

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0367 CAF**

**KENNETH WIENKEN,
Complainant**

v.

**JAYCO INC. and
FORD MOTOR COMPANY,
Respondents**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Kenneth Wienken (Complainant) 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 his vehicle manufactured by Jayco Inc. and Ford Motor Company (Respondents). The hearings examiner concludes that the subject vehicle has a warrantable defect. However, the vehicle did not have a reasonable number of repairs. Consequently, the Complainant's vehicle only qualifies for warranty repair relief.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and recessed on March 30, 2016, in Sealy, Texas and reconvened and adjourned on May 4, 2016, in Austin, Texas before Hearings Examiner Andrew Kang. The record closed on May 4, 2016. Charley Smith, attorney, and Kacie Murphy, attorney, represented the Complainant. The Complainant testified for himself and Rose Wienken also testified for the Complainant. John Arnold, attorney, represented Jayco and Eric Thomas, Senior Electrical Engineer, and Craig Newcomer, Consumer Affairs Manager, testified for Jayco. Maria Diaz, Consumer Legal Analyst, represented Ford and Brian Jay, Field Service Engineer, testified for Ford.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief

A vehicle qualifies for repurchase or replacement if the manufacturer cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”² In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must continue to exist after a “reasonable number of attempts” at repair.³ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed written notice of the defect to the manufacturer, (2) an opportunity to repair by the manufacturer, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

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

b. Substantial Impairment of Use or Value

i. Impairment of Use

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

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

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

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”⁶

c. Reasonable Number of Repair Attempts

The Lemon Law provides three ways to establish a rebuttable presumption that a reasonable number of repair attempts have been undertaken.⁷ The first applies generally,⁸ the second applies to serious safety hazards,⁹ and the third applies to vehicles out of service for repair for at least 30 days.¹⁰

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

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and: (A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever occurs 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 occurs first, immediately following the date of the second repair attempt.¹¹

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

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

⁷ TEX. OCC. CODE § 2301.605(a).

⁸ TEX. OCC. CODE § 2301.605(a)(1).

⁹ TEX. OCC. CODE § 2301.605(a)(2).

¹⁰ TEX. OCC. CODE § 2301.605(a)(3).

¹¹ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and: (A) at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.¹²

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

[A] nonconformity still exists that substantially impairs the vehicle's use or market value and: (A) the vehicle is 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.¹³

However, the statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹⁴ Furthermore, the Department adopted a decision implying that if the consumer takes the vehicle for a service visit then that visit would constitute a repair attempt unless the consumer was at fault for failure to repair the vehicle.¹⁵

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;¹⁶ (2) the manufacturer was given an

¹² TEX. OCC. CODE § 2301.605(a)(2).

¹³ TEX. OCC. CODE § 2301.605(a)(3).

¹⁴ “[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’” *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ).

¹⁵ “[O]nly those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.” *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication).

¹⁶ TEX. OCC. CODE § 2301.606(c)(1). Note: the Lemon Law does not define the words “mailed” or “mail”, so under the Code Construction Act, the common usage of the word applies. TEX. GOV'T CODE § 311.011. Dictionary.com defines “mail” as “to send by mail; place in a post office or mailbox for transmission” or “to transmit

opportunity to cure the defect or nonconformity;¹⁷ and (3) the owner or someone on behalf of 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.¹⁸

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair under Section 2301.204 of the Texas Occupations Code if the vehicle has a "defect . . . that is covered by a manufacturer's . . . warranty agreement applicable to the vehicle."¹⁹

3. The Complaint Limits the Issues in this Case

The law limits the scope of this case to the issues identified in the complaint and any amendments.²⁰ The pleadings should state "sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law."²¹

A. Summary of Complainant's Evidence and Arguments

On September 5, 2014, the Complainant, purchased a new 2014 Greyhawk 29KS from Southwest RV Centers, LLC dba Camping World RV Supercenter, an authorized dealer of the Respondent, Jayco Inc., in Katy, Texas. The vehicle had 1,263 miles on the odometer at the time of purchase. Jayco's limited warranty covers the house portion of the vehicle for two years or 24,000 miles, whichever occurs first. Ford's limited warranty provides bumper to bumper coverage of the vehicle's chassis for three years or 36,000 miles, whichever occurs first.

by email." mail. Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://www.dictionary.com/browse/mail> (accessed: April 01, 2016).

