

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0190424 CAF**

**CHRISTIANNE WITT,
Complainant**

v.

**GENERAL MOTORS LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Christianne Witt (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2018 Chevrolet Malibu. Complainant asserts that the vehicle is defective because the check engine light (CEL) intermittently illuminates. General Motors LLC (Respondent) argued that the vehicle does not have a manufacturing defect and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainant is not eligible for relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record was closed on March 1, 2019, in Houston, Texas before Hearings Examiner Edward Sandoval. Christianne Witt, Complainant, represented herself at the hearing. Respondent was represented by Clifton Green, Business Resource Manager. Also testifying for Respondent was Bruce Morris, Field Service Engineer.

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.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have provided written notice of

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ *Id.*

the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever comes first, following the date of original delivery to the owner.⁶

B. Complainant's Evidence and Arguments

Complainant purchased a new 2018 Chevrolet Malibu on July 5, 2018, from Bayway Chevrolet (Bayway) in Houston, Texas.⁷ Respondent provided a new vehicle limited bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first.⁸ Respondent also provided a powertrain warranty for the vehicle's powertrain which provides coverage for five (5) years or 60,000 miles.⁹ On the date of hearing the vehicle's mileage was 19,102. At the time of hearing the vehicle's warranties were still in effect.

Complainant testified that the vehicle's CEL intermittently illuminates. She first noticed the issue on August 2, 2018, when she was driving into a parking lot. Complainant immediately called the dealer and was instructed by the dealer representative to take the vehicle in for repair. Complainant took the vehicle to Bayway for repair that same day. The CEL was still on when Complainant delivered the vehicle to the dealer. Bayway's service technician determined that there was water on the vehicle's ambient air temperature sensor wiring harness.¹⁰ The technician replaced the vehicle's ambient air temperature sensor, the active lower shutter, and wiring harness in order to resolve the issue.¹¹ The vehicle's mileage on this occasion was 4,898.¹² The

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ 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.

⁷ Complainant Ex. 2, Motor Vehicle Retail Installment Sales Contract dated July 5, 2018.

⁸ Respondent Ex. 1, New Vehicle Limited Warranty, p. 1.

⁹ *Id.*

¹⁰ Complainant Ex. 4, Repair Order dated August 2, 2018.

¹¹ *Id.*

¹² *Id.*

vehicle was in Bayway's possession for approximately 24 hours.¹³ Complainant was provided with a loaner vehicle while her vehicle was repaired.

Complainant testified that a few days later the CEL illuminated again. She took the vehicle to Bayway for repair for the issue on August 23, 2018. The CEL was still on when Complainant delivered the vehicle to the dealer. Bayway's technician determined that the vehicle had an internal fault in the battery control module.¹⁴ The technician replaced the vehicle's battery control module in order to resolve the issue.¹⁵ The vehicle's mileage on this occasion was 6,468.¹⁶ The vehicle was in Bayway's possession for one (1) day. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on August 23, 2018.¹⁷ Complainant stated that she filed the complaint because she informed the dealer representative that she was unhappy with the vehicle. The representative informed Complainant that the only options available for her were to have the dealer buy back the vehicle or to file a Lemon Law complaint. When Complainant was informed by the representative that the dealer would repurchase the vehicle for \$15,000 less than what she owed on it, Complainant decided to file the Lemon Law complaint.

Complainant testified that she wrote a letter outlining the fact that she was unhappy with the vehicle. However, she did not send the letter to Respondent. Instead, Complainant hand delivered the letter to someone at Bayway.

Complainant testified that the CEL illuminated again sometime in late November or early December of 2018. She took the vehicle to Munday Chevrolet (Munday) in Houston, Texas for repair on December 1, 2018. The CEL was not on when Complainant delivered it to Munday. Munday's service technician was unable to recreate the issue and the light did not illuminate while at the dealership.¹⁸ No repairs were performed at the time. The vehicle's mileage on this occasion was 15,295.¹⁹

Complainant testified that she was not asked by Respondent's representative to allow them an opportunity to inspect the vehicle. She also stated that there was an occasion in the past where a dealer had refused to honor Respondent's warranty and wanted to charge her to repair an issue

¹³ *Id.*

¹⁴ Complainant Ex. 5, Repair Order dated August 23, 2018.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Complainant Ex. 1, Lemon Law Complaint dated August 23, 2018.

¹⁸ Complainant Ex. 6, Repair Order dated December 1, 2018.

¹⁹ *Id.*

with the vehicle. Complainant stated that she did not pay to repair the issue because she could not afford to pay the amount requested.

Complainant testified that the vehicle's CEL has not illuminated since prior to December 1, 2018.

During cross-examination, Complainant testified that the vehicle has never left her stranded anywhere. She's never had the vehicle towed.

C. Respondent's Evidence and Arguments

1. Clifton Green's Testimony

Clifton Green, Business Resource Manager, represented Respondent at the hearing and offered testimony.

Mr. Green stated that Respondent did request an opportunity to inspect the vehicle which was granted by Complainant. The vehicle was inspected by Respondent's field service engineer (FSE), Bruce Morris, on November 5, 2018, at Bayway.

Mr. Green also stated that Respondent never received any written notice from Complainant to indicate that she was dissatisfied with the vehicle.

2. Bruce Morris' Testimony

Bruce Morris, Field Service Engineer, testified for Respondent. Mr. Morris has worked for 32 years in the automotive industry. He's worked in the past as an automotive technician, a shop foreman, and a service manager. Mr. Morris has worked for Respondent for the past 11 years as a field service engineer. He is an Automotive Service Excellence (ASE) Certified World Class Technician and a General Motors World Class Technician.

