

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 14-0296 CAF**

ALICE SMITH,	§	BEFORE THE OFFICE
Complainant	§	
	§	
v.	§	OF
	§	
THOR MOTOR COACH, INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Alice Smith filed a complaint seeking relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) from Thor Motor Coach, Inc. (Thor), for failure to correct alleged warrantable defects in her 2013 Chateau 33SW Motorcoach. Ms. Smith seeks repurchase relief due to defects in the motor home’s slideout system. Although Thor concedes that the slideroom was inoperable on the date of hearing, it argues that the slideout was successfully repaired, and that the failure that occurred at hearing was the result of “unauthorized alteration” of the slide, as opposed to a warrantable defect. The hearings examiner finds that Ms. Smith is entitled to repurchase relief under the Lemon Law. Accordingly, Thor is ordered to repurchase the coach, and to reimburse Ms. Smith for her attorney’s fees incurred in pursuing her complaint.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested.¹ These issues are discussed only in the Findings of Fact and Conclusions of Law.

The evidentiary hearing convened on October 10, 2014 in Spring, Texas, before Hearings Examiner Anne K. Perez.² Attorneys Dennis S. Dresden and Benjamin J. Reviere appeared on behalf of Ms. Smith. Thor was represented by attorney John W. Arnold. The hearing was adjourned that same date. Following the submission of written closing statements, the record closed on October 24, 2014.

¹ The notice of hearing issued on August 19, 2014, named both Thor and Ford Motor Company (Ford) as respondents to this case. This was because the chassis of Ms. Smith’s coach was manufactured by Ford, while the living quarters were fabricated by Thor. On August 20, 2014, Ford filed a motion requesting to be removed as a party to this action because the complaint does not allege the existence of a defect in the chassis components or parts. On September 30, 2014, Ms. Smith filed a Notice of Dismissal in the case as to Ford. By order dated October 1, 2014, Ford’s request to be dismissed as a respondent-party to this action was granted.

² The hearing was held at the home of Ms. Smith’s daughter, Cindy Ponsonby, when a slideout issue made the coach unsafe for travel.

II. DISCUSSION

A. Undisputed Facts

1. Purchase Information

On March 28, 2013, Ms. Smith purchased a new 2013 Chateau 33SW Motorhome from Demontrond Automotive Group, Inc. (Demontrond) of Houston, Texas, with mileage of 1,216 at the time of delivery. Thor manufactured the motorhome. Demontrond is an authorized dealer of Thor products. The total purchase price of \$124,330.50 paid by Ms. Smith consists of \$119,588 (price of coach); \$4,036.75 (sales tax); \$295.50 (dealer's inventory tax); \$285.50 (licensing and filing fees); and \$125.00 (documentary fee).³ On the date of hearing the motorhome's mileage was 23,500.⁴

2. Warranty Coverage

On March 28, 2013, Thor issued an express limited warranty applicable to the motorhome covering defects in workmanship and materials used to manufacture the motorhome (unless expressly excluded from warranty coverage) for 12 months or 15,000 miles, whichever occurs first.⁵ A contractual provision in the warranty states, "Misuse or neglect,...[or] unauthorized alteration ...shall discharge [Thor] from any express or implied warranty to repair any resulting defect."⁶ On the date of hearing Thor's express limited warranty covering the motorhome was expired.

3. Complaint and Notice to Manufacturer

On or around June 4, 2014, Ms. Smith provided written notice to Thor that the slideout system in her motorcoach was defective.⁷ Shortly thereafter, she filed a Lemon Law complaint with the Texas

³ Complainant Ex. 1, Motor Vehicle Retail Installment Contract. Counsel for Thor stipulated to the above-referenced figures for the purpose of Lemon Law repurchase calculations.

⁴ The parties stipulated to the motorhome's mileage at the time of hearing.

⁵ Complainant Ex. 2 at 9. Items excluded from coverage under Thor's express limited warranty include systems and equipment warranted by other manufacturers (e.g., the automotive chassis and powertrain, appliances, water heater), materials that are subject to normal wear and tear, and replacement items that are categorized as owner maintenance. *Id.* at 11.

⁶ *Id.* at 9.

⁷ Complainant Ex. 5. Ms. Smith's letter describes a litany of problems that required repairs to the motorcoach. However, consistent with counsel's stipulation that the sole contested issue in this case involves the slideout's defective condition, the decision does not address matters unrelated to the slideout.

Department of Motor Vehicles (Department) against Thor. Ms. Smith's complaint received by the Department on July 8, 2014, describes the motorhome's alleged defect as: "slide out inoperable."⁸

4. Incidental Expenses

On August 26, 2014, Thor filed a Notice of Appearance designating attorney John W. Arnold as its lead counsel in this matter. On September 5, 2014, Ms. Smith filed a Notice of Appearance of Counsel designating Dennis S. Dresden and Benjamin J. Reviere as her attorneys of record. In pursuing her Lemon Law claim against Thor to a close through the contested case hearings process, Ms. Smith incurred attorney's fees of \$7,000, an amount that is reasonable.⁹

B. Legal Standards

A manufacturer is required to make repairs necessary to conform a new vehicle to an applicable manufacturer's express warranty. 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 § 2301.605.¹⁰

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, or substantially impairs the use or market value of the vehicle;¹¹ (3) the manufacturer has been given a reasonable number of attempts to repair the defect;¹² (4) the owner sent

⁸ Ms. Smith's complaint filed with the Department was officially noticed. See Tex. Gov't Code § 2001.090.

