

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0256 CAF**

**JAMES HASSETT,  
Complainant**

v.

**FORD MOTOR COMPANY AND  
FOREST RIVER, INC.,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

James Hassett (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 his vehicle manufactured by Ford Motor Company and Forest River, Inc. (Respondents). A preponderance of the evidence does not show that the subject vehicle has a defect covered by Forest River's warranty. With regard to Ford's chassis, the record does not show a reasonable number of repair attempts or notice of any defects in the chassis. However, the Ford chassis does appear to have a warrantable nonconformity. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement but does qualify for repair under Ford's warranty.

**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, held by telephone, convened on September 8, 2016, in Austin, Texas, before Hearings Examiner Andrew Kang. The record closed on September 8, 2016, upon filing of the written submissions. The Complainant represented himself. Maria Diaz, Consumer Legal Analyst, represented the Respondent Ford Motor Company. Mel Williams, Owner Relations Manager, represented the Respondent Forest River, Inc.

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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,

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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).

or 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 February 7, 2015, the Complainant, purchased a new 2015 Coachmen Mirada 35BH from Motor Home Specialist, LP, an authorized dealer of the Respondent, Forest River, Inc., in Alvarado, Texas. The vehicle had 1,197 miles on the odometer at the time of purchase. The

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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).

Forest River limited warranty covers the vehicle for one year or 12,000 miles, whichever occurs first.<sup>22</sup> In addition, Forest River extended the warranty for one year. The Ford limited warranty provides bumper to bumper coverage of the chassis for three years or 36,000 miles, whichever occurs first and powertrain coverage for five years or 60,000 miles, whichever occurs first.<sup>23</sup>

On April 26, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the living room slide did not work, the slide motor did not work properly; the drawer under the refrigerator will not stay closed, outside trim on the bunk slide was incorrectly cut and not secure; trim in front of the driver side tire was coming off; curtain ties were coming apart; the driver side slide pulled out rear of slide, took off gasket, pulled wires out of the motor; TVs in the bunk will stop working; the front bunk will not go up or down; and the slide motor needed replacing. On May 27, 2015, the Complainant e-mailed a written notice of defect to Forest River. On or about April 26, 2016, a person on behalf of the Complainant mailed written notice of the defects to Ford.<sup>24</sup>

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

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<sup>22</sup> Complainant's Ex. 1, Limited Warranty Motorized Products.

<sup>23</sup> Complainant's Ex. 2, 2015 Model Year Ford Warranty Guide.

<sup>24</sup> 43 TEX. ADMIN. CODE § 215.204 ("Upon 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.").

Date	Miles	Issue
March 24, 2015 - June 8, 2015	3,743	Living room slide not working properly, slide motor out of sync; drawer under refrigerator will not stay shut; rear bunk slide exterior trim not cut right and not secure <sup>25</sup>
August 19, 2015- December 29, 2015	4,733	Trim in front of driver side tire coming off, curtain ties coming apart; front slide pulled out rear of slide, took off gasket, pulled wires out of the motor; DVDs will stop working in the TVs in the bunk <sup>26</sup>
February 11, 2016	4,825	Front bunk will not go up or down or will go into fault <sup>27</sup>
March 17, 2016- May 23, 2016	5,876	Driver side front slide will not go out straight, rear side of slide will not go in and get caught <sup>28</sup>
May 27, 2016- June 25, 2016	5,876	Slide doing same thing it was doing <sup>29</sup>

