

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 23-0001038 CAF**

**JOANE BROWN,
Complainant**

v.

**HYUNDAI MOTOR AMERICA,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Joane Brown (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in a vehicle manufactured by Hyundai Motor America (Respondent). A preponderance of the evidence shows that the Complainant's vehicle qualifies for warranty repair relief.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

Notice and jurisdiction were not contested and are addressed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on June 21, 2023, in Fort Worth, Texas, before Chief Hearings Examiner Bennie Brown with the Department's Office of Administrative Hearings (OAH). The Complainant appeared with her granddaughter, Lisa Spieldenner, and represented herself. Respondent appeared through its representative Susan Lucas. The hearing concluded the same day, but the record was held open until July 5, 2023, to allow the submission of additional evidence and objections.¹

¹ The following exhibits were submitted by Complainant and are admitted without objection: Complainant Exs. 10a-10c: Email Correspondence; Complainant Ex. 11: Hyundai Theta Engine Paperwork; Complainant Ex. 12: Warranty and Recall Information.

II. APPLICABLE LAW

The Texas Lemon Law and Warranty Performance Law require a manufacturer, converter, or distributor to make repairs necessary to conform a new motor vehicle to an applicable warranty.² If this cannot be accomplished, the owner of the vehicle may seek relief by filing a complaint with the Department.³ The case may be referred to OAH for a hearing on the merits to determine which type of relief, if any, is warranted pursuant to statute.⁴

The Lemon Law statute only applies to new motor vehicles with warrantable defects (defects covered by warranty) that create a serious safety hazard or substantially impair the vehicle's use or value. A new vehicle may qualify for repurchase or replacement of the vehicle, along with reimbursement of incidental expenses resulting from the loss of use of the vehicle due to the defect(s).⁵ If a vehicle does not qualify for repurchase or replacement, the vehicle may still qualify for warranty repair relief.⁶

The Warranty Performance Law applies to both new and used vehicles with any warrantable defects. Both the Lemon Law and the Warranty Performance Law require prior notice of the defect to the respondent to qualify for relief.⁷ In this case Complainant is seeking repair of alleged warrantable defects.

² Tex. Occ. Code § 2301.603(a).

³ Tex. Occ. Code § 2301.204(a); 43 Tex. Admin. Code § 215.202.

⁴ Tex. Occ. Code § 2301.204(d); 43 Tex. Admin. Code § 215.202(b)(4).

⁵ Tex. Occ. Code § 2301.604.

⁶ 43 Tex. Admin. Code § 215.208(e).

⁷ Tex. Occ. Code § 2301.606(c)(1); 43 Tex. Admin. Code § 215.202(b)(3).

A. Warranty Repair Relief

A vehicle may qualify for warranty repair relief if all the following conditions are met:

- 1) the vehicle has a “defect . . . that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle;”⁸
- 2) the vehicle owner provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty’s expiration;⁹ and
- 3) the vehicle owner filed a complaint with the Department specifying the defect.¹⁰

B. Burden of Proof

The Complainant has the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.¹¹ That is, the Complainant must present sufficient evidence to show that it is more likely than not that every required fact for relief exists.¹²

C. The Lemon Law Complaint Identifies the Relevant Issues in the Case

The complaint filed with the Department identifies the relevant issues to address in this case. The complaint must state “sufficient facts to enable the [D]epartment and the party complained against to know the nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law.”¹³ However, the parties may expressly or impliedly consent to hearing issues not included in the complaint or pleadings.¹⁴ Implied consent occurs when a party introduces evidence on an unpleaded issue without

⁸ Tex. Occ. Code § 2301.204(a).

⁹ Tex. Occ. Code § 2301.204(b); 43 Tex. Admin. Code § 215.202(b)(1), (3).

¹⁰ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1).

¹¹ 43 Tex. Admin. Code § 206.66(d); *see Vance v. My Apartment Steak House, Inc.*, 677 S.W. 2d 480, 482 (Tex. 1984) (“[A] civil litigant who asserts an affirmative claim of relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

¹² *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

¹³ 43 Tex. Admin. Code § 215.202(a)(3), (b)(1).