⁹ The parties orally stipulated that Ms. Smith incurred \$7,000 in attorney's fees, and that this amount was reasonable.

¹⁰ Tex. Occ. Code § 2301.603(a) and (b).

¹¹ "Serious safety hazard" means "a life-threatening malfunction or nonconformity" that "substantially impedes a person's ability to control or operate a vehicle for ordinary use or intended purposes," or "creates a substantial risk of fire or explosion." "Impairment of market value" means "a substantial loss in market value caused by a defect specific to a vehicle." See Tex. Occ. Code § 2301.601(1) and (4).

¹² 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 a manufacturer's express warranty. It is presumed that a reasonable number of attempts have been made to correct a warrantable defect that substantially impairs the vehicle's use or market value if the defect 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). The same presumption is established if a warrantable defect that substantially impairs the vehicle's use or market value 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).

written notice of the defect to the manufacturer;¹³ and (5) the manufacturer has been given an opportunity to cure the defect.¹⁴

C. Ms. Smith's Evidence

Ms. Smith offered her own testimony at hearing. In addition to documentary evidence previously discussed (*e.g.*, purchase contract, warranty information), she presented the owner's manual for the coach; correspondence; repair orders; her own calendar reflecting the total number of days the coach was out of service for repair; and a photograph of a slide motor cylinder removed from her coach.

1. Testimony of Alice Smith

Ms. Smith testified that at age 71, she is retired from employment as an auditor for the state of Arkansas. She has a passion for camping and horses, and keeps a horse in in northern Arkansas. She previously owned a different coach model produced by Thor that she traded for the 2013 Chateau. She was excited about the Chateau because it possessed all the features she desired: it was diesel-powered and rated to tow 10,000 pounds; she would not have to worry about the batteries running down because of the "auto-gen" feature (a generator designed to automatically charge the coach batteries in response to low voltage); and it was marketed as a unit suitable for dry-camping, *i.e.*, if she camped in an area without "shore" connections, she could rely on the auto-generator to power small items, like TVs.

While camping Ms. Smith said she keeps the auto-generator "on" at all times to ensure that the generator will "kick-on" and correct a low-battery situation. She does not attempt to operate the slideout without running the generator for about an hour and a half beforehand, unless the coach is already connected to "shore" power. Similarly, in the absence of "shore" power she keeps the generator running during slideout operations. Consistently observing the voltage of the coach batteries by viewing a monitor located inside the motorhome also provides her with peace of mind.

Only one day after purchase, Ms. Smith said the coach's slideout "made a popping noise" during operation and ripped a piece of linoleum from the floor. Demontrond was closed for the weekend so she brought the motorhome in on Monday, April 1, 2013. The dealer called Thor. After Demontrond

¹³ Tex. Occ. Code § 2301.606(c)(1).

¹⁴ Tex. Occ. Code § 2301.606(c)(2).

technicians thought they had fixed the slideout she drove the unit home. Later that same day, however, the slide went out but failed to retract. A Demontrond technician came to her home and tried, unsuccessfully, to repair the slideout. Ultimately, it took three technicians to manually push the driver's slide wall in. She took the coach back to Demontrond, where it remained until April 17, 2013. At that point, Ms. Smith drove the coach from Houston, Texas to Thor's factory service center located in Elkhart, Indiana, a distance of 1,192 miles, so that Thor could repair the slideout system.

Ms. Smith testified that the slide system underwent repairs at Thor's plant between April 22, 2013 and May 3, 2013. In the end she was told that the system was fixed, but it was not. Following Thor's first repair attempt the slideout system developed a pattern of malfunction. The slide would work properly for a short period of time, maybe a week, and then begin to exhibit popping noises. After that the slide mechanism's function became intermittent. She offered the following description: "Sometimes you pushed the button (one to "extend," and the other to "retract") and you would get nothing." And, "Sometimes you just had to keep pushing the button." Typically, when the slide "gets stuck" it was in the "out," or extended position. The unit cannot be safely driven on the roads with the slideroom extended. Conversely, if the slide gets stuck in the retracted position, some portion of the living quarters is inaccessible. Ms. Smith recalled speaking to Thor representative Bob Harlan about the slide's failure to retract. He instructed her to "sync" the slide's front and rear motors by "holding the [extend] button down until the slide extends seven inches, then pushing the [retract] button to bring it back in," and to keep repeating the same sequence until the problem was solved. It did not work.

While the slideout system underwent repairs at Camping World RV Sales (Camping World) of Lowell, Arkansas, Ms. Smith slept in the coach behind the dealership's locked gates for a full 31 days (presumably between October 1 and 31, 2013). However, she could not be in the motorhome while technicians were performing repairs. She was rarely provided with alternate transportation¹⁵ and spent much of her time in Camping World's display shop. A technician from Thor flew down to work on the slideout at some point, and when he finished he told her -the problem was fixed. It was not.