The Complainant testified that the following issues were successfully resolved: drawer under the refrigerator, bunk slide trim, trim in front of door side tire, curtain ties, TVs in the bunk (apparently corrected), and slide gasket and wires pulled out. Three issues remain outstanding: the living room slide operation, door side front slide operation, and front bunk operation. One issue, the TV/DVD players appears uncertain. The Complainant first noticed the living room slide not working in March of 2015 and last noticed it the weekend before the hearing. He explained that the slide did not go in or out properly despite replacing the slide motor four to five times. The Complainant first noticed the door side slide problems in mid-August of 2015. The slide would pull out the rear part of the slide gasket and pull out the motor wires. The slide would hang up and not close. The Complainant stated that the gasket and wiring were repaired, but the slide itself continued to have problems. With regard to the TVs, specifically the DVD players built into the TVs, DVDs will play for an hour and then the TV/DVD players will reset themselves. The Complainant first noticed this issue in the spring or maybe early summer of 2015. He could not tell if the problems continued because he had not used his vehicle much this year. However, he believed that a repair attempt occurred for the TVs. The Complainant testified that the bunk would either come down and not go up or not go down at all. The control module

<sup>25</sup> Complainant's Ex. 3, Work Order 6491.

<sup>26</sup> Complainant's Ex. 4, Work Order 7979; Complainant's Ex. 5, Work Order 7979.

<sup>27</sup> Complainant's Ex. 6, Work Order 9459.

<sup>28</sup> Complainant's Ex. 7, Work Order 9769.

<sup>29</sup> Complainant's Ex. 8, Work Order 10641.

will flash a fault. He first noticed this issue in late spring or early summer of 2015. He noted that he had not used the bunk since the last service visit, about the end of March 2016 or mid-March 2016, when the front bunk motors were replaced. He elaborated that the bunk was first repaired during the August 19, 2015 to December 29, 2015, service visit. He last witnessed the bunk malfunction between late January and early February 2016. The Complainant noted that the vehicle was currently under repair for the front slide not working correctly.

The Complainant explained that the Ford service ticket was left open and that the vehicle came in twice for repairs. The initial visit was to test the vehicle and 500 miles later, the vehicle was retested and the PCM replaced. He confirmed the vehicle still had the check engine light on. He confirmed that the current slide issues were different from before but added that the slides never worked properly—one side worked and the other did not. The front bunk motors were replaced twice but the manufacturer would not replace the battery. The Complainant could not determine whether the slide problem resulted from the slide motor or the slide itself.

#### **B. Forest River's Evidence and Arguments**

On cross-examination, the Complainant identified the currently existing problem as the front slide. The status of the bunk was uncertain because he had not used it enough to test it. He confirmed the rear slide was fixed, noting that the rear slide issue was more cosmetic. However, the Complainant added that the front slide did not work completely—one side starts to move but the other side will not go out. The Complainant acknowledged that the vehicle had damage (scuffed passenger side rear corner, paint damage, damaged water heater door, and damaged tail light) from an accident, unrelated to the warranty repairs.

Mr. Williams testified that Forest River may not have had an opportunity to repair the remaining issues. The dealer in Nashville did not request a repair authorization until August 1st. The Respondent could not determine what happened in the first month because the dealer did not contact the Respondent. Mr. Williams explained that the bunk is tied to coach battery. As a result, if the coach battery dies, the bunk needs to be reset. The current slide issues appear to be different. Mr. Williams confirmed that a third party manufactured the bunks. Mr. Williams noted that the Respondent's records only showed one bunk motor replacement and he did not know if the dealer billed the vendor or not. But the Respondent would like to bring the vehicle to the factory for repair.

### C. Ford's Evidence and Arguments

Ford contended that the vehicle did not have any issues with the Ford chassis. Further, the vehicle only had one repair attempt and the Complainant never brought the vehicle in for the scheduled final inspection/repair attempt. Ms. Diaz pointed out that the vehicle was still under Ford's warranty and could be repaired without cost to the Complainant.

### D. Analysis

#### 1. Ford Chassis

The complaint did not identify any issues relating to the Ford manufactured chassis. In addition, the Complainant acknowledged never providing a notice of defect to Ford. The record also shows that the vehicle had at most two repair attempts for the chassis. Moreover, Ford itself, as opposed to a dealer, never had an opportunity to cure. Nevertheless, the evidence indicates the existence of a warrantable nonconformity—the check engine light remained on. The vehicle does not qualify for repurchase or replacement since the Lemon Law prohibits granting repurchase or replacement without written notice of the defect and a reasonable number of repair attempts. However, the vehicle still qualifies for repair relief.

