

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0104 CAF**

**STACY EGLINSDOERFER and  
MICHAEL EGLINSDOERFER,  
Complainants**

**v.**

**GULF STREAM COACH, INC.,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Stacy Eglinsdoerfer and Michael Eglinsdoerfer (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 vehicle manufactured by Gulf Stream Coach, Inc. (Respondent). The hearings examiner concludes that the vehicle has a warrantable defect that substantially impairs the use or market value of the vehicle. Consequently, the Complainants' vehicle qualifies for repurchase relief.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice of hearing<sup>1</sup> 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 the record closed on February 18, 2016, in Fort Worth, Texas, before Hearings Examiner Andrew Kang. The Complainants, represented themselves. Elizabeth Ganiere, General Counsel, appearing by telephone, represented the Respondent.

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<sup>1</sup> 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.”<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

##### b. Substantial Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. 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.”<sup>5</sup>

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<sup>2</sup> TEX. OCC. CODE § 2301.604(a).

<sup>3</sup> TEX. OCC. CODE § 2301.604(a).

<sup>4</sup> TEX. OCC. CODE § 2301.601(4).

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

**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.<sup>6</sup> The first applies generally,<sup>7</sup> the second applies to serious safety hazards,<sup>8</sup> and the third applies to vehicles out of service for repair for at least 30 days.<sup>9</sup> In the present case, the third presumption applies. 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

**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;<sup>13</sup> (2) the manufacturer was given an

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<sup>6</sup> TEX. OCC. CODE § 2301.605(a).

<sup>7</sup> TEX. OCC. CODE § 2301.605(a)(1).

<sup>8</sup> TEX. OCC. CODE § 2301.605(a)(2).

<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>10</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>11</sup> “[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).

<sup>12</sup> “[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).

<sup>13</sup> TEX. OCC. CODE § 2301.606(c)(1).

opportunity to cure the defect or nonconformity;<sup>14</sup> 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.<sup>15</sup>

## 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."<sup>16</sup>

### A. Complainants' Evidence and Arguments

On April 1, 2015, the Complainants, purchased a new 2015 Kingsport 277DDS from Fun Town RV, an authorized dealer of the Respondent, Gulf Stream Coach, Inc., in Cleburne, Texas.<sup>17</sup> The vehicle's limited warranty covers the vehicle against defects for one year from delivery. In addition, the warranty covers structural defects for two years from delivery.<sup>18</sup>

Mr. Eglinsdoerfer testified that the vehicle had problems with: the slide leaking/flooding when raining; the slide not closing satisfactorily; electrical issues (operation of slide and jacks blowing fuses); wood buckling from water damage; sheet metal buckling when pulling in the slide; water damage to the seat, cabinet doors (cabinet door fell off), and drawers (drawer will not close correctly). The Complainants' provided a photo showing exposed wiring, including wires connected by twist-on wire connectors, at the tongue.<sup>19</sup> Mr. Eglinsdoerfer testified that the vehicle malfunctioned on the morning of the hearing. Specifically, the vehicle blew a fuse when operating the jack.

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<sup>14</sup> 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).

<sup>15</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>16</sup> TEX. OCC. CODE § 2301.204.

<sup>17</sup> Complainants' Ex. 1, Purchase Order.

<sup>18</sup> Complainants' Ex. 2, Gulf Stream Coach, Inc. Limited Warranty.

<sup>19</sup> Complainants' Ex. 11, photo of exposed wiring.

In relevant part, the Complainants took the vehicle to a dealer for repair as shown below:

Date	Issue
05/29/2015	Exterior leak on slide out, water on flooring, linoleum bubbled, slide out retracting too much causing marks, exterior marine plug damaged, slide out window leaking <sup>20</sup>
06/22/2015	Slide out blowing fuses <sup>21</sup>
07/13/2015	Slide out blowing fuses <sup>22</sup>
09/24/2015	Slide too tight on top and too loose on bottom, trim coming off, drawers are not staying closed, jack keeps blowing fuses, metal bowing on outside of slide <sup>23</sup>

Mrs. Eglinsdoerfer testified that the vehicle had been under repair for 150 days. Mr. Eglinsdoerfer stated that for the September 24, 2015, repair visit, the dealer had the vehicle ready on December 29, 2015. Mr. Eglinsdoerfer confirmed that the vehicle had repairs done after the November 11, 2015, date of the written notice of defect to the Respondent. Mr. Eglinsdoerfer testified that the Respondent sent a technician (Glenn Disher) to inspect the dealer's repairs on November 25, 2015, and found no further issues. Mrs. Eglinsdoerfer explained that the Respondent's technician worked on the slide and inspected the work by the other (the dealer's) technicians. The Complainants provided a letter from the Respondent's technician advising the Complainants of his actions and findings.<sup>24</sup>

On November 11, 2015, the Complainants mailed a written notice of defect to the Respondent. On November 24, 2015, the Complainants filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) alleging that: the slide leaked; the slide scratched paint and dented the side of the vehicle; the bottom right of the slide stuck out; the slide was not level; the slide would blow fuses; leaking water buckled the flooring; the automatic jack blew fuses; the automatic jack would not retract; wood trim detached from the cabinets, shelving, and the entertainment center; a drawer did not latch correctly and opened when the vehicle moved; refrigerator did not cool; and breakers would trip when running refrigerator and

<sup>20</sup> Complainants' Ex. 5, Invoice No. 127531.

