

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 23-0004981 CAF**

**ROMAN and NORMA LOPEZ,
Complainants**

v.

**AMERICAN HONDA MOTOR COMPANY, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Roman and Norma Lopez (Complainants) 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 distributed by American Honda Motor Company Inc. (Respondent). A preponderance of the evidence shows that Complainants' vehicle does not qualify 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 November 9, 2023, by teleconference before Hearings Examiner Lindy Hendricks with the Department's Office of Administrative Hearings (OAH). Complainants appeared and represented themselves. Respondent was represented by attorney Abigail Mathews. The hearing concluded and the record closed the same day.

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.¹ If this cannot be accomplished, the owner of the vehicle may seek relief by filing a complaint with the Department.² 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.³

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.⁴ In this case, the Complainants are seeking repair of alleged warrantable defects.

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;”⁵
- 2) the vehicle owner, or the owner’s designated agent, provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty’s expiration;⁶ and
- 3) the vehicle owner filed a complaint with the Department specifying the defect.⁷

¹ Tex. Occ. Code § 2301.603(a).

² Tex. Occ. Code § 2301.204(a); 43 Tex. Admin. Code § 215.202.

³ Tex. Occ. Code § 2301.204(d); 43 Tex. Admin. Code § 215.202(b)(4).

⁴ Tex. Occ. Code § 2301.606(c)(1); 43 Tex. Admin. Code § 215.202(b)(3).

⁵ Tex. Occ. Code § 2301.204(a).

⁶ Tex. Occ. Code § 2301.204(b); 43 Tex. Admin. Code § 215.202(b)(1), (3).

⁷ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(3).

The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty” if during the term of the warranty, the owner reported the nonconformity to the manufacturer, converter, or distributor, or to a designated agent or franchised dealer of the manufacturer, converter, or distributor.⁸

B. Burden of Proof

Complainants have the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.⁹ That is, Complainants must present sufficient evidence to show that it is more likely than not that every required fact for relief exists.¹⁰ Failure to prove even one required fact results in denial of relief.

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.”¹¹ However, the parties may expressly or impliedly consent to hearing issues not included in the complaint or pleadings.¹² Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.¹³ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.¹⁴

⁸ Tex. Occ. Code § 2301.603.

⁹ 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.”).

¹⁰ E.g., *Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

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

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

¹³ See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App. – San Antonio 1953, writ ref’d).

¹⁴ See Tex. Gov’t Code §§ 2001.051-.052, .141(b)-(c); Tex. R. Civ. P. 301.

III. DISCUSSION

A. Summary of Complainants' Evidence and Arguments

On March 6, 2021, Complainants purchased a used 2019 Honda Pilot from Bert Odgen Toyota of Harlingen (Bert Odgen), a franchised dealer of Respondent, located in Harlingen, Texas.¹⁵ The vehicle had 6,732 miles on the odometer at the time of purchase.¹⁶ The vehicle's limited warranty provides coverage for 3 years or 36,000 miles, whichever occurs first. The vehicle's powertrain warranty provides coverage for 5 years or 60,000 miles, whichever comes first.¹⁷

On December 20, 2022, Complainants filed a complaint with the Department alleging that the vehicle shifted into neutral when the brakes were applied. When in neutral, the vehicle would not shift into drive and had to be shut off to restart. When stopped at the light, the vehicle would shut off and not restart or took a while to restart.¹⁸ The vehicle had approximately 40,000 miles at the time the complaint was filed.

Complainants first noticed the problem in July 2021. In relevant part, Complainants took the vehicle for repair of the alleged issues as follows:

Date	Invoices ¹⁹	Mileage	Issue
8/27/2021	493294	15,276	C/S emission system problem is displayed.
12/23/2021	498338	20,728	The vehicle loses power and kicks into neutral.
4/25/2022	503707	25,660	C/S Vehicle shut off when at idle- would not turn on.

¹⁵ Complainants Exhibit 6.

¹⁶ Complainants Exhibit 6.

