

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0010346 CAF**

**RONALD KNOTT,
Complainant**

v.

**GENERAL MOTORS LLC,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Ronald Knott (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his vehicle manufactured by General Motors LLC (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect. Consequently, the Complainant’s vehicle does not qualify for relief.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on October 28, 2020, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself. Clifton Green, business resource manager, represented the Respondent.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

A vehicle qualifies for repurchase or replacement if the respondent cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition

¹ TEX. GOV’T CODE § 2001.051.

that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”² In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must currently exist after a “reasonable number of attempts” at repair.³ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a written notice of the defect to the respondent, (2) an opportunity to cure by the respondent, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life-threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁴

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁵

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”⁶

c. Reasonable Number of Repair Attempts

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he 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 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

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have 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.⁸

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

[A] nonconformity still exists that substantially impairs the vehicle’s use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, 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.⁹

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“We find that this interpretation of the standard required for demonstrating substantial impairment is reasonable and consistent with the statute’s plain language which requires a showing of loss in market value. . . . [T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

⁸ TEX. OCC. CODE § 2301.605(a)(2).

⁹ TEX. OCC. CODE § 2301.605(a)(3).

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁰

The existence of a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹¹ Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.¹²

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner or someone on behalf of the owner, or the Department has provided written notice of the alleged defect or nonconformity to the respondent;¹³ (2) the respondent was given an opportunity to cure the defect or nonconformity;¹⁴ and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.¹⁵

¹⁰ TEX. OCC. CODE § 2301.605(c).

¹¹ *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’”).

¹² *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

¹³ 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department’s notice of the complaint to the Respondent satisfies the requirement to provide notice of the defect or nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).

¹⁴ TEX. OCC. CODE § 2301.606(c)(2). A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer may satisfy the opportunity to cure requirement when the respondent allows a dealer to attempt repair after written notice to the respondent. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 226 (Tex. App.—Austin 2012); *Texas Department of Transportation, Kennemer v. Dutchman Manufacturing, Inc.*, MVD Cause No. 09-0091 CAF (Motor Vehicle Division Sept. 25, 2009) (Final Order Granting Chapter 2301, Subchapter M Relief). An opportunity to cure does not require an actual repair attempt but only a valid opportunity. *Id* at 2.

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer’s, converter’s, or distributor’s . . . warranty agreement applicable to the vehicle” and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect before the warranty’s expiration.¹⁶ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”¹⁷

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁸ The Complainant must prove all facts required for relief by a preponderance of the evidence. That is, the Complainant must present sufficient evidence to show that every required fact more likely than not exists.¹⁹ Accordingly, the Complainant cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely.

4. The Complaint Identifies the Relevant Issues in this Case

The complaint identifies the relevant issues to address in this case.²⁰ 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 under the lemon law.”²¹ However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.²² Implied consent occurs when a party introduces evidence

¹⁶ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁷ TEX. OCC. CODE § 2301.603(a).

¹⁸ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁹ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

²⁰ “In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case.” TEX. GOV’T CODE § 2001.051; “Notice of a hearing in a contested case must include . . . either: (A) a short, plain statement of the factual matters asserted; or (B) an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.” TEX. GOV’T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) (“The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.”); TEX. OCC. CODE § 2301.204(d) (“A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

²¹ 43 TEX. ADMIN. CODE § 215.202(a)(3).

²² 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

on an unpleaded issue without objection.²³ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.²⁴

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainant for reasonable incidental expenses resulting from the vehicle's loss of use because of the defect.²⁵ Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle's failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts or similar written documents).²⁶ However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."²⁷

B. Summary of Complainant's Evidence and Arguments

On December 20, 2019, the Complainant, purchased a new 2019 Chevrolet Silverado from Chuck Fairbanks Chevrolet, a franchised dealer of the Respondent, in DeSoto, Texas. The vehicle had 55 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first and powertrain coverage for five years or 60,000 miles, whichever occurs first. On April 16, 2020, the Complainant provided a written notice of defect to the Respondent. On April 16, 2020, the Complainant filed a complaint with the Department alleging that when shifting from reverse to drive, the vehicle would hesitate then jolt/jump/lunge and exhibit a popping noise in the transmission (harsh shift issue).

²³ See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

²⁴ See TEX. GOV'T CODE §§ 2001.141(b)-(c), 2001.051-2001.052; TEX. R. CIV. P. 301.

²⁵ TEX. OCC. CODE § 2301.604.

²⁶ 43 TEX. ADMIN. CODE § 215.209(a).

²⁷ 43 TEX. ADMIN. CODE § 215.208(b)(1).

