

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0112 CAF**

**THERESA THOMAS,  
Complainant**

**v.**

**KEYSTONE RV COMPANY,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Theresa Thomas (Complainant) filed a complaint (Complaint) with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in her recreational vehicle manufactured by Keystone RV Company (Respondent). The record shows that the Respondent's warranty does not apply to any of the currently existing issues. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement or warranty repair.

**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 Thursday, October 13, 2016, in Lufkin, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented herself. Mark Hopkins, the Complainant's spouse, testified for the Complainant. Randall D. Davis, Product Manager, represented and testified for the Respondent 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 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.”<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).

**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.”<sup>6</sup>

**c. Reasonable Number of Repair Attempts**

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.<sup>7</sup>

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.<sup>8</sup>

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<sup>6</sup> *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.”).

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

<sup>8</sup> TEX. OCC. CODE § 2301.605(a)(3).

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>9</sup> Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.<sup>10</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 or someone on behalf of the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;<sup>11</sup> (2) the manufacturer was given an opportunity to cure the defect or nonconformity;<sup>12</sup> and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.<sup>13</sup>

**2. Warranty Repair Relief**

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer's, converter's, or

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<sup>9</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>10</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>11</sup> TEX. OCC. CODE § 2301.606(c)(1). 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 by email.” mail. Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://www.dictionary.com/browse/mail> (accessed: April 01, 2016). Also, 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department's notice of the complaint to the Respondent may satisfy the requirement that someone on behalf of the owner mailed notice of the defect/nonconformity to the Respondent.

<sup>12</sup> TEX. OCC. CODE § 2301.606(c)(2). A repair visit to a dealer can satisfy the “opportunity to cure” requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt the final repair on the manufacturer's behalf. *See Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

<sup>13</sup> TEX. OCC. CODE § 2301.606(d)(2).

distributor's . . . warranty agreement applicable to the vehicle.”<sup>14</sup> The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”<sup>15</sup>

### 3. Burden of Proof

The law places the burden of proof on the Complainant.<sup>16</sup> The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present evidence showing that every required fact is more likely than not true.<sup>17</sup>

### 4. The Complaint Identifies the Issues in this Proceeding

The Complaint identifies the issues to be addressed in this proceeding.<sup>18</sup> The Complaint 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.”<sup>19</sup> However, the parties may expressly or impliedly consent to trying issues not included in the pleadings.<sup>20</sup> Trial by implied consent occurs when a party introduces evidence on an unpleaded issue without objection.<sup>21</sup>

#### A. Complainant's Evidence and Arguments

On December 31, 2014, the Complainant, purchased a new 2015 Keystone Montana 3711FL from RV Station Ltd, an authorized dealer of the Respondent, Keystone RV Company, in

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<sup>14</sup> TEX. OCC. CODE § 2301.204.

<sup>15</sup> TEX. OCC. CODE § 2301.603(a).

<sup>16</sup> 43 TEX. ADMIN. CODE § 215.66(d).

<sup>17</sup> *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

<sup>18</sup> “In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days.” TEX. GOV'T CODE §§ 2001.051; “Notice of a hearing in a contested case must include . . . a short, plain statement of the matters asserted.” TEX. GOV'T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) (“The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.”); TEX. OCC. CODE § 2301.204(d) (“A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

<sup>19</sup> 43 TEX. ADMIN. CODE § 215.202(b).

<sup>20</sup> 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

<sup>21</sup> *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

Nacogdoches, Texas.<sup>22</sup> The vehicle's limited warranty covered the vehicle for one year from the date of purchase.<sup>23</sup> On November 30, 2015, the Complainant mailed a written notice of defect to the Respondent.<sup>24</sup> On December 3, 2015, the Complainant filed a Lemon Law complaint with the Department alleging that the air conditioning (AC) did not work properly; the slide did not work properly, the toilet did not hold water, and the air vents did not have switches to open.

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

Date	Issue
April 1, 2015	AC short cycling, freeze sensor located in blow area <sup>25</sup>
May 16, 2015	AC will not cool, no air at ducts; driver side slide out needs adjustment <sup>26</sup>
July 7, 2015	AC short cycling <sup>27</sup>
February 18, 2016	AC zones reversed; AC runs continuously in living room; AC units do not drain properly; slide out hangs and turns sideways <sup>28</sup>

Additionally, although the vehicle arrived at the dealer on December 4, 2014, the slide was inoperable, so the Complainant did not actually take delivery until December 24, 2014. Prior to delivery, the dealer repaired a loose slide out gear assembly.<sup>29</sup> Also, though the Complainant took delivery on December 24, 2014, the purchase agreement had a December 31, 2014, date.

Mr. Hopkins testified that the slide crimped the ice maker water line several times. He also pointed out that the slide tore off panels. The Complainant confirmed that the toilet and air vent issues had been successfully repaired, leaving the AC and slide issues outstanding. Mr. Hopkins described that the slide, when pushing out, veers towards one side, causing it to hang on doors and cabinets. Sometimes the slide will come out enough and others not. The malfunction damaged parts under the slide, preventing the slide from retracting. An employee of the Respondent, Brent Giggy, spent half a day getting the slide back in. The dealer, RV Station, only replaced broken

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<sup>22</sup> Complainant's Ex. 2, Purchase Agreement.

<sup>23</sup> Complainant's Ex. 1, Limited One Year Warranty.

<sup>24</sup> Complainant's Ex. 3, Notice of Defect.

<sup>25</sup> Complainant's Ex. 6, Byron's RV Repair, Invoice 16018.

<sup>26</sup> Complainant's Ex. 5, RV Station Work Orders, Work Order 7579.

<sup>27</sup> Complainant's Ex. 5, RV Station Work Orders, Work Order 7689.

<sup>28</sup> Complainant's Ex. 5, RV Station Work Orders, Work Order 8175.

<sup>29</sup> Complainant's Ex. 5, RV Station Work Orders, Work Order 7244.

parts, but did not resolve the root problem (the slide mechanism's design). Mr. Hopkins contended that the slide would not come out straight with only one cylinder pushing on one side of the slide. He opined that this was a bad design. He explained that when slide hangs, gears would break. Additionally, he believed that some of the AC problems resulted from the slide not sealing (thereby letting cool air out) and causing the AC to run all the time. Mr. Hopkins believed the problem could not be fixed without changing the design because the slide was too heavy for one cylinder. Mr. Hopkins understood that Keystone did not manufacture the slide mechanism; the Complainant identified Lippert (Lippert Components, Inc.) as the manufacturer. Mr. Hopkins stated that in one incident, the slide came out almost completely. Mr. Hopkins testified that he first noticed the slide had a problem (misaligned slide) when at the dealer to pick up the vehicle. The dealer explained that it would take care of the misalignment. He last noticed the slide problem the morning of the hearing. Mr. Hopkins stated that after repairs, the slide did not pop as before but still came out crooked. Mr. Davis added that Lippert called this "lead and follow" (the side of the slide directly driven by the hydraulic cylinder would "lead" by extending first then the other side, indirectly driven by the cylinder, would "follow", alternating from side to side until the slide completely extends). The Complainant testified that the slide fell out while at the beach for the 4th of July (2016). The Respondent's inspector came out to beach and closed the slide. Lippert subsequently repaired the vehicle at the dealer.

Mr. Hopkins explained that the front AC unit would run all the time, never cycling, never shutting off, operating loudly, and not cooling. The back AC unit would cool but stopped cooling from working so hard. Mr. Hopkins believed the dealer changed the front AC unit once and the back AC unit twice. The Complainant thought that the large window allowed heat in and covered it. She also covered the steps and took precautions to seal what needed sealing. The Complainant stated she first noticed the AC problems on January 30, 2015. Mr. Hopkins added that everything went wrong on April 1, 2015. The Complainant pointed out that they called Byron's RV Repair (an independent repair facility) at that time to address the AC. Mr. Hopkins stated that the AC would not cool but produced so much condensation that it puddled on top of the vehicle. He estimated that he last noticed the AC issues on May 30, 2016, and the Complainant concurred.

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

Mr. Davis testified that in December (2014), the dealer found a gear pack loose and the Respondent paid the claim and the dealer put the gear pack in. Next, according to the work order, when traveling, the cabinet door came open causing damage to the slide. Mr. Davis continued that the dealer ran the (kitchen) slide in and out but found nothing out of the ordinary and made no repairs. Mr. Davis stated that "lead and follow" systems are used throughout the industry and that Lippert did not commonly have problems. When the AC short cycling occurred, Byron's found the freeze sensor out of place and not in the coil. Mr. Davis explained that this would frost the coil. He agreed with Byron's assessment but contended that multiple repairs for water running off the roof was not an AC issue. Mr. Davis explained that zone 1 and zone 2 referred to the AC units (the main unit and secondary unit) as opposed to designating a physical area of the vehicle and that all coaches had this zoning. Mr. Davis stated that Dometic (Dometic Corporation) manufactured the AC units. He added that if the subject vehicle had been in a different area, they could have accomplished more. When Mr. Hopkins asked if AC problems were common for forward living (floorplans with the living area in front), Mr. Davis answered that he did not think that forward living was a problem but that the (real) problem could be a ventilation issue, more likely than an AC or zoning issue, especially given the amount of condensation from the AC unit. He elaborated that AC does not "cool" but removes heat. The AC can remove a certain amount of heat out of the air, usually about 18 to 20 degrees. The AC sucks in air through the intake vent, across the coil, the coil removes heat out of the air, and blows down the ducts and keeps recycling that same air. As long as the AC keeps removing 20 degrees of heat and keeps recycling the air. The air will get cooler and cooler. But if not moving enough air with heat from the sun, Texas' climate, and two people in the vehicle, the vehicle will never cool off with the AC removing 20 degrees of heat while adding 15 degrees of heat. That is why replacing the AC units would not make a difference. The circulation should have been checked but was not.

### **C. Inspection**

The kitchen slide extended with one side of the slide going out further than the other (lagging) side and the lagging side subsequently moving out. This (lead and follow) pattern continued until the slide completely extended. The trim on the right of the kitchen slide exhibited damage from where it contacted the adjacent cabinet doors. The hinges of the adjacent cabinet

doors appeared to have been torn out by the slide. Bolts on the frame of the slide were bent outward. During the inspection, Mr. Hopkins acknowledged that the slide operated better after the repairs by Lippert. The air conditioning was not tested because the RV did not have a generator.

#### D. Analysis

##### 1. Slide

The vehicle's warranty does not cover the slide mechanism; consequently, the vehicle does not qualify for repurchase or replacement. Although the vehicle clearly had problems, the Lemon Law only provides relief for warrantable defects, i.e., defects covered by warranty.<sup>30</sup> The Lemon Law does not require a manufacturer to provide any particular warranty coverage or any warranty coverage at all, but only requires manufacturers to comply with whatever coverage it does provide.<sup>31</sup> Therefore, if the warranty does not cover the vehicle or the complained of problem, then the Lemon Law provides no remedy. In this case, reviewing the Respondent's warranty shows that it does not cover components manufactured by third parties, such as the slide mechanism manufactured by Lippert. In general the warranty states:

COVERAGE: Except as specifically excluded below, Keystone RV Company and Dutchmen Manufacturing, a division of Keystone (hereinafter "Keystone") WARRANTS for a period of one (1) year from the date of purchase that the recreational vehicle manufactured and assembled by Keystone shall be free from defects in materials and workmanship supplied and attributable to Keystone.<sup>32</sup>

Under the heading "Warranty Exclusions", the warranty specifies that "This Limited Warranty Shall Not Apply To: • Equipment, products, components, appliances, or accessories not manufactured by Keystone whether or not warranted, including but not limited to, tires, batteries, generators, washer, dryer, electronics and other installed equipment or accessories."<sup>33</sup> The record shows that Lippert, not the Respondent, manufactured the slide mechanism. Accordingly, the Respondent's warranty provides no coverage of the slide mechanism and the Lemon Law cannot provide any relief.

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<sup>30</sup> TEX. OCC. CODE §§ 2301.603 and 2301.604.

<sup>31</sup> TEX. OCC. CODE §§ 2301.603.

<sup>32</sup> Complainant's Ex. 1, Limited One Year Warranty (emphasis added).

<sup>33</sup> Complainant's Ex. 1, Limited One Year Warranty (emphasis added).

## 2. Air Conditioning

As explained above, the Lemon Law only provides relief for defects covered by the Respondent's warranty.<sup>34</sup> The Respondent's warranty does not cover components manufactured by third parties.<sup>35</sup> In this case, the record shows that Dometic, a third party, manufactured the air conditioning unit. Consequently, as with the slide mechanism manufactured by Lippert, the Lemon Law provides no relief for any defects in the air conditioning.

## 3. Ventilation

A preponderance of the evidence supports the existence of a ventilation problem. Mr. Davis testified that the vehicle more likely had a ventilation issue rather than a problem with the air conditioners, especially given the substantial condensation pooling on the roof. Moreover, replacement of the air conditioning units apparently had no effect. Unlike the slide mechanism or air conditioning, the evidence does not show that the warranty excludes ventilation. However, neither the Complaint nor the notice of defect identified any ventilation issues. As outlined in the discussion of applicable law, if the pleadings do not include an issue, that issue may not be addressed in a proceeding. Still, the parties may expressly or impliedly consent to trying the unpleaded issue.<sup>36</sup> In this case, the Respondent, through Mr. Davis' testimony, introduced the ventilation issue at the hearing without objection. Consequently, the parties impliedly agreed to consider the issue in this proceeding. However, the repair orders shows no repair attempts addressing ventilation. Further, the Complainant's notice of defect does not identify the ventilation issue. As a result, the Lemon Law prohibits granting repurchase or replacement relief.<sup>37</sup> Nevertheless, because the vehicle has an existing warrantable defect in its ventilation, the Lemon Law allows granting repair relief.<sup>38</sup>

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<sup>34</sup> TEX. OCC. CODE §§ 2301.603 and 2301.604.

<sup>35</sup> Complainant's Ex. 1, Limited One Year Warranty.

<sup>36</sup> 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

<sup>37</sup> TEX. OCC. CODE § 2301.606(c)(1); TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).

<sup>38</sup> TEX. OCC. CODE §§ 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).

### III. Findings of Fact

1. The Complainant, purchased a new 2015 Keystone Montana 3711FL from RV Station Ltd, an authorized dealer of the Respondent, Keystone RV Company, in Nacogdoches, Texas. The Complainant actually took delivery of the vehicle on December 24, 2014. The purchase agreement listed December 31, 2014, as the agreement date.
2. The vehicle's limited warranty covered the vehicle for one year from the date of purchase.
3. The vehicle's limited warranty excludes coverage of "[e]quipment, products, components, appliances, or accessories not manufactured by Keystone whether or not warranted, including but not limited to, tires, batteries, generators, washer, dryer, electronics and other installed equipment or accessories."
4. Lippert Components, Inc. manufactured the vehicle's slide mechanism.
5. Dometic Corporation manufactured the vehicle's air conditioning units.
6. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Issue
April 1, 2015	AC short cycling, freeze sensor located in blow area
May 16, 2015	AC will not cool, no air at ducts; driver side slide out needs adjustment
July 7, 2015	AC short cycling
February 18, 2016	AC zones reversed; AC runs continuously in living room; AC units do not drain properly; slide out hangs and turns sideways

7. On December 4, 2014, prior to the Complainant taking delivery of the vehicle, the dealer repaired a loose slide out gear assembly.
8. On November 30, 2015, the Complainant mailed a written notice of defect to the Respondent. The notice of defect did not address ventilation.
9. On December 3, 2015, the Complainant filed a Lemon Law complaint with the Department alleging that the air conditioning did not work properly; the slide did not work properly, the toilet did not hold water, and the air vents did not have switches to open.
10. The toilet and air vent issues were successfully resolved prior to the hearing.

11. On January 19, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, Keystone RV 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.
12. The hearing in this case convened and the record closed on Thursday, October 13, 2016, in Lufkin, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented herself. Mark Hopkins, the Complainant's spouse, testified for the Complainant. Randall D. Davis, Product Manager, represented and testified for the Respondent the Respondent.
13. The warranty expired on December 31, 2015.
14. Mr. Davis testified that the vehicle likely had a ventilation problem rather than a problem with the air conditioning, in part citing the condensation pooling on the roof.
15. Replacement of the air conditioning units did not have any effect on the vehicle.
16. During the inspection at the hearing, the kitchen slide exhibited the "lead and follow" pattern while opening. The trim on the right of the kitchen slide showed damage from where it contacted the adjacent cabinet doors. The slide appeared to have torn out the hinges of the adjacent cabinet doors. Bolts on the frame of the slide were bent outward. Mr. Hopkins acknowledged that the slide operated better after the repairs by Lippert. The air conditioning was not tested because the vehicle did not have a generator.

#### **IV. Conclusions of Law**

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613.
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 Complainant timely filed a 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 did not prove that the vehicle has any defect in the slide mechanism or air conditioning covered by the Respondent'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 ventilation defect. TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).
8. The Complainant or a person on behalf of the Complainant did not provide sufficient notice of the ventilation defect to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
9. The Complainant's vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604 and TEX. OCC. CODE § 2301.606(c).
10. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
11. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranties. TEX. OCC. CODE §§ 2301.603.
12. The Respondent has a continuing obligation after the expiration date of the warranty to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's designated agent or franchised dealer before the warranty expired. TEX. OCC. CODE §§ 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 Respondent shall make any repairs needed

to conform the vehicle's ventilation to the applicable warranty. The Complainant shall deliver the subject vehicle to the Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.<sup>39</sup> Within 40 days after receiving the vehicle from the Complainant, the Respondent shall complete repair of the subject vehicle. 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 October 31, 2016**



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

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<sup>39</sup> (1) If a party does not timely file a motion for rehearing, this Order becomes final when the period for filing a motion for rehearing expires, or (2) if a party timely files a motion for rehearing, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Decision and Order.