

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0174297 CAF**

JOHN JR. AND TAMMY AHLERS,
Complainants

v.

JAYCO, INC.,
Respondent

§
§
§
§
§
§
§

**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

John Ahlers, Jr. and Tammy Ahlers (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 (RV) manufactured by Jayco, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle qualifies for repurchase/replacement or warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on October 26, 2017 in New Braunfels, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants represented and testified for themselves. Bob Harlan, Consumer Affairs Manager, represented and testified for the Respondent.

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

¹ TEX. GOV'T CODE § 2001.051.

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

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

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).

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:

[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

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).

⁹ TEX. OCC. CODE § 2301.605(a)(3).

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 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” and the vehicle owner notified the

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).

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

manufacturer, converter, distributor, or its authorized agent of the defect.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 Complainants.¹⁸ 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.¹⁹ If any required fact appears equally likely or unlikely, then the Complainants 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 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. Complainants’ Evidence and Arguments

On June 22, 2016, the Complainants, purchased a new 2016 Autumn Ridge 346RESA from Camping World RV Supercenter, an authorized dealer of the Respondent, in New Braunfels,

¹⁶ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

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).

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).

Texas. The vehicle's limited warranty provides coverage for two years. On March 20, 2017, the Complainants provided a written notice of defect to the Respondent. On March 27, 2017, the Complainants filed a complaint with the Department alleging that the RV had: torn linoleum, a broken bedroom light, a broken island wheel, bedroom door damage from the island, door frame damage from the island, a damaged kitchen cabinet, a dented window accent slide, damage to the side walls from island, a broken recliner, damaged recliner material, a grinding/whining noise from the slide, a passenger side slide leak, water damaged decking, and front fascia water damage. The Complainants confirmed that the following issues were subsequently resolved: the broken bedroom light, broken island wheel, bedroom door damage from the island, door frame damage from the island, damage to the side walls from the island, broken recliner, and damaged recliner material. Accordingly, the following issues remain to be resolved: torn linoleum, damaged kitchen cabinet, dented window accent slide, grinding/whining slide noise, passenger side slide leak, water damaged decking, and front fascia water damage. In relevant part, the Complainants took the vehicle to a dealer for repair of the remaining alleged issues as follows according to work orders from the dealer:

Date	Issue
August 15, 2016	Slide leak, linoleum torn,
November 10, 2016	Linoleum damaged, damage to bottom kitchen cabinet, damage to slide fascia from leak, driver side slide makes grinding and whining noise, passenger side slide leak
June 29, 2017	Damage to bottom kitchen cabinet, damage to slide fascia, leak from passenger side slide, bedroom slide ripping linoleum
July 31, 2017	Leak from passenger side slide

Mr. Ahlers testified that the linoleum was torn when the first looked at the vehicle prior to buying it. The dealer replaced the torn linoleum a couple of months before the hearing but the dealer did not lay down the linoleum correctly and it had bubbles under the flooring. Mrs. Ahlers added that there was a tear in the new linoleum and that the new linoleum did not completely cover the hole where the old linoleum was. Mr. Ahlers noted that the dealer's replacement of the linoleum subsequently caused damage. Mrs. Ahlers elaborated that: they were told that bubbling in the linoleum resulted from the glue and heat, the replacement linoleum had a tear, and the linoleum curled up and was not completely attached in some places.

Mr. Ahlers explained that the kitchen cabinet had dents from the island coming loose and colliding with the cabinet. Mrs. Ahlers added that the cabinets were replaced but the drawers do not shut all the way. Mr. Ahlers confirmed that the dents occurred after they bought the RV.

With regard to the dented window accent slide, Mrs. Ahlers stated that the dealer had replaced the part but did not caulk it. The island had caused the dent, which occurred after purchasing the RV.

Mr. Ahlers stated that the slide makes a grinding/whining noise coming and going out. Mrs. Ahlers averred that this noise occurred from the beginning.

Mrs. Ahlers testified that a leak in the passenger side slide leaked rainwater on the rug. Mr. Ahlers stated that he first noticed the leaking in September of 2016. Upon the hearings examiners clarifying questions, Mrs. Ahlers answered that the leak had been patched and she was not aware of any leak since then. She confirmed that the RV had been exposed to rain since the repair. However, she noted that the leak had occurred in a corner of the slide that she did not step in all the time.

