

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0010700 CAF**

**VIET NGUYEN,
Complainant**

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BEFORE THE OFFICE

v.

OF

**LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, INC,
Respondent**

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Viet Nguyen (Complainant) seeks repair relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in his 2017 Lexus GX 460. Complainant asserts that the vehicle has a defect or nonconformity which causes the vehicle’s navigation system to freeze or black out. Lexus, a Division of Toyota Motor Sales, Inc. (Respondent) argued that the vehicle is operating as designed, 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 telephonically on September 24, 2020, before Hearings Examiner Edward Sandoval. Viet Nguyen, Complainant, represented himself at the hearing. Respondent was represented by Matthew Hennessey, Field Technical Specialist. The hearing was continued until October 8, 2020, in order to obtain additional documentation which had not been provided to the hearings examiner.

At the continuance on October 8, 2020, Viet Nguyen, Complainant, represented himself. Respondent was represented by Matthew Hennessey, Field Technical Specialist. The hearing record closed on October 8, 2020.

II. DISCUSSION

A. Applicable Law

Texas 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.”

Texas Occupations Code § 2301.604 provides that “[a] manufacturer, converter, or distributor that is unable to 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 shall reimburse the owner for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect and:

- (1) replace the motor vehicle with a comparable motor vehicle; or
- (2) accept return of the vehicle from the owner and refund to the owner the full purchase price, less a reasonable allowance for the owner’s use of the vehicle, and any other allowances or refunds payable to the owner.”

Texas 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 2017 Lexus GX 460 on February 18, 2017, from Northside Lexus (Northside) in Houston, Texas.¹ The vehicle's mileage at the time of delivery was 10.² Respondent provided a new vehicle limited warranty for the vehicle which provides warranty coverage for the vehicle for four (4) years or 50,000 miles, whichever comes first. On the date of hearing the vehicle's mileage was 27,378. At the time of hearing the vehicle's warranty was still in effect.

Complainant stated that he has experienced issues with the vehicle's navigation screen freezing up or going black on occasion. Complainant testified that whenever the navigation screen freezes up, he has to pull the vehicle over to the side of the road and turn it off and then back on to reset the navigation screen. Complainant testified that he first noticed the issue with the navigation screen freezing up during a trip to Louisiana in March of 2018. The issue occurred at least twice during the trip. On both occasions, Complainant had to pull the vehicle over to the side of the road and turn it off and back on to get the navigation screen to work again.

Complainant testified that he took the vehicle to Northside for repair for the navigation screen issue on March 19, 2018. Northside's service technician performed a software/firmware update to the vehicle's navigation system in order to address the issue.³ The vehicle's mileage on this occasion was 10,698.⁴ Complainant could not recall if the vehicle was in Northside's possession for one (1) or two (2) days on this occasion. Complainant indicated that he received a loaner vehicle whenever the dealer kept the vehicle overnight for repair. Complainant was told by the dealer's service representative to let them know if the navigation screen froze up again.

In April of 2018, Complainant drove the vehicle to San Antonio and used the vehicle's navigation system on the drive. During the drive, the navigation screen froze up again. Complainant had to pull the vehicle over to the side of the road and turn it off and on in order to get the navigation screen to work again. On April 28, 2018, Complainant took the vehicle to Northside for repair for the issue regarding the navigation screen. Northside's service technician performed a hard reset to the navigation system in an attempt to resolve the issue.⁵ The vehicle's mileage at the time was 11,531.⁶ The vehicle was in Northside's possession for two (2) days.

¹ Complainant Ex. 2, Motor Vehicle Bill of Sale dated February 18, 2017.

² *Id.*

³ Complainant Ex. 3, Repair Order dated March 19, 2018.

⁴ *Id.*

⁵ Complainant Ex. 4, Repair Order dated April 28, 2018.

⁶ *Id.*

Complainant received a loaner vehicle while his vehicle was being repaired.⁷ Complainant stated that he did not test the vehicle's navigation system when he went to pick up the vehicle. He assumed it was working correctly.

