

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 22-0001875 CAF**

PHILLIP WILLIAMS, Complainant	§ § § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
GENERAL MOTORS LLC, Respondent		

DECISION AND ORDER

Phillip Williams (Complainant) filed a petition seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his new 2021 Chevrolet Silverado 3100. Complainant asserts that the vehicle has a defect or nonconformity which has caused the engine to die while he's driving. General Motors LLC (Respondent) argued that the vehicle has been altered or modified by Complainant, that the manufacturer's warranty does not cover issues that are caused by the alterations or modifications, and that no relief is warranted. The hearings examiner concludes that the vehicle has been altered or modified, the warranty does not cover any issues caused by the modification, 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 via Microsoft Teams on March 30, 2022, before Hearings Examiner Edward Sandoval. Phillip Williams, Complainant, appeared and represented himself. General Motors LLC, Respondent, was represented by Kevin Phillips, Business Resource Manager. Also, appearing and testifying for Respondent was Irfaun Bacchus, Field Service Engineer. Present as an observer for Respondent was Gregg Derevyanyik, Customer Activities Manager. The hearing record closed on March 30, 2022.

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 2021 Chevrolet Silverado 3100 on December 2, 2020, from Chuck Fairbanks Chevrolet (Fairbanks) in De Soto, Texas with mileage of 14 at the time of delivery.^{11,12} Respondent issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for three (3) years or 36,000 miles, whichever occurs first.¹³ In addition, Respondent provided a powertrain warranty for its Series 3500 Heavy Duty pickups equipped with a 6.6L Duramax Turbo-Diesel engine vehicles covering the vehicle's powertrain for five (5) years or 100,000 miles.¹⁴ On the date of hearing the vehicle's mileage was approximately 40,000. At the time of the hearing, the vehicle's warranties were still in effect, except the engine warranty which had been voided by Respondent prior to the hearing date.

Complainant testified that prior to purchasing the vehicle, he test drove it. He felt that the vehicle drove normally and did not observe any issues with it. Complainant testified that the vehicle's check engine light illuminated after he had driven about 168 miles. However, he did not take the vehicle in for repair at that time. He stated that he did not drive the vehicle very much for the first two (2) to three (3) months after purchase.

Complainant used the vehicle for his work. He was an over-the-road truck driver and was driving across country in the vehicle. On March 22, 2021, Complainant had an auxiliary fuel tank installed on the vehicle.¹⁵ Complainant stated that he stored fuel in the auxiliary tank to be used to refuel the vehicle during his deliveries. He denied that he would refuel while driving the vehicle. He stated that he would pull over and turn off the vehicle when refueling out of the auxiliary tank.

Complainant testified that during most of 2021 he experienced problems with the vehicle. The check engine light (CEL) kept illuminating and the vehicle's engine would die when he was driving it. In addition, diagnostic trouble codes (DTC's) would be triggered periodically.

¹⁰ Tex. Occ. Code § 2301.605(c).

¹¹ Complainant Ex. 1, Retail Installment Sales Contract dated December 2, 2020.

¹² Complainant Ex. 2, Odometer Disclosure Statement dated December 2, 2020.

¹³ Complainant Ex. 19, 2021 Limited Warranty and Owner Assistance Information, undated.

¹⁴ *Id.*

¹⁵ Complainant Ex. 10, Earl Owen Transfer Tank Invoice dated March 22, 2021.

