

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0006798 CAF**

**MARY CRAIN,
Complainant**

v.

**FCA US LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Mary Crain (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in her 2009 Dodge Caravan. Complainant asserts that FCA US LLC (Respondent) has failed to honor a lifetime warranty for the vehicle's powertrain and has refused to repair transmission and oil leaks in the subject vehicle. Respondent argued that Complainant has not met the requirements of the warranty, that the lifetime powertrain warranty has been suspended, and that Complainant is not entitled to relief under the warranty. The hearings examiner concludes that the vehicle does have a currently existing warrantable defect and that Respondent is obligated to perform repairs to the vehicle for the complained of defect.

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 telephonically on July 7, 2020, before Hearings Examiner Edward Sandoval. Complainant, Mary Crain, appeared and represented herself at the hearing. Respondent, FCA US LLC, was represented by Jan Kershaw, Early Resolution Case Manager. In addition, Stuart Ritchey, Technical Advisor, was present and offered testimony for Respondent. The hearings examiner continued the hearing in order to obtain necessary additional documentary evidence from Complainant.

The hearing reconvened telephonically on July 23, 2020, before Hearings Examiner Edward Sandoval. Complainant appeared and represented herself. Respondent was represented by Ms. Kershaw. The hearing record closed on July 23, 2020.

II. DISCUSSION

A. Applicable Law

Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.”

Occupations Code § 2301.606 provides that in order to have the options of repurchase or replacement available as remedies, Complainant must commence the Lemon Law proceeding “not later than six months after the earliest of:

- (1) The expiration date of the express warranty term; or
- (2) The dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.”

For Complainants who fail to meet the timelines described above repair relief is available under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” The relief available under this section of the Code is repair of the vehicle in question.

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2009 Dodge Caravan from Fiesta Auto Center (Fiesta) in San Antonio, Texas on May 8, 2009, with mileage of 209 at the time of delivery.¹ Respondent provided a Lifetime Powertrain Limited Warranty for the vehicle which provided coverage for the vehicle’s powertrain for the original purchaser of the vehicle for as long as they owned the vehicle.² On the date of hearing the vehicle’s mileage was 156,297.

Respondent’s Lifetime Powertrain Limited Warranty required that the vehicle owner have a powertrain inspection performed by Respondent’s authorized dealer once every five (5) years in order to continue coverage under the warranty. Said inspection to be performed within sixty (60) days of each five (5) year anniversary of the in-service date of the vehicle.³

¹ Complainant Ex. 1, Odometer Disclosure Statement dated May 8, 2009.

² Complainant Ex. 3, Excerpts from Warranty Manual, undated.

³ *Id.*

Complainant took the vehicle to Ingram Park Chrysler Jeep Dodge (IPAC) in San Antonio, Texas on June 26, 2014, for an oil change. While Complainant had the vehicle at IPAC, she was informed that the five (5) year powertrain inspection required to retain the lifetime powertrain warranty was due. Complainant agreed to have the inspection performed at the time.⁴ No other repairs were performed during the maintenance visit. The vehicle's mileage on this occasion was 87,672.⁵

A few days after the oil change, Complainant noticed that the vehicle had a fluid leak. On July 17, 2014, Complainant took the vehicle to IPAC to determine the cause of the fluid leak. IPAC's service technician determined that the vehicle's oil pan and transmission pan were both leaking.⁶ The technician resealed the transmission pan at the time, but advised Complainant to return the vehicle to IPAC later to reseal the oil pan.⁷ The vehicle's mileage on this occasion was 91,556.⁸

Complainant testified that she took the vehicle to IPAC for repair for the oil pan on July 21, 2014.⁹ IPAC's service technician replaced the vehicle's oil pan due to a leak from a gasket by the vehicle's bell housing.¹⁰ The vehicle's mileage at the time was 91,812.¹¹

On January 6, 2017, Complainant took the vehicle to IPAC because the vehicle's service engine and brake lights illuminated.¹² After inspecting the vehicle, the service technician found that the vehicle's valve cover gasket was leaking oil and that the transmission pan was leaking fluid.¹³ The technician replaced the valve cover gasket and resealed the transmission pan.¹⁴ The vehicle's mileage on this occasion was 129,324.¹⁵

On June 7, 2019, Complainant took the vehicle to IPAC for an oil change. IPAC's service technician indicated that there was moisture on the vehicle's oil and transmission pans, but did not specify if there was a leak.¹⁶ In addition, he did not mention to Complainant that the vehicle's powertrain was due to be inspected as required by Respondent's Lifetime Powertrain Limited Warranty. The vehicle's mileage at this time was 148,937.¹⁷

⁴ Complainant Ex. 4, Repair Order dated June 26, 2014.