Complainant testified that he took his family on a trip to Orlando, Florida in late January of 2019. During the trip, the vehicle's navigation screen froze up again. Complainant stated that he had to pull the vehicle over to the side of the road and turn the vehicle off and back on in order to get the navigation system to work properly. Complainant took the vehicle to Northside for repair for the issue on February 5, 2019. Northside's service technician determined that the vehicle's navigation system had the current available software and that the system was operating normally at the time of the repair visit.⁸ No repair was performed at the time. The vehicle's mileage on this occasion was 16,894.⁹ The vehicle was in Northside's possession for the day.¹⁰ Complainant did not receive a loaner vehicle while his vehicle was being repaired. Complainant did not know whether the navigation system was working properly when he picked up the vehicle.

Complainant testified that in August or September of 2019, he drove the vehicle to San Antonio and the navigation screen froze up again. Complainant took the vehicle to Northside to have the issue addressed on September 9, 2019. Northside's technician could not duplicate the problem and did not find any diagnostic trouble codes (DTC's) stored on the vehicle's computers for the issue.¹¹ Northside's service representative recommended to Complainant that he delete his personal contacts from the vehicle's computer system which was paired to his cell phone and not pair his or his wife's phones with the Bluetooth system in order to determine if the phones were causing a problem with the navigation system.¹² The vehicle's mileage on this occasion was 21,939.¹³ The vehicle was in Northside's possession for nine (9) days. Complainant received a loaner vehicle while his vehicle was being repaired. Complainant testified that he did not follow the dealer's service representative's request, as he wanted to use the vehicle and its accessories as designed.

In January of 2020, Complainant took his family on a trip to Orlando, Florida. While driving to Florida, the vehicle's navigation screen froze up again. Complainant had to pull the vehicle over to the side of the road and turned it off and back on in order to reset the navigation screen. Complainant testified that he took the vehicle to Northside for repair for the issue on February 14, 2020. Northside's service technician performed a hard reset to the navigation system in an

⁷ *Id.*

⁸ Complainant Ex. 5, Repair Order dated February 5, 2019.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Complainant Ex. 6, Repair Order dated September 9, 2019.

¹² *Id.*

¹³ *Id.*

attempt to resolve the issue.¹⁴ Northside's service advisor asked Complainant to not transfer his personal information to the vehicle via the Bluetooth connection in an effort to determine if his cell phone was causing the issues with the vehicle's navigation system.¹⁵ The representative also asked Complainant to use the navigation system while driving around town with the phone disconnected in an attempt to troubleshoot the problem.¹⁶ The vehicle's mileage on this occasion was 23,813.¹⁷ The vehicle was in Northside's possession for four (4) days. Complainant received a loaner vehicle while his vehicle was being repaired. Complainant again did not follow the service representative's request not to connect his cell phone to the vehicle through the Bluetooth connection.

Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department) on April 26, 2020, in which he complained about the vehicle's navigation screen freezing up and/or going black.¹⁸ Complainant contacted Respondent's consumer affairs department by phone to complain about the vehicle.

As a result of the complaint regarding the vehicle, Complainant agreed to a request by Respondent's representative of an inspection of the vehicle. The inspection took place on June 1, 2020, at Northside. The vehicle's mileage was 24,553 on the date of the inspection.¹⁹ Matthew Hennessey, Dealer Technical Specialist, performed the inspection virtually due to the Covid-19 emergency.²⁰ Mr. Hennessey requested that Complainant allow Northside's technician to install a separate Bluetooth hands free unit to the vehicle so that Complainant would not pair his cell phone to the vehicle's Bluetooth in an effort to determine if the navigation screen issue was being caused by Complainant's cell phone.²¹ Complainant refused to allow the installation of the separate Bluetooth.²² The technician was unable to find any stored DTC's and did not perform any repairs to the vehicle.²³

Complainant testified that the issue with the vehicle's navigation screen freezing up occurred again in August of 2020 while he and his family were on another trip to Florida. Complainant stated that he had to pull the vehicle over to the side of the road and stop and restart it in order to get the navigation screen to reset.

¹⁴ Complainant Ex. 7, Repair Order dated February 14, 2020.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Complainant Ex. 1, Warranty Performance Complaint dated April 26, 2020.

