

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0015276 CAF**

**FRANCIS CIANCARELLI,
Complainant**

v.

**GENERAL MOTORS LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Francis Ciancarelli (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2020 Cadillac XT5 Sport. Complainant asserts that the vehicle has a defect or nonconformity which causes the vehicle's infotainment system to not work properly. General Motors LLC (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 although the vehicle does have a currently existing warrantable defect, Complainant is entitled only to repair relief, as the defect does not substantially impair the use or market value of the vehicle and it does not create a serious safety hazard as defined in the Occupations Code and Complainant failed to allow Respondent a final opportunity to cure the 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 February 24, 2021, before Hearings Examiner Edward Sandoval. Francis Ciancarelli, Complainant, represented himself at the hearing. Respondent was represented by Carlin Davis, Business Resource Manager. The hearing record closed on February 24, 2021.

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

¹ Tex. Occ. Code § 2301.604(a).

value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have provided written notice of 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 can be established 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

“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

Finally, a rebuttable presumption can be established 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 that substantially impairs the vehicle’s use or market value, the vehicle has been out of service for repair for a cumulative total of 30 or more days, and the repairs 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.⁹

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).

⁷ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁸ Tex. Occ. Code § 2301.601(4).

⁹ Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

The 30 day out of service requirement described in Section 2301.605(a)(3) does not include any period during which the manufacturer or distributor lends the vehicle owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.¹⁰

B. Complainant's Evidence and Arguments

Complainant purchased a new 2020 Cadillac XT5 Sport on November 7, 2019, from Randall Motors (Randall) in San Angelo, Texas.¹¹ The vehicle's mileage at the time of delivery was 2.¹² Respondent provided a new vehicle limited warranty for the vehicle which provides bumper-to-bumper 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 39,046. At the time of hearing the vehicle's warranty was still in effect.

Complainant stated that soon after purchasing the vehicle, he began to experience issues with the vehicle's infotainment system. He stated that he had trouble placing and receiving calls from his cell phone, he had no access to data on occasion, and had trouble receiving texts. Complainant stated that he contacted OnStar regarding the issues and was referred to the dealer for repair.

Complainant testified that he took the vehicle to Randall for repair for the infotainment system issues on February 17, 2020. Randall's service technician inspected the vehicle and found that the vehicle's multimedia receptacle was not responding to the SD card properly.¹³ The technician replaced the vehicle's multimedia receptacle in order to resolve the issue.¹⁴ The vehicle's mileage on this occasion was 5,412.¹⁵ Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant stated that he continued to have issues with the infotainment system. However, he did state that he generally experiences connectivity issues with his cell phone in the San Angelo area where he currently resides.¹⁶

Complainant stated that soon after he got the vehicle back after the repairs were performed on February 17, 2020, he went to Midland, Texas for personal reasons. On his way back home, he experienced issues with the infotainment system. As a result, he took the vehicle to Randall for repair on March 14, 2020. Complainant informed Randall's service advisor that he was still

¹⁰ Tex. Occ. Code § 2301.605(c).

¹¹ Complainant Ex. 2, Purchase Order dated November 7, 2019.

¹² *Id.*

¹³ Complainant Ex. 3, Repair Order dated February 17, 2020.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ During the telephonic hearing, Complainant experienced issues with his cell phone connection from his home. Complainant was not able to establish a good cell connection until he drove to a location about five (5) minutes away from his home.

seeing the warning message that the SD card had been removed, that the Wi-Fi operated erratically, that he had trouble on occasion connecting his phone to the infotainment system, that he could not always send texts or emails from his phone when it was connected to the system, and that the display screen would sometimes go black.¹⁷ Randall's service technician linked an iPhone 10 to the vehicle's infotainment system and the Apple car play and determined that the system was operating as designed.¹⁸ The service technician informed Complainant that the system would allow the user to use either the Bluetooth connection or Apple car play singly, not at the same time.¹⁹ In addition, Complainant was informed that he could use only one (1) Wi-Fi connection at a time, not multiple connections.²⁰ Finally, the technician updated the vehicle's engine control module (ECM) software to the latest configuration.²¹ The vehicle's mileage at the time was 8,473.²² The vehicle was in Randall's possession until March 19, 2020.²³ Complainant received a loaner vehicle while his vehicle was being repaired.

