

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 14-0260 CAF**

<b>GEZILLA AND MICHAEL AMICO,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainants</b>	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>POLARIS INDUSTRIES, INC.,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Gezilla and Michael Amico (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged defects in their 2013 Polaris Ranger 500 utility vehicle. Polaris Industries, Inc. (Respondent) asserts that damage to the vehicle was caused by Complainant's abuse of the vehicle and their alteration or modification of the vehicle. The hearings examiner concludes that the vehicle does not have an existing warrantable defect, and Complainant is not eligible for relief.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on September 17, 2014 in Houston, Texas before Hearings Examiner Edward Sandoval. The record closed on September 19, 2014. Complainants were represented by Ron Raydon, attorney. Complainants were also present to testify. Also present as a witness for Complainants was Francis Bott, certified technician for Mud Mart. Respondent was represented by Bill Childs, Senior Counsel with Bowman and Brook, LLP. Also present for Respondent were Ernie Hutchins, General Manager for Quality Marine Service, and, by telephone, John Thole, Technical Service Representative.

**II. DISCUSSION**

**A. Applicable Law**

A manufacturer is required to make repairs necessary to conform a new vehicle to an applicable manufacturer's express warranty.<sup>1</sup> 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.<sup>2</sup> In addition, a manufacturer may plead an affirmative defense that a nonconformity was the result of abuse, neglect, or unauthorized modification or alteration of the vehicle.<sup>3</sup>

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<sup>1</sup> Tex. Occ. Code § 2301.603(a).

<sup>2</sup> Tex. Occ. Code § 2301.603(b).

<sup>3</sup> Tex. Occ. Code § 2301.606(b).

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. Receipt of the owner's complaint by the Department invokes the agency's jurisdiction, and if the matter is not privately resolved between the complainant and the manufacturer the Department may schedule an evidentiary hearing on the complaint.<sup>4</sup>

In a contested case hearing before the Department, a complainant seeking repurchase or replacement of the vehicle under Texas Occupations Code § 2301.604 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,<sup>5</sup> or substantially impairs the use or market value of the vehicle;<sup>6</sup> (3) the manufacturer has been given a reasonable number of attempts to repair the defect;<sup>7</sup> (4) the owner mailed written notice of the defect to the manufacturer;<sup>8</sup> and (5) the manufacturer has been given an opportunity to cure the defect.<sup>9</sup>

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

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<sup>4</sup> Tex. Occ. Code § 2301.204(b)-(d).

<sup>5</sup> "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).

<sup>6</sup> "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).

<sup>7</sup> 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)(A) and (B). 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(a)(3)(A) and (B).

<sup>8</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>9</sup> Tex. Occ. Code § 2301.606(c)(2).

A proceeding under this subchapter<sup>10</sup> 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.

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.<sup>11</sup>

## **B. Complainant's Evidence and Arguments**

Complainants purchased a 2013 Polaris Ranger 500 utility vehicle (UTV) from Quality Marine Service, Inc.(Quality) in Onalaska, Texas, on February 15, 2013, with no mileage at the time of delivery.<sup>12</sup> On the date of hearing the vehicle's mileage was 2,015 and the hours of usage were 318.9.<sup>13</sup> Respondent has provided a basic limited warranty for the vehicle for the first six (6) months of ownership. In addition, they have provided a one (1) year limited warranty on the final drive chain.<sup>14</sup>

### **1. Gezilla Amico**

Complainants purchased two UTV's on February 15, 2013, from Quality Marine Service, respondent's authorized dealer. At the time of purchase they also purchased lift kits and wheel spacers for both vehicles.<sup>15</sup> In May of 2013, Complainant's ranch manager, D. J. Dudley, took the vehicle to Quality for routine maintenance. Upon inspection by dealer's service technician, it was discovered that there were some issues with the vehicle that needed to be addressed. As a result, the technician replaced the vehicle's engine harness and front constant velocity (CV) shaft

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<sup>10</sup> Texas Occupations Code, Title 14, Subtitle A, Chapter 2301, Subchapter M (Warranties: Rights of Vehicle Owners).