¹⁷ Complainants Exhibit 8.

¹⁸ The Hearings Examiner took official notice of the administrative record, including the Lemon Law complaint.

¹⁹ Complainants Exhibit 7.

5/9/2022	504298	26,569	Car turns off when driving or on idle.
10/13/2022	510273	36,211	When at a stop light, the car completely died. Takes a few minutes to restart.
11/9/2022	511274	38,194	When at a stop, the vehicle turns off and will not start when on auto pilot.
12/13/2022	512629	40,803	Auto stop feature does not automatically restart when car shuts off at a stop.
1/9/2023	513536	45,545	Recall 23-008 Auto Idle Stop Restart (update)
2/13/2023	514716	45,673	When slowing down, vehicle shifts into park and engine stays on; will not let you shift to any other gear. Has to turn off the vehicle and start it back up to get it to shift into another gear.
5/27/2023	518855	51,711	The vehicle will switch into neutral position when coming to a stop at times. Needs to be turned off to switch gear. Sometimes it stays locked in neutral for 1 to 5 minutes. Customer has also noticed that vehicle will go into sport mode without the button being touched.

On April 25, 2022, Complainants contacted Honda via email, advising them of the problem they experienced with the vehicle.²⁰ Specifically, Complainants notified Honda that their vehicle turns off completely when at an idle stop. The first time it happened, they took the vehicle to the dealership for repair, but the issue occurred three more times after repair. The dealership could not find anything wrong with the vehicle. The vehicle had 25,660 miles at the time of the notice to Honda.

Complainants called two witnesses: Norma Salinas and Adele Satterwhite. On April 29, 2023, Ms. Salinas was present and witnessed an incident when the vehicle shut off at the stop light. They were on a busy street, cars were honking, and the vehicle would not start for 10 minutes. It was a scary situation, and she expressed concern for her family and grandchildren. Ms. Satterwhite also witnessed a few incidents where the vehicle stopped and would not start.

²⁰ Complainants Exhibit 6.

At the time of the hearing, the vehicle had 67,000 miles. The vehicle is currently operational. The issue of the vehicle turning off when idle does not currently exist. The defect has not occurred since the last repair on May 31, 2023. Complainants are asking for an extended warranty for that specific issue should the defect occur again. Complainants are also concerned about the loss of value to their vehicle if they were to sell or trade in the vehicle. Given the recurrence of the issue, Complainants have experienced anxiety and stress. The issue took a long time to repair. Complainants do not trust and are not convinced that the vehicle is fixed and requested an extended warranty.

At the hearing, Complainants mentioned the issue of the vehicle shifting from drive to sport mode. Complainants believed they discussed the issue with Honda over the phone, but this issue is not in their complaint and was not their main focus because the shift to sport mode did not jeopardize their lives like the idle stop issue. The shift from drive to sport mode issue was first mentioned in the repair order dated May 27, 2023, when the vehicle had 51,711 miles. It was not raised in any written communications with Respondent.

B. Summary of Respondent's Evidence and Arguments

Adrian Jordan testified on behalf of Respondent. Mr. Jordan is the District Parts and Services Manager for American Honda for the Gulf Coast. He oversees the parts and services departments of dealerships, including AutoNation. Mr. Jordan reviewed the repair orders and is familiar with the standard 3 years/36,000 miles warranty on this vehicle. According to Mr. Jordan, the warranty started from the original delivery date of July 27, 2019, and expired on July 27, 2022. The warranty had expired when the issue of the shift to sports mode was first reported on May 27, 2023. As for the stall issue, Mr. Jordan was contacted by the dealership after the vehicle had been serviced multiple times. Mr. Jordan contacted Douglas Toler, a field technical specialist, to involve him in the matter.