The day after he received the vehicle from Randall, Complainant experienced an issue with the vehicle's infotainment display going black and then turning back on and Apple car play not working. Complainant took the vehicle to Randall for repair for the issues on March 20, 2020. Randall's service technician was unable to duplicate the issues.²⁴ The vehicle's mileage on this occasion was 8,781.²⁵ The vehicle was in Randall's possession until April 29, 2020, during this repair attempt.²⁶ Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant testified that he continued to experience intermittent issues with the vehicle's infotainment system, including the message showing that the SD card had been removed. He took the vehicle to Randall for repair for the issues on May 12, 2020. Randall's service technician verified that the warning message regarding the SD card was present on the display screen, although the SD card had not been removed.²⁷ Randall's technician contacted one of Respondent's engineers about the issue and was informed that there was no repair available for the issue.²⁸ Complainant was informed that he would be contacted by the dealer when a repair was available.²⁹ The technician also determined that Complainant's information had been deleted from OnStar and had Complainant reset his password for the application and agree to the

¹⁷ Complainant Ex. 4, Repair Order dated March 14, 2020.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Complainant Ex. 5, Repair Order dated March 20, 2020.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Complainant Ex. 6, Repair Order dated May 12, 2020.

²⁸ *Id.*

²⁹ *Id.*

provider's terms in order to resolve that issue.³⁰ The vehicle's mileage on this occasion was 14,035.³¹ The vehicle was in Randall's possession until May 13, 2020.³² Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant testified that he took the vehicle to Pollard Cadillac located in Big Spring, Texas for repair for the issues with the infotainment system on an unknown date in the spring or summer of 2020. It was reiterated to him at the time that there was no repair available to address the issue of the warning message regarding the SD card being removed.

On June 1, 2020, Complainant provided a letter to George Randall, owner of Randall Motors, in which he informed Mr. Randall that he was dissatisfied with the vehicle.³³ Complainant stated that he did not provide Respondent with written notice of his concerns. Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on August 19, 2020, in which he complained about the vehicle's infotainment system.³⁴

During cross-examination, Complainant stated that he has not been contacted by anyone from Randall Motors to take the vehicle in for further repair. However, he did state that he was contacted by one of Respondent's representatives who asked him to take the vehicle to a dealer for repair for the SD navigation card warning message issue. Complainant stated that he refused to take the vehicle in for repair for the issue.

C. Respondent's Evidence and Arguments

Carlin Davis, Business Resource Manager, testified for Respondent. He testified that he is an Automotive Service Excellence (ASE) Certified Master Technician. Mr. Davis stated that he has worked for Respondent for the past 14 years and attended Southern Illinois Automotive School. Prior to being hired by Respondent, Mr. Davis served 20 years in the navy.

Mr. Davis stated that he has never seen the subject vehicle. However, he was able to testify in general about the infotainment system Respondent has placed in its vehicles. Mr. Davis stated that cell phones work through "line of sight", that is that the cell phone must be in the line of sight of a cell tower in order to work properly. He feels that many of the problems Complainant is experiencing with the vehicle's infotainment system can be linked to the fact that there is limited cellular coverage in the area where Complainant lives. In addition, Mr. Davis indicated that not all cell phones are compatible with the vehicle's infotainment system. Some phones will

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Complainant Ex. 7, Letter to George Randall dated June 1, 2020.

³⁴ Complainant Ex. 2, Lemon Law Complaint dated August 19, 2020.

have connectivity issues due to the number of different cell phones available to the public and the continual updating of those phones' operating systems.

Mr. Davis testified that Respondent has experienced an issue with a warning message regarding the SD card being removed showing on some vehicles' display screens. However, he also stated that the Respondent has developed a fix for the issue and that the fix was available beginning September 10, 2020. Mr. Davis went on to say that the nothing can be done for line of sight issues between cell towers and the vehicle.

Mr. Davis stated that Respondent never received written notice from Complainant that he was dissatisfied with the vehicle. Mr. Davis also stated that once Respondent received notice of the filing of the Lemon Law complaint, Respondent asked Complainant for a final opportunity to inspect and repair the vehicle. However, Complainant refused to allow Respondent an opportunity to cure.³⁵

D. Analysis

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

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Complainant feels that the vehicle has a defect or nonconformity which causes the vehicle's infotainment system to not work properly. Respondent argues that all cell phones may not be compatible with the vehicle's infotainment system, that there may be problems with the cellular coverage in the area where Complainant lives, and that there is no defect or nonconformity with the vehicle which would warrant repurchase or replacement of the vehicle.

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

³⁵ Respondent Ex. 3, Email from Guadalupe Martinez to Carlin Davis dated December 2, 2020.

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.³⁶ In sum, because the warranty only covers manufacturing defects, the Lemon Law does not apply to design characteristics or design defects.