<sup>11</sup> 43 Tex. Admin. Code § 215.208(e).

<sup>12</sup> Complainant Ex. 1, Sales Order dated February 15, 2013.

<sup>13</sup> Post hearing submission provided by Complainant to hearings examiner and opposing party via email dated September 19, 2014.

<sup>14</sup> Respondent Ex. 3, Ranger 500 Midsize, Ranger Crew 500 Owner's Manual.

<sup>15</sup> Complainant Ex. 1, Sales Order dated February 15, 2013.

and changed the oil and filter.<sup>16</sup> In addition, Complainants had the technician install a gun mount on the vehicle.

The vehicle operated properly for awhile after these repairs. However, it started burning oil, so the ranch manager took the vehicle back to Quality on September 3, 2013. At this time, the service technician determined that the engine had "water/mud in intake and is using oil."<sup>17</sup> As a result of the water and mud in the intake, the engine had been damaged and it was necessary to replace the engine. The technician also installed rear CV boot guards on the vehicle and ordered front CV boot guards to be installed at a later date. In addition, the technician changed the vehicle's engine oil and filter, replaced spark plugs, and the engine air filter. Complainants were required to leave the vehicle at Quality's location, since the technician was waiting on parts to complete the repairs.

The engine was replaced on September 10, 2013, after the needed parts arrived. In addition, the front CV boot guards which had been ordered by Quality were also installed.<sup>18</sup> The vehicle was returned to Complainants who were able to drive it without problem.

During this entire period of time, Complainants were also having issues with the second UTV that they purchased from Quality. In April of 2014, the second UTV stopped working. Complainants began to contact Respondent regarding their unhappiness with the fact that they were having problems with the vehicles. On April 1, 2014, Complainants sent a letter to Respondent regarding their issues with the vehicles and the attendant costs in addressing their issues. In addition, Complainants sent e-mails to Respondent about their concerns. They spoke to some of Respondent's warranty representatives to attempt to resolve their issues with the vehicles. The representatives asked for a list of all the issues with the vehicles to see if they could do anything to satisfy Complainants. However, nothing ever was done.

In April of 2014, the vehicle's transmission went out. Rather than return the vehicle to Quality, Complainants took the vehicle to Mud Mart in Liberty, Texas. (Mud Mart is not an authorized dealer for Respondent.) Complainants took the vehicle to this location because it was about two miles from their ranch and more convenient for them. On April 22, 2014, Complainants had the vehicle's transmission replaced and had the technician check the vehicle's brake line.<sup>19</sup>

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<sup>16</sup> Complainant Ex. 3, Invoice dated May 18, 2013.

<sup>17</sup> Complainant Ex. 4, Invoice dated September 3, 2013.

<sup>18</sup> Complainant Ex. 5, Invoice dated September 10, 2013.

<sup>19</sup> Complainant Ex. 6, Sales Receipt dated April 22, 2014.

Complainants filed Lemon Law complaints regarding the two UTV's with the Texas Department of Motor Vehicles on May 28, 2014.<sup>20</sup> In the complaint letter Complainants indicated that they would like a repurchase or replacement of the vehicles in question.<sup>21</sup>

The Polaris 500 Ranger worked for awhile after the April 22, 2014 repair, but broke down again in the beginning of August of 2014. The vehicle would not start, even after Complainants replaced the vehicle's battery. Complainants indicated that the vehicle is "burning oil" and would not start. Also, the brakes were not working properly.<sup>22</sup> The vehicle is currently in storage. It has not been repaired and no one has looked at it to determine what repairs are necessary because Complainants cannot afford to have it repaired.

During cross examination, Ms. Amico indicated that Complainants were seeking not only repurchase of the vehicles (both UTV's), but also compensation for the cost of repairs to the vehicles from Respondent. The amount for repurchase of the vehicles and reimbursement for the cost of repairs totals approximately \$41,000.