#### 2. Forest River Body

As a threshold matter, the Lemon Law only applies to items covered by the manufacturer's warranty.<sup>30</sup> The Forest River warranty only covers defects in the materials and workmanship of the vehicle's body structure, i.e., manufacturing defects in the body structure.<sup>31</sup> Specifically, the warranty states that “the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.”<sup>32</sup> The warranty further states that “Warrantor will remedy substantial defects in materials and workmanship caused by Warrantor.”<sup>33</sup> Additionally, under “EXCLUSIONS FROM THIS WARRANTY” the

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<sup>30</sup> TEX. OCC. CODE § 2301.604(a).

<sup>31</sup> A manufacturing defect occurs when the vehicle has a flaw because of some error in making it, such as incorrect assembly (defective workmanship) or the use of a substandard part (defective material). *Ridgway v. Ford Motor Co.*, 82 S.W.3d 26, 31-32 (Tex. App.—San Antonio 2002), *rev'd on other grounds*, 135 S.W.3d 598 (Tex. 2004). A manufacturing defect happens during the manufacturing process and exists when it leaves the manufacturer.

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

<sup>33</sup> Complainant's Ex. 1, Limited Warranty Motorized Products.

warranty explains that “Warrantor makes no warranty with regard to, but not limited to, the motorhome chassis including without limitation, the engine and drivetrain, any mechanical parts or systems of the chassis, tires, tubes, batteries and gauges, optional generators, routine maintenance, equipment and appliances, or audio and/or video equipment.”<sup>34</sup> Accordingly, problems arising outside of the Respondent’s manufacture of the body structure are not warrantable defects. In this case, the Complainant initially testified that the following issues were successfully resolved: drawer under the refrigerator, bunk slide trim, trim in front of door side tire, curtain ties, TVs in the bunk (apparently corrected), and slide gasket and wires pulled out. On cross-examination, the Complainant confirmed that following issues remained outstanding: the slide and the bunk. The Complainant elaborated that he was not certain about the bunk because he had not used it enough. He also confirmed that the rear slide had been fixed. Because third parties (not Forest River) manufactured the slide mechanisms<sup>35</sup> and the bunk, the warranty provides no coverage for these items (the warranty also excludes the TVs). Since the Lemon Law provides no relief for unwarranted items, none of the outstanding issues can support any relief.

### III. Findings of Fact

1. On February 7, 2015, the Complainant, purchased a new 2015 Coachmen Mirada 35BH from Motor Home Specialist, LP, an authorized dealer of the Respondent, Forest River, Inc., in Alvarado, Texas. The vehicle had 1,197 miles on the odometer at the time of purchase.
2. The Forest River limited warranty covers the vehicle for one year or 12,000 miles, whichever occurs first. In addition, Forest River extended the warranty for one year. The Ford Motor Company limited warranty provides bumper to bumper coverage of the chassis for three years or 36,000 miles, whichever occurs first and powertrain coverage for five years or 60,000 miles, whichever occurs first.
3. The Complainant took the vehicle to a dealer for repair as shown below:

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<sup>34</sup> Complainant’s Ex. 1, Limited Warranty Motorized Products.

<sup>35</sup> The warranty only covers the slide malfunction if it results from a problem in the structure of the slide. On the other hand, the warranty does not apply if the problem results from a slide motor. In this case, the dealer diagnosed the slide motor as the problem and the Complainant testified that he could not tell whether the slide structure or the slide motor caused the problem. Accordingly, the evidence does not show that the slide malfunction more likely than not occurred because of the slide structure.