The dealers' repair orders reflect the following information:¹⁶

Date	Mileage	Servicing Dealer	Reported Concern	Dealer's Findings
3-30-21	3,873	Fairbanks	CEL illuminated Diesel Exhaust Fluid (DEF) low warning light illuminated	DTC P026C was discovered and was referred for investigation by the service technician for Respondent. No problem was found regarding DEF
4-16-22	10,412	Fairbanks	CEL illuminated Replace diesel fuel filter	Light was not illuminated DTC's being investigated Diesel fuel filter replaced
5-6-21	16,577	Fairbanks	CEL illuminated	Replaced fuel sensor connector
6-14-21	21,189	Boch Chevrolet (Boch), Norwood, MA	CEL illuminated Requested fuel filter replacement	Replaced fuel filter
6-17-21	23,197	Ed Bozarth Chevrolet, Aurora, CO	Oil service requested	Oil service performed
6-28-21	27,627	Ciocca Chevrolet (Ciocca), Quakertown, PA	CEL illuminated and reduced engine power, service brake warning lights illuminated	DTC's discovered Reprogrammed engine control module (ECM)
7-6-21	29,314	Fairbanks	Service Engine Soon (SES) light illuminated Traction Control warning light illuminated	Shorted fuel rail sensor discovered Replaced fuel rail sensor
7-21-21	30,212	Bravo Chevrolet Cadillac, Las Cruces, NM	CEL illuminated and reduced engine power, service brake warning lights illuminated	Issues not on invoice No repair performed

¹⁶ The repair orders were admitted as Complainant's Exs. 4-9 and 13-16. For clarity and ease of reference, some of the information has been summarized instead of quoted.

7-29-21	32,584	Fairbanks	SES light illuminated	No repair performed Complainant advised to refuel vehicle as designed, <i>i.e.</i> , vehicle needs to be stopped when refueling
9-20-21	36,365	Fairbanks	CEL illuminated	Technician determined that rust in the aftermarket fuel tank was contaminating fuel in the vehicle's fuel system Complainant declined repairs

Complainant mailed a letter to Respondent on September 29, 2021, in which he indicated his dissatisfaction with the vehicle.¹⁷ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on October 17, 2021.¹⁸

Complainant was contacted by Respondent's representative to have the vehicle inspected by their field service engineer (FSE). The inspection took place on November 9, 2021, at the Fairbanks dealership. The vehicle's mileage at the time was 36,592.¹⁹ The FSE determined that the vehicle's fuel had been contaminated by the auxiliary fuel tank.²⁰ He observed "metal and trash" in the auxiliary fuel tank.²¹ The FSE determined that the auxiliary tank was "plumbed" into the factory filler neck with no filter or filtration device to keep the trash and metal from entering the vehicle's fuel system.²² Complainant was advised that the repairs would not be covered by Respondent's warranty. It was estimated that it would cost Complainant \$12,192.95 to repair the vehicle.

Complainant testified that the vehicle is still not operating properly. He is no longer driving the vehicle on a daily basis and is not using it for work any longer.

¹⁷ Complainant Ex. 17, Letter to Chevrolet Customer Assistance Center dated September 29, 2021.

¹⁸ Complainant Ex. 3, Lemon Law Complaint dated October 17, 2021.

¹⁹ Complainant EX. 18, Repair Order dated November 9, 2021.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

C. Respondent's Evidence and Arguments

1. Kevin Phillip's Testimony

Kevin Phillips, Business Resource Manager, testified for Respondent. He stated that Respondent provided a powertrain warranty for its Series 3500 Heavy Duty pickup trucks equipped with a 6.6L Duramax Turbo-Diesel engine vehicles covering the vehicle's powertrain for five (5) years or 100,000 miles. He testified that the warranty was voided due to Respondent's determination that Complainant had altered or modified the vehicle in violation of the warranty by adding an additional fuel tank to the vehicle's bed. Respondent's warranty provides that the warranty does not cover damage to a vehicle caused as the result of alteration, modification of the vehicle or other components in the vehicle.²³ In addition, the warranty does not cover damage due to using contaminated, improper, or poor fuel quality in the vehicle.²⁴

Mr. Phillips verified that Respondent had received Complainant's notice letter dated September 29, 2021.

2. Irfaun Bacchus' Testimony

Irfaun Bacchus, Field Service Engineer, testified for Respondent at the hearing. Mr. Bacchus testified that he has worked in the automotive industry for 20 years. He worked from 2001 to 2012 for various car dealers as a service technician and team lead. He was hired by Respondent in his present position eight (8) years ago. Mr. Bacchus is a GM World Class Technician and Automotive Service Excellence (ASE) Master Certified Technician.