Ms. Smith has been stranded at three camp sites because the unit's slideout would not retract when she was ready to depart. On two separate occasions, both Cleburne RV of Cleburne, Texas, and Camping

¹⁵ For a portion of her stint at Camping World Ms. Smith had the use of a "Spark" golf cart and later, a small sedan, but neither vehicle was equipped to pull her horse trailer.

World sent service technicians out to her camp site to manually push the slideroom back in, a task that requires three to four people. Three weeks prior to the hearing, the slide failed to retract while she was camping in Arkansas. This time, counsel for Ms. Smith contacted Thor. Thor called Camping World, and the dealer dispatched four technicians to Ms. Smith's location. Once again, the slideroom had to be manually pushed in before she could leave her camp site. Afterwards she took the unit to Camping World and waited for Thor's Technical Manager Mark Stanley to fly down from Elkhart.

Ms. Smith recalled speaking with Mr. Stanley only one time prior to his arrival at the Arkansas dealership in mid-September 2014. Their second interaction occurred on September 16, 2014, and they did not speak again until the hearing on October 10, 2014. Ms. Smith testified that during the two conversations she had with Mr. Stanley, he never suggested that she was misusing the batteries in the coach, nor did he imply that she was tampering with, or causing damage to the slideout mechanism. He made no mention water damage to the slide motors.

On September 16, 2014, Ms. Smith said Mr. Stanley showed her one of the slide motor cylinders he had removed from her coach. In response to her comment that the connector attached to the motor's exterior wiring "looked burned," Mr. Stanley said, "No, it's glue." He went on to explain that "some technicians glue the connectors together so they won't come unplugged, and some technicians use tape. I believe that's glue." Ms. Smith was not convinced. She used her cellular phone to photograph the motor cylinder. When the photograph was offered at hearing, she pointed to the connector's "blackened" and "burned" appearance.¹⁶ Upon his completion of repairs Mr. Stanley assured her that the slideout system was fixed. It was not. The slide worked properly for a few short days. Within a week, however, it failed to retract while she was at Camping World having a new slide topper (a cover for the slide) installed. On this occasion, a service technician "togglled" the slide and got the mechanism working again. From that date forward, however, the slideout system's function was intermittent and it never worked without "togglng," *i.e.*, pushing the retract and extend buttons sequentially and repetitively until eventually, the slideout was either fully extended or fully retracted. Ms. Smith said "togglng" is not mentioned in Thor's owner's manual for the coach.¹⁷

¹⁶ Complainant Ex. 16, copy of photograph.

¹⁷ Complainant Ex. 1A.

Around September 25, 2014, Ms. Smith left Camping World and drove to a camp site in Glen Rose, Texas. The slideout mechanism worked intermittently so long as she “toggled” the extend and retract buttons. Shortly thereafter, however, she began to hear “popping noises.” She recalled being told by “Dennis” (an employee of Thor) on some earlier occasion that the “popping noise” meant that the slide had a broken shoe. On September 28, 2014, she drove back to her daughter’s home in Spring, Texas.

The slideout system completely failed on October 7, 2014, while the unit was parked in her daughter’s driveway. On this occasion, Ms. Smith and her attorneys were testing out the slide. She said the slide function was working intermittently but at one point while the slide was extended part-way out, it failed to retract. It remained in this same “stuck out” position when the hearing convened three days later.

Ms. Smith testified that prior to the hearing, no one from Thor ever suggested that she was responsible for the slideout system’s failure, much less was she accused of purposely causing damage to the slideout’s internal components. Thor instead made repetitive, unsuccessful attempts to repair the slide mechanism. The fact that Thor previously offered her “lifetime warranty” coverage of defects in materials or workmanship related to the slideout seems odd to Ms. Smith, especially given the tone of Mr. Stanley’s allegations at hearing.¹⁸

On cross-examination, Ms. Smith indicated that she has no training or experience in the area of RV mechanics. She possesses no technical expertise. She denied that she ever touched the slideout’s internal components, or that she tried to cause damage to the slide mechanism. If the slideout could have been successfully repaired she would love to keep the motorhome. Mr. Stanley never showed her how to disconnect the harnesses that hold the slideout motors in place, and she has no idea how to accomplish that task. She denied that she tried to disconnect the coach’s slide motors from their harnesses: not in the past week, not in the past two weeks, not since Mr. Stanley’s repair attempt in mid-September 2014, not ever. She has never touched the slide motor harnesses, and other than the Camping World technician who “toggled” the slide when it failed a week after Mr. Stanley’s repair attempt, she is unaware of anyone else who might have touched the slide’s internal components.

Ms. Smith acknowledged that she spent several months “dry camping” during the year 2014. She consistently keeps the generator running while operating the slideout system (unless the coach is hooked

¹⁸ Complainant Ex. 3, Letter from Thor employee Andrew Van Scolk, dated December 2, 2013.

up to “shore” power), but she did not develop this practice on the advice of either Mr. Stanley or Mr. Harlen. Her reason? Common sense. The motorhome’s inverter has malfunctioned in the past. Given all the problems she has had with the slideout, running the generator during slideout operations is the safe, obvious choice.

