

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 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

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).

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

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

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

1. Joseph Marcum’s Testimony

Complainant leased a new 2018 Land Rover Discovery on November 28, 2018, from Park Place Jaguar Land Rover DFW (Park Place) located at DFW Airport, Texas.¹¹ The lease was assigned to JP Morgan Chase Bank, NA (Intervenor).¹² Complainant received a \$1,000 customer cash incentive that was applied to the price of the vehicle.¹³ The vehicle’s mileage at the time of delivery was 26.¹⁴ Respondent provided a new vehicle limited bumper-to-bumper warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever comes first. On the date of hearing the vehicle’s mileage was 24,908 miles and the vehicle’s warranty was still in effect.

Complainant testified that he is the primary driver of the vehicle. Complainant stated that he did test drive the vehicle before purchasing it. He explained that the test drive occurred in the evening and the weather was clear. He further explained that the vehicle was stored in a warehouse at the dealership, so it was not exposed to rain.

⁸ Tex. Occ. Code § 2301.601(4).

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

¹⁰ Tex. Occ. Code § 2301.605(c).

¹¹ Complainant Ex. 1, Retail Lease Agreement dated November 28, 2018.

¹² *Id.*

¹³ Complainant Ex. 8, Customer Cash Receipt Acknowledgment Form, undated.

¹⁴ Complainant Ex. 2, Odometer Disclosure Statement dated November 28, 2018.

Complainant testified that on or about October 30, 2019, he noticed water dripping from the vehicle's rear-view mirror. He felt under the rear-view mirror and notice that the water was coming from the housing. He stated that he placed a towel underneath the leak and took the vehicle to Park Place the next day.¹⁵ The technician replaced the vehicle's front windshield in order to address the concerns with the vehicle.¹⁶ The vehicle's mileage on this occasion was 9,608.¹⁷ The vehicle was in Park Place's possession until December 13, 2019. Complainant was provided several loaner vehicles while his vehicle was being repaired. For the first two weeks he was provided a sedan that he felt was not comparable to his vehicle. For the remainder of the time his vehicle was in the shop, he was provided with a Jaguar F-Pace which he also felt was not comparable to his vehicle. He stated that the long delay for the repair was due to a line of customers in front of him with similar issues as well as an instance where the replacement windshield was shattered during installation. Complainant stated that when he got the vehicle back the leak was no longer present.

Complainant testified that on December 14, 2020, when he got in the vehicle, he noticed standing water in the cupholder. He felt the headliner of the vehicle and it was substantially wet. He stated that it was wetter than it had been during the previous incident. Complainant took the vehicle to Jaguar Land Rover of Chantilly (Chantilly), in Chantilly, Virginia the following day. Complainant stated that Chantilly's service technician said that windshield leaks were a common problem. The vehicle's windshield was removed and then replaced and resealed as a temporary fix until a new windshield could arrive.¹⁸ During this repair, the cord to the heated windshield had to be severed. This has led to an inability to clear snow/ice on the windshield as well as condensation forming on the inside of the windshield. A new windshield was ordered at that time, but there was a backlog for replacement windshields. The vehicle's mileage on this occasion was 19,499.¹⁹ Complainant testified that the vehicle was in Chantilly's possession for three days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant stated that he was informed that a replacement windshield arrived at the dealership in June of 2021. He did not proceed with the replacement due to the ongoing lemon law case. Complainant stated that he has noticed spots of water since the December repair. He explained that there have been spots of water around the center console and around the cupholders. He clarified that he has not seen a water leak since the December repair. He affirmed that he has not taken the vehicle to a dealer for repairs on this issue since then.

¹⁵ Complainant Ex. 5, Repair Order dated October 31, 2019.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Complainant Ex. 6, Repair order dated December 15, 2020.

¹⁹ *Id.*

On December 10, 2019, Complainant wrote an email to Respondent advising them of his dissatisfaction with the vehicle.²⁰ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on February 25, 2021.²¹ Respondent had their opportunity to inspect the vehicle and perform repairs on July 13, 2021 at Chantilly. No repairs were performed during this inspection.

On cross examination, Complainant confirmed that he attempted to call Respondent at the 800-number provided by Park Place's service manager. He stated that he never received a follow up call. He also confirmed that he sent emails to two of Respondent's executives. He admitted that he did not send any other emails.

Complainant established that when he lived in Texas, the vehicle was parked uncovered in a driveway and now the vehicle is parked covered in Virginia. He added that the vehicle is parked uncovered while at work. He confirmed that Respondent has paid two lease payments as a show of good will for the windshield issues. He also clarified that the reason he did not get his windshield replaced when a replacement come in was because his lawyer advised him not to. Complainant's lease expires in February of 2022.

2. Kristin Marcum's Testimony

Kristin Marcum, Complainant's wife, testified in the hearing. She stated that she drives the vehicle once a weekend and she rides in the vehicle about once a week. Ms. Marcum testified that she has seen the aftermath of the windshield leak including a musty smell in the vehicle. She explained that she feels that the vehicle has a moldy odor. Ms. Marcum stated that on two occasions she has observed water inside the vehicle. She clarified that the moldy smell has decreased over time, but it is still present, specifically when it is hot outside. Ms. Marcum testified that she most recently detected the musty odor the weekend before the hearing, but she did not see any sitting water and could not tell if anything was damp. She stated the last time she noticed water in the vehicle was mid-February of 2020.

²⁰ Complainant Ex. 7, Emails Between Complainant and Park Place dated December 2019, p. 1.

²¹ Complainant Ex. 4, Lemon Law Complaint dated February 25, 2021.