The evidence indicates that many factors may have contributed to the issues that Complainant is experiencing with the vehicle's infotainment system. First, the cell phone coverage in the area is spotty as testified by Complainant and experienced in the telephonic hearing. Second, the testimony established that not all cell phones are compatible with the vehicle's infotainment system. Phone compatibility is a design issue not subject to the warranty. Third, Complainant may have been attempting to use both the vehicle's Bluetooth and Apple car play at the same time which the infotainment system does not allow. Finally, Complainant may have been attempting to access more than one of the vehicle's Wi-Fi connections which the infotainment system also will not allow. However, Complainant did raise the issue of the warning message that the SD card was removed from the multimedia receptacle appearing on the vehicle's display screen on more than one occasion and that Respondent verified the issue and, at the time of the last repair attempt in May of 2020, Respondent admitted that they did not have a repair for, although they may now.

The hearings examiner must find that there is a minor defect with the vehicle itself. No evidence was presented to indicate that the issue *substantially* impairs the use or market value of the vehicle and it does not create a serious safety hazard. In addition, Complainant did not provide Respondent with a final opportunity to inspect and repair the vehicle which is a requirement under Occupations Code § 2301.606(c) before the hearings examiner can order repurchase or replacement of a vehicle. Therefore, repurchase or replacement relief for Complainant cannot be ordered. However, repair relief is possible. As such, the hearings examiner will order Respondent to repair the vehicle so as to conform to its warranty.

On the date of hearing, the vehicle's mileage was 39,046 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 repurchase or replacement relief is denied. However, Respondent will be ordered to perform any necessary repairs to the vehicle's infotainment system in order to conform the vehicle to their applicable warranty. Such repairs must be completed within the time frame indicated below.

III. FINDINGS OF FACT

³⁶ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

1. Francis Ciancarelli (Complainant) purchased a new 2020 Cadillac XT5 Sport on November 7, 2019, from Randall Motors (Randall) in San Angelo, Texas with mileage of 2 at the time of delivery.
2. The manufacturer or distributor of the vehicle, General Motors LLC (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper 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 39,046.
4. At the time of hearing the vehicle's warranty was still in effect.
5. Complainant has experienced numerous issues with the vehicle's infotainment system, including problems placing and receiving cell phone calls, accessing data on his cell phone, and receiving a warning message that the SD card has been removed from the multimedia receptacle.
6. Complainant took the vehicle for repair to Respondent's authorized dealer, Randall, in order to address his concerns with the vehicle's infotainment system on the following dates:
 - a. February 17, 2020, at 5,412 miles;
 - b. March 14, 2020, at 8,473 miles;
 - c. March 20, 2020, at 8,781 miles; and
 - d. May 12, 2020, at 14,035 miles.
7. On February 17, 2020, Randall's service technician determined that the vehicle's multimedia receptacle was not responding to the SD card properly and replaced the receptacle.
8. On March 14, 2020, Randall's service technician determined that the vehicle's Bluetooth system and Apple Car Play system were both operating as designed. Despite this finding, the technician updated the vehicle's engine control module (ECM) software to the latest configuration during the repair visit.
9. On March 20, 2020, Randall's service technician was unable to duplicate Complainant's concerns with the vehicle's infotainment system. As a result, no repairs were performed to the vehicle at the time.
10. On May 12, 2020, Randall's service technician verified that the vehicle's message panel

showed that a warning message that the SD card had been removed from the multimedia receptacle. The technician indicated that there was no fix for the warning message at the time.

11. Also on May 12, 2020, Randall's service technician verified that a message appeared on the vehicle's message panel indicating that the driver must accept terms and conditions in order to use OnStar. The technician had Complainant reset his password and agree to the terms in order to resolve the issue.
12. On June 1, 2020, Complainant sent a letter to George Randall, owner of Randall Motors, advising them of his dissatisfaction with the vehicle and the number of repair attempts for the vehicle.
13. Complainant did not send or provide written notice of his dissatisfaction with the vehicle to Respondent.
14. On August 19, 2020, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
15. After receiving the Lemon Law complaint, Respondent requested, but was not provided, a final opportunity to repair the vehicle.
16. On December 7, 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.
17. The hearing in this case convened telephonically on February 24, 2021, before Hearings Examiner Edward Sandoval. Francis Ciancarelli, Complainant, represented himself at the hearing. Respondent was represented by Carlin Davis, Business Resource Manager. The hearing record closed on February 24, 2021.

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 the vehicle has a verifiable defect or nonconformity, *i.e.*, the vehicle's infotainment system doesn't work properly and shows a warning message that the SD card has been removed from the multimedia receptacle. However, that defect does not present a serious safety hazard nor substantially impair the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
 7. Respondent was not provided a final opportunity to cure the defect. Tex. Occ. Code § 2301.606(c)(2).
 8. 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.
 9. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
 10. Complainant is entitled to repair relief under the terms of Respondent's warranty. Tex. Occ. Code § 2301.204.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**. It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the infotainment system 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 § 2001.144.³⁷ Within 40 days after receiving the

³⁷ (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

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 April 2, 2021.



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