

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 18-0181232 CAF**

**JAMES D. HINCH,  
Complainant**

v.

**KEYSTONE RV COMPANY,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

James D. Hinch (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 Keystone RV Company (Respondent). A preponderance of the evidence does not show that the subject vehicle currently has a defect covered by the warranty. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement or warranty repair.

**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 February 15, 2018 in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. Kirby Hopkins, attorney, represented the Complainant. Deven Hinch, the Complainant's spouse, and the Complainant himself testified for the Complainant. Christopher (Chris) Lowman, attorney, represented the Respondent. Matt Arndt, Senior Product Manager, testified for the Respondent.

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<sup>1</sup> 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.”<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 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>

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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).

<sup>5</sup> *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.”<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 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:

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<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).

<sup>8</sup> 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.<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 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>

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<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).

<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).

## 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 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>

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<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.”).

<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).

## 5. Attorney Fees

When repurchase or replacement is ordered, the Department's rules allow reimbursement of "attorney fees if the complainant retains counsel after notification that the respondent is represented by counsel." Such expense "must be reasonable and verified through receipts or similar written documents."<sup>24</sup>

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

On May 30, 2016, the Complainant, purchased a new 2017 Raptor 425TS from Holiday World of League City, an authorized dealer of the Respondent, in League City, Texas.<sup>25</sup> The vehicle's limited warranty provides coverage for one year from purchase.<sup>26</sup> On July 19, 2016, Mrs. Hinch, on behalf of the Complainant, provided a written notice of defect to the Respondent.<sup>27</sup> On November 15, 2017, the Complainant filed a complaint with the Department alleging that the fiberglass sidewall cracked due to a frame integrity issue; the sidewall had a bulge after repair; the structural integrity of the frame was questionable; and the paint and finish at the site of repair did not match the gel coat and the paint had run down the side and under the decal.

The Complainant testified that in July 2016, he noticed a crack in the sidewall and notified the dealer, Holiday World of League City, where the Complainant took the RV for service on July 12, 2016. The RV had developed another crack when picking up the RV on August 12, 2016. Between dropping off the RV for repair on August 14, 2016, and picking it up on November 4, 2016, the RV cracked again and the paint did not match the existing finish. Mrs. Hinch stated that they last dropped off the vehicle for repair the week of Thanksgiving at Holiday World of Katy, which had a paint shop. Thereafter, the Complainant conditionally authorized the Respondent to repair the RV at its factory. The RV returned from the factory on April 6, 2017. Upon inspecting the RV on April 8, 2017, the Complainant found: an apparent hole under the decal on the sidewall; the sidewall had a bulge; the slide did not close evenly; most of the screws holding the flashing under tongue were missing; the rubber roof where it met the cap was folded over in places; and the gasket on top was cut short and filled in with sealant in a puddle. Mrs. Hinch added that the

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<sup>24</sup> 43 TEX. ADMIN. CODE § 215.209(a).

<sup>25</sup> Complainant's Ex. 1, Purchase Agreement.

<sup>26</sup> Complainant's Ex. 2, Owner's Manual, Limited One-Year Warranty.

<sup>27</sup> Complainant's Ex. 6, E-mail from Deven Hinch to Jenny Herman on July 19, 2016.

RV had missing screws, corrosion on the hardware, and the generator door latch could not hold it open. The Complainant pointed out that the cut for the sidewall repair was supposed to run straight across but was done diagonally. Overall, the sidewall cracked four times, which the dealer and the manufacturer repaired four times. However, the sidewall continues to have a defect. Mrs. Hinch had the impression that the crease under the decal was a paint run. She expressed a concern about the RV's structure.