Complainants have a 200 acre ranch on which the vehicles were being used to transport hunters. There are muddy and watery areas on the ranch. The vehicles when being used sometimes had to drive through these muddy and watery areas. Complainants' hunting ranch opened in August of 2013. Before that, the UTV's were used for the construction process on the ranch. Complainants had never owned UTV's prior to the purchase of these vehicles. Mr. Dudley used the vehicles when Complainants were not at the ranch. (Mr. Dudley was discharged by Complainants in August of 2013.) However, they were not aware if anyone else used the vehicles during their absence. The ranch guests were not allowed to drive the UTV's. However, the ranch did have volunteer employees who sometimes drove the vehicles.

When Complainants purchased the two UTV's, they also purchased lift kits and wheel spacers for the vehicles. It was explained to Ms. Amico that the lift kit would raise the vehicle's carriage higher, so that it would have a higher clearance. Complainants also were required to sign a Warranty Waiver, due to the purchase of these extra items. The waiver informed Complainants that installation of a lift kit on the UTV would void any drive line warranty coverage, including shafts, transmissions, differential, bearings, four wheel drive systems, and any related items.<sup>23</sup> Ms. Amico signed the waiver. Mr. Amico did not.

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<sup>20</sup> Complainant's initial complaint letter was dated May 23, 2014. However, the letter was not received by the Texas Department of Motor Vehicles until May 28, 2014, which is the effective date of the Lemon Law complaint.

<sup>21</sup> Complainant's Letter dated May 23, 2014.

<sup>22</sup> Complainant Ex. 2, Spreadsheet for Polaris 500, undated.

<sup>23</sup> Respondent Ex. 2, Warranty Waiver signed February 16, 2013.

When the UTV's were being used, Complainants did not inspect the vehicles prior to driving them. They would ensure that the vehicles had gas and then drive them where they needed to go. Complainants were not at the ranch on a daily basis, so they could not be sure that the pre-ride inspection recommended by Respondent was performed before the vehicles were driven by Mr. Dudley.

On the May 18, 2013, repair visit, Quality replaced the engine harness and front CV shaft at no charge to Complainants, although the CV shaft was not covered under the warranty due to the waiver signed by Complainants.<sup>24</sup> An oil change on the vehicle was also performed at this time and a gun mount installed. Regular maintenance is not covered under the warranty, although the cost of the maintenance work was included in Complainants' request for recompense from Respondent. In addition, the purchase and installation of the gun mount were not covered under the warranty.

On the September 3, 2013, repair invoice, the Quality service technician indicated that the engine had mud in the intake.<sup>25</sup> This vehicle was the primary vehicle used by Mr. Dudley during his employment at the ranch. Complainant did not know how mud might have gotten into the intake. She denied that the vehicle had ever been sunk in mud.

## **2. Michael Amico**

Mr. Amico indicated that his wife, Gezilla Amico, handled all of the paperwork and bookwork for the ranch. He also indicated that he had instructed Mr. Dudley to always follow the maintenance guidelines and perform pre-ride inspections for the UTV's. Mr. Amico also testified that the salesperson for Quality was the individual who recommended that they purchase lift kits and spacers for the vehicles. He was not informed that use of these items would affect the warranties on the vehicles.

## **3. Francis Bott**

Francis Bott owns and runs Mud Mart, an ATV and motorcycle repair business in Liberty, Texas. He also works on UTV's. He became a certified technician in 2000, but has been working on these types of vehicles since 1987. Mr. Bott worked on both UTV's owned by Complainants several times. He felt that the vehicles appeared to be in good shape whenever he worked on them. There would sometimes be mud on them, but that was to be expected as the ranch area would sometimes be muddy. He did not think that the vehicles exhibited any evidence of misuse or abuse by Complainants.

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<sup>24</sup> Complainant Ex. 3, Invoice dated May 18, 2013.

<sup>25</sup> Complainant Ex. 4, Invoice dated September 3, 2013.

Mr. Bott indicated that his first documented repair of the vehicle was on April 22, 2014. On that date, he replaced the vehicle's drive shaft and pinion seal. It appeared that the rear boot guards had rubbed a hole in the vehicle's transmission and mud got into it, which caused an oil leak; hence, the need for the repairs. Mr. Bott felt that the rear CV boot guards had been installed improperly which caused the damage to the vehicle. He did not perform any other documented repairs for this vehicle.

