

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0173709 CAF**

**GUS STEVENS,
Complainant**

v.

**REV RECREATION GROUP, INC., and
FORD MOTOR COMPANY
Respondents**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Gus Stevens (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) and/or Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in his recreational vehicle manufactured by the Respondents, REV Recreation Group, Inc. (REV) and Ford Motor Company (Ford). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that qualifies for warranty repair but not repurchase/replacement.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on August 18, 2017, and reconvened on October 12, 2017, in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on November 2, 2017, the deadline for responses to written submissions. The Complainant, represented himself; Judy Stevens, the Complainant's spouse, testified for the Complainant. Christopher Lowman, attorney, represented REV; David Matzenger, Dispute Resolution Administrator, testified for REV. Amanda Bemiller, Consumer Affairs Legal Analyst, represented Ford; Assad Bashir, Automotive Technical Specialist, testified for Ford.

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 the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.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 the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁸

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:

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).

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁰

The existence of 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.¹¹ 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.¹²

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, someone on behalf of the owner, or the Department provided written notice of the alleged defect or nonconformity to the manufacturer;¹³ (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹⁴ and (3) the Lemon Law complaint was filed within six months after the earliest

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.605(c).

¹¹ *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.’”):

¹² *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.”).

¹³ TEX. OCC. CODE § 2301.606(c)(1).

¹⁴ 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).

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.¹⁵

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."¹⁶ The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."¹⁷

3. **Burden of Proof**

The law places the burden of proof on the Complainant.¹⁸ The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present sufficient evidence to show that each required fact is more likely than not true.¹⁹ If any required fact appears equally likely or unlikely, then the Complainant has not met the burden of proof.

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

The complaint identifies the issues to be addressed in this proceeding.²⁰ 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."²¹ However, the parties may expressly or impliedly consent

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

¹⁶ TEX. OCC. CODE § 2301.204.

¹⁷ TEX. OCC. CODE § 2301.603(a).

¹⁸ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁹ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

²⁰ "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.").

²¹ 43 TEX. ADMIN. CODE § 215.202(a)(2).

to trying issues not included in the pleadings.²² Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²³

A. Complainant's Evidence and Arguments

On March 12, 2016, the Complainant, purchased a new 2016 Bounder 35K from Holiday World of Willis, an authorized dealer of the Respondent, in Willis, Texas. The Complainant actually took delivery on March 22, 2016. The vehicle had 1,217 miles on the odometer at the time of purchase. The REV (Fleetwood) limited warranty covers the "house" of the vehicle for one year or 15,000 total miles, whichever occurs first. With respect to the chassis, the Ford warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first, and powertrain coverage for five years or 60,000 miles. On February 7, 2017, the Complainant provided a written notice of defect to the Respondent. On March 6, 2017, the Complainant filed a complaint with the Department alleging that the water pressure varied, the water temperature was not hot enough, lines broke, and other valves malfunctioned; the air conditioning (AC), heat pump, and furnace malfunctioned; the vehicle swayed on roads, especially when cornering and on banked roads; the vehicle was noisy on roads, microwave rattled, side entrance door rattled, engine was noisy; water leaked in from rain and AC condensation from gutters; the transmission slipped out of gear or lost power; and the fiberglass had a crack. The Complainant and Mrs. Stevens confirmed that the issues with water pressure, water temperature, valves, lines, microwave rattling, and fiberglass crack were successfully resolved.

The Complainant explained that he had two buyer's orders because the original buyer's order had a negative balance, so the dealer revised the buyer's order to increase the purchase price and increase the trade-in amount to facilitate financing. He noted that the AC had been repaired but continued to break down and the microwave was quieted but other problems persisted. Mrs. Stevens elaborated that the RV still had water leaks after repairs. The Complainant pointed out the uncertainty of whether the transmission/power loss issue experienced in the mountains still existed since the Houston area did not have any 6% or higher grades. The Complainant could not recall whether he had provided written notice to Ford apart from the complaint. The Complainant

