

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0050 CAF**

**LAURA CHILCUTT and
DAVID CHILCUTT,
Complainants**

v.

**FOREST RIVER, INC.,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Laura Chilcutt and David Chilcutt (Complainants) 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 their recreational vehicle manufactured by Forest River, Inc. (Respondent). A preponderance of the evidence shows that the subject vehicle continues to have warrantable defects. However, such defects do not create a serious safety hazard or substantially impair the vehicle's use or market value. Consequently, the Complainants' vehicle does not qualify for repurchase/replacement but does qualify 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 February 28, 2017, in Fort Worth, Texas, before Hearings Examiner Andrew Kang. The Complainants, represented and testified for themselves. Mel Williams, Owner Relations Manager, 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 *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[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.’”).

¹¹ *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

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 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 Complainants.¹⁷ The Complainants must prove all facts required for relief by a preponderance, that is, the Complainants must present sufficient evidence to show that each required fact is more likely than not true.¹⁸

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.¹⁹ 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."²⁰ However, the parties may expressly or impliedly consent

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 "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 factual 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.").

²⁰ 43 TEX. ADMIN. CODE § 215.202(a)(2)(emphasis added).

to trying issues not included in the pleadings.²¹ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²²

A. Complainants' Evidence and Arguments

On July 24, 2015, the Complainants, purchased a new 2016 Chaparral 390QSMB from Fun Town RV, an authorized dealer of the Respondent, in Cleburne, Texas. The vehicle's limited warranty covers the vehicle for one year from the date of purchase. On October 4, 2016, the Complainants mailed a written notice of a water leak to the Respondent. On October 18, 2016, the Complainants filed a Lemon Law complaint with the Department alleging that: the shower drain was not connected and leaked, causing water damage; a recliner did not work; trim was coming off/loose; steps inside were broken/loose; the antenna crank was loose/coming off; the underbelly came off; a sewer strap came off, leaving the pipe almost on the ground; a fender came off while towing; a shower door latch came off; the closet door louvers were loose and coming out; a window blind came off; a hinge on the island came off; and the Murphy bed had broken spring and collapsed in the middle. Of the items identified in the complaint, the Complainants confirmed that the following issues have been resolved: the water drain leak itself, recliner not working, trim coming off/loose, antenna crank loose/coming off, sewer strap came off, loose closet door louvers, window blind came off,²³ island hinge came off, and broken Murphy bed spring. In relevant part, the Complainants took the vehicle to a dealer for repair of the remaining alleged issues as follows:

Date	Issue
1/11/2016	Water leaking from underbelly, steps inside are weak
7/8/2016	Water damage inside front compartment, fender skirt blew off, shower door latch fell off

Mr. Chilcutt testified that the Complainants had to pay for mobile repair, not covered under warranty, of a major water leak while out of town. Mr. Williams asked if the Complainants were reimbursed. Mr. Chilcutt answered that the trip to obtain parts was not covered and only the parts and labor were covered. Mr. Williams asked if the mobile repair service charged \$336 for the call. Mr. Chilcutt responded that, if not under warranty, the repair cost would have been \$800 to \$900.

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

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

²³ Mrs. Chilcutt confirmed that the window blind was successfully repaired but also added that the dealer placed the valance on backwards when repairing the blind. However, issues caused by the dealer do not constitute manufacturing defects attributable to the Respondent under the warranty.

He confirmed that the water leak was successfully repaired but affirmed that not all water damage had been repaired and noted the possibility of unknown damage. He questioned why the dealer would repair something upright, i.e., wall studs, but not repair something horizontal (the floor) that collects water. Mrs. Chilcutt confirmed that the steps inside creaked. Mr. Chilcutt elaborated that initially, the steps were “really bad” and now are “just not right”. Mr. Chilcutt noted that the antenna crank leaked water but the Respondent objected to the consideration of leakage from the antenna crank since the complaint did not identify such a leak. Mr. Chilcutt confirmed that the fender had been repaired but also that it had started to come loose again. With regard to the shower latch, Mrs. Chilcutt confirmed that the latch was repaired but a latch on the other side was coming off. Additionally, the originally complained of latch was not working completely as it should. Mr. Chilcutt affirmed that the closet louvers were fixed but that the same door had other problems. Mrs. Chilcutt explained that the door came completely off track. Mrs. Chilcutt stated that they tried emailing the Respondent regarding the defects but never received a response, so they mailed a notice on October 4, 2016. Mr. Chilcutt testified that for one issue, the vehicle was out for repair for 123 days, mostly between July 8 and October 27, 2016. He expressed that their biggest concern was water damage.