¹⁷ TEX. OCC. CODE § 2301.606(c)(2). Note: a repair visit to a dealer satisfies the "opportunity to cure" requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer. See *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

¹⁸ TEX. OCC. CODE § 2301.606(d)(2).

¹⁹ TEX. OCC. CODE § 2301.204.

²⁰ The complaint identifies the issues to be addressed in this proceeding. See TEX. OCC. CODE § 2301.204; TEX. GOV'T CODE §§ 2001.051-2001.052.

²¹ 43 TEX. ADMIN. CODE § 215.202(b).

In relevant part, the Complainant took the vehicle to a dealer for service as shown below:

Date In/Out	Miles	Issue
September 26, 2014 October 31, 2014	1,386	Voltage at battery, rattle in front end, leveling jack rubbing and hitting frame, battery drawer does not slide out, bedroom vent fan opens but does not turn on (customer advised to use wall switch to operate fan), window frame loose, water heater, customer wanted to know what the two switches are for in the bathroom, ladder missing, keyless entry shorting out and smoking ²²
October 27, 2014 October 31, 2014	1,386	Noise under the left front floor (Ford part) ²³
November 3, 2014 November 4, 2014	1,386	Secured bunk ladder, secured battery cable, reset control for leveling jacks, replaced keyless entry door pad ²⁴
November 15, 2014 -	1,525.5	Chassis battery draining, radio in coach does not match manual, customer wants to know how to program keypad ²⁵
January 2, 2015 February 4, 2015	2,187	Cannot control water heater temperature, CO detector going off, chassis battery voltage goes down, passenger side windshield wiper bent, customer wants diagrams for 120v system and plumbing ²⁶
July 1, 2015 -	2,554	Main slide inoperable, water heater inoperable, front/main TV inoperable with DVD player, water heater temperature control inoperable, window squeaking, driver's seat too high ²⁷
October 23, 2015 December 10, 2015	2,642.9	Chassis and house batteries drain in less than a week, squeak in window ²⁸
December 15, 2015 December 16, 2015	2,675	Batteries go dead after sitting, driver's seat will not move close enough to pedals for customer ²⁹

Jayco's final opportunity to repair the vehicle occurred on October 23, 2015. Ford's final opportunity to repair the vehicle occurred on December 16, 2015.

On February 4, 2015, the Complainant mailed a written notice of defect to Jayco. On August 25, 2015, the Complainant filed a Lemon Law complaint (Complaint) with the Texas

²² Complainant's Ex. G, Work Order 87320.

²³ Complainant's Ex. G, Work Order 87320A.

²⁴ Complainant's Ex. G, Work Order 87320B.

²⁵ Complainant's Ex. G, Work Order 88047.

²⁶ Complainant's Ex. G, Work Order 88730.

²⁷ Complainant's Ex. G, Work Order 91649.

²⁸ Complainant's Ex. G, Work Order 93414.

²⁹ Complainant's Ex. G, Invoice 821251.

Department of Motor Vehicles (Department) alleging that: electrical issues caused the chassis and house batteries to drain, a window squeaked, the chassis squeaked under the driver's seat, the auto leveling system did not work, the battery drawer would not slide out, the bedroom vent fan did not work properly, the water heater did not work properly, the switches in the bathroom were not identified, the vehicle did not have a manual for the radio or for the keyless entry, the carbon monoxide (CO) detector would sound an alarm when running the furnace, a windshield wiper was bent, the manual did not have electrical wiring diagrams, the main slide did not work, the front TV did not work with the DVD player, the generator would not start, and the driver's seat was too high. The Complaint itself appears to be the first written notice of defect provided to Ford.