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

²³ See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

testified that the awning caught rain when open and would leak rain inside when retracting the slide. Additionally, the AC and heat pump would turn on at the same time, but the dealer explained this was normal. The Complainant explained that the AC, heat pump, and furnace would make noise and did not always function properly. The AC last malfunctioned in August of 2017. The heat pump also last malfunctioned in August 2017. Mrs. Stevens stated that the furnace last malfunctioned in February or March of 2017. The Complainant testified that the vehicle swayed when going on an overpass down to a frontage road, the vehicle dips and sways back and forth. He described the side door rattle as a metallic rattle, as if something were not tight. Mrs. Stevens stated that they noticed the noise essentially immediately and last noticed this in Galveston (August 2017). Mrs. Stevens testified that she last noticed a water leak on August 28, 2017. The Complainant explained that after the dealer sealed the top of the RV, the Complainant drove the vehicle to an RV park about 100 to 150 miles away and the RV leaked when raining that night. The Complainant explained that the transmission slipping out of gear or power loss occurred on grades 6% or higher in the Rocky Mountains. The transmission would feel like it were in neutral and did not want to go anywhere. He confirmed that this occurred in high altitude areas and that he did not notice this occurring any other time. In response to whether the Complainant used the RV only recreational and not full time, the Complainant responded that they were supposed to be full time.

On cross-examination, the Complainant testified that they had sold their house to travel full time in the RV. Mrs. Stevens answered that they did not check the sealants, noting that the leak occurred two months after buying the RV. The Complainant stated there was a six inch void in the sealant. The Complainant confirmed that Mr. Matzenger offered to take the RV to address the leaks in Alvarado but Mrs. Stevens pointed out that Alvarado was a four hour drive from them and they did not have the time to do that. The Complainant stated that he told Mr. Matzenger that repairing in Alvarado was not possible at the time. When asked if the vehicle displayed any warning messages or warning lamps in relation to the transmission not engaging, the Complainant answered no.

The Complainant noted out that the person who first alerted him to the drive quality had 26 years' experience with heavy trucks. He also affirmed that the dealer had a technician install the satellite dish after purchasing the RV.

B. Respondent's Evidence and Arguments

Mr. Matzenger explained that the repair history was generated with the warranty claim processing system. He observed that the AC operated throughout the test drive and appeared to operate normally, with no abnormal noise, with zone 1 and zone 2 both set for cooling. Mr. Matzenger noted the test drive took the RV through some construction areas and appeared to drive like every other Bounder driven in his forty years with Fleetwood. With regard to the entrance door, he heard nothing abnormal. He did hear some creaking from the cabinets but found it normal, adding that when loaded, dishes, etc., can make noise and rattle. Mr. Matzenger did not see any watermarks, residue, or other signs of water in the area. He saw that a satellite dish was installed, which was something the manufacturer did not install. He also testified that transmission appeared to operate normally and neither the transmission nor the engine exhibited any unusual noise. Mr. Matzenger pointed out that the warranty specifically excluded refrigerators but that dealers may attempt to assist customers with such issues. Mr. Matzenger explained that Motor Home Specialist is an approved REV retailer down the street from REV's repair facility. Motor Home Specialist processes the paperwork to ensure compliance with Texas law but REV personnel actually performed the repairs. Mr. Matzenger affirmed that the repair order did not reference water leaks, the refrigerator, or rattling door.

On cross-examination, Mr. Matzenger confirmed that Holiday World was an approved retailer for REV. He explained that a dealer may express an opinion but that would not be a statement by REV. He reiterated that the REV warranty specifically disclaims refrigerators. When asked why aftermarket improvements to improve the ride were not covered under warranty, Mr. Matzenger explained that REV did not warrant the chassis. With regard to the leaking, he explained that he was not involved in the diagnosis of the issue but the dealer sealed the RV. He elaborated that the Alvarado facility was a part of REV but not the dealer. When asked about living in the RV full time, Mr. Matzenger explained that every aspect of maintenance is accelerated. He pointed out that without routine maintenance, the probability of leaks increases. Some of the Complainant's photos suggest that the slides were retracted without completely shedding the water from the top. Additionally, he did not know whether the aftermarket satellite dish was properly installed and sealed. Mr. Matzenger stated that dealers are approved to do a variety of repairs but some repairs require the dealer to call REV before proceeding. In this case the roof AC manufacturer did this.

With respect to the Ford chassis, Ms. Bemiller testified that the vehicle did not qualify for repurchase or replacement because it did not have four or more repair attempts, was not out of service 30 or more days, and did not have a substantial impairment.

