

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 14-0228 CAF**

**SHARON SHARP
and MICHAEL SHARP,
Complainants**

v.

**NEWMAR CORPORATION,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Sharon Sharp and Michael Sharp (Sharps) filed a petition with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) from Newmar Corporation (Newmar), for failure to correct alleged warrantable defects in the Sharps' 2013 Canyon Star Motorhome. The Sharps seeks repurchase relief due to numerous alleged defects in the coach. Newmar argues that all of the items raised by the Sharps have been successfully repaired, and even if that was not the case, none of the alleged defects create a safety hazard, or substantially impair the use or market value of the coach.

The hearings examiner finds that the Sharps' request for repurchase relief is barred by Texas Occupations Code § 2301.606(d)(1)'s filing limitations period. Nonetheless, Newmar has a continuing obligation to repair, beyond the period of its express limited warranty issued for the motorhome, warrantable defects that fall within the parameters of Texas Occupations Code § 2301.603(b).

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested. These issues are discussed only in the Findings of Fact and Conclusions of Law.

The evidentiary hearing convened on August 15, 2014 in San Antonio, Texas, before Hearings Examiner Anne K. Perez. The Sharps appeared and represented themselves. Newmar was represented by attorney Edward J. Hennessy. The hearing was adjourned on August 15, 2014. The record closed on September 19, 2014, following the submission of written closing statements and rebuttal argument.

II. DISCUSSION

A. Purchase, Warranty Coverage, and Newmar's Owner's Guide

On August 22, 2012, the Sharps purchased a new 2013 Canyon Star Motorhome manufactured by Newmar from Ancira Motorhomes, Inc., of Boerne, Texas. The coach's mileage on the date of purchase was 2,261.¹ On the same date, Newmar issued an express limited warranty for the Sharps' motorhome:

If any part of your new Newmar product fails because of a manufacturing defect within 12 months from the original retail owner's date of purchase, it will be repaired without charge for either parts or labor by Newmar...²

Relevant to this proceeding, Newmar's limited warranty coverage specifically excludes:

- Normal deterioration of appearance items due to wear, *e.g.*, drapery, upholstery, carpeting;
- Normal maintenance cost and requirements detailed in Newmar's Owner's Guide;³
- Cosmetic alignment of the slideout(s) and other cosmetic adjustments (which are considered routine maintenance);⁴ and
- Equipment and components supplied and separately warranted by other manufacturers, including but not limited to tires, batteries, chassis, including all items supplied by the chassis manufacturer, and other installed equipment and accessories (these suppliers provide their own warranties separate from Newmar's limited warranty).⁵

According to the Owner's Guide, the 2013 Canyon Star Motorhome is equipped with appliances and components supplied by manufacturers who issued limited warranties applicable to the installed items. The evidentiary record does not contain copies of component warranties relevant to the Sharps' claim against Newmar. The Owner's Guide suggests, however, that component manufacturers issued limited warranties applicable to the following equipment in the Sharps' RV: (1) Accessories (Back Up Monitor; Upholstered Furniture; Roof Vent; Stereo-Dash; TV Antenna; Television; Satellite Dish (2); and DVD);

¹ Complainant Ex. 9, Motor Vehicle Purchase Order. On the date of hearing, mileage was at 7,501.

² Complainant Ex. 10. Newmar also issued a limited five-year warranty for the coach's superstructure (the steel/aluminum structure of the sidewall, roof, or frame) covering defects in factory-supplied materials or workmanship.

³ Complainant Ex. 8, 2013 Canyon Star Owner's Guide (Owner's Guide).

⁴ *Id.* The Owner's Guide at p. 83 states: "Cosmetic adjustments must be performed within the first three (3) months from the date of original purchase for warranty consideration. Thereafter, these items are considered routine maintenance."

⁵ *Id.* A list of supplier's phone numbers is included in the Owner's Guide.

(2) Air Conditioning (A/C)/Heating (Dash Air; Roof Air; Furnaces); (3) Tires; (4) Electrical (Batteries-12-Volt; Generators); and (5) Exterior (Awning and Hardware; Jacks; Steps, Electrical).⁶

B. Alleged Defects and Sharps' Argument

On April 28, 2014, the Sharps filed a complaint with the Department listing the following alleged defects in the RV: (1) rear slidelock on main slideout comes unlocked in travel; (2) weather-stripping gasket outside rear-entry door coming off; and (3) house battery will not hold a charge.⁷

The Sharps' amended complaint filed with the agency on May 19, 2014, raised additional alleged defects: (1) persistent drain on the house batteries suggests a faulty inverter, despite inverter's replacement in November 2012; (2) inside release (handle) for engine hood is defective; (3) loose, falling-off cabinetry (pantry door, cabinet doors above driver and passenger seats, medicine cabinet); (4) A/C unit pumping out heat; (5) DVD player does not work; and (6) problems listed in attachment illustrate that RV was manufactured with substandard materials and poor workmanship standards.⁸

On August 1, 2014, the Sharps filed a second amended complaint with the Department, reiterating certain issues raised in prior complaints and alleging the presence of new defects: (1) loose cabinet doors with stripped-out screw holes, including garage door (right-side bottom); DVD cabinet; wardrobe and storage compartments in bedroom; storage compartments above and below bathroom vanity; compartments above refrigerator and under kitchen sink; control panel door above main entryway; cabinets above couch; and all pantry doors; (2) refrigerator does not cool properly while running on A/C power; (3) garage A/C unit switched from "Cool" to "Auto" on its own in June 2014; (4) cannot add or drain water from the fresh water tank; and (5) front entry door squeaks and rattles in travel, also difficult to lock and unlock.

Many of the alleged defects raised in the Sharps' complaint have been successfully repaired. Nonetheless, the couple argues that the RV's extensive repair history – successful or not – proves that

⁶ *Id.*, at 9. See also Complainant Ex. 9. Attachments to the Motorhome Purchase Contract list equipment, appliances, etc. that were included as part of sale.

⁷ Pursuant to Texas Government Code § 2001.090, official notice is taken of the Sharps' original complaint, as well as their two amended complaints filed with the Department. This Decision and Order refers to the three documents collectively as "the complaint."

⁸ The attachment lists: (1) pocket doors require continual adjustment to prevent movement in travel; (2) master panel readings for fresh water, gray water, and sewage levels are continually inaccurate; (3) back up monitor in dash fell out due to poor repair, required further repair on November 27, 2012; (4) automatic stabilizing jacks failed due to bad pressure switch, requiring switch replacement on November 27, 2012; (5) kitchen ceiling fan motor required replacement on February 12, 2014; (6) electric mechanism for driver's seat emitted sparks, required repair on February 12, 2014; (7) toilet seat came loose, required repair on February 12, 2014; (8) non-working latches (refrigerator, outside TV compartment); and (9) linoleum tiles and molding near front interior steps are loose.

the motorhome is a "lemon." They emphasize that they purchased the coach new, with mileage of 2,261. In the past two years, they have been on few excursions (mileage is currently at 7,501), yet they have never taken the bus on a trip without experiencing some problem. Certain defects are repetitive and have required multiple repairs. The couple attributes the situation to Newmar's reliance on substandard materials and shoddy workmanship in the manufacturing process. They assert that the RV's extensive repair history negatively affects its market value, and the multitude of problems (which are likely to reoccur, given the coach's inferior quality) also substantially impairs the use of their motorhome. For these reasons, they contend that Newmar should be required to repurchase the motorhome.