The Complainant took the vehicle to a dealer for repair as follows:

Date	Miles	Issue
January 28, 2020	3,281	Whining noise in drive
February 24, 2020	4,159	<i>Brake system malfunction recall</i>
March 2, 2020	4,712	Harsh shift into drive
March 24, 2020	5,246	Hesitates/jerks from reverse to drive
May 20, 2020	8,602	Delay going to drive, harsh shift

The Complainant testified that that he first noticed the harsh shift issue within the first 30 days of delivery. He explained that the issue happened three to four times a week. He described the harsh shift as strong enough to cause a drink to splash. He did not notice any seasonal differences. Instead, the issue was associated more with shifting from reverse to drive and pulling a trailer. He last noticed the issue the morning of the hearing. In the video, the Complainant elaborated that the harsh shift occurred at a stop with a foot on the brake. He characterized the issue as feeling like driving a standard transmission. He was unsure if the harsh shift occurred from reverse gear to first gear. But he characterized the driving as comfortable after the harsh shift. The harsh shift occurred as often as three or four times a day. The vehicle currently had 20,819 miles on the odometer.

On cross-examination, the Complainant testified that the last service visit was in August (2020) when the field service engineer came to inspect the vehicle. Since the last service visit, the harsh shifts still occurred, though not daily. He affirmed that repair order (RO) 422259 (January 28, 2020) reflected the first visit for a transmission issue. RO 424099 (February 24, 2020) involved a brake related recall. The second repair visit for the transmission (RO 424599, March 2, 2020) was for a combination of two issues. The vehicle would not go into gear and the vehicle had to be towed to a dealer and reprogrammed, which was when the DTCs (diagnostic trouble codes) came into play (relating to the engine control module and transmission control module). However, the harsh shift issue remained. At the third repair visit for the transmission (RO 263637, March 24, 2020), the dealer, Carlisle Chevrolet, suggested taking the vehicle to another dealership and indicated that the jumping and jolting were known attributes of the vehicle. The Complainant affirmed that Carlisle Chevrolet did not find any problems. He acknowledged that no issues were found in RO 428524 (May 20, 2020) but he considered it baseless.

C. Summary of Respondent's Evidence and Arguments

Mr. Green outlined the Respondent's position that the vehicle did not have a substantial safety concern or substantial impairment of use or value. Mr. Bacchus testified that he visited Chuck Fairbanks Chevrolet on May 20, 2020, for the harsh shift issue. He contacted the Complainant and obtained approval to duplicate the issue in his driveway. Mr. Bacchus could duplicate the issue when shifting into drive while the vehicle was rolling. In contrast, when shifting after coming to a complete stop, the issue could not be duplicated. Mr. Bacchus elaborated that the jolt resulted from the transmission commanding 2nd gear because the transmission still perceived speed from the speed sensor. The 2nd to 1st downshift could be felt as a clunk or jolt. This would not happen at a complete stop. Mr. Bacchus noted that the Complainant's long driveway, backing into a major road, and possibly rushing to avoid traffic could play a factor. After removing the transmission, no debris was found. A slight amount of debris was found in the transmission filter, but all the debris was contained in filter. The debris could have been from casting flash from machining. There was not enough debris to cause an issue. The transmission fluid was clean. Normal material was on the debris magnet. Mr. Bacchus pointed out that 0 mph on the speedometer did not necessarily indicate 0 mph at the output sensor. The 0-mph speedometer reading came from the wheel sensors but the output speed sensor may still be reading speed over 0 mph. Mr. Bacchus concluded that there was no way to eliminate the concern. Rather the only way to address the issue would be to trade into a 2020 model. The 2020 models have a calibration that addresses the issue. The manufacturer cannot change the calibration from year to year due to EPA (Environmental Protection Act) regulatory reasons. Mr. Bacchus noted that in the video without the rain, the vehicle could be seen moving (when shifted from reverse to drive). In the video with the rain, a tire slipping could have led to the jolt.

On cross-examination, Mr. Bacchus testified that the Respondent published a bulletin addressing this issue in May 2020. He described the issue as a design characteristic. When asked about possible transmission damage 60,000 miles in the future, he could not provide a definite answer but noted that warranty repairs on the eight-speed transmission were very rare and the transmission was very strong. He acknowledged that only the 2019 model year was affected by this dissatisfier. When asked if the speed sensor had a problem, Mr. Bacchus answered the issue related to the calibration.

D. Analysis

As explained in the discussion of applicable law, the law imposes the burden of proof on the Complainant. Accordingly, the Complainant must affirmatively prove every Lemon Law element by a preponderance of the evidence. In this case, a preponderance of the evidence does not show that the subject vehicle has a defect covered under warranty (warrantable defect).