<sup>21</sup> Complainants' Ex. 6, Invoice No. 129264.

<sup>22</sup> Complainants' Ex. 7, Invoice No. 130510.

<sup>23</sup> Complainants' Ex. 8, Invoice No. 600152.

<sup>24</sup> Complainants' Ex. 10, letter from Glenn Disher to Complainants.

air conditioning at the same time.<sup>25</sup> Mr. Eglinsdoerfer stated that of the complained of issues, the vehicle continues to have electrical and slide adjustment issues.

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

The Respondent alleged that the Complainants failed to cooperate and allow for a final opportunity for repair. Ms. Ganiere testified that she tried to contact the Complainants, but due to a lack of communication, the Respondent had not been able to execute the warranty. Ms. Ganiere stated that she did not know of any existing problems until the last prehearing conference in this case and that when she contacted Mrs. Eglinsdoerfer, Mrs. Eglinsdoerfer would tell Ms. Ganiere to speak with Mr. Eglinsdoerfer, who would not be available. To show that the Respondent did not know of any ongoing issues, Ms. Ganiere referenced Mr. Disher's letter to the Complainants indicating that no further issues were found.

### **C. Inspection**

The inspection at the hearing showed that: the vehicle's power jack on the tongue failed to operate (apparently from a blown fuse) one corner of the slide out did not appear to be closed completely flush; various wood components exhibited water damage; and a cabinet door had fallen off; the wiring at the tongue had a resettable fuse installed; and the previously exposed wiring was contained in a flexible plastic conduit. In addition, the power jack on the tongue had a sticker from the dealer showing the dates of the last repair visit as September 24, 2015, through December 29, 2015.

### **D. Analysis**

The record reflects that the vehicle qualifies for repurchase/replacement relief. Although not all of the complained of issues appear warrantable,<sup>26</sup> the repurchase relief in this case only requires one currently existing warrantable defect that substantially impairs the use of value of the vehicle after over 30 days out of service for repair. The evidence clearly shows that the vehicle has

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<sup>25</sup> Complainants' Ex. 9, Lemon Law complaint form.

<sup>26</sup> In relevant part, the warranty covers "against defect in Gulf Stream materials and/or workmanship in the construction of the recreational vehicle" but expressly excludes: "[a]ppliances and component parts not manufactured by Gulf Stream, including, but not limited to, auxiliary generator power plants, refrigerators, air conditioners, water heaters, furnaces, invertors, etc." Complainants' Ex. 2, Gulf Stream Coach, Inc. Limited Warranty.

an existing problem with fuses blowing out when operating the jacks, despite four repair visits and a cumulative 150 days out for repair. Having the jacks inoperable clearly interferes with the stabilization and transportation of the vehicle. Moreover, this problem substantially impairs the vehicle's value from a reasonable prospective purchaser perspective (i.e., the defect would deter buying the vehicle or substantially reduce the willing purchase price).<sup>27</sup>

Although the Lemon Law requires a final opportunity for repair by the manufacturer, the Authorized warranty repair by a dealer after a written notice of defect to the manufacturer may constitute an opportunity to repair by the manufacturer.<sup>28</sup> In this case, the Complainants mailed a written notice of defect to the Respondent on November 11, 2015. The subject vehicle was at the dealer, Fun Town Cleburne, for warranty repair from September 24, 2015, through December 29, 2015.<sup>29</sup> On November 25, 2015, Glenn Disher, a technician of the Respondent, made adjustments to the slide out's exterior fascia, resealed the corners, tested the operation of the slide out, and inspected the repairs by the dealer's technicians.<sup>30</sup> Moreover, the Complainants testimony shows that the dealer made at least some repairs after the Complainants' written notice to the manufacturer. Although the Respondent did not have a repair attempt at its facilities, the Respondent has had an opportunity for repair according to the Lemon Law as shown by the post-notice dealer repairs and the adjustments and inspection by the Respondent's own technician.

### III. Findings of Fact

1. On April 1, 2015, the Complainants, purchased a new 2015 Kingsport 277DDS from Fun Town RV, an authorized dealer of the Respondent, Gulf Stream Coach, Inc., in Cleburne, Texas.
2. The vehicle's limited warranty covers the vehicle against defects for one year from delivery. In addition, the warranty covers structural defects for two years from delivery.
3. The vehicle's warranty was in effect at the time of the hearing.