⁵ *Id.*

⁶ Complainant Ex. 5, Repair Order dated July 17, 2014.

⁷ *Id.*

⁸ *Id.*

⁹ Complainant Ex. 6, Repair Order dated July 21, 2014.

¹⁰ *Id.*

¹¹ *Id.*

¹² Complainant Ex. 7, Repair Order dated January 6, 2017.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Complainant Ex. 9, Repair Order dated June 7, 2019.

¹⁷ *Id.*

On August 2, 2019, Complainant took the vehicle to IPAC for an oil change. IPAC's service technician determined that the vehicle's oil pan and transmission pan were leaking.¹⁸ Complainant was also informed that the lifetime powertrain warranty was suspended because she had not had the powertrain inspection performed during the time frame required by the warranty and the repairs for the leaks would not be covered by the warranty. Complainant was informed that it would cost approximately \$2,000 to repair the leaks. No work beyond the oil change was performed at the time. The vehicle's mileage was 151,585.¹⁹

Complainant complained to the dealer and to Respondent about the suspension of the lifetime powertrain warranty. As a result, Respondent agreed to allow the powertrain to be inspected, although it was beyond the required time frame. The inspection was performed on October 3, 2019, at IPAC. The vehicle's mileage at the time was 152,836.²⁰ The service technician performing the inspection determined that several items on the vehicle needed to be repaired before the items covered by the powertrain warranty could be repaired. Complainant did not know what the repairs were or how much the cost for the repairs would be because she never received a written estimate from the service technician. Complainant refused to pay for the repairs.

Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department) on January 15, 2020.²¹

On March 24, 2020, Complainant took the vehicle to Pep Boys in San Antonio, Texas for an oil change.²² Complainant was informed by the service technician that the vehicle had an engine/transmission leak. Complainant did not authorize repairs for the leaks. The vehicle's mileage when Complainant took the vehicle to Pep Boys was 155,720.²³

Complainant testified that the leaks have not been repaired. The vehicle is still leaking fluids from the oil pan and transmission pan. Complainant feels that lifetime powertrain warranty was wrongfully suspended.

¹⁸ Complainant Ex. 10, Repair Order dated August 2, 2019.

¹⁹ *Id.*

²⁰ Complainant Ex. 11, Repair Order dated September 25, 2019. Although the actual powertrain inspection did not take place until October 3, 2019, Complainant took the vehicle to IPAC for the inspection on September 25, 2019.

²¹ Complainant Ex. 2, Lemon Law Complaint dated January 15, 2020.

²² Complainant Ex. 12, Pep Boys Invoice dated March 24, 2020.

²³ *Id.*

C. Respondent's Evidence and Arguments

1. Jan Kershaw's Testimony

Jan Kershaw, Early Resolution Case Manager, testified for Respondent. Ms. Kershaw stated that in order for Complainant's vehicle to be repaired under Respondent's Lifetime Powertrain Limited Warranty, the vehicle would have had to pass the powertrain inspection that was performed on October 3, 2019. Ms. Kershaw stated that the vehicle did not pass the inspection. Therefore, the repairs to the vehicle's powertrain could not be performed. The vehicle did not pass inspection because the technician performing the inspection determined that several items on the vehicle needed to be repaired that were not covered by the powertrain warranty. The technician determined that these repairs needed to be performed prior to performing any repairs for the powertrain components.

Ms. Kershaw also testified that the requirement for the powertrain inspection being performed within sixty days from the five (5) year anniversary of the date of the vehicle purchase was waived for Complainant in order to perform the inspection on October 3, 2019.

Ms. Kershaw stated that the vehicle's Lifetime Powertrain Limited Warranty has been suspended. It will not be reinstated.

2. Stuart Ritchey's Testimony

Stuart Ritchey, Technical Adviser, testified for Respondent. He has worked in the automotive industry and has worked for Respondent since 1994. Mr. Ritchey is an Automotive Service Excellence (ASE) Master Certified Technician.

Mr. Ritchey testified that he has never seen or inspected the subject vehicle. He stated that Respondent, as a matter of course, mails a notification every five (5) years reminding owners of vehicles with a Lifetime Powertrain Limited Warranty to have the powertrain inspected within the required time frame. The letter provides information on what an owner needs to do to keep the warranty in effect.

Mr. Ritchey testified that he believes that on June 7, 2019, when Complainant took the vehicle to IPAC for an oil change, that she went to the dealer's express lube oil change section. The technicians in this section write up the oil change request and perform a quick vehicle inspection for maintenance items. He does not believe that the technicians perform a check of the vehicle's records to see if there are any outstanding issues that need to be addressed.

