

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0184449 CAF**

RUSSWHIT REAL ESTATE HOLDINGS, LLC,
Complainant

BEFORE THE OFFICE

v.

FORETRAVEL, INC.,
Respondent

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OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

RussWhit Real Estate Holdings, LLC (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 its recreational vehicle (RV) manufactured by Foretravel, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect. Consequently, the Complainant's 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 19, 2018, in Carrollton, Texas, before Hearings Examiner Andrew Kang. The record closed on August 14, 2018, the deadline for the Complainant's reply brief. Russell Whitaker represented and testified for the Complainant. Susan Hansen and Tracey Terrell Doyle, Vice President of Whit Corp., also testified for the Complainant. Bill Crocker, attorney, represented the Respondent. Cory Rucker, Vice President; Lyle Reed, President; and Drew Pierce, Assistant Vice President, and Mark Harvey, the Respondent's former service director, testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief

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

a. Serious Safety Hazard

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

b. Substantial Impairment of Use or Value

i. Impairment of Use

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

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

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

ii. Impairment of Value

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

c. Reasonable Number of Repair Attempts

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

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

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

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

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

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

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

⁸ TEX. OCC. CODE § 2301.605(a)(2).

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

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

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

d. Other Requirements

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

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.605(c).

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

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

¹³ TEX. OCC. CODE § 2301.606(c)(1).

¹⁴ TEX. OCC. CODE § 2301.606(c)(2). A repair visit to a dealer 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).

¹⁵ 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.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 Complainant.¹⁸ 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.¹⁹ 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.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 to trying issues not included in the pleadings.²² Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²³

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).

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).

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.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 verifiable (for example, through receipts or similar written documents).²⁵

A. Summary of Complainant's Evidence and Arguments

On October 28, 2015, the Complainant, purchased a new 2015 Foretravel ih-45 from Motorhome Specialist, LP, an authorized dealer of the Respondent, in Alvarado, Texas. The vehicle had 1,050 miles on the odometer at the time of purchase. The vehicle's limited warranty provides coverage for 24 months or 24,000 miles, whichever occurs first, from the date of origination. The Respondent extended the warranty to December 28, 2017, or 24,564 miles, whichever comes first. On March 15, 2017, a person on behalf of the Complainant provided a written notice of defect to the Respondent. On March 7, 2018, the Complainant filed a complaint with the Department alleging that water leaked and penetrated into the RV. Mr. Whitaker confirmed that water leak and air leak (compressor) issues remained to be addressed.

Mr. Whitaker testified that because of repairs over two days, the RV was actually picked up on October 30, 2018. He stated that three leaking windows were successfully repaired but the slide-outs and the bay doors leaked from the beginning. He last noticed the slide-outs leaking on June 6, 2018, when the driver's side slide and a bay flooded. Mr. Whitaker responded that the air bladder seems to have stopped leaking air but may be causing the slide-outs to leak water. He also confirmed that June 6, 2018, was also the last day he noticed the bay doors leaking. He elaborated

²⁴ TEX. OCC. CODE § 2301.604.

²⁵ 43 TEX. ADMIN. CODE § 215.209(a).

that for the doors to leak, the rain had to be a certain type of heavy rain. He added that the bay doors always leaked but the slide-outs leaked intermittently. When asked if he resided in the RV full-time, Mr. Whitaker responded that he did when in Texas. The months occupying the RV varied from year to year.

Mrs. Doyle testified that she had seen water dripping with the slides out when raining. She thought the couch needed replacement because every cushion was like a sponge and they had to take everything out to dry. She described the leak as pouring down like from a hole in the roof.

Mr. Whitaker noted that the water leak during the inspection at the hearing was due to the bringing the slides in. The slides did not leak every time. The repair invoices never mentioned any sticks or gravel or dirt. He elaborated that gravel appeared on all the cars at his business but no one's car leaked. Mr. Whitaker attributed the slide leaking to bad design, which was why the manufacturer added awnings.

On cross examination, Mr. Whitaker affirmed that he lived in the RV and that he also had a boat that he lived in. He explained that he used his business address for his voter registration. While in California, he would park the RV by his boat and other times stay at RV parks. When in Dallas, he would go to the Grapevine RV park. He confirmed that he would leave the slides out when storing the RV. He acknowledged complaining about the slides to the Respondent and confirmed the issue appeared on invoices. He explained that the warranty was extended by two months. Mr. Whitaker affirmed that he had found leaves and twigs inside the slide. He also recognized that the bays were not watertight and communicated with each other. However, he had not seen water moving front to back. He acknowledged that two doors sustained damage, which were repaired. He also understood that the bay doors utilized a two-stage catch with two levels of closure. Regarding the awnings, Mr. Whitaker explained that when first taking off, the awnings did not work properly because of incorrect wiring. He concluded that water dumped on his head and rain and wind gushed because of the awnings coming in. However, the invoice did not mention a twig or gravel. The dealer identified a piece of rubber as interfering with the seal. Mr. Whitaker affirmed that the RV had water in the compartments at the time of purchase. When asked if he removed debris from the top of the slides, he answered not a lot, two or three times. He detailed that he would take the RV to a truck wash and use a ladder to reach the top of the slides.

Mr. Whitaker testified that the leaks were not due to debris. Various cars and trucks around the same area did not leak because of debris in the seals. The RV leaked because of rubber, wire, and broken fiberglass. Debris was never mentioned at the repair visits.

Upon clarifying questions, Mr. Whitaker testified that the bay doors would leak significantly during hard rains, usually in one or two bays. Lighter rains would cause one or two puddles. After cleaning gravel, the doors still leaked. Regarding the slides, he does not climb the 13' 6" to look at the slide. He has people clean it off. When asked when the slide tops were last cleaned, he answered probably a couple of months ago. He added that the gravel mentioned above came from demolition of a motel and parking lot from a month ago. However, the RV leaked in the parking lot and right out of the shop. When asked if he parked under trees at RV parks, he answered that he did all the time.

B. Inspection

Upon inspection at the hearing, the subject RV's odometer displayed 23,426 miles. The vehicle's storage bay with a cooler exhibited some moisture and the compartment doors had some grit (sand and fine rock) around the seals. The floor of the compartment with the plumbing/water manifold exhibited some rust. All doors had some grit, but only the front (cooler) compartment was wet. Mr. Whitaker noted that rubber molding was added to the tops of the compartments. The compartments had two-stage locking doors, which required the 2nd stage to be set to be fully locked. Mr. Whitaker water tested the compartments by spraying them with a water hose. After the water test, the 3rd and 4th driver's side compartments accumulated some water. The battery compartment's gasket had partially pulled away. Water dripped on top of the driver's side living room slide and splattered on the couch from rain earlier. The countertop in front of the TV accumulated some water drops. The floor had some small 2" by 1" pools of water on the floor between the kitchen and entertainment center. Mr. Whitaker noted that rain had fallen the morning of the hearing. Mr. Whitaker pointed out that the driver's side (generator) compartment at the very front never leaked. Water pooled in the 4th (water heater) compartment. The 6th compartment (containing water connections) showed some water pooling. The electrical components in the compartments were mounted on raised surfaces. Mr. Whitaker sprayed directly into the compartment door gaps/channels. Mr. Whitaker noted that the doors could not be adjusted. Mr. Whitaker explained that by design the RV needs to be tilted before closing the slide (to run off the

water). The Respondent's newer models have awnings to prevent water getting on the slide. Mr. Whitaker closed the slide without tilting the RV and water leaked inside from the slide. Mr. Whitaker stated that the RV would leak with the slides out and the bladder full of air.

C. Summary of Respondent's Evidence and Arguments

Mr. Harvey testified that the initial service visit did not involve a complaint about water except for water coming from the slide room but he attributed this to not understanding having to tilt the RV before bringing in the slides, which is a common procedure. He also confirmed that a slide may commonly leak water if brought in after a rainstorm without tilting. He acknowledged that water could drain into the compartments below. During the June 6, 2018, inspection, Mr. Harvey affirmed seeing gravel in the door seals and confirmed that gravel could keep the doors from being watertight. He expected the owner to address the gravel as a regular maintenance item. He explained that the RVs used a bladder to form an air seal around a room. When the bladder inflates, it presses against the side of the room to create a seal. The bladder is encased in an aluminum extrusion installed with a lock strip, which typically will not leak. However, the bladder may leak with debris, such as the gravel described above, between the slide and bladder. He did not find any condition of the vehicle to be a serious safety hazard.

On cross-examination, Mr. Harvey explained that the air pump was a part of the air seal system. He elaborated that the system will seal if the compressor is running. However, if the seal was damaged so that the compressor would run constantly, then he could see that it would not seal. However, this was not case with the subject vehicle.

On redirect examination, Mr. Harvey confirmed that the system no longer had a leak after replacement of the leaking T-fitting.

Mr. Pearce testified that a technician took the room trim down and sent a picture of debris (leaves and twigs), explaining the need to clean off the slide to get a proper seal, which the technician did.

On cross-examination, the Mr. Pearce acknowledged that the air system would not inflate if the compressor were not working.

Mr. Pearce affirmed that if there was not enough air pressure to keep the bladder inflated then the compressor would run all the time instead of turning on and off.

Mr. Reed testified that at the June 6, 2018, inspection, he blocked out the light and taped over light sources so completely darken the RV. He looked for light indicating a gap but did not see any light. Mr. Reed also affirmed that the RV's market value was restored with each repair. He also elaborated that tilting the slide will reduce water coming in, though there will still be some dampness because the bladder deflates when the slide comes in.

On cross-examination, Mr. Reed stated that he only knew of fiberglass problems that may cause a leak on one endcap. The problem actually resulted from adhesive that let go on the radius. However, the repair was in good condition when inspected on June 6, 2018.

Mr. Rucker testified about debris that may relate to water penetration, including gravel on the roof, gasket material behind the awnings, and limbs, twigs, and gravel on the RV's roof. The top of the driver's front slide exhibited scraping from rock getting caught on the way in and out. He affirmed that this requires inspection from time to time by the owner. He stated that the Respondent offered to install topper awnings but the Mr. Whitaker rejected this.

D. Analysis

As an initial matter, Lemon Law relief does not apply to all issues that a consumer may have with a vehicle but only to defects covered by warranty (warrantable defects).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 part, the warranty generally states that the Respondent: "warrants each ih Motorcoach to be free from defects in materials or workmanship under normal use and service, subject to certain limitations or additions as specifically set forth herein." According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).²⁷ A manufacturing defect is

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

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.").

generally an isolated aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Unlike manufacturing defects, issues that do not arise from manufacturing, such as characteristics of the vehicle's design (which exists before manufacturing) are not warrantable defects. Design characteristics result from the vehicle's specified design and not from any error during manufacturing.²⁸ In sum, the warranty only covers manufacturing defects and the Lemon Law does not apply to design characteristics or design defects. Even though an issue may be undesirable or problematic, the Lemon Law provides no relief unless the issue constitutes a manufacturing defect.

The Complainant essentially has identified problems two areas of leaks: at the storage bays and at the slides. The leaks at the storage bays appear to result from the vehicle's design and not from any manufacturing defect. The vehicles design even contemplates that some leaking will occur, as shown by electrical components mounted above the bay floors to avoid any water that may enter. Moreover, the use of two-stage latches also appear to contribute to the intrusion of water. However, the manufacturer's use of these latches is a design issue, not a manufacturing defect. In sum, the bay door leaks do not appear to arise from a warrantable defect subject to Lemon Law relief.²⁹

A preponderance of the evidence does not show that the leak at the slides is a warrantable defect. Mr. Whitaker noted, that the design of the RV, i.e., the lack of slide topper awnings, contributes to the intrusion of the water. Moreover, the record clearly shows that debris may cause leakage by interfering with the air seal. Although the evidence shows that gravel from the hotel demolition would not have been a factor in earlier leaks, Mr. Whitaker testified that he parked the RV under trees frequently but has only cleared the slides two or three times, with the most recent instance, a couple of months before the hearing. Accordingly, the debris from trees appear as likely a cause of any leakage as any possible manufacturing defect. As a result, the Complainant has not satisfied the burden of proof required for Lemon Law relief.

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).

²⁹ However, the inspection at the hearing did reveal one loose gasket. However, the warranty expired before the hearing.

III. Findings of Fact

1. On October 28, 2015, the Complainant, purchased a new 2015 Foretravel ih-45 from Motorhome Specialist, LP, an authorized dealer of the Respondent, in Alvarado, Texas. The vehicle had 1,050 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides coverage for 24 months or 24,000 miles, whichever occurs first, from the date of origination. The Respondent extended the warranty to December 28, 2017, or 24,564 miles, whichever comes first.
3. On March 15, 2017, a person on behalf of the Complainant provided a written notice of defect to the Respondent.
4. On March 7, 2018, the Complainant filed a complaint with the Department alleging that water leaked and penetrated into the RV.
5. 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.
6. The hearing in this case convened on June 19, 2018, in Carrollton, Texas, before Hearings Examiner Andrew Kang. The record closed on August 14, 2018, the deadline for the Complainant's reply brief. Russell Whitaker represented and testified for the Complainant. Susan Hansen and Tracey Terrell Doyle, Vice President of Whit Corp., also testified for the Complainant. Bill Crocker, attorney, represented the Respondent. Cory Rucker, Vice President; Lyle Reed, President; and Drew Pierce, Assistant Vice President, and Mark Harvey, the Respondent's former service director, testified for the Respondent.
7. The vehicle's odometer displayed 23,426 miles at the time of the hearing.
8. The warranty expired on December 28, 2017.
9. Upon inspection at the hearing, the subject RV's odometer displayed 23,426 miles. The vehicle's storage bay with a cooler exhibited some moisture and the bay doors had some grit (sand and fine rock) around the seals. The floor of the storage bay with the

plumbing/water manifold exhibited some rust. All doors had some grit, but only the front (cooler) storage bay was wet. Mr. Whitaker noted that rubber molding was added to the tops of the storage bays. The storage bays had two-stage locking doors, which required the 2nd stage to be set to be fully locked. Mr. Whitaker water tested the storage bays by spraying them with a water hose. After the water test, the 3rd and 4th driver's side storage bays accumulated some water. The battery bay's gasket had partially pulled away. Water dripped on top of the driver's side living room slide and splattered on the couch from rain earlier. The countertop in front of the TV accumulated some water drops. The floor had some small 2" by 1" pools of water on the floor between the kitchen and entertainment center. Mr. Whitaker noted that rain had fallen the morning of the hearing. Mr. Whitaker pointed out that the driver's side (generator) storage bay at the very front never leaked. Water pooled in the 4th (water heater) storage bay. The 6th storage bay (containing water connections) showed some water pooling. The electrical components in the storage bays were mounted on raised surfaces. Mr. Whitaker sprayed directly into the bay door gaps/channels. Mr. Whitaker noted that the doors could not be adjusted. Mr. Whitaker explained that by design the RV needed to be tilted before closing the slide (to run off the water). The Respondent's newer models had awnings to prevent water getting on the slide. Mr. Whitaker closed the slide without tilting the RV and water leaked inside from the slide. Mr. Whitaker stated that the RV would leak with the slides out and the bladder full of air.

10. The bay doors are not designed to be water tight. The design of the bays contemplates that the at least some water will enter the bays.
11. Debris, including twigs and leaves, on the slides may lead to water leakage by interfering with the air seal. Mr. Whitaker frequently parks the RV under trees. Mr. Whitaker has only had the slides cleared two or three times with the last time occurring about two months before the hearing.

IV. Conclusions of Law

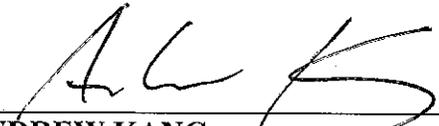
1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.

2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. TEX. OCC. CODE § 2301.704.
3. The Complainant filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052. 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant's vehicle does not qualify for replacement or repurchase. 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 October 15, 2018



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