The Complainant testified that he experienced two occasions with problems involving the CO detector. In late December of 2014, while he had the vehicle parked at his house (under a shed, open on four sides, about eight feet behind the garage) and turned on the furnace. The CO detector sounded an alarm after a few minutes, so he turned off the furnace and opened the doors and windows, after which the alarm stopped. The wind had blown the furnace's exhaust through the doorway. He affirmed that the CO detector's user manual stated that only CO would set off the CO alarm and that CO can be deadly. The CO alarm sounded again in January of 2016 while he worked in the yard with the vehicle stored at the same location with nothing on in the vehicle, plugged into shore power, with the house battery off (with the disconnect active). When checking the alarm, he saw the light for CO on. After opening the windows and doors, the CO detector reset itself. The Complainant contended that the vehicle still had a problem even after a repair to seal to seal the doorway.

Although the Complainant purchased the vehicle on September 5, 2014, he did not actually take possession of the vehicle until September 19, 2014, because he noticed a squeak under the driver's seat. He added that on September 26, 2014, he took the vehicle to the dealer, Camping World, to address the following: auto-leveler not working, squeak in the chassis, house battery drawer would not come out, vent fan in bedroom not working properly, squeak in window above table, water heater issue, switches unidentified, ladder missing for bunk beds, and the keyless entry shorted out. The vehicle spent 42 days out of service for repair of these issues. On January 2, 2015, the Complainant took the vehicle back to the dealer because of the water heater. When trying to take a shower, the water would successively turn cold and hot. The vehicle was out of service for 35 days for this repair visit. The Complainant took the vehicle in again for the water heater on July

1, 2015. The vehicle was out of service for 37 days for this repair visit. At this visit, the dealer notified the Complainant that the vehicle had a voltage issue. The Complainant also testified that the window squeak issue continued to exist and he heard it the morning of the hearing. The Complainant clarified that the vehicle had two squeaks: one under the seat (involving the jack issue) and the other by a window. The Complainant had taken the vehicle in for the window squeak on July 1, 2015, and received the vehicle back on August 7, 2015, a total of 37 days out for repair (the same time period when the water heater repair occurred). He stated that the water heater issue appeared to have been corrected. The vehicle went for service again for the window squeak on October 23, 2015 and remained at the dealer for 55 days. In total, the vehicle was out of service for repairs for 134 days.

The Complainant first noticed electrical issues right after bringing the vehicle home. The auto leveler did not work, the vehicle had issues with the water heater, the vent (which the Complainant believed to be more of a mechanical rather than electrical issue), the vehicle had to have the batter cable rerouted, and switches were not identified. The Complainant noted that he first experienced a battery dying approximately two days after bringing the vehicle home. He had turned everything off and went to move the vehicle but the engine did not start. Subsequently, the vehicle needed a jump start, despite not using the vehicle and keeping it parked. Additionally, the house battery drained despite not using the batteries and being connected to shore power. The Complainant stated he received a report that Jayco hooked up the radio differently than Ford would have done, which may be draining the battery.

The Complainant and Jayco stipulated to the reasonableness of the Complainant's \$8,000 in attorneys' fees. Ford pointed out that it did not have an attorney appear in this proceeding.

B. Summary of Jayco's Evidence and Arguments

On cross-examination by Jayco, the Complainant confirmed that he did not experience any CO alarms in conjunction with using the furnace after the repair to seal the doorway to prevent penetration of exhaust into the cabin. He also acknowledged the possibility that the CO detector detected other substances in the air, including chemicals used in the manufacture of the vehicle. The Complainant conceded that the window squeak did not substantially impair the use of the vehicle, but constituted an annoyance. He also affirmed that the water heater's temperature issue was resolved; the auto leveling system only had two repair attempts; and battery cables were

reconfigured to allow the house battery tray to slide out. The Complainant confirmed that shore power kept the house battery charged (but not the chassis battery) and running the engine would charge the chassis battery.

