

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 19-0001035 CAF**

**PAMELA COLLINS,  
Complainant**

v.

**HEARTLAND RECREATIONAL  
VEHICLES LLC,  
Respondent**

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**BEFORE THE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Pamela Collins (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 her recreational vehicle (RV) manufactured by Heartland Recreational Vehicles LLC (Respondent). A preponderance of the evidence shows that the manufacturer's warranty does not cover the alleged nonconformities. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement or warranty repair.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice of hearing<sup>1</sup> and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on April 3, 2019, in Austin, Texas, before Hearings Examiner Andrew Kang, and the record closed on April 9, 2019. The Complainant, represented himself. Ronald (Ronnie) Collins testified for the Complainant. Ian Roberts, Consumer Affairs Manager, represented and 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 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.”<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 currently 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 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.<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 respondent;<sup>13</sup> (2) the respondent was given an opportunity to cure the defect or nonconformity,<sup>14</sup> and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty's

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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 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.<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 before the warranty’s expiration.<sup>16</sup> The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”<sup>17</sup>

## 3. Burden of Proof

The law places the burden of proof on the Complainant.<sup>18</sup> The Complainant must prove all facts required for relief by a preponderance of the evidence. That is, the Complainant must present sufficient evidence to show that every required fact more likely than not exists.<sup>19</sup> Accordingly, the Complainant 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 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

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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.”).

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>

### B. Summary of Complainant’s Evidence and Arguments

On April 30, 2016, the Complainant, purchased a new 2016 Road Warrior 412RW from Fun Town RV, an authorized dealer of the Respondent, in Giddings, Texas. The vehicle’s limited warranty provides coverage for one (1) year from the date of retail purchase. On June 13, 2018, an attorney on behalf of the Complainant provided a written notice of defect to the Respondent. On September 27, 2018, the Complainant filed a complaint with the Department alleging that the RV had defects in the roofline and drip edge, and the exterior wall had streaks and a “demarcation” by the front door (a visible outline on the wall left by a repair).

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<sup>21</sup> 43 TEX. ADMIN. CODE § 215.202(a)(3).

<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).

The Complainant testified that the issues started with leaking water and that the repairs caused problems. She elaborated that the factory repaired the RV and the dealer tried to fix the factory repairs. She confirmed that the initial problems addressed by the dealer were not a part of the complaint. Because of water in the wall, on May 13, 2017, the Complainant took the RV to the dealer, which could not fix the issue. She did not know if the latest repairs successfully resolved the issue of water leaking into the ceiling and walls but she thought the walls could delaminate. She explained that the RV returned from the factory to the dealer on August 24, 2017, but she did not find out until September 5, 2017. The RV had subsequent repairs by the dealer after the RV returned. She did not receive any invoices for these repairs. She confirmed that after the Respondent delivered the RV to the dealer, the RV did not leave the dealership. The Complainant affirmed that the roof line, drip edge, streaks, and front door demarcation issues were not successfully repaired. She testified that the dimpled part of the roof was replaced, but the caulking was unsatisfactory and white showed through the trim after repair by the dealer. Regarding the drip edge, Mr. Collin explained that the white part bubbled up at the metal edge. He confirmed that the photo exhibits of the drip edge reflected the dealer's repairs, which occurred after returning from the Respondent's factory. In relation to the demarcation (a visible outline from a repair) by the front door, Mr. Collins stated that the opposite side of the RV had no such markings. The Complainant noted that radius trim had been installed in December 2017. She explained that the demarcation looked as if a nail went through and a piece had been cut out and replaced, the replaced piece shows through. The Complainant testified that the RV had streaks on one side but not the other. Mr. Collins noted that the front and back also did not have streaks. The Complainant expressed a concern about doing required maintenance per the service contract she paid for. She stated that the batteries did not work and that the dealer had to charge the batteries whenever showing the RV to her. The six tires on triple axles, spent almost two years sitting uncovered with nothing done to them. The seals exhibited cracks and a hole.

### **C. Inspection**

Inspection of the vehicle at the hearing showed: a roughly two-inch diameter circle ("demarcation") on the door side, unevenness on the roof, and a faded area on the exterior wall. Mr. Roberts noted that sun can cause the fading. Mr. Collins asked why only one side had faded. Mr. Roberts answered that the entire unit is not repainted after repair. Instead, the paint stops at

the closest natural break. The Complainant pointed out that a broken metal piece was just caulked. The Complainant added that the batteries did not work.

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

Mr. Roberts testified that though the dealer installed the Goose Box, such installation constituted a modification that invalidates the warranty. Mr. Roberts concluded that the issues were cosmetic and did not hinder the use of the RV.

#### **E. Analysis**

##### **1. Filing Deadline for Repurchase/Replacement Relief**

As an initial matter, the subject RV cannot qualify for repurchase or replacement because the Complainant did not timely file her Lemon Law complaint. In relevant part (as described in the discussion of applicable law), the Lemon Law requires a complaint for repurchase/replacement relief to be filed no later than six months after the express warranty expires. In this case, the warranty expired on April 30, 2017, one year after purchase of the subject RV. Accordingly, the Lemon Law complaint must have been filed no later than October 30, 2017. However, the complaint was filed on September 27, 2018, approximately 11 months after the filing deadline.

##### **2. Applicability of Warranty**

To qualify for any relief, the vehicle must have a defect covered by the Respondent's warranty (warrantable defect).<sup>27</sup> The Lemon Law does not require that a manufacturer provide any 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. The warranty generally states that:

Except as specifically excluded below, Heartland RV WARRANTS for a period of ONE (1) YEAR to the original retail purchaser, who purchases the recreational vehicle from an authorized Heartland RV dealer and who uses the recreational vehicle, under normal use, for private single family recreational travel, camping and seasonal usage, that the recreational vehicle manufactured and assembled by Heartland RV shall be free from defects in material and/or workmanship supplied and attributable to Heartland RV in the construction of the recreational vehicle. "Defect" means the failure of the unit and/or the materials used to assemble the unit to conform to Heartland's design and manufacturing specifications and tolerances.

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<sup>27</sup> TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

Any product used for a commercial or business purpose, including, but not limited to, rental, charter, or other fees for service, or as a residence is specifically excluded from this Limited Warranty. (*The residential exclusion shall not apply to LandMark, Big Horn and Big Country brands.*) This Limited Warranty is intended for the original retail owner and is non-transferable.<sup>28</sup>

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).<sup>29</sup> 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, 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) or improper repairs (which occur after manufacturing), are not warrantable defects. Design characteristics result from the vehicle's specified design and not from any error during manufacturing.<sup>30</sup> In sum, the warranty only covers manufacturing defects and the Lemon Law does not apply to design characteristics or design defects. Additionally, under "**WHAT IS NOT COVERED BY HEARTLAND RVS LIMITED WARRANTY,**" the warranty lists: "components which have been installed in the recreational vehicle, including but not limited to microwave ovens, ranges, refrigerators, leveling jacks, furnaces/heaters, DVD/CD players, air conditioning, icemakers, vacuum cleaners, televisions, hot water heaters, generators, power converters, batteries, and other items not specifically manufactured by Heartland RV, LLC, are warranted by the component manufacturers as detailed in their individual manufacturers' warranties, and are not covered by this Limited Warranty;" "failure which may be related to alteration or modification;" "[n]ormal deterioration due to wear or exposure, such as fading of fabrics or drapes, carpet wear, exterior

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<sup>28</sup> Respondent's Exhibit C, Heartland RV Limited Warranty.

<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.").

<sup>30</sup> In contrast to manufacturing defects, "[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves." *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

surfaces, etc.;" and "[m]aintenance items: such as light bulbs, fuses, lubricants, minor adjustments."<sup>31</sup> As further detailed below, the nonconformities alleged by the Complainant are not warrantable defects.

**a. Non-Manufacturing Defects**

The complained of issues, except for the streaks, appear to arise from repairs for the original underlying issue of water leaks in the ceiling and walls. However, as explained above, improper repairs are not manufacturing defects covered by the warranty. The streaks (faded areas) appear to result from exposure to the sun; However, the warranty specifically excludes "deterioration due to wear or exposure, such as fading."

**b. Alteration or Modification**

Given the warranty language above, Mr. Roberts argued that the dealer's installation of the Reese Goose Box constituted a modification that invalidated the warranty. On the other hand, the Complainant asserted that the frame manufacturer (Lippert Components, Inc.) endorsed the use of the Reese Goose Box gooseneck coupler. However, as explained below, though the gooseneck coupler may not affect Lippert's frame warranty, Lippert's representations have no effect on the Respondent's warranty, which specifies that:

This written limited warranty is the entire warranty authorized and offered by Heartland RV. There are no warranties or representations beyond those expressed in this written document. This written limited warranty cannot be amended by any dealer, sales person or agent. . . . Heartland RV is not responsible for any undertaking, representation or warranty made by any dealer or other person beyond those expressly set forth in this limited warranty.<sup>32</sup>

The warranty makes clear that any representations by third parties, such as Lippert, has no effect on the warranty. Under the rules of construction,<sup>33</sup> if a warranty is unambiguous, then it is construed according to the terms within the "four corners" of the warranty without reference to any extraneous evidence.<sup>34</sup> In this case, the warranty itself expressly excludes any representation

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<sup>31</sup> Respondent's Exhibit C, Heartland RV Limited Warranty.

<sup>32</sup> Respondent's Exhibit C, Heartland RV Limited Warranty.

<sup>33</sup> *Medical City Dallas, Ltd. v. Carlisle Corp.*, 251 S.W.3d 55, 61 (Tex. 2008) ("When we ascertain the parties' intentions in a warranty, we look to well-established rules for interpretation and construction of contracts.").

<sup>34</sup> *Tro-X, L.P. v. Anadarko Petroleum Corp.*, 548 S.W.3d 458, 466 (Tex. 2018).

or warranty by third parties (such as Lippert) from having any effect. Additionally, the warranty recognizes the existence of separate warranties for components manufactured by other entities: “items not specifically manufactured by Heartland RV, LLC, are warranted by the component manufacturers as detailed in their individual manufacturers’ warranties.”<sup>35</sup> Accordingly, any representations by Lippert regarding the frame’s warranty has no bearing on the Respondent’s warranty. Consequently, the warranty precludes coverage of the complained of issues.

**c. Issues Not Included in the Complaint**

The Complainant testified about issues with the RV’s batteries, tires, and seals, which were not included in the Complaint. The Respondent did not object to consideration of these issues. However, the Respondent’s warranty expressly excludes these issues as third-party components or maintenance items.

**III. Findings of Fact**

1. On April 30, 2016, the Complainant, purchased a new 2016 Road Warrior 412RW from Fun Town RV, an authorized dealer of the Respondent, in Giddings, Texas.
2. The vehicle’s limited warranty provides coverage for one (1) year from the date of retail purchase.
3. On June 13, 2018, an attorney on behalf of the Complainant provided a written notice of defect to the Respondent.
4. On September 27, 2018, the Complainant filed a complaint with the Department alleging that the RV had defects in the roofline and drip edge, and the exterior wall had streaks and a visible “demarcation” by the front door.
5. On January 10, 2019, 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

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<sup>35</sup> Respondent’s Exhibit C, Heartland RV Limited Warranty.

- be held; particular sections of the statutes and rules involved; and the factual matters asserted.
6. The hearing in this case convened on April 3, 2019, in Austin, Texas, before Hearings Examiner Andrew Kang, and the record closed on April 9, 2019. The Complainant, represented himself. Ronald (Ronnie) Collins testified for the Complainant. Ian Roberts, Consumer Affairs Manager, represented and testified for the Respondent.
  7. The warranty expired on April 30, 2017.
  8. Inspection of the vehicle at the hearing showed: a roughly two-inch diameter circle (“demarcation”) on the door side, unevenness on the roof, and a faded area on the exterior.
  9. The warranty applies to “defects in material and/or workmanship supplied and attributable to Heartland RV in the construction of the recreational vehicle.”
  10. The warranty excludes coverage of “components which have been installed in the recreational vehicle, including but not limited to microwave ovens, ranges, refrigerators, leveling jacks, furnaces/heaters, DVD/CD players, air conditioning, icemakers, vacuum cleaners, televisions, hot water heaters, generators, power converters, batteries, and other items not specifically manufactured by Heartland RV, LLC, are warranted by the component manufacturers as detailed in their individual manufacturers’ warranties, and are not covered by this Limited Warranty;” “failure which may be related to alteration or modification;” “[n]ormal deterioration due to wear or exposure, such as fading of fabrics or drapes, carpet wear, exterior surfaces, etc.,” and “[m]aintenance items: such as light bulbs, fuses, lubricants, minor adjustments.”
  11. The issues identified in the complaint arise from repairs for the underlying water leak in the ceiling and walls.

#### **IV. Conclusions of Law**

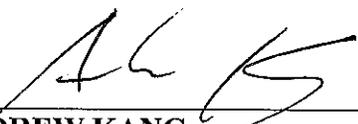
1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.
2. A hearings examiner of the Department’s Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including

- 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 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 date on which 24 months have passed since the date of original delivery of the motor vehicle to an owner. TEX. OCC. CODE § 2301.606(d).
  7. The Complainant does 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.
  8. If the Complainant's 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).
  9. The Complainant's vehicle does not qualify for warranty repair. The Complainant 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 Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED June 10, 2019



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