C. Notification of Defects

The Sharps provided written notice of alleged defects in the coach through emails sent to Newmar. Steve Klotz, Newmar's Consumer Affairs Manager, acknowledged receipt of the Sharps' emails on January 30, 2014, February 5, 2014, and May 20, 2014, respectively.⁹

D. Legal Standards

A manufacturer is required to make repairs necessary to conform a new vehicle to an applicable manufacturer's express warranty.¹⁰ The manufacturer's obligation extends beyond the expiration date of a warranty if, during the term of the warranty, the owner reported the defect to the manufacturer, or to a franchised dealer of the manufacturer, or if a rebuttable presumption relating to the vehicle is created under Texas Occupations Code § 2301.605.¹¹

Pursuant to Texas Occupations Code § 2301.204(a), the owner of a vehicle may make a complaint concerning a defect in a vehicle that is covered by a manufacturer's warranty. The complaint must be in writing and specify each warrantable defect in the vehicle, and must be served on the manufacturer.

⁹ Complainant Ex. 12C (Mr. Sharp's January 27, 2014 email to customerservice@newmarcorp.com provided a list of defective items in the RV); Complainant Ex. 12E (Mr. Klotz's January 30, 2014 letter to Mr. Sharp acknowledging receipt of Sharps' January 27, 2014 email); Complainant Ex. 12F (Mr. Klotz's February 5, 2014 letter to Mr. Sharp acknowledging "consideration and review of all known documents, call history, and correspondence..."); Complainant Ex. 12G (Mr. Sharp's May 20, 2014 email to Mr. Klotz listing faulty items in the coach, with the suggestion that the attached repair orders provide "a frame of reference" for the listed items; and Mr. Klotz's same-day email reply, confirming receipt of information provided by Sharp on May 20, 2014).

¹⁰ Tex. Occ. Code § 2301.603(a).

¹¹ Tex. Occ. Code § 2301.603(b).

Receipt of the owner's complaint by the Department invokes the agency's jurisdiction, and if the matter is not privately resolved between the parties the Department may schedule a hearing on the complaint.¹²

In a contested case hearing before the Department, a complainant seeking repurchase or replacement of the vehicle must establish the following criteria: (1) the manufacturer has not conformed the vehicle to an applicable express warranty because the manufacturer cannot repair the defect; (2) the defect creates a serious safety hazard,¹³ or substantially impairs the use or market value of the vehicle;¹⁴ (3) the manufacturer has been given a reasonable number of attempts to repair the defect;¹⁵ (4) the owner sent written notice of the defect to the manufacturer;¹⁶ and (5) the manufacturer has been given an opportunity to cure the defect.¹⁷

A complainant who seeks repurchase or replacement relief is subject to the limitations period prescribed by Texas Occupations Code § 2301.606(d):

A proceeding under this subchapter¹⁸ must be commenced not later than six months after the earliest of:

- (1) the expiration date of the express warranty term; or
- (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.

¹² Tex. Occ. Code § 2301.204(b)-(d).

¹³ "Serious safety hazard" means "a life-threatening malfunction or nonconformity" that "substantially impedes a person's ability to control or operate a motor vehicle for ordinary use or intended purposes," or "creates a substantial risk of fire or explosion." See Tex. Occ. Code § 2301.601(4)(A) and (B).

¹⁴ "Impairment of market value" means "a substantial loss in market value caused by a defect specific to a motor vehicle." See Tex. Occ. Code § 2301.601(1).

¹⁵ Pursuant to Texas Occupations Code § 2301.605(a), a complainant may establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. The rebuttable presumption is established if the defect creates a serious safety hazard and continues to exist after being subject to repair two or more times and: (1) one of the repair attempts was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (2) at least one other repair attempt was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt. See Tex. Occ. Code § 2301.605(a)(2). If the defect is not hazardous but substantially impairs the use or market value of the vehicle, two other statutory provisions permit a complainant to establish the same rebuttable presumption. It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if a defect that substantially impairs the vehicle's use or market value still exists after being subject to repair four or more times and: (A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt. See Tex. Occ. Code § 2301.605(a)(1). Similarly, it is presumed that a reasonable number of attempts have been made to correct a warrantable defect if the same defect continues to exist and (A) the vehicle was out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner. See Tex. Occ. Code § 2301.605(3).

¹⁶ Tex. Occ. Code § 2301.606(c)(1).

¹⁷ Tex. Occ. Code § 2301.606(c)(2).

¹⁸ Texas Occupations Code, Title 14, Subtitle A, Chapter 2301, Subchapter M (Warranties: Rights of Vehicle Owners).

Should the Department determine after a hearing that the complainant's vehicle does not qualify for repurchase or replacement, the Department may enter an order requiring repair work to be performed, or other action taken to obtain compliance with the manufacturer's warranty obligations.¹⁹

E. Sharps' Evidence

Both Sharon and Michael Sharp testified at hearing. They offered the testimony of John S. Harlan, Jr. and Ronnette ("Ronnie") L. Harlan, friends and camping companions to the Sharps. In addition to documentary evidence previously discussed (e.g., the RV purchase contract, warranty information), the couple also presented service records for the coach, photographs, and video evidence.

1. Documented Repair History

On six occasions, the Sharps' motorhome was serviced by Ancira GMC Trucks and Motorhomes (Ancira) of Boerne, Texas. And, between the dates of June 2 and June 5, 2014, Newmar service technician Michael Miller inspected and performed repairs to the RV. Service records for the motorhome reflect the following information:²⁰

Mileage/ Invoice No.	Dates To/From	Reported Concerns	Diagnostic Action And Dealer's Findings
2,515 Invoice No. 240509	9-13-12 to 9-20-12	(1) Rear lock on driver side slideout isn't tight; (2) Pantry door fell off; (3) Cabinet screws above passenger seat are stripped-out; (4) Folding ladder-plastic piece broken; (5) "I-pod" not syncing; (6) Bedroom speakers not working; (7) Plastic piece found; (8) Water gauges not working;	(1) Found slide offset. Not timed correctly (off by ½"); re-timed slide so front and rear slide are correct; (2) Drilled & installed inserts; glued inserts in place & used longer wood screws; (3) Drilled & installed plastic inserts; glued inserts into place & used longer wood screws; (4) Special-ordered part; (5) Customer to call (800) support line for "I-pod" system test; (6) Checked radio front & rear; no problem found; (7) Replaced fire extinguisher; (8) Filled tanks to test; all gauges working; (9) Adjust cable/cable ends at RAM. Test. OK;

¹⁹ 43 Tex. Admin. Code § 215.208(e).