During cross examination, Mr. Bott testified that the first time he ever saw Complainants' UTV's was in January of 2014. He does not have any first-hand knowledge about the vehicles before then. Mr. Botts is state certified in Kawasaki and Suzuki motorcycles. He stated that sometimes Complainants would call him to come to their ranch to look at the vehicles when they were having problems with them. He didn't always charge them for any repairs that he may have performed on the vehicles.

### **C. Respondent's Evidence and Arguments**

#### **1. Ernie Hutchins**

Ernie Hutchins started at Quality in 1997 as a jet ski mechanic, eventually moving to ATV mechanic. That fall, October of 1997, Quality became affiliated with Respondent. He worked as a mechanic for Quality for six years. He then took over as parts and service manager starting in approximately 2003, and then moved up to General Manager approximately five years ago.

Mr. Hutchins was the salesperson who dealt with Complainants when they purchased the UTV's from Quality. He testified that the 500 engine has been in use since about 1996. Quality sells between 200 to 250 UTV's per year.

The sales process with Complainants began with a visit to Quality by Mr. Dudley. He indicated that he was looking for two UTV's for his employers because they were going to open a hunting ranch. He told Mr. Hutchins that he wanted the UTV's plus lift kits and wheel spacers. Mr. Dudley was the primary contact during the sales process. Complainants only contacted Mr. Hutchins by phone after Mr. Dudley's initial visit and then on the date of purchase when they showed up at the dealership to sign the paperwork to buy the vehicles and to pick them up.

Mr. Hutchins indicated that most of the time when he sells a vehicle, he will discuss the pros and cons of using a lift kit with the customer. In the situation with the Complainants, however, Mr.

Hutchins dealt primarily with Mr. Dudley. Mr. Dudley asked for the lift kits and seemed to know about them.

Lift kits are designed to create more ground clearance for driving the vehicle through rough terrain. The object of the lift kit is to get the vehicle up as high as possible. A UTV has four drive shafts (two in the front and two in the back). The drive shaft consists of CV boots and joints. It connects on one end to the transmission or gear housing and on the other end to a wheel. The boots hold the grease which lubricates the joint and the bearings inside. A regular vehicle warranty does not cover CV boots if they get torn or ripped. It becomes a wear item and not covered by warranty, since the damage is not caused by a defect. Sticks, roots, barbed wire, and the like can put a hole in a boot. If the owner continues to drive the vehicle afterwards, all the grease can wash or leak out of the boot. Since there's no lubrication, the metal in the joint will just grind on metal. A UTV's drive shaft is normally at about a five degree angle. When a lift kit is added to a UTV the angle of the drive shaft changes to near 45 degrees. This puts an unusual stress on the vehicle's joints. As a result, the vehicle is no longer being used as it was engineered and designed. The installation of lift kits on a UTV can void the entire manufacturer's warranty.

Mr. Hutchins also testified that the manufacturer's warranty does not cover abuse or misuse of the vehicle. The warranty is to address manufacturer's defects and not abuse, lack of maintenance or wear items.

(The vehicle's owner's manuals which Complainants received at the time of purchase of the UTV also indicated that the warranty did not cover "accidental damage, normal wear and tear, abuse or improper handling."<sup>26</sup> It goes on to specify that the warranty did not cover "any vehicle that has been altered structurally, modified, neglected, improperly maintained . . . ."<sup>27</sup>)

Each UTV has its own maintenance schedule and pre-ride checklist. There are items on UTV's that need to be addressed daily. Whenever Mr. Hutchins sells a UTV, he goes over the machine from front to back and points out issues that need to be monitored, including brake pads, CV joints, CV boots, and air filters.

If mud, dust, or water gets into a UTV's air intake, it will get into the engine eventually. The mud, dust, or water will stick to the rings and will groove the cylinder walls or pistons and will cause the engine to lock up. If the vehicle gets into mud and it gets into the air filter, the situation should be addressed immediately. The air and oil filters will need to be changed immediately in such situations.

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<sup>26</sup> Respondent Ex. 3, Ranger 500 Midsize; Ranger Crew 500, Owner's Manual, p. 80.

