

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 18-0180955 CAF**

**JOHNYE L. SLAUGHTER,  
Complainant**

v.

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

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Johnye L. Slaughter (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his recreational vehicle (RV) manufactured by the Respondents, REV Recreation Group, Inc. (REV) and Ford Motor Company (Ford). A preponderance of the evidence does not show that the REV-manufactured “house” portion of the RV qualifies for any relief. The Ford-manufactured chassis appears to have a warrantable defect, but the record does not show a reasonable number of repair attempts for the chassis. Consequently, the Complainant’s RV does not qualify for repurchase/replacement but does qualify for repair relief.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice of hearing<sup>1</sup> 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 April 18, 2018 in Lake Jackson, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself. In addition, Dan Densford and Tommie Slaughter testified for the Complainant. Christopher Lowman, attorney, represented REV. Angela Brooks, Dispute Resolution Administrator, testified for REV. Daniel Keovy,

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<sup>1</sup> TEX. GOV'T CODE § 2001.051.

Consumer Affairs Legal Analyst, represented and testified for Ford. Asad Bashir, Automotive Technical Consultant, also testified for Ford.

## **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.”<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

##### **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

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<sup>2</sup> TEX. OCC. CODE § 2301.604(a).

<sup>3</sup> TEX. OCC. CODE § 2301.604(a).

<sup>4</sup> TEX. OCC. CODE § 2301.601(4).

vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”<sup>5</sup>

**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.”<sup>6</sup>

**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.<sup>7</sup>

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

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<sup>5</sup> *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

<sup>6</sup> *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.”).

<sup>7</sup> TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>8</sup>

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.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

#### **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;<sup>13</sup> (2) the manufacturer was given an opportunity to cure the defect or

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<sup>8</sup> TEX. OCC. CODE § 2301.605(a)(2).

<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>10</sup> TEX. OCC. CODE § 2301.605(c).

<sup>11</sup> *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.’”).

<sup>12</sup> *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.”).

<sup>13</sup> TEX. OCC. CODE § 2301.606(c)(1).

nonconformity;<sup>14</sup> 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.<sup>15</sup>

## 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.<sup>16</sup> The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”<sup>17</sup>

## 3. Burden of Proof

The law places the burden of proof on the Complainant.<sup>18</sup> The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present sufficient evidence to show that every required fact is more likely than not true.<sup>19</sup> If any required fact appears more likely to be untrue or equally likely to be true or untrue, then the Complainant cannot prevail.

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

The complaint identifies the issues to be addressed in this proceeding.<sup>20</sup> The complaint should state “sufficient facts to enable the department and the party complained against to know

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<sup>14</sup> TEX. OCC. CODE § 2301.606(c)(2). A repair visit to a dealer satisfied the “opportunity to cure” requirement when the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt a repair on the manufacturer's behalf. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

<sup>15</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>16</sup> TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

<sup>17</sup> TEX. OCC. CODE § 2301.603(a).

<sup>18</sup> 43 TEX. ADMIN. CODE § 215.66(d).

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

<sup>20</sup> “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.”).

the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law.<sup>21</sup> However, the parties may expressly or impliedly consent to trying issues not included in the pleadings.<sup>22</sup> Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.<sup>23</sup>

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

On June 10, 2017, the Complainant, purchased a new 2017 Jamboree 31U from Holiday World of Katy, an authorized dealer of REV, in Katy, Texas. The vehicle had 1,370 miles on the odometer at the time of purchase. The REV limited warranty covers non-structural defects for one year or until the vehicle reaches 15,000 miles on the odometer, whichever occurs first. The Ford limited warranty provides: (1) bumper to bumper coverage for three years or 36,000 miles, whichever occurs first, and (2) powertrain coverage for five years or 60,000 miles, whichever occurs first. On July 20, 2017, the Complainant provided a written notice of defect to REV. On November 7, 2017, the Complainant filed a complaint with the Department alleging that: the check engine light came on, the motor made a loud sound and vibrated, shaking the entire RV; rain water leaked in the bedroom, bathroom, behind kitchen cabinets, walls and ceiling; bathroom and entry doors did not fit or vibrated loose; the steering wheel had play and the RV drifted; bedroom and bathroom wall panels were coming loose; levelling jacks scraped speed bumps and railroad crossings; a latch on the sewer system door did not function; slideout gaskets were worn; water leaked at the slideout; and the TV did not get reception. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
6/15/17	1,448	Check engine light, roaring noise
7/11/17	1,970	Screen door loose, rear wall loose, bathroom door loose, satellite and cable will not work, levelling jacks position, bulb seal coming off slide, compartment latch not holding, water leak,
9/30/17	1,980	Engine light on, engine runs rough
2/28/18	2,403	Entry door vibrating, water leak under bedroom slide, bathroom wall loose, bulb seal falling off bedroom slide, TV inoperable, jacks drag on speed bumps, water leak in kitchen, bathroom door not closing, latch on sewer system door not working, vehicle drifts, steering wheel play

<sup>21</sup> 43 TEX. ADMIN. CODE § 215.202(a)(2).

<sup>22</sup> 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

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

The Complainant confirmed that some of the issues were successfully resolved. On the day of the hearing, he did not hear the blower noise from the engine (but the check engine light remained on) and the noise was reduced; the RV had repair attempts for leaking, but the RV had not been in the rain after repair; installation of a new door quieted the loose door, but a closet door would open at the top; the Complainant affirmed that the steering appeared satisfactory; the wall panels and shaking door were repaired; the levelling jacks were raised as high as possible, but the Complainant had not driven over anything to check the clearance; the sewer system door/latch was repaired; some slideout gaskets were repaired, but he did not have a chance to test them; and the TV worked well.

The Complainant pointed out that when driving from Alvarado (the location of REV's repair facility), the engine light came on and the RV sounded like a fan blowing. He found the floorboard to be hot. Mr. Densford explained that, in relation to the check engine light, the engine was not rough all the time but exhibited a bump, which occurred before a cylinder misfired. The vehicle has not had a misfire code since then. The Complainant testified that the check engine light first came on when he purchased the vehicle. The check engine light was on leaving the dealer's lot. On the I-10 on ramp, at 55 to 60 mph, the RV shook so hard that the entry door gapped at least two inches. Extending the slideouts revealed water stains in a corner. The Complainant noticed more stains after the repair at the Ford dealership. The blower noise started after leaving Alvarado on cruise control at about 73 mph, when the engine light came on. Later the noise sounded like a cooling fan. The motor ran a little rough but the Complainant attributed this to the road until he felt the hotness of the floorboard. He confirmed that the check engine light was currently on, but all other indicators read normal. He last noticed the roaring engine noise when the RV was picked up for transport to Alvarado. The Complainant last heard the buzzing, fan-like noise about three days or four days after Good Friday (three or four days after March 30, 2018). On the morning of the hearing, the engine light was still on but the fan noise was not present. Mr. Densford noted 10 miles was not enough to cause the RV to heat up (on the floor board). The Complainant last noticed water leaking when having the RV transported to Alvarado. The Complainant explained that the top latch of the left closet would pop out rough roads and he last noticed this traveling between Alvarado and Hearne, which Mr. Densford elaborated occurred on Good Friday (March 30th). The Complainant last noticed the hearing issue upon returning from Alvarado and parking the RV in the shed. The Complainant purchased the vehicle on June 4, 2017, but did not take delivery until

June 10, 2017. He noted that he subsequently found that the RV had its engine rebuilt before he purchased it.

On cross-examination, the Complainant confirmed that he last noticed leaks before the transport of the RV to Alvarado (in mid-February), noting that he stored the RV in a building. He affirmed that he had not tested the RV for water leaks. The Complainant stated that he did not test drive the RV before buying it.

### **B. REV's Evidence and Arguments**

Ms. Brooks confirmed that the technicians at Alvarado water tested the RV for two days in a rain bay and the RV remained outside in the rain for two days without water intrusion. Additionally, mold testing showed that far higher mold counts in the ambient air than inside the RV. With regard to the closet door, Ms. Brooks stated that she noticed the top latch undone on the rearmost closet door, which she closed and which did not come open during the test drive.

### **C. Ford's Evidence and Arguments**

Mr. Bashir reviewed the repair history of the RV's Ford-manufactured chassis. The first service visit relating to the chassis occurred on June 15, 2017, at 1,448 miles at Gulf Coast Ford for a check engine light. The dealer found misfire codes for the number 2 and 9 cylinders and a random misfire code. The base engine was normal under a compression test. A secondary coil had a circuit fault and was replaced along with a spark plug. Prior to delivery to the Complainant, Fulshear Ford Motor Sales repaired the vehicle on October 31, 2016, for cylinder misfire due to a bent intake valve. The dealer found driveline vibration. However, the driveline was modified/extended after manufacture by Ford. On January 24, 2018, a Ford field service engineer (FSE) inspected the vehicle at Gulf Coast Ford for engine misfire, noise, and vibration. The FSE found the malfunction indicator not lit and no present diagnostic trouble codes. The vehicle exhibited a roaring noise coming from the rear, either the driveshaft of rear axle area. The FSE conferred with REV and discussed the driveline modification. A weight had been added on the driveshaft, but was no longer present, that may have resulted in noise and vibration. The rear axle was not suspected to be a concern after investigation of the drive shaft modification. Mr. Bashir explained that Ford manufactures the chassis with heat shields on the Y-pipe and the catalytic converter, the areas that typically have the highest exhaust temperatures. The cutaway chassis