²⁰ The service records were admitted as Complainant Exs. 1-7. With respect to the third repair order (Invoice No. 241662), Ancira's records show that the RV was dropped off on January 18, 2013, and picked up on February 12, 2013. In contrast, Ms. Sharp testified that she and her husband retrieved the bus on February 21, 2013, drove directly to a campground located on the Guadalupe River in Kerrville, Texas, and paid a \$99 camping fee to enter the park (Complainant Ex. 13 is the Sharps' credit card statement reflecting this charge). Mr. Sharp offered corroborating testimony on this issue. The evidence as a whole indicates that Ancira's service records are less than accurate. For example, the "drop off" and "pick up" dates on Invoice No. 241662 and Invoice No. 244643 are identical except for the year, and several witnesses agreed this was an obvious error. In addition, Ms. Sharp compared Ancira's "Daily Service Advisor Call Log" (Respondent's Ex. 2) with the Sharps' cellular phone records (Complainant Ex. 11). She testified that Ancira's record of telephone calls to and from the Sharps was inconsistent with the cellular phone service provider's records.

		(9) Rear cargo door will not secure; (10) Bath door will not latch; (11) Left rear burner will not light w/sparker.	(10) Adjust bath door lock to operate correctly. Test. OK; (11) Checked left rear burner w/sparker over 3 days. Working as designed.
3,045 Invoice No. 240929	11-7-12 to 11-27-12	(1) TV/entertainment system not working; inverter not coming on; (2) Rear travel lock of main slide comes loose when locked; (3) Fresh water tank is ½ full but gauge shows empty; (4) Rubber molding at rear-entry door/window coming off; (5) Rear back up monitor fell into dash; (6) Front door entry squeaks during travel; (7) Jacks do not work properly, does not level; (8) Bedroom pocket door latch does not work.	(1) Hard reboot; replaced inverter; Test; Magnum 9965; (2) Adjust as necessary; adjust center pin; test; (3) Filled tank & verified level; OK; Checked sensor location; OK; Note: Tank goes full to other side of coach; working as designed; (4) Replaced seal on window, necessary to R/R mount screws & heat-seal to install; (5) Disassemble; file opening larger to accept mount; install & test new mount; (6) Aligned door & striker; lubed handles; test drove, no abnormal noise heard; (7) Set null; fill tank; retract; diagnose; replaced bad pressure switch; (8) Aligned door & lock assembly.
3,270 Invoice No. 241662	1-18-13 to 2-21-13	(1) After parked 5 days & plugged in, house battery was dead; (2) Entry door squeaks & rattles during travel; (3) Driver side slideout; rear travelock falls down during travel; (4) Batteries do not charge when engine is running.	(1) Checked battery fluid, OK; Plug into 50 AMP, charging house batt. 14.28; let charge overnight; next day still charging ok; no problem found at this time; (2) Adjust door, lube hinges & seals; test drove; barely heard door noise; heard noise from slide, stove & table; (3) Installed shim against wall. Test. OK; Necessary to cut shim and trim as needed; (4) Checked charging system; had 14.2 at engine battery and 11.9 at house battery with engine running; Bird would not turn on relay; replaced controller. Test. OK; charge batteries; OK on Engine; Test on House. Charging.
4,970 Invoice No. 244643	1-18-14 to 2-21-14	(1) Nut on toilet seat fell off; (2) Kitchen ceiling fan inoperable w/switch; (3) Electric driver's seat inoperable; (4) Rear slideroom lock will not stay in locked position; (5) Bathroom door will not latch open; (6) Steps intermittently will not come out after coach has been sitting for a few days, but working now.	(1) Installed nut on toilet seat bolt; tighten & test; (2) Replaced bad fan motor; Test; (3) Checked plug for power, found none; Checked wire for power, OK; removed tape & found wires were pulled out; put on butt connectors & test. OK. Retape; (4) Worked on before; Called factory; Replaced slide lock on rear of slide; (5) Disassembled bathroom door; adjusted lock rod; reassemble & tested. OK; (6) Right House Battery tested bad; Curb Side; Left House Battery good; Needs one battery; Replaced Curb Side House Battery. OK.
5,122 Invoice	3-14-14 to 3-19-14	Rear living room slide lock came down again while driving. Problem	On 3-18-14, Tim L. & Pete C. road-tested coach with rear-travelock in position; drove 52 miles (Comfort to Boerne, round-trip) over rough roads, turns and dips; rear-travelock

No. 245130		occurs intermittently (no set mileage).	stayed in position. After lunch drove coach another 76 miles over rough roads with turns and dips. Unable to duplicate movement of rear slideroom lock. Added 25 gallons of fuel for test drive.
No Mileage Figure Newmar Repair Order: 01022	5-30-14 to 6-6-14	(1) Main slideout mechanism comes loose; (2) Passenger rear door gasket falling off; (3) House battery goes dead during storage; (4) Latch on Refer (sic) Storage Inoperable; (5) Latch on Outside TV Storage Inoperable; (6) Bedroom DVD Inoperable; (7) Entry step trim coming loose; (8) Roof A/C not working, started smoking?; (9) Entry door gasket falling off; (10) Medicine cabinet door fell off in customer's hand; (11) Front-hood very hard to release.	Michael Miller inspected coach on 6-2-14, completed repairs between 6-3 and 6-5-14; Discussed all repairs with customer: (1) Rear lock did not seem to be as tight as front lock of slideout; Added new shim to back side of plate; set and tested; drove over rough roads; never moved; added fuel; (2) Found screw-cover molding stretched from heat; reinstalled & added seal to hold; inserted black screws in radius to hold permanently; (3) Checked house batteries with hydrometer and both were dead; replaced both house batteries; Monitored AMP draws with unit unplugged; problem found with tower solenoid, would not allow chassis and house batteries to disengage; unhooking signal wire from bi-directional ISO box did not disengage solenoid; ordered new solenoid from Newmar; received tower solenoid from Newmar, new style; installed but brass bridge to solenoid would not secure due to new tower lugs being shorter, therefore removed brass bridge and installed 2GA Jumper (from Napa); Installed & Tested OK; Replaced Bi-directional Board although old Board working fine due to new part; confirmed that new tower solenoid is disengaging w/o loss of signal. OK; On 6-5-14 hydrometer-tested house batteries, all cells 100%, but chassis battery all cells 50-75%; Replaced chassis battery; Checked all connections (convertors, DIS panels, batteries) OK; Checked AMP draws all 3 days with unit unplugged and solenoid disengaged; AMP draw to batteries (House) at .5 (half an AMP) or lower, Engineering advised OK. (4) Tested operation & inspected for defects; none at this time; (5) Straightened & tightened latch; (6) Checked system; DVD was set to camcorder; found RCA plugs to A/B box in bedroom wired wrong; Video in audio plug; Rewired & tested OK; (7) Found trim damaged; Ordered new, resecured side laminate with spray adhesive; reinstalled new trim, painted wood area black & sealed; (8) Couldn't get compressor to "high" on front A/C; Replaced with new A/C; reset thermostat; performed annual maintenance on all 3 roof A/Cs; checked and cleaned return air filters; all operation OK; tightened garage A/C bolts; talked with domestic about proper thermostat operation; (9) Reinstalled molding & used seal to hold added fasteners in corners; (10) Inspected & found no problem at this time; showed to Ancira's GM; (11) Straightened and smoothed bends in cable;; cut cable from wire loom and positioned it better (without so many bends) to lessen pull on outside latch.
7,439 Invoice No.	7-30-14 to 8-14-14	(1) Cabinet door above driver's seat fell off; hinge screws will not tighten; all cabinet	(1) Removed all 28 doors & hinges; added sealant to hinges and reinstalled in doors; pre-drilled holes & installed larger screws on all 28 doors; sealed all hinges; (2) 5-Day diagnostic testing of refrigerator & freezer; on

