

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 18-0185561 CAF**

**JENNIFER and MICHAEL MAYER,  
Complainants**

v.

**KEYSTONE RV COMPANY,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Jennifer and Michael Mayer (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 a warrantable defect that creates a serious safety hazard or substantially impairs the vehicle's use or market value after a reasonable number of repair attempts. Consequently, the Complainants' 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 October 18, 2018, in Conroe, Texas, Texas, before Hearings Examiner Andrew Kang, and the record closed on November 2, 2018, the deadline for the response to the Complainants' documentation of attorney's fees. Rick Brass and Alina Dionne, attorneys, represented the Complainants. The Complainants testified for the themselves. Christopher Lowman, attorney, represented the Respondent. Matt Gaines, Senior Product Manager, testified for the Respondent.

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

## II. Discussion

### A. Applicable Law

#### 1. Repurchase/Replacement Relief

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

##### a. Serious Safety Hazard

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

##### b. Substantial Impairment of Use or Value

###### i. Impairment of Use

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

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

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

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

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

**ii. Impairment of Value**

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

**c. Reasonable Number of Repair Attempts**

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

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

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

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

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

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

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

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

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

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

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

**d. Other Requirements**

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

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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> A repair visit to a dealer satisfies the manufacturer's “opportunity to cure” requirement when the manufacturer allows a dealer to attempt repair after written notice to the manufacturer, i.e., the manufacturer may delegate its opportunity to repair to a dealer. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 226 (Tex. App.—Austin 2012); Texas Department of Transportation, *Kennemer v. Dutchman Manufacturing, Inc.*, MVD Cause No. 09-0091 CAF (Motor Vehicle Division Sept. 25, 2009) (Final Order Granting Chapter 2301, Subchapter M Relief).

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

## 2. Warranty Repair Relief

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

## 3. Burden of Proof

The law places the burden of proof on the Complainants.<sup>18</sup> The Complainants must prove all facts required for relief by a preponderance of the evidence. That is, the Complainants must present sufficient evidence to show that every required fact more likely than not exists.<sup>19</sup> Accordingly, the Complainants cannot prevail where the existence of any required fact appears equally likely or unlikely.

## 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

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

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

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

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

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

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

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>

## 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 verifiable (for example, through receipts or similar written documents).<sup>25</sup> However, the Department’s rules expressly exclude compensation for “any interest, finance charge, or insurance premiums.”<sup>26</sup>

### A. Summary of Complainants’ Evidence and Arguments

On April 6, 2016, the Complainants, purchased a new 2016 Montana 362RD from Dealer, an authorized dealer of the Respondent, in Willis, Texas. The vehicle’s limited warranty issued by the Respondent provides coverage for one year from the date of purchase. On March 14, 2018, the Complainants’ attorney provided a written notice of defect to the Respondent. On April 11, 2018, the Complainants filed a complaint with the Department alleging that water leaked into the RV at various points. In relevant part, the Complainants took the vehicle to a dealer for repair of the alleged issue as follows:

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<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).

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

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

<sup>26</sup> 43 TEX. ADMIN. CODE § 215.208(b)(1).

Date	Issue
08/31/16	Water leaking in master bedroom through antenna
10/28/17	Rear AC leaking; water coming in kitchen slide out; underbelly full of water; furnace vents full of water; soft spots in floor; water leaking in rear bathroom

