

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 mailed written notice of 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 these 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 by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the repair 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.⁶

If a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has 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.⁷

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ *Id.*

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) (3) provides a third method 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. This section 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 Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

“Serious safety hazard” means a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.⁸

B. Complainant’s Evidence and Arguments

Complainant leased a new 2018 Land Rover Range Rover from Land Rover Austin on February 24, 2018, with mileage of 16 at the time of delivery.^{9,10} On the date of the lease signing, the lease was assigned to JP Morgan Chase Bank, NA (Intervenor).¹¹ Respondent issued a new vehicle limited warranty which provides coverage for the vehicle for four (4) years or 50,000 miles from the date of the first retail sale, whichever occurs first.¹² The vehicle’s mileage on the date of hearing was approximately 18,989. At the time of hearing the vehicle’s warranty was still in effect.

1. Crayton Bare’s Testimony

Crayton Bare, Complainant’s husband, testified in the hearing. Mr. Bare stated that Complainant is the primary driver of the subject vehicle. Mr. Bare stated that he drives the vehicle about once a month.

Mr. Bare testified that sometime in the middle of February of 2020, Complainant informed him that the vehicle’s coolant warning light illuminated. He took the vehicle to a local auto repair shop to have the coolant level checked and to add coolant to the vehicle’s coolant system. This occurred twice during the month. After the second incident, Mr. Bare decided to take the vehicle to the dealer, Land Rover Houston, to have the issue addressed.

On March 3, 2020, Complainant took the vehicle to Land Rover Houston to address the issue of the coolant warning light illuminating. The dealer’s service technician determined that the vehicle’s coolant pump was leaking and that the coolant pump bearing was loose.¹³ The technician replaced the vehicle’s coolant pump in order to address the issue of the coolant leak.¹⁴ The vehicle’s mileage at the time was 18,716.¹⁵ The vehicle was in the dealer’s possession for seven (7) days. Complainant was not provided a loaner vehicle while her vehicle was being repaired because the dealer did not have any vehicles available.

⁸ Tex. Occ. Code § 2301.601(4).

⁹ Complainant Ex. 2, Closed-End Lease dated February 24, 2018.

¹⁰ Complainant Ex. 3, Odometer Disclosure Statement dated February 24, 2018.

¹¹ Complainant Ex. 2, Closed-End Lease dated February 24, 2018.

¹² Complainant Ex. 15, Excerpts from Vehicle Warranty Manual, undated.

¹³ Complainant Ex. 4, Repair Order dated March 3, 2020.

¹⁴ *Id.*

¹⁵ *Id.*

In May of 2020, the vehicle's coolant warning light illuminated again. Complainant took the vehicle to Land Rover Houston for repair for the issue on May 22, 2020. The dealer's service technician verified coolant was leaking from behind the vehicle's water pump.¹⁶ The technician determined that the O-ring on the water pump had separated.¹⁷ The technician replaced the O-ring and gasket in order to address the issue.¹⁸ The vehicle's mileage on this occasion was 18,838.¹⁹ The vehicle was in the dealer's possession for five (5) days during this repair visit. Mr. Bare testified that Complainant was not provided with a loaner vehicle while her vehicle was being repaired because there was not one available. The coolant warning light was not illuminated when Complainant picked up the vehicle.

On June 1, 2020, the vehicle's coolant warning light again illuminated. Complainant took the vehicle to Land Rover Houston for repair for the issue on June 3, 2020. The dealer's service technician determined that the vehicle's outlet pipe was leaking coolant.²⁰ The technician also determined that the vehicle's rear manifold and bypass tube were leaking coolant.²¹ The technician replaced the vehicle's outlet pipe, rear manifold, and bypass tube in order to address the issue of the coolant leak.²² The vehicle's mileage on this occasion was 18,908.²³ The vehicle was in the dealer's possession until August 14, 2020. Complainant was informed that the delay in returning the vehicle was because a part had to be special ordered. Complainant was not provided with a loaner vehicle during this repair visit.

