

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0175062 CAF**

**MARK and TERRI TAYLOR,
Complainants**

v.

**FOREST RIVER, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Mark and Terri Taylor (respectively Mr. Taylor and Mrs. Taylor and collectively, the 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) and/or Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in their recreational vehicle (RV) manufactured by Forest River, Inc. (Respondent). A preponderance of the evidence shows that the vehicle does not qualify for repurchase or replacement relief. However, the Complainants' vehicle 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 on October 25, 2017, in San Antonio, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented and testified for themselves. Matthew Taylor, the Complainants' son, also testified for the Complainants. Jason Brewer, Director of Customer Relations, 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 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” and the vehicle owner notified the 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

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

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).

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 May 19, 2016, the Complainants, purchased a new 2017 Concord 300TS from Ron Hoover Companies of Boerne, Inc., an authorized dealer of the Respondent, in Boerne, Texas. The vehicle had 1,238 miles on the odometer at the time of purchase. The vehicle's limited warranty covers the body structure for one year or 12,000 miles, whichever occurs first. On March 20, 2017, the Complainants mailed a written notice of defect to the Respondent. On April 18, 2017, the Complainants filed a complaint with the Department alleging: cosmetic damage due to modification of the slide, the range hood did not draw air, the driver's side step was scratched, the awning did not operate properly, and the floor had a hump. In relevant part, the Complainants took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
June 13, 2016	1,238	Slide comes loose; squeaking awning;
September 19, 2016	1,238	Slide coming out; awning arm pops
October 10, 2016	1,238	Slide pops and does not touch sweeps; hump on floor; vent hood control collapsed in; awning making noise and sticking
February 17, 2017	6,028	Slide moving; wood blocks under slide; scratches on step; awning sticking; vent hood not venting; hump on floor
June 13, 2017	6,028	Awning not coming out correctly; vent hood not drawing air

Mrs. Taylor testified that the biggest remaining issue was the 2x4 blocks installed during repairs to support the slide-out frame, which she believed decreased the RV's value. She stated that the slide-out malfunctioned the day the Complainants bought it, and that the RV had repairs throughout their ownership. Matthew Taylor confirmed that the Complainants took several family trips to indicate that the mileage changed between work orders and that the dealer failed to document the actual mileage in the work orders. Mrs. Taylor added that the slide-out would not seal and that light would come in. The use of the 2x4s were apparently the recommended repair by the manufacturer. Mrs. Taylor explained that the slide-out was not square and the opening for

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).

the slide-out was so large that the sweep seals were not close to touching the slide-out. She went on to explain that the range hood never worked and the switches collapsed in. Mrs. Taylor testified that the driver side step had a deep scratch and non-skid strips had been placed on top (however, inspection of the vehicle showed that the scratches were on top of the non-skid strips and not under). Mrs. Taylor described that the awning as functioning most of the time but not all of the time. One side consistently opens correctly but the other side unrolls but does not open as the other side. They last noticed the awning malfunctioning the day before the hearing. Mrs. Taylor stated that when addressing issues with the slide-out and a side door, they became aware of the hump on the floor between the door and slide-out. The manufacturer documented that the hump protected that area from flexing and damaging pipes.

The hearings examiner asked Mrs. Taylor if any water leaked in from the slide. She responded that she did not believe it had been in the rain, explaining that the RV was parked in a barn.

On cross-examination, Mr. Taylor confirmed that the dealer did all the repairs it could but notified the Complainants that they would have to contact the Respondent for further repair because the dealer was not qualified to fix the slide. When asked if he responded to the May 26, 2017, email from Ron Ross (the Respondent's Service & Warranty Manager) asking for a time to discuss Mr. Taylor's concerns, he answered that he did not have any contact with Mr. Ross since March 2017.

B. Respondent's Evidence and Arguments

Mr. Brewer testified that the Respondent could only help as much as the dealer communicated to the Respondent. For example, the scratches on the steps appeared in multiple work orders (as early as June 13, 2016), the Respondent did not receive a claim for the scratches until June 2017. The scratches were not warrantable but the Respondent authorized a goodwill repair upon being made aware of the scratches. Many of the repairs were never submitted to the Respondent. Although the Respondent receives information noted on the work orders, the Respondent does not know what the customer actually communicates to the dealer. Mr. Brewer explained that the Concord model has a curved wall, requiring a gusset and drip pan. Because the gusset and drip pan can float, the pan is supported (with the 2x4 wood blocks) to prevent floating when on the road. The dealer may have been able to do better than just using raw 2x4 blocks but

the Respondent does not know until receiving the vehicle. Ron asked the Complainants to contact him and the next step was to address the RV at the factory and transport it at the Respondent's expense and provide an additional six months of bumper to bumper coverage.

On cross-examination, Mr. Brewer stated that he did not know that the slide vendor had been dispatched to address the slide-out. He explained that the dealer could go directly to the vendor or go through the Respondent.

C. Inspection

At the inspection at the hearing, the vehicle's odometer displayed 6,781 miles. Light shone under the seal at the top of the sofa slide-out. Unfinished wood blocks supported the slide. The blocks generally could not be seen while standing up except towards the front of the slide. The button on the hood vent had collapsed inward. The non-skid strips on the entry steps exhibited scratches. The scratches were not under the non-skid strips. The rearmost awning arm exhibited some stiffness/balkiness when unrolling the awning. The floor had a slight hump, about a 2 degree slope, which was not visually discernable but could be felt on contact.

D. Analysis

1. Manufacturer's Opportunity to Repair

As explained in the discussion of applicable law, to qualify for repurchase/replacement relief, the Lemon Law requires the manufacturer, not the dealer, to have had an opportunity to repair after written notice of the alleged defects. In this case, the Complainants mailed written notice on March 20, 2017, and mailed their complaint on April 18, 2017. On May 26, 2017, Mr. Ross, representing the Respondent, e-mailed Mr. Taylor to address the concerns regarding the RV. However, Mr. Taylor did not respond. Accordingly, the record indicates that the Respondent did not have an opportunity to repair the RV. Consequently, the Lemon Law prohibits granting repurchase/replacement relief.

2. Warrantable Defect

The Lemon Law does not apply to all problems that a consumer may have with a vehicle but only to defects covered by warranty (warrantable defects).²⁴ The Lemon Law does not require

²⁴ TEX. OCC. CODE § 2301.603(a).

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 its vehicles to whatever coverage the warranty provides. Consequently, to qualify for replacement or repurchase or for warranty repair, the vehicle must have a defect covered by warranty.²⁵ The vehicle's warranty specifies that the Respondent "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 or (12000) twelve thousand miles, whichever occurs first (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor." Accordingly, the warranty only applies to defects in materials or workmanship (manufacturing defects) and not to conditions arising from the vehicle's design. Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover design issues.²⁶ 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 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. 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."²⁷ Because the warranty only covers manufacturing defects, the Lemon Law does not apply to design issues, even if they rise to the level of a design defect. Further, as cited above, the warranty only covers manufacturing defects in the RV's body structure

²⁵ TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

²⁶ 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.").

²⁷ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

attributable to the Respondent. Moreover, the warranty specifically excludes: “the motorhome chassis including without limitation, the engine and drivetrain, any mechanical parts or systems of the chassis, tires, tubes, batteries and gauges, optional generators, routine maintenance, equipment and appliances, or audio and/or video equipment.”

a. Slide-Out

Any inadequacy of the repair by the dealer is not a manufacturing defect since the repair occurred after the manufacture of the vehicle. Consequently, the dealer’s slide modification is not covered by warranty. Additionally, the Complainants pointed out the gap in the seal over the sofa slide. Neither the written notice of defect nor the complaint identified the gap as an issue. Consequently, the gap in the slide-out seal cannot support repurchase or replacement relief. Nevertheless, the law allows warranty repair relief since the Complainants raised the gap issue with the dealer.

b. Range Hood

As described above, the warranty specifically excludes appliances. Consequently, any defect in the range hood is not a warrantable defect under the Lemon Law.