2. Documented Repair History

Repairs to the slideout mechanism in Ms. Smith’s motorhome were performed by two of Thor’s authorized servicing dealers, Demondtron and Camping World. In addition, the slideout system underwent repairs at Thor’s factory service center in Elkhart. Repair records for the motorhome reflect the following information:¹⁹

Mileage/Dealer/ Invoice No.	Dates To/From	Reported Concerns	Diagnostic Action And Dealer’s Findings
In/1,211 Out/1,211 Demondtron Invoice No. 2040	3-6-13 to 4-18-13	Slide topper torn and will not roll up properly.	Verified complaint & found the slide topper Dometic Model 86103FJ-2821-U catching the fascia and tore. 2.00 sop new slide topper fabric & pull the full wall center support. Pull the slide topper from the full wall side rail. Install felt to upper lip of the corner of the slide fascia where the fabric rolls across. Reinstall the topper and center the fabric. Reinstall the center rail.
In/1,253 Out/1,253 Demondtron	4-1-13 to 4-17-13	(1) Driver’s slide inoperable with noise at times; (2) Driver’s slide won’t	(1) There are a few problems we worked on with Kurt at [Thor]. We adjusted room, inspected all seals & hardware, & cleaned debris from under slide; re-synced motors, replaced both motors with 500 style, ohmed

¹⁹ The service records were admitted as Complainant Exs. 6-13. The content of Demondtron Invoice No. 2040 (Complainant Ex. 6) is puzzling. The “R.O. Open Date” of March 6, 2013 is plainly wrong (the coach was purchased on March 28, 2013), and unless the slide topper was replaced twice (and one of the repair orders was not offered), Ms. Smith’s testimony establishes that the slide topper was removed in March 2014 and replaced with a new slide topper on September 25, 2014. In addition, between Ms. Smith’s personal calendar highlighting the dates the coach was in service for repairs (Complainant Ex. 15) and Ms. Smith’s uncontroverted testimony, the following matters are deduced: (1) Demondtron Invoice Nos. 2208 and 2320 should have been treated as one service visit that began on April 1, 2013 and ended April 17, 2013; (2) Between the dates of April 18-21, 2013, Ms. Smith was driving the coach from Demondtron (in Houston) to Thor’s factory in Elkhart; (3) the motorhome underwent repairs at Thor’s facility in Elkhart from April 22 to May 3, 2013, and again from December 17, 2013 to March 1, 2014, *i.e.*, the “Out” date on Thor’s Claim No.C0091298 is incorrect; (4) on December 16, 2013, service technicians at Demondtron manually pushed the slide out so that Ms. Smith could retrieve her personal belongings, after which the coach was immediately transported to Thor’s facility in Elkhart for repairs, *i.e.*, Demondtron Invoice No. 4142’s ending service date of March 18, 2014, is inaccurate; (5) Ms. Smith’s testimony that she spent 31 nights at Camping World (presumably between October 1-31, 2013) while her coach underwent slideout repairs should be taken at face value, especially since the service dates on Camping World Work Order Nos. 2614 and 3887 show that the coach was in service for a total of 100 days, a number far more favorable to Thor; and (7) Neither testimony nor documentary evidence (repair orders) establish that the motorhome was in service for repairs on the following dates, as represented in Complainant’s Ex. 15: September 9-10, 2013; November 6-8, 11-14, and 18-20, 2013; December 11, 2013; and May 22-28, 2014.