Mr. Bacchus testified that he inspected the vehicle on November 9, 2021, at the Fairbanks dealership. The vehicle's mileage at the time was 36,592.²⁵ Mr. Bacchus stated that he visually inspected the vehicle and observed that Complainant had added an aftermarket steel fuel storage tank in the vehicle's bed. The tank had a warning notice advising the purchaser of the tank that it was not designed to be used as an auxiliary fuel tank and should not be used commercially or for interstate commerce.²⁶ It appeared to Mr. Bacchus that the auxiliary fuel tank was installed so that it would feed fuel to the vehicle's engine while Complainant was driving. Mr. Bacchus

²³ Respondent Ex. 2, New Vehicle Limited Warranty, p. 5.

²⁴ *Id.*

²⁵ Respondent Ex. 1, Vehicle Legal Inspection dated November 10, 2021.

²⁶ *Id.*, p. 2.

checked the fuel in the tank and determined that there were signs of rust contamination of the fuel.²⁷

Mr. Bacchus test drove the vehicle and observed that the vehicle's fuel pressure dropped at times over 2,000 to 3,000 psi under the desired fuel pressure.²⁸ After the test drive, Mr. Bacchus inspected the vehicle's fuel quality and, after removing the vehicle's fuel filter, found metal and rust in the filter assembly.²⁹ The filter had been replaced at 10,412 miles.³⁰ Mr. Bacchus testified that he felt that the fuel contamination was caused by the aftermarket fuel tank. He stated that Respondent does not warrant damage to a vehicle's fuel system caused by fuel contamination. Mr. Bacchus recommended replacing the vehicle's entire fuel system and removing the aftermarket fuel tank in order to effectively repair the vehicle.³¹ However, Complainant would be responsible for the cost of the repairs, since they would not be covered by the warranty.

Mr. Bacchus testified that the P0461 DTC was probably triggered by refueling the vehicle from the auxiliary fuel tank while driving. The proper way to refuel the vehicle was to pull over to the side of the road and turning off the vehicle, before adding fuel to the vehicle.

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 a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the 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, Complainant is entitled to have the vehicle repurchased or replaced.

The first issue to address is whether Complainant's vehicle has a defect or condition that substantially impairs its use or market value, or which creates a serious safety hazard. The totality of the evidence presented at the hearing reveals that the vehicle's CEL illuminates, and the engine dies periodically when the vehicle is being driven.

²⁷ *Id.*, p. 3.

²⁸ *Id.*, p. 4.

²⁹ *Id.*, p. 5.

³⁰ *Id.*

³¹ *Id.*

The evidence presented at the hearing indicates that the issues with the vehicle's engine are caused by Complainant altering or modifying the vehicle by adding an unauthorized fuel tank to the vehicle's bed and by using contaminated fuel in the vehicle. The fuel tank had rust and metal in it which contaminated the fuel which was then used in the subject vehicle. Since Respondent's warranties allow for denial of warranty coverage for issues caused by an unapproved modification and for using contaminated fuel in a vehicle, the hearings examiner must hold that relief under the Lemon Law is not warranted under the present circumstances because the issues with the vehicle's engine are not the result of a manufacturing defect or nonconformity.

On the date of hearing, the vehicle's mileage was approximately 40,000 and it remains covered under Respondent's warranties, except the engine warranty which has been voided. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties which are still in effect.

Complainant's request for repair relief is denied.