Mr. Ritchey also stated that when the powertrain inspection was actually performed on October 3, 2019, the inspection was not specific as to what repairs actually needed to be performed prior to the powertrain repairs.²⁴ The cost of those repairs not covered by the warranty totaled \$7,987.70.²⁵

D. Analysis

In order to be eligible for repurchase or replacement relief under the Lemon Law, Complainant must have filed her complaint within six (6) months after the vehicle has been driven 24,000 miles or within 24 months of ownership, whichever comes first. In the present case, the evidence revealed that Complainant purchased the vehicle on May 8, 2009. As such, Complainant would have had to file her complaint no later than November 8, 2011, in order to have the option of repurchase or replacement of the vehicle as possible relief for her complaint. Complainant did not file the Lemon Law complaint until January 15, 2020. Since she did not file the complaint within the required time frame, the hearings examiner must hold that the only remedy available to Complainant is repair of the vehicle.

The issues in this case are whether Respondent's Lifetime Powertrain Limited Warranty is still in effect for Complainant's vehicle and whether Respondent is responsible to repair the vehicle under the terms of that warranty. The evidence presented in the hearing established that in order to continue coverage under the lifetime powertrain warranty, Complainant was required to present the vehicle once every five years, within 60 days from the anniversary date of the purchase of the vehicle, to Respondent's authorized dealer in order to have a powertrain inspection performed on the vehicle. The evidence indicated that Complainant presented the vehicle to Respondent's authorized dealer, IPAC, on June 26, 2014 (five years and 49 days from the purchase date of the vehicle), for an oil change and was informed by IPAC's representatives that the powertrain inspection to retain the warranty was due at that time. Complainant did not have to request that the inspection be performed at that time. However, Complainant was not informed on June 9, 2019, when she took the vehicle to IPAC for an oil change, that the five year powertrain inspection was due to be performed, even though the maintenance visit was within the required time frame. This seems odd, considering that the service technician indicated that he found moisture on the vehicle's oil pan and transmission pan. A review of the vehicle's records by the technician would have revealed that the vehicle was due for the powertrain inspection at that time. In addition, the technician did not seem to take any initiative to see if there was a fluid

²⁴ Respondent Ex. 1, Repair Order dated September 25, 2019 and Powertrain Inspection Worksheet dated October 3, 2019.

²⁵ *Id.*

leak that was causing the moisture to be on the components. In light of the evidence presented in the hearing, the hearings examiner must hold that Complainant met the burden of persuasion to establish that she met the requirements of Respondent's Lifetime Powertrain Limited Warranty. There is nothing within the language of the warranty which requires that the vehicle owner must assert that they are at the dealer's location for the inspection. The warranty just states that the inspection must be performed within the required time frame.

In the present case, the first hand testimony indicates that Complainant is experiencing issues with the vehicle's oil pan and transmission pan leaking fluid. As such, the hearings examiner must hold that the vehicle has not been repaired under the warranty, that a defect or nonconformity exists within the vehicle, and that repair relief for Complainant is warranted.

Complainant's request for repair relief is granted.

III. FINDINGS OF FACT

1. Mary Crain (Complainant) purchased a new 2009 Dodge Caravan on May 8, 2009, from Fiesta Auto Center (Fiesta) in San Antonio, Texas, with mileage of 209 at the time of delivery.
2. The manufacturer of the vehicle, FCA US LLC (Respondent), issued a Lifetime Powertrain Limited Warranty for the vehicle.
3. Respondent's Lifetime Powertrain Limited Warranty required that the vehicle owner have a powertrain inspection performed by Respondent's authorized dealer once every five (5) years. Said inspection to be performed within sixty (60) days of each five (5) year anniversary of the in-service date of the vehicle.
4. The vehicle's mileage on the date of hearing was 156,297.
5. On June 26, 2014, Complainant took the vehicle to Respondent's authorized dealer, IPAC in San Antonio, Texas for an oil change. The vehicle's mileage at the time was 87,672.
6. During the maintenance visit described in Findings of Fact #5, Complainant was informed that the vehicle was due the five year powertrain inspection required by Respondent's Lifetime Powertrain Limited Warranty.
7. At the time of the vehicle maintenance described in Findings of Fact #5, the service technician did not indicate that there was any issue with the vehicle's oil pan or transmission.