On June 30, 2020, Complainant mailed a letter to Respondent advising them that she was dissatisfied with the vehicle and demanding that they repurchase it.²⁴ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on July 6, 2020.²⁵

Mr. Bare testified that he picked up the vehicle from Land Rover Houston on August 14, 2020. The coolant warning light was not illuminated when Mr. Bare picked up the vehicle. The vehicle was low on fuel when he picked it up, so he stopped at a store to put gas in the vehicle. When he started the vehicle after getting gas, Mr. Bare observed that the vehicle's intelligent emergency braking (IEB) warning light illuminated. Mr. Bare took the vehicle back to Land Rover Houston immediately so that the issue could be addressed. When he arrived at the dealer's location, Mr.

¹⁶ Complainant Ex. 7, Repair Order dated May 22, 2020.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Complainant Ex. 8, Repair Order dated June 3, 2020.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Complainant Ex. 10, Letter to Jaguar Land Rover North America, LLC dated June 31, 2020. The date on the letter is a typographical error as there are only 30 days in June.

²⁵ Complainant Ex. 1, Lemon Law Complaint dated July 6, 2020.

Bare noticed some damage to the vehicle's bumper. Mr. Bare was later informed that the IEB warning light illuminated due to the damaged bumper. The vehicle was in the dealer's possession for repair for the issue until October 6, 2020, at which time Mr. Bare was informed that the vehicle had been repaired and could be picked up. Mr. Bare refused to pick up the vehicle from the dealer. The vehicle is still currently at Land Rover Houston.

Mr. Bare testified that he has not driven the vehicle to determine if it has been repaired. He stated that Complainant refuses to drive the vehicle as she feels that it's a safety hazard. Mr. Bare also testified that he feels that the vehicle has lost value due to the repairs performed to it. However, Mr. Bare has not had the vehicle appraised.

2. Alexis Bare's Testimony

Alexis Bare, Complainant, testified in the hearing. She stated that she does not feel safe driving the vehicle because there have been many issues with the vehicle. She feels that the coolant leaking from the cooling system can cause a fire in the vehicle. In addition, she feels that the vehicle could stall or die and leave her and her children stranded on the side of the road.

Ms. Bare also stated that she felt that the loaner vehicles offered to her by the dealer were not comparable to the vehicle that she was leasing, because they were smaller and did not have the same retail value.

C. Respondent's Evidence and Arguments

Brandon Sangster, Customer Satisfaction Senior Technical Specialist, testified for Respondent. Mr. Sangster has been in the automotive business for 35 years. He has worked for Respondent in his present position for a year and a half. Prior to being hired by Respondent, Mr. Sangster worked as an automotive technician, team leader, shop foreman, and field technical specialist for various automobile manufacturers. Mr. Sangster stated that his current job duties for Respondent require that he provide technical advice to affiliated dealers, represent Respondent in proceedings as a subject matter expert, and perform vehicle inspections when necessary.

Mr. Sangster testified that he has never seen Complainant's vehicle because he has been unable to travel to perform vehicle inspections due to the ongoing Covid-19 emergency. However, he does feel that the vehicle has been repaired. Mr. Sangster stated that he has spoken to the service manager for Land Rover Houston and was told that there have been no issues with the vehicle during test drives taken after the last vehicle repair.

Mr. Sangster stated that he does not feel that a coolant leak is a serious safety hazard. He has never seen a coolant leak cause a fire in a vehicle. However, failing to address a coolant leak could seriously damage a vehicle's engine.

Mr. Sangster also stated that he does not feel that the repairs performed to the vehicle substantially impair the vehicle's value.

E. 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 subject 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.

Complainant leased the vehicle on February 24, 2018. Complainant experienced issues with the vehicle's coolant warning light illuminating and took the vehicle for repair for a coolant leak issue on the following dates: March 3, 2020; May 22, 2020; and June 3, 2020. The evidence indicates that the coolant leak was repaired during the June 3, 2020 repair visit. Another issue arose when Complainant picked up the vehicle from the dealer after the June 3, 2020 repair. However, this issue was not included on the Lemon Law complaint and cannot be addressed by the hearings examiner. In addition, this issue (the intelligent emergency braking system [IEB] warning light illuminating) was not related to the coolant leak issue. However, Respondent indicates that this issue has also been repaired.

