

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0000658 CAF**

**MICHAEL and THERESA SPRADLIN,
Complainants**

v.

**FOREST RIVER, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Michael and Theresa Spradlin (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 his vehicle manufactured by Forest River, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect 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 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 April 25, 2019, in Bryan, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented testified for themselves. Warren Murphy, Assistant Director, Parts, Service, & Warranty, represented and testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

A vehicle qualifies for repurchase or replacement if the respondent 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 currently 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 respondent, (2) an opportunity to cure by the respondent, 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 respondent;¹³ (2) the respondent 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

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 A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer satisfies the opportunity to cure requirement when the respondent allows a dealer to attempt repair after written notice to the respondent. *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). An opportunity to cure does not require an actual repair attempt but only a valid opportunity. *Id* at 2.

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 before the warranty’s expiration.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 of the evidence. That is, the Complainants must present sufficient evidence to show that every required fact more likely than not exists.¹⁹ 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.²⁰ The complaint must 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 forming the basis of the claim

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.”).

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

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

B. Summary of Complainants’ Evidence and Arguments

On February 7, 2017, the Complainants, purchased a new 2016 Forest River Vengeance from Toppers’ RV Center, an authorized dealership of the Respondent, in Waller, Texas. The vehicle’s limited warranty provides coverage for one (1) year from the date of purchase. On June 26, 2017, the Complainants provided written notice of defect to the Respondent. On August 27, 2018, the Complainants filed a complaint with the Department alleging the following issues:

1. BOTTOM REAR CORNER OF R/S SLIDE OUT DOESN’T CLOSE ALL THE WAY.
2. METAL ON METAL GRINDING FROM R/S WHEELS/AXLES
3. RUBBER UNDER BATHROOM DOOR ON SLIDE FOLD OUT DAMAGED
4. RUBBER ON SLIDING SCREEN DOOR ON SIDE FOLD OUT LOOSE

²¹ 43 TEX. ADMIN. CODE § 215.202(a)(3).

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).

²⁶ 43 TEX. ADMIN. CODE § 215.208(b)(1).

5. SLIDE FOLD OUT TV MISSING REMOTE 6. FIREPLACE DOES NOT TURN ON 7. TABLE IN GARAGE DAMAGED FIRST USE 8. TRI ON SIDE/BOTTOM OF DOOR INTO GARAGE LOOSE 9. GARAGE SLIDING DOORS DON'T LINE UP/WON'T LATCH 10. TOP LEFT PANEL ON REFER LOOSE 11. REFER MAKE LOUD NOISE WHEN ON 12. WHEN SWITCHED REFER FROM ELECT TO GAS IT STOPPED COOLING 13. TRIM ON WALL NEXT TO OVER LOOSE 14. SOUNDBAR DOES NOT WORK WITH TV 15. ROCK TRIP NEXT TO TV LOOSE 16. WHEN ALL 3 AC ON FRONT BEDROOM AC DOES NTO COOL 17. CLOSET DOORS IN THE BEDROOM HARD TO OPEN 18. SINK IN BATHROOM NOT CONNECTED, WATER GOT EVERYWHERE CHECK WATER DAMAGE 19. FLOOR IN FROM OF BED CREEKS 20. SPOT ON SIDE OF TV RUBBED/DAMAGED 21. BATHROOM DOOR DOES NOT CLOSE 22. SCREEN ON DOOR LOOSE 23. CURTAIN HOLDER IN HALLWAY BROKEN/MISSING 24. LIGHT UNDER SINK STOPPED WORKING WHEN SINK LEAKED.