¹⁹ Respondent Ex. 1, Repair Order dated June 1, 2020.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

Complainant testified that he feels that the issue with the vehicle's navigation system puts him and his family's safety at risk, because he has to pull the vehicle over to the side of the road or in a parking lot to turn off the vehicle and restart it in order to reset the navigation screen. He feels that the issue is electrical in nature, as the service technicians have performed hard resets to the vehicle several times. Complainant stated that he wants to enjoy the vehicle and its accessories as designed and that his cell phone should not affect the vehicle's navigation system. Complainant also stated that the problem with the navigation screen could be a hardware or wiring issue. Complainant feels that Respondent should repair or replace the vehicle's navigation system.

C. Respondent's Evidence and Arguments

Matthew Hennessey, Field Technical Specialist, represented and testified for Respondent at the hearing. Mr. Hennessey testified that he has worked in the automotive industry for 25 years. For the first five (5) years of his career, he worked as a service technician for a dealer. Mr. Hennessey has worked for Respondent for the past 20 years in his current position. He is an Automotive Service Excellence (ASE) Master Certified Technician.

Mr. Hennessey testified that he has never seen the subject vehicle. He was assigned to perform an inspection of the vehicle, but due to the Covid-19 emergency, he was unable to travel to the vehicle location to perform the inspection. As a result, Mr. Hennessey performed a virtual inspection of the vehicle via Facetime. The inspection was performed on June 1, 2020, at Northside. Mr. Hennessey testified that he had the dealer's service technician connect various cell phones to the vehicle's Bluetooth system to see if they affected the vehicle's navigation screen. There was no malfunction with the navigation system while any of the test phones were used.

Mr. Hennessey stated that the navigation screen never froze up during any of the repairs performed by the dealer. In addition, no DTC's for the navigation screen were ever stored on the vehicle's computers. One software update was performed to the navigation system on March 19, 2018.

Mr. Hennessey stated that problems with a vehicle's navigation system are usually caused by the driver's cell phone. There could be programs running in the phone's background that could affect the way the vehicle's navigation system works. Mr. Hennessey stated that it is necessary to determine if the driver's cell phone is downloading information in the background which could be creating problems with the system. As a result, Mr. Hennessey recommended that a separate Bluetooth hands free unit be installed in the vehicle so that Complainant could connect his phone and use it while driving. This would allow the service technician to see if Complainant's cell phone was actually interfering with or affecting the vehicle's navigation system. Since

Complainant's cell phone would not be paired with the vehicle's Bluetooth system, the technician could make an actual diagnosis of the problem. However, Complainant refused the request. As a result, no repair was performed on the vehicle on June 1, 2020, as the navigation system was working as designed.

Mr. Hennessey stated that he does not believe that the issue with the navigation screen is a safety issue. He stated that it is not necessary to turn off the vehicle and restart it in order to reset the navigation system. A reset can be performed by pushing the navigation system's power button for three (3) seconds which will cause the system to reboot. The reboot procedure is included in the vehicle's owner's manual. In addition, Mr. Hennessey does not feel that the issue affects the vehicle's value or use.

D. Analysis

The issue to be addressed is whether Complainant's vehicle has a defect or condition that causes the vehicle's navigation screen to freeze up and which has not been repaired by Respondent. Complainant feels that the vehicle has an electrical, wiring, or hardware defect or nonconformity which causes the vehicle's navigation screen to freeze up periodically. Respondent argues that Complainant's cell phone could be the cause of the issue with the navigation screen and that there is no defect or nonconformity with the vehicle which has not been repaired.

A manufacturing defect is 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, such as incorrect assembly or the use of a broken part. Unlike manufacturing defects, issues that do not arise from manufacturing, such as characteristics of the vehicle's design (which exists before manufacturing) or dealer representations and improper dealer repairs (which occur after manufacturing) are not warrantable defects. Design characteristics result from the vehicle's specified design and not from any error during manufacturing.²⁴ In sum, because the warranty only covers manufacturing defects, Warranty Performance does not apply to design characteristics or design defects.

The evidence indicates that the issue with the vehicle's navigation screen freezing up could be caused by Complainant's cell phone running programs in the background while the phone has a Bluetooth connection with the vehicle. Complainant did not allow Respondent an opportunity to see if this was actually the case, since he refused to allow Respondent to install an external Bluetooth device to the vehicle in an attempt to troubleshoot the problem. Complainant bears the burden of persuasion to establish that there is a defect with the vehicle which Respondent has

²⁴ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

failed to repair. The hearings examiner must hold that Complainant has not met this burden, since he has not provided Respondent with an adequate opportunity to troubleshoot the issue. As such, the hearings examiner must find that there is no defect with the vehicle itself. Therefore, repair relief for Complainant is not warranted.