Mr. Thomas explained that Jayco receives the chassis from Ford as a cutaway: the back end cut away, with rails, with the radio deleted, and the dash and cab intact. He found the vehicle's battery disconnect switch working properly—the “disconnect” disconnects house components from the battery. He determined whether the chassis battery had any irregularity by disconnecting the Ford chassis from Jayco's house (disconnecting tail light connectors, dash connectors and isolator relay). After disconnecting the Jayco house from the Ford Chassis, Mr. Thomas measured the amp draw at the chassis battery and found that it started at 0.55 amps and went down to 0.14 amps. After disconnection, the Jayco components would not have contributed to the amp draw. Mr. Thomas also explained that the Jayco installed stereo would not drain the battery with the ignition off. He concluded that the Ford side of the vehicle should be examined for the amp draw. Mr. Thomas found the CO detector to be operating properly as well as the leveling jacks. Mr. Newcomer testified that the vehicle's owner's manual explains that the CO detector may detect fumes/vapors other than CO and propane, such as glue and other adhesive vapors. Further, the fact that the alarm would cease after airing the vehicle out indicates that the CO detector is functioning properly.

C. Summary of Ford's Evidence and Arguments

On cross-examination by Ford, the Complainant acknowledged that he did not contact Ford prior to September of 2014 to address any chassis concerns. He also confirmed that Ford did not have any opportunity to repair the vehicle prior to the final opportunity for repair.

Ms. Diaz pointed out that Ford's warranty began to run from December 16, 2013, shortly after Camping World acquired the chassis from Ford. Accordingly, the Ford warranty would expire by December 16, 2016. Mr. Jay testified that he did not have Jayco's wiring documents and he was not familiar with the disconnects and relay. He did examine whether the battery was holding a charge, whether it would start the vehicle, hold a charge. He also evaluated the vehicle for noise and test drove it. Mr. Jay concluded that the Ford systems functioned properly. He explained that he did not disconnect anything during his inspection of the vehicle. Mr. Jay could not confirm with 100% certainty if a continued battery drain originated on the Jayco side since he did not know

where the Jayco house tied into the Ford chassis. Mr. Jay could not find anything on the Ford side that would have an abnormal drain. Mr. Jay also stated that the vehicle only had one Ford service visit for the battery drain and a prior visit for a bushing.

D. Inspection and Test Drive

The driver's seat height did not appear to be a manufacturing defect but simply a product of its design. The window above the dinette did squeak during the test drive.

E. Analysis

The Lemon Law does not apply to all problems a complainant may have with a vehicle but only to warrantable defects, i.e., defects covered by a warranty. Jayco's warranty does not cover most of the issues identified in the Complaint. Jayco's limited warranty "only covers substantial defects in materials, components, or parts of the RV attributable to Jayco. It does not replace, modify, or apply to the warranties provided by the manufacturers that supply the products used by Jayco to assemble the RV, like the chassis."³⁰ Furthermore, the warranty includes significant exclusions:

By way of example only, this limited warranty does not cover any of the following: defects in materials, components or parts of the RV not attributable to Jayco; . . . imperfections that do not affect the suitability of the RV for its intended purpose of recreational use or items that are working as designed but that you are unhappy with. . . .

In addition, this limited warranty does not cover any material, component or part of the RV that is warranted by another entity, including, by way of example, the automotive chassis and power train, steering, handling, braking, wheel balance, muffler, tires, tubes, batteries, gauges, generator, hydraulic jacks, inverter, converter, microwave, television, DVD/CD player, radio, speakers, television, refrigerator, range, hot water heater, water pump, stove, carbon monoxide detector, smoke detector, propane detector, furnace or any air conditioner.³¹

Accordingly, Jayco's warranty does not cover the squeaking window because it is not a substantial defect and it does not affect the vehicle's intended use. The auto-leveling jacks system, the

³⁰ Jayco Exhibit 1, Jayco 2014 Greyhawk Class C Motorhomes at 1-8 (emphasis added).