C. Respondent's Evidence and Arguments

1. Brandon Sangster's Testimony

Brandon Sangster, Customer Satisfaction Senior Technical Specialist, testified for Respondent. Mr. Sangster testified that he has worked in the automotive industry over 30 years. For the first part of his career, Mr. Sangster worked as an instructor in multiple vocational schools as well as a field service engineer at various automotive repair locations. He was hired by Respondent in June of 2019, in his current position. He attended Universal Technical Institute and received a certification from them. He has had Automotive Service Excellence (ASE) certifications in the past, but most of them have expired.

Mr. Sangster stated that he saw the vehicle in question when he performed the inspection on July 13, 2021 at Chantilly. His inspection was focused on the interior of the vehicle and the windshield area. He was looking for leaks around the windshield. In addition, he attempted to determine if there was a moldy odor in the vehicle's interior. The vehicle's mileage at the time of the inspection was 24,451.²²

During his inspection, Mr. Sangster did not notice any leaks or any water/dampness in the interior of the vehicle after it was sprayed with a high-pressure water hose.²³ He stated that he did not notice an abnormal smell in the interior of the vehicle.²⁴ He believed that the vehicle was operating as designed.

During cross-examination, Mr. Sangster stated that he did not believe there was a windshield shortage during the first repair. He explained that the delay in the repair was due to the technicians breaking the windshield and having to order a new one. He further explained that the second repair delay was a result of a part constraint due to the Covid-19 pandemic, but it was not due to a part shortage. Mr. Sangster stated that he was not aware of the windshield heating issue until Complainant's testimony at the hearing and, therefore, he did not test the feature during his inspection.

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

²² Respondent Ex. 2, Pictures and Videos of Subject Vehicle Taken on July 13, 2021.

²³ Respondent Ex. 1, Inspection Report of Brandon Sangster, undated.

²⁴ *Id.*

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 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's concern with the vehicle is that the vehicle's windshield leaks.

The evidence presented at the hearing established that the windshield was removed and replaced on December 15, 2020, by Respondent's authorized service dealers and the leak has not occurred since. Since repairs performed by Respondent's authorized dealers were performed after the incident occurred and the issue has not recurred, the hearings examiner must hold that the issue has been repaired and, as such, does not provide grounds to order repurchase or replacement relief for Complainant.

Evidence taken at the hearing established that the heating element of the windshield was disconnected during a repair by Respondent's authorized service dealers. This issue was not included on the Lemon Law complaint. Therefore, the hearings examiner does not have jurisdiction to rule on it. However, Complainant is strongly encouraged to take the vehicle to the dealer for repair for the issue.

On the date of the hearing, the vehicle's mileage was 24,908 and it remains under warranty. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the vehicle's warranty.

Complainant's request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Joseph Marcum (Complainant) leased a new 2018 Land Rover Discovery on November 28, 2018, from Park Place Jaguar Land Rover DFW (Park Place) located at DFW Airport, Texas with mileage of 26 at the time of delivery.
2. 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 which provides coverage for the first four (4) years or 50,000 miles after deliver, whichever comes first.
4. The vehicle's mileage on the date of hearing was 24,908.
5. At the time of hearing the vehicle's warranty was still in effect.
6. Complainant has experienced multiple situations where the vehicle's windshield has leaked after a rainstorm.
7. Complainant took the vehicle for repair to Respondent's authorized dealers to address his concerns with the water leak issue on the following dates:
 - a. October 31, 2019, at 9,608 miles at Park Place Jaguar Land Rover DFW;
 - b. December 15, 2020, at 19,499 miles at Jaguar Land Rover of Chantilly;
8. On October 31, 2019, the vehicle was taken to Park Place for repair because there was water leaking from the rear-view mirror.
9. During the repair visit described in Findings of Fact #8, in order to address Complainant's concerns, Park Place's service technician replaced the vehicle's windshield. The vehicle was in Park Place's possession for a month and a half.
10. On December 10, 2019, Complainant wrote an email to Respondent advising them of his dissatisfaction with the vehicle.
11. On December 15, 2020, Complainant took the vehicle to Chantilly because there was standing water inside the cupholders and the interior of the vehicle was wet.
12. During the repair visit described in Findings of Fact #11, Chantilly's service technician removed and then replaced the front windshield as a temporary repair until a replacement windshield could arrive at the dealership. During this repair, the wire to the windshield heater was cut in order to facilitate the removal and replacement of the windshield.
13. On February 25, 2021, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

14. In June of 2021, a replacement windshield was available. Complainant refused the replacement windshield on the advice of counsel due to the pending Lemon Law complaint.
15. On July 13, 2021, Respondent's Customer Satisfaction Senior Technical Specialist, Brandon Sangster, performed an inspection of the vehicle at the Chantilly location. The vehicle's mileage was 24,451 at the time.
16. During the inspection described in Findings of Fact #15, Mr. Sangster determined that the vehicle's windshield was not leaking and did not perform any repairs to the vehicle for the issue.
17. There have been no leaks since the windshield was replaced during the repair visit described in Findings of Fact #11.
18. On April 30, 2021, 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.
19. The hearing in this case convened telephonically on August 4, 2021, before Hearings Examiner Edward Sandoval. Joseph Marcum, Complainant, appeared and was represented by Sidney Scheinberg, attorney with Godwin Bowman, PC, at the hearing. Also appearing and testifying for Complainant was his wife, Kristin Marcum. Respondent, Jaguar Land Rover North America, LLC, was represented by John Chambless, attorney with Thompson, Coe, Cousins, and Irons, LLP. Also appearing for Respondent was Brandon Sangster, Customer Satisfaction Senior Technical Specialist. Intervenor, JP Morgan Chase Bank, NA, did not appear at the hearing. The hearing record closed on August 4, 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 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 replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED September 14, 2021.



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