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<sup>27</sup> *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

<sup>28</sup> *See Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

<sup>29</sup> Complainants' Ex. 8, Invoice No. 600152.

<sup>30</sup> Complainants' Ex. 10, letter from Glenn Disher to Complainants.

4. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Issue
05/29/2015	Exterior leak on slide out, water on flooring, linoleum bubbled, slide out retracting too much causing marks, exterior marine plug damaged, slide out window leaking <sup>31</sup>
06/22/2015	Slide out blowing fuses <sup>32</sup>
07/13/2015	Slide out blowing fuses <sup>33</sup>
09/24/2015	Slide too tight on top and too loose on bottom, trim coming off, drawers are not staying closed, jack keeps blowing fuses, metal bowing on outside of slide <sup>34</sup>

5. The Respondent's final opportunity for repair occurred during the September 24, 2015, repair visit.
6. On November 25, 2015, the Respondent's technician, Glenn Disher, made adjustments to the vehicle and inspected repairs.
7. The electrical issue relating to the jacks and the slide adjustment issue remained after the repair attempts.
8. On November 11, 2015, the Complainants mailed a written notice of defect to the Respondent.
9. On November 24, 2015, the Complainants filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) alleging that: the slide leaked; the slide scratched paint and dented the side of the vehicle; the bottom right of the slide stuck out; the slide was not level; the slide would blow fuses; leaking water buckled the flooring; the automatic jack blew fuses; the automatic jack would not retract; would trim detached from cabinets, shelving, and the entertainment center; a drawer does not latch correctly and opens when the vehicle moves; refrigerator did not cool; breakers would trip when running the refrigerator and air conditioning at the same time.

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<sup>31</sup> Complainants' Ex. 5, Invoice No. 127531.

<sup>32</sup> Complainants' Ex. 6, Invoice No. 129264.

<sup>33</sup> Complainants' Ex. 7, Invoice No. 130510.

<sup>34</sup> Complainants' Ex. 8, Invoice No. 600152.



10. On January 5, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainants and the Respondent, Gulf Stream Coach, 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.
11. The hearing in this case convened and the record closed on February 18, 2016, in Fort Worth, Texas, before Hearings Examiner Andrew Kang. The Complainants, represented themselves. Elizabeth Ganiere, General Counsel, appearing by telephone, represented the Respondent.
12. The inspection at the hearing showed that: the vehicle's power jack on the tongue failed to operate, apparently from a blown fuse, one corner of the slide out did not appear to be closed completely flush; various wood components exhibited water damage; and a cabinet door had fallen off.

13. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$24,968.94
Date of delivery	04/01/15
Date of first report of defective condition	05/29/15
Date of hearing	02/18/16
Days out of service	150
Useful life determination	3,650

Purchase price, including tax, title, license and registration				\$24,968.94
<i>Unimpaired Days:</i> Date of first report of defective condition less date of delivery	05/29/15	-	04/01/15	= 58
<i>Impaired Days:</i> Date of hearing less date of first report of defective condition Less days out of service for repair	02/18/16	-	05/29/15	= 265 -150 <u>115</u>
<i>Reasonable Allowance for Use Calculations:</i> Unimpaired days	58	÷	3,650	× \$24,968.94 = \$396.77
Impaired days	115	÷	3,650	× \$24,968.94 × 50% = \$393.35
<b>Total reasonable allowance for use deduction</b>				<b>\$790.11</b>
Purchase price, including tax, title, license and registration				\$24,968.94
Less reasonable allowance for use deduction				-\$790.11
Plus filing fee refund				\$35.00
<b>TOTAL REPURCHASE AMOUNT</b>				<b>\$24,213.83</b>

#### 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 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 § 206.66(d).
6. The Complainants' vehicle qualifies for replacement or repurchase. A warrantable defect that substantially impairs the use or market value of the vehicle continues to exist after a reasonable number of repair attempts. TEX. OCC. CODE § 2301.604.

### 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 **GRANTED**. It is further **ORDERED** that the Respondent shall repair the warrantable defect(s) in the reacquired vehicle identified in this Decision. **IT IS THEREFORE ORDERED** that:

1. The Respondent shall accept the return of the vehicle from the Complainants. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the Complainants. If from the date of the hearing to the date of repurchase the vehicle 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. The Respondent shall repurchase the subject vehicle in the amount of **\$24,213.83**. The refund shall be paid to the Complainants and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to the Respondent, then the full refund shall be paid to the Complainants. At the time of the return, the Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, the Complainants are responsible for providing the Respondent with clear title to the vehicle;
3. Within 20 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle 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, the Respondent 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 the Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by the Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);

4. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and
6. The Respondent, 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 vehicle within 60 calendar days of the transfer.

**SIGNED February 19, 2016**

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