

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 20-0000583 CAF**

<b>ROBERT and TINA CARDOSI,</b> <b>Complainants</b>	§ § § § § § §	<b>BEFORE THE OFFICE</b>  <b>OF</b>  <b>ADMINISTRATIVE HEARINGS</b>
v.		
<b>AMERICAN HONDA MOTOR CO., INC.,</b> <b>Respondent</b>		

**DECISION AND ORDER**

Robert Cardosi and Tina Cardosi (Complainants) 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 their vehicle distributed by American Honda Motor Co., Inc. (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that qualifies for 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 June 29, 2020, for the test drive in Austin, Texas, before Hearings Examiner Andrew Kang. The hearing reconvened by videoconference on July 17, 2020, and the record closed on the same day. The Complainants, represented themselves. Abigail Mathews, attorney, represented the Respondent.

**II. Discussion**

**A. Applicable Law**

**1. Repurchase/Replacement Relief Requirements**

A vehicle qualifies for repurchase or replacement if the respondent cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition

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<sup>1</sup> TEX. GOV'T CODE § 2001.051.

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 respondent, (2) an opportunity to cure by the respondent, 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>

**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

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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).

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:

[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>

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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) (“We find that this interpretation of the standard required for demonstrating substantial impairment is reasonable and consistent with the statute’s plain language which requires a showing of loss in market value. . . . [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).

<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(3).

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 to the respondent;<sup>13</sup> (2) the respondent 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>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). 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 satisfies the requirement to provide notice of the defect or nonconformity to the Respondent.

<sup>14</sup> TEX. OCC. CODE § 2301.606(c)(2). A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer may satisfy the opportunity to cure requirement when the respondent allows a dealer to attempt repair after written notice to the respondent. *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). An opportunity to cure does not require an actual repair attempt but only a valid opportunity. *Id* at 2.

<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 before the warranty’s expiration.<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 Complainants.<sup>18</sup> The Complainants must prove all facts required for relief by a preponderance of the evidence. That is, the Complainants must present sufficient evidence to show that every required fact more likely than not exists.<sup>19</sup> Accordingly, the Complainants cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely.

## 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 forming the basis of the claim for relief under the lemon law.”<sup>21</sup> However, the parties may expressly or impliedly consent to

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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)(3).

hearing 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 Complainants 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> However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."<sup>26</sup>

### B. Summary of Complainants' Evidence and Arguments

On October 25, 2017, the Complainants, purchased a new 2017 Honda CR-V from Honda of San Angelo, a franchised dealer of the Respondent, in San Angelo, Texas. The vehicle had 20 miles on the odometer at the time of purchase. The applicable new vehicle limited warranty provides coverage for three years or 36,000 miles, whichever occurs first. On September 16, 2019, the Complainants filed a complaint with the Department alleging that the main control head (touch screen) that controls the stereo, Apple CarPlay, Bluetooth, and safety systems (Lane Departure Warning (LDW)),<sup>27</sup> will give intermittent false readings. On September 18, 2019, the

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<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).

<sup>26</sup> 43 TEX. ADMIN. CODE § 215.208(b)(1).

<sup>27</sup> The complaint identified the Lane Departure Warning as an issue; however, the Complainants' testimony showed that they intended to refer to the Blind Spot Information System (BSI).

Complainants provided a written notice of defect to the Respondent. In relevant part, the Complainants took the vehicle to a dealer for repair of the alleged issues as follows:

<b>Date</b>	<b>Miles</b>	<b>Issue</b>
06/05/19	21,321	Display will go black
07/01/19	22,153	Lane departure light comes on when still driving in same lane
07/30/19	23,422	Screen will go black
08/01/19	23,445	Screen goes blank; blind spot alerts when there is no one beside the car
09/24/19	24,964	Display goes blank
10/8/19	25,428	Display goes dark; static present when using Bluetooth
01/11/20	28,839	Blind spot warning with no vehicles around
01/22/20	29,156	Blind spot warning when no vehicles present