246449	<p>doors loose;</p> <p>(2) Refrigerator (on electric power) will not cool below 58 degrees; switched to LP gas, on 3rd day cooled to 48 degrees;</p> <p>(3) Entry door rattles; cannot lock/unlock from inside;</p> <p>(4) Bathroom door will not stay locked in the open position;</p> <p>(5) Rear A/C was set on cool at 78 degrees, switched to Auto by itself and blew hot air;</p> <p>(6) Cannot add or release water from fresh water tank;</p> <p>(7) Fresh water tank shows empty but still has water in tank.</p>	<p>setting 4, refrigerator approx. 32 degrees & freezer approx. four degrees; No problem at this time;</p> <p>(3) Test-drove; Shimmed molding to stop squeaking noise; Test drove, OK; checked locks, OK, no abnormal pressure needed to open; Shimmed wooden molding to left of entry door as needed; no problem found w/locking or unlocking;</p> <p>(4) Disassembled wall to remove door; removed rod; added one additional nut to stop rod from rotating down; reassembled door & panel; Tested; Locked open & closed;</p> <p>(5) Tested; set on Cool & let run; never changed to Auto but stopped cooling after 4 days; Diagnosed; Found thermostat was set to go off at 8 am & on at 10 pm; found clock was not set; Reset thermostat to factory settings & retested another 4 days; Worked OK;</p> <p>(6) Diagnosed; both Fill valve & Drain valve are bad; drained and reconnected water; replaced Drain valve; disassembled Fill valve & replaced; reassembled & tested; Verified it fills to full & empties as designed;</p> <p>(7) Relocated sensor 1" lower to spec. test operation; Tank will have water & show empty if level is below 1/3 tank; Normal.</p>
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2. John Harlan, Jr.

Mr. Harlan testified that prior to retirement he served as a pilot in the United States Navy for 30 years. While there he gained extensive knowledge of electronics, aeronautics, inverters, batteries, and wiring issues. He and his spouse "Ronnie" Harlan have owned two "fifth-wheel" travel trailers, and he is generally familiar with the operation of recreational vehicles.

Since the Sharps purchased their RV in August 2012, the two couples have camped together six to eight times. According to Mr. Harlan, the Sharps have experienced so many problems with their coach that the phrase, "What went wrong this time?" is now a "running joke" amongst them, except it is not funny. Recalling their camping excursions together, he could not recall taking one trip with the Sharps when their coach did not malfunction. Mr. Harlan has personally witnessed the motorhome slideout's rear lock come unlocked at least four times; the stairs fail to extend because the coach batteries were dead; the pantry door falling off; loose cabinet doors; inaccurate readings on the water tank gauges; the bathroom pocket door moving because the latch would not hold; and the television not working.

3. Ronnette "Ronnie" Harlan

Ms. Harlan testified that on several occasions, the Sharps were forced to bow out of camping trips with the Harlans because of problems with the motorhome, *e.g.*, the batteries were dead so the electric steps would not roll out, and loading the RV without assist steps was too difficult. She recalled being with the Sharps the first time they used their new RV, at a campground in Fredericksburg, Texas. It was September 2012. As the Sharps pulled up next to the Harlan's fifth-wheel trailer, Ms. Harlan noticed that the rear leading-edge of the Sharps' slideout was "sticking out" a couple of inches, instead of lying flush with the side of the motorhome. On that same trip, while Ms. Harlan was inside the Sharps' RV she noticed that a cabinet in the dining area was "barely hanging on" by a small screw.

Ms. Harlan testified that she was present at other camp sites when the Sharps' motorhome steps failed to retract, signaling a dead battery. While present inside the unit, she saw multiple cabinet doors coming loose; the bathroom pocket door failing to stay closed; the fresh-water tank sensor malfunctioning; and the rear A/C unit failing. On cross-examination, Ms. Harlan reiterated her observation regarding the rear section of the driver's side slideout "sticking out several inches" from the RV's external wall.

4. Michael Sharp

Mr. Sharp testified that prior to retirement he served as a transportation manager in the United States Air Force for 28 years. During that time, he worked with automotive mechanics and developed a good understanding of automotive technology.

As a result of his employment background, one of the first questions Mr. Sharp posed to Tommy Norris (the Ancira salesman who brokered the transaction) was: "Do we need to keep the RV plugged in when it's in storage?" Mr. Norris reportedly assured him that using an outside power source was not necessary, but Mr. Sharp was not convinced.

When the RV is not in use the Sharps keep it parked at a storage facility in San Antonio. They periodically visit the facility and plug the coach into a generator, start the engine, and charge up the batteries. Despite these measures, the bus has experienced system failures on a regular basis. Mr. Sharp described arriving at the facility, plugging in the unit and opening the door, but on many occasions the entryway steps failed to emerge as designed. Each time this happened, he said, one of the Sharps would

have to crawl up through the entryway opening in order to start the engine and charge the house batteries. Sometimes this strategy worked, but other times the batteries went dead again minutes.

Mr. Sharp referred to the RV repair orders, which detail a multitude of problems. He noted that Newmar's factory-supplied parts have repeatedly failed, and expressed conviction that Newmar products are manufactured with cheap, flimsy materials: particle board, tiny, non-weight bearing screws, thin rubber, and insubstantial plastic. According to him, when Mr. Miller performed repairs to the Sharps' RV in June 2014 he proved this point, by choosing to procure parts for the solenoid relay from Napa, California, rather than installing a solenoid tower manufactured by Newmar.