<sup>27</sup> *Id.*



Mr. Hutchins was aware that Mr. Dudley would bring Complainant's vehicles for repairs with mud on them. In September of 2013, Mr. Dudley took the Ranger 500 to Quality for repairs, because the engine was making noise and burning oil. Quality's technician who was working on the vehicle took pictures of the vehicle to verify its condition.<sup>28</sup> There was mud on top of the vehicle's engine, gas tank, and battery. The vehicle's air intake had mud and water in it. The air filter was covered in dirt. The engine was damaged and had to be replaced. Mr. Hutchins felt that the only way so much mud could have been in the vehicle was for the vehicle to have been sunk in mud past its floorboards. However, Mr. Dudley denied that this had been the case.

Mr. Hutchins believes that Mr. Dudley never did the required maintenance on the vehicles. Whenever they were taken to Quality, the vehicles were always dirty and muddy. The manufacturer requires regular maintenance of the vehicles to ensure that they operate as designed. In addition, they should be washed periodically. If someone purchases a UTV and does no maintenance or wash it, they're probably going to have problems with the vehicle. Mr. Hutchins doesn't feel that any of the issues with the vehicle was due to any manufacturer defect.

Under cross examination, Mr. Hutchins testified that he could not recall telling the Complainants that installing the lift kits would void the warranty. Respondent's UTV's were originally manufactured in the United States. However, a few years ago Respondent began manufacturing them in Mexico. Mr. Hutchins doesn't feel that the change of location has affected the quality of the vehicles. Of the approximately 200 to 250 UTV's sold by Quality per year, lift kits are installed in approximately 40 per year. Several of those vehicles will have problems due to the installation of the lift kits.

## **2. John Thole**

John Thole, Technical Service Representative, began working in the power sports industry in 1986. He began his career as a technician at a dealership, then moved on to become a service and parts manager, then a general manager. In 2001, Mr. Thole began working for Respondent as a technical service representative. He was in that position for about six to eight months, before moving up to become a supervisor. He worked as a supervisor for about four years, before returning to a position as a technical service representative, where he is now. Mr. Thole's daily responsibilities include assisting dealers in diagnosing and repairing vehicles, motorcycles, and snowmobiles. He also assists dealers in authorizing warranty repairs for vehicles manufactured by Respondent.

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<sup>28</sup> Respondent Ex. 11, Photos of Ranger 500 taken by Quality Marine Service.

Mr. Thole testified that all of the vehicles manufactured by Respondent are built to engineering specifications, including all of their components. The vehicles are validated through a test and design team. Each vehicle model is test driven for several hours per day. Hundreds of hours are put on the vehicles to test and validate each component on them. Each model is put through the same process before being put into general production for sale.

The manufacturer's warranty is based on a stock vehicle with no alterations or modifications. Even though this is the case, sometimes Respondent will provide warranty coverage on CV joints for "good will" if there is a problem within the warranty period. The Respondent will sometimes provide good will coverage depending on the customer's situation. Mr. Thole will look at the customer's purchase history, the problem with the unit, and the cost of the repair when determining whether Respondent will cover the cost of the repair.

If a customer has requested a modification to a vehicle, Mr. Thole testified that the Respondent asks the dealer to explain to the customer that certain modifications and driving characteristics may increase the potential of a drive shaft or CV joint type failure. A modification will change the geometry of the suspension and increase the risk of such failure. If a CV boot is torn, then the CV joint can become damaged from moisture, dirt, or debris getting inside the joint. When a lift kit is added to a UTV, the vehicle's geometry is changed. The CV boot is stressed and pulled and can crack and break because of the stress. Extra stress can also be created by the use of wheel spacers. These are mounted on the vehicle's hubs between the hub and the wheel. Using the wheel spacers broadens the vehicle's foot print. The wheels are further away from the vehicle's frame and create a wider stance.

Mr. Thole also testified that the owner of a UTV should do the recommended pre-ride inspection regularly and clean the vehicle daily. Severe use, or using the vehicle in a dirty, dusty, or muddy environment requires more maintenance. In such conditions the vehicle's air filter and CV joints should be checked more frequently. From what Mr. Thole had seen, he felt that the vehicles purchased by Complainants had been used severely. He also indicated that he felt that the vehicle had been submerged well above the vehicle's floorboards since there was mud and water in the engine intake.