<p>Invoice No. 2208</p>		<p>fully close & tearing floor; (3) Generator not charging batteries</p>	<p>harness, replaced module a few times, lubed slide system with 14.00; we did get slide to going in and out ok but the lights on the module never has both red and green light on when slide stops, as we were told it should, and there is a code that keeps showing: Code 1.6. Customer will use unit for their trip and we may have to work on this later; (2) At first the metal trim near dinette was hitting and had cut floor so we had it repaired by a sublet, that as we were addressing the closing part of the slide cut the flooring in the bedroom so we had it repaired as well; we had the flooring repaired two times at this point and there is more info. online; (3) Because page 2 of the repair order was not offered in evidence, this record does not establish the dealer's diagnostic findings/repairs performed on the generator.</p>
<p>In/1,281 Out/1,281 Demontrond Invoice No. 2320</p>	<p>4-18-13 to 5-8-13</p>	<p>(1) After pick up customer states no power 110 or 12V-Monitor Panel Blank & water pump inoperable; (2) After repair of electrical line, main slide will not come in all the way.</p>	<p>(1) On 4-17-13 found batteries not charging; after 1.5 hours/trouble-shooting, found main lead to batteries from under steps, main lead inside battery box & secured. Had output & started charging, all working electrical & check few minor issues for cust, left @ 1:30. (2) On the ride back to the shop remembered [I] did not check slide operation. Contacted customer, had her test operation; slide came in 1/2 way & stopped & would not move; [Customer] turned around & from 1:45 p.m. to 6 p.m. worked with Thor [by] phone, trying to get slide to come all the way in. Had nothing after hours of trouble-shooting motors & module. Then found 15-amp fuse in fuse panel that should have been a 30-amp; replaced fuse but [slide] still would not operate. Disconnected motors to manually push in slide, had to call two other techs from shop to help push slide in. After finally walking slide in & out with switch finally allowed slide to manually push in. Took coach back to shop. Thor contacted Ms. Smith on 4-18-13, a decision was made to use original motors on slide that were shipped on Friday the 12th. Ms. Smith requested that the unit be returned to Thor. A decision was made to install motors & if not repaired, unit was to return to Thor. Motors were installed, slide still not going in evenly; rear will come in [but] front still not closing all the way. More time trouble-shooting, slide operation still incorrect. Unit returning to factory.</p>
<p>One mileage figure: 2,488 Thor Service Center, Elkhart, IN Claim No. C0070301</p>	<p>4-22-13 to 5-3-13</p>	<p>Slideout inoperable.</p>	<p>Cause: Slideout system out of alignment. Correction: Removed exterior bottom fascia & all interior fascia & slide fasteners & removed driver's side slideout; Removed damaged Schwintek columns & replaced with new added adjustable rollers to support the weight & reinstalled the room. Reinstalled fascias & seals & puttied as needed. Tested alignment & operation of room. Room operates as designed. No further action required.</p>
<p>One mileage figure: 2,533 Camping</p>	<p>5-4-13 to 7-12-13</p>	<p>(1) Generator doesn't work from the manual switch; (2) Slideout ripped</p>	<p>(1) Because page 4 of the repair order was not offered in evidence, this record does not establish the dealer's diagnostic findings/repairs to the generator switch. (2) Diagnosed slide; repaired with Thor tech.</p>

World Work Order No. 2614		floor in dining room. Now ripped floor back by bedroom.	
One mileage figure: 2,533 Camping World Work Order No. 3887	10-1-13 to 10-31-13	Slide makes loud popping noise; Customer found lots of screws, & [reports that slide] retracts at different speeds, & cannot be brought in [all the way] at once	Because page 2 of the repair order was not offered in evidence, this record does not establish the dealer's diagnostic findings/repairs performed on the slideout system.
In/14,338 Out/14,338 Demontrond Invoice No. 4142	12-16-13 to 3-18-14	(1) Driver's side slideout inoperable; Customer needs slide pulled out [in order] to remove personal belongings from bedroom. (2) Thor to pick up coach for repairs	(1) Moved slide out for customer. Verified customer's concern: slide will not go out on driver's side front. Had to remove molding to access the motor better, then had to remove motor & get slide started going out from behind by pushing on the inside. Then reinstalled motor and was able to get slide out by running motors while, at the same time, another tech was pushing slide at front. When customer got items out, had to have other tech push on outside wall of slide in front while I ran motors to get slide back in for travel. (2) Coach did not deliver back to Houston. Customer picked up [coach] in Springfield, AR
One mileage figure: 15,501 Thor Service Center, Elkhart, IN Claim No. C0091298	12-17-13 to 2-3-14	(1) Full wall slideout, new slide system, replace rubber seals, underneath bottom needs replacement and the canvas is exposed. Topper awning is starting to rip at both ends. Hole in floor at bedroom end/repair & sees daylight at both ends with room out; (2) The linoleum floor needs replacement; in two areas the slide has also torn into the subflooring; (3) Driver's side awning tearing away; (4) Cable on generator needs to be replaced.	(1) Cause: Inspected & found Schwintek system inoperable. Correction: Removed room when removing slideout. Slideout end wall skins. Cut & added alum. to framing, removed & replaced foam as needed. Replaced wall skins. Installed new column triple rail. Installed new column triple rail. Installed custom glide system. Reinstalled room, interior fascias, plumbing, electrical & LP. Tested LP, Polarity & operation of slide. All pass test as functioning as designed; (2) Cause: Found linoleum torn. Correction: Removed linoleum, floor, & rollers; replaced flooring, used adhesive and sealant when installing new linoleum. Installed two new rollers; (3) Cause: Exterior driver's side wall needs to be repaired; Inspected Driver's side awning and found awning fabric is fraying; Correction: Prepped area, sanded, paint to match unit & clear; Removed & replaced fabric with new; (3) Cause: Cable on generator needs to be replaced. Correction: Removed and replaced generator cable with new.

D. Thor's Evidence

1. Testimony of Mark Stanley

Mr. Stanley testified that he has been employed by Thor since 2001. He currently serves as Thor's Technical Manager, a position that requires him to perform in-field service repairs to Thor products at

dealer locations around the country. He estimated that he has performed “at least 100” slideout repairs, thus he is familiar with slideout system mechanics.

During the inspection of Ms. Smith’s coach at the October 10, 2014 hearing, Mr. Stanley testified that he found both slide motors “half-way unplugged.” His suspicions were raised, and he immediately asked whether he could take photographs. He subsequently explained that regular operation of the slideout system would never cause the wire harnesses to protrude from their position located behind rubber seals, inside the aluminum columns. In the same vein, he said, “Plugs don’t un-plug themselves. It takes force to pull apart these plugs because they are connected by wires.”