Mr. Sharp said his exasperation with the motorhome's repetitive battery failure was compounded by misinformation. For example, Mr. Miller advised him to use an outside power source when the unit was placed in storage to ensure charging of the house batteries. However, this advice was contrary to the counsel of Mr. Norris (Ancira's RV salesman), as well as instructions in the Owner's Guide:

Newmar...does not recommend use of "adapter," "cheater," or "dog bone" style connectors that will modify the existing shore power cord to a different style of outlet. Use of [such adapters] will ...reduce the amount of available current ...[and increase the possibility of electrical failure or fire]. Newmar... cannot assume liability for failures occurring to the RV....from the use of any electrical adapter.²¹

Mr. Sharp expressed anger and frustration towards both Newmar and Ancira. The Sharps were responsible for large payments (not to mention insurance and storage fees) on a motorhome they were unable to use for almost six months due to battery failure. When they reported the problem to Ancira on January 18, 2013, the dealer replaced the battery "controller." The nature of this repair was never explained to the Sharps, the problem persisted, and every time the batteries died the Sharps were inconvenienced. When they took the bus camping, sometimes the RV's steps failed to retract. On other occasions the steps would not roll out. Even after Ancira replaced one of the house batteries on January 18, 2014, the battery failure reoccured while the bus was in storage. The Sharps had to cancel several camping trips with friends because they could not rely on the bus. The longstanding issue was not correctly diagnosed until June 2014, when Newmar dispatched Mr. Miller to inspect and repair the RV. At that time, Mr. Miller replaced both house batteries, the chassis battery, and the solenoid relay

²¹ Complainant Ex.8, at 47.

connecting the house and chassis batteries. Since the date of Mr. Miller's repair no further battery failures have occurred.

However, another major problem has never been fixed: the rear lock of the main slideout comes "undone" during travel. Ancira first serviced the RV for this issue in September 2012. Each one of the dealer's five repair attempts failed. Mr. Miller worked on the slideout in June 2014, but the problem is still present. In July 2014 the couple took the bus on a trip to Phoenix. The rear lock on the slideout came unfastened while the RV was traveling 60 or 70 miles per hour (mph) on a highway. That the slidelock is not operating as designed is obvious. And, the rear travelock's failure is probably related to another problem that both the Sharps and the Harlans have observed: the edge of the slideout "sticking out" several inches from the side of the motorhome while the engine is running, *i.e.*, the slideout does not lie flush with the RV's exterior side.

While acknowledging that Newmar eventually resolved the battery failure, Mr. Sharp said that he desired to illustrate a larger point: the motorhome he bought from Newmar was produced from cut-rate, low-quality materials. Neither he nor Ms. Sharp were aware of this fact when they purchased the RV, and by the time problems began to surface it was too late. They feel angry and let-down by Newmar. Although they purchased a five-year extended service contract for the RV, any claim under the policy requires the Sharps to pay a \$200 deductible. The point is, the couple purchased an extended service contract to pay for repairs the motorhome will need over the long-term, not to repair defects resulting from inferior construction materials and poor workmanship standards.

In the end, Mr. Sharp stressed that the RV has been serviced by Ancira for numerous issues, including problems with the batteries and the main slideout's rear lock, during the period of Newmar's one-year limited warranty. Ancira is an authorized dealer of Newmar. Newmar bears responsibility for repairing issues that were raised during the warranty period, and given Ancira's mishandling of the RV's battery issues, Mr. Sharp is determined to hold Newmar accountable for every timely raised warrantable defect.

5. Sharon Sharp

Ms. Sharp testified that the steps on the bus are about waist-high to her. In October 2012, she was forced to crawl into and load the bus without the use of steps when the couple traveled from

San Antonio to Conroe, Texas. The same scenario occurred in December 2012, when they took the RV on a trip to Kerrville, Texas. In February 2013, the steps emerged when the couple left the storage facility in San Antonio and traveled to Bastrop, Texas. While camping in Bastrop, they hooked the unit up to a 50-AMP power unit, but when they were ready to depart the steps once again failed to emerge.

Ms. Sharp said her husband had back surgery on March 11, 2013, and afterwards they did not use the bus for about six weeks. They visited the storage facility twice during this period, making sure to start up the motorhome and charge the batteries. By May 2013 they were traveling again. Ms. Sharp indicated that the RV's steps continued to fail intermittently right up until June 2014, when Mr. Miller completed his repairs. She does not recall having problems with the steps since that time.

In June 2014, anxious to test the success of Mr. Miller's repairs, the couple drove the bus on a long trip to Phoenix, Arizona. During travel the slideout's rear lock remained in place (in an upwards, or "scissor-lock" position) for approximately two days. However, on June 25, 2014, while they were driving between El Paso and Phoenix, the rear lock slipped and came down. Ms. Sharp took a video clip of the slideout's rear lock after it fell down, or "straightened out."²² In addition, on July 30, 2014, Ms. Sharp testified that the RV's engine was running when she photographed the "gap" between the front edge of the slideout and the side of the motorhome, *i.e.*, the edge of the slideout is "sticking out" several inches from the side of the RV.²³

6, Other Items Raised by the Sharps

Mr. Sharp testified that Newmar used tiny, half-inch screws to attach all of the cabinets (made of particle board) to the motorhome's inside frame. He said that Newmar's use of second-rate materials, combined with shoddy workmanship, resulted in the cabinet door above the driver's seat hanging aloft by a hinge. Photographs of the cabinet hanging down, as well as wooden particles that drifted down from the stripped-out screw holes onto the steering wheel, were photographed by Ms. Sharp on July 30 and August 14, 2014.²⁴ If the cabinet door had fallen down while Mr. Sharp was driving it would have hit his head.

²² Complainant Ex. 13, thumb drive, pic. 2e.

²³ Complainant Ex. 13, thumb drive, pics. 2j-2l.

²⁴ Complainant Ex. 14, thumb drive, pic. 3a-3e.

Mr. Sharp testified that after discussing the RV's fresh water tank level and valves with an Ancira service technician in November 2012, he understood that the water tank configuration (shape and size) affected the gauge level readings, to some extent. Still, a July 20, 2014 report to Ancira that he was unable "to add or release water from the fresh water tank" led service technicians to diagnose both the "fill" and "drain" valves as faulty. According to Mr. Sharp, Ancira replaced both valves with "cheap plastic handles" unfit for installation on a motorhome. On the other hand, he agreed that technicians' movement of the water tank sensor resolved the gauge level readings' inaccuracy.

Mr. Sharp acknowledged that Ancira's "redesign" of the bathroom pocket door in August 2014 successfully repaired the faulty latch. Now he is fearful that the bedroom pocket door (which has the bathroom door's former design flaw) will fail again.²⁵

F. Newmar's Evidence

Newmar presented the testimony of Tim LaLanne, Ancira's Service Advisor; Charles Kevin Ketner, Ancira's General Manager; Tim Stahlnecker, Ancira's RV technician; Michael Miller, Newmar's Service Technician; and Pete Ciomperlik, Ancira's Shop Foreman. In addition, Newmar presented a copy of the Owner's Registration (or Walk-through Sheet) for the Sharps' motorhome,²⁶ and portions of Ancira's "Daily Service Advisor Call Log."²⁷

1. Tim LaLanne

Mr. LaLanne testified that he has been employed as a service advisor by Ancira for 15 years, and before that he was an automotive mechanic. His present position involves meeting with customers and writing their concerns on a repair order. The repair order is in turn is passed on to a dispatcher, who assigns an Ancira service technician to perform the necessary automotive repairs.