Mr. Toler is a Honda master technician with over 25 years' experience working on Honda's and Acura's. He testified that when a vehicle has had multiple repair attempts, he is brought in to try to resolve the issue with a final repair attempt. On January 24, 2023, he was asked

to check Complainants' vehicle for shifting to neutral, stalling, and not restarting. Around that time, Honda had released a recall in Service Bulletin 23-008, dated January 6, 2023, for the idle stop issue. Mr. Toler noted that the dealership indicated in its February 2023 repair order that it had addressed the idle stop recall issue. However, when Mr. Toler hooked up his scan tool to check the software version, he found that the vehicle had not been updated as notated. Mr. Toler testified that he updated the software as the first step pursuant to Service Bulletin 23-008. He test drove the vehicle after the software update and noted that it operated as designed. The vehicle was returned to Complainants. However, the software update did not correct the issue, and he was contacted again about the vehicle going into idle auto stop and not restarting.

A second Service Bulletin 23-009 was issued for the idle stop issue. Service Bulletin 23-009 states that the engine does not auto-restart after entering auto idle stop. It recognized that under certain circumstances, after coming to a stop and engaging idle stop, the vehicle may not restart automatically due to excessive cylinder pressure and/or low cranking torque. Under Service Bulletin 23-009, a higher torque starter was installed, and a valve adjustment was performed. In addition to the repairs, Honda extended the warranty coverage for the valve adjustment and starter replacement related to this condition for 10 years from the original date of purchase with no mileage limitation.

On May 27, 2023, the repairs were performed on Complainants' vehicle. Mr. Toler supervised the repair and had the dealership install a new battery. Mr. Jordan confirmed that, under this warranty extension, if the auto idle issue should reoccur, it is warranted for 10 years from the July 2019 delivery date, and the vehicle would be repaired, regardless of mileage. Mr. Jordan confirmed that Service Bulletin 23-009 included Complainants' vehicle (model year and make).

As for the shift to sports mode, Mr. Toler testified that this shift issue is unrelated to the auto idle stop, and the electrical components involved are different and unrelated.

Respondent argues that the issue of the auto idle stop raised in the complaint has been repaired. The issue does not currently exist. Should the issue reoccur, there is an extended 10-year

warranty. Respondent argues the issue of the shift to sports mode was not raised in the complaint and was first reported after the warranty expired and is not a warrantable defect.

C. Analysis

Complainants had the burden of proof to show that the subject vehicle qualified for relief pursuant to statute. Because the vehicle was purchased as a used vehicle, the only remedy provided by statute is warranty repair.²¹ To qualify for relief, Complainants must prove the required elements by a preponderance of the evidence. Failure to prove even one of the required facts causes the vehicle to be ineligible for relief. Based on the evidence presented, Complainants failed to establish the facts necessary for warranty repair relief.

Complainants failed to prove that the vehicle has a defect that is covered by a manufacturer's warranty.²² That is, the vehicle must currently have a warrantable defect. In their complaint, Complainants alleged that the vehicle shut off when the brakes were applied and would not restart. This issue was addressed by Respondent as part of the auto idle stop recall in Service Bulletins 23-008 and 23-009. At the hearing, Complainants testified that this idle stop issue had been repaired and does not currently exist. As such, there is no existing warrantable defect related to the idle stop issue that requires repair.

At the hearing, Complainants testified that the vehicle also shifts to sport mode by itself. Complainants reported the issue in May 2023 at the last repair.²³ However, the issue was not included in the complaint. Further, Respondent did not consent to try the issue without notice in the complaint. A complaint filed with the Department identifies the relevant issues to address in this case. The complaint must state sufficient facts to enable the Department 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.²⁴ Because the complaint determines the relevant issues,

²¹ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b).

²² Tex. Occ. Code § 2301.204(a).

²³ Complainants Exhibit 7.

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

the Department cannot order relief for an issue not included in the complaint unless tried by consent.²⁵ The shifting issue was not mentioned in the complaint and cannot be considered in this hearing. Thus, Complainants have not proven every element required for relief.

Because Complainants failed to establish all facts necessary for warranty repair relief, their request for relief is denied.