### **B. Summary of Respondent's Evidence and Arguments**

Mr. Arndt explained that, by design, the rail wrapped around the front cap. From what he saw, the rail on the Raptor does not wrap all around the front, which he has seen on other Dutchmen products, including the Voltage. Because the rail does not wrap all the way around, the factory seals around the corner. The rail stops short and edge is sealed. In this case, the sealant looks bad and could have been done better. The RV had a visible bubble where the material should have been pulled tight. Mr. Arndt believed that when reinstalling the cap, the cap pushed some of the material back causing the bubble and seal void. Mr. Arndt found that the diagonal portion under the decal stood out – he knew the fiberglass repair was not finished correctly. Some sealant issues also needed cleaning up. He found that the slide out sealed normally, regardless of the larger gap towards the bottom the top of the slide out. He pointed out that the slight bulge resulted from the reinforcement repair at the factory. Mr. Arndt stated that Holiday World of League City did a poor fiberglass repair. The dealer cut the fiberglass improperly and did not follow the Respondent's instructions. The fiberglass should not have been cut diagonally but straight up and down. However, he thought the existing fiberglass repair had held up well. Regarding the Respondent's repairs at the factory, Mr. Arndt expounded that the tack weld cracked where the vertical aluminum tube met the triple horizontal tubes, allowing movement in the wall. When the slide out moves, it can put pressure on the walls leading to the crack. The Respondent rewelded the aluminum tubes, took the front cap off, pulled out the slide out, and released the opening trim to work on the fiberglass. Mr. Arndt explained that the service department determines what repairs to perform when the RV gets to the factory. In this case, the Respondent worked with the existing dealer repairs. After opening the wall, the Respondent cleaned the aluminum tubes, ground down the improperly applied epoxy, rewelded the tubes with a gusset to reinforce the joint, added a plate, and repaired the fiberglass. However, adding the reinforcing material caused the hump. This repair

has still held. In sum, Mr. Arndt testified that the RV wall has even more reinforcement than when coming off the production line. However, the fiberglass repair was not finished properly. In conclusion, he explained that the warranty did not cover cosmetic issues, including the issues with the roof, or environmentally caused corrosion, like that on the door latches.

### C. Inspection

The inspection of the RV at the hearing showed: four missing screws around the pin box area; the painted sidewall surface was a shade lighter than the existing gel coat; a bulge in the sidewall; paint chipping/peeling; slight cracking in the finish; a crease under the sidewall decal; the space between the wall and slide lip near the sidewall repair was about half the size of the space around the rest of the slide; one of the door latches would not hold the door open; about eight inches of the slide gasket hung loose; the underlying channel was bent and exhibited holes from where screws were removed but screwed in elsewhere; the weather strip on the roof appeared short with the last inch filled with sealant. Mr. Arndt explained that the wall had vertical tube and three horizontal tubes bracing the sidewall. A weld in the vertical tube cracked, causing the original crack in the fiberglass. The repair added a gusset and plate, which caused the bulge, but also made the joint stronger than when originally manufactured. Mr. Arndt could not determine whether the crease in the decal was from the decal itself or from the fiberglass. Mr. Arndt agree that the repair was not correct; however, the decal can be removed and the sidewall repainted to match. He noted that the structure itself was not a problem. He opined that the missing screws on the pin box material were simply overlooked during reassembly. Mr. Arndt did not believe RV had a frame problem. He clarified that the tack welds in the wall frame broke and not the chassis frame. He affirmed that Holiday World of League City did a bad repair. He added that the roof membrane was not stretched tight enough, leaving a ripple. Mr. Arndt stated that moisture readings in the RV appeared normal and the carpet and wallpaper did not exhibit signs of moisture. He pointed out that even though the original repair (under the decal) looked uneven, the slide out still sealed. He noted that the sealant on the roof appeared to have been applied to cover the gap where the cap was originally installed. The Complainant added that the crease under the decal was not there when the RV returned from the factory.

## D. Analysis

### 1. Warranty Coverage

The record reflects that the subject vehicle has multiple existing problems. However, the warranty does not cover these issues, making Lemon Law relief inapplicable. Lemon Law relief does not apply to all problems that a consumer may have with a vehicle but only to defects covered by warranty (warrantable defects).<sup>28</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. In this case, the vehicle's warranty generally states that: "The Keystone RV Company ("Keystone") warranty covers this recreational vehicle ("RV") for a period of one (1) year from the date of purchase by the first retail owner. This limited warranty covers defects in materials and workmanship supplied by and attributable to Keystone's manufacturing and assembly of the RV, when the RV is used for its intended purposes of recreational camping."<sup>29</sup> According to these terms, the warranty only applies to defects in materials and workmanship (manufacturing defects).<sup>30</sup> 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. Accordingly, a manufacturing defect exists when the vehicle leaves the factory. Unlike manufacturing defects, issues that do not arise from manufacturing, such as improper dealer repairs (which occur after manufacturing), are not warrantable defects. Therefore, the warranty only covers manufacturing defects. In addition, the warranty specifically excludes: "[r]ust or corrosion due to the environment; and any broken glass damage" and "[a]ny fading or die lot

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<sup>28</sup> TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

<sup>29</sup> Complainant's Ex. 2, Owner's Manual, Limited One-Year Warranty (emphasis added).

<sup>30</sup> 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.").

changes of fabrics or carpet or cosmetic issues with the roof material(s) or its installation.”<sup>31</sup> Consequently, even though a problem may be undesirable or problematic, the Lemon Law provides no relief unless the problem constitutes a manufacturing defect covered by the warranty.

## **2. Original Defect – Broken Sidewall Frame Welds**

The original defect, the broken welds in the tubes of the sidewall frame, were successfully repaired. The record shows that the Respondent repaired the broken welds at the factory by rewelding the tubes and welding in additional bracing material to reinforce the frame, resulting in a frame stronger than original specifications. Although originally not produced according to specifications, the frame as repaired now meets and exceeds specifications. Consequently, this manufacturing defect no longer exists. However, to qualify for Lemon Law relief, a manufacturing defect must continue to exist even after repair.

## **3. Post-Manufacturing Issues**

Although the record shows the RV currently has multiple problems, the warranty does not cover these issues. The complaint alleged the following issues: fiberglass sidewall crack; sidewall bulge after repair; questionable frame integrity; paint did not match the gel coat; and paint had run. In addition, the Complainant presented evidence of other issues: a seam under the sidewall decal; the smaller gap at the slide by the sidewall bulge; screws missing from around the pin box; rubber roof folded over; and gasket gap filled with sealant; and corroded latches. As explained above, the frame issues were resolved by the factory repairs. The evidence reflects that all remaining problems arose from repairs (after manufacturing of the RV) and not from any defects in material or workmanship during manufacturing. Because the present warranty only covers manufacturing defects and specifically excludes the latch corrosion due to environmental conditions and any cosmetic roof issues, the Lemon Law provides no relief for the remaining issues.

### **III. Findings of Fact**

1. On May 30, 2016, the Complainant, purchased a new 2017 Raptor 425TS from Holiday World of League City, an authorized dealer of the Respondent, in League City, Texas.
2. The vehicle’s limited warranty provides coverage for one year from purchase.

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<sup>31</sup> Complainant’s Ex. 2, Owner’s Manual, Limited One-Year Warranty.

3. On July 19, 2016, Mrs. Hinch, on behalf of the Complainant, provided a written notice of defect to the Respondent.
4. On November 15, 2017, the Complainant filed a complaint with the Department alleging that the fiberglass sidewall cracked due to a frame integrity issue; the sidewall had a bulge after repair; the structural integrity of the frame was questionable; and the paint and finish at the site of repair did not match the gel coat and the paint had run down the side and under the decal.
5. On January 4, 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.
6. The hearing in this case convened on February 15, 2018 in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. Kirby Hopkins, attorney, represented the Complainant. Deven Hinch, the Complainant's spouse, and the Complainant himself testified for the Complainant. Christopher (Chris) Lowman, attorney, represented the Respondent. Matt Arndt, Senior Product Manager, testified for the Respondent.
7. The warranty expired on May 30, 2017.
8. The warranty covers defects in materials and workmanship supplied by and attributable to the Respondent's manufacturing and assembly of the vehicle. The warranty also excludes corrosion from environmental conditions and cosmetic roof issues.
9. The Respondent repaired the broken sidewall frame, the original underlying issue, to meet and exceed specifications.
10. Repairs performed on the vehicle resulted in post-manufacturing issues, including: a fiberglass crack; sidewall bulge; mismatched paint; seam under the sidewall decal; smaller gap between the slide and sidewall by the bulge; screws missing from around the pin box; rubber roof folded over; and gasket gap filled with sealant; and corroded latches.

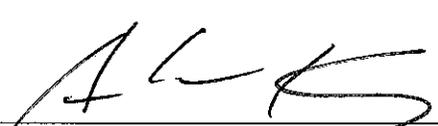
#### IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613; TEX. OCC. CODE § 2301.204.
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. TEX. OCC. CODE § 2301.704.
3. The Complainant filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052. 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
7. 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 Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613.

**SIGNED April 16, 2018**



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