8. On July 17, 2014, Complainant took the vehicle to IPAC for repair for a fluid leak that she had discovered. The vehicle's mileage at the time was 91,556.
9. During the repair visit described in Findings of Fact #8, IPAC's service technician resealed the vehicle's transmission pan in order to address the fluid leak. Complainant was advised to take the vehicle back to IPAC at a later date in order to replace the vehicle's oil pan.
10. On July 22, 2014, Complainant took the vehicle back to IPAC in order to have the vehicle's oil pan replaced in order to address the fluid leak that she had observed earlier in the month.
11. On January 6, 2017, Complainant took the vehicle to IPAC for repair because the vehicle's service engine and brake lights were illuminated. The vehicle's mileage at the time was 129,324.
12. During the repair visit described in Findings of Fact #11, IPAC's service technician discovered that one of the vehicle's valve cover gaskets was leaking oil and the vehicle's transmission pan was leaking. The technician replaced the leaking valve cover gasket and transmission pan in order to address the issue of the leaks.
13. On June 7, 2019, Complainant with took the vehicle to IPAC for an oil change. The vehicle's mileage was 148,937 at the time.
14. During the dealer visit for the oil change described in Findings of Fact #13, IPAC's service technician found moisture on the vehicle's oil and transmission pans. No repair was performed for the issue.
15. Neither IPAC's service advisor nor IPAC's service technician advised Complainant during the June 7, 2019 maintenance visit that the vehicle was due for the powertrain inspection required to maintain the Lifetime Powertrain Limited Warranty, although the vehicle was present at Respondent's authorized dealer during the required time frame for the inspection.
16. On August 2, 2019, Complainant took the vehicle to IPAC for an oil change. The vehicle's mileage at the time was 151,585.
17. During the repair visit described in Findings of Fact #16, Complainant was informed that the vehicle's oil pan and transmission pan were leaking.

18. Also during the repair visit described in Findings of Fact #16, Complainant was informed that she would be financially responsible for any repairs for the oil pan and transmission pan leaks because Respondent's Lifetime Powertrain Limited Warranty was suspended as she had not had the vehicle's powertrain inspected during the required time frame.
19. Complainant was informed that the cost to repair the items described in Findings of Fact #17 was \$2,000 since she had failed to have the powertrain inspected at the five year mark as required by the warranty.
20. Due to Complainant's complaints to the dealer and Respondent that the vehicle's Lifetime Powertrain Limited Warranty had been suspended, Respondent approved to allow a late powertrain inspection to be performed on the vehicle on October 3, 2019. The vehicle's mileage at the time was 152,836.
21. The service technician who performed the inspection described in Findings of Fact #20, determined that there were several items on the vehicle which needed to be repaired prior to any repairs being performed to the vehicle's powertrain and that Complainant would be responsible for paying for these repairs.
22. The cost of the repairs described in Findings of Fact #21 totaled \$7,987.50, which Complainant refused to pay for.
23. On March 24, 2020, Complainant took the vehicle to Pep Boys in San Antonio, Texas for an oil change. The service advisor for Pep Boys informed Complainant that the vehicle had an engine/transmission leak. No repair was performed for the issue.
24. The vehicle still has an oil and transmission fluid leak.
25. Complainant abided by the terms of Respondent's Lifetime Powertrain Limited Warranty and presented the vehicle to the dealer within the required time frame both in 2014 and 2019.
26. On January 15, 2020, Complainant filed a Lemon Law/Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).
27. The only remedy available to Complainant is repair of the vehicle, since she filed her Lemon Law complaint on January 15, 2020, more than six (6) months after 24 months from the date of purchase (May 8, 2009).

28. On April 2, 2020, 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.
29. The hearing in this case convened telephonically on July 7, 2020, before Hearings Examiner Edward Sandoval. Complainant, Mary Crain, appeared and represented herself at the hearing. Respondent, FCA US LLC, was represented by Jan Kershaw, Early Resolution Case Manager. In addition, Stuart Ritchey, Technical Advisor, was present and offered testimony for Respondent. The hearings examiner continued the hearing in order to obtain necessary additional documentary evidence from Complainant. The hearing reconvened telephonically on July 23, 2020, before Hearings Examiner Edward Sandoval. Complainant represented herself. Respondent was represented by Ms. Kershaw. The hearing record closed on July 23, 2020.

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 proved by a preponderance of the evidence that the vehicle has verifiable defects or conditions (oil pan and transmission pan leaks) that are covered by Respondent's warranty and which have not been repaired. Tex. Occ. Code § 2301.204.

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.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. It is **FURTHER ORDERED** that Respondent shall make any repairs needed to repair the issues of the vehicle's transmission and oil pan leaking and to have the vehicle conform to the applicable warranty. Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.²⁶ Within 40 days after receiving the vehicle from Complainant, Respondent shall complete repair of the subject vehicle. However, if the Department determines Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider 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 September 22, 2020.



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

²⁶ (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Order.