Date	Miles	Issue
March 24, 2015 - June 8, 2015	3,743	Living room slide not working properly, slide motor out of sync; drawer under refrigerator will not stay shut; rear bunk slide exterior trim not cut right and not secure <sup>36</sup>
August 19, 2015- December 29, 2015	4,733	Trim in front of driver side tire coming off, curtain ties coming apart; front slide pulled out rear of slide, took off gasket, pulled wires out of the motor; DVDs will stop working in the TVs in the bunk <sup>37</sup>
February 11, 2016	4,825	Front bunk will not go up or down or will go into fault <sup>38</sup>
March 17, 2016- May 23, 2016	5,876	Driver side front slide will not go out straight, rear side of slide will not go in and get caught <sup>39</sup>
May 27, 2016- June 25, 2016	5,876	Slide doing same thing it was doing <sup>40</sup>

4. On May 27, 2015, the Complainant e-mailed a written notice of defect to Forest River.
5. Neither the Complainant nor a person on behalf of the Complainant mailed written notice of any defects in the chassis to Ford.
6. On April 26, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the living room slide did not work, the slide motor did not work properly; the drawer under the refrigerator will not stay closed, outside trim on the bunk slide was incorrectly cut and not secure; trim in front of the driver side wheel was coming off; curtain ties were coming apart; the driver side slide pulled wires out of the motor and the gasket came off; TVs in the bunk will stop working; the front bunk will not go up or down; and the slide motor needed replacing.
7. Except for the slide and bunk issues, all issues in the complaint have been successfully resolved prior to the hearing.
8. On June 16, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, Ford Motor Company and Forest River, Inc., giving all parties not less than 10 days' notice of hearing and their

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<sup>36</sup> Complainant's Ex. 3, Work Order 6491.

<sup>37</sup> Complainant's Ex. 4, Work Order 7979; Complainant's Ex. 5, Work Order 7979.

<sup>38</sup> Complainant's Ex. 6, Work Order 9459.

<sup>39</sup> Complainant's Ex. 7, Work Order 9769.

<sup>40</sup> Complainant's Ex. 8, Work Order 10641.

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.

9. The hearing in this case, held by telephone, convened on September 8, 2016, in Austin, Texas, before Hearings Examiner Andrew Kang. The record closed on September 8, 2016, upon filing of the written submissions. The Complainant represented himself. Maria Diaz, Consumer Legal Analyst, represented the Respondent Ford Motor Company. Mel Williams, Owner Relations Manager, represented the Respondent Forest River, Inc.
10. The vehicle's odometer displayed 5,922 miles at the time of the hearing.
11. The Forest River warranty expires on February 7, 2017. The Ford warranty's bumper to bumper and powertrain coverages were in effect at the time of the hearing.
12. The Forest River warranty only covers the body structure of the vehicle.
13. The Forest River warranty excludes "the motorhome chassis including without limitation, the engine and drivetrain, any mechanical parts or systems of the chassis, tires, tubes, batteries and gauges, optional generators, routine maintenance, equipment and appliances, or audio and/or video equipment."
14. Forest River did not manufacture the slide mechanisms, the bunks, or the TVs.
15. The Complainant could not determine if the slide malfunction occurred because of the slide's structure or the slide motor.
16. A dealer identified the slide motor as the cause of the slide malfunction.
17. The vehicle has a check engine light on.

#### **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 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 did not prove that the vehicle has a defect covered by Forest River's warranty. TEX. OCC. CODE § 2301.604(a).
  7. The Complainant did not meet the statutory requirement for a reasonable number of repair attempts with respect to the Ford chassis. 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 defect(s) to Ford. TEX. OCC. CODE § 2301.606(c)(1).
  9. Ford did not have an opportunity to cure the alleged defect(s). TEX. OCC. CODE § 2301.606(c)(2).
  10. The Complainant's vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604; TEX. OCC. CODE § 2301.606(c).
  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 and 2301.204.

**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, Ford Motor Company, shall make any repairs needed to address the vehicle's check engine light to conform the vehicle to the applicable warranty. The Complainant shall deliver the subject vehicle to Ford within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.<sup>41</sup> Within 20 days after receiving the vehicle from the Complainant, Ford 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 November 4, 2016**

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

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<sup>41</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.