

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 18-0181759 CAF**

**D.R. CANTER,**  
**Complainant**

**v.**

**FORD MOTOR COMPANY,**  
**Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

D.R. Canter (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 the subject recreational vehicle (RV) chassis manufactured by Ford Motor Company (Respondent). A preponderance of the evidence does not show that the subject vehicle has any manufacturing defects 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 June 21, 2018, in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself. Daniel Keevy, Consumer Affairs Legal Analyst, represented and testified for the Respondent. Asad Bashir, Technical Consultant, also 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. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainant for reasonable incidental expenses resulting from the vehicle's loss of use because of the defect.<sup>24</sup> Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle's failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verified through receipts or similar written documents.<sup>25</sup>

### A. Complainant's Evidence and Arguments

On August 23, 2017, the Complainant, purchased a new 2018 Tiffin 36UA from Vogt RV Centers, an authorized dealer of the Respondent, in Fort Worth, Texas. The vehicle had 727 miles on the odometer at the time of purchase. The vehicle's 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. On February 14, 2018, the Complainant provided a written notice of defect to the Respondent. On December 8, 2017, the Complainant filed a complaint with the Department. On February 14, 2018, the Complainant amended the complaint to allege issues with the chassis manufacture by the Respondent, including problems with: the front-end alignment, the vehicle only reaching 71 mph with the speed limiter set for 75 mph, and problems with the transmission's shifting.

The Complainant testified that the repairs did not resolve the issues. He explained that the RV pulled to right, the steering wheel had a lot of play, and the steering wheel was crooked. He first noticed the issues after purchasing the vehicle upon going home. He last noticed these issues on the way to the hearing. The Complainant noted that the transmission seemed better at times, with the vehicle's speed increasing by about 1 mph. Regarding the speed issue, the Complainant

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<sup>24</sup> TEX. OCC. CODE § 2301.604.

<sup>25</sup> 43 TEX. ADMIN. CODE § 215.209(a).

stated that the speedometer would read 75 mph but the GPS would show 71 mph and radar would show 70 to 72 mph. He first noticed the issue on the first trip in the RV, during which everyone seemed to be passing the RV while traveling at the speed limit. He last noticed the speed issue about two weeks before the hearing. The Complainant testified that when the vehicle reaches a certain speed, on a small incline or when passing, the transmission will downshift, raising the rpms with the motor "screaming". He would have to drop the speed to 60 mph to get the transmission upshift. He first noticed the shifting issue when driving home from the dealership and last noticed the issue on a trip about two weeks before the hearing.

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

Mr. Bashir testified that a Ford dealerships' alignment machine was unable to accommodate the RV. However, the Respondent allowed subletting of such work. He noted that the alignment was within specifications. The Respondent's field service engineer (FSE) found the steering wheel angle slightly off center, to the left. The steering wheel incorporated a "Clear Vision" adjustment to compensate for the slope of the road so the steering wheel would not obstruct the instrument cluster. The FSE adjusted the steering wheel as close to center as possible while still providing a clear view. What the Complainant described as pulling to the right may have been due to the crown of the road and the appearance of the Clear Vision adjustment. Mr. Bashir explained that the RV was configured with a 75-mph speed limit. He pointed out that the speedometer had a 3.5% margin of error and a 2% bias, so that the speedometer displays a slightly higher speed than actual. In this case, the speedometer operated within an acceptable range. A diagnostic trouble code did show that the RV reached its speed limit. Mr. Bashir elaborated that on hilly terrain that the RV may exceed 75 mph (going downhill) but this did not indicate a fault. With regard to the transmission, Mr. Bashir described stated that the RV had peak horsepower of 320 hp at 3,900 rpm and peak torque of 460 lb-ft at 3,000 rpm. Under conditions described by the Complainant, with a full fuel tank, the RV will accelerate to full speed and downshift to 5th gear and maintain 5th gear at about 3500 rpm, which is about half way between the rpm of peak horsepower and peak torque. If experiencing high loads, the RV's adaptive transmission will drop to a lower gear to maintain speed. Driving at 3,500 rpm is not damaging but increases fuel consumption. The vehicle was designed to operate like this for an extended time, without an increase in maintenance intervals. On cross-examination, Mr. Bashir pointed out that various

factors may affect downshifting, in addition to weight, such as the large frontal area, wind resistance, and altitude. Mr. Keevy concluded that the RV operated as designed. He added that the vehicle did not exhibit a serious safety concern and the vehicle only had one repair attempt and an inspection.