Upon cross examination, Mr. Thole admitted that he has never personally seen either vehicle. His testimony was based solely on written documentation and pictures provided to him by Respondent's counsel.

#### D. Analysis

The Amico's request for repurchase relief is barred by Texas Occupations Code § 2301.606(d)'s limitations provision. Pursuant to the statute, a complainant seeking repurchase or replacement of a vehicle 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 Amicos purchased the UTV on February 15, 2013. Respondent's express limited warranty for the vehicle issued that same date states: "Polaris Sales Inc. . . . gives a SIX MONTH LIMITED WARRANTY on all components of the POLARIS *RANGER* against defects in material or workmanship."<sup>29</sup> Respondent's six month limited warranty applicable to the vehicle expired on August 15, 2013. Pursuant to the Texas Occupations Code § 2301.606(d)(1)'s filing limitations period, in order to be eligible for repurchase or replacement relief the Amicos were required to file a complaint with the Texas Department of Motor Vehicles no later than February 15, 2014. Because the Amico's original complaint received by the agency on May 28, 2014, was not timely, Texas Occupations Code § 2301.606 prohibits the Department from ordering Polaris to repurchase the vehicle.

A statutory period of limitations is not subject to waiver, under any circumstances. Because the Amico's 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 their vehicle creates a serious safety hazard, or substantially impairs the use or market value of the vehicle. *See* Tex. Occ. Code §§ 2301.604; 2301.601(4); and 2301.601(1).

Although the Department may not order repurchase relief in this case, the period of limitations in Texas Occupations Code § 2301.606(d) does not apply to warranty performance complaints received by the agency. The Amicos provided the required written notice to Respondent of alleged warrantable defects in the vehicle. *See* Tex. Occ. Code § 2301.204(a). Because the complaint was filed with the agency the Department has jurisdiction over this matter. In such a situation, 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).

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<sup>29</sup> Respondent Ex. 3, Ranger 500 Midsize, Ranger Crew 500 Owner's Manual, p. 80.

However, there are two factors which mitigate against Complainants. First, is the fact that Ms. Amico signed a warranty waiver at the time of purchase of the vehicle. Quality required that she sign the waiver, since Complainants were having lift kits and wheel spacers fitted to the vehicle. The waiver specifically advised Complainants that by adding the lift kits, the drive line warranty was being voided. As a result, there would be no warranty coverage for “shafts, transmissions, differential, bearings, 4WD system or any related items.”<sup>30</sup> Although Mr. Hutchins did not specifically speak to Complainants about the waiver and the fact that the installment of the lift kits would void the waiver, Ms. Amico did sign the waiver and should have read it. If she did not understand what she was signing, she should have asked further questions about the document.

The second factor is the fact that Respondent on its written warranty contained in the vehicle’s owner’s manual specifically states that its warranty “does not cover any vehicle that has been altered structurally, modified, neglected, improperly maintained . . . .”<sup>31</sup> In the present case, as already indicated, the vehicle was modified by the installation of the lift kits and wheel spacers. In addition, there is evidence that the vehicle was improperly maintained, as Complainants testified that they did not always perform the pre-ride inspection recommended by Respondent and they were unsure if their ranch manager had performed the required inspections before he drove the vehicle. Also, there was very strong evidence that Mr. Dudley may have actually sunk the vehicle in mud or water, based on the photographs provided by Respondent.

In addition, eligibility for warranty repair is limited to alleged warrantable defects in the vehicle that were reported to Respondent, or to a franchised dealer of Respondent, within the period of the six-month express limited warranty applicable to the vehicle. Respondent’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 vehicle was serviced by Quality, a franchised dealer of Respondent. According to the repair orders, the Amicos reported only one concern to Quality during the period of the express limited warranty that can still be addressed in the future and that is the issue of the engine harness which was repaired on May 18, 2013. All other issues that might have been covered by the express warranty were waived by Complainants or are not warrantable due to Complainants’ modification of the vehicle.