Mrs. Cardosi testified that she sounded like she was underwater when calling using the vehicle's Bluetooth feature. When using Apple CarPlay, the controls would not work. She did not know if the same issues occurred with other phones paired to the vehicle. However, Mr. Cardosi noted that his phone, an Android phone, has had the same problems as Mrs. Cardosi's phone, an Apple iPhone. He added that Mrs. Cardosi had called him the day before and he could not tell what she had said. Mr. Cardosi explained that the Apple CarPlay malfunctioned as recently as June 5th this year. The volume could not be changed and the display would not show a device connected. Mrs. Cardosi added that even the controls on the steering wheel would not control the volume. Mr. Cardosi stated that the first touchscreen was replaced because it would not accept updates. Mrs. Cardosi said that they almost immediately returned the vehicle to the dealer because the touch screen still did not work. Mr. Cardosi explained that the touch screen would initially be blank and do nothing, which the touch screen replacement appeared to resolve but some underlying issues remained. Mrs. Cardosi added that her phone would not connect the day before the hearing. When asked if Bluetooth would not function when paired, Mr. Cardosi testified that he did not drive the subject vehicle often and would call when returning from the drive and he had never tried to use Android Auto.

Mr. Cardosi testified that BSI will intermittently present false warnings (i.e., warnings with no vehicle in the blind spot). He described the false warnings as occurring in varying conditions (day, night, sunshine, and rain) and was most recently recorded on April 22nd this year. He stated that the vehicle was kept in a garage. Mr. Cardosi stated that the frequency of the issue varied from a week apart to months apart. However, he has never noticed a vehicle in the blind spot without

the warning indicator on. Mr. Cardosi described an instance when the BSI warning light was on for about 25 minutes, from leaving home to returning.

On cross-examination, Mr. Cardosi confirmed that Round Rock Honda failed to generate a repair order (RO), when taking the vehicle in. He also acknowledged that the first RO after filing the Lemon Law complaint was in June 2019 at 21,321 miles. Mr. Cardosi affirmed that the ROs, through July 30, 2019, did not address BSI, CarPlay, or Bluetooth, and that the Lemon Law complaint was filed shortly after the August 1, 2019, RO. Mr. Cardosi testified that he did not know of the touch screen going blank after replacement of the LVDS cable. Mrs. Cardosi affirmed that the screen did not go blank again. Mr. Cardosi affirmed that BIS would alert them to vehicles in the blind spot. He also testified that people have experienced difficulty hearing him on his Android phone when using the vehicle's Bluetooth but he did not know the volume level set on the vehicle. However, the dealer had advised that 29 to 34 was the optimum sound level. In the June 5, 2020, video, Mr. Cardosi did not know what applications were running. Mrs. Cardosi noted that before the pandemic, she would not update her phone's operating system because she recognized it may cause problems. When asked if she used Waze or other navigation service, she responded that she has used the Maps app or Google but not often.

Mr. Cardosi added that the Complainants had paid extra for features that did not perform without an offer to repair. He expressed a fear that their vehicle would not be repaired.

### **C. Inspection**

Upon inspection, before the test drive at the hearing, the subject vehicle's odometer displayed 32,901 miles. The vehicle was driven predominantly on a freeway and local roads. The test drive ended at 32,920 miles. The vehicle operated normally during the test drive. At the end of the test drive, Mrs. Cardosi made phone calls using the vehicle's Bluetooth feature. The call did not appear to exhibit any unusual characteristics either when observed from inside the vehicle or outside the vehicle at the called phone.

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

Maurice Narbona, district parts and service manager (DPSM), testified that all warranty work gets paid. He affirmed that if the dealership cannot duplicate a concern but the customer has repeated issues, the dealership would reach out to the DPSM. He explained that the Respondent



