

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0300 CAF**

**PATRICIA VILLARREAL and  
PONCIANO VILLARREAL, JR.,  
Complainants**

v.

**FOREST RIVER, INC.  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Patricia Villarreal and Ponciano Villarreal, Jr. (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 Forest River, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a defect covered by warranty. Consequently, the Complainants' 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 September 28, 2016, in Pharr, Texas, before Hearings Examiner Andrew Kang. The Complainants, represented and testified for themselves. Mel Williams, Owner Relations Manager, represented and testified for 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>

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

[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>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)(2).

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>9</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>10</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>11</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>12</sup> (2) the manufacturer was given an opportunity to cure the defect or nonconformity;<sup>13</sup> and (3) the

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

<sup>10</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>11</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>12</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>13</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).

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>14</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>15</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>16</sup>

## 3. Burden of Proof

The law places the burden of proof on the Complainants.<sup>17</sup> 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.<sup>18</sup>

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

The Complaint identifies the issues to be addressed in this proceeding.<sup>19</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>20</sup> However, the parties may expressly or impliedly consent

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<sup>14</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>15</sup> TEX. OCC. CODE § 2301.204.

<sup>16</sup> TEX. OCC. CODE § 2301.603(a).

<sup>17</sup> 43 TEX. ADMIN. CODE § 215.66(d).

<sup>18</sup> *E.g.*, *Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

<sup>19</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>20</sup> 43 TEX. ADMIN. CODE § 215.202(b).

to trying issues not included in the pleadings.<sup>21</sup> Trial by implied consent occurs when a party introduces evidence on an unpleaded issue without objection.<sup>22</sup>

#### A. Summary of Complainants' Evidence and Arguments

On February 18, 2015, the Complainants, purchased a new 2015 Coachmen Freelanders 21RS from Ron Hoover Companies of Donna, Inc., an authorized dealer of the Respondent, Forest River, Inc., in Donna, Texas. The vehicle had 1,635 miles on the odometer at the time of purchase. The vehicle's limited warranty covers the vehicle for one year or 12,000 miles, whichever occurs first.<sup>23</sup>

On May 26, 2016, the Complainants mailed a written notice of defect to the Respondent.<sup>24</sup> On June 3, 2016, the Complainants filed a Lemon Law complaint with the Department alleging that the heater blew cold air; water dripped from the shower to the compartments below; and the generator was hard to start and stalled.

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

Date	Issue
June 22, 2015	Heater duct torn; shower needs caulking; generator starting switch sometimes inoperable <sup>25</sup>
September 22, 2015	No hot air coming from vents; water leaking out of shower and going onto floor and compartments <sup>26</sup>
January 22, 2016	Shower leaking into rear compartment and floor <sup>27</sup>

The Mr. Villarreal testified that the vehicle had a total of four repair visits. One of which was not documented. On March 7, 2015, a technician sent to the Complainants' residence determined he did not have the tools to fix everything, so he suggested taking the vehicle to the dealer.

Mr. Villarreal confirmed that the vehicle had three issues: the heater blowing cold air in the rear bedroom, water dripping from the shower into compartments below; and the generator

<sup>21</sup> 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

<sup>22</sup> See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

<sup>23</sup> Complainants' Ex. 3, Limited Warranty Motorized Products.

<sup>24</sup> Complainants' Ex. 4, Notice of Defect.

<sup>25</sup> Complainants' Ex. 5, Work Order 19625.

<sup>26</sup> Complainants' Ex. 6, Work Order 20172.

<sup>27</sup> Complainants' Ex. 7, Work Order 20813.

being hard to start and stalling in rainy conditions. Mr. Villarreal testified he first noticed the cold air blowing about March 7, 2015, during a trip to South Padre Island. When a technician from the dealer went to the island, Mr. Villarreal noted that the air blew but not hot air. The technician took off a panel to reveal the duct work and water tank and the tank was not strapped in. Mr. Villarreal last experienced the cold air blowing on September 22, 2016. He confirmed that every time he used the heater, cold air would blow in the bedroom and bathroom. He first noticed water dripping from the shower into the compartments from the beginning, about March 7, 2015. The water would spread to the floor of the living area and drip into the storage compartments underneath. At first, Mr. Villarreal suspected the caulking as the source of the water, so he had the dealer caulk the shower at the top and base. However, after caulking, the dripping remained the same. Mr. Villarreal believed the water came from a combination of the plumbing and shower surround. He pointed out that a dealership work order identified a plumbing leaking under the shower. He confirmed that the water last leaked in May of 2016. Mr. and Mrs. Villarreal affirmed that the water leaked every time they used the shower. Mr. Villarreal first noticed the generator problems on Saturday, March 7, 2015. The generator was hard to start and the switch seemed defective. He explained that the generator had to be primed for 30 seconds and then the switch was supposed to be pressed. Sometimes the generator would start, sometimes not, but would be hard to start and may start but stall. He confirmed that the generator was hard to start every time. He noted that in rainy conditions, when getting wet, the generator will stall. Also, a work order from Payton Electric noted that the vehicle did not have a mud flap to prevent water splashing from the tires and that the carburetor had varnish. Mr. Villarreal concluded that the varnish was the problem from the start. Mr. Villarreal added that Mrs. Villarreal counted 50 days out of service for repair.

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

Mr. Williams testified that the June 22nd work order noted that the generator was out of fuel and that having less than 1/3 of a tank can starve the generator and prevent it from starting. The work order from Payton Electric, which is not an authorized service center for the generator, stated that the generator had varnish (from lack of use), would cause hard starts until cleaned. The work order also stated that the vehicle should have a mud flap; however, the generator manufacturer comes to the Respondent's factory to inspect the generators for correct installation. Mr. Williams explained that the varnish accumulated from non-use of the generator, which was a

maintenance issue not covered under warranty. He also noted that the compartments are not watertight so even with everything proper, rain may still cause a problem. Mr. Williams noted three repairs to the shower: sealing of the top of the shower; sealing of the lower part of the shower; and repairing the P-trap. Water getting into the compartments can be fixed, though assumed to be from the shower. Mr. Williams indicated that the water may not have come from the shower, given the proximity of the wheel well to the compartment. The June 22nd work order does not mention the lack of heat, just a crushed duct from the water tank moving, so the dealer rerouted the duct and reinstalled everything with a new duct. Mr. Williams did not know if the repair may have caused the issue. The report shows air warmed 25 degrees to the front, which was normal, and the further the air travels from the furnace, the less heat it will have.

### C. Inspection

The water was turned on in the shower. Water did not appear to leak from the shower onto the bathroom floor. In the compartment underneath the shower, the plywood forming the top of the compartment exhibited several small water stains where water had in the past dripped down the side of the plywood from above. Water did not drip into the compartment while the water was turned on during the inspection. However, the Complainants noted that the leaks occurred with someone actually standing in the shower.

The generator did not initially start or provide any indication that it would start. After turning on the vehicle's engine, and recharging the "house" battery, the generator made noises similar to a car's starter, but the generator did not actually start. Mr. Williams suggested checking the fuel level, noting that the generator will only start if the tank is at least one-third full. The fuel gauge showed that the RV had approximately one-eighth of a tank of gas. The Complainants fueled the vehicle to roughly three-eighths of a tank. The generator started normally after refueling.

Inspection of the heating system showed the vents in the living area (located in the base of the kitchen cabinet) were the closest to the furnace, the vent in the bathroom was the second closest, and the vent in the bedroom was the furthest. The furnace was located beneath the stove. The ducts leading to the bathroom and bedroom were approximately 2.25 inches in diameter. The ducts ran through spaces too small to accommodate larger ducts. In general, the entire heating system, including the furnace, sat in very confined spaces, apparently limited by the vehicle's design. Consistent with the length of the duct runs, the vents in the living area warmed up fastest



and hottest, and the vents in the bathroom and bedroom did not warm up as quickly or as much, with the bathroom vent blowing warmer air than the bedroom vent.

#### D. Analysis

The Lemon Law only applies to items covered by the manufacturer's warranty.<sup>28</sup> As detailed below, the Respondent's warranty only applies to defects in the materials and workmanship of the vehicle's body structure, i.e., manufacturing defects in the body structure. "A manufacturing defect is one created by a manufacturer's failure to conform to its own specifications, i.e., the product would not have been defective if it had conformed to the manufacturer's design specifications."<sup>29</sup> In particular, the Respondent warrants 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 states that "Warrantor will remedy substantial defects in materials and workmanship caused by the Warrantor."<sup>31</sup> Warranty terms covering "defects in material or workmanship" do not cover design defects.<sup>32</sup> "A design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves."<sup>33</sup> Additionally, under "EXCLUSIONS FROM THIS WARRANTY" the 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, such as defects in design or defects in non-body components, are not warrantable defects.

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<sup>28</sup> TEX. OCC. CODE § 2301.604(a).

<sup>29</sup> *E.g., Torres v. Caterpillar, Inc.*, 928 S.W.2d 233 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

<sup>30</sup> Complainants' Ex. 3, Warranty (emphasis added).

<sup>31</sup> Complainants' Ex. 3, Warranty (emphasis added).

the applicable expressed warranty."); see *GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, *writ denied*) ("the language in the contract of May 12, 1980, expressly limited TCR's recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.").

<sup>33</sup> *E.g., Torres v. Caterpillar, Inc.*, 928 S.W.2d 233 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

<sup>34</sup> Complainants' Ex. 3, Warranty (emphasis added).

**1. Heating (Furnace/Ducts)**

The evidence shows that lack of sufficiently hot air results from the design of the vehicle, which the warranty does not cover. Although the vehicle's furnace did not have the clearances or duct sizes specified in the furnace manufacturer's installation documentation, the tight clearances and smaller duct sizes did not result from any manufacturing defects, but from the design of the vehicle. Moreover, the cooler temperatures corresponded to the longer duct runs, a normal consequence of the design. The record shows that the vehicle's design provides very confined spaces for installation of the furnace and ducts. However, the warranty only covers manufacturing defects and not any issue arising from the design. The inspection at the hearing showed that the vehicle had limited space for the furnace and air ducts, ostensibly affected by the inclusion of house features (e.g., kitchen appliances, cabinets, etc.) within the constraints of a truck/van chassis. Accordingly, because the tight clearances and small duct sizes result from the design of the vehicle, the heating issue cannot support any relief.

**2. Shower Water Leak**

The record shows that a water leak more likely than not continues to exist. Although, as the Respondent suggested, water might normally seep into the compartments in wet weather, the balance of the evidence indicates that the water originated from the shower. Testimony shows that the shower leaked as late as May 2016, after the last repair on January 22, 2016. Moreover, the Complainants averred that the shower leaked every time they used it. However, the record does not show that the Respondent, as opposed to the dealer, had an opportunity to cure. As previously noted, the last repair attempt occurred on January 22, 2016, and the Complainant mailed the notice of defect on May 26, 2016. However, the record provides no indication of an opportunity to cure by the Respondent after the notice of defect. Consequently, the Lemon Law prohibits repurchase or replacement and only allows repair relief.

**3. Generator**

A preponderance of the evidence does not show that the generator's starting problems result from a manufacturing defect. As outlined previously, the warranty excludes coverage of the generator itself. With respect to water splashing the generator because of a lack of mud flaps, the use of mud flaps concerns the design, which the warranty does not cover. Moreover, inspecting the vehicle at the hearing showed that the generator sits in an enclosed compartment, not directly

exposed to any water, with no discernible defects in the compartment or its door. The record reflects that the respondent manufactured the generator compartment according to design, with the generator manufacturer reviewing the generator installation. If the vehicle's design does not adequately keep moisture away from the generator, such design issue cannot support relief since the warranty does not cover design defects. Additionally, various factors may contribute to the generator not working even without the existence of any defects. As demonstrated during the inspection at the hearing, the generator initially made no signs of starting because of an insufficiently charged battery. After recharging the house battery, the generator made noises as if trying to start but would not start with only 1/8th of a tank of fuel. However, after refilling to 3/8th of a tank (more than the minimum 1/3 tank required to start), the generator started normally. In sum, neither the generator nor the generator's compartment has a warrantable defect.

### III. Findings of Fact

1. On February 18, 2015, the Complainants, purchased a new 2015 Coachmen Frelander 21RS from Ron Hoover Companies of Donna, Inc., an authorized dealer of the Respondent, Forest River, Inc., in Donna, Texas. The vehicle had 1,635 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty covers the vehicle for one year or 12,000 miles, whichever occurs first.
3. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Issue
June 22, 2015	Heater duct torn; shower needs caulking; generator starting switch sometimes inoperable <sup>35</sup>
September 22, 2015	No hot air coming from vents; water leaking out of shower and going onto floor and compartments <sup>36</sup>
January 22, 2016	Shower leaking into rear compartment and floor <sup>37</sup>

4. The Mr. Villarreal testified that the vehicle had a total of four repair visits. One of which was not documented. On March 7, 2015, a technician sent to the Complainants' residence

<sup>35</sup> Complainants' Ex. 5, Work Order 19625.

<sup>36</sup> Complainants' Ex. 6, Work Order 20172.

<sup>37</sup> Complainants' Ex. 7, Work Order 20813.

determined he did not have the tools to fix everything, so he suggested taking the vehicle to the dealer.

5. The Respondent itself did not attempt any of the repairs shown in the repair history.
6. On May 26, 2016, the Complainants mailed a written notice of defect to the Respondent.
7. On June 3, 2016, the Complainants filed a Lemon Law complaint with the Department alleging that the heater blew cold air; water dripped from the shower to the compartments below; and the generator was hard to start and stalled.
8. On August 29, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainants 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.
9. The hearing in this case convened and the record closed on September 28, 2016, in Pharr, Texas, before Hearings Examiner Andrew Kang. The Complainants, represented and testified for themselves. Mel Williams, Owner Relations Manager, represented and testified for the Respondent.
10. The vehicle's odometer displayed 7,974 miles at the time of the hearing.
11. The warranty expired on February 18, 2016.
12. The warranty provides that "the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor."
13. The 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. The vehicle's generator, heating, and shower did not exhibit any nonconformities during the inspection at the hearing.
15. The shower would leak water every time when used.

16. The shower last leaked in May of 2016.

#### 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 Complainants timely filed a sufficient complaint with the Department. TEX. OCC. CODE §§ 2301.204, 2301.606(d); 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052; 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainants showed that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).
7. The Complainants provided sufficient notice of the defect(s) to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
8. The Respondent did not have an opportunity to cure the alleged defect(s). TEX. OCC. CODE § 2301.606(c)(2).
9. The Complainants' vehicle does not qualify for replacement or repurchase. This Order may not require repurchase or replacement of the vehicle without an opportunity to cure by the Respondent. TEX. OCC. CODE § 2301.606(c).
10. 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 Complainants' 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 shower (water leaking from the shower) to the applicable warranty. The Complainants 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>38</sup> Within 30 days after receiving the vehicle from the Complainants, the Respondent shall complete repair of the subject vehicle. However, if the Department determines the Complainants' refusal or inability to deliver the vehicle caused the failure to complete the required repair, the Department may consider the Complainants 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 23, 2016**



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

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<sup>38</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.