manufactured by Ford did not have a floor to attach additional shielding. Where the heat was felt on the floor was not where the catalytic converter was located but would have been either the exhaust manifold or Y-pipe. Mr. Bashir explained that the fan noise was due to the normal operation of the cooling fan clutch, which will engage and spin the fan at a higher rate of speed upon reaching operating temperatures. Noise can be heard as the fan spins.

Mr. Keevy testified that the RV did not have a reasonable number of repair attempts. The initial repair occurred before the Complainant was the owner. A notice letter was not sent to Ford or a Ford dealership and Ford did not have a final repair attempt.

#### **D. Inspection**

Upon inspection at the hearing, before the test drive, the vehicle's odometer displayed 2,739 miles. Initially, a closet door in the bedroom was unlatched at the top. The check engine light was illuminated upon starting the vehicle. The vehicle was driven primarily on a freeway. The floor between the driver and passenger seats progressively grew warmer during the test drive but did not appear hot. The test drive ended with 2,777 miles on the odometer. Ms. Brooks pointed out that she had closed the closet door prior to the test drive and the door remained shut after the test drive. The vehicle appeared to perform normally during the test drive.

#### **E. Analysis**

Lemon Law relief only applies to currently existing defects covered by warranty (warrantable defects).<sup>24</sup> 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 its vehicles to whatever coverage the warranty provides.

##### **1. REV House**

Under the Lemon Law, the Complainant bears the burden of proving by a preponderance that the alleged defects continue to exist after repair. Except for one issue, the record does not show that the issues relating to the RV's REV-manufactured house still exist. The Complainant affirmed the successful repair of the vibration, bathroom and entry door, steering wheel/drift,

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<sup>24</sup> TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204

wall panels, sewer system door latch, and TV reception. Additionally, the record contains no evidence of the continuing existence of the following issues after repair: rain water leak, leveling jacks scraping, and worn/leaking slideout gaskets. Also, with respect to the leveling jacks, the record indicates that the dealer raised jacks to the maximum limit allowed by design, that is, the design of the jacks do not allow any greater clearance. However, the warranty does not cover any issues arising from the design of the vehicle.<sup>25</sup> A preponderance of the evidence only shows the current existence of one defect in the RV's house – the loose latch at the top of the bedroom closet door, which allowed the door to gap slightly near the top. Although this latch did not come loose during the test drive, the Complainant testified that the latch did come loose, despite being replaced. The loose latch issue does not appear to have been previously reported to the manufacturer or dealer. The closest issue identified in the work orders relates to a warped closet door as opposed to any issue with a latch. However, prior notice of the defect is a prerequisite for repair relief.<sup>26</sup> Consequently, the house portion of the RV does not qualify for any relief.

## 2. Ford Chassis

The complaint identified three issues with the Ford chassis addressed in the work orders: the check engine light, engine roaring noise, and vibration. Testimony showed that the roaring noise did not recur after repair at the Alvarado facility. In addition, the fan noise, which the complaint did not include, appears to arise from the normal operation of the fan clutch and not any defect. Likewise, the heating of the floorboard, which was not included in the complaint, also appears to result from normally occurring heat from the exhaust system (particularly the exhaust manifold or Y-pipe). Nevertheless, the record reflects that the Ford chassis continues to have a defect – the check engine light was illuminated at the hearing. However, the chassis did not have

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<sup>25</sup> The REV warranty covers: “manufacturing defects in material or workmanship.” Complainant’s Ex. 4, Limited One-Year Warranty. 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.”).

<sup>26</sup> TEX. OCC. CODE § 2301.204(c). Also note that the Ford warranty does not apply to any issues occurring before the warranty period, which begins when the vehicle is put in service (i.e., delivered to the Complainant). Complainant’s Ex. 13, 2017 Model Year Ford Warranty Guide.

a reasonable number of repair attempts and Ford did not get notice of the alleged chassis defects apart from the complaint itself. Moreover, the repair history only shows two, possibly three, applicable repair attempts for chassis related issues.<sup>27</sup> The record includes work orders from two service visits: June 15, 2017, and July 11, 2017. In addition, Mr. Bashir's testimony appeared to indicate that a Ford FSE inspected the vehicle on January 24, 2018. Because this inspection occurred after the filing of the complaint, and presumably service of the complaint on Ford, the manufacturer appears to have had an opportunity to repair. Nevertheless, the vehicle does not appear to have had sufficient repair attempts. Generally, the Lemon Law presumes that four repair attempts are reasonable and the facts do not appear to warrant otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.