Mr. Stanley stated that approximately three weeks prior to the hearing, he traveled to Camping World in Lowell, Arkansas to work on the coach’s slideout system. At that time he replaced both the front and rear motors, as well as the aluminum columns that enclose each motor behind a protective rubber flap. When he completed these repairs on September 16, 2014, the motors and wiring harnesses were securely installed and concealed. In contrast, on the date of hearing the motors and wiring harnesses were visibly protruding from their rubber casings. He expressed certainty that “someone” disrupted the placement of these items, because they could not have come loose and worked themselves into their present position.

Beyond these observations, Mr. Stanley said that the connector attaching the slide’s front motor to the wiring harness was damaged. He testified that the destruction he observed could only be the result of deliberate tampering, *i.e.*, “someone” reached inside the aluminum column where the slide motor and harness sit behind a protective rubber flap, yanked the motor and the harness out of the column, and used a knife or similar tool to “pull the pins out of the plug,” thereby completely disabling the slideout mechanism. He also theorized that whomever was responsible “barely” disconnected the rear slide motor from the wiring harness, thus creating the impression that both plugs came loose naturally and tending to conceal the significant damage to the front connector, which was obviously intentional.

During the second of two inspections performed during the hearing, Mr. Stanley admitted that the front connector appeared to be “melted.” He subsequently denied that the “melting” he observed could result from heat produced by the slide’s internal components. He insisted that only the exterior portion of the connector “was black” and that the interior portion of the harness showed no signs of melting or burning

(blackness of color). Based on this observation, Mr. Stanley again concluded that “someone” intentionally “burned” the connector’s exterior, perhaps by way of an open flame.

Mr. Stanley said he also found the coach’s slide motors unplugged when he arrived at Camping World in September 2014. However, unlike his reaction at hearing he did not find the circumstance unusual. He assumed that service technicians had unplugged the motors in order to manually extend the slide and allow Ms. Smith to retrieve personal items from inside the coach. And, since the slide motors were already unplugged he took the opportunity to show Ms. Smith how to disconnect the harnesses holding the slide motors in place. Whether she used this knowledge to disconnect the slide motors on the date of hearing, Mr. Stanley could not say. But “someone” did it.

On cross-examination, Mr. Stanley agreed that he found only the coach’s front slide motor unplugged when he arrived at Camping World in September 2014. He did not explain how technicians manually pushed out the slide without unplugging both motors. He admitted telling Ms. Smith that some technicians use glue or tape on the connectors that attach slide motors to wiring harnesses, but said it was unnecessary if the motors are properly installed. In keeping with this statement, he denied using glue or tape when he installed new slide motors in Ms. Smith’s coach in September 2014. He did not comment on the visual similarity between the damaged front slide motor connector inspected at hearing and Complainant Ex. 16 (photograph of slide motor removed from Ms. Smith’s unit three weeks prior to hearing, in which the motor’s exterior wiring connector appears “burned”).

Mr. Stanley insisted that a slide motor could “never come unplugged by itself,” yet he admitted that an improperly-installed slide motor could move around and become unplugged. He acknowledged that Thor’s owner’s manual does not require running the coach generator while the slideout is in operation and other than advising the owner to keep the batteries “fully charged,” the manual fails to address battery voltage requirements for slideout operations. He admitted that he is unaware of Ms. Smith’s use of the coach generator while operating the slideout. He did not explain the basis for his “suspicion” that she, or someone on her behalf, intentionally damaged the front slide motor’s wiring connector.

2. Testimony of Robert Harlan

Mr. Harlan testified that he is employed by Thor in the area of Consumer Affairs. He said he has dealt with Ms. Smith on multiple occasions. On at least two occasions, he told her to operate the generator at

least 30 minutes prior to operating the slideout, or be plugged into "shore" power. On cross-examination, he admitted that the Owner's Manual does not provide these instructions. He also acknowledged that he has no personal knowledge that Ms. Smith ever failed to follow these instructions.

E. Analysis

Ms. Smith has established, by a preponderance of the evidence, that the slideout system in her coach is defective. Sometimes the slide extends, and then it fails to retract. Occasionally it retracts but cannot be rolled out. Sometimes it works intermittently, and sometimes not at all. Through documentary evidence Ms. Smith established a rebuttable presumption that a reasonable number of attempts have been undertaken to repair the slideout system, yet the slide was inoperable on the date of hearing. The defect substantially impairs her use of the coach: she cannot safely drive the unit on the roads when the slide fails to retract, and she cannot enjoy full use of the living quarters when the slide fails to extend. The slideout system's lack of dependability has caused her to cancel trips. Ms. Smith is without question entitled to repurchase relief, in addition to reimbursement for her attorney's fees incurred in this action.

Thor's accusation that Ms. Smith intentionally damaged the wire harness connector to the front slide motor, rendering the slide system inoperable on the day of hearing, finds no support in credible evidence. The repair orders describing the slideout's problems, alone, tell the story. If the slide's defect could have been repaired it would have happened by now. Ms. Smith has suffered substantial inconvenience. She has plainly suffered an ordeal, and the suggestion that she is responsible for Thor's slideout debacle is unwarranted.