¹⁴ 43 Tex. Admin. Code § 215.42; Tex. R. Civ. P. 67.

objection.¹⁵ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.¹⁶

III. DISCUSSION

A. Summary of Complainant's Evidence and Arguments

On December 10, 2018, Complainant purchased a pre-owned 2017 Hyundai Santa Fe Sport 2.4L engine from Jerry's Hyundai, LLC, a franchised dealer of Respondent located in Weatherford, Texas.¹⁷ The vehicle had 27,599 miles on the odometer at the time of purchase.¹⁸ Complainant purchased a Certified Pre-Owned Wrap service contract for the vehicle which provided powertrain coverage for 10 years or 100,000 miles, whichever occurred first.¹⁹ Among other things, the powertrain warranty provides coverage for the vehicle's engine, transmission, and drive axle.²⁰

On or about September 26, 2022, Complainant filed a complaint with the Department alleging that the vehicle's check engine light is on and the vehicle's acceleration is delayed. The Department sent a copy of the complaint to Respondent, providing written notice of the alleged defects.

¹⁵ See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App. – San Antonio 1953, writ ref'd).

¹⁶ See Tex. Gov't Code §§ 2001.051-.052, .141(b)-(c); Tex. R. Civ. P. 301.

¹⁷ Respondent Ex. 1, part 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Complainant Ex. 12.

In relevant part, Complainant took the vehicle for repair of the alleged issues as follows:²¹

Date	Miles	Issue
05/09/2019 – 05/13/2019	36,636	Check engine light flashing
07/08/2021	85,417	Check engine light on; RPMs jump upon acceleration but vehicle moves slowly
08/09/2021 – 08/13/2021	87,480	Check engine light on and vehicle has no power
10/19/2021 – 12/08/2021	93,204	Check engine light flashing; vehicle died while driving; oil consumption test
12/23/2021 – 12/23/2021	94,231	Vehicle losing oil; oil consumption test
01/12/2022 – 01/12/2022	95,874	Vehicle losing oil; oil consumption test
03/31/2022 – 03/31/2022	101,845	Vehicle losing oil

Ms. Spieldenner testified on behalf of Complainant and explained that she is the primary driver of the subject vehicle. Ms. Spieldenner stated that the vehicle was purchased in 2018. The vehicle was pre-owned, but Complainant purchased a platinum vehicle service contract and certified pre-owned wrap coverage for the vehicle. On May 9, 2019, the vehicle was taken in for service at 36,636 miles because the check engine light was flashing. Recall campaign T3G was performed regarding the wiring harness and knock sensor.²² In July 2021, when the vehicle had approximately 85,000 miles, the check engine light came on, and the vehicle would not accelerate. Ms. Spieldenner initially took the vehicle to a Hyundai dealership in Burleson, Texas, but was told

²¹ Complainant Ex. 3; Respondent Ex. 4.

²² *Id.*

that the technicians had gone home for the day and that it would take 3-4 weeks before they could get to the vehicle. Ms. Spieldenner took the vehicle to a local mechanic and was told to take it to Hyundai since it was still under warranty. They also advised that there was a Theta engine recall for her vehicle.

Shortly thereafter, Complainant received notice of a class action settlement with Respondent.²³ The documents advised, in relevant part, that 2013-2019 Hyundai Santa Fe Sports equipped with a 2.0L or 2.4L gasoline direct injection engine have been alleged to have a defect that can cause engine seizure, stalling, engine failure, and engine fire. Under the proposed settlement, Respondent agreed, among other things, to provide financial and other benefits for certain engine related repairs and to extend the powertrain warranty to a lifetime warranty for the engine short block assembly, upon completion of the Knock Sensor Detection System (KSDS) Update.²⁴ The KSDS is an “engine monitoring technology. . .[that provides] an added layer of protection against engine failure.”²⁵ The technology continuously monitors for symptoms that precede an engine failure from excessive connection rod bearing damage. The documents sent to Complainant explain that “[i]f excessive bearing wear is detected, the Malfunction Indicator Lamp (Check Engine light) will blink continuously, an audible chime will sound[,], and the vehicle will be placed in a temporary engine protection mode with reduced power and acceleration.” Specifically, the vehicle will accelerate slowly and have a reduced maximum speed. Drivers are advised to contact their dealer immediately if these events occur.²⁶

Ms. Spieldenner testified that by the time she received the recall letter, the deadline to submit a claim (April 12, 2021) had passed. But she still sent in the paperwork, and the claim was denied due to untimeliness. However, the notice advises that if an owner does nothing in response to a potential claim, the owner will still receive the limited lifetime warranty upon installation of

²³ Complainant Ex. 11.