Mrs. Ahlers testified that the Complainants were advised of water damaged decking but it was not something they could see. She stated that this issue was never repaired.

Mrs. Ahlers believed the front fascia sustained water damage from a lean in the slide. She explained that the fascia, which she thought was particle board, seemed soft and spongy. She added that the slide was rotted out and bowing but the last time the Complainants had the RV at the dealer, the dealer notified them that the slide no longer required repair.

On cross-examination, Mrs. Ahlers confirmed the correction of various issues. She disputed the accuracy of the completed date in a work order (#30838), noting that they at times left the RV with the dealer for two or three months. When asked if the dealer emailed Mr. Ahlers that the RV was available for use, he testified that the dealer may have said something but he did not remember and he could not have picked up the RV if he had his truck out of town. Mr. Ahlers noted that the "in" and "completed" dates on the work orders were a day later than the dates the Complainants had. Mrs. Ahlers confirmed that the slide did not leak anymore but added that the dealer initially said the wood was compromised. She also affirmed that the dealer later found the

wood to be satisfactory. Mrs. Ahlers identified the remaining complaint items as including the floor, subsequent damage, and the slide grinding/squeaking.

In closing, Mr. Ahlers expressed that the RV should not have so many problems and that the Complainants did not mistreat the vehicle. The issues have taken a lengthy time to get right and some issues were still not right. The dealer corrected some problems and sometimes caused further problems. Mrs. Ahlers understood that not all issues were warranty work but she asserted that the dealer's repairs represented the Respondent. She emphasized the customer service aspect and acknowledged the issues were not necessarily with the Respondent but mainly with the dealer.

B. Respondent's Evidence and Arguments

Mr. Harlan presented the Respondent's position that many of the items were not warrantable and other complaint issues no longer existed as defects. Moreover, the RV did not meet the requirement for days out of service, noting that some repair attempts were not made when the RV was taken in. There were many days when the vehicle was not at the dealership and there were 25 days before the final repair attempt.

In closing, Mr. Harlan pointed out that the Respondent relied on the information the dealer gives. The dealer's lack of information about the island was unfortunate. Mr. Harlan noted that repairing the RV at the factory may still be an option depending on the outcome of this proceeding.

C. Inspection

During the inspection, one slide exhibited a squealing noise. Mr. Harlan stated that the slide mechanisms were manufactured by Schwintek. A section of the linoleum appeared to have a patch installed by the dealer and a portion of the linoleum had curled. The RV exhibited various dents, scratches, and soiling apparently caused during the dealer's repairs. Mrs. Ahlers stated that the dealer initially stated that the slide was bowed and had water damage but ultimately did not repair the slide. Mr. Harlan explained that the dealer initially assumed the slide had water damage but after further inspection determined that the curve was due to the design. Mr. Harlan explained that when shipped from the factory, the island is strapped in place where it should be stored with foam blocks between the chairs and island. The RV did not have the foam blocks. Mr. Harlan pointed out that if the dealer did not report the shipping damage, then subsequent claims for that damage would be denied. Mr. Harlan could not see any issues with the roof of the slide. The Complainants

pointed out that the wood was soft at a corner below the stereo. With regard to floor decking, Mrs. Ahlers explained that she had inquired about the floor because the entire area under the couch had gotten soaking wet but the dealer responded that this would not damage anything. She did not know of any damage under the floor and did not report any such damage since she could not actually see such damage.

D. Analysis

The record shows that the Complainants have experienced extensive problems with their vehicle. However, Lemon Law relief does not apply to all problems that a consumer may have but only to defects covered by warranty (warrantable defects).²⁴ In the present case, the RV does not have any currently existing defects that qualify for Lemon Law relief.