Occupations Code § 2301.603 provides that "a manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's converter's or distributor's express warranty." Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer's warranty. If a vehicle has been repaired then no relief can be possible. A loss of confidence in the vehicle when a defect has been cured does not warrant relief under the Lemon Law. The Lemon Law requires that in order for a vehicle to be determined to be a "lemon" the "nonconformity continues to exist" after the manufacturer has made repeated repair attempts.²⁶ In the present case, the evidence reveals that the vehicle has been repaired and that it currently conforms to the manufacturer's warranty. Therefore, the hearings examiner finds that there is no defect with the

²⁶ Tex. Occ. Code § 2301.605.

vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

Respondent's new vehicle limited warranty applicable to Complainants' vehicle provides coverage for four (4) years or 50,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 18,989 and the vehicle remains covered under the 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 repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Alexis Bare (Complainant) leased a new 2018 Land Rover Range Rover on February 24, 2018, from Land Rover Austin in Austin, Texas, with mileage of 16 at the time of delivery.
2. At the time of the lease signing, the lease was assigned to JP Morgan Chase Bank, NA (Intervenor).
3. The manufacturer or distributor of the vehicle, Jaguar Land Rover North America, LLC (Respondent), issued a new vehicle limited warranty for the vehicle providing coverage for four (4) years or 50,000 miles, whichever comes first, from the date of delivery.
4. The vehicle's mileage on the date of hearing was approximately 18,989.
5. At the time of hearing the vehicle's warranty was still in effect.
6. Beginning in late February or early March of 2020, Complainant experienced instances of the vehicle's coolant warning light illuminating. Complainant determined that the vehicle had a coolant leak which was causing the warning light to turn on.
7. Complainant took the vehicle to Respondent's authorized dealer, Land Rover Houston located in Houston, Texas, for repair for the coolant leak issue on the following dates:
 - a. March 3, 2020, at 18,716 miles;
 - b. May 22, 2020, at 18,838 miles; and
 - c. June 3, 2020, at 18,908 miles.
8. On March 3, 2020, the dealer's service technician replaced the vehicle's coolant pump in an attempt to resolve the issue of the coolant leak.

9. On May 22, 2020, the dealer's service technician determined that the water pump's O-ring had separated and replaced the O-ring and gasket in an attempt to resolve the leak issue.
10. On June 3, 2020, the dealer's service technician replaced the vehicle's outlet pipe, rear manifold, and bypass tube in order to resolve the issue of the coolant leak. The vehicle was in the dealer's possession until August 14, 2020, on this occasion
11. When Complainant picked up the vehicle from the dealer on August 14, 2020, the vehicle's intelligent emergency braking (IEB) warning light illuminated.
12. Complainant returned the vehicle to Land Rover Houston on August 14, due to the IEB light being illuminated.
13. The vehicle is currently at Land Rover Houston as she has refused to pick it up or drive it since August of 2020.
14. The vehicle's coolant leak was repaired during the June 3, 2020 repair visit.
15. On June 30, 2020, Complainant mailed a letter to Respondent advising them that she was dissatisfied with the vehicle.
16. On July 6, 2020, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
17. On September 1, 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.
18. The hearing in this case convened telephonically on November 18, 2020, before Hearings Examiner Edward Sandoval. Alexis Bare, Complainant, appeared and testified in the hearing. She was represented in the hearing by her husband, Crayton Bare, who also testified. John Chambliss, attorney with Thompson, Coe Cousins & Irons, LLP, represented Respondent, Jaguar Land Rover North America, LLC, in the hearing. Also present and testifying for Respondent was Brandon Sangster, Customer Satisfaction Senior Technical Specialist. James W. Meredith, staff attorney, appeared and represented

JP Morgan Chase Bank, NA, Intervenor. The hearing record closed on November 18, 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 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 repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED December 8, 2020



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