B. Respondent’s Evidence and Arguments

On cross examination, Mr. Chilcutt confirmed that they did not live in the vehicle, but traveled, for example, going to stock shows, San Antonio, Dallas, and Missouri. When asked if the vehicle had any roof maintenance, Mr. Chilcutt answered they had it cleaned. Mr. Williams testified that if the vehicle still has issues, the Respondent would repair them, even if the warranty is expired.

C. Inspection

The inspection at the hearing revealed a roughly one inch wide water stain on a piece of solid wood under the water heater in the storage compartment. A felt-like carpeting covered most of the oriented strand board (OSB) floor in the storage compartment, which prevented inspection for visible water damage in those areas. A round uncarpeted area of the floor, a little less than a foot wide, aft of the water heater did not show any signs of water damage. The areas of the floor within reach, including the area by the water heater, felt solid and did not appear warped or soft to

the touch. An approximately 2" x 3/4" strand came off of the OSB floor under the water heater, apparently due to water damage. The floor did not otherwise exhibit water damage. A fender on the non-door side was loose, with one screw missing. The right side of the tread on the first step was loose and could be felt by pushing in by hand. The shower door latch identified in the complaint had been repaired; however, the latch did not appear to be functioning completely right. Additionally, another latch of the same type failed. The closet door louvres had been repaired, but the door itself had come off track. The valance on the window was placed backwards.

D. Analysis

1. Respondent's Opportunity for Repair

The evidence does not reflect that the Respondent had an opportunity for repair. The Complainants sent a notice of defect to the Respondent on October 4, 2016. However, the record does not show, after notice of the defects, that the Respondent, as opposed to a dealer, had an opportunity to repair or the Complainants presented their vehicle for repair by the Respondent. Consequently, the Lemon Law prohibits granting repurchase or replacement relief.

2. Warrantable Defects

The Lemon Law does not cover all problems that may occur with a vehicle but applies to defects/conditions covered by the warranty (warrantable defects). Accordingly, to qualify for replacement/repurchase or warranty repair under the Lemon law, the vehicle must have a defect covered by an applicable warranty.²⁴ In this case, the vehicle's warranty provides that:

Forest River Inc., 55470 CR 1, P.O. Box 3030, Elkhart, Indiana 46515-3030 (Warrantor) warrants to the ORIGINAL CONSUMER PURCHASER ONLY, when purchased from an authorized Forest River Inc. dealer, for a period of one (1) year from the date of purchase (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.²⁵

In addition, the warranty states:

Warrantor expressly disclaims any responsibility for damage to the unit where damage is due to condensation, normal wear and tear or exposure to elements. Warrantor makes no warranty with regard to, but not limited to, the chassis,

²⁴ TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

²⁵ Complainants' Ex. 20, Forest River Fifth Wheel Owner's Manual, Warranty.

including, without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, routine maintenance, equipment and appliances, or audio and/or video equipment. Their respective manufacturers and suppliers may warrant some of these items. Warranty information with respect to these items is available from your dealer. The Warrantor further makes no warranty with regard to any product used for commercial purposes, as a permanent residence or as a rental unit, or any product not registered and normally used in the United States or Canada.²⁶

Significantly, the warranty excludes defects attributable to parts manufactured by third parties and instead applies only to body structure defects in materials and workmanship (manufacturing defects) attributable to the Respondent.

Furthermore, the warranty does not cover conditions caused by the vehicle's design. Courts have affirmed that warranty language covering "defects in material or workmanship" did not cover design defects.²⁷ That is, defects in materials or workmanship (manufacturing defects) differ from defects in design. The courts have explained that 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."²⁸ 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 assembly or the use of a broken part. 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), 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."²⁹ Likewise, design

²⁶ Complainants' Ex. 20, Forest River Fifth Wheel Owner's Manual, Warranty.

²⁷ *E.g., Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 ("The manufacturer's express warranty in the case sub judice provides: 'Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship' The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within 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.").

²⁸ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

²⁹ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

characteristics result from the vehicle's specified design and not from any error during manufacturing, so that the same-model vehicles made according to the manufacturer's specifications should ordinarily have the same characteristics. If the complained of condition constitutes a design characteristic or even a design defect, the Lemon Law does not apply because the warranty only covers manufacturing defects.

a. Water Leak

The disconnected drain was successfully repaired, eliminating ongoing water damage. However, to repair the water damage, the dealer only replaced wall studs in the compartment and not the floor. Inspection of the compartment floor at the hearing showed that a piece of OSB had broken off due to water damage. Nevertheless, the inspection showed only limited water damage on the compartment's exposed wood floor. The existence of any visible water stains under the carpet could not be confirmed, given the inability to see under the carpeting. However, the floor did not exhibit any visible or tangible warping or tangible soft spots. Nevertheless, the existing damage qualifies for repair relief.