Mr. LaLanne said his involvement with the Sharps began in September 2012, when they came to Ancira with concerns about their motorhome. According to Ancira's repair orders, Mr. LaLanne was the service advisor responsible for communicating with the Sharps about their RV. Mr. LaLanne said the

²⁵ The Sharps indicated that the refrigerator and the rear A/C unit were no longer in issue.

²⁶ Respondent Ex. 1.

²⁷ Respondent Ex. 2

“repair order date” on the paper work is the date he wrote up the customer’s concerns, while the “Invoice Date” reflects the dealership’s completion of all repairs to the customer’s vehicle.

Mr. LaLanne indicated that one of his duties is to call and inform the customer when his or her vehicle is ready for pick-up. Up until 2013 or 2014, he stated, Ancira did not maintain a record showing the date that the customer picked up the vehicle. Mr. LaLanne said it was not unusual for a customer to delay picking up a vehicle after being informed that the work was complete. Mr. Sharp was no exception. According to Ancira’s records, a service advisor contacted Mr. Sharp on February 11, 2014, to let him know that his RV was ready, but Mr. Sharp indicated he would be in on Friday to pick up the vehicle.²⁸ Mr. Sharp purportedly responded in a similar manner when he was informed by telephone that his RV was ready on August 7, 2014.²⁹

2. Charles Kevin Ketner

Mr. Ketner testified that he is the General Manager of Ancira’s dealership in Boerne. Ancira was established 43 years ago and owns two dealerships, one in Boerne and the other in Laredo, Texas. Ancira has been selling Newmar Class A motorhomes for about five years. Between the two dealerships, Ancira sells Newmar’s full line of products.

Mr. Ketner said he was aware that Newmar’s express limited warranty applicable to the Sharps’ RV expired in August 2013. He agreed that the repair orders in evidence reflect items that were raised by the Sharps during the period of the warranty, as well as items reported after the expiration of the warranty. He characterized Newmar’s payments to Ancira for non-warranty repair work as a “goodwill gesture” towards the Sharps.

3. Tim Stahlnecker

Mr. Stahlnecker testified that he has been employed by Ancira as an RV technician for 30 years. In 1998, he obtained national certification as a Master Recreational Vehicle Technician through the Recreation Vehicle Industry Association (RVIA).

²⁸ *Id.*

²⁹ *Id.*

Mr. Stahlnecker stated that in November 2012, the Sharps' motorhome was serviced for problems with the inverter and the slideout's rear travellock. With respect to the slideout's rear travellock, Mr. Stahlnecker reset the "center pin's" spring-tension to reduce noise, but he said the travellocks serve no safety-related function. He denied that a loose travellock could cause the leading edge of the slideout to "stick out" from the side of the motorhome. He stated that the slideroom would never slide out while the motorhome's engine was running, even in the absence of travellocks. Upon reviewing Ancira's repair order dated November 7, 2012, Mr. Stahlnecker described the other items he worked on during that service visit, included aligning the front door, remounting the back up monitor, and verifying water tank levels.

Mr. Stahlnecker testified that during the RV's January 2014 service visit, he replaced the nut on the toilet seat bolt and the motor in the kitchen ceiling fan. He disassembled the bathroom door and used "lock-tyte" on the rod before reassembling the door. He also used connectors to restore electrical power to the driver's seat. He replaced the house battery that was causing an intermittent problem with the steps. Finally, he replaced the rear travellock on the main slideout.

Mr. Stahlnecker said the July 30, 2014 service visit was the last time he worked on the Sharps' bus. He took all of the doors and hinges off the cabinets inside the RV. He sprayed sealant on the hinges and used longer screws when remounting the doors and hinges. On this occasion, he performed no work on the slideout.

4. Michael Miller

Mr. Miller testified that he is currently employed as an RV technician by Newmar in Elkhart County, Indiana. Prior to that, he spent 21 years with Monaco Coach Holiday Rambler (formerly a manufacturer of Class A motorhomes), where he worked his way up from service technician to service manager, supervising 150-plus employees. His first job in the industry was with Yellowstone RVs, another travel trailer manufacturer. For approximately 10 years, Mr. Miller was certified as an RV Technician through RVIA. He said he let his certification lapse because of the cost involved, and because his current position does not require it.

In early June 2014, Newmar sent Mr. Miller to "troubleshoot" problems with the Sharps' RV. According to Mr. Miller, Newmar is the only company that manufactures RVs (in two of its models) with a slideout travellock function, and he has experience working on the mechanism.

Mr. Miller was provided with a list of 11 items involved in the Sharps' complaint, but his primary task was to review the coach's slideout function. When he arrived he observed that the rear travellock was "undone," whereas the front travellock was "tighter." He explained that the two travellocks "stabilize" the top of the house, minimizing noise and vibration emitted by the house during travel. He was aware of the previous adjustments made by other service technicians, and said his own adjustments were slight: he cut a shim to provide complete coverage of the rear bracket, thereby equalizing pressure between the front and rear locks and lowering the mechanism slightly. Afterwards, he observed the rear travellock during a 10-mile test-drive. During that time, he did not see the rear lock become disengaged, or even loosen. He considered the repair a success.

With respect to the Sharps' and Ms. Harlan's testimony that they observed the front leading edge of the slideout "sticking out a few inches" from the motorhome's side, Mr. Miller could think of no explanation for the phenomena, except that if the engine was engaged "you could accidentally hit the button causing the slide to pop out." He did not address the unlikelihood of this scenario, given that the "button" (or slide switch) is located behind a rear panel above the main entryway.

Mr. Miller repaired the gasket on the rear door, using sealant and two black fasteners at the radius to hold the gasket in place. He also addressed the battery problem. He tested the house batteries using a hydrometer, and upon finding water in the cells of both batteries he replaced them. Hydrometer testing of the chassis battery also revealed the need for its replacement. He subsequently monitored all of the batteries for AMP and parasitic draws and determined they were within acceptable limits.

Mr. Miller also tightened the spinning latch on the outside door, and fixed the bedroom DVD player by switching out the audio and video plugs in the A/B Box. He repaired damage to the entry step trim and stairwell. After observing that the front A/C unit's compressor was bad, Mr. Miller replaced the unit at Newmar's expense. He examined the AMP draws and temperature controls of the two other A/C units as well. He also repaired the gasket on the front entry door. Mr. Sharp had already fixed the medicine

cabinet. Lastly, Mr. Miller repositioned the difficult-to-reach cables under the hood, making the outside hood release latch much easier to use.

5. Pete Ciomperlik

Pete Ciomperlik testified that he is Ancira's Shop Foreman. He oversees the work of Ancira's service technicians, and in the event that a customer is unhappy Mr. Ciomperlik gets involved. He stated that he is familiar with the Sharps because a number of issues with their motorhome have required his involvement.

