent or Respondent's agent of the alleged defect. TEX. OCC. CODE §§ 2301.204 and 43 TEX. ADMIN. CODE § 215.202(b)(3).
  12. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

## V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the subject vehicle's navigation system to the applicable warranty as specified here. Upon this Order becoming final under Texas Government Code § 2001.144:<sup>31</sup> (1) the Complainant

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<sup>31</sup> This Order does not become final on the date this Order is signed, instead: (1) this Order becomes final if a party does not file a motion for rehearing within 25 days after the date this Order is signed, or (2) if a party files a motion for rehearing within 25 days after the date this Order is signed, this Order becomes final when: (A) an order overruling the motion for rehearing is signed, or (B) the Department has not acted on the motion within 55 days after

shall deliver the vehicle to the Respondent within 20 days; and (2) the Respondent shall complete the repair of the vehicle within **20 days** after receiving it. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

**SIGNED February 19, 2019**



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

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the date this Order is signed. Accordingly, this Order cannot become final (1) while a motion for rehearing remains pending; or (2) after the grant of a motion for rehearing.