IV. FINDINGS OF FACT

1. On March 6, 2021, Roman and Norma Lopez (Complainants) purchased a used 2019 Honda Pilot from Bert Odgen Toyota of Harlingen (Bert Odgen) in Harlingen, Texas. The vehicle was distributed by American Honda Motor Company, Inc. (Respondent or Honda).
2. The vehicle had 6,732 miles on the odometer at the time of purchase.
3. The vehicle's limited warranty provided coverage for defects in materials or workmanship for 3 years or 36,000 miles, whichever occurs first. The vehicle's powertrain warranty provided coverage for 5 years or 60,000 miles, whichever comes first.
4. In July 2021, Complainants first noticed the issue where the vehicle would shut off when idling and would not restart.
5. Complainants took the vehicle for repair as shown below:

Date	Invoices ²⁶	Mileage	Issue
8/27/2021	493294	15,276	C/S emission system problem is displayed.
12/23/2021	498338	20,728	The vehicle loses power and kicks into neutral.
4/25/2022	503707	25,660	C/S Vehicle shut off when at idle- would not turn on.
5/9/2022	504298	26,569	Car turns off when driving or on idle.
10/13/2022	510273	36,211	When at a stop light, the car completely died. Takes a few minutes to restart.
11/9/2022	511274	38,194	When at a stop, the vehicle turns off and will not start when on auto pilot.

²⁵ See Tex. Gov't Code §§ 2001.051-.052, .141(b)-(c); Tex. R. Civ. P. 301.

²⁶ Complainants Exhibit 7.

12/13/2022	512629	40,803	Auto stop feature does not automatically restart when car shuts off at a stop.
1/9/2023	513536	45,545	Recall 23-008 Auto Idle Stop Restart (update)
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5/27/2023	518855	51,711	The vehicle will switch to neutral position when coming to a stop at times. Needs to be turned off to switch gear. Sometimes it stays locked in neutral for 1 to 5 minutes. Customer has also noticed that vehicle will go into sport mode without anyone touch button.

6. On December 20, 2022, Complainants filed a complaint with the Texas Department of Motor Vehicles (Department) alleging that the vehicle shifted into neutral when the brakes were applied (idle stop).
7. On July 19, 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. On September 26, 2023, OAH issued Order No. 4 Memorializing Prehearing Conference and resetting the hearing on the merits to November 9, 2023.
9. The Notice of Hearing and Order No. 4 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.
10. On November 9, 2023, a hearing on the merits convened by teleconference before OAH Hearings Examiner Lindy Hendricks. Complainants appeared and represented themselves. Respondent appeared through attorney Abigail Matthews. The hearing concluded and the record closed the same day.
11. This idle stop issue was repaired in accordance with Service Bulletins 23-008 and 23-009 with an extended 10-year warranty and no mileage limitation.
12. A warrantable defect related to the auto idle stop does not currently exist.
13. On May 27, 2023, Complainants reported the shifting issue during the repair when the vehicle had 51,711 miles.
14. At the hearing, Complainants raised the issue of the vehicle shifting to sport mode.

15. Respondent objected to the shifting issue being raised and tried at the hearing without prior notice.
16. The shifting issue was not mentioned in the complaint, was not tried by consent, and cannot be considered in this hearing.

V. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204, 601-.613.
2. A Hearings Examiner with the Department's OAH 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. Complainants 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 §§ 2001.051-.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainants bears the burden of proof in this proceeding. 43 Tex. Admin. Code § 206.66(d).
6. Complainants failed to show, by a preponderance of the evidence, that the vehicle has a defect covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
7. Complainants failed to show, by a preponderance of the evidence, that written notice of the alleged defect was provided to Respondent. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(1), (3).

VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' petition for relief pursuant to Texas Occupations Code § 2301.204 is **DISMISSED**.

SIGNED December 21, 2023.



LINDY HENDRICKS
Hearings Examiner
Office of Administrative Hearings
Texas Department of Motor Vehicles