Mr. Morris testified that he performed an inspection of Complainant's vehicle on November 5, 2018, at Bayway. Mr. Morris stated that the vehicle's CLE was illuminated at the time that he inspected the vehicle.

Mr. Morris performed a visual inspection of the vehicle. He saw that the vehicle had a chip in the windshield, a scratch on a door, some curb rash on a wheel, and that the front license plate was bent. On closer inspection, Mr. Morris noticed that the front license plate bracket was cracked.

Mr. Morris stated that it appeared that perhaps a vehicle with a tow hitch had backed into Complainant's vehicle causing the damage to the bracket and license plate.

Mr. Morris found two (2) diagnostic trouble codes on the vehicle's computers at the time of inspection. The codes were related to the vehicle's front air shutter assemble in the lower valance of the front bumper.²⁰ The shutters are designed to regulate air flow over the vehicle's radiator for the cooling system. Mr. Morris said that the shutters were open and that he could not control them with the scan tool at his disposal.²¹ Mr. Morris stated that it appeared that the incident which had damaged the vehicle's license plate and the plate bracket had also caused the shutter assembly to dislodge from its position and was causing the vehicle's CEL to illuminate.²² Mr. Morris' finding was that the light was illuminating at the time due to damage to the vehicle caused by an outside force and was not due to a defect in the vehicle.²³

Mr. Morris stated that since the CEL was illuminating due to damage done to the vehicle, Respondent's warranty did not cover the cost for repair. This is why Complainant was informed by the dealer's representative that she would have to pay to repair the issue. Mr. Morris also stated that as far as he knows, Complainant did not pay to repair the issue. The CEL was illuminated when he last saw the vehicle.

D. Analysis

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

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. The evidence indicates that the issues causing the vehicle's CEL to illuminate on August 2, 2018 and August 23, 2018, were both resolved. Sometime subsequent to August 23, 2018, Complainant's

²⁰ Respondent Ex. 2, Vehicle Legal Inspection dated November 6, 2018.

²¹ *Id.*

²² *Id.*

²³ *Id.*

vehicle was damaged which caused the front air shutter assembly to dislodge from its designed location and which caused the CEL to illuminate. Complainant refused to pay for repair for the issue as it was not covered by Respondent's warranty which excludes warranty coverage for any damage caused by "collision . . . or objects striking the vehicle."²⁴ Since there has been damage to the vehicle caused by outside forces which Complainant has not had repaired and which may be causing the vehicle's CEL to illuminate, the hearings examiner must hold that Complainant has not established that the issue she's complaining of is currently caused by a manufacturing defect in the vehicle. Therefore, repurchase or replacement relief for Complainant is not warranted.

On the date of hearing, the vehicle's mileage was 19,102 and it remains covered under Respondent's warranties. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

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

III. FINDINGS OF FACT

1. Christianne Witt (Complainant) purchased a new 2018 Chevrolet Malibu on July 5, 2018, from Bayway Chevrolet (Bayway) in Pearland, Texas.
2. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for three (3) years or 36,000 miles, whichever occurs first. In addition, Respondent provided a powertrain warranty for the vehicle which provides coverage for five (5) years or 60,000 miles, which occurs first.
3. The vehicle's mileage on the date of hearing was 19,102.
4. At the time of hearing the vehicle's warranties were still in effect.
5. Complainant has observed that the vehicle's check engine light (CEL) intermittently illuminates.
6. Complainant took the vehicle for repair to Respondent's authorized dealer, Bayway, in order to address her concerns regarding the vehicle's CEL illuminating on the following dates:

²⁴ Respondent Ex. 1, New Vehicle Limited Warranty, p. 6.

- a. August 2, 2018, at 4,898 miles; and
 - b. August 23, 2018, at 6,468 miles.
7. On August 2, 2018, Bayway's service technician determined that there was water in the connector at the vehicle's ambient temperature sensor and the active shutter. The technician replaced the sensor, the active lower shutter, and the harness in order to address the concern.
 8. On August 23, 2018, Bayway's service technician determined that the CEL was illuminating because there was an internal fault in the vehicle's battery control module. The technician replaced the module in order to address the issue.
 9. On August 23, 2018, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
 10. On November 6, 2018, Respondent's field service engineer (FSE), Bruce Morris, inspected the vehicle. The CEL was illuminated at the time.
 11. During the inspection described in Findings of Fact #10, Mr. Morris determined that the vehicle had suffered impact damage to the front of the vehicle and that this had dislodged the front air shutter assembly for the lower valance of the front bumper and that the shutter would not close which was causing the vehicle's CEL to illuminate.
 12. Complainant refused to pay for repair to the front air shutter assembly, as this was not covered by warranty.
 13. On December 1, 2018, Complainant took the vehicle to Munday Chevrolet (Munday) in Houston, Texas for repair because the vehicle's CEL illuminated.
 14. On December 1, 2018, Munday's service technician did not observe that the CEL was illuminated and could not duplicate any concern with the vehicle.
 15. The vehicle's CEL has not illuminated since prior to December 1, 2018.
 16. On November 7, 2018, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.

17. The hearing in this case convened and the record was closed on March 1, 2019, in Houston, Texas before Hearings Examiner Edward Sandoval. Christianne Witt, Complainant, represented herself at the hearing. Respondent was represented by Clifton Green, Business Resource Manager. Also testifying for Respondent was Bruce Morris, Field Service Engineer.

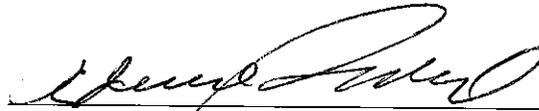
IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

ORDER

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

SIGNED March 6, 2019.



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