On the date of hearing, the vehicle's mileage was 27,378 and it remains covered under Respondent's warranty. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

Complainant's request for repair relief is denied.

III. FINDINGS OF FACT

1. Viet Nguyen (Complainant) purchased a new 2017 Lexus GX 460 on February 18, 2017, from Northside Lexus (Northside) in Katy, Texas with mileage of 10 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Lexus, a Division of Toyota Motor Sales, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides warranty coverage for the vehicle for four (4) years or 50,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 27,378.
4. At the time of hearing the vehicle's warranty was still in effect.
5. Complainant has experienced several incidents where the vehicle's navigation system has frozen or blacked out while driving on long trips.
6. Complainant took the vehicle for repair to Respondent's authorized dealer, Northside, in order to address his concerns with the vehicle's navigation screen freezing or going black on the following dates:
 - a. March 19, 2018, at 10,698 miles;
 - b. April 28, 2018, at 11,531 miles;
 - c. February 5, 2019, at 16,897 miles;
 - d. September 9, 2019, at 21,939 miles; and
 - e. February 14, 2020, at 23,813 miles.

7. On March 19, 2018, Northside's service technician performed a software/firmware update on the vehicle's navigation system in order to address the issue of the navigation screen freezing.
8. On April 28, 2018, Northside's service technician performed a hard reset to the vehicle's navigation system in an attempt to resolve the issue of the navigation screen freezing up.
9. On February 5, 2019, Northside's service technician verified that the vehicle's navigation system had the current software and determined that the system was operating normally during the repair visit. No repair was performed for the issue at the time.
10. On September 9, 2019, Northside's service technician could not duplicate the concern and did not find any diagnostic trouble codes (DTC's) stored on the vehicle's computers for the navigation screen freezing or blacking out. No repair was performed for the issue.
11. During the repair visit described in Findings of Fact #10, the service representative asked Complainant to not transfer his personal information to the vehicle via the Bluetooth connection and not pair the phone to the vehicle in an attempt to determine in an effort to determine if his cell phone was causing the issues with the vehicle's navigation system. Complainant did not follow the representative's recommendation.
12. On February 14, 2020, Northside's service technician performed a hard reset for the navigation system and verified its operation over the next several days. The system seemed to be working correctly when the vehicle was released to Complainant.
13. Also, during the repair visit described in Findings of Fact #12, Northside's service representative again asked Complainant to not transfer his personal contacts to the vehicle's Bluetooth connection and to use the navigation system when driving in town to see if it was operating correctly. Complainant did not follow the service representative's recommendation.
14. On April 26, 2020, Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).
15. On June 1, 2020, Complainant took the vehicle to Northside to allow Respondent's field technical specialist, Matthew Hennessey, to inspect the vehicle to see if he could resolve the issue with the vehicle's navigation screen. The vehicle's mileage was 24,553 at the time.

16. During the inspection described in Findings of Fact #15, Mr. Hennessey suggested that a separate Bluetooth hand free unit be installed in the vehicle for Complainant to use, so that the technician could remove the car to cell phone pairing to see if the vehicle's phone was affecting the navigation system. Complainant refused to cooperate with this request. No repair was performed at the time.
17. In August of 2020, the vehicle's navigation screen froze twice on a trip that Complainant and his family took to Destin, Florida.
18. The only remedy available to Complainant is repair of the vehicle, since he filed the complaint on April 26, 2020, more than six (6) months after 24 months from the date of purchase (February 18, 2017).
19. On July 22, 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.
20. The hearing in this case convened telephonically on September 24, 2020, before Hearings Examiner Edward Sandoval. Viet Nguyen, Complainant, represented himself at the hearing. Respondent was represented by Matthew Hennessey, Field Technical Specialist. The hearing was continued until October 8, 2020, in order to obtain additional documentation which had not been provided to the hearings examiner. At the continuance, Viet Nguyen, Complainant, represented himself. Respondent was represented by Matthew Hennessey, Field Technical Specialist. The hearing record closed on May 18, 2020.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204 (Warranty Performance) and §§ 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 in the vehicle. 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 **DISMISSED**.

SIGNED November 16, 2020.



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