b. Steps

The inspection revealed that the lower step continues to be loose. Accordingly, repair relief applies.

c. Fender

As Mr. Chilcutt observed, the fender issue appears to result from a poor design. The fender has a gap at the front, funneling air behind the fender, causing it to move and loosen. Although the fender appears to have been installed according to specifications, the design itself appears to be defective. Because this condition stems from the design as opposed to a manufacturing defect, the warranty does not cover the loose fender. Therefore, the Lemon Law does not provide relief here.

d. Shower Latch

Problems with the shower door latches appear to arise from the materials or workmanship attributable to the third-party that manufactured the latch and not the Respondent. As a result, Lemon Law relief does not apply here.

e. Closet Door

Though the complaint did not identify the closet door going off track as an issue, a repair order reflects that the dealer adjusted the door tracks to address broken closet door louvers, which the complaint did include. In any event, this issue was addressed without objection. In this case, the issue appears to arise from the Respondent's installation of the door/tracks. Accordingly, the door qualifies for repair relief.

III. Findings of Fact

1. On July 24, 2015, the Complainants, purchased a new 2016 Chaparral 390QSMB from Fun Town RV, an authorized dealer of the Respondent, in Cleburne, Texas.
2. The vehicle's limited warranty covers the vehicle for one year from the date of purchase.
3. In relevant part, the Complainants took the vehicle to a dealer for repair as shown below:

Date	Issue
1/11/2016	Water leaking from underbelly, steps inside are weak
7/8/16	Water damage inside front compartment, fender skirt blew off, shower door latch fell off

4. On October 4, 2016, the Complainants mailed a written notice of a water leak to the Respondent.
5. On October 18, 2016, the Complainants filed a Lemon Law complaint with the Department alleging that: the shower drain was not connected and leaked, causing water damage; a recliner did not work; trim was coming off/loose; steps inside were broken/loose; the antenna crank was loose/coming off; the underbelly came off; a sewer strap came off, leaving the pipe almost on the ground; a fender came off while towing; a shower door latch came off; the closet door louvers were loose and coming out; a window blind came off; a hinge on the island came off; and the Murphy bed had broken spring and collapsed in the middle.
6. Of the items identified in the complaint, the Complainants confirmed that the following issues have been resolved: the water drain leak itself, recliner not working, trim coming off/loose, antenna crank loose/coming off, sewer strap came off, loose closet door louvers, window blind came off, island hinge came off, and broken Murphy bed spring.

7. On January 6, 2017, the Department's Office of Administrative Hearings issued an amended notice of hearing directed to the Complainants 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.
8. The hearing in this case convened and the record closed on February 28, 2017, in Fort Worth, Texas, before Hearings Examiner Andrew Kang. The Complainants, represented and testified for themselves. Mel Williams, Owner Relations Manager, represented and testified for the Respondent.
9. The warranty expired on July 24, 2016.
10. The inspection at the hearing revealed a roughly one inch wide water stain on a piece of solid wood under the water heater in the storage compartment. A felt-like carpeting covered most of the oriented strand board (OSB) floor in the storage compartment, which prevented inspection for visible water damage in those areas. A round uncarpeted area of the floor, a little less than a foot wide, aft of the water heater did not show any signs of water damage. The areas of the floor within reach, including the area by the water heater, did not appear warped or soft to the touch. An approximately 2" x 3/4" strand came off of the OSB floor under the water heater, apparently due to water damage. The floor did not otherwise exhibit water damage. A fender on the non-door side was loose, with one screw missing. The right side of the tread on the first step was loose and could be felt by pushing in by hand. The shower door latch identified in the complaint had been repaired; however, the latch did not appear to be functioning completely right. Additionally, another latch of the same type failed. The closet door louvres had been repaired, but the door itself had come off track.
11. The design of the fender funnels air behind the fender causing it to loosen.
12. The closet door came off track after adjustment of the track by the dealer.

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 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 Respondent did not have an opportunity to cure the alleged defect(s). TEX. OCC. CODE § 2301.606(c)(2).
7. The Complainants' vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604.
8. 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).
9. If the Complainants' 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 Complainants' vehicle qualifies for warranty repair. TEX. OCC. CODE §§ 2301.204 and 2301.603.
11. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603.
12. 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 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 to the applicable warranty, specifically, the Respondent shall repair: the water damaged wood floor in the storage compartment; the loose interior step; and the off track closet door. The Complainants shall deliver the subject vehicle to the Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.³⁰ Within 90 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 as prescribed, 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 May 1, 2017



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

³⁰ (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.