### III. Findings of Fact

1. On June 10, 2017, the Complainant, purchased a new 2017 Jamboree 31U from Holiday World of Katy, an authorized dealer of REV, in Katy, Texas. The vehicle had 1,370 miles on the odometer at the time of purchase.
2. The REV limited warranty covers non-structural defects for one year or until the vehicle reaches 15,000 miles on the odometer, whichever occurs first. The Ford limited 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, whichever occurs first.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
6/15/17	1,448	Check engine light, roaring noise
7/11/17	1,970	Screen door loose, rear wall loose, bathroom door loose, satellite and cable will not work, levelling jacks position, bulb seal coming off slide, compartment latch not holding, water leak,
9/30/17	1,980	Engine light on, engine runs rough
2/28/18	2,403	Entry door vibrating, water leak under bedroom slide, bathroom wall loose, bulb seal falling off bedroom slide, TV inoperable, jacks drag on speed bumps, water leak in kitchen, bathroom door not closing, latch on sewer system door not working, vehicle drifts, steering wheel play

<sup>27</sup> Only repair attempts occurring after the date of original delivery to the Complainant apply when determining reasonable repair attempts under the statutory presumption. TEX. OCC. CODE § 2301.605(a).

4. On July 20, 2017, the Complainant provided a written notice of defect to REV.
5. On November 7, 2017, the Complainant filed a complaint with the Texas Department of Motor Vehicles alleging that: the check engine light came on, the motor made a loud sound and vibrated, shaking the entire RV; rain water leaked in the bedroom, bathroom, behind kitchen cabinets, walls and ceiling; bathroom and entry doors did not fit or vibrated loose; the steering wheel had play and the RV drifted; bedroom and bathroom wall panels were coming loose; levelling jacks scraped speed bumps and railroad crossings; a latch on the sewer system door did not function; slideout gaskets were worn; water leaked at the slideout; and the TV did not get reception.
6. Ford did not receive written notice of the alleged defects except for the complaint itself.
7. On March 20, 2018, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them 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.
8. The hearing in this case convened on April 18, 2018 in Lake Jackson, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself. In addition, Dan Densford and Tommie Slaughter testified for the Complainant. Christopher Lowman, attorney, represented REV. Angela Brooks, Dispute Resolution Administrator, testified for REV. Daniel Keevy, Consumer Affairs Legal Analyst, represented and testified for Ford. Asad Bashir, Automotive Technical Consultant, also testified for Ford.
9. The vehicle's odometer displayed 2,739 miles at the time of the hearing.
10. The vehicle's REV and Ford warranties were in effect at the time of the hearing.
11. The vehicle exhibited a check engine light upon inspection at the hearing. The vehicle otherwise operated normally during the test drive at the hearing.
12. The REV-manufactured house continues to have a loose bedroom closet door latch.

13. The loose bedroom closet door latch was not previously reported to REV or REV's authorized representative and was not included in the notice of defect or the complaint.

#### IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 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 the "house" manufactured by REV. The Complainant did not prove that the house has a warrantable defect that creates a serious safety hazard or substantially impairs the use or market value of the vehicle with respect to the REV-manufactured portion of the vehicle. TEX. OCC. CODE § 2301.604(a).
7. The Complainant's vehicle does not qualify for replacement or repurchase based on the Ford chassis. The Complainant did not meet the requirement for a reasonable number of repair attempts for the Ford chassis. TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).
8. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with a Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).

9. The issue with the check engine light qualifies for warranty repair relief. The Complainant proved that the vehicle has a defect covered by Ford's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
10. The loose closet latch does not qualify for warranty repair relief. For an issue to qualify for warranty repair, the issue must have been previously reported or included in the notice of defect or the complaint. TEX. OCC. CODE §§ 2301.204, § 2301.606(c)(1) and 43 TEX. ADMIN. CODE § 215.202(b)(3).
11. The Respondents 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 Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that: Ford shall make any repairs needed to conform the vehicle's check engine light issue to the applicable warranty. The Complainant shall deliver the subject vehicle to Ford within 20 days after the date the Complainant receives the vehicle from REV after the repair described above. Within 20 days after receiving the vehicle from the Complainant, Ford 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 June 18, 2018**

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