Lemon Law relief does not apply to all problems that may occur with a vehicle but only to warrantable defects that continue to exist after repairs.²⁸ The Lemon Law does not require that a manufacturer provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. The Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. In part, the subject vehicle's warranty states that: "The warranty covers repairs to correct any vehicle defect, not slight noise, vibrations, or other normal characteristics of the vehicle due to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new, remanufactured, or refurbished parts."²⁹ According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³⁰

A defectively manufactured vehicle has a flaw so that it does not conform to the manufacturer's specifications, and is not identical to other same model vehicles.³¹ A manufacturing defect occurs when the vehicle varies from the manufacturer's design standards, causing that vehicle to differ from other vehicles of the same kind.³² In other words, a

²⁸ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

²⁹ Complainant's Ex. 10, New Vehicle Limited Warranty.

³⁰ Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover design issues. *E.g.*, *Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 ("The manufacturer's express warranty in the case sub judice provides: 'Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship' The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty."); *see GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) ("the language in the contract of May 12, 1980, expressly limited TCR's recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.").

³¹ *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.—Texarkana 1985), *aff'd* in part on other grounds, *rev'd* in part on other grounds, 715 S.W.2d 629 (Tex. 1986) ("Manufacturing defect cases involve products which are flawed, i.e., which do not conform to the manufacturer's own specifications, and are not identical to their mass-produced siblings.").

³² *Ridgway v. Ford Motor Co.*, 82 S.W.3d 26, 31-32 (Tex. App.—San Antonio 2002), *rev'd on other grounds*, 135 S.W.3d 598 (Tex. 2004) ("A manufacturing defect may be distinguished from a design defect. A manufacturing

manufacturing defect is an isolated aberration, an unintended configuration occurring only in those vehicles not produced according to the manufacturer's specifications.³³ A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Accordingly, manufacturing defects occur during manufacturing and exist when the vehicle leaves the manufacturing plant. In contrast, design issues result from the manufacturer's design of the vehicle, even though manufactured without any flaws.³⁴ Design defects/characteristics exist in the vehicle's specifications, before the vehicle is even manufactured, and do not arise from any error during manufacturing.³⁵ Accordingly, a design defect/characteristic exists in all vehicles of the same design, but the vehicle's intended configuration may produce unintended and unwanted results.³⁶ Unlike manufacturing defects, issues that do not arise from manufacturing, such as the vehicle's design characteristics (which exist before manufacturing) or dealer representations and improper dealer repairs (which occur after manufacturing), are not warrantable defects. Because the warranty only covers manufacturing defects, the Lemon Law does not provide relief for design characteristics, design defects, or any other non-manufacturing problem. Even though an issue may be unintended and unwanted, the Lemon Law provides no relief unless the issue constitutes a manufacturing defect.

In the present case, a preponderance of the evidence does not show that the complained of issue is a warranted manufacturing defect as opposed to an unwarranted design issue. Significantly, technical service bulletin (TSB) #20-NA-102 appears to directly address the issue in this case,

defect occurs when the product varies from the manufacturer-established design standards, causing that product to deviate from the normal safety of other products of its kind.)

³³ *Harduvel v. Gen. Dynamics Corp.*, 878 F.2d 1311, 1317 (11th Cir. 1989) (“This distinction between ‘aberrational’ defects and defects occurring throughout an entire line of products is frequently used in tort law to separate defects of manufacture from those of design. . . . Stated another way, the distinction is between an unintended configuration [a manufacturing defect], and an intended configuration that may produce unintended and unwanted results [a design defect].”).

³⁴ *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.--Texarkana 1985), *aff'd* in part on other grounds, *rev'd* in part on other grounds, 715 S.W.2d 629 (Tex. 1986) (“Defective design cases, however, are not based on consumer expectancy, but on the manufacturer's design of a product . . . even though not flawed in its manufacture.”).

³⁵ In contrast to manufacturing defects, “[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves.” *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

³⁶ *Harduvel v. Gen. Dynamics Corp.*, 878 F.2d 1311, 1317 (11th Cir. 1989) (“This distinction between ‘aberrational’ defects and defects occurring throughout an entire line of products is frequently used in tort law to separate defects of manufacture from those of design. . . . Stated another way, the distinction is between an unintended configuration [a manufacturing defect], and an intended configuration that may produce unintended and unwanted results [a design defect].”).

which explains that the 2019 model year Silverado 1500s will shift harshly from 2nd to 1st gear when shifting from reverse to drive while not at a complete stop. This TSB states:

Some customers may comment that after traveling in reverse and shifting the transmission to drive, the vehicle may experience a lack of acceleration followed by a clunk or harsh downshift feeling.

This condition may be caused by the fact the vehicle not coming to a complete stop before shifting from reverse to drive.

