

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0340 CAF**

BRUCE PINNELL,
Complainant

v.

KEYSTONE RV COMPANY,
Respondent

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Bruce Pinnell (Complainant) filed a 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 recreational vehicle manufactured by Keystone RV Company (Respondent). A preponderance of the evidence shows that the subject vehicle has warrantable defects. However, the Complainant's vehicle does not qualify for repurchase/replacement and only qualifies for 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 and the record closed on November 27, 2016, in San Antonio, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented and testified for himself. Sharon Pinnell also testified for the Complainant. Brent Giggy, Product Team Lead, represented and testified for 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.

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.⁴

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.”⁵

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ *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.”⁶

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.⁷

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.⁸

⁶ *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.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

⁸ 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.⁹

However, a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹⁰

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.¹¹

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;¹² (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹³ and (3) the

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ “[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).

¹¹ “[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).

¹² 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.

¹³ 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.¹⁴

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."¹⁵ The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."¹⁶

3. **Burden of Proof**

The law places the burden of proof on the Complainant.¹⁷ The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present sufficient evidence to show that every required fact is more likely than not true.¹⁸

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

On December 29, 2015, the Complainant, purchased a new 2016 Dutchmen Denali 316RES from Camping World RV Supercenter, an authorized dealer of the Respondent, in New Braunfels, Texas. The vehicle's limited warranty covers the vehicle for one year. On July 13, 2016, the Complainant mailed a written notice of defect to the Respondent.¹⁹ On July 18, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the refrigerator did not work on propane; the vehicle did not have wiring for satellite TV; the auto-leveling system did not work properly; two of the shades cannot be raised and other shades needed adjustment; battery cover was not properly installed; ladder supports were bent; the storage compartment doors do not safely hold open; waste valves would not seat; and a fireplace remote control was not provided.

¹⁴ TEX. OCC. CODE § 2301.606(d)(2).

¹⁵ TEX. OCC. CODE § 2301.204.

¹⁶ TEX. OCC. CODE § 2301.603(a).

¹⁷ 43 TEX. ADMIN. CODE § 215.66(d).

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

¹⁹ Complainant's Ex. 5. Written Notice of Defect.

The issue regarding the storage compartment doors has since been successfully resolved as shown during the inspection at the hearing. The Complainant took the vehicle for repair of the alleged issues as follows:

Date	Issue
February 2, 2016, February 12, 2016	Cannot raise some shades; screws coming loose from compartment holdback latch; auto-leveling system only puts down one jack; ladder screws are loose and support connection is bent; compartment holdback is inadequate ²⁰ Cannot raise shades ²¹
February 15, 2016	Satellite TV wiring not identifiable; no remote for fireplace; auto-leveling system needs adjustment; ladder screws loose and supports bent; compartment latches are inadequate; waste knife valves do not seat fully ²²
April 25, 2016	Refrigerator not cooling on LP ²³
April 27, 2016	Refrigerator shuts off on gas – pinched line under slide ²⁴
May 12, 2016	Checked gas burner on Norcold (refrigerator) ²⁵
May 25, 2016	Improper refrigerator installation – no baffle ²⁶
June 27, 2016	Refrigerator still not working on LP ²⁷

The Complainant noted that he did not represent Work Order 26860 as separate from Work Order 26860A since they addressed the same issue (shades). Work Order 26860A noted that the shade issue in Work Order 26860 was placed in a separate Work Order 26860A.

The Complainant explained that he found the same model/year vehicle at a dealer in San Antonio and asked the dealer for permission to photograph it. Unlike the subject vehicle, the new, same-model vehicle had a satellite TV jack. The Complainant was stated that the left front jack does not consistently deploy. He first noticed this issue when first using the auto-leveling system in January of 2016. The Complainant last noticed the issue when setting up the vehicle at the hearing. After contacting the leveling system manufacturer (Lippert Components, Inc.), Lippert stated it would send a replacement unit if the Complainant disconnects and sends in the

²⁰ Complainant's Ex. 6, Work Order 26860.

²¹ Complainant's Ex. 8, Work Order 26860A.

²² Complainant's Ex. 9, Work Order 27082.

²³ Complainant's Ex. 15, Invoice 124702.

²⁴ Complainant's Ex. 15, Work Order 23918.

²⁵ Complainant's Ex. 15.

²⁶ Complainant's Ex. 15, Work Order 23102.

²⁷ Complainant's Ex. 15, Work Order 499943.

malfunctioning unit. The Complainant explained that some of the shades would not stay up. Mrs. Pinnell added that four of the shades malfunctioned. Upon delivery, the Complainant found that the battery cover was not installed and instead was sitting in a storage compartment. The Complainant testified that a dealer technician bent the vehicle's ladder by climbing the ladder without securing (unfolding) the ladder on the bottom. The Complainant found two gray water waste valves to be sticky and hard to push in and out. In contrast, the black water worked easily because it had been replaced. The Complainant confirmed that the fireplace remote control was missing from the beginning. The Complainant testified that the refrigerator did not work properly on propane. Although a repair improved the refrigerator's performance, it did not operate optimally on hot days because the refrigerator was not installed with the necessary insulation. The Complainant stated that putting the swiveling, reclining chairs on the vinyl floor dimpled the floor. The Complainant affirmed that any vinyl flooring would not appear to sufficiently resist dimpling. Mr. Pinnell concluded that he reasonably expected that the dealer had sufficient time to make repairs but the dealer could not be trusted.

B. Respondent's Evidence and Arguments

Mr. Giggy explained that a baffle directs air to go out the top and the insulation installed on the sides is a buffer to keep the air from going around. The Respondent did not install insulation, except to direct the air. Mr. Giggy testified that the manufacturer did not categorically install insulation to protect the refrigerator (from heat). Mr. Giggy noted that the difference in performance between electricity and propane may not be the insulation, since the insulation is the same for both. Variables in refrigerator performance include air flow, cleanliness, elevation (propane does not perform as well at higher elevations), temperature, and whether level. Mr. Giggy contended that the Complainant took the vehicle before completion of repairs. The Respondent understood that the Complainant wanted to use the vehicle for a trip and the Respondent agreed the Complainant could take it but the Respondent needed the vehicle back to complete repairs. Ms. Diaz offered to have the vehicle transported to a dealer, but the Complainant wanted to proceed to the hearing. Mr. Giggy explained that the dealer did some repairs but did not address the issues in the complaint. Though the Complainant claimed he did not have notice until November 11 (2016) that repairs were not complete. Mr. Giggy asserted that Ms. Diaz's contact with the Complainant to attempt to get the vehicle to a dealer for repair provided notice that the Respondent wanted to

complete repairs. Mr. Giggy contended that the two chairs in the slideout were never intended to be removed from the slide. The intent of the design is to use the chairs in the carpeted area. The chairs are heavy, about 100 pounds, and difficult to move as attested by Mrs. Pinnell. The Respondent offered to provide carpet but the chairs were not intended to be used on linoleum.

C. Inspection

The inspection showed that the cover of the battery box had been installed. However, the battery cable appeared to be slightly larger than the battery's boxes cable outlet. The battery box had vents on the top and bottom opening to the exterior of the vehicle. The vinyl flooring exhibited some dimples/divots. The area where the satellite TV jack should be did not have such a jack. The latches on the compartment doors worked properly, allowing the doors to be lifted high enough to latch/unlatch the doors. The refrigerator had insulation on the sides but no insulation between the baffle and the refrigerator. The ladder had bent supports. The gray water valves operated more stiffly than the black water tank valve. Several of the blinds were limp (could not be adjusted up or down). The door-side jack did not contact the ground.

D. Analysis

1. Warrantable Defects

The Lemon Law only applies to defects covered by the manufacturer's warranty (warrantable defects).²⁸ Therefore, if the warranty does not cover the vehicle or the complained of problem, then the Lemon Law provides no remedy. In this case, the Respondent's warranty covers "defects in materials and workmanship supplied and attributable to Keystone" (manufacturing defects). A manufacturing defect occurs when the vehicle varies from the manufacturer's intended design: "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."²⁹ In other words, a manufacturing defect is an aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect

²⁸ TEX. OCC. CODE § 2301.604(a).

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

assembly. As a result, a defective vehicle differs from a properly manufactured vehicle. Issues that do not arise from manufacturing, such as the design of the vehicle (which occurs before manufacturing) or improper dealer repairs (which occur after manufacturing), are not warrantable defects. In contrast to manufacturing defects, “[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves.”³⁰ Design characteristics result from the vehicle’s design and not from any error in the manufacturing process, so that the same-model vehicles made according to the manufacturer’s specifications should ordinarily have the same characteristics. Additionally, the warranty specifically excludes “[e]quipment, products, components, appliances, or accessories not manufactured by Keystone whether or not warranted, including but not limited to, tires, batteries, generators, washer, dryer, electronics and other installed equipment or accessories.” The warranty also excludes “[d]amage or loss caused in whole or in part by the acts or omissions of any kind by any party other than Keystone.” In sum, issues not arising from the Respondent’s manufacture of the vehicle, such as the design of the vehicle, flaws in components manufactured by third parties, or improper dealer service, are not warrantable defects.

a. Satellite Wiring

Inspection of the vehicle showed that the vehicle did not have any jacks for the satellite TV wiring, and possibly did not have the wiring at all. In contrast, a new same model vehicle did have such a jack, indicating that the Respondent failed to install a satellite TV jack according to design. Accordingly, the absence of a satellite TV jack constitutes a warrantable defect. However, the missing jack does not appear to substantially impair the use or market value of the vehicle.

b. Auto-Leveling

The record reflects that Lippert Components, Inc. manufactured the auto-leveling system. As explained above, the warranty does not cover third party components, such as the auto-leveling system manufactured by Lippert. Therefore the Lemon Law does not apply.

³⁰ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

c. Shades

The shades are components manufactured by a third party and not by the Respondent. Consequently the warranty does not cover the shades and the Lemon Law does not apply.

d. Battery Cover

At delivery of the vehicle, the Complainant found that manufacturer had failed to install the top of the battery box. Since then, the top of the battery box was installed and at the inspection during the hearing, the battery box appeared to be properly installed. However, the battery cable appeared to be marginally too large to fit precisely in the battery box's cable groove.

e. Ladder Supports

As noted above, the warranty only covers defects in materials and workmanship of the Respondent. Furthermore, the warranty specifically excludes damage caused by anyone other than the Respondent. In this case, a technician of a dealer caused the damage to the ladder. Therefore, the warranty does not cover the ladder damage and the Lemon Law provides no remedy.

f. Storage Doors

As demonstrated during the inspection at the hearing, the storage doors and latches have been successfully repaired.

g. Waste Valves

The inspection showed that the waste valves, though functioning, required significantly more force to operate than the valve that had been replaced. However, the problem appears to arise from the valve itself, a component not manufactured by the Respondent, and therefore not covered by warranty.

h. Fireplace Remote Control

The omission of the fireplace remote control constitutes a warrantable defect. The failure to include the remote control appears to be an omission attributable to the respondent that varies from its intended specifications. However, the missing remote does not appear to substantially impair the use or market value of the vehicle.

i. Refrigerator

As described above, the warranty only applies to defects in the workmanship or materials but does not cover issues arising from the design of the vehicle. Here, the record shows that the respondent did not ordinarily use insulation in addition to using a baffle with the refrigerator. Although the use of additional insulation may improve the refrigerator's performance, the Lemon Law only requires the manufacturer to comply with its own specifications, even if those specification may be suboptimal. In this case, the testimony shows that the Respondent installed the refrigerator according to its specifications. Because the refrigerator was installed according to the Respondent's specifications, the lack of additional insulation is not a warrantable defect subject to Lemon Law relief.

j. Flooring

The warranty covers manufacturing defects but does not cover issues arising out of the design of a vehicle. In this case, the testimony reflects that the Respondent uses flexible flooring material because the floor must be flexible to avoid cracking. Further, Mr. Giggy testified that the Respondent does not produce any vehicles with hard flooring. Additionally, the Denali brochure shows the chairs placed on the carpeted portion of the floor and not on the vinyl.³¹ Although the floorplan of the vehicle may make TV viewing inconvenient with the chairs on the carpet, the layout of the vehicle and the use of vinyl flooring are all part of the vehicle's intended design and not a manufacturing defect. Accordingly, the indentions caused by moving the chairs onto the vinyl floor are not a warrantable defect.

2. Respondent's Opportunity to Repair

The record reflects that the Respondent did not have the opportunity to repair that the Lemon Law requires to grant repurchase or replacement relief. As outlined in the discussion of applicable law, this order cannot grant repurchase or replacement unless "the manufacturer . . . has been given an opportunity to cure the alleged defect or nonconformity."³² The manufacturer's opportunity to repair is a separate requirement. In other words, even if a vehicle satisfies all other requirements for repurchase/replacement (such as reasonable repair attempts), the manufacturer,

³¹ Respondent's Ex. 4, Denali brochure.

³² TEX. OCC. CODE § 2301.606(c)(2).

as opposed to just the dealer, must still have had an opportunity to repair the defects. In the present case, the Complainant brought the vehicle to the dealer on July 21, 2016. The Respondent authorized repairs on August 22, 2016. However, the Complainant picked up the vehicle on September 13, 2016, before any repairs of the complained of issues. Ms. Diaz, on behalf of the Respondent, attempted to arrange for the completion of repairs. However, the Complainant refused.³³ The Department previously determined that “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”³⁴ Accordingly, the Respondent did not have the required opportunity to repair. Consequently, this order cannot grant repurchase or replacement relief even if the vehicle otherwise qualifies for such relief.

III. Findings of Fact

1. On December 29, 2015, the Complainant, purchased a new 2016 Dutchmen Denali 316RES from Camping World RV Supercenter, an authorized dealer of the Respondent, in New Braunfels, Texas.
2. The vehicle’s limited warranty covered the vehicle for one year.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Issue
February 2, 2016, February 12, 2016	Cannot raise some shades; screws coming loose from compartment holdback latch; auto-leveling system only puts down one jack; ladder screws are loose and support connection is bent; compartment holdback is inadequate Cannot raise shades
February 15, 2016	Satellite TV wiring not identifiable; no remote for fireplace; auto-leveling system needs adjustment; ladder screws loose and supports bent; compartment latches are inadequate; waste knife valves do not seat fully
April 25, 2016	Refrigerator not cooling on LP
April 27, 2016	Refrigerator shuts off on gas – pinched line under slide
May 12, 2016	Checked gas burner on Norcold (refrigerator)
May 25, 2016	Improper refrigerator installation – no baffle
June 27, 2016	Refrigerator still not working on LP

³³ Respondent’s Ex. 3, E-mail correspondence.

³⁴ *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication).

4. On July 13, 2016, the Complainant mailed a written notice of defect to the Respondent.
5. On July 18, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the refrigerator did not work on propane; the vehicle did not have wiring for satellite TV; the auto-leveling system did not work properly; two of the shades cannot be raised and other shades needed adjustment; battery cover was not properly installed; ladder supports were bent; the storage compartment doors do not safely hold open; waste valves would not seat; and a fireplace remote control was not provided.
6. On November 14, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, 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. The hearing in this case convened and the record closed on November 27, 2016, in San Antonio, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented and testified for himself. Sharon Pinnell also testified for the Complainant. Brent Giggy, Product Team Lead, represented and testified for the Respondent.
8. The vehicle's warranty was in effect at the time of the hearing.
9. The inspection at the hearing showed that the cover of the battery box had been installed. However, the battery cable appeared to be slightly larger than the battery's boxes cable outlet. The battery box had vents on the top and bottom opening to the exterior of the vehicle. The vinyl flooring exhibited some dimpling. The area where the satellite TV jack should be did not have such a jack. The latches on the compartment doors worked properly, allowing the doors to be lifted high enough to latch/unlatch the doors. The refrigerator had insulation on the sides but no insulation between the baffle and the refrigerator. The ladder had bent supports. The gray water valves operated more stiffly than the black water tank valve. Several of the blinds were limp (could not be adjusted up or down). The door-side jack did not contact the ground.

10. The Respondent's warranty covers "defects in materials and workmanship supplied and attributable to Keystone."
11. The warranty specifically excludes "[e]quipment, products, components, appliances, or accessories not manufactured by Keystone whether or not warranted, including but not limited to, tires, batteries, generators, washer, dryer, electronics and other installed equipment or accessories." The warranty also excludes "[d]amage or loss caused in whole or in part by the acts or omissions of any kind by any party other than Keystone."
12. Consistent with the Respondent's intended design, the Respondent does not install refrigerators with insulation in addition to baffles.
13. The use of vinyl flooring conforms to the Respondent's intended design.
14. A technician of a dealer caused the damage to the ladder.
15. On July 21, 2016, the Complainant took the vehicle to a dealer for repair.
16. On August 22, 2016, the Respondent authorized repairs on the vehicle.
17. On September 13, 2016, the Complainant retrieved the vehicle from the servicing dealer before repair of the complained of issues.
18. The Respondent attempted to arrange for completion of the repairs.
19. The Complainant refused to return the vehicle for repairs.

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 Complainant timely filed a sufficient complaint with the Department. TEX. OCC. CODE §§ 2301.204, 2301.606(d); 43 TEX. ADMIN. CODE § 215.202.

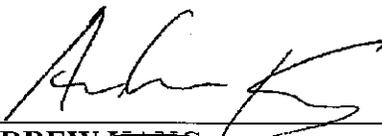
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052; 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Respondent did not have an opportunity to cure the alleged defect(s). TEX. OCC. CODE § 2301.606(c)(2).
7. The Complainant's vehicle does not qualify for replacement or repurchase. The currently existing warrantable defects do not create a serious safety hazard or substantially impair the use or market value of the vehicle. TEX. OCC. CODE § 2301.604.
8. The Complainant's 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).
9. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
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.
11. The Respondent has a continuing obligation after the expiration date of the warranty to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's designated agent or franchised dealer before the warranty expired. TEX. OCC. CODE §§ 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the vehicle's satellite TV wiring/jack and fireplace to the applicable warranty, specifically, the Respondent shall install any missing satellite TV wiring/jack and replace the missing fireplace remote control. The Complainant shall deliver the subject vehicle to the

Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.³⁵ Within 90 days after receiving the vehicle from the Complainant, the Respondent shall complete repair of the subject vehicle. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair, the Department may consider the Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED January 26, 2017



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

³⁵ (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.