1. REFRIGERATOR DOESN'T KEEP TEMP WHEN DRIVING DOWN THE ROAD 2. CONTROL CENTER BLOWED OUT, SLIDE CONTROLERS 3. CO2 DETECTOR GOING OFF CONSTANTLY 4. DOOR IS HARD TO CLOSE, COMPARTMENT LEVEL SYSTEM ONE 5. SCREWS ARE OUT OF BACK FENCE PATIO DOOR 6. SIDE PATIO FENCE NEEDS ADJUSTING 7. CHECK BACK SCREEN DOOR 8. CHECK ELECTIRCAL... WENT OFF RANDOMLY 9. UNDER FRONT CAP PANEL IS COMING UP – UNDER FIFTH WHEEL

ROOF IS BUBBLED ALL THROUGH OUT THE ROOF

1. SKYLIGHT 2. 3 WHITE CAPS RIPPED OFF TOP 3. REFRIGERATOR WON'T STAY LIT WHILE DRIVING DOWN THE ROAD – 3 TIMES LOOK AT.

1. WHOLE ISLAND HAS NO ELECTRIC 2. PATIO LEG 3. GENERATOR SWITCH IS FALLING OFF, CONTROL PANEL IS LOOSE 4. FRIG WON'T STAY LIST WHILE TRAVELING.

In relevant part, the Complainants took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Issue
May 4, 2017 June 2, 2017	Bottom rear corner of R/S slide does not close completely, metal grinding from R/S wheel/axles , rubber under bathroom door on slide fold out is damaged, rubber on sliding screen door on side fold is loose, slide fold out television is missing the remote, fireplace does not turn on, table in garage damaged first use, trim on side/bottom of door into garage loose, garage sliding door do not line up/will not latch, top left panel on refrigerator is loose, refrigerator makes loud noise when on, trim on wall next to oven loose, sound-bar does not work with television, rock trim next to television is loose, when all 3 AC units are on the front AC does not cool, closet doors in the bedroom are hard to open, sink in the bathroom is not connected, check for water damage, floor in front of bed creeks, spot on side of television rubbed/damaged, bathroom door does not close, screen on door is loose, curtain holder in hallway is broken/missing, light under sink has stopped working when sink leaked
August 11, 2017 November 10, 2017	Roof is bubbled all throughout the roof
September 5, 2017 November 10, 2017	Refrigerator does not keep temperature when driving down the road, control center blew out, slide controllers, CO detector goes off constantly, door is hard to close, screws are out of back fence patio door, side patio fence needs adjusting, back screen door will not close completely, electricals go off randomly, under front cap panel is coming up – under fifth wheel
January 8, 2018 February 1, 2018	Skylight, white caps ripped off top, refrigerator will not stay lit while driving down the road
January 8, 2018 February 1, 2018	Whole island has no electricity, screws fall out of the patio leg, generator switch is falling off, control panel is loose, refrigerator will not stay lit while traveling

Mrs. Spradlin testified that only a few of the issues in the complaint remained unresolved. She confirmed that the following issues still existed: electrical issues, CO (carbon monoxide) detector going off, and the refrigerator not cooling while driving. The Complainants also noted two issues not addressed in the exhibits or reported to the dealer: the leveling system's jacks did not go up or down and the suspension made a metal on metal grinding noise while traveling.

Mrs. Spradlin explained that the refrigerator stopped functioning properly when running on propane. When on the road, the refrigerator would switch to propane and stop working. The Complainants explained that when the refrigerator was not using the propane system, the

refrigerator would stay at 40 degrees. But when driving, the system switches to propane system and the refrigerator will warm to 70 degrees and the freezer will warm to 60 degrees.

The electrical issues occurred in various parts of the vehicle. Mr. Spradlin stated that the entire island lost power and no outlets were usable. In addition to the island, on another separate occasion the entire vehicle lost power, except for a single outlet in the bathroom. Mrs. Spradlin testified that the electrical problems were first noticed on September 5, 2017. The last time the electrical problems were noticed was on January 8, 2018, which was the date the vehicle was taken into RV Source for repairs.

Regarding the CO issue, Mrs. Spradlin explained that the detector arbitrarily went off at various hours of the day. When the detector went off the Complainants would open all the windows in the vehicle until the detector stopped. Mrs. Spradlin did not know if CO actually leaked into the vehicle. The last time that the CO detector went off was in June 2018, which the Complainants responded to by disconnecting all the gas lines and subsequently notified Forest River of the problem.

Mr. Spradlin stated that with respect to the leveling system, power will not go to the head of the system. To fix the problem the Complainants would disconnect the power from the module and reconnect the power to reset the system. When resetting the system, any pause after the reconnecting power will stop the power and will not start again until disconnecting and reconnecting power to the system again. The problem was first noticed the week of April 14, 2019. The problem was last noticed on April 25, 2019. The vehicle was not taken in for repairs for this problem.

The Complainants stated that they had not occupied the vehicle full time and that the Complainants preferred a repurchase of the vehicle.

On cross-examination, the Mrs. Spradlin stated that they had an insurance claim on the vehicle for a roof repair. Mr. Spradlin elaborated that the vehicle hit a tree branch, which required the replacement of the entire roof, the skylight, and the caps. After receiving the vehicle from RV Source in February 2018, they plugged the vehicle into a 50-amp outlet. Upon plugging in the vehicle, the electricals in the vehicle worked properly. The Complainants had not taken the vehicle in for repair because they wanted the vehicle to be present for the hearing. Additionally, on cross-examination, Mrs. Spradlin confirmed that they had received a call from Ms. Byrd on June

29, 2018, about replacing the refrigerator. Mrs. Spradlin stated that they did not receive a voicemail or any information from Ms. Byrd to have the vehicle taken to Indiana for repairs and a refrigerator replacement. On January 2, 2019, the Complainants received a call from RV Source that the replacement refrigerator had been shipped. The Complainants did not take the vehicle to RV Source to get the replacement refrigerator because the Complainants wanted the vehicle to be present for the hearing, previously scheduled for March.

C. Inspection

Upon inspection at the hearing, the vehicle's leveling module screen appeared blank and the hydraulic leveling jacks would not deploy. The CO detector (RV Carbon Monoxide/Propane Gas Alarm) displayed a green blinking light, but no alarm. The propane was turned on at the time. The Complainants stated that normally the CO detector had a solid green light, not a blinking light. The electrical system was unable to be tested. The refrigerator could not be tested because the issue only occurred when the vehicle was on the road with the refrigerator running on propane. The rear garage door required pulling with two hands to latch. Additionally, the suspension exhibited signs of metal rubbing on metal.

D. Summary of Respondent's Evidence and Arguments

Mr. Huff, service manager of RV Source, the servicing dealer, testified that the problems with the vehicle had not been completely resolved, primarily the refrigerator. Mr. Huff stated that at the first repair visit, the refrigerator seemed to be working properly, so no repairs were performed. However, during the next visit, the dealer installed an aluminum plate (to shield the pilot light to prevent the wind from blowing it out). The dealer had also contacted Dometic, the refrigerator's manufacturer, for more information about the issue. Dometic informed the dealer that it would replace the malfunctioning refrigerator with a new refrigerator. The refrigerator was sent between January and February 2018. However, Dometic sent the wrong refrigerator. RV Source did not receive the correct refrigerator until November 20, 2018, after the Complainants filed their Lemon Law complaint. Mr. Huff testified that no one at RV Source contacted the Complainants until receiving the correct refrigerator. Mr. Huff also testified that installing the new refrigerator would take about two to six hours.

Respondent offered as an exhibit, the VIN notes, containing the records of communications, claims, and repairs. However, the Complainants disputed part of the exhibit showing a communication on June 29, 2018, between Complainants and Ms. Byrd. The Complainants stated that they neither received a voicemail nor were informed that the vehicle could be taken to Indiana for repair. The Complainants agreed with the accuracy of the other communications recorded in the VIN notes. On cross-examination Mr. Murphy testified that Ms. Byrd was no longer employed with Forest River.

Finally, Mr. Murphy testified that he believed the leveling problem could be fixed quickly and the new refrigerator could be installed. He emphasized that the refrigerator and the leveling system were the only two ongoing problems and that the other complaints had been fixed and the Respondent wanted an opportunity to correct the remaining defects.

E. Analysis

1. Filing Deadline

As explained above in the discussion of applicable law, the Lemon Law requires filing of the complaint within six months after the manufacturer's warranty expires. In this case, the warranty expired on February 7, 2018, one year after the purchase date. Accordingly, the Lemon Law complaint must have been filed by August 7, 2018, six months after the manufacturer's warranty expired. However, the complaint was filed on August 27, 2018, 20 days past the deadline. Consequently, the vehicle cannot qualify for repurchase or replacement under the Lemon Law. However, the vehicle may still qualify for repair relief for any defects covered by the warranty.

2. Warranty Coverage

To qualify for any relief, the subject vehicle must have a defect covered by warranty (warrantable defect).²⁷ The record shows that the Complainants have experienced extensive problems with their vehicle. However, Lemon Law relief does not apply to all problems that a consumer may have but only to warrantable defects.²⁸ In the present case, the vehicle does not have any currently existing defects that qualify for relief.

²⁷ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

²⁸ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

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. Instead, the Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. In this case, the vehicle's warranty generally states that:

Forest River Inc., 55470 CR 1, P.O. Box 3030, Elkhart, Indiana 46515-3030 (Warrantor) warrants to the ORIGINAL CONSUMER PURCHASER ONLY, when purchased from an authorized Forest River Inc. dealer, for a period of one (1) year from the date of purchase (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.²⁹

Under these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects) due to the Respondent.³⁰ A manufacturing defect is 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. Unlike manufacturing defects, issues that do not arise from manufacturing, such as improper dealer repairs (which occur after manufacturing) are not warrantable defects. Furthermore, the warranty provides that:

EXCLUSIONS FROM THIS WARRANTY: Warrantor expressly disclaims any responsibility for damage to the unit where damage is due to condensation, normal wear and tear or exposure to elements. Warrantor makes no warranty with regard to, but not limited to, the chassis, including, without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, routine maintenance, equipment and appliances, or audio and/or video equipment. Their respective manufacturers and suppliers may warrant some of these items. Warranty information with respect to these items is available from your dealer. The Warrantor further makes no warranty with regard to any product used for commercial

²⁹ Complainant's Exhibit G, Forest River Fifth Wheel Owner's Manual, Warranty.

³⁰ 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.").

purposes, as a permanent residence or as a rental unit, or any product not registered and normally used in the United States or Canada.³¹

In sum, the warranty only applies to manufacturing defects attributable to the Respondent. However, as detailed below, the alleged existing defects relate to the dealer's failure to properly repair the vehicle or other causes not attributable to the Respondent, such as components manufactured by third parties. Even though an issue may be undesirable or problematic, the Lemon Law provides no relief unless the warranty covers the issue.

a. Electrical Issues

The testimony reflects that the components last noticed the electrical malfunction in January 2018, before taking the vehicle in for repair. The electrical system operated properly, after the February 2018 repair, when the Complainants connected the vehicle to a 50-amp power source. The record does not include any evidence of the electrical systems malfunctioning after the last repair visit. Accordingly, a preponderance of the evidence does not show that an electrical system defect continues to exist.

b. CO Detector (RV Carbon Monoxide/Propane Gas Alarm)

A preponderance of the evidence does not show that the CO detector alarms resulted from a warrantable defect. Mrs. Spradlin testified that, with the gas on, the CO detector alarm activated randomly and the Complainants would leave the windows open in response. The record does not indicate that any CO producing equipment, e.g. a generator, was operating when the CO detector last exhibited an alarm in June 2018. The evidence shows that the gas (propane) was on, but the record does not appear to contain any evidence of alarms from detecting propane as opposed to CO. Nor does the record include any evidence of a propane smell when the alarm activated. However, at the inspection during the hearing, the CO detector (RV Carbon Monoxide/Propane Gas Alarm) displayed a flashing green light, which normally would have been a solid green light. Given the facts above, the evidence appears to indicate that the random alarms resulted from an issue with the CO detector itself. However, the Respondent only warrants the "body structure" for "defects in materials and workmanship attributable to Warrantor" and expressly excludes

³¹ Complainant's Exhibit G, Forest River Fifth Wheel Owner's Manual, Warranty (emphasis added).

“equipment and appliances” such as the CO detector. Accordingly, the random CO detector alarms do not support any relief.

c. Refrigerator

The warranty specifically excludes coverage of the “chassis, including, without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, routine maintenance, equipment and appliances, or audio and/or video equipment.” Because the warranty excludes appliances, any problems with the refrigerator does not qualify for any relief.

d. Leveling System

The warranty only covers “defects in materials and workmanship attributable to Warrantor” and expressly excludes coverage of the “chassis, including, without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, routine maintenance, equipment and appliances, or audio and/or video equipment.” Because a third party (Lippert Components, Inc.) manufactured the leveling system, the Respondent’s warranty provides no coverage for any defects in the leveling system.

e. Suspension Noise

As specified in the warranty, the Respondent provides no warranty coverage for “the chassis, including, without limitation, any mechanical parts or systems of the chassis,” so the warranty does not apply to any issues regarding the chassis’ suspension and the suspension issue cannot support any relief.

III. Findings of Fact

1. On February 7, 2017, the Complainants, purchased a new 2016 Forest River Vengeance from Toppers’ RV Center, an authorized dealership of the Respondent, in Waller, Texas.
2. The vehicle’s limited warranty provides coverage for one (1) year from the date of purchase. The Respondent warrants “that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.” The warranty specifically excludes “the chassis, including, without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, routine maintenance, equipment and appliances, or audio and/or video equipment.”

3. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Issue
May 4, 2017 June 2, 2017	Bottom rear corner of R/S slide does not close completely, metal grinding from R/S wheel/axles , rubber under bathroom door on slide fold out is damaged, rubber on sliding screen door on side fold is loose, slide fold out television is missing the remote, fireplace does not turn on, table in garage damaged first use, trim on side/bottom of door into garage loose, garage sliding door do not line up/will not latch, top left panel on refrigerator is loose, refrigerator makes loud noise when on, trim on wall next to oven loose, sound-bar does not work with television, rock trim next to television is loose, when all 3 AC units are on the front AC does not cool, closet doors in the bedroom are hard to open, sink in the bathroom is not connected, check for water damage, floor in front of bed creeks, spot on side of television rubbed/damaged, bathroom door does not close, screen on door is loose, curtain holder in hallway is broken/missing, light under sink has stopped working when sink leaked
August 11, 2017 November 10, 2017	Roof is bubbled all throughout the roof
September 5, 2017 November 10, 2017	Refrigerator does not keep temperature when driving down the road, control center blew out, slide controllers, CO detector goes off constantly, door is hard to close, screws are out of back fence patio door, side patio fence needs adjusting, back screen door will not close completely, electricals go off randomly, under front cap panel is coming up – under fifth wheel
January 8, 2018 February 1, 2018	Skylight, white caps ripped off top, refrigerator will not stay lit while driving down the road
January 8, 2018 February 1, 2018	Whole island has no electricity, screws fall out of the patio leg, generator switch is falling off, control panel is loose, refrigerator will not stay lit while traveling

4. On June 26, 2017, the Complainants provided written notice of defect to the Respondent.

5. On August 27, 2018, the Complainants filed a complaint with the Department alleging the following:

1. BOTTOM REAR CORNER OF R/S SLIDE OUT DOESN'T CLOSE ALL THE WAY.
2. METAL ON METAL GRINDING FROM R/S WHEELS/AXLES
3. RUBBER UNDER BATHROOM DOOR ON SLIDE FOLD OUT DAMAGED
4. RUBBER ON SLIDING SCREEN DOOR ON SIDE FOLD OUT LOOSE
5. SLIDE FOLD OUT TV MISSING REMOTE
6. FIREPLACE DOES NOT TURN ON
7. TABLE IN GARAGE DAMAGED FIRST USE
8. TRI ON SIDE/BOTTOM OF DOOR INTO GARAGE LOOSE
9. GARAGE SLIDING DOORS DON'T LINE UP/WON'T LATCH
10. TOP LEFT PANEL ON REFER LOOSE
11. REFER MAKE LOUD NOISE WHEN ON
12. WHEN SWITCHED

REFER FROM ELECT TO GAS IT STOPPED COOLING 13. TRIM ON WALL NEXT TO OVER LOOSE 14. SOUNDBAR DOES NOT WORK WITH TV 15. ROCK TRIP NEXT TO TV LOOSE 16. WHEN ALL 3 AC ON FRONT BEDROOM AC DOES NTO COOL 17. CLOSET DOORS IN THE BEDROOM HARD TO OPEN 18. SINK IN BATHROOM NOT CONNECTED, WATER GOT EVERYWHERE CHECK WATER DAMAGE 19. FLOOR IN FROM OF BED CREEKS 20. SPOT ON SIDE OF TV RUBBED/DAMAGED 21. BATHROOM DOOR DOES NOT CLOSE 22. SCREEN ON DOOR LOOSE 23. CURTAIN HOLDER IN HALLWAY BROKEN/MISSING 24. LIGHT UNDER SINK STOPPED WORKING WHEN SINK LEAKED.

1. REFRIGERATOR DOESN'T KEEP TEMP WHEN DRIVING DOWN THE ROAD 2. CONTROL CENTER BLOWED OUT, SLIDE CONTROLERS 3. CO2 DETECTOR GOING OFF CONSTANTLY 4. DOO IS HARD TO CLOSE, COMPARTMENT LEVEL SYSTEM ONE 5. SCREWS ARE OUT OF BACK FENCE PATIO DOOR 6. SIDE PATIO FENCE NEEDS ADJUSTING 7. CHECK BACK SCREEN DOOR 8. CHECK ELECTIRCAL...WENT OFF RANDOMLY 9. UNDER FRONT CAP PANEL IS COMING UP – UNDER FIFTH WHEEL

ROOF IS BUBBLED ALL THROUGH OUT THE ROOF

1. SKYLIGHT 2. 3 WHITE CAPS RIPPED OFF TOP 3. REFRIGERATOR WON'T STAY LIT WHILE DRIVING DOWN THE ROAD – 3 TIMES LOOK AT.

1. WHOLE ISLAND HAS NO ELECTRIC 2. PATIO LEG 3. GENERATOR SWITCH IS FALLING OFF, CONTROL PANEL IS LOOSE 4. FRIG WON'T STAY LIST WHILE TRAVELING.

6. On December 18, 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 April 25, 2019, in Bryan, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented testified for themselves. Warren Murphy, Assistant Director, Parts, Service, & Warranty, represented and testified for the Respondent.
8. The warranty expired on February 7, 2018.

9. Upon inspection at the hearing, the vehicle's leveling system screen appeared blank and the hydraulic leveling jacks would not deploy. The CO detector (RV Carbon Monoxide/Propane Gas Alarm) displayed a green blinking light, but no alarm. The propane was turned on at the time. Normally, the CO detector had a solid green light, not a blinking light. The electrical system was unable to be tested. The refrigerator could not be tested because the issue only occurred when the vehicle was on the road with the refrigerator running on propane. The suspension exhibited signs of metal rubbing on metal.
10. The electrical issues did not recur after February 2018 repair.

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 cannot 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 do not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
- 9. Because the Complainants did not prove that the vehicle has a defect covered by the Respondent's warranty, the Complainants' vehicle also does not qualify for warranty repair. 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 June 24, 2019



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