If the transmission output speed (OSS) of the transmission does not obtain 0 mph/(kph) before shifting from reverse to drive, the transmission will be commanded to start in 2nd gear. Upon increasing the throttle, the transmission will command a 2-1 downshift, which will be harsh.

The OSS may appear to obtain 0 mph/(kph) when reviewing GDS data. However, the filtered signal as determined by the Transmission Control Module (TCM), may be above the 0 mph/(kph) threshold required by the TCM.

The vehicle must come to a complete stop prior to shifting the transmission from reverse to drive.

Important: Replacing components on the transmission will not provide a resolution to the customers concern.³⁷

In pertinent part, the complaint's description of the condition mirrors the TSB. The complaint states: "WHILE SHIFTING FROM REVERSE TO DRIVE EXTREME HESITATION THEN SOME JOLTING, JUMPING, LUNGING." The issue as described in the complaint consists of the same three basic elements as the condition in the TSB: (1) shifting from reverse to drive, (2) a lack of acceleration, and (3) a clunk or harsh downshift feeling. Moreover, the TSB contemplates that the transmission may see a speed over 0 mph even though the vehicle may appear to be at 0 mph, which is consistent with the Complainant's video exhibits where the speedometer may display 0 mph while the transmission reacts to sensing speed over 0 mph. Specifically, the evidence shows that the speed shown on the speedometer comes from wheel speed sensors, while the speed used as an input to the transmission comes from an output speed sensor, which may lead to the speedometer showing 0 mph though the transmission reacts to movement sensed by the output speed sensor. Critically, the TSB emphasizes that replacing transmission components will not

³⁷ Respondent's Ex. 8, #20-NA-102: Lack of Acceleration Followed by a Clunk Feeling After Shifting From Reverse to Drive - (May 14, 2020).

resolve the issue, indicating that the issue arises from the design as opposed to any mechanical failure that may be fixed by replacing a defective part. Further, the TSB only applies to the 2019 model year, reflecting a condition specific to the that year's design, while testimony shows that the complained of condition does not occur in 2020 model year vehicles because of a change in calibration, that is, a change in design. Consistent, with the issue arising from the design, an inspection of the transmission showed no indication of mechanical failure. In sum the evidence shows that the issue here arises from the design shared by the 2019 model year vehicles as opposed to an isolated manufacturing defect in the subject vehicle.

III. Findings of Fact

1. On December 20, 2019, the Complainant, purchased a new 2019 Chevrolet Silverado from Chuck Fairbanks Chevrolet, a franchised dealer of the Respondent, in DeSoto, Texas. The vehicle had 55 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first and powertrain coverage for five years or 60,000 miles, whichever occurs first.
3. The warranty generally states that: "The warranty covers repairs to correct any vehicle defect, not slight noise, vibrations, or other normal characteristics of the vehicle due to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new, remanufactured, or refurbished parts."
4. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
January 28, 2020	3,281	Whining noise in drive
February 24, 2020	4,159	<i>Brake system malfunction recall</i>
March 2, 2020	4,712	Harsh shift into drive
March 24, 2020	5,246	Hesitates/jerks from reverse to drive
May 20, 2020	8,602	Delay going to drive, harsh shift

5. On April 16, 2020, the Complainant provided a written notice of defect to the Respondent.
6. On April 16, 2020, the Complainant filed a complaint with the Department alleging that when shifting from reverse to drive, the vehicle would hesitate then jolt/jump/lunge and exhibit a popping noise in the transmission (harsh shift issue).

7. On July 28, 2020, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them 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 factual matters asserted.
8. The hearing in this case convened on October 28, 2020, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself. Clifton Green, business resource manager, represented the Respondent.
9. The vehicle's odometer displayed 20,819 miles at the time of the hearing.
10. The vehicle's warranty was in effect at the time of the hearing.
11. The warranty only applies to defects in materials or workmanship (manufacturing defects) and does not apply to any issues due to the design.
12. Due to a design issue, 2019 model year Silverado 1500s will shift harshly from 2nd to 1st gear when shifting from reverse to drive while not at a complete stop according to the signal from the output speed sensor. The transmission may see a speed over 0 mph from the output speed sensor even though the vehicle may appear to be at 0 mph according to the speedometer reading from the wheel speed sensor.
13. Replacement of transmission components will not resolve the harsh shift.
14. The transmission showed no signs of mechanical failure.
15. The harsh shift condition does not occur in 2020 model year Silverado 1500s because of a change in calibration (design) from the 2019 model year.
16. The harsh shift issue results from the design of the subject vehicle rather than any warrantable manufacturing defects.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.
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. The Complainant filed a sufficient complaint with the Department. 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. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
7. The Complainant does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
8. The Complainant's vehicle does not qualify for warranty repair. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
9. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED December 23, 2020



ANDREW KANG
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES