

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0280 CAF**

**STEPHANIE MAGNESS and
CAMERON MAGNESS,
Complainants**

v.

**FOREST RIVER, INC.,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Stephanie Magness and Cameron Magness (Complainants) filed a complaint with the Texas Department of Motor Vehicles seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in their 2015 Coachmen Mirada manufactured by Forest River, Inc. (Respondent). The hearings examiner concludes that the Respondent was not given an opportunity to repair the alleged defects. Consequently, the Complainants' vehicle does not qualify for repurchase/replacement. However, the vehicle does qualify for certain warranty repairs.

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 October 27, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. The record closed on the same day. The Complainants represented themselves. Mel Williams, Owner Relations Manager, represented the Respondent, Forest River, Inc.

II. Discussion

A. Applicable Law

The Lemon Law, in part, requires a manufacturer of a motor vehicle to repurchase or replace a vehicle when the manufacturer is "unable to conform a motor vehicle to an applicable

express warranty.”¹ Additionally, warranty repair under Section 2301.204 of the Texas Occupations Code requires a “defect in a motor vehicle that is covered by a manufacturer’s . . . warranty agreement applicable to the vehicle.”² Accordingly, for a vehicle to be eligible for repurchase or replacement, or even warranty repair, the vehicle must have a defect covered by a warranty (warrantable defect).

Further, for a vehicle to qualify for replacement or repurchase, a warrantable defect must either (1) create a serious safety hazard or (2) substantially impair the use or market value of the vehicle, despite a “reasonable number of attempts” at repair.³ The Lemon Law defines “serious safety hazard” as a life threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁴ The Department applies a reasonable purchaser standard for determining whether the defect substantially impairs the value of the vehicle.⁵ The Lemon Law provides three ways to establish a rebuttable presumption that a reasonable number of repair attempts have been undertaken.⁶ The first applies generally,⁷ the second applies to serious safety hazards,⁸ and the third applies to vehicles out of service for repair for at least 30 days.⁹

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;¹⁰ (2) the manufacturer was given an

¹ TEX. OCC. CODE § 2301.604(a).

² TEX. OCC. CODE § 2301.204.

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ “[F]actfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.” *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

⁶ TEX. OCC. CODE § 2301.605(a).

⁷ TEX. OCC. CODE § 2301.605(a)(1).

⁸ TEX. OCC. CODE § 2301.605(a)(2).

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.606(c)(1).

opportunity to cure the defect or nonconformity;¹¹ and (3) the owner filed the Lemon Law complaint within six months after the earliest of: the warranty's expiration date or 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

B. Complainants' Evidence and Arguments

On September 25, 2014, the Complainants, purchased a new 2015 Coachmen Mirada from Motor Home Specialist, LP, an authorized dealer of the Respondent, in Alvarado, Texas.¹³ The vehicle had 1,145 miles on the odometer at the time of purchase.¹⁴ The vehicle's limited warranty covers the vehicle for one year from the date of purchase.¹⁵

On June 1, 2015, the Complainants filed a Lemon Law complaint (Complaint) alleging that: *the generator will not stay running and runs on the high range of normal; the vehicle leans to the passenger side; paint is peeling on a slide out; kitchen floor linoleum has a cut; auto-leveling jacks do not work at all or would not level the vehicle; underside of vehicle is rusting; generator is corroding; driver's side camera has condensation on the lens; bathroom skylight is cracked; passenger fender paint is discolored; blinds are crooked or will not stay up; white film on entry door window; entry step will not fold; temperature gauge will not work; latch on bedroom television is broken; wiring harness is unsecured; entry door is hard to open/close; windshield privacy curtains are missing hooks; kitchen cabinet doors are not level; and pull-out couch legs are not properly installed.*¹⁶ The following issues have been resolved prior to the hearing: the generator not running; vehicle leaning; paint peeling on the slide out; cut on the linoleum floor; auto-leveling jacks; side camera condensation; bathroom skylight; fender paint; blinds; temperature gauge; television latch; entry door; front windshield privacy curtain; and pull-out couch legs. Additionally, Mr. Magness instructed the dealer not to work on the kitchen cabinets. Accordingly, the following complaint issues remain: the generator running on the high range of

¹¹ TEX. OCC. CODE § 2301.606(c)(2).

¹² TEX. OCC. CODE § 2301.606(d)(2).

¹³ Complainants' Ex. 1, Sales Agreement.

¹⁴ Complainants' Ex. 2, Odometer Disclosure Statement.

¹⁵ Complainants' Ex. 11, Coachmen Motorized Owner's Manual at 2.

¹⁶ Resolved issues are shown in italics.

normal; rust on the vehicle's underside; corroding generator; film on door window; entry step will not fold; and an unsecured wiring harness. The Complainants also identified the following issues not included in the complaint: damage on the bathroom ceiling; screws protruding from the back-up camera brackets; the refrigerator only works with the generator running or with the vehicle plugged in; refrigerator does not cool well; awning will not roll up on the first try; cut in the floor by the half bath; tile replacement looks like a patch; and the spice rack latch is broken.

The Complainants took the vehicle to a dealer to address warranty issues as shown below:

Date	Miles	Issue
July 27, 2015	5,921	Generator will not continue running; vehicle leans; paint peeling; cut in linoleum; auto-leveling jacks inoperable; underside rusting; condensation on camera lenses; cracked bathroom skylight; fender paint discolored; window blinds crooked or will not stay up; film on door window; step works intermittently and is rusted; television latch broken; wiring harness not secured; door hard to open/close; front windshield privacy curtain missing hoods; kitchen cabinet doors not level; pull-out couch legs not installed properly; rough/damaged shower ceiling; refrigerator not working on shore power and not getting cold; awning will not roll up on first try; rock chips in windshield sublet ¹⁷

In addition, the generator itself had two repairs.¹⁸

C. Respondent's Evidence and Arguments

Mr. Williams testified that the Respondent did not have a final repair attempt. Mr. Williams also noted that the manufacturer's warranty excluded the generator.¹⁹ Moreover, the warranty also excluded damage due to corrosion and environmental effects.²⁰

D. Analysis

Most of the issues alleged in the complaint were resolved prior to the hearing, leaving the following issues for resolution: the generator running on the high range of normal; rust on the

¹⁷ Complainants' Ex. 8, Work Order 27279.

¹⁸ Complainants' Ex. 9, Power Field Services Repair Order; Complainants' Ex. 10, Power Field Services Repair Order.

¹⁹ Complainants' Ex. 11, Coachmen Motorized Owner's Manual at 2 and 5.

²⁰ Complainants' Ex. 11, Coachmen Motorized Owner's Manual at 2.

vehicle's underside; corroding generator; film on door window; entry step will not fold; and an unsecured wiring harness. The Complainants identified some additional issues at the hearing, but those issues were not included in the complaint and therefore exceed the scope of this proceeding.²¹

As an initial matter, the Lemon Law prohibits repurchase or replacement unless the manufacturer (as opposed to the dealer) had an opportunity to repair the vehicle. Specifically, “[a]n order issued under this subchapter may not require a manufacturer . . . to make a refund or to replace a motor vehicle unless . . . the manufacturer . . . has been given an opportunity to cure the alleged defect or nonconformity.”²² In this case, the record does not show that the Respondent itself had an opportunity to repair the vehicle. Consequently, repurchase or replacement relief does not apply in this case. Nevertheless, repair relief may be available for any warrantable defects.

In the present case, the conditions relating to rust and the generator are not warrantable defects. The warranty expressly excludes “damage to the unit where damage is due to condensation . . . or exposure to the elements.”²³ Accordingly, rust, which may result from condensation or exposure to the elements (e.g., moisture) is not a warrantable condition. Further, the Respondent “makes no warranty with regard to, but not limited to, the chassis including without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, routine maintenance, equipment and appliances, or audio and/or video equipment.”²⁴ The Owner's Manual specifically lists the generator as a component covered by a separate warranty provided by the component manufacturer and not by the Respondent.²⁵ Although the warranty excludes the generator and rust issues, the manufacturer does warrant that “the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to the Warrantor.”²⁶ Accordingly, the film on the door window, the entry step not folding, and the unsecured wiring harness appear to be warrantable and therefore subject to warranty repair relief. Additionally, to the extent the Complainants reported any warrantable defects to the Respondent

²¹ The complaint identifies and limits the issues to be addressed in this proceeding. *See* TEX. OCC. CODE § 2301.204; TEX. GOV'T CODE §§ 2001.051-2001.052.

²² TEX. OCC. CODE § 2301.606(c)(2).

²³ Complainants' Ex. 11, Coachmen Motorized Owner's Manual at 2.

²⁴ Complainants' Ex. 11, Coachmen Motorized Owner's Manual at 2.

²⁵ Complainants' Ex. 11, Coachmen Motorized Owner's Manual at 5.

²⁶ Complainants' Ex. 11, Coachmen Motorized Owner's Manual at 2.

or Respondent's authorized dealer or service center before the warranty expired, the Respondent has a continuing obligation to address and repair or correct those warrantable defects even if they recur after the warranty expires.²⁷

III. Findings of Fact

1. On September 25, 2014, the Complainants, purchased a new 2015 Coachmen Mirada from Motor Home Specialist, LP, an authorized dealer of the Respondent, in Alvarado, Texas. The vehicle had 1,145 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty covered the vehicle for one year from the date of purchase.
3. The warranty covers substantial defects in materials and workmanship in the body structure of the vehicle attributable to the Respondent.
4. The warranty excludes damage due to condensation or exposure to the elements.
5. The warranty also excludes the chassis, including without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, routine maintenance, equipment and appliances, or audio and/or video equipment.
6. The vehicle's warranty expired on September 25, 2015.
7. On June 19, 2015, the Complainants mailed a written notice of defect to the Respondent.
8. On June 1, 2015, the Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) alleging that: the generator will not stay running and runs on the high range of normal; the vehicle leans to the passenger side; paint is peeling on a slide out; kitchen floor linoleum has a cut; auto-leveling jacks do not work at all or would not level the vehicle; underside of vehicle is rusting; generator is corroding; driver's side camera has condensation on the lens; bathroom skylight is cracked; passenger fender paint is discolored; blinds are crooked or will not stay up; white film on entry door window; entry step will not fold; temperature gauge will not work; latch on bedroom television is broken; wiring harness is unsecured; entry door is hard to open/close;

²⁷ TEX. OCC. CODE §§ 2301.204, 2301.603.

- windshield privacy curtains are missing hooks; kitchen cabinet doors are not level; and pull-out couch legs are not properly installed.
9. The following issues were resolved prior to the hearing: the generator not running; vehicle leaning; paint peeling on the slide out; cut on the linoleum floor; auto-leveling jacks; side camera condensation; bathroom skylight; fender paint; blinds; temperature gauge; television latch; entry door; front windshield privacy curtain; and pull-out couch legs. Additionally, Mr. Magness instructed the dealer not to work on the kitchen cabinets.
 10. The following complaint issues remained unresolved: the generator running on the high range of normal; rust on the vehicle's underside; corroding generator; film on door window; entry step will not fold; and an unsecured wiring harness.
 11. The warranty does not cover the generator or rust issues.
 12. On August 18, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainants and the Respondent, Forest River, Inc., 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.
 13. The hearing in this case convened on October 27, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. The record closed on the same day. The Complainants represented themselves. Mel Williams, Owner Relations Manager, represented the Respondent, Forest River, Inc.
 14. At the hearing, the Complainants also identified the following issues not included in the complaint: damage on the bathroom ceiling; screws protruding from the back-up camera brackets; the refrigerator only works with the generator running or with the vehicle plugged in; refrigerator does not cool well; awning will not roll up on the first try; cut in the floor by the half bath; tile replacement looks like a patch; and the spice rack latch is broken.
 15. The vehicle's odometer showed 7,108 miles at the time of the hearing.
 16. The Respondent was not given an opportunity to cure the alleged defect or nonconformity.

IV. Conclusions of Law

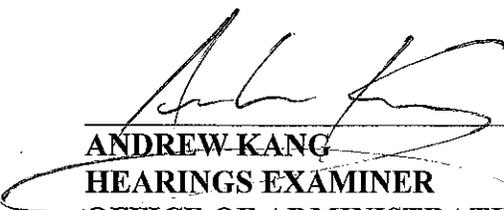
1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, 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 Complainants timely filed a sufficient complaint with the Department. TEX. OCC. CODE §§ 2301.204, 2301.606(d); 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052; 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainants bear the burden of proof in this matter. 43 TEX. ADMIN. CODE § 215.206.66(d).
6. The complaint identifies and limits the issues addressed in this proceeding. *See* TEX. OCC. CODE § 2301.204; TEX. GOV'T CODE §§ 2001.051-2001.052.
7. The Complainants' vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.606(c)(2).
8. The Respondent has a continuing obligation to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's authorized dealer or service center before the warranty expired. TEX. OCC. CODE §§ 2301.204, 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall repair the vehicle's door window, the entry step, and unsecured wiring harness. Within 30 days after the date this Order becomes final under Texas Government Code § 2001.144, the parties shall complete the delivery and repair of the subject vehicle. However, if the Department determines the Complainants' refusal or inability to deliver the vehicle caused the failure to complete the required repair, the Department

may consider the Complainants to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED December 22, 2015



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