III. FINDINGS OF FACT

1. On March 28, 2013, Alice Smith purchased a purchased a new 2013 Chateau 33SW Motorhome from Demontrond Automotive Group, Inc. (Demontrond), of Houston, Texas, with mileage of 1,216 at the time of delivery.
2. Thor Motor Coach, Inc. (Thor) is the manufacturer of the motorhome.
3. Demontrond is an authorized dealer of Thor products.

4. On March 28, 2013, Thor issued an express limited warranty applicable to the motorhome covering defects in workmanship and materials used to manufacture the coach (unless expressly excluded from warranty coverage) for 12 months or 15,000 miles, whichever occurs first.
5. Based on time and mileage, the expiration of Thor's express limited warranty applicable to the motorhome occurred at the earliest of: (a) March 28, 2014; or (b) at mileage of 16,216.
6. Thor's express limited warranty applicable to the motorhome covers the slideout system, including the slideroom, the slideout mechanism and assembly and all component parts of the slideout system.
7. Demontrond is an authorized servicing dealer of Thor.
8. Camping World RV Sales (Camping World) of Lowell, Arkansas, is an authorized servicing dealer of Thor.
9. During the period of Thor's 12-month/15,000 mile express limited warranty applicable to the motorhome, Ms. Smith reported defects in the slideout system to Demontrond and Camping World, as well as Thor.
10. Demontrond serviced the motorhome's slideout system as follows:
 - a. April 1-17, 2013, at 1,253 miles, Ms. Smith reported that the driver's side slide was inoperable; that the slide would not fully retract; and that operating the slide was tearing the floor; and
 - b. December 16, 2013, at 14,338 miles, Ms. Smith reported that the driver's side slideout was inoperable.
11. Camping World serviced the motorhome's slideout system as follows:
 - a. On May 4, 2013, at 2,533 miles, Ms. Smith reported that the slideout had ripped-up the floor in the dining room and back bedroom; and
 - b. October 1-31, 2013 at 2,533 miles, Ms. Smith reported that the slide made loud popping noises; that the slide retracted at varying speeds, and that the slide would not fully retract without stopping.
12. The motorhome was serviced by Thor at its manufacturing facility/service center located in Elkhart, Indiana, as follows:
 - a. April 22-May 3, 2013, at 2,488 miles, Ms. Smith reported that the slideout was inoperable; and

- b. December 17, 2013-March 1, 2014, at 15,501 miles, Ms. Smith reported that the slideout was not working properly; and that operating the slideout caused damage to the floor and awning.
13. The defective condition of the motorhome's slide system was not successfully repaired as a result of the efforts described in Finding of Fact Nos. 10-12.
14. Based on the dates and mileage figures of the repair visits described in Finding of Fact Nos. 10-12, Thor and its authorized servicing dealers undertook a reasonable number of attempts to conform Ms. Smith's motorhome to Thor's applicable express warranty, but the nonconformity in the slideout system continues to exist.
15. The repair visits described in Finding of Fact Nos. 10-12 establish that the motorhome was out of service for repair for a cumulative total of 30 or more days in the 24-month period following March 28, 2013, the date that the motorhome was originally delivered to Ms. Smith.
16. Thor did not loan Ms. Smith a comparable motor vehicle for any period of time during which her motorhome was undergoing repairs performed by Thor's authorized servicing dealers Demontrond or Camping World, or by Thor, the motorhome's manufacturer.
17. On or about June 4, 2014, Ms. Smith provided written notice of alleged defects in the motorhome's slideout system to Thor.
18. On July 8, 2014, Ms. Smith filed a complaint with the Texas Department of Motor Vehicles (Department), alleging that a warrantable defect existed in the motorhome's slideout system.
19. On September 16, 2014, Thor was given the opportunity to inspect and make repairs to the motorhome. At that time, Thor replaced the two slideout mechanisms, consisting of the front and rear motors, and the aluminum columns that enclose each motor behind a protective rubber flap.
20. One week after Thor's September 16, 2014 final repair attempt, the motorhome's slideout failed to retract. From that date forward the slide system functioned only intermittently.
21. On October 7, 2014, the motorhome's slide room rolled about halfway out and then failed to retract.
22. On October 10, 2014, the date of hearing, the motorhome's slide system was inoperable.
23. On the date of hearing, the motorhome's mileage was 23,500.

- 24. The failure of the motorhome’s slide system is the result of a defect covered by Thor’s express limited warranty applicable to the motorhome.
- 25. The failure of the motorhome’s slide system was not the result of an “unauthorized alteration” that would discharge Thor from its express warranty obligation to repair the underlying defect.
- 26. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$124,330.50
Delivery mileage	1,216
Mileage at first report of defective condition	1,253
Mileage on hearing date	23,500
Useful life determination	120,000

Purchase price, including tax, title, license and registration	\$124,330.50
Mileage at first report of defective condition	1,253
Less mileage at delivery	<u>-1,216</u>
Unimpaired miles	37
Mileage on hearing date	23,500
Less mileage at first report of defective condition	<u>-1,253</u>
Impaired miles	22,247