Mr. Ciomperlik testified that Mr. Sharp was particularly upset about the rear travellock in the RV's slideout. In March 2014, Mr. Sharp brought the motorhome in for service and reported that the rear travel lock was coming loose during travel. However, Mr. Sharp refused Mr. Ciomperlik's request to accompany him on a test drive of the RV. According to Mr. Ciomperlik, on March 18, 2014, he and Tim LaLanne road-tested the Sharps' RV over rough roads with multiple turns and dips. They put 128 miles on the motorhome that day, but did not observe the slideout's rear travel lock fall out of position.

E. Analysis

1. Limitations

The Sharps' request for repurchase relief is barred by Texas Occupations Code § 2301.606(d)'s limitations provision. Pursuant to the statute, a complainant seeking repurchase under Texas' Lemon Law (Texas Occupations Code, Chapter 2301, Subchapter M) must initiate the proceeding (*i.e.*, by filing a complaint) "not later than six months after the earliest of ... (1) the expiration date of the express warranty term; or (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner." *See* Tex. Occ. Code § 2301.606(d)(1) and (2).

The Sharps purchased the motorhome new on August 22, 2012. Newmar's express limited warranty for the coach issued that same date states: "If any part of your new Newmar product fails because of a manufacturing defect *within 12 months from the original retail owner's date of purchase*, it will be repaired without charge for either parts or labor by Newmar...." (Emphasis supplied). Newmar's 12-month limited warranty applicable to the Sharps' motorhome expired on August 22, 2013. Pursuant to

Texas Occupations Code § 2301.606(d)(1)'s filing limitations period, in order to be eligible for repurchase relief the Sharps' initial complaint filed with the Department was due no later than February 22, 2014. Because the original complaint was not received by the agency until April 28, 2014, it was not timely-filed. As a result, Texas Occupations Code § 2301.606 prohibits the Department from ordering Newmar to repurchase the motorhome.

A statutory period of limitations is not subject to waiver, under any circumstances. Because the Sharps' claim for repurchase relief is barred, it is unnecessary to discuss other required elements of their claim, such as whether they met their burden of proof to show that a currently existing defect in the motorhome create a serious safety hazard, or substantially impairs the use or market value of the motorhome. *See* Tex. Occ. Code §§ 2301.604; 2301.601(4); and 2301.601(1). Similarly, factors related to the rebuttable presumption provisions in Texas Occupations Code § 2301.605 (number of repair attempts, days out of service, etc.) are not relevant to the outcome of this matter.

2. Repair Relief

Although the Department may not order repurchase relief in this case, Texas Occupations Code § 2301.606(d)'s limitations period does not apply to warranty performance complaints received by the agency. The Sharps provided written notice to Newmar of alleged warrantable defects in the motorhome, as required by Texas Occupations Code § 2301.204(a). Because the Sharps' complaint was filed with the agency the Department has jurisdiction over the matter. And, the Department is authorized to order the performance of repair work or other action to ensure compliance with a manufacturer's warranty obligations. *See* 43 Tex. Admin. Code § 215.208(e).

Determining whether repair relief is appropriate is based on several factors. Eligibility is limited to alleged warrantable defects in the motorhome that were reported to Newmar, or to a franchised dealer of Newmar, within the period of Newmar's 12-month express limited warranty applicable to the coach. Newmar's obligation to perform repairs beyond the warranty period is dependent on such notice. Eligibility for repairs outside the warranty period is also limited to currently existing defects, *i.e.*, warrantable defects that were timely raised but not successfully repaired. *See* Tex. Occ. Code § 2301.603(b).

The Sharps' motorhome was serviced by Ancira, a franchised dealer of Newmar. According to the repair orders, the Sharps reported the following concerns to Ancira during the period of Newmar's express limited warranty applicable to the RV:

- (1) **On September 13, 2012**, repair items included: (1) Rear lock on driver side slideout isn't tight; (2) Pantry door fell off; (3) Cabinet screws above passenger seat are stripped-out; (4) Folding ladder-plastic piece broken; (5) "I-pod" not syncing; (6) Bedroom speakers not working; (7) Plastic piece found; (8) Water gauges not working; (9) Rear cargo door will not secure; (10) Bath door will not latch; and (11) Left rear burner will not light w/sparker.
- (2) **On November 7, 2012**, repair items included: 1) TV/entertainment system not working; inverter not coming on; (2) Rear travel lock of main slide comes loose when locked; (3) Fresh water tank is ½ full but gauge shows empty; (4) Rubber molding at rear-entry door/window coming off; (5) Rear back up monitor fell into dash; (6) Front door entry squeaks during travel; (7) Jacks do not work properly, does not level; and (8) Bedroom pocket door latch does not work.
- (3) **On January 18, 2013**, repair items included: (1) After parked 5 days and plugged in, house battery was dead; (2) Entry door squeaks and rattles during travel; (3) Driver side slideout; rear travellock falls down during travel; and (4) Batteries do not charge when engine is running.

Ms. Sharp testified that following Mr. Miller's repair attempt in early-June 2014, she and her husband took the bus on a trip from San Antonio to Phoenix. While Mr. Sharp drove the coach, she monitored the slideout's rear travellock for signs of movement. The rear travellock remained in an upwards, or "scissor-lock" position, for approximately two days of travel. However, while they were driving between El Paso and Phoenix on June 25, 2014, the rear travellock slipped and came downward. Ms. Sharp took a video clip of the slideout's rear travellock after it fell, or came "undone." In contrast, she testified that the slideout's front travellock remained in the "scissor-lock" position the entire time.

The rear travellock of the slideout is plainly not operating as designed, and the issue was raised during the period of Newmar's express limited warranty. Mr. Miller and Mr. Stahlneck both testified that the slideout's travellocks are not safety features, and in the absence of controverting evidence the hearings examiner accepts this testimony as true. Nonetheless, even Mr. Miller acknowledged that the slideout's travellocks serve a function: they stabilize the house during travel, and reduce sound and vibration

emitted by the house during travel. Expert testimony is not required to surmise that the slideouts front and rear travellocks are designed stay locked, unless unlocked manually or by flipping a switch located above the main entryway, not subject to "bumping" accidentally. It follows that the rear travellock on the Sharp's motorhome's slideout should not come "undone" by itself, even as the front travellock remains in the locked position. In addition, the travellocks are part of the larger slideout mechanism. Documentary evidence established the presence of a "gap" (measuring a couple of inches) between the front edge of the slideout and the side of the motorhome. Testimony established that the "gap" appeared following attempts to repair the rear travellock. Given that a series the slideout mechanism requires a series of interrelated components to function properly, a preponderance of the evidence establishes that the "gap" is related to the problem with the rear travellock. Newmar bears responsibility for repairing RV's main slideout, which encompasses both issues.

A review of the issues reported to Ancira on September 13, 2012, November 7, 2012, and January 18, 2013 (*i.e.*, during the period of Newmar's 12-month limited warranty) reveals two outstanding issues: (1) problems with the main slideout, as previously discussed; and (2) the cabinet door above the driver's seat is loose and likely to fail again. Given that the RV's other cabinet doors were constructed and repaired in the same manner as the cabinet door, similar failures of this kind are likely to occur.