²⁴ *Id.*

²⁵ Complainant Ex. 12.

²⁶ *Id.*

the KSDS update.²⁷ Complainant testified that she was told to keep the lifetime warranty paperwork in her glove compartment in case they had trouble with the engine.

In August 2021, the vehicle was taken to Jerry's Hyundai in Weatherford, Texas, because the check engine light was on and the vehicle had no power. It was determined that there was an internal failure with the CAM sensor cover.²⁸ Repair work was performed, and the issue appeared to be resolved. However, Ms. Spieldenner testified that the service technician told her if the repair was unsuccessful, she would need a new engine.

On October 18, 2021, the check engine light started flashing while Ms. Spieldenner was driving, and the vehicle jerked off the road while traveling 75 mph. The vehicle was towed to Vandergriff Hyundai in Arlington, Texas. The vehicle was at the dealership until December 8, 2021. She was advised that there was no oil in the vehicle's engine. An oil consumption test was recommended. Ms. Spieldenner was told to bring the vehicle back every 1,000 miles for 3,000 miles and one additional time after 4,000 miles so the oil consumption tests could be performed. She took the vehicle back on December 23, 2021, at 94,231 miles; on January 12, 2022, at 95,874 miles; and on March 31, 2022, at 101,845 miles for the oil consumption tests. She was told that the vehicle passed the oil consumption test because it was using one quart of oil per 1,210 miles. However, she was also advised that the vehicle was 15 miles short of failing the oil consumption test.

Ms. Spieldenner explained that she had been working with a service manager named Annabell. He told her that the engine was failing and that the oil consumption test was just protocol. At the last visit for testing on March 31, 2022, she learned that Annabell had been terminated and she was told that everything was fine with her vehicle. The check engine light was off at the time, and the technician recommended that she go to the sales department and trade in the vehicle while the check engine light was off. But she felt uncomfortable putting another family in an unsafe vehicle and did not do so.

²⁷ *Id.*

²⁸ Complainant Ex. 3; Respondent Ex. 4.

After the March 2022 visit, the check engine light came on again within a week or so. Ms. Spieldenner stated that the mileage at that time was 101,845 miles. She pointed out that the vehicle was under 100,000 miles when she took it in for service, but the dealer asked her to put another 4,000 miles on the vehicle for the oil consumption tests, which caused the mileage to surpass 100,000 miles.

In January 2023, Ms. Spieldenner's infant daughter was in the hospital for 30 days. During that time, she took the vehicle to Jerry's Hyundai for repair. They provided her with a rental car in February 2023. This was the first time she was ever provided a rental car in 2 years. Two weeks prior to the hearing, she was advised that the oil consumption test needed to be performed again. The service manager told her she could keep the rental car because the subject vehicle is not safe to drive with her children.

Ms. Spieldenner testified that she and Complainant spent one year going back and forth with Respondent asking them to repair the vehicle. On December 1, 2021, Complainant sent an email to Hyundai Theta Engine Settlement Support explaining the unresolved issues with her vehicle. Specifically, Complainant advised that the check engine light was on and the vehicle was slow to accelerate. She referenced the above incidents from August 2021 to December 2021 and stated that she was told the vehicle's engine did not have any oil when inspected. Complainant requested that the vehicle be repaired or that some resolution be provided. She sent another email on June 4, 2022, advising that the vehicle was having the same problems with the check engine light and requesting repair.²⁹

The vehicle's current mileage is approximately 125,000 miles, and it still has the same problems. According to Ms. Spieldenner, the vehicle is hard to start, the check engine light comes on and stays on, and the vehicle is slow to accelerate even though the RPMs go all the way up when trying to accelerate. In addition, the vehicle is unable to pass inspection because the check engine light will not go off and the engine will not hold oil. She is unable to drive another

²⁹ Complainant Exs. 10a-10c.

1,000 miles for the oil consumption test because the vehicle cannot be driven legally with an expired inspection.

Ms. Spieldenner testified that she was never given a diagnosis or reason as to why the check engine light comes on. She explained that the dealer would repair a few things, but the check engine light always returned with the same problems. She stated that the vehicle has not been working properly for 2 years, but she has still been making payments on a vehicle that is unsafe. She believes the market value of the vehicle is substantially impaired due to all the problems and that the vehicle is not safe to drive.

Complainant argues that the vehicle has a manufacturing defect as evidenced by the class action notice and the limited lifetime warranty information they were provided for the engine. Complainant seeks relief pursuant to the applicable statute.

B. Vehicle Inspection

The vehicle was not present for inspection at the hearing because Complainant felt it was unsafe to drive and because it has an expired inspection.

C. Summary of Respondent's Evidence and Arguments

Ms. Lucas testified that a new Hyundai vehicle comes with a new vehicle limited warranty for 5 years or 60,000 miles and a powertrain warranty for 10 years or 100,000 miles, whichever occurs first. Although Complainant purchased the vehicle "AS IS" from the dealer, the vehicle qualifies as a certified pre-owned vehicle with the powertrain coverage listed above because Complainant purchased additional warranties as a certified pre-owned vehicle. However, Respondent's position is that they are not responsible for any repairs because the vehicle's mileage is over 100,000 miles and the powertrain warranty no longer applies.

Ms. Lucas stated that according to the CarFax and repair orders, the original owner had the first oil change done at 27,500 miles. She explained that the owner's manual requires an oil change

every 7,500 miles. However, she conceded that the original owner may have had the oil changed prior to 27,500 miles at a non-dealer location. She confirmed that Complainant purchased the vehicle with 27,599 miles on it and had an oil change within specifications at 32,500 miles. On May 9, 2019, at 36,636 miles, Complainant brought the vehicle in for service because the check engine light was flashing. There was a service recall, and work was performed regarding the wiring harness and knock sensor.

The next time the vehicle's oil changed was at 61,637 miles, which was beyond the recommended mileage for an oil change. Although Complainant stated she sent proof of oil changes prior to that mileage to the dealer, Ms. Lucas advised that Respondent did not receive proof of those oil changes. She also pointed out that the lifetime warranty information provided by Respondent states that "[r]egular maintenance is essential to obtaining the highest level of performance, safety, and reliability from [a] Hyundai vehicle."³⁰ Ms. Lucas stressed the importance of sending proof of regular oil changes to Respondent. However, the lifetime warranty also states that "Hyundai will not deny a warranty claim solely because you do not have your records to show that you maintained your vehicle. However, damage or failure caused by an owner's neglect is not covered under warranty, including the lifetime warranty given by Hyundai in connection with the knock sensor software update described in this brochure."³¹

Ms. Lucas also explained that even though Complainant purchased a service contract stating she is entitled to receive a rental vehicle whenever the subject vehicle is in for service, the service contract is not with Respondent. Rather, it is with a third party, and Respondent is not obligated to provide a rental vehicle.

According to Ms. Lucas, Respondent is ready to continue with the next oil consumption test. She recommended that Complainant have it done. However, she argued that Respondent is not required to repair the vehicle because it is out of warranty due to the vehicle's mileage.

³⁰ Complainant Ex. 12.

³¹ *Id.*

Ms. Lucas did not have any information or response to the class action settlement or limited lifetime warranty information provided to Complainant.

D. Analysis

Complainant had the burden of proof to show that the subject vehicle qualified for relief pursuant to statute. Because the vehicle was purchased as a pre-owned vehicle, the only remedy provided by statute is warranty repair.³² To qualify for relief, Complainant must prove the required elements by a preponderance of the evidence. Based on the evidence presented, Complainant established the facts necessary for warranty repair relief.

The first element required to be proven for warranty repair is that the vehicle has a “defect. . . covered by a manufacturer’s, converter’s, or distributor’s . . . warranty agreement applicable to the vehicle.”³³ Complainant argues that the vehicle’s engine has a manufacturing defect as evidenced by the class action settlement notification and the subsequent lifetime warranty brochure regarding engine repair. Both documents reference known issues regarding the vehicle’s engine such as engine seizure, stalling, engine failure, and engine fire.³⁴ In fact, information regarding the KSDS details the very issues experienced by Complainant, such as the check engine light flashing and the vehicle’s reduced power and acceleration.³⁵ Therefore, the evidence shows it is more likely than not that the subject vehicle has a manufacturing defect affecting the vehicle’s engine.

The next issue to be determined is whether the defect is covered by warranty. Respondent argues that the subject vehicle is no longer covered by the powertrain warranty because the current mileage is above 100,000 miles. Conversely, Complainant argues that the vehicle is covered under the powertrain warranty because the vehicle was brought in for repair of this issue several times prior to 100,000 miles. Further, Complainant argues that the only reason the vehicle is over

³² Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b).

³³ Tex. Occ. Code § 2301.204(a).

³⁴ Complainant Exs. 11-12.

³⁵ Complainant Ex. 12.

100,000 miles is because the dealer asked that the vehicle be driven an additional 4,000 miles for the oil consumption test.

An analysis of the evidence, however, reveals that there are two possible warranties applicable to the subject vehicle. First, the vehicle's powertrain warranty provides coverage for 10 years or 100,000 miles, whichever occurs first. Although the vehicle was over 100,000 miles at the time of the hearing, it was not over 100,000 miles when Complainant first started experiencing issues with the vehicle's engine. In fact, the first time the vehicle was taken in for service for the check engine light was at 36,636 miles in May 2019.³⁶ The issue with the check engine light has never been resolved despite numerous service visits prior to 100,000 miles. Thus, Respondent has had multiple opportunities to fully repair or resolve the issue prior to 100,000 miles and cannot now argue that the vehicle is out of warranty because it failed to properly repair the vehicle on multiple occasions.

In addition, it appears that the extended lifetime warranty provided by Respondent applies to the subject vehicle as well. According to the information sent to Complainant, Respondent is "providing limited lifetime warranty coverage for certain engine repairs for original and subsequent owners of the following vehicles, provided the software update [for the KSDS] has been completed:. . .2013-2018 Santa Fe Sports. . .The lifetime warranty covers the short block assembly, consisting of the engine block, crankshaft and main bearings, connecting rods and connecting rod bearings, and pistons when damaged due to connecting rod bearing failure."³⁷ Although this warranty requires that the update for the KSDS be installed, it appears that this was performed on the subject vehicle in May 2019 at 36,636 miles. The invoice for this visit indicates that the customer stated the check engine light was flashing. Recall campaign T3G was performed, which included the wiring harness and knock sensor.³⁸ As noted above, the issues experienced by Complainant were the exact issues Respondent stated would occur after the KSDS update had been installed.³⁹ Therefore, it is more likely than not that the subject vehicle has received the KSDS

³⁶ Complainant Ex. 3; Respondent Ex. 4.

³⁷ Complainant Ex. 12.

³⁸ Complainant Ex. 3; Respondent Ex. 4.

³⁹ *Id.*

update and qualifies for the limited lifetime warranty coverage for the engine. Consequently, the first element requiring proof that the vehicle has a warrantable manufacturing defect has been proven by a preponderance of the evidence.

The second element required for relief is proof that written notice of the alleged defect was provided to Respondent prior to the warranty's expiration.⁴⁰ In this case, the written invoices provide documentation of notice to Respondent or Respondent's agent prior to the warranty's expiration. The first documented complaint for the check engine light and related issues occurred on May 9, 2019, at 36,636 miles. The following documented complaints occurred on July 8, 2021, at 85,417 miles; August 9, 2021, at 87,480 miles; October 19, 2021, at 93,204 miles; December 23, 2021, at 94,231 miles; and January 12, 2022, at 95,874 miles.⁴¹

In addition, Complainant sent written notice of problems with the subject vehicle to Hyundai Theta Engine Settlement Support on December 21, 2021.⁴² Although the vehicle's exact mileage on this date is unknown, it is reasonable to infer that the mileage was under 100,000 miles based on the repair invoices before and after this date. For example, on October 19, 2021, the vehicle was taken in for service at 93,204 miles. On December 23, 2021, the vehicle was taken in for service at 94,231 miles. Hence, the vehicle could not have been over 100,000 miles on December 1, 2021, when Complainant provided written notice to Respondent. Therefore, the second element required for relief has been proven by a preponderance of the evidence.

The final element required for relief is proof that the vehicle owner filed a complaint with the Department specifying the defect.⁴³ As noted earlier, Complainant filed a complaint with the Department on September 26, 2022, alleging that the vehicle's check engine light was on and the vehicle's acceleration was delayed. Thus, the third element required for relief has been proven by a preponderance of the evidence.

⁴⁰ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1), (3).

⁴¹ Complainant Ex. 3; Respondent Ex. 4.

⁴² Complainant Ex. 10a.

⁴³ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1).

For the reasons listed above, the Hearings Examiner finds that Complainant has met its burden of proof and has established all elements required for relief pursuant to statute.⁴⁴ Therefore, the subject vehicle qualifies for warranty repair relief.

IV. FINDINGS OF FACT

1. On December 10, 2018, Joane Brown (Complainant) purchased a certified pre-owned 2017 Hyundai Santa Fe Sport 2.4L engine from Jerry's Hyundai, LLC, a franchised dealer of Hyundai Motor America. (Respondent), located in Weatherford, Texas. The vehicle had 27,599 miles on the odometer at the time of purchase.
2. Complainant purchased a Certified Pre-Owned Wrap service contract for the vehicle, which qualified it as a certified pre-owned vehicle with a powertrain warranty providing coverage for 10 years or 100,000 miles, whichever occurred first.
3. Among other things, the powertrain warranty provides coverage for the vehicle's engine, transmission, and drive axle.
4. Complainant took the vehicle for repair as shown below:

Date	Miles	Issue
05/09/2019 – 05/13/2019	36,636	Check engine light flashing
07/08/2021	85,417	Check engine light on; RPMs jump upon acceleration but vehicle moves slowly
08/09/2021 – 08/13/2021	87,480	Check engine light on and vehicle has no power
10/19/2021 – 12/08/2021	93,204	Check engine light flashing; vehicle died while driving; oil consumption test

⁴⁴ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b).

Date	Miles	Issue
12/23/2021 – 12/23/2021	94,231	Vehicle losing oil; oil consumption test
01/12/2022 – 01/12/2022	95,874	Vehicle losing oil; oil consumption test
03/31/2022 – 03/31/2022	101,845	Vehicle losing oil

5. On or about September 26, 2023, Complainant filed a complaint with the Texas Department of Motor Vehicles (Department) alleging that the vehicle's check engine light was on and that the vehicle's acceleration was delayed.
6. The Department sent a copy of the complaint to Respondent, providing written notice of the alleged defects.
7. On March 20, 2023, the Department's Office of Administrative Hearings (OAH) issued a Notice of Hearing directed to all parties, providing not less than 10 days' notice of the hearing date and advising the parties of their rights under the applicable rules and statutes.
8. The Notice of Hearing advised the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the Department.
9. On June 21, 2023, a hearing on the merits was convened in Fort Worth, Texas, before OAH Chief Hearings Examiner Bennie Brown. Complainant appeared with her granddaughter, Lisa Spieldenner, and represented herself. Respondent appeared through its representative Susan Lucas. The hearing concluded the same day, but the record was held open until July 5, 2023, to allow the submission of additional evidence and objections.
10. On May 9, 2019, the subject vehicle was taken in for service at 36,636 miles because the check engine light was flashing. Recall campaign T3G was performed regarding the wiring harness and knock sensor.
11. In July 2021, at approximately 85,000 miles, the check engine light came on, and the vehicle would not accelerate.
12. The vehicle was taken to a local mechanic who advised that there was a Theta engine recall for the vehicle.