Mr. Bashir outlined the repair history of the chassis. He checked for bulletins and checked for diagnostic trouble codes and found none. The RV shifted normally during a 10 mile test drive. He noted that the owner's guide states that "Drive" was best for normal driving but the transmission could manually be shifted to a lower gear range. Additionally, the tow/haul switch can reduce the frequency of shifting and help with engine braking. The history did not show a repair visit for engine noise. The vehicle's engine produces maximum torque at 3,000 rpm, so the transmission may stay in lower gear to hold the rpms in a higher range to produce sufficient power. The dealership was unable to verify a handling problem on a road test. Mr. Bashir explained the importance of proper loading to avoid contributing to swaying. Additionally, the storage tanks (for water and fuel) have a dynamic load and slosh from side to side. However, such a dynamic load is not a defect. Also the vehicle is longer, wider, and higher than most people are accustomed to driving. Mr. Bashir confirmed that high altitudes can contribute to a feeling of loss of power.

In closing, REV asserted that it did not have an opportunity to cure, at least with respect to the water leaks. When the RV was taken to REV's service center, the water leak issue was not on the list for repair.

C. Inspection

Upon inspection at the hearing, before the teste drive, the vehicle had 13,480 miles on the odometer. The odometer displayed 13,495 at the end of the test drive. The vehicle appeared to operate normally during the test drive.

D. Analysis

Lemon Law relief does not apply to all issues that a consumer may have with a vehicle but only to defects covered by warranty (warrantable defects).²⁴ The Lemon Law does not require that a manufacturer provide any particular warranty coverage nor does the Lemon Law specify any standards for vehicle characteristics. The Lemon Law only requires the manufacturer to conform

²⁴ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); Tex. Occ. Code § 2301.204

its vehicles to whatever coverage the warranty provides. In part, the REV warranty generally states that “Your new motor home is warranted under normal use to be free from manufacturing defects in material or workmanship when first sold by an authorized Fleetwood Dealership.” Similarly, the Ford warranty provides that “Ford Motor Company dealers will, without charge, repair, replace, or adjust all parts on your vehicle that malfunction or fail during normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship.” According to these terms, the warranties only apply to defects in materials or workmanship (manufacturing defects).²⁵ A manufacturing defect is an isolated 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. Unlike manufacturing defects, issues that do not arise from manufacturing, such as characteristics of the vehicle’s design (which exists before manufacturing) or dealer representations and improper dealer repairs (which occur after manufacturing) are not warrantable defects. Design characteristics result from the vehicle’s specified design and not from any error during manufacturing.²⁶ In sum, because the warranty only covers manufacturing defects, the Lemon Law does not apply to design characteristics or design defects. Additionally, the REV warranty specifically excludes, among other things:

1. The automotive chassis system (including the chassis and drive train), tires and batteries, all of which are covered by the separate warranties of the respective manufacturers of these components.
2. Components or items expressly warranted by their respective manufacturer.
3. Defects or performance failures caused by or related to: . . . b. Failure to comply with instructions contained in the Owner’s Information Package; . . . e. Normal deterioration due to wear or exposure, such as sealants, fading of exterior surfaces, fabrics, drapes, and carpet wear, etc.; . . . k. Pre-mature deterioration and accelerated wear and tear on Motor homes used for full-time living

²⁵ Courts have affirmed that warranty language covering “defects in material or workmanship” do not cover design issues. *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.”).

²⁶ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

accommodations; l. Motor homes used for commercial or business purposes; . . .
n. Residential refrigerators, which are covered by separate warranties of the respective manufacturers of these components.

1. AC, Heat Pump, Furnace, and Refrigerator Malfunctions

As outlined above, the warranty does not cover components manufactured/warranted by third parties, such as the air conditioning, heat pump, and furnace. Further, the warranty specifically excludes refrigerators.²⁷ As a result, any issues arising from these components are not warrantable defects and cannot support any relief under the Lemon Law.

2. Swaying

The RV's ride quality during the test drive appeared normal for a class A motorhome. Significantly, Mr. Matzenger found the subject RV to perform like all other like model RVs he had driven, indicating that the subject RV's ride quality is a characteristic of its design as opposed to a manufacturing defect. Also, Mr. Bashir pointed out the dynamic nature of the RV's load which may normally contribute to the swaying as well as the size of the RV. In sum, the swaying does not appear to be a nonconformity.

3. Noise, Side Entrance Door Rattle

The RV did not exhibit any abnormal noises during the inspection and test drive at the hearing. Accordingly, this issue does not appear to be an existing defect.