may replace a component as goodwill, from the Respondent's budget, for which the dealer gets paid. He confirmed that after the dealer's service director called and e-mailed him regarding the touch screen going blank, the second screen was repaired under goodwill. Mr. Narbona was not notified about issues with Apple CarPlay, Bluetooth, or BSI. The screen going dark was the only complaint, which was ultimately resolved (after replacing the touch screen twice and the LVDS cable). He described the LVDS cable as like an HDMI or USB cable that connects the audio unit to the screen. Mr. Narbona clarified that a single component did not control the audio system, CarPlay, Bluetooth, and BSI. He elaborated that BSI was part of the Honda Sensing system, which was separate from the audio system. He affirmed that the LVDS cable did not relate to the Honda Sensing system or BSI in particular. Mr. Narbona explained that CarPlay was a third-party application that allows connecting the iPhone to the infotainment system and essentially mirrors the iPhone. Mr. Narbona identified various factors that may cause interference/glitches with an iPhone's operation with CarPlay and the infotainment system, including apps on the phone, the phone's operating system version, the phone hardware, the phone's carrier, corrupt files. In contrast, a problem with the vehicle's hardware would be a permanent failure requiring replacement of the unit. Mr. Narbona opined that the problem in this case was an issue with the phone's interface with the vehicle. Based on the calls made after the test drive, he concluded that the Bluetooth operated as designed. Additionally, he confirmed that setting the volume too loud would distort the sound. Mr. Narbona addressed the difference between the Lane Departure Warning and BSI, elaborating that LDW indicates when the vehicle departs a lane while BSI indicates when another vehicle comes into a blind spot. BSI only beeps when changing lanes. BSI is a convenience feature for the operator but cannot be relied upon solely. BSI has limitations from things such as the effect of radio waves and other electrical interference, and detecting physical objects like guardrails and trees. Mr. Narbona did not previously address BSI since only the blank touch screen issue was presented to him.

On cross-examination, Mr. Narbona indicated that he did not know the Complainants had filed a complaint with customer relations. He affirmed that BSI was a part of Honda Sensing safety system, which is not available on the base trim. He explained that the BSI issue was not previously repaired because only the blank touch screen was brought to his attention.

## E. Analysis

As explained below, the subject vehicle qualifies for warranty repair relief of the Blind Spot Information System.

### 1. Repurchase/Replacement Relief

As a condition for repurchase/replacement relief, the Lemon Law requires a reasonable number of repair attempts within a certain timeframe. In relevant part, the presumption for reasonable repairs under the Lemon Law generally requires four repair attempts within the earlier of 24 months or 24,000 miles after delivery. In this case, the Complainants purchased the vehicle on October 25, 2017, with 20 miles on the odometer. Accordingly, the vehicle must have had at least four repair attempts for the same nonconformity by the earlier of *October 25, 2019*, or *24,024 miles*. The repair history reflects that the vehicle reached 24,024 miles before October 25, 2019, so the four repair attempts must have occurred by 24,024 miles. However, the vehicle's repair history only shows one repair visit before 24,024 miles for an existing issue (Blind Spot Information System). In other words, none of the existing issues pleaded in the complaint has had sufficient repair attempts to support repurchase or replacement relief. Nevertheless, even if a vehicle does not qualify for repurchase or replacement, it may still qualify for warranty repair.

### 2. Warranty Repair Relief

Warranty repair relief requires an existing warrantable defect and written notice of that defect. The record reflects that on September 18, 2019, the Complainants provided a written notice of defect to the Respondent, indicating problems (in relevant part) with Bluetooth, Apple CarPlay, and the Blind Spot Information System (misabeled as Lane Departure Warning). To qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to have a defect covered by the Respondent's warranty (warrantable defect) that continues to exist after repairs.<sup>28</sup> In part, the warranty generally states that: "Honda will repair or replace any part that is defective in material or workmanship under normal use."<sup>29</sup> According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).<sup>30</sup> A defectively

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<sup>28</sup> TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

<sup>29</sup> Complainant's Ex. 5, New Vehicle Limited Warranty.

<sup>30</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

manufactured vehicle has a flaw because of some error in making it at the factory, such as incorrect assembly. Unlike manufacturing defects, issues that do not arise from manufacturing, such as design characteristics or design defects are not warrantable defects.

**a. Bluetooth and Apple CarPlay**

As explained in the discussion of applicable law, the Complainants have the burden of proving every required element by a preponderance, i.e. the evidence must show that all required facts are more likely true than not true. The evidence shows that a multitude of factors may affect the performance of Bluetooth and Apple CarPlay, such as an application (or applications) on the phone, the phone's firmware, the phone hardware itself, the phone's carrier, and corrupt files. The record does not contain sufficient evidence to show that a warrantable defect is more likely to have caused the malfunctions than any other factor. Further, at the June 29, 2020, test drive and inspection, the calls made using the vehicle's Bluetooth sounded normal. Nevertheless, without some standard or specification, determining how much noise or distortion constitutes a nonconformity is inherently problematic. An individual's subjective perception of call quality may vary by person, so that the same call may seem too noisy for some but not others, making proof evasive, in contrast to objective information that can be proven true or false (for example, whether a touch screen is blank or not). Considering all the variables that may impact the operation of Bluetooth and CarPlay, the record does not contain sufficient evidence to prove that the problems arose from a warrantable defect as opposed to an unwarranted condition.