13. Shortly thereafter, Complainant received notice of a class action settlement with Respondent, which advised that 2013-2019 Hyundai Santa Fe Sports equipped with a 2.0L or 2.4L gasoline direct injection engine have been alleged to have a defect that can cause engine seizure, stalling, engine failure, and engine fire.
14. Under the settlement, Respondent agreed to provide financial and other benefits for certain engine related repairs and to extend the powertrain warranty to a lifetime warranty upon completion of the Knock Sensor Detection System (KSDS) update.
15. The KSDS is an engine monitoring technology that continuously monitors for symptoms preceding an engine failure.
16. If excessive connection rod bearing wear is detected, the Check Engine light will blink continuously, an audible chime will sound, and the vehicle will be placed in a temporary engine protection mode with reduced power and acceleration.
17. The subject vehicle experienced the same issues as predicted to occur with the installation of the KSDS.
18. Complainant received notification of the class action settlement after the deadline to file a claim had passed. Complainant sent in the information, but her claim was denied due to untimeliness.
19. Complainant also received a brochure detailing the extended lifetime warranty for the engine and was told to keep it inside the vehicle.
20. In August 2021, at 87,480 miles, the vehicle was taken in for service because the check engine light was on and the vehicle had no power.
21. The dealer determined that there was an internal failure with the CAM sensor, and repair work was performed.
22. On October 19, 2021, at 93,204 miles, the vehicle was taken in for service because the check engine light started flashing while driving, and the vehicle jerked off the road while traveling 75 mph.
23. The dealer found no oil in the vehicle's engine and recommended an oil consumption test.
24. To perform the oil consumption test, Complainant was required to bring the vehicle in every 1,000 miles for 3,000 miles and one additional time after 4,000 miles.
25. The vehicle was taken in on December 23, 2021, at 94,231 miles; on January 12, 2022, at 95,874 miles; and on March 31, 2022, at 101,845 miles for the oil consumption tests.
26. The vehicle passed the oil consumption test but was 15 miles short of failing the test.

27. The vehicle's check engine light came on again within a week or so after the March 2022 oil consumption test.
28. In February 2023, the vehicle was taken in for service because the check engine light was on. Complainant was advised that another oil consumption test needed to be performed.
29. On December 1, 2021, prior to 100,000 miles, Complainant provided written notice of the vehicle's problems to Respondent or Respondent's agent.
30. At the time of the hearing, the vehicle's mileage was approximately 125,000 miles.
31. The vehicle's check engine light is on, and the vehicle is slow to accelerate.
32. The vehicle will not pass inspection because the check engine light is on.
33. The vehicle cannot be driven legally because the inspection is expired.

V. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204, 601-.613.
2. A Hearings Examiner with 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 filed a sufficient complaint with the Department. 43 Tex. Admin. Code § 215.202.
4. Proper and timely notice of the hearing was provided. Tex. Gov't Code ch. 2001.051-.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this proceeding. 43 Tex. Admin. Code § 206.66(d).
6. Complainant proved, by a preponderance of the evidence, that the subject vehicle has a defect covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
7. Complainant or an agent of Complainant notified Respondent or Respondent's agent of the alleged defect(s) with the subject vehicle prior to the expiration of the warranty period. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(3).

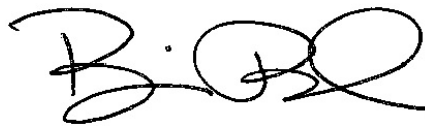
8. Complainant filed a complaint with the Department specifying the defect(s). Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1).
9. Complainant is entitled to warranty repair relief pursuant to Texas Occupations Code § 2301.204 and 43 Texas Administrative Code § 215.202(b).

VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's request for warranty repair relief pursuant to Texas Occupations Code § 2301.204 is **GRANTED**.

It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the subject vehicle to the applicable warranty; specifically, Respondent shall resolve the following issues: check engine light and slow acceleration. Upon this Order becoming final under Texas Government Code § 2001.144:⁴⁵ (1) Complainant shall deliver the vehicle to Respondent within 30 days; and (2) Respondent shall complete the repair of the vehicle within **60 days** after receiving it. 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 the 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 August 29, 2023



**BENNIE BROWN
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**

⁴⁵ This Order does not become final on the date this Order is signed, instead: (1) this Order becomes final if a party does not file a motion for rehearing within 25 days after the date this Order is signed, or (2) if a party files a motion for rehearing within 25 days after the date this Order is signed, this Order becomes final when: (A) an order overruling the motion for rehearing is signed, or (B) the Department has not acted on the motion within 55 days after the date this Order is signed. Accordingly, this Order cannot become final (1) while a motion for rehearing remains pending; or (2) after the grant of a motion for rehearing.