4. Water Leaks

The record as a whole appears to show that the vehicle more likely than not has an existing leak. Though the warranty excludes defects/failures due to: failing to comply with the owner's information package, normal wear, full-time living, and business use, at least some of the leaks appear attributable to a warrantable defect. Mrs. Stevens testified that she last noticed a water leak on August 28, 2017, after the last repair visit in May of 2017. However, the law requires that the manufacturer, as opposed to a dealer, have an opportunity to cure the alleged nonconformity. The repair history shows the dealer addressed the leak, but the evidence is equivocal as to whether REV had an opportunity to repair the leak. Testimony did show that the Complainant did not accept REV's offer to repair the leak because of the time required to take the RV to Alvarado.

²⁷ The Complainant did not include the refrigerator in the complaint or notice of defect but the parties still addressed this issue at hearing.

Accordingly, because a preponderance of the evidence does not show an opportunity by REV to cure the leak, the vehicle does not qualify for repurchase or replacement but does qualify for warranty repair.

5. Transmission

As explained in the discussion of applicable law, the Complainant has the burden of proving every required element by a preponderance. As the Complainant pointed out, the transmission issue only occurred in areas with steeper grades and higher elevations. However, the law requires the Complainant to prove that the nonconformity exists presently, but the transmission issue has not recurred since driving through the mountains. Consequently, a preponderance of the evidence does not show that the transmission issue continues to exist.

III. Findings of Fact

1. On March 12, 2016, the Complainant, purchased a new 2016 Bounder 35K from Holiday World of Willis, an authorized dealer of the Respondent, in Willis, Texas. The Complainant actually took delivery on March 22, 2016. The vehicle had 1,217 miles on the odometer at the time of purchase.
2. The REV limited warranty covers the “house” of the vehicle for one year or 15,000 total miles, whichever occurs first. With respect to the chassis, the Ford warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first, and powertrain coverage for five years or 60,000 miles.
3. The last repair visit occurred on May 9, 2017.
4. On February 7, 2017, the Complainant provided a written notice of defect to the Respondent.
5. On March 6, 2017, the Complainant filed a complaint with the Department alleging that the water pressure varied, the water temperature was not hot enough, lines broke, and other valves malfunctioned; the AC, heat pump, and furnace malfunctioned; the vehicle swayed on roads, especially when cornering and on banked roads; the vehicle was noisy on roads, microwave rattled, side entrance door rattled, engine was noisy; water leaked in from rain and AC condensation from gutters; the transmission slipped out of gear or lost power; and

- the fiberglass had a crack. The issues with water pressure, water temperature, valves, lines, microwave rattling, and fiberglass crack were successfully resolved prior to the hearing.
6. On August 24, 2017, the Department's Office of Administrative Hearings issued an amended 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 factual matters asserted.
 7. The hearing in this case convened on August 18, 2017, and reconvened on October 12, 2017, in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on November 2, 2017, the deadline for responses to written submissions. The Complainant, represented himself; Judy Stevens, the Complainant's spouse, testified for the Complainant. Christopher Lowman, attorney, represented REV; David Matzenger, Dispute Resolution Administrator, testified for REV. Amanda Bemiller, Consumer Affairs Legal Analyst, represented Ford; Assad Bashir, Automotive Technical Specialist, testified for Ford.
 8. The vehicle's odometer displayed 13,480 miles at the time of the hearing.
 9. The Ford warranty was in effect at the time of the hearing but the REV warranty expired on March 22, 2017.
 10. The vehicle operated normally during the test drive at the hearing.
 11. REV offered to repair the water leak at its facilities but the Complainant declined.
 12. The REV warranty does not cover the AC, heat pump, furnace, or refrigerator.
 13. The swaying is a characteristic of the vehicle's design not covered by the REV warranty.
 14. The vehicle does not exhibit a currently existing noise issue.
 15. The vehicle leaked rain water as late as August 28, 2017.
 16. The transmission issue only occurred while driving through mountainous areas around July through August or September of 2016 and has not recurred since.

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 filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052; 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant's vehicle does not qualify for replacement or repurchase based on issues with the AC, heat pump, furnace, refrigerator, swaying, noise or transmission. The Complainant did not prove that these issues constitute defects covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
7. The Complainant's vehicle does not qualify for replacement or repurchase based on the water leak. The Respondent did not have an opportunity to cure the alleged water leak. 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)(2).
8. 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).
9. The Complainant's vehicle qualifies for warranty repair. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 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 water leak to the applicable warranty. The Complainant shall deliver the subject vehicle to the Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.²⁸ Within 40 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 as prescribed, 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 2, 2018



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

²⁸: (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, 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 Order.