**b. Blind Spot Information System (BSI)**

A preponderance of the evidence indicates that the vehicle's BSI has a warrantable defect. The evidence shows that a variety of external factors may affect BSI's performance. However, the record shows that, at least in one instance, the BSI indicator remained on for 25 minutes, the entirety of a trip, suggesting that the producing cause remained with the vehicle the entire time (i.e. the cause was internal) as opposed to being caused by passing an external cause. The factors

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("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.").

listed in the owner's manual that may adversely affect BSI all appear transient, except for towing a trailer. However, the BSI indicator stayed on throughout a 25-minute drive, with no evidence that the vehicle was towing a trailer. Accordingly, the evidence reflects that BSI false alerts are more likely than not due to a warrantable defect.

### III. Findings of Fact

1. On October 25, 2017, the Complainants, purchased a new 2017 Honda CR-V from Honda of San Angelo, a franchised dealer of the Respondent, in San Angelo, Texas. The vehicle had 20 miles on the odometer at the time of purchase.
2. The applicable new vehicle limited warranty provides coverage for three years or 36,000 miles, whichever occurs first.
3. The Complainants took the vehicle to a dealer for repair as shown below:

<b>Date</b>	<b>Miles</b>	<b>Issue</b>
06/05/19	21,321	Display will go black
07/01/19	22,153	Lane departure light comes on when still driving in same lane
07/30/19	23,422	Screen will go black
08/01/19	23,445	Screen goes blank; blind spot alerts when there is no one beside the car
09/24/19	24,964	Display goes blank
10/8/19	25,428	Display goes dark; static present when using Bluetooth
01/11/20	28,839	Blind spot warning with no vehicles around
01/22/20	29,156	Blind spot warning when no vehicles present

4. On September 16, 2019, the Complainants filed a complaint with the Department alleging that the main control head that controls the stereo, Apple CarPlay, Bluetooth, and safety systems (lane departure warning [Blind Spot Information System (BSI)]), will give intermittent false readings.
5. On September 18, 2019, the Complainants provided a written notice of defect to the Respondent.
6. On December 13, 2019, 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 June 29, 2020, for the test drive portion of the hearing in Austin, Texas, before Hearings Examiner Andrew Kang. The hearing reconvened by videoconference on July 17, 2020, and the record closed on the same day. The Complainants, represented themselves. Abigail Mathews, attorney, represented the Respondent.
8. The vehicle's odometer displayed 32,901 miles at the time of the hearing.
9. The vehicle's warranty was in effect at the time of the hearing.
10. The warranty states that: "Honda will repair or replace any part that is defective in material or workmanship under normal use."
11. The vehicle operated normally during the test drive at the hearing.
12. Calls placed using the vehicle's Bluetooth feature appeared normal.
13. Various factors may affect the performance of Bluetooth and Apple CarPlay, such as an application (or applications) on the phone, the phone's firmware, the phone hardware itself, the phone's carrier, and corrupt files on the phone.
14. The BSI indicator stayed on throughout a 25-minute drive. Neither a vehicle in the subject vehicle's blind spot nor other external factors triggered the BSI indicator.

#### **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 Complainants 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 Complainants bear the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainants' vehicle does not qualify for replacement or repurchase. The Complainants did not meet the requirement for a reasonable number of repair attempts. TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).
7. The Complainants do 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.
8. The Complainants' vehicle qualifies for warranty repair. The Complainants proved that the vehicle has a defect in the BSI covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainants or an agent of the Complainants 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).
9. The Bluetooth and Apple CarPlay issues do not support any relief. The Complainant did not prove that the Bluetooth and Apple CarPlay issues arose from a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
10. 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 Complainants' 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 to the applicable warranty; specifically, the Respondent shall repair the Blind Spot Information System. Upon this Order becoming final under Texas Government

Code § 2001.144:<sup>31</sup> (1) the Complainants 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 Complainants' refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainants 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 September 15, 2020**



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

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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 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.