Mr. Mayer testified that the subject RV had defects requiring repair before the Complainants took delivery. In particular, the jack system had exhibited an error code. After repair, the RV continued to have issues with the jacks and the RV had shades missing. Mr. Mayer affirmed the presence of various issues, including screws missing from a fender, a loose fender, moldings that did not fit flush, and the dinette shade not retracting. Additionally, the Complainants found water penetrating into the RV. Water flowed under a slide out and to the fireplace. After taking the vehicle in for service, the dealership found a problem with the jacks. After picking up the RV, the jacks malfunctioned during a trip to Wisconsin. The Complainants eventually brought the RV back for repair, but in the meantime, the RV leaked again, by the TV and back in the bathroom area, the same places as the prior leak. On a subsequent service visit, Mr. Mayer notified the dealer about issues with the dining shade not retracting; the auto-leveling/jacks malfunctioning; trim hitting the wall in the dining area; water leaking in the master bedroom, kitchen, bunkhouse, on the couch, behind the TV and on the counter. Also, the RV continued to have screws come out and the fender come loose. In addition, the dealer found that the furnace had blown a fuse. After the trip from Wisconsin, with the RV stored in Brenham, the Complainants found water in the RV. The dealer found a nickel to quarter sized hole that it attributed to Mr. Mayer. The RV needed a new roof because patching nullified the warranty. As a result, the Complainants contacted their insurer. Mr. Mayer did not believe he caused the hole and did not believe this caused the RV's problems because the hole was not near the areas where he noticed the water. During the August 31, 2016, repair visit, for which the dealer had the RV for 76 days, in part, the dealer repaired wiring and replaced an AC circuit board. Afterwards, on a trip to Lake Somerville, the jacks continued to have issues and the furnace stopped working. The Complainants took the RV back to dealer on December 28, 2016, for a fourth repair visit. Mr. Mayer testified that previously, the entire front of the living area had standing water. He affirmed that he was not initially in the RV to see where the water originated from during the rain from Hurricane Harvey. However, in a subsequent incident, he saw an approximately eight-inch wide flow of water from under the refrigerator/stove slide out to the forward area and back bedroom. Additionally, water came out of

the AC in the back bedroom and onto the wall and couch and recliner. The Complainants' insurer denied coverage of the water damage because the damage occurred over an extended time due to water seepage.<sup>27</sup> Subsequently, the Complainants left the RV open to air it out but rain started and water seeped in like the time during Hurricane Harvey. Water flowed from the AC vent like a faucet turned halfway on. The Complainants took the RV to the dealer on October 28, 2017. About November, the dealer determined the RV needed a pressure test. The test showed a defect around the awning arms and issues with the roof AC unit. The dealer replaced the kitchen floor, damaged molding, and addressed the underbelly filled with water. The dealer found issues with the auto-leveling and the seal of the awning arms at the wall.

On cross-examination, Mr. Mayer affirmed that he had hired Mr. Brass in March of 2018. He testified that the Complainants stored the RV in an open area without a covering. When asked if the seals were maintained, Mr. Mayer responded that (at the time) they had owned the RV for only one winter. He had taken the RV to the dealer for yearly maintenance, as part of which he requested winterization. He believed winterization included seal maintenance. He acknowledged the manufacturer's warranty had expired. Mr. Mayer explained that the dealer told him to contact the insurer because of a hole by the dinette, which insurance covered as a casualty event. The Complainants have not used the RV since picking it up from the dealer about a month before the hearing. Mr. Mayer explained that Russell RV only evaluated the RV and found that the dealer started working on the RV and found possible issues with some seals and some paneling which the dealer may not have had a chance to address yet. He confirmed that the water leaking from the AC vent after Hurricane Harvey was the first leak at that location, which occurred five months after the warranty expired, but a drought had occurred for six months before that leak. The Complainants had purchased a third-party service agreement.

Mrs. Mayer concurred with Mr. Mayer's testimony. She added that the heat and sound bar malfunctioned on a trip and she noticed water pouring out of the back of the RV.

Upon clarifying questions, Mr. Mayer testified that he last saw the RV leak about September 28th or 29th before taking it to the dealership in 2017, a month after Hurricane Harvey. The last time he noticed leaking before the insurance-covered repair was just before that repair

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<sup>27</sup> Complainant's Ex. 0005-0006.

visit. On recross-examination, Mr. Mayer confirmed that the last repair order before the insurance repair was for December 28, 2016, to February of 2017. He affirmed that water came out of the RV around the time of Hurricane Harvey and he had stored the RV with the jacks deployed and the slides out. However, when apprised of the coming hurricane, he closed the RV.

### **B. Inspection**

During the inspection at the hearing, Mr. Gaines commented that the water from the AC vent occurred after the roof replacement. He noted that the AC unit may not have been set correctly or conditioned and unconditioned air may have been allowed to mix. The hearing examiner felt some softness on the floor near the floor air vents. Mr. Mayer explained that the water leak in the kitchen area occurred with the slide open and closed. Mr. Gaines commented that during his prior inspection, he found high moisture readings in the back third of the RV. He explained that the floor rotted from the bottom up. The hearing examiner observed moisture on the wall behind the TV and the countertop below it. Mr. Gaines found: water in the Maxxair vents over the bathroom and kitchen, the antenna out of position—out of its cradle, and the coaxial cable boot not inserted securely. Mr. Mayer stated that he has not seen a recurrence of the type of leaking that led to the prior repairs.

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

Mr. Gaines testified that he inspected the RV at the dealership. He did not find that the seals and possible points of water intrusion had any manufacturing defects. During the inspection at the hearing, he found the roof-mounted antenna at an odd angle and a loose coaxial cable boot and he saw cracks in both Maxxair vents (exhaust fans) on the roof. He explained that, as part of the insurance repair, all roof mounted components were removed. After which, the rubber roof would have been removed, the roof cleaned, staples removed, new membrane installed, and components reinstalled. He noted that Keystone usually installed new moldings. He confirmed that the AC units and other components on the roof involved sealing them and that the insurance-paid repair had no coverage under Keystone's warranty.

On cross-examination, Mr. Gaines affirmed that, if not defective, Keystone's product should keep the rain out. He acknowledged the portions of the repair orders showing warrantable repairs due to water intrusion. He confirmed that he did not know when the cracks in the vents

occurred. He agreed that the dealer had possession of the RV for almost a year by the time he inspected it. He expressed that a dealer should not reinstall a cracked vent. He inspected the floor and observed rotting in the subfloor but did not agree that rotting and softness in the floor comported with significant amounts of water on the RV's floor. He explained that his inspection showed high-moisture readings on the outside but the readings on the floor were fine. He elaborated that a slide out floor was replaced. He affirmed that he inspected the RV after repairs. He confirmed that the Respondent authorizes warranty work by the dealer but the Respondent does not always get repair information from the dealer. He explained that depending on the job, if small enough, the dealer can do the repair without requesting approval.

On redirect examination, Mr. Gaines confirmed that the warranty expired on April 6, 2017, and that the RV was out of warranty when taken to the dealer in October 2017 and when he inspected the RV. He expressed that the RV had no similar leak complaints during the warranty period (as compared to after the warranty period).

On recross examination, Mr. Gaines confirmed that generally, the warranty would not cover a defect identified before the warranty expired that an authorized repair facility failed to correct. He added that if he was notified that an RV would not be in for repair until a week or two after the warranty expired, the Respondent would honor that.

## **D. Analysis**

### **1. Filing Deadline**

As an initial matter, the Complainants did not timely file their Lemon Law complaint. As explained in the discussion of applicable law above, the Lemon Law requires filing of a complaint no later than six months after the manufacturer's warranty expires. In this case, the warranty expired on April 6, 2017, one year after the date of purchase. Accordingly, the filing deadline fell on October 6, 2017. However, the Complainants filed their complaint on April 11, 2018, six months after the deadline. Consequently, the subject vehicle cannot qualify for repurchase or replacement under the Lemon Law. Additionally, as outlined in the discussion of applicable law, reimbursement of incidental expenses, including attorney's fees, only applies when repurchase or replacement is ordered. Nevertheless, a vehicle may still qualify for warranty repair relief if a warrantable defect continues to exist.

## 2. Warrantable Defect

Lemon Law relief does not apply to all problems that a consumer may have with a vehicle but only to defects covered by the manufacturer's warranty (warrantable defects).<sup>28</sup> The Lemon Law does not require that a manufacturer provide any particular warranty coverage nor does the Lemon Law impose any specific 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:

Except as specifically excluded below, Keystone RV Company and Dutchmen Manufacturing, a division of Keystone (hereinafter "Keystone") WARRANTS for a period of one (1) year from the date of purchase that the recreational vehicle manufactured and assembled by Keystone shall be free from defects in materials and workmanship supplied and attributable to Keystone.

According to these terms, the warranty only applies for one year to defects in materials or workmanship (manufacturing defects)<sup>29</sup> attributable to the Respondent (as opposed to a third party). A defectively manufactured vehicle has a flaw because of some error in making it. Unlike manufacturing defects, issues that do not arise from manufacturing, such as improper dealer repairs (which occur after manufacturing) are not warrantable defects. In the present case, the warranty expired on April 6, 2017. If the vehicle owner or owner's agent reported a defect to the manufacturer or dealer before the warranty expired, the Lemon Law imposes a continuing obligation to repair that same defect after the warranty expires. However, if the defect was reported for the first time after April 6, 2017, the warranty provides no coverage, i.e., the defect is not a warrantable defect. Further, the warranty specifically excludes:

Equipment, products, components, appliances, or accessories not manufactured by Keystone whether or not warranted, including but not limited to, tires, batteries, generators, washer, dryer, electronics and other installed equipment or accessories; . . . Damage or loss caused in whole or in part by the acts or omissions

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

<sup>29</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.").

of any kind by any party other than Keystone; . . . Routine maintenance including, without limitation, brake squeak/lock-up/adjustment, caulking, changing fuses or light bulbs, combustion systems, latches, locks, maintaining the air conditioning and heating systems, re-caulking and waxing of the body of the recreational vehicle, tightening screws, and winterization; . . . Damage or loss caused in whole or in part by exposure to natural or atmospheric elements, corrosive chemicals, ash or fumes generated or released by vehicles, collision, road hazards, rock chips, condensation, or any other source.

Even though a vehicle may have severe problems, Lemon Law (repurchase/replacement) relief and Warranty Performance (repair) relief only apply to warrantable defects.

**a. Water Leaks**

A preponderance of the evidence does not show any existing warrantable leaks that qualify for relief.

**i. The Complained of Leaks Do Not Continue to Exist**

One of the essential requirements for any relief is that the alleged defect must continue to exist. Mr. Mayer testified that he last noticed leaking (of the type described in the Complainants' testimony and addressed by the repair orders) on September 28th or 29th 2017, before taking the RV to the dealer for repair. The record only shows two repair orders for water intrusion into the RV.<sup>30</sup> The first, from August 31, 2016, addressed a leak in the master bedroom from an improperly sealed antenna cable, which the warranty covered. The second, from October 28, 2017, after the warranty expired, addressed an AC unit leaking, water coming in the kitchen slide out, an underbelly full of water, furnace vents full of water, soft spots in the floor, and water leaking in the rear bathroom, which the warranty did not cover. If the second leak was a continuation of the same defect as the first leak (i.e., the leak was not successfully repaired the first time), then the Lemon Law provides that the warranty applies to this defect even after the warranty expires. However, the repair orders characterize the two leaks differently, reflecting two unrelated issues. The first leak resulted from an improperly sealed cable (a manufacturing defect) in the master bedroom, while the second apparently resulted from a hole near the dining area, which insurance covered as a casualty event. Although Mr. Mayer did not believe the hole caused the water

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<sup>30</sup> The December 28, 2016, repair order only shows a leak at the city water connection, a plumbing issue, as opposed to a structural problem allowing rain to leak in from the exterior. The May 14, 2016, shows no water leak at all.

intrusion, Mr. Mayer's testimony and other evidence reflects that water leaked from around the kitchen slide, which appears consistent with a hole in the dining area. In any event, the type of leaks addressed by these two repair visits has not reoccurred since the last leak repair.

**ii. Any Existing Leak Is Not a Warrantable Defect**

Although the type of leaks leading to the repairs has not recurred, the inspection at the hearing showed evidence of some minor leaking. However, a preponderance of the evidence does not show that any leak occurring after the insurance-covered roof repair is a warrantable defect. First, any deficiency in the insurance repair is not covered by the warranty, since the warranty only applies to manufacturing defects and expressly excludes damage from third parties, such as improper dealer repairs after the vehicle leaves the plant. The evidence shows that the roof-mounted antenna's coaxial cable boot was not secure and the Maxxair vents were cracked, providing entry points for water (the vents had water in them). The dealer would have removed and reinstalled these components during the October 2017 insurance repair, indicating that the dealer, not the manufacturer, failed to properly install the coaxial cable boot, and either the dealer damaged the vents or some subsequent casualty event damaged the vents. Second, any new leaks reported after April 6, 2017, are not warrantable defects, even if caused by a manufacturing defect, since the warranty expired one year after purchasing the RV.

**b. Other Issues**

The complainant only listed water leaks as issues in this case. However, the Complainants mentioned other defects when testifying about the RV's history, including the auto-leveling system and jacks, the sound bar, furnace, shades, trim hitting the wall, missing screws, loose fender, etc. As explained above, the warranty excludes defects in components manufactured by third parties, such as the auto-leveling system and jacks from Lippert, sound bar, furnace, and shades, so none of these components support any relief here. With respect to any other issues, the record does not appear to show that those issues continue to exist.

**III. Findings of Fact**

1. On April 6, 2016, the Complainants, purchased a new 2016 Montana 362RD from Dealer, an authorized dealer of the Respondent, in Willis, Texas.

2. The subject recreational vehicle's limited warranty provides coverage for one year from the date of purchase.
3. The warranty only applies to "defects in materials and workmanship supplied and attributable to Keystone."<sup>31</sup>
4. The warranty expressly excludes:

Equipment, products, components, appliances, or accessories not manufactured by Keystone whether or not warranted, including but not limited to, tires, batteries, generators, washer, dryer, electronics and other installed equipment or accessories; . . . Damage or loss caused in whole or in part by the acts or omissions of any kind by any party other than Keystone; . . . Routine maintenance including, without limitation, brake squeak/lock-up/adjustment, caulking, changing fuses or light bulbs, combustion systems, latches, locks, maintaining the air conditioning and heating systems, re-caulking and waxing of the body of the recreational vehicle, tightening screws, and winterization; . . . Damage or loss caused in whole or in part by exposure to natural or atmospheric elements, corrosive chemicals, ash or fumes generated or released by vehicles, collision, road hazards, rock chips, condensation, or any other source.<sup>32</sup>

5. The warranty expired on April 6, 2017.
6. In relevant part, the Complainants took the vehicle to a dealer for repair as shown below:

Date	Issue
08/31/16	Water leaking in master bedroom through antenna
10/28/17	Rear AC leaking; water coming in kitchen slide out; underbelly full of water; furnace vents full of water; soft spots in floor; auto-level errors; water leaking in rear bathroom

7. On March 14, 2018, the Complainants' attorney provided a written notice of defect to the Respondent.
8. On April 11, 2018, the Complainants filed a complaint with the Department alleging that water leaked into the RV at various points.
9. On June 29, 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

<sup>31</sup> Respondent's Ex. 1, Keystone RV Company Owner's Manual at 7.

<sup>32</sup> Respondent's Ex. 1, Keystone RV Company Owner's Manual at 8.

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.

10. The hearing in this case convened on October 18, 2018, in Conroe, Texas, Texas, before Hearings Examiner Andrew Kang, and the record closed on November 2, 2018, the deadline for any response to the Complainants' documentation of attorney's fees. Rick Brass and Alina Dionne, attorneys, represented the Complainants. The Complainants testified for the themselves. Christopher Lowman, attorney, represented the Respondent. Matt Gaines, Senior Product Manager, testified for the Respondent.
11. During the inspection at the hearing, the hearings examiner felt some softness on the floor near the floor air vents and observed moisture on the wall behind the TV and the countertop below it. Mr. Gaines found water in the Maxxair vents over the bathroom and kitchen, the antenna out of position, and the coaxial cable boot not inserted securely, all of which may provide pathways for water to enter the RV.
12. A dealer removed and reinstalled the vents, antenna, and coaxial cable boot as part of an insurance-covered repair of a hole in the roof.
13. The complained of water leaks did not reoccur after the October 28, 2017, repair visit.
14. The moisture observed during the inspection at the hearing reflects a minor leak that differs from the complained of water leaks as described in testimony and the repair orders.
15. Any currently existing water leaks occurred after the warranty expired.
16. The Complainants did not address the continuing existence of any issues other than the water leaks.

#### **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 Complainants' vehicle does not qualify for replacement or repurchase. The Complainants did not timely file the complaint for repurchase or replacement relief. The proceeding must have been commenced not later than six months after the earliest of: (1) the expiration date of the express warranty term; or (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner. TEX. OCC. CODE § 2301.606(d).
8. The Complainants, a person on behalf of the Complainants, or the Department provided written notice of the alleged defect(s) to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
9. If the Complainants' vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
10. The Complainants' vehicle does not qualify for warranty repair. The Complainants did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 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 January 2, 2019

A handwritten signature in black ink, appearing to read 'ALK', is written over a horizontal line.

ANDREW KANG

HEARINGS EXAMINER

OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS DEPARTMENT OF MOTOR VEHICLES