III. FINDINGS OF FACT

1. Phillip Williams (Complainant) purchased a new 20121 Chevrolet Silverado 3100 on December 2, 2020, from Chuck Fairbanks Chevrolet (Fairbanks) in De Soto, Texas with mileage of 14 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 three (3) years or 36,000 miles, whichever occurs first. In addition, Respondent provided a powertrain warranty for its Series 3500 Heavy Duty pickups equipped with a 6.6L Duramax Turbo-Diesel engine vehicles covering the vehicle's powertrain for five (5) years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was approximately 40,000.
4. At the time of hearing the vehicle's new vehicle limited warranty and powertrain warranty (except for the engine warranty) were still in effect.
5. Complainant has experienced a problem with the vehicle's check engine light (CEL) illuminating and the vehicle's engine dying while he's driving the vehicle.
6. The dealers' repair orders reflect the following information:

Date	Mileage	Servicing Dealer	Reported Concern	Dealer's Findings
3-30-21	3,873	Fairbanks	CEL illuminated Diesel Exhaust Fluid (DEF) low warning light illuminated	DTC P026C was discovered and was referred for investigation by the service technician for Respondent. No problem was found regarding DEF
4-16-22	10,412	Fairbanks	CEL illuminated Replace diesel fuel filter	Light was not illuminated DTC's being investigated Diesel fuel filter replaced
5-6-21	16,577	Fairbanks	CEL illuminated	Replaced fuel sensor connector
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6-17-21	23,197	Ed Bozarth Chevrolet, Aurora, CO	Oil service requested	Oil service performed
6-28-21	27,627	Ciocca Chevrolet (Ciocca), Quakertown, PA	CEL illuminated and reduced engine power, service brake warning lights illuminated	DTC's discovered Reprogrammed engine control module (ECM)
7-6-21	29,314	Fairbanks	Service Engine Soon (SES) light illuminated Traction Control warning light illuminated	Shorted fuel rail sensor discovered Replaced fuel rail sensor
7-21-21	30,212	Bravo Chevrolet Cadillac, Las Cruces, NM	CEL illuminated and reduced engine power, service brake warning lights illuminated	Issues not on invoice No repair performed

7-29-21	32,584	Fairbanks	SES light illuminated	No repair performed Complainant advised to refuel vehicle as designed, <i>i.e.</i> , vehicle needs to be stopped when refueling
9-20-21	36,365	Fairbanks	CEL illuminated	Technician determined that rust in the aftermarket fuel tank was contaminating fuel in the vehicle's fuel system Complainant declined repairs

7. On September 29, 2021, Complainant mailed a letter to Respondent advising them of his dissatisfaction with the vehicle.
8. On October 17, 2021, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
9. Respondent's field service engineer, Irfaun Bacchus, performed an inspection of the vehicle on November 9, 2021, at the Fairbanks dealership in De Soto, Texas.
10. During the inspection described in Findings of Fact #9, Mr. Bacchus observed that Complainant had installed an aftermarket fuel tank to the vehicle.
11. Also, during the inspection described above, Mr. Bacchus found that the fuel in the aftermarket fuel tank had rust and metal in it.
12. Mr. Bacchus determined that due to Complainant using contaminated fuel in the vehicle, the vehicle's entire fuel system needed to be replaced in order to fully repair the vehicle.
13. Respondent's warranty provides that warranty coverage for a vehicle can be denied if an issue is caused by abuse, neglect, improper maintenance, or unapproved modifications.
14. Complainant was informed that the repairs would not be covered by Respondent's warranty due to the installation of the auxiliary fuel tank and the subsequent usage of contaminated fuel in the vehicle.
15. Complainant was provided with an estimated cost for repair for the vehicle which came to \$12,192.95.

16. On December 8, 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.
17. The hearing in this case convened via Microsoft Teams on March 30, 2022, before Hearings Examiner Edward Sandoval. Phillip Williams, Complainant, appeared and represented himself. General Motors LLC, Respondent, was represented by Kevin Phillips, Business Resource Manager. Also, appearing and testifying for Respondent was Irfaun Bacchus, Field Service Engineer. Present as an observer for Respondent was Gregg Derevyaniuk, Customer Activities Manager. The hearing record closed on March 30, 2022.

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) and § 2301.204 (Warranty Performance).
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 and § 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.
8. Complainant's vehicle does not qualify for repair relief. 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 repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **DISMISSED**.

SIGNED May 19, 2022.



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