

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0121 CAF**

**CARLA CLAPPER,**  
                    **Complainant**

**v.**

**FOREST RIVER, INC.,**  
                    **Respondent**

§  
§  
§  
§  
§  
§  
§

**BEFORE THE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Carla Clapper (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 her recreational vehicle (RV) manufactured by Forest River, Inc. (Respondent). The hearings examiner concludes that the subject RV does not have a warrantable defect that creates a serious safety hazard or substantially impairs the RV's use or market value. Consequently, the Complainant's RV does not qualify for repurchase/replacement but does qualify for 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 June 24, 2016, in Waco, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented and testified for herself. Warren Murphy, Assistant Director, Parts, Service, & Warranty, represented the Respondent. Mike Roberts and Basil El-Masri, both of Fun Town RV, testified for the Respondent.

---

<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>

---

<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**

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

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>11</sup>

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

---

<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).

<sup>8</sup> TEX. OCC. CODE § 2301.605(a)(1).

<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(2).

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

<sup>11</sup> 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.<sup>12</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>13</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>14</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>15</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>16</sup>

---

<sup>12</sup> TEX. OCC. CODE § 2301.605(a)(2).

<sup>13</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>14</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>15</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>16</sup> 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 by email.” mail. Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc.

(2) the manufacturer was given an opportunity to cure the defect or nonconformity;<sup>17</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>18</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 distributor's . . . warranty agreement applicable to the vehicle.”<sup>19</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>20</sup>

## 3. Burden of Proof

The law places the burden of proof on the Complainant.<sup>21</sup> The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present evidence showing that all of the required facts are more likely than not true.<sup>22</sup> For example, the Complainant must show the fact that a warrantable defect more likely than not exists. For any required fact, if the evidence weighs in favor of the Respondent or if the evidence equally supports the Complainant and the Respondent, the Respondent will prevail.

---

<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>17</sup> TEX. OCC. CODE § 2301.606(c)(2). Note: 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>18</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>19</sup> TEX. OCC. CODE § 2301.204.

<sup>20</sup> TEX. OCC. CODE § 2301.603(a).

<sup>21</sup> 43 TEX. ADMIN. CODE § 215.66(d).

<sup>22</sup> E.g., *Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

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

The Complaint identifies the issues to be addressed in this proceeding.<sup>23</sup> 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.”<sup>24</sup>

##### A. Summary of Complainant’s Evidence and Arguments

On June 24, 2015, the Complainant, took delivery of a new 2015 Palomino Solaire 315RLTSE purchased from Fun Town RV, an authorized dealer of the Respondent, Forest River, Inc., in Waco, Texas.<sup>25</sup> The Complainant noted that she actually received the RV 10 days after the initial purchase agreement date. She confirmed that she took delivery on June 24, 2015. The RV’s limited warranty covers the RV for one year from the date of purchase.<sup>26</sup>

On December 7, 2015, the Complainant e-mailed a written notice of defect to the Respondent.<sup>27</sup> On December 15, 2015, the Complainant filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) alleging that the RV could not be safely towed with a truck that the dealer’s salesperson said could safely tow the RV; the (liquid) propane (LP) leaked; a light dangled; the air conditioning (AC) and heat did not work properly; and the TV (panel) was not properly sealed.

---

<sup>23</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 also* 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>24</sup> 43 TEX. ADMIN. CODE § 215.202(b).

<sup>25</sup> Complainant’s Ex. 3, Purchase Order Dated 6/14/2015; Complainant’s Ex. 3, Purchase Order Dated 6/24/2015.

<sup>26</sup> Complainant’s Ex. 11, Limited Warranty Towable Products.

<sup>27</sup> Complainant’s Ex. 9, E-mail Dated December 7, 2015, Re: Palomino Website Service Question From Carla Clapper.

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

Date	Issue
10/01/2015	Seal around TV is not sealing; LP alarm beeping <sup>28</sup>
05/17/2016	Front AC freezes and blows hot air; LP alarm goes off randomly; light dangling by wires; TV mount will not turn; trailer sways <sup>29</sup>

### 1. Swaying

The Complainant explained that she first experienced the swaying when leaving the dealer after purchasing the RV. The Complainant testified that the RV continued to sway even after installing different hitches (on her 1/2-ton 2012 Ford F-150). To address the swaying, the complainant brought the RV in for service; pulled the camper within the manufacturer's specified (cargo carrying capacity) weight of 1,746 pounds; and used a four point hitch with sway control. The Complainant also attempted to trade the subject RV in for a smaller unit. However, the subject RV's trade-in value depreciated in less than two weeks after taking delivery. A dealer's employee, Mike Roberts, towed the subject RV with his own personal vehicle and would not let the Complainant leave because he felt the RV was unsafe to tow. The Complainant subsequently bought a 3/4 ton truck to tow the RV because the four point hitch did not help. The repair attempts improved the sway a little but the Complainant still did not feel comfortable taking the RV over 50 mph. However, she stated that the sway was not as severe when towing with her 3/4 ton truck, though still evident. She could not recall when she last towed the RV with her 1/2-ton truck.

### 2. Liquid Propane (LP)

The LP alarm first sounded on September 31, 2015, on a trip to Grand Prairie. Also, water leaked from under the RV. To address the alarm, the Complainant had the tanks removed, filled and reinstalled. However, the alarm sounded again the next day. Additionally, she noticed water pouring from under the RV. The alarm went off again when camping about March 29, 2016. She last noticed the LP alarm on June 8, 2016. She could not tell if any repairs improved the propane issue but she found that turning on the water and the LP alarm seemed to coincide. She clarified that the LP alarm issue was random, but also occurred twice with the water running.

---

<sup>28</sup> Complainant's Ex. 8, Invoice 600199.

<sup>29</sup> Respondent's Ex. 2, Invoice 218534.

**3. Light Fixture**

The Complainant confirmed the dangling light issue was repaired and has not recurred.

**4. Heating/Air Conditioning**

The Complainant stated that she has not tried using the heat since the final repair. She noted that possibly in March 2016, she turned on the heat and it did not work. She stated that she did not turn on the heat again and instead used the fireplace. She also had problems with AC involving condensation, not cooling like it should (did not feel 20 degrees cooler than the ambient temperature), the AC often ran constantly, and the air came out well from the AC itself but not the registers.

**5. TV Panel**

The Complainant explained that the (swiveling) TV mount panel had gaps through which bugs could come in. The dealer in Cleburne replaced the panel but then the panel would not turn to the outside. The dealer in Waco replaced the seals but the Complainant has not since tried the TV mount panel.

**B. Summary of Respondent's Evidence and Arguments**

On cross-examination, the Complainant confirmed that the 3/4 ton truck would pull the RV satisfactorily. She did not know what propane smelled like but noticed a strange odor when setting up in May, whether formaldehyde from the furniture or propane. The Complainant affirmed that the RV was overweight sometime around July 2015, possibly the 8th. She did not know the weight ratings for her 1/2-ton truck. She explained that she did not know the numbers for distributing weight between the drive axle on the tow vehicle and the trailer but she used her experience with how the trailer pulls and handles. She acknowledged that she did not know the proportion of load between the towing vehicle and the trailer axles and that she based the loading of the RV on feel. She elaborated her understanding that once she brought the RV weight under the "1,700 lb." (cargo carrying capacity) limit, the loading was a matter of weight distribution. However, the tongue could not take any more weight and distributing the weight did not correct the problem. She explained the slide on the left side was heavier than the right side and the RV could not be balanced any better. The Complainant stated that the subject RV was 32 feet long and the longest trailer she had before was 28 feet long and she had used a one ton truck to pull the 28 foot trailer. She also

said that the longest trailer she pulled with a 1/2-ton truck was 18 feet long. She elaborated that for anything longer, she normally used a bigger truck.

Mr. Roberts testified that on July 10, 2015, he rode in the Complainant's 1/2-ton truck. He stated that this truck towing the subject RV swayed and could only reach 40 mph. He noted that they hooked up the RV to his truck (a 2015 Dodge Ram with an 11,200 lb. towing capacity) and Mr. Robert's truck did the same thing. Thereafter, he took the RV to a weigh station and weighed it. Subsequently, he had a four point hitch installed, which resolved the RV's performance issues. Mr. Roberts had another technician pull the trailer with the new hitch and he reached 70 mph. The Complainant's truck had an 11,300 lb. towing limit. With regard to the AC, Mr. Roberts explained that the air AC manufacturer will not allow the dealer to service the AC units but only allow swapping a unit out if the air from the AC is less than 20 degrees cooler than the ambient temperature. Mr. Roberts clarified that 20 degree cooling standard was determined from the difference between the ambient temperature and the temperature of the air directly from the AC (as opposed to the temperature of the RV's interior shown on the thermostat). He explained that the 20 degree standard did not account for any heating of the RV that may occur, for example, from radiant heat. Mr. Roberts testified that the RV when tested did not exhibit any change in LP pressure. He noted that the LP alarm will go off if the battery discharges. Additionally, the LP detector may detect aerosols. Variation in pressure would have indicated a leak. The Respondent had Lippert Components Inc. (LCI) inspect the RV's frame and the LCI technician found the frame within specifications and stated that the frame would not affect swaying.

Mr. Murphy answered that the Respondent does not set guidelines for what vehicles can tow an RV. Rather, towability depends on weight ratings. Mr. Murphy noted that Trailer Life published a towing guide. He affirmed that many variables affect towability, such as load distribution, towing vehicle ratings, towed vehicle ratings, cargo weight, etc.

### **C. Inspection and Test Drive**

During the test drive, the Complainant experienced greater pulling at higher speeds and did not feel comfortable driving over 65 mph. The Complainant remarked that the towing vehicle, a 1/2-ton 2014 Ford F-150 borrowed from a friend, pulled the RV more easily than the 1/2-ton truck she previously used. She remarked that her truck felt like it was floating when pulling the RV. When Mr. Roberts drove, he confirmed that the RV would pull more at higher speeds but he felt

comfortable driving up to 70 mph. The difference in visible sway between 55 mph and 70 mph appeared indistinguishable. The inspection of the RV at the hearing showed that the rubber molding around the swiveling TV mount panel had an approximately quarter inch gap in the lower right corner. The temperature of the air from the AC was 61.5 while the ambient air temperature, as shown by the truck towing the subject RV, was 90 degrees (a difference of 28.5 degrees).

#### D. Analysis

##### 1. Warrantability of Air Conditioner/Heater, LP System/LP Alarm

The Respondent's warranty does not apply to the air conditioner/heater and the LP system and LP alarm. Lemon Law relief only applies to warrantable defects, that is, manufacturing defects covered under the terms of the RV's warranty. In this case the warranty specifies that:

Forest River Inc. . . . (Warrantor) warrants to the ORIGINAL CONSUMER PURCHASER ONLY, when purchased from an authorized Forest River, Inc. dealer, for a period of (1) one year from date of purchase (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.<sup>30</sup>

The warranty further provides that:

Warrantor expressly disclaims any responsibility for damage to the unit where damage is due to condensation, normal wear and tear or exposure to elements. Warrantor makes no warranty with regard to, but not limited to, the chassis including without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, routine maintenance, equipment and appliances, or audio and/or video equipment. Their respective manufacturers and suppliers may warrant some of these items. Warranty information with respect to these items is available from your dealer.<sup>31</sup>

Significantly, the warranty only covers the body structure and not any equipment manufactured by third parties. Consequently, any issues relating to the AC/heater and LP system/LP alarm fall outside of the warranty's coverage and therefore do not support any relief.

---

<sup>30</sup> Complainant's Ex. 11, Limited Warranty Towable Products (emphasis added).

<sup>31</sup> Complainant's Ex. 11, Limited Warranty Towable Products (emphasis added).

## 2. Sway

The sway does not appear to be a warrantable nonconformity but a normal characteristic of the RV. The towability of a vehicle result from a variety of factors. Multiple variables, including tow vehicle weight ratings, tongue load, the load on the axles, the distribution of the load, etc. all affect the towing/ride quality. However, these characteristics do not the result from a manufacturing defect but from the interaction of the various weight capacities, loading, and weight distribution of the towing and towed vehicles, which comports with the Complainant's observation that her 3/4 ton truck towed the subject RV better than her 1/2-ton truck. The Complainant acknowledged that her RV had been overweight as reflected in the scale tickets from July of 2015.<sup>32</sup> In particular, the scale tickets reflect that attaching the RV reduced the weight on the drive axle by roughly 3,000 lbs. (essentially lifting the drive wheels up) so the drive wheels had less force holding it against the road when pulling the RV, ostensibly affecting the RV's towing quality. This would appear consistent with the Complainant's description of her truck's ride as feeling like floating when towing the RV. Further, the Complainant noted that the RV's left side was heavier than the right, due to the design of the slides, which would also appear to influence the RV's tow/ride characteristics. Finally, though a salesperson of the dealer may have made certain representations as to the towability of the subject RV, such representations are not actionable under the Lemon Law. As previously, described, the Lemon Law only applies to warrantable defects, which in this case only include defects in materials or workmanship in the structure of the RV attributable to the Respondent and not any dealer representations. In conclusion, the RV's tow/ride quality do not appear to be warrantable defects subject to repurchase/replacement or repair relief.

## 3. TV mount panel

As observed during the inspection at the hearing, the TV mount panel's rubber had an approximately quarter inch gap in the lower right corner. This nonconformity does not substantially impair the use or value of the vehicle and therefore does not support repurchase or replacement but does allow for repair relief.

---

<sup>32</sup> Respondent's Ex. 1, Scale Tickets.

### III. Findings of Fact

1. On June 24, 2015, the Complainant, took delivery of a new 2015 Palomino Solaire 315RLTSE purchased from Fun Town RV, an authorized dealer of the Respondent, Forest River, Inc., in Waco, Texas.
2. The vehicle's limited warranty covers the vehicle for one year from the date of purchase.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Issue
10/01/2015	Seal around TV is not sealing; LP alarm beeping <sup>33</sup>
05/17/2016	Front AC freezes and blows hot air; LP alarm goes off randomly; light dangling by wires; TV mount will not turn; trailer sways <sup>34</sup>

4. On December 7, 2015, the Complainant e-mailed a written notice of defect to the Respondent.
5. On December 15, 2015, the Complainant filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) alleging that the vehicle could not be safely towed with a vehicle that the dealer's salesperson said could safely tow the vehicle; the propane leaked; a light dangled; the air conditioning and heat did not work properly; and the TV (panel) was not properly sealed.
6. On January 25, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, Forest River, Inc., giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
7. On April 13, 2016, the Complainant, Carla Clapper, requested a continuance of the hearing set for Tuesday, April 19, 2016.
8. On May 6, 2016, Order No. 4 reset the hearing in this case to June 24, 2016.

---

<sup>33</sup> Complainant's Ex. 8, Invoice 600199.

<sup>34</sup> Respondent's Ex. 2, Invoice 218534.

9. The hearing in this case convened and the record closed on June 24, 2016, in Waco, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented and testified for herself. Warren Murphy, Assistant Director, Parts, Service, & Warranty, represented the Respondent. Mike Roberts and Basil El-Masri, both of Fun Town RV, testified for the Respondent.
10. The vehicle's warranty was in effect at the time of the hearing.
11. The warranty covers the body structure of the vehicle against defects in materials or workmanship attributable to the Respondent.
12. The warranty does not cover "the chassis including without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, routine maintenance, equipment and appliances, or audio and/or video equipment."
13. The dangling light was successfully repaired.
14. Inspection of the vehicle showed that the swiveling TV mount panel had a gap (approximately a quarter inch wide) in the rubber molding in the lower right corner.
15. The tow/ride qualities of the subject vehicle are normal characteristics of the vehicle's design.

#### 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's vehicle does not qualify for replacement or repurchase. The vehicle does not have a warrantable defect that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. TEX. OCC. CODE § 2301.604.
7. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranties. TEX. OCC. CODE §§ 2301.204, 2301.603.
8. The Respondent has a continuing obligation to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's authorized dealer before the warranty expired. TEX. OCC. CODE §§ 2301.204, 2301.603.

#### V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the 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 and the Respondent shall make any repairs needed to conform the vehicle's TV mount panel 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 August 23, 2016**

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