Other items raised during the warranty period were not shown to be persistent defects. The Sharps did not challenge Mr. Miller or Mr. LaLanne's testimony describing the successful completion of numerous repairs to the coach. With respect to the battery problems, however, a couple of issues are not clear. The Sharps do not dispute that the battery system is currently functioning as designed. Both the chassis and the house batteries are warranted by component manufacturers, rather than Newmar. However, the various repair attempts by Ancira and Newmar revealed problems with the solenoid relay and/or the bi-directional isolator relay delay (BIRD), which may or may not have caused the RV's batteries to deteriorate. The battery relay functions are not excluded from Newmar's warranty coverage. Since the battery problems were raised during the period of Newmar's limited warranty, Newmar bears continuing responsibility for problems resulting from the battery wiring system.

II. FINDINGS OF FACT

1. On August 22, 2012, the Sharon Sharp and Michael Sharp (Sharps) purchased a new 2013 Canyon Star Motorhome from Ancira Motorhomes, Inc., of Boerne, Texas.
2. The mileage of the motorhome was 2,261 at the time of delivery.
3. Newmar Corporation (Newmar) is the manufacturer of the motorhome.
4. On August 22, 2012, Newmar issued an express limited warranty for the motorhome covering defects in manufacturing for a period of 12 months from the original retail owner's date of purchase.
5. Ancira GMC Trucks and Motorhomes (Ancira) of Boerne, Texas, is a franchised dealer of Newmar.
6. During the period of Newmar's 12-month limited warranty applicable to the motorhome, the motorhome was serviced by Ancira for the following problems:
 - A. Rear travelock on driver-side slideout comes loose (unlocks) during travel (three repair attempts);
 - B. Pantry door fell off;
 - C. Cabinet screws above passenger seat are stripped-out;
 - D. Folding ladder-plastic piece broken;
 - E. Fresh water tank gauges not working (two repair attempts);
 - F. "I-pod" not syncing;
 - G. Rear cargo door will not secure;
 - H. Bathroom door will not latch;
 - I. Left-rear burner on stove will not light;
 - J. TV/home entertainment center not working;
 - K. Inverter not coming on;
 - L. Bedroom speakers not working;
 - M. Rubber molding at rear-entry door/window coming off;
 - N. Rear back up monitor unsecured (fell into dash);
 - O. Front door squeaks during travel (two repair attempts);
 - P. Hydraulic jacks do not work properly (do not level);
 - Q. Bedroom pocket door latch does not work;
 - R. House batteries dead; and
 - S. Batteries do not charge when engine running;

7. Newmar's express limited warranty applicable to the motorhome covers manufacturing defects in the slideout and the cabinetry.
8. With respect to the items listed in Finding of Fact No. 6, the following items but have not been successfully repaired: (a) the problem with RV's slideout not only causes the rear travelock to come unlocked during travel, but a related problem – a "gap" of several inches between the leading edge of the slideout and the side of the motorhome – appears when the engine is running; and (b) the cabinet door above the driver's seat is loose and likely to fail again.
9. The RV's other cabinet doors were constructed and repaired in the same manner as the cabinet door above the driver's seat, and are also likely to fail in the future.
10. Newmar bears continuing responsibility to repair the warrantable defects described in Finding of Fact Nos. 7, 8, and 9.
11. The RV's battery system is currently functioning as designed, but Ancira and Newmar's repair attempts revealed problems with the solenoid relay and/or the bi-directional isolator relay delay (BIRD), which may or may not have caused the RV's batteries to deteriorate.
12. Although the RV's batteries are warranted by other component manufacturers, the battery relay functions are not excluded from Newmar's warranty coverage.
13. Since the battery problems were raised during the period of Newmar's 12-month limited warranty, Newmar bears continuing responsibility for future problems resulting from the battery wiring system.
14. On April 28, 2014, the Sharps filed a complaint with the Texas Department of Motor Vehicles (Department), alleging that warrantable defects existed in the motorhome.
15. The Sharps provided written notice of alleged defects in the motorhome through emails sent to Newmar. Newmar acknowledged receipt of the Sharps' emails on January 30, 2014, February 5, 2014, and May 20, 2014.
16. Newmar's 12-month limited warranty for the motorhome expired on August 22, 2013.
17. The Sharps' complaint filed on April 28, 2014, was received by the Department more than six months after the date that Newmar's express limited warranty for the motorhome expired.
18. The motorhome's mileage on the date of hearing was 7,501.

19. On July 9, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Sharps and Newmar, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
20. The hearing convened on August 15, 2014 in San Antonio, Texas, before Hearings Examiner Anne K. Perez. The Sharps appeared and represented themselves. Newmar Corporation was represented by attorney Edward J. Hennessy. The hearing was adjourned on August 15, 2014, and the record closed on September 19, 2014.

III. CONCLUSIONS OF LAW

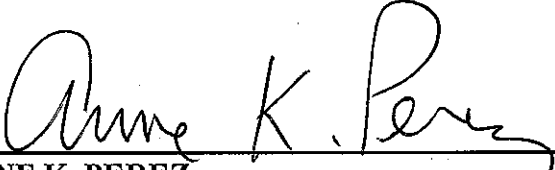
1. The Department has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
4. The Sharps' original complaint filed with the Department on April 28, 2014, was not received within the limitations period prescribed by Texas Occupations Code § 2301.606(d)(1).
5. Because the Sharps' original complaint was not filed within the applicable period of limitations, the Department is prohibited from ordering Newmar to repurchase the Sharps' motorhome. Tex. Occ. Code § 2301.606.
6. The Sharps proved by a preponderance of the evidence that the motorhome has an existing, verifiable defect in the main slideout that causes the rear travelock to unlock during travel and a "gap" to appear between the leading edge of the slide and the side of the motorhome.
7. The defect described in Conclusion of Law No. 6 is covered by Newmar's express limited warranty issued for the motorhome, and was raised during the warranty period.
8. The Sharps proved by a preponderance of the evidence that the motorhome has an existing, verifiable defect in the cabinetry that causes the cabinets to come loose and fall off.

9. The defect described in Conclusion of Law No. 8 is covered by Newmar's express limited warranty issued for the motorhome, and was raised during the warranty period.
10. The Sharps reported the defective condition of the slideout and the cabinetry to a franchised dealer of Newmar during the period of Newmar's express limited warranty issued for the motorhome.
11. Newmar has a continuing obligation to make any repairs necessary to resolve the warrantable defects described in Conclusion of Law Nos. 6 and 8. Tex. Occ. Code § 2301.603(b)(1).
12. The Department is authorized to order Newmar to perform any repairs necessary to cure the warrantable defects described in Conclusion of Law Nos. 6 and 8. Tex. Occ. Code § 2301.204 and 43 Tex. Admin. Code § 215.208(e).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Newmar make any repairs necessary to conform the Sharps' motorhome to the applicable express warranty, as described herein.

SIGNED November 14, 2014.



ANNE K. PEREZ
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES