

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0182078 CAF**

LARRY C. and JUANITA J. WILLIAMS, Complainants	§ § § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
KEYSTONE RV COMPANY, Respondent		

DECISION AND ORDER

Larry C. and Juanita J. Williams (Complainants) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in their recreational vehicle (RV) manufactured by Keystone RV Company (Respondent). A preponderance of the evidence does not show that the subject vehicle has any defects covered by warranty. Consequently, the Complainants' vehicle does not qualify for repurchase/replacement or warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on June 12, 2018, in Wichita Falls, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented and testified for themselves. Brent Giggy, Product Manager, represented and testified for the Respondent. Michelle Diaz, Retail Claims Manager, also attended for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief

A vehicle qualifies for repurchase or replacement if the manufacturer cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”² In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must continue to exist after a “reasonable number of attempts” at repair.³ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a written notice of the defect to the manufacturer, (2) an opportunity to repair by the manufacturer, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁴

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁵

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

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

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”⁶

c. Reasonable Number of Repair Attempts

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁷

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁸

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“[T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

⁸ TEX. OCC. CODE § 2301.605(a)(2).

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁰

The existence of a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹¹ Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.¹²

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner or someone on behalf of the owner, or the Department has provided written notice of the alleged defect or nonconformity to the manufacturer;¹³ (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹⁴ and (3) the Lemon Law complaint was filed within six months after the earliest

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.605(c).

¹¹ *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’”).

¹² *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

¹³ TEX. OCC. CODE § 2301.606(c)(1). Also, 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department’s notice of the complaint to the Respondent may satisfy the requirement to provide notice of the defect or nonconformity to the Respondent.

¹⁴ 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).

of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.¹⁵

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a "defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle" and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect.¹⁶ The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."¹⁷

3. Burden of Proof

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

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.²⁰ The complaint should state "sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law."²¹ However, the parties may expressly or impliedly consent

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

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

¹⁷ TEX. OCC. CODE § 2301.603(a).

¹⁸ 43 TEX. ADMIN. CODE § 215.66(d).

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

²⁰ "In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days." TEX. GOV'T CODE §§ 2001.051; "Notice of a hearing in a contested case must include . . . a short, plain statement of the factual matters asserted." TEX. GOV'T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) ("The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty."); TEX. OCC. CODE § 2301.204(d) ("A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.").

²¹ 43 TEX. ADMIN. CODE § 215.202(a)(2).

to trying issues not included in the pleadings.²² Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²³

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainants for reasonable incidental expenses resulting from the vehicle's loss of use because of the defect.²⁴ 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.²⁵

A. Summary of Complainants' Evidence and Arguments

On October 31, 2017, the Complainants, purchased a new 2018 Montana 3121RL from Holiday World of Alvarado, an authorized dealer of the Respondent, in Alvarado, Texas. The vehicle's limited warranty provides coverage for one year. On December 21, 2017, the Complainants or a person on behalf of the Complainants mailed a written notice of defect to the Respondent. On December 21, 2017, the Complainants filed a complaint with the Department alleging problems with: the kitchen faucet water flow; scratches on the front cap (found when picking up the RV from the dealer); a hole cut in underbelly for repair – covered with black tape (by the dealer); the auto leveling system not working – blown fuses and dead batteries (after leaving the RV with dealer); the iN-Command control system not working, blown fuses (after leaving with dealer); the bedroom slide trim needing re-caulking; bad caulking where fiberglass cap met the roof; the bedroom cabinet drawer not latching; refrigerator door misalignment; a tear

²² 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

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

²⁴ TEX. OCC. CODE § 2301.604.

²⁵ 43 TEX. ADMIN. CODE § 215.209(a).

on the theater seats (noted at walk-through when picking up from dealer); dining room light not working (noted at walk-through); an awning light not working; bedroom closet trim bowing and coming off; air conditioning (AC) duct noise; dust or a smudge between glass oven door panels. The Complainants confirmed the successful repair of most of the issues in the complaint, except that the following issues remain for resolution in this proceeding: scratches on the front cap; hole/gaps in the underbelly; the electrical issue underlying the blown fuses; and AC duct noise. In relevant part, the Complainants took the vehicle for repair as follows:

Date	Issue
November 16, 2017	AC rattles in living room area; blown fuse behind iN Command system
December 11, 2017	12V not working; fiberglass repair-lot damage; underbelly cut for faucet repair
January 3, 2018	Duct in living room has something blocking air flow; overspray on front cap; seal underbelly; stress cracks in the front cap paint
January 23, 2018	Buff front cap to remove overspray; concern about underbelly not being sealed; rattling in ducting

The Complainant testified that the AC duct in the bedroom rattles sometimes; the iN Command system worked but the RV still had electrical issues; the fiberglass damage, which he assumed a forklift caused while at a dealership, was somewhat repaired but the front cap had what appeared to be stress cracks; the underbelly was replaced but had a hole and gaps. Regarding the front cap, Mr. Williams elaborated that the front cap now had hairline cracks at the bottom but the fiberglass damage occurred on a different part of the front cap, so he did not know whether the cracks were attributable to the manufacturer. Mr. Giggy commented that the only concern with the front cap the Respondent had was the paint, which was not a warranty item. Regarding the underbelly, Mr. Williams explained that the replacement underbelly came as one piece but the dealer could install the underbelly either in one or two pieces and Mr. Williams told the dealer install it whichever way. He added that he liked to have had the underbelly like the original – in new shape. The Complainant recited various electrical issues: the fireplace did not work sometimes, the thermostat (malfunctioned), the awning light had a short, the dining room light (malfunctioned), and the iN Command system shorted. When asked if electrical issues continued after the last repair attempt, Mr. Williams responded the fireplace exhibited issues now. He stated that he noticed the AC duct noise the day of the hearing. He answered that the noise was constant in the bedroom but intermittent in the living room.

Mr. Williams added that new same-model vehicles have a strip to prevent buckling. The RV's underbelly has gaps (as compared to when the RV came from the factory). He believed that electrical problems existed, whether someone did something wrong or not or maybe damaged it. The AC ducting problem existed since picking up the RV, which appeared to be an existing problem with all same-model vehicles. Mr. Williams pointed out that one work order stated that the dealer diagnosed the 12V issue as arising from a bad inverter.

B. Summary of Respondent's Evidence and Arguments

Mr. Giggy testified that all issues presented were repaired. The electrical issues discussed were all separate issues. The front cap was a non-warrantable issue, not a manufacturing defect. The AC issue, were unable to identify specific noise in the rear. Any noise does not prevent use of the component. The underbelly has been replaced as agreed. Nothing about the replacement indicates that the underbelly will not function as designed. None of the issues keep the RV from being used and the Complainants have actually used it. Mr. Giggy concluded that safety features functioned as designed. Specifically, fuses blew and the Respondent had them replaced.

C. Inspection

Inspection of the subject vehicle showed that the front cap's finish had some fine "spider web" cracks about 2 inches or less on the lower right (door) side. Mr. Giggy noted that the concern Mr. Williams noted that the underbelly did not have a reinforcing strap like other similar model RVs that he had seen. The underbelly appeared wavy. The living room AC vent did not appear to make any abnormal noise. The bedroom AC vent made a rattling noise. Mr. Giggy explained that the AC ducts may have wires, foam, tape, and other things in the ducts that may make noise. Mr. Giggy reached into the bedroom AC duct and removed some loose tape. Mr. Giggy pointed out that the bedroom duct/vent was not discussed at the manufacturer's inspection. Mr. Williams described an instance when the thermostat displayed a code. Mr. Giggy explained that this did not necessarily indicate a problem outside of the thermostat or AC or a problem with the RV's wiring but could be a voltage issue, or and that at some campgrounds, the RVs there may draw a substantial amount of power and not all campgrounds can support the subject vehicle's AC. Mr. Williams stated that the RV did not have any electrical issues the first time he took the RV to the dealer for repair but after coming back from the dealer, the RV had a variety of electrical issues,

such as the inverter and a short in the wiring. Mr. Giggy pointed out that some of the RVs repairs did not make sense. He had never experienced an RV developing six new issues after being dropped off at a dealership. One issue (on the work order) was the inverter. However, Mr. Giggy discovered that the inverter did not have any problems but the reverse polarity fuses in the converter were blown. Mr. Williams noted that the technician (that worked on the subject vehicle) had been fired so the dealer's service manager could not have discussed this with that technician. Mr. Giggy elaborated that the inverter had nothing to do with the 12 volt system. Mr. Williams noted that he inquired of the tech how the inverter was involved, since the converter related to the 12 volt system. Mr. Williams surmised that if the inverter went out, then the RV had something else wrong, in addition to the 12 volt system. Mr. Giggy's review of the parts orders showed that the dealer did not order an inverter. Mr. Giggy explained that the converter's fuses exist for one situation: when the battery is hooked up backwards, the positive and ground are reversed, the fuses blow to protect the converter. This in turn blew other fuses. Mr. Williams asked how Mr. Giggy knew that the short in the wire did not cause the fuses to blow. Mr. Giggy responded that the dealer did not replace any wire. Except, the iN Command control panel cable was replaced, but this was a low voltage cable that only transmitted signals from the control panel to the DCM and that excess voltage may have damaged the cable. Mr. Giggy explained that the 12 volt and 110 volt systems were on separate circuits. Some components use both but not many. Regarding the fireplace, Mr. Giggy would first think it had an issue with the temperature sensor. Since all the 110 volt lights were functioning, the problem did not appear to be with the 110 volt system.

D. Analysis

Even though an issue may be undesirable or problematic, the Lemon Law provides no relief unless the issue constitutes a defect covered by warranty (warrantable defect).²⁶ 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 states: "This Limited Base Warranty covers defects in materials and workmanship supplied by and attributable to Keystone's manufacturing and assembly of the RV,

²⁶ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

when the RV is used solely for its intended purposes of recreational camping.” Under these terms, the warranty only applies to defects in materials or workmanship from Keystone’s manufacturing (manufacturing defects).²⁷ Accordingly, manufacturing defects exist when the vehicle leaves the manufacturing plant. A manufacturing defect is an isolated aberration occurring only in those vehicles not produced according to the manufacturer’s specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Unlike manufacturing defects, issues that do not arise from manufacturing, such as design characteristics and improper/inadequate dealer repairs, are not warrantable defects. Design characteristics exist before manufacturing and result from the vehicle’s specified design and not from any error during manufacturing.²⁸ Any improper/inadequate dealer repairs occur after manufacturing. Furthermore, the warranty expressly excludes:

Equipment, products, components, appliances, or accessories not manufactured by Keystone; . . .

Damage or loss caused in whole or in part by the misuse, abuse, neglect, theft, vandalism, product modification, improper customer or dealer installation, improper stowing of equipment, overloading or improper balancing of the load, low or high voltage, unauthorized repair or failure to follow instructions supplied with the recreational vehicle.

In sum, the warranty only covers defects that arise during the manufacturing process.

1. Scratches on Front Cap

The complaint identified deep scratches on the cap, which occurred at the dealership, as an issue but did not include the fine “spider web” cracks, possibly stress cracks, observed during the inspection. As an initial matter, an issue raised for the very first time at the hearing is not eligible

²⁷ 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.”).

²⁸ 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).

for any relief, since it cannot meet the reasonable repair requirement under the Lemon Law or the notice requirement under the warranty performance statute. Secondly, the facts are unclear whether cracks resulted from a manufacturing defect or from dealer negligence. The record indicates that the dealer directly damaged the front cap, leaving scratches. The December 11, 2017, work order shows fiberglass repairs for damaging incurred on the dealer's lot. The spider web cracks appeared sometime after the damage occurring at the dealership. Although the spider web cracks appeared lower on the cap than the scratches, the cracks appear consistent with stress cracks, which appears as likely to have been caused by the dealer's handling of the RV as any manufacturing defect. In sum, a preponderance of the evidence does not show that the cracks resulted from a manufacturing defect.

2. Underbelly

The Lemon Law provides no relief for the complained of condition of the underbelly since the warranty does not cover this issue. As discussed above, the warranty only covers manufacturing defects. Manufacturing defects occur in the manufacturing process. Accordingly, a manufacturing defect exists when the vehicle leaves the manufacturer. Conversely, a condition caused after the manufacturing process is not a manufacturing defect covered by the warranty. In this case, the evidence shows that a dealer technician cut the underbelly when repairing the faucet water flow, leading to the complained of hole/gapping.

3. Blown Fuses, Auto Level, iN Command Control, Dining Room Light, Awning Light

The Complainants confirmed that the individual electrical issues were successfully repaired, but they still had concerns about a possible underlying electrical problem. However, the evidence shows that dealer negligence caused the issue underlying the blown fuses. Mr. Williams testified that the RV had no electrical problems until taking the RV to the dealer for repair, after which it exhibited multiple electrical problems. The evidence shows that a dealership technician reversed the polarity on the batteries, causing the converter's fuses reverse polarity fuses to blow, in turn blowing other fuses and potentially causing other damage. Mr. Williams noted the fireplace as an example of the ongoing electrical concerns; however, the 110 volt system, which powers the fireplace, did not exhibit any existing problems. Additionally, any problems with the fireplace itself would not be covered under the warranty, which specifically excludes equipment, products,

components, appliances, and accessories not manufactured by Keystone. In sum, the vehicle does not have any warrantable electrical defects.

4. AC Duct Noise

The AC duct noise appears to result from the design common to all Montana RVs, including the subject vehicle, and not from a manufacturing defect. Mr. Williams noted that the AC duct issues occurred with throughout the Montana model line, indicating the existence of an issue relating to the design shared by RVs of the same model. Specifically, the RV's ducts, by design, may include wires, foam, tape (and other parts) within the ducts, so that air hitting these objects may produce noise. However, the warranty only applies to manufacturing defects and not to design issues.

III. Findings of Fact

1. On October 31, 2017, the Complainants, purchased a new 2018 Montana 3121RL from Holiday World of Alvarado, an authorized dealer of the Respondent, in Alvarado, Texas.
2. The vehicle's limited warranty provides coverage for one year.
3. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Issue
November 16, 2017	AC rattles in living room area; blown fuse behind iN Command system
December 11, 2017	12V not working; fiberglass repair-lot damage; underbelly cut for faucet repair
January 3, 2018	Duct in living room has something blocking air flow; overspray on front cap; seal underbelly; stress cracks in the front cap paint
January 23, 2018	Buff front cap to remove overspray; concern about underbelly not being sealed; rattling in ducting

4. On December 21, 2017, the Complainants or a person on behalf of the Complainants mailed a written notice of defect to the Respondent.
5. On December 21, 2017, the Complainants filed a complaint with the Department alleging problems with: the kitchen faucet water flow; scratches on the front cap (found when picking up the RV from the dealer); a hole cut in underbelly for repair – covered with black tape (by the dealer); the auto leveling system not working – blown fuses and dead batteries (after leaving the RV with dealer); the iN-Command control system not working, blown

fuses (after leaving with dealer); the bedroom slide trim needing re-caulking; bad caulking where fiberglass cap met the roof; the bedroom cabinet drawer not latching; refrigerator door misalignment; a tear on the theater seats (noted at walk-through when picking up from dealer); dining room light not working (noted at walk-through); an awning light not working; bedroom closet trim bowing and coming off; air conditioning (AC) duct noise; dust or a smudge between glass oven door panels. The Complainants confirmed the successful repair of most of the issues in the complaint, except that the following issues remained unresolved: scratches on the front cap; hole/gaps in the underbelly; the electrical issue underlying the blown fuses; and AC duct noise.

6. On March 21, 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.
7. The hearing in this case convened on June 12, 2018, in Wichita Falls, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented and testified for themselves. Brent Giggy, Product Manager, represented and testified for the Respondent. Michelle Diaz, Retail Claims Manager, also attended for the Respondent.
8. The vehicle's warranty was in effect at the time of the hearing. The warranty expires on October 31, 2018.
9. The vehicle's warranty only covers defects arising out of the Respondent's manufacture and assembly of the vehicle. The warranty does not cover design issues, dealer negligence, or issues relating to components not manufactured by the Respondent.
10. The cracks on the front cap appear as likely to have been caused by dealer negligence as by any manufacturing defect.
11. The underbelly repair by the dealer is not a manufacturing defect.

12. The prior electrical concerns are attributable to dealer negligence, specifically, reversing the polarity of the batteries, causing the converter to blow its fuses. The 110 volt system appears to be operating normally. The warranty does not cover components not manufactured by the Respondent, such as the fireplace.

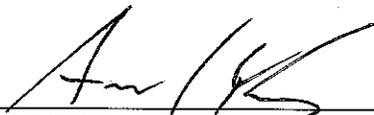
IV. Conclusions of Law

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 Complainants filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052. 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainants' vehicle does not qualify for replacement or repurchase. The Complainants did not prove that the 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 Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED August 13, 2018



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