c. Step

The scratch on the entry step does not appear, more likely than not, to be a manufacturing defect instead of damage occurring after manufacturing, which the warranty does not cover.

d. Awning

A preponderance of the evidence does not show that the awning’s unrolling problems arises from a defect attributable to the Respondent as opposed to an issue in the awning itself, which is a component manufactured by a third party and therefore not warranted by the Respondent.

e. Floor

The record does not indicate that the hump is more likely than not a warrantable defect. Testimony reflects that the floor may normally exhibit some bulging due to the space required for plumbing/conduits under the floor. In this case the, evidence is equivocal as to whether the hump is an actual defect or simply a normal consequence of the vehicle’s design. Additionally, the hump,

if a defect, does not appear to be a substantial defect covered by warranty. The inspection showed the slope of the hump to be about 2 degrees and not discernable by sight.

III. Findings of Fact

1. On May 19, 2016, the Complainants, purchased a new 2017 Concord 300TS from Ron Hoover Companies of Boerne, Inc., an authorized dealer of the Respondent, in Boerne, Texas. The vehicle had 1,238 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty covers the body structure for one year or 12,000 miles, whichever occurs first.
3. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
June 13, 2016	1,238	Slide comes loose; squeaking awning;
September 19, 2016	1,238	Slide coming out; awning arm pops
October 10, 2016	1,238	Slide pops and does not touch sweeps; hump on floor; vent hood control collapsed in; awning making noise and sticking
February 17, 2017	6,028	Slide moving; wood blocks under slide; scratches on step; awning sticking; vent hood not venting; hump on floor
June 13, 2017	6,028	Awning not coming out correctly; vent hood not drawing air

Note: the work orders did not accurately document the mileage.

4. On March 20, 2017, the Complainants mailed a written notice of defect to the Respondent.
5. On April 18, 2017, the Complainants filed a complaint with the Department alleging: cosmetic damage due to modification of the slide, the range hood did not draw air, the driver's side step was scratched, the awning did not operate properly, and the floor had a hump.
6. On June 26, 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 25, 2017, in San Antonio, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented and testified for themselves. Matthew Taylor, the Complainants' son, also testified for the Complainants. Jason Brewer, Director of Customer Relations, represented and testified for the Respondent.
8. The vehicle's odometer displayed 6,781 miles at the time of the hearing.
9. The warranty expired on May 19, 2017.
10. At the inspection at the hearing, light shone under the seal at the top of the sofa slide-out. Unfinished wood blocks supported the slide. The blocks generally could not be seen while standing up except towards the front of the slide. The button on the hood vent had collapsed inward. The non-skid strips on the entry steps exhibited scratches. The rearmost awning arm exhibited some stiffness/balkiness when unrolling the awning. The floor had a slight hump, about a 2 degree slope, which was not visible but could be felt on contact.
11. The warranty only covers the body structure of the vehicle for substantial defects in materials and workmanship attributable to the Respondent.
12. The warranty specifically excludes "the motorhome chassis including without limitation, the engine and drivetrain, any mechanical parts or systems of the chassis, tires, tubes, batteries and gauges, optional generators, routine maintenance, equipment and appliances, or audio and/or video equipment."
13. On May 26, 2017, Mr. Ron Ross, on behalf of the Respondent, e-mailed Mr. Taylor to address the concerns regarding the RV. However, Mr. Taylor did not respond.

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 issues regarding the dealer's slide-out modifications, the range hood, entry step, awning, or hump on the floor were covered by the Respondent's warranty. 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 slide gap issue 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). The Respondent did not have an opportunity to cure the alleged defect(s). 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).
7. 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).
8. The Complainants' vehicle qualifies for warranty repair. The Complainants proved that the vehicle has a defect (the slide gap) 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 Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the vehicle's slide, specifically, the gap between the slide and the seal, to the applicable warranty. The Complainants shall deliver the subject vehicle to the Respondent within 20 days

after the date this Order becomes final under Texas Government Code § 2001.144.²⁸ Within 60 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 December 21, 2017



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.