³¹ Jayco Exhibit 1, Jayco 2014 Greyhawk Class C Motorhomes at 1-9 to 1-10 (emphasis added).

bedroom vent fan, water heater, carbon monoxide detector, the TV and DVD player, and generator all appear to be components manufactured by third parties and not warranted by Jayco. Given the available evidence, the chassis squeak, battery drawer, bent windshield wiper, main slide, and water heater all appear to have been successfully repaired or do not otherwise present an existing defect. The claims regarding not identifying switches in the bathroom, missing manuals for the radio and keyless entry, the lack of electrical wiring diagrams in the manual do not allege any defects in materials, components, or parts of the RV. Rather they only concern a lack of information about materials, components, or parts. Inspection of the driver's seat did not reveal any defects. Rather, the height appeared to simply be a product of its design, which may not be desirable but is not a defect. Consequently, these issues provide no basis for any relief. The battery drain and exhaust penetration/CO detector issues are addressed below.

1. Battery Drain

The parties do not dispute the existence of an excessive amperage draw. The question is whether the draw originates from Jayco's house or Ford's chassis. Mr. Jay concluded that the excessive amp draw occurred in Jayco's part of the vehicle. Likewise, Mr. Thomas indicated that the Ford side should be examined for the amp draw. However, Mr. Jay did not have the benefit of any Jayco wiring diagrams and did not disconnect the Jayco part of the vehicle from the Ford part of the vehicle. On the other hand, Mr. Thomas disconnected the house wiring from the chassis, thereby isolating Jayco's house portion of the vehicle from Ford's chassis portion of the vehicle when examining the vehicle for abnormal amp draws. Moreover, Mr. Jay acknowledged that he could not confirm with complete certainty that the abnormal draw originated in the Jayco side. Given these considerations, the amp draw appears more likely to originate from the Ford side than from the Jayco side of the vehicle. Nevertheless, the vehicle has only had one repair attempt by Ford or a franchised Ford dealer addressing the battery drain issue. Therefore, the vehicle has not had the reasonable number of repair attempts necessary for repurchase or repair relief.

2. Furnace Exhaust Penetration and CO Detector

The evidence indicates that sealing the doorway successfully resolved the furnace exhaust entering the vehicle since operating the furnace no longer activated the CO alarm. However, as previously explained, the CO detector itself is not a warrantable item. The warranty specifically lists "carbon monoxide detector" and "propane detector" as items not covered by Jayco's warranty

and warranted instead by the third party manufacturer of that component. Consequently, neither the furnace exhaust penetration nor the CO detector support granting any relief.

III. Findings of Fact

1. On September 5, 2014, the Complainant, purchased a new 2014 Greyhawk 29KS from Southwest RV Centers, LLC dba Camping World RV Supercenter, an authorized dealer of the Respondent, Jayco Inc., in Katy, Texas. The vehicle had 1,263 miles on the odometer at the time of purchase.
2. Jayco's limited warranty covers the house portion of the vehicle for two years or 24,000 miles, whichever occurs first. Ford's limited warranty provides bumper to bumper coverage of the vehicle's chassis for three years or 36,000 miles, whichever occurs first.
3. The vehicle's warranties were in effect at the time of the hearing.
4. The Complainant took the vehicle to a dealer for repair as shown below:

Date In/Out	Miles	Issue
September 26, 2014 October 31, 2014	1,386	Voltage at battery, rattle in front end, leveling jack rubbing and hitting frame, battery drawer does not slide out, bedroom vent fan opens but does not turn on (customer advised to use wall switch to operate fan), window frame loose, water heater, customer wanted to know what the two switches are for in the bathroom, ladder missing, keyless entry shorting out and smoking
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November 3, 2014 October 31, 2014	1,386	Secured bunk ladder, secured battery cable, reset control for leveling jacks, replaced keyless entry door pad
November 15, 2014 -	1,525.5	Chassis battery draining, radio in coach does not match manual, customer wants to know how to program keypad
January 2, 2015 February 4, 2015	2,187	Cannot control water heater temperature, CO detector going off, chassis battery voltage goes down, passenger side windshield wiper bent, customer wants diagrams for 120v system and plumbing
July 1, 2015 -	2,554	Main slide inoperable, water heater inoperable, front/main TV inoperable with DVD player, water heater temperature control inoperable, window squeaking, driver's seat too high
October 23, 2015 December 10, 2015	2,642.9	Chassis and house batteries drain in less than a week, squeak in window
December 15, 2015 December 16, 2015	2,675	Batteries go dead after sitting, driver's seat will not move close enough to pedals for customer

5. On February 4, 2015, the Complainant mailed a written notice of defect to Jayco.
6. On August 25, 2015, the Complainant filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) alleging that: electrical issues caused the chassis and house batteries to drain, a window squeaked, the chassis squeaked under the driver's seat, the auto leveling system did not work, the battery drawer would not slide out, the bedroom vent fan did not work properly, the water heater did not work properly, the switches in the bathroom were not identified, the vehicle did not have a manual for the radio or for the keyless entry, would sound an alarm when running the furnace would the carbon monoxide detector, windshield wiper was bent, the manual did not have electrical wiring diagrams, the main slide did not work, the front TV did not work with DVDs, the generator would not start, and the driver's seat was too high. The Complaint itself is the first written notice of defect mailed to Ford.

7. On November 23, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondents, Jayco Inc. 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.
8. The hearing in this case convened and recessed on March 30, 2016, in Sealy, Texas and reconvened and adjourned on May 4, 2016, in Austin, Texas before Hearings Examiner Andrew Kang. The record closed on May 4, 2016. Charley Smith, attorney, and Kacie Murphy, attorney, represented the Complainant. The Complainant testified for himself and Rose Wienken also testified for the Complainant. John Arnold, attorney, represented Jayco and Eric Thomas, Senior Electrical Engineer, and Craig Newcomer, Consumer Affairs Manager, testified for Jayco. Maria Diaz, Consumer Legal Analyst, represented Ford and Brian Jay, Field Service Engineer, testified for Ford.
9. The vehicle's odometer displayed 2,757 miles at the time of the hearing.
10. The vehicle's driver's seat appeared normal upon inspection at the hearing.
11. The vehicle exhibited some squeaking noise by a window during the test drive at the hearing.
12. The vehicle has an existing issue with the battery draining abnormally.
13. The battery drain appears more likely than not to originate from the Ford chassis.
14. The vehicle only had one repair attempt by Ford or a Ford dealer for the battery drain issue.

IV. Conclusions of Law

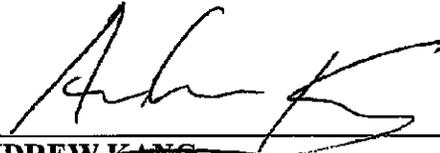
1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the 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 Complainant 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 Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant proved that the vehicle has a defect covered by Ford's warranty. TEX. OCC. CODE § 2301.604(a).
7. The Complainant did not meet the statutory requirement for a reasonable number of repair attempts for the battery drain. TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).
8. The Complainant's vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604.
9. The Respondents remains responsible to address and repair or correct any defects that are covered by the Respondents' warranties. 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 Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Complainant shall deliver the subject vehicle to the Respondent, Ford Motor Company, and Ford shall make repairs necessary to conform the vehicle's battery draining to the applicable warranty. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair, the Department may consider the Complainant 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 July 1, 2016



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