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. Instead, the Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. In this case, the vehicle's warranty specifies that: "In the event that a substantial defect in material or workmanship, attributable to Starcraft, is found to exist during the warranty period, it will be repaired or replaced, at Starcraft's option, without charge to the RV owner, in accordance with the terms, conditions and limitations of this limited warranty." Under these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects) due to the Respondent. 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. Unlike manufacturing defects, issues that do not arise from manufacturing, such as improper dealer repairs (which occur after manufacturing) are not warrantable defects. Furthermore, the warranty provides that:

By way of example, only, this Limited Warranty does not cover any of the following: defects in materials, components or parts of the RV not attributable to Starcraft; items that are added or changed after the RV leaves the possession of Starcraft; additional equipment or accessories installed at any dealership, or other place of business, or by any other party, other than Starcraft; any RV not used solely for recreational travel and camping; all soft goods, normal wear, tear or usage, such as tears, punctures, soiling, mildew, fading, or discoloration of exterior plastic, fiberglass, upholstery, drapes, carpet, vinyl, screens, cushions, mattresses and

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

fabrics; the effects of condensation or moisture from condensation inside the RV and failure to provide adequate ventilation; mold or any damage caused by mold to the inside or outside of the RV; imperfections that do not affect the suitability of the RV for its intended purpose of recreational use or items that are working as designed but that you are unhappy with; problems related to misuse, mishandling, neglect or abuse, including failure to maintain the RV in accordance with the owner's manual, or other routine maintenance such as inspections, lubricating, adjustments, tightening of screws, tightening of lug nuts, sealing, rotating tires; damage due to accident, whether or not foreseeable, including any acts of weather or damage or corrosion due to the environment, theft, vandalism, fire, or other intervening acts not attributable to Starcraft; service items such as windshield wiper blades, lubricants, fluids, filters, etc.; damage resulting from tire wear or tire failure; defacing, scratches, dents, chips on any surface or fabric of the RV; damage caused by off road use, overloading the RV or alteration of the RV, or any of its components or parts.

In addition, this limited warranty does not cover any material, component or part of the RV that is warranted by another entity, including, by way of example, handling, braking, wheel balance, muffler, tires, tubes, batteries, gauges, generator, hydraulic jacks, inverter, converter, microwave, television, DVD/CD player, radio, speakers, television, refrigerator, range, hot water heater, water pump, stove, carbon monoxide detector, smoke detector, propane detector, furnace or any air conditioner. (Note: the written warranty provided by the manufacturer of the component part is the direct responsibility of that manufacturer).²⁵

In sum, the warranty only applies to manufacturing defects attributable to the Respondent. However, the majority of alleged defects relate to the dealer's failure to properly repair the RV or other causes not attributable to a defect in the Respondent's manufacture of the RV.

1. Torn Linoleum

The Complainants' testimony showed that the currently existing torn linoleum is not a defect from manufacturing attributable to the Respondent, but a deficient repair attributable to the dealer occurring after the RV left the manufacturer. Accordingly, the warranty does not cover this item and therefore the Lemon Law does not apply.

2. Damaged Kitchen Cabinet,

The Complainants testified that the island caused the damage to the kitchen cabinet after purchasing the RV. Ostensibly, the dealer did not properly instruct the Complainants on the correct storage of the rolling island, resulting in the island rolling free and colliding with various parts

²⁵ Complainant's Exhibit 5, Warranty (emphasis added).

inside the RV. Neither the dealer's failure to properly instruct the Complainants nor the damage caused by the island are defects from manufacturing attributable to the Respondent. Moreover, though the Complainants mishandled the island because of the dealer, the warranty nevertheless excludes "problems related to misuse, mishandling." Additionally, the warranty specifically excludes "dents, chips on any surface or fabric of the RV." Accordingly, the Lemon Law does not apply.

3. Dented Window Accent Slide

The testimony showed that the dealer had actually replaced the dented window accent slide but also failed to caulk the replacement part. As explained in the discussion of the damaged cabinet, the dent is not a warrantable defect. With regard to the caulk issue, neither the notice of defect nor the complaint identified the issue. As explained in the discussion of applicable law, the complaint delimits the issues considered in a proceeding. Though a respondent may consent to consideration of unpleaded issues, the Respondent objected to issues not in the complaint. In any event, as explained previously, a deficient repair by the dealer occurring after manufacturing is not a manufacturing defect covered by the warranty. Consequently, the Lemon Law does not apply.

4. Grinding/Whining Slide Noise

As outlined in the warranty, it only covers substantial defects in material or workmanship attributable to the Respondent. Furthermore, the warranty expressly excludes third party components, such as the RV's slide mechanism manufactured by Schwintek. Here, the record appears to show that issue is with the slide mechanism as opposed to material or workmanship attributable to the Respondent. Accordingly, the Lemon Law does not apply to this issue.