Reasonable Allowance for Use Calculations:					
Unimpaired miles	<u>37</u>				
	120,000	X	\$124,330.50	=	\$38.34
Impaired miles	<u>22,247</u>				
	120,000	X	\$124,330.50	.5 =	<u>\$11,524.92</u>
Total reasonable allowance for use deduction:					\$11,563.25

Purchase price, including tax, title, license and registration	\$124,330.50
Less reasonable allowance for use deduction	-\$11,563.25
Plus filing fee refund	<u>\$35.00</u>
TOTAL REPURCHASE AMOUNT	\$112,802.25

27. Ms. Smith retained legal representation in this matter after she received notice that Thor was represented by counsel.
28. In pursuing her Lemon Law claim against Thor through the contested case hearings process, Ms. Smith incurred attorney's fees of \$7,000.
29. The total amount of attorney's fees incurred by Ms. Smith is reasonable.
30. On August 19, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to Ms. Smith, Thor, and Ford Motor Company, 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.
31. By order dated October 1, 2014, Ford Motor Company was dismissed as a party to this action.
32. The hearing convened on October 10, 2014 in Spring, Texas, before Hearings Examiner Anne K. Perez. Attorneys Dennis S. Dresden and Benjamin J. Reviere appeared on behalf of Ms. Smith. Thor was represented by attorney John W. Arnold. The hearing was adjourned that same date. Following the submission of written closing statements, the record closed on October 24, 2014.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613.
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. Ms. Smith's complaint filed with the Department on July 8, 2014, was timely received. Tex. Occ. Code § 2301.606(d).

5. Ms. Smith bears the burden of proof in this matter.
6. Ms. Smith proved by a preponderance of the evidence that the motorhome has an existing defect in the slideout system that substantially impairs the use and market value of the motorhome. Tex. Occ. Code § 2301.604(a).
7. The defect referenced in Conclusion of Law No. 6 is covered by Thor's express limited warranty applicable to the motorhome.
8. Although Thor's express limited warranty applicable to the motorhome was expired on the date of hearing, Thor's obligation extends beyond the expiration date of a warranty because Ms. Smith reported the defect to Thor, or to an authorized servicing dealer of Thor, during the term of the warranty. Tex. Occ. Code § 2301.603(b).
9. Although Thor's express limited warranty applicable to the motorhome was expired on the date of hearing, Thor's obligation extends beyond the expiration date of a warranty because Ms. Smith established a rebuttable presumption that a reasonable number of attempts were made to correct a warrantable defect in the motorhome's slideout system, yet the same defect continues to exist. Tex. Occ. Code §§ 2301.605(a)(1) and (3).
10. Ms. Smith mailed written notice of the defect in the motorhome's slideout system to Thor, and Thor was given an opportunity to cure the defect. Tex. Occ. Code § 2301.606(c).
11. Thor failed to prove as an affirmative defense, that the defective condition of the slideout system is the result of abuse, neglect, or unauthorized modification or alteration of the motorhome. Tex. Occ. Code § 2301.606(b)(1).
12. Based on the above Findings of Fact and Conclusions of Law, Ms. Smith is entitled to repurchase or replacement relief under Texas Occupations Code § 2301.604(a).
13. Because Ms. Smith's motorhome qualifies for replacement or repurchase, she is entitled to reimbursement for incidental expenses, including attorney's fees that are reasonable in amount. 43 Tex. Admin. Code § 215.209.
14. Based on the above Findings of Fact and Conclusions of Law, Thor is required to repurchase Ms. Smith's motorhome. Tex. Occ. Code § 2301.604(a)(1).

ORDER

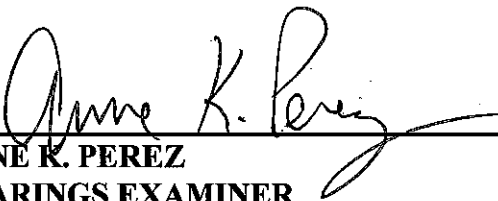
Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that:

1. Thor shall accept the return of the motorhome from Ms. Smith. Thor shall have the right to have its representatives inspect the motorhome upon the return by Ms. Smith. If from the date of the hearing to the date of repurchase the motorhome is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;
2. Thor shall repurchase the subject motorhome in the amount of **\$112,802.25**. The refund shall be paid to Ms. Smith and the motorhome lien holder as their interests require. If clear title to the motorhome is delivered to Thor, then the full refund shall be paid to Ms. Smith. At the time of the return, Thor or its agent is entitled to receive clear title to the motorhome. If the above noted repurchase amount does not pay all liens in full, Ms. Smith is responsible to provide Thor with clear title to the motorhome;
3. Ms. Smith is entitled to reimbursement of attorney fees in the amount of **\$7,000.00**;
4. Within 30 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject motorhome. If the repurchase of the subject motorhome is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31st calendar day from receipt of this order, Thor is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Ms. Smith' refusal or inability to deliver the motorhome with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Ms. Smith and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
5. Thor, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the motorhome prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
6. Thor, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired motorhome in a conspicuous place, and upon the first retail sale of the

motorhome, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and

7. Thor, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the motorhome within 60 calendar days of the transfer.

SIGNED December 23, 2014.



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