Complainant’s request for repurchase or replacement relief is denied.

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<sup>30</sup> Respondent Ex. 2, Warranty Waiver dated February 16, 2013.

<sup>31</sup> Respondent Ex. 3, Ranger 500 Midsize, Ranger Crew 500 Owner’s Manual, p. 80.

### III. FINDINGS OF FACT

1. Gezilla and Michael Amico (Complainants) purchased a new 2013 Polaris Ranger 500 utility vehicle on February 15, 2013, from Quality Marine Service, Inc. (Quality) of Onalaska, Texas, with mileage of zero (0) at the time of delivery.
2. On the date of hearing the vehicle had mileage of 2,015 and 318.9 hours of usage.
3. On February 15, 2013, Respondent issued an express limited warranty for the vehicle covering defects in manufacturing for a period of six (6) months from the original retail owner's date of purchase.
4. At the time of purchase, Complainants had the vehicle fitted with a lift kit and wheel spacers.
5. As a result of the installation of the lift kit and wheel spacers which are considered to be modifications to the vehicle, Quality required Complainants to sign a waiver of warranty, since the modifications voided the waiver.
6. Complainant's vehicle was serviced by Quality Marine Service, Inc. in Onalaska, Texas, one of Respondent's authorized dealers, on May 18, 2013; September 3, 2013; and September 10, 2013.
7. On the May 18, 2013 repair visit, the dealer's service technician replaced the vehicle's engine harness and front constant velocity (CV) shaft. Quality covered both items under the warranty, even though Complainants had signed a waiver excluding the shaft from warranty coverage. In addition, since the vehicle had been modified, the express warranty was voided and the drive shaft was no longer covered by the warranty.
8. On the September 3, 2013 repair visit, the vehicle's rear CV boot guards were replaced. Since the warranty had expired and since the waiver had been signed by Complainants, this repair was not covered by the warranty. In addition, it was determined that the vehicle's engine needed to be replaced because water or mud had gotten into the engine intake.

9. On the September 10, 2013 repair visit, the vehicle's engine was replaced and front CV boot guards were installed on the vehicle. These repairs were not covered by the warranty, since the warranty had expired and since the waiver had been signed by Complainants.
10. On April 22, 2014, Complainants took the vehicle to Mud Mart, which is not one of Respondent's authorized dealers, because the vehicle's transmission was not working. The transmission was replaced at this time. The repairs were not covered by warranty, since the warranty had expired and since the waiver had been signed by Complainants.
11. On May 28, 2014, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department), requesting repurchase or replacement of the vehicle.
12. In August of 2014, the vehicle broke down again and is not currently working. Complainants do not know why the vehicle is not working.
13. On July 16, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
14. The hearing convened on September 17, 2014 in Houston, Texas before Hearings Examiner Edward Sandoval. Complainants were represented by Ron Raydon, attorney. Complainants were also present and testified in the hearing. Also present as a witness for Complainants was Francis Bott, certified technician for Mud Mart. Respondent was represented by Bill Childs, Senior Counsel with Bowman and Brook, LLP. Also present for Respondent were Ernie Hutchins, General Manager for Quality Marine Service, and, by telephone, John Thole, Technical Service Representative. The hearing adjourned on September 17, 2014. The record closed on September 19, 2014.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (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. Complainants complaint filed with the Department on May 28, 2014, was not received within the limitations period prescribed by Tex. Occ. Code § 2301.606(d)(1).
5. Because the complaint was not filed within the applicable period of limitations, the Department is prohibited from ordering Respondent to repurchase Complainants' vehicle. Tex. Occ. Code § 2301.606.
6. Respondent has a continuing obligation to make any repairs to the engine harness that may be necessary in the future. Tex. Occ. Code § 2301.603(b)(1).
7. Since Complainants signed a waiver of warranty regarding any drive line issues and have modified the vehicle which voided the warranty and since the warranty has now expired, Respondent has no obligation to make any repairs for any other issue with the vehicle that may arise. Tex. Occ. Code § 2301.204.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**.

**SIGNED November 18, 2014.**



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