### C. Inspection and Test Drive

Upon inspection at the hearing, the subject RV displayed 5,824 miles on the odometer. The RV was driven for 30 miles, predominantly on a highway, and to a lesser extent on service roads. During the test drive, the reading on the speedometer appeared to closely track the speed shown on: a GPS application on the hearing examiner's phone, the RV's own GPS, and a roadside radar speed sign. The vehicle reached just over 75 mph at the fastest speed. The RV exhibited a slowness in upshifting after downshifting.

### D. Analysis

To qualify for Lemon Law relief, the vehicle must have a defect covered by warranty (warrantable defect).<sup>26</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 or performance. 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 provides that:

Your NEW VEHICLE LIMITED WARRANTY gives you specific legal rights. You may have other rights that vary from state to state. Under your New Vehicle Limited Warranty if:

- your Ford vehicle is properly operated and maintained, and
- was taken to a Ford dealership for a warranted repair during the warranty period,

then authorized Ford Motor Company dealers will, without charge, repair, replace, or adjust all parts on your vehicle that malfunction or fail during normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship.

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<sup>26</sup> TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).<sup>27</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. Unlike manufacturing defects, issues that do not arise from manufacturing are not warrantable defects. Design characteristics result from the vehicle's specified design, which exists before manufacturing, and not from any error during manufacturing.<sup>28</sup> Improper dealer repairs occur after manufacturing. In sum, the warranty only covers manufacturing defects. Moreover, the warranty expressly excludes maintenance items and normal wear and tear. Nevertheless, the Respondent will address certain maintenance items for a limited time as shown below:

The New Vehicle Limited Warranty does not cover: (1) parts and labor needed to maintain the vehicle; and (2) the replacement of parts due to normal wear and tear. You, as the owner, are responsible for these items. See your Owner's Manual. Some examples of maintenance and normal wear are:

- oil changes
- oils, lubricants, other fluids
- oil/air filters
- tire rotation/inflation
- cleaning/polishing
- clutch linings
- wiper blades\*
- wheel alignments and tire balancing\*
- brake pad/lining\*

\* Ford will replace or adjust certain maintenance items when necessary, free of charge during a limited period:

- Wiper blade replacements will be provided during the first six months in service, regardless of miles driven.
- Wheel alignments and tire balancing will be provided during the first 12 months or 12,000 miles in service, whichever occurs first.

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<sup>27</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.").

<sup>28</sup> 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." *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

- Brake pad/lining replacements will be provided during the first 12 months or 18,000 miles in service, whichever occurs first.

The limited warranty does not guarantee satisfactory performance but warrants that the vehicle does not have a manufacturing defect (a defect in material or workmanship).

### **1. Front end alignment**

As cited in the discussion of warrantable defects, the warranty specifically excludes “wheel alignments and tire balancing” so that alignment issues do not qualify for Lemon Law relief. Nevertheless, the Respondent provides free wheel alignments in the first 12 months or 12,000 miles.<sup>29</sup> However, the record is unclear whether any apparent alignment issue originated from the alignment or a perceived pull from road conditions along with the “Clear Vision” adjustment of the steering wheel. With respect to the positioning of the steering wheel, the record shows that the vehicle’s steering wheel incorporates a Clear Vision adjustment that allows an obstructed view of the instrument panel past the steering wheel that compensates for the steering wheel’s position on a crowned road (which slants down toward the right side). However, the clear vision adjustment necessarily moves the steering wheel off the actual center. Nevertheless, this offset is done intentionally per specifications and is not the result of a manufacturing defect.<sup>30</sup> In sum, the alignment issues do not support any relief.