5. Passenger Side Slide Leak

To qualify for relief, the Lemon Law requires the defect to continue to exist after repair. However, the testimony shows that the slide has not leaked after repair. Consequently, the slide leak issue cannot support any relief.

6. Water Damaged Decking

The law requires the Complainants to prove every required element by a preponderance. However, the record in this case is equivocal. The only evidence of this defect is a hearsay statement from the dealer that the wood was compromised but the dealer ultimately found no such

defect existed. Significantly, the Complainants themselves could not attest to the existence of such defect, which Mrs. Ahlers noted was something that could not be seen.

7. Front Fascia Water Damage

At the inspection at the hearing, the Complainants pointed out the soft wood as being located below the stereo and not the slide fascia, which work order #36933 shows as repaired. The evidence indicates that the issue actually complained of was repaired. Additionally, the soft wood noted at the inspection does not appear to have been identified in either the complaint or the notice of defect or in any work order. Accordingly, neither the front fascia nor the soft wood under the stereo can support granting any Lemon Law relief.

III. Findings of Fact

1. On June 22, 2016, the Complainants, purchased a new 2016 Autumn Ridge 346RESA from Camping World RV Supercenter, an authorized dealer of the Respondent, in New Braunfels, Texas.
2. The vehicle's limited warranty provides coverage for two years.
3. On March 20, 2017, the Complainants provided a written notice of defect to the Respondent.
4. On March 27, 2017, the Complainants filed a complaint with the Department alleging that alleging that the vehicle had: torn linoleum, a broken bedroom light, a broken island wheel, bedroom door damage from the island, door frame damage from the island, a damaged kitchen cabinet, a dented window accent slide, damage to the side walls from island, a broken recliner, damaged recliner material, a grinding/whining noise from the slide, a passenger side slide leak, water damaged decking, and front fascia water damage.
5. The Complainants confirmed that the following issues were successfully resolved prior to the hearing: the broken bedroom light, broken island wheel, bedroom door damage from the island, door frame damage from the island, damage to the side walls from the island, broken recliner, and damaged recliner material.
6. On August 8, 2017, the Department's Office of Administrative Hearings issued a 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 factual matters asserted.
7. The hearing in this case convened on October 26, 2017 in New Braunfels, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants represented and testified for themselves. Bob Harlan, Consumer Affairs Manager, represented and testified for the Respondent.
 8. The vehicle's warranty was in effect at the time of the hearing.
 9. The vehicle's slide made a squealing noise during the inspection at the hearing.
 10. A third party, Schwintek, manufactured the vehicle's slide mechanisms.
 11. The Complainants did not properly secure the rolling island, which caused the complained of dents in the interior of the vehicle.
 12. The dealer did not adequately repair the torn linoleum.
 13. The warranty only applies to defects in material or workmanship attributable to the Respondent and not to the dealer.
 14. The warranty excludes problems related to misuse and mishandling.
 15. The warranty excludes dents on any surface of the vehicle.
 16. The leak in the slide and the damaged slide fascia were successfully repaired.
 17. The slide decking curvature was due to the vehicle's design and not any water damage.

IV. Conclusions of Law

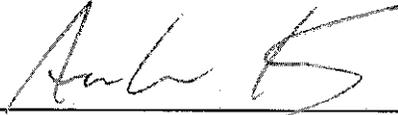
1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613; TEX. OCC. CODE § 2301.204.
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. TEX. OCC. CODE § 2301.704.

3. The Complainants filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052; 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainants' vehicle does not qualify for replacement or repurchase. The Complainants did not prove that the Respondent's warranty covered any of the complained of defects. TEX. OCC. CODE §§ 2301.603(a) and 2301.604(a). The Complainants, a person on behalf of the Complainants, or the Department did not provide written notice of the alleged damaged wood below the stereo to the Respondent. This Order may not require repurchase or replacement of the vehicle without written notice of the defect/nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
7. The Complainants' vehicle does not qualify for warranty repair. The Complainants did not prove that the Respondent's warranty covered any of the defects alleged in the complaint TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainants nor an agent of the Complainants notified the Respondent or Respondent's agent of the alleged damaged wood under the stereo. TEX. OCC. CODE §§ 2301.204 and 43 TEX. ADMIN. CODE § 215.202(b)(3).
8. 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.

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**.

SIGNED December 27, 2017



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