

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0296 CAF**

**FLOYD J. JENNES and
LISA M. JENNES,
Complainants**

v.

**KEYSTONE RV COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Floyd J. Jennes and Lisa M. Jennes (Complainants) 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 their vehicle manufactured by Keystone RV Company (Respondent). A preponderance of the evidence shows that the subject vehicle does not have a warrantable defect. Consequently, the Complainants' vehicle does not qualify for repurchase/replacement or warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on October 6, 2016, in Houston, Texas, before Hearings Examiner Andrew Kang. The record closed on October 27, 2016, upon the filing of the Complainants' reply. Russell Eberley, represented the Complainants and the Complainants testified for themselves. Brent Giggy, Product Team Lead, represented the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief

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

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;⁴ (2) the manufacturer was given an opportunity to cure the defect or nonconformity;⁵ and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty’s expiration

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ 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.

⁵ 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).

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.⁶

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.”⁷ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”⁸

3. Burden of Proof

The law places the burden of proof on the Complainants.⁹ The Complainants must prove all facts required for relief by a preponderance, that is, the Complainants must present evidence showing that every required fact is more likely than not true.¹⁰

4. The Complaint Identifies the Issues in this Proceeding

The Complaint identifies the issues to be addressed in this proceeding.¹¹ 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.”¹² However, the parties may expressly or impliedly consent

⁶ TEX. OCC. CODE § 2301.606(d)(2).

⁷ TEX. OCC. CODE § 2301.204.

⁸ TEX. OCC. CODE § 2301.603(a).

⁹ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁰ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

¹¹ “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.”).

¹² 43 TEX. ADMIN. CODE § 215.202(b).

to trying issues not included in the pleadings.¹³ Trial by implied consent occurs when a party introduces evidence on an unpleaded issue without objection.¹⁴

A. Summary of Complainants' Evidence and Arguments

On June 7, 2013, the Complainants, purchased a new 2013 Dutchmen Voltage V3950 from Lone Star RV Sales, Inc., an authorized dealer of the Respondent, Keystone RV Company, in Houston. The vehicle's limited warranty covers the vehicle for one year from the date of delivery or when first placed in service, whichever occurs first.

On March 9, 2015, Harry Gruen, of Bob Jones RV, on behalf of the Complainants, sent an e-mail notifying the Respondent of the defect to address repair options. On May 31, 2016, the Complainants filed a Lemon Law complaint with the Department alleging that a slide scraped the floor, the bedroom slide out t-rails were not sealed properly, the bunk beds did not move up and down, and the floor was bowed. Mr. Jennes confirmed that all but one issue, the bowed floor, had been resolved. In part, the Complainants took the vehicle to a dealer for repair as shown below:

Date	Issue
03/19/2015	Galley slide is damaging floor when retracted (floor bowed)
06/18/2015	Front of door side galley slide out dropped and is dragging on the floor (main floor bowed causing slide room to gouge the floor)
02/13/2016	Rear bunks inoperable; front bedroom slide out trim T-rail needs to be sealed

The Complainants first noticed the bowed floor in December 2013, when the slide gouged the floor. On December 2, 2013, he contacted Lone Star RV to arrange for repair. He explained that no actual repairs of the floor occurred because such repairs were always denied. The floor continued to be bowed as of the date of the hearing. Mr. Jennes explained that (after December 2013), the bowing became worse so that in October of 2014, the slide tore a one foot by 10 inch section of vinyl flooring, gouged the plywood floor, and prevented the slide from completely sealing. The vehicle remained at a Lone Star RV for repair from December 2, 2014, until February 24, 2015, and then again at Bob Jones RV from February 24, 2015, until late June 2015. When

¹³ 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

¹⁴ See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

taking the vehicle home from Bob Jones RV, the slide had dropped a little over 1/16th of an inch relative to the floor. Mr. Jenness confirmed that the bowed floor was part of the reason the slide out dragged on the floor. Mr. Jenness represented that, in a four-way conversation with Jeff of Team Denali, an employee of Lone Star RV, and an employee of Bob Jones RV. Bob Jones RV's proposed loosening the bolts on the edges of the floor to lift it up but Jeff responded that they could not do that because of stress on the floor and the only way to remove the bow was to tear down the floor and install a new floor system. Mr. Eberley pointed out the Complainants' concern that if the crowning itself is not repaired, the problems (with the slide out) will happen again.

B. Summary of Respondent's Evidence and Arguments

On cross-examination, Mr. Jenness confirmed that since the repairs, the slide out has not touched the floor. When asked if the bowing has caused additional problems, Mr. Jenness answered that it had not yet. Mr. Giggy explained that the middle of the floor has more flex because it was designed to accommodate an air duct. He described the construction of the floor, explaining that: the floor is mounted to a steel frame that has outriggers (to which the floor ties); bolts secure the floor to the frame; walls are built on top of the floors; the outriggers are welded to the frame and vary from each other because of the application of heat; outriggers may tip up or down, so the floors will not be consistently level. Typically, a bowed floor indicates an outrigger has collapsed—something on the external support gave in allowing the floor to bow. In this case, the vehicle's frame showed no such signs, indicating that the vehicle was built with a bowed floor (as opposed to a structural failure causing the bowing). The slide out systems are installed in the opening, screwed to the wall and set on rollers on the floor, the slide out system can settle. To correct this, the slide out is lifted up with spacers underneath but the slide out settling has nothing to do with the floor itself. The whole system can settle slightly, but to get a 7/16th inch difference, the frame and the outriggers would show indications of flexing. However, the vehicle had no indications that the frame and the outriggers flexed. Mr. Giggy confirmed that a third party vendor manufactured the chassis. Mr. Giggy noted that the slide out has not settled/moved in the last fourteen months.

C. Inspection

Inspection of the vehicle at the hearing showed a half inch difference between the high-point of the bowed floor and the floor abutting the door side wall.

D. Analysis

1. Filing Deadline for Repurchase or Replacement Relief

As an initial matter, the vehicle does not qualify for repurchase or replacement relief because the Complainants did not timely file their Lemon Law Complaint. The Complainants purchased and took delivery of the vehicle on June 7, 2013. Accordingly, the warranty expired on June 7, 2014. To qualify for repurchase or replacement relief, the complaint must have been filed no later than six months after the warranty's expiration, which falls on December 7, 2015.¹⁵ The Complainants filed their complaint on May 31, 2016, approximately five months after the filing deadline. Consequently, the vehicle cannot qualify for repurchase or replacement but may still qualify for repair relief.

2. Obligation to Repair After Expiration of the Warranty

The Respondent contends that the vehicle did not qualify for relief because the first repair attempt for the warped floor occurred after the warranty expired. However, under the Lemon Law, if an owner provides notice of the defect before the warranty expires, the manufacturer must conform the vehicle to the warranty even after the warranty expires. Specifically, the Lemon Law provides that the obligation to repair a vehicle to conform to its warranty applies even after the expiration of the warranty if “during the term of the warranty, the owner or the owner’s agent reported the nonconformity to the manufacturer . . . or to a designated agent or franchised dealer of the manufacturer.”¹⁶ The warranty specifies that to “obtain warranty service the owner must deliver the recreational vehicle to an authorized Dutchmen dealer.”¹⁷ Although the dealership could not accommodate the vehicle for a repair attempt during the term of the warranty, the evidence shows that the Complainants did report the nonconformity to an authorized dealer before the warranty expired. In particular, the Complainants represented that they notified the dealer about

¹⁵ TEX. OCC. CODE § 2301.606(d).

¹⁶ TEX. OCC. CODE § 2301.603(b)(1) (emphasis added).

¹⁷ Complainants’ Ex. 3, Warranty.

the torn vinyl flooring on December 2, 2013, about six months before the warranty expired on June 7, 2014. Accordingly, the Complainants triggered the manufacturer's obligation to conform the vehicle to the warranty even after its expiration.

3. Warranty Coverage

The Lemon Law only applies to nonconformities/defects covered by an applicable warranty (warrantable defects). A review of the warranty indicates that it does not cover the bowing of the floor. The warranty states that "Dutchman will repair or replace components on your Dutchmen recreational vehicle that are defective in materials and/or workmanship supplied by and attributable to Dutchmen."¹⁸ The warranty also specifies: "This Limited Warranty does NOT provide coverage for any of the following: • Equipment, products, components, appliances and accessories not manufactured by Dutchmen; . . . • Representations made by any person (including your dealer) beyond those stated in this Limited Warranty."¹⁹ The evidence shows that the floor will normally not be consistently level because of variances in the outriggers attached to the frame caused by expansion from the heat of welding. Because the outriggers will vary, the floors placed on the outriggers will also normally vary. Mr. Giggy's testimony also reflected that a failure/flexing in the outriggers or frame may lead to the floor bowing, but the subject vehicle had no such signs of failure or flexing. Instead, the bowing in this case appears to have originated from variations occurring during the manufacture of the chassis. However, a third party, Lippert Components, Inc., manufactured the chassis. Because the warranty does not cover components not manufactured by the Respondent, the bowing from variations in the chassis does not constitute a warrantable defect that qualifies for any relief. Additionally, the slide out currently appears to be operating properly without impacting the floor. Nevertheless, as outlined previously, because the Complainants reported the issue of the slide out scraping the flooring to an authorized dealer during the term of the warranty, the Respondent has a continuing obligation to repair this issue if it reoccurs.

¹⁸ Complainant's Ex. 3, Warranty.

¹⁹ Complainant's Ex. 3, Warranty.

III. Findings of Fact

1. On June 7, 2013, the Complainants, purchased a new 2013 Dutchmen Voltage V3950 from Lone Star RV Sales, Inc., an authorized dealer of the Respondent, Keystone RV Company, in Houston.
2. The vehicle's limited warranty covers the vehicle for one year from the date of delivery or when first placed in service, whichever occurs first.
3. In part, the Complainants took the vehicle to a dealer for repair as shown below:

Date	Issue
03/19/2015	Galley slide is damaging floor when retracted (floor bowed)
06/18/2015	Front of door side galley slide out dropped and is dragging on the floor (main floor bowed causing slide room to gouge the floor)
02/13/2016	Rear bunks inoperable; front bedroom slide out trim T-rail needs to be sealed

4. On March 9, 2015, Harry Gruen, of Bob Jones RV, on behalf of the Complainants, sent an e-mail notifying the Respondent of the defect to address repair options.
5. On May 31, 2016, the Complainants filed a Lemon Law complaint with the Department alleging that a slide scraped the floor, the bedroom slide out t-rails were not sealed properly, the bunk beds did not move up and down, and the floor was bowed.
6. The issues regarding the bedroom slide out t-rails and the bunk beds were successfully resolved and the slide currently
7. On July 7, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainants 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.
8. The hearing in this case convened on October 6, 2016, in Houston, Texas, before Hearings Examiner Andrew Kang. The record closed on October 27, 2016, upon the filing of the

Complainants' reply. Russell Eberley, represented the Complainants and the Complainants testified for themselves. Brent Giggy, Product Team Lead, represented the Respondent.

9. The warranty expired on June 7, 2014.
10. At the inspection at the hearing, the vehicle exhibited crowning on the floor. The difference between the high-point at the mid-line of the floor to the low-point where the floor meets the door-side wall measured 0.5”.
11. On December 2, 2013, the Complainants notified an authorized dealer of the Respondent that the slide had torn the vinyl flooring.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613; TEX. OCC. CODE § 2301.204.
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. TEX. OCC. CODE § 2301.704.
3. The Complainants filed a sufficient complaint with the Department. TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052; 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainants did not timely file the complaint for repurchase or replacement relief. Accordingly, the Complainants' vehicle cannot qualify for replacement or repurchase. TEX. OCC. CODE § 2301.606(d).
7. The Complainants did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).

8. The Complainants' vehicle does not qualify for warranty repair. TEX. OCC. CODE §§ 2301.204 and 2301.603.
9. 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 and 2301.204.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 and § 2301.204 is **DISMISSED**.

SIGNED December 22, 2016



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