### **2. Speed Limiter**

The subject vehicle, as configured, has its speed limited to 75 mph. However, the complaint as amended alleged that the vehicle only reached 71 mph. During the test drive at the hearing, the speed shown on the speedometer went up to 75 mph and slightly higher while traveling on the highway. The vehicle’s speed on the speedometer comported with the speed shown on the hearings examiner’s GPS application, the vehicle’s GPS, and a roadside radar speed sign. The test drive appeared to confirm that the vehicle can achieve the specified maximum speed. Additionally, the record reflects that the speedometer, by design, has a 2% bias built in so the speedometer will display a slighter higher speed than actual. Furthermore, the manufacturer’s specifications for

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<sup>29</sup> “Wheel alignments and tire balancing will be provided during the first 12 months or 12,000 miles in service, whichever occurs first.” Complainant’s Ex. 1, 2018 Model Year Ford Warranty Guide.

<sup>30</sup> The Complainant stated that the last adjustment blocked the instrument view even more. However, any inadequacy of the repair is not a manufacturing defect subject to relief.

normal operation allows a 3.5% variance from the actual speed. Even with the possible variance, the speedometer appeared to closely reflect the actual speed. Accordingly, the vehicle's speed limiter does not appear to have a defect subject to Lemon Law relief.

### **3. Transmission shifting**

Although the transmission did not shift to the Complainant's satisfaction, the transmission nevertheless operated according to its design. As outlined in the discussion of warrantable defects, the Lemon Law does not set any specific standards for vehicle performance but only requires that the vehicle comply with its warranty. In this case, the warranty only covers problems "due to a manufacturing defect in factory-supplied materials or factory workmanship." As explained previously, a design issue is not a manufacturing defect. The record here shows that the transmission shifted at the correct shift points as programmed. Although a change in the vehicle's design (specifically, the transmission's programming/software) may improve performance, the Lemon Law does not require a manufacturer to improve a vehicle's design. Rather, the law only requires the vehicle to conform to its existing design, even if the design is not optimal. Since the transmission shifting is not a manufacturing defect but is a design issue, Lemon Law relief does not apply.

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

1. On August 23, 2017, the Complainant, purchased a new 2018 Tiffin 36UA from Vogt RV Centers, an authorized dealer of the Respondent, in Fort Worth, Texas. The vehicle had 727 miles on the odometer at the time of purchase.
2. The vehicle's 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. On February 14, 2018, the Complainant provided a written notice of defect to the Respondent. On December 8, 2017, the Complainant filed a complaint with the Department.
4. On February 14, 2018, the Complainant amended the complaint to allege issues with the chassis manufacture by the Respondent, including problems with: the front-end alignment,

- the vehicle only reaching 71 mph with the speed limiter set for 75 mph, and problems with the transmission's shifting.
5. On April 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 June 21, 2018, in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself. Daniel Keevy, Consumer Affairs Legal Analyst, represented and testified for the Respondent. Asad Bashir, Technical Consultant, also testified for the Respondent.
  7. The vehicle's odometer displayed 5,824 miles at the time of the hearing.
  8. The vehicle's warranty was in effect at the time of the hearing.
  9. Upon inspection at the hearing, the subject RV displayed 5,824 miles on the odometer. The RV was driven for 30 miles, predominantly on a highway, and to a lesser extent on service roads. During the test drive, the reading on the speedometer appeared to closely track the speed shown on: a GPS application on the hearings examiner's phone, the RV's own GPS, and a roadside radar speed sign. The vehicle reached just over 75 mph at the fastest speed. The RV exhibited a slowness in upshifting after downshifting.
  10. The warranty expressly excludes wheel alignment from coverage. Nevertheless, the Respondent will service the alignment for a period of 12 months or 12,000 miles, whichever comes first. Whether the vehicle's alignment requires adjustment is unclear due to factors such as the road crown and the Clear Vision adjustment of the steering wheel.
  11. The vehicle appeared to normally reach its 75-mph maximum speed as shown during the test drive rather than only 71 mph.
  12. The transmission operated normally according as programmed, according to its design. The vehicle will normally operate in 5th gear at the higher rpm identified as a concern.

#### 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.
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 is **DISMISSED**.

**SIGNED August 20, 2018**



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