

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0002367 CAF**

**JAMES CAMPBELL,
Complainant**

v.

**FOREST RIVER, INC.,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

James Campbell (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 his recreational vehicle (RV) manufactured by Forest River, Inc. (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 Complainant's vehicle does not qualify for repurchase/replacement but does qualify for 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 May 7, 2019, in San Antonio, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself. Ida Campbell, the Complainant's spouse, also testified for the Complainant. Michael Locke, warranty relations manager, 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 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 or someone on behalf of the owner, or the Department has 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

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

¹⁴ 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.

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

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle” and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect 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 Complainant.¹⁸ 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.¹⁹ 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.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 Complainant for reasonable incidental expenses resulting from the vehicle’s loss of use because of the defect.²⁴ Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle’s failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts or similar written documents).²⁵ However, the Department’s rules expressly exclude compensation for “any interest, finance charge, or insurance premiums.”²⁶

B. Summary of Complainant’s Evidence and Arguments

On, December 15, 2017, the Complainant, purchased a new 2018 Leprechaun 310 BHF from Crestview RV Super-Store, an authorized dealer of the Respondent, in Selma, Texas. The vehicle had 1,443 miles on the odometer at the time of purchase. The vehicle’s limited warranty provides coverage for a period of one year or 12,000 miles, whichever occurs first from the date of purchase. On August 20, 2018, the Complainant provided a written notice of defect to the Respondent. On October 19, 2018, the Complainant filed a complaint with the Department alleging the driver side slide-out did not close properly. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issue as follows:

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).

Date	Issue
March 31, 2018	Driver side slide-out not closing at rear bottom
June 14, 2018	
July 23, 2018	Driver side slide-out not closing at rear bottom
August 31, 2018	

Mrs. Campbell testified that there was a gap between the vehicle body and the driver side slide-out. The vehicle was taken to the dealer, Crestview RV Super-Store, for repair. The dealer repaired the seal and adjusted the rollers. The problem with the slide-out was not successfully repaired during the first repair. The Complainant noticed after the first repair that a piece of metal trim on the outside of the vehicle was bent. The bend in the trim, the Complainant testified, was the result of the repair technicians trying to force the slide-out into place. The Complainant stated that Respondent instructed Crestview RV Super-Store to replace the rollers and install a bubble seal on the slide-out. However, Complainant testified that after the repair, upon using the slide-out the bubble seal fell off the vehicle.

Mrs. Campbell testified that they first noticed the issue with the slide-out after purchase in 2017. She stated that they stopped using the RV after August 2018. She last noticed the issue in July 2018 during a trip. After the trip, the Complainant brought the vehicle to Crestview RV Super-Store for repair of both slide-outs in August. Repair attempts did not fix the issues. Mrs. Campbell explained that if the slide-outs would not close they would have to close the slide-outs manually. Closing the slide-outs manually required disconnecting everything from the slide-out and physically pushing the slide-out back into the main cabin of the vehicle. After taking the RV to the dealer for repair in August, the Complainant filed the Lemon Law complaint.

The Complainant testified that the slide-out stuck out enough when closed that a hand would fit in the gap. Mrs. Campbell also stated that water sometimes entered the vehicle through the slide-out when raining. Additionally, wind blew through the gap of the slide-out creating a loud noise. Mrs. Campbell clarified that the gap between the vehicle and the slide-out was located toward the bottom the slide-out where the slide-out met the cabin.

Mrs. Campbell explained that the driver side slide-out was not the only problem with the vehicle. She also testified the RV had issues with power to the 110V outlets, the generator, the shower door coming off the rollers, the refrigerator going out while driving, the passenger side slide-out leaving screws, wood, and metal shavings on the ground when sliding in or out, and the microwave could not be used without turning on the generator and shutting off the air conditioner.

Additionally, the Complainant testified that they had not occupied the vehicle full-time and the issue with both slide-outs occurred every time the vehicle was used.

On cross examination, Mrs. Campbell stated that they first noticed the refrigerator not working on a trip over July 4, 2018. The Complainant took the vehicle in for repair on July 23, 2018, for the refrigerator and other issues. The technicians at Crestview RV Super-Store were not able to duplicate the refrigerator issue and did not document the problem. On cross examination, the Complainant also clarified that both slide-outs were set at an angle.

During rebuttal testimony, the Complainant stated that they were unable to get a written statement from Crestview RV Super-Store regarding the issues with the vehicle when it was taken in for repair. The Complainant elaborated that Crestview RV Super-Store could not give the Complainant written feedback about the issues with the vehicle because they must work directly with the Respondent and the Respondent was not responding to Crestview RV Super-Store. The Complainant testified that after the repair on August 31, 2018, Crestview RV Super-Store received no communication from the Respondent and Crestview RV Super-Store required the Complainant to move the vehicle or they would be charged a storage fee.

C. Inspection

At the inspection of the RV at the hearing, the odometer displayed 5,482 miles. The driver side slide-out had a crease in the rear-most trim piece, which was angled towards the RV's outer wall. The bottom of the driver side (living room) slide-out had a gap, between the body and the exterior slide-out wall, about the width of a finger, that ran almost the entire length of the slide-out. However, the exterior slide-out wall did compress the rubber seal. The Complainant confirmed that the seal on slide-out felt tight. Both the driver side slide-out and the passenger side (bunk) slide-out were not square with the openings, with a roughly half inch difference between the top and bottom of the slide-outs relative to the openings. Mrs. Campbell kept a bag of screws and pieces of wood that had broken off from the passenger side slide-out sometime in July 2018. The floor by the passenger side slide-out had some wood and metal particles apparently rubbed off the slide-out. Some oil was present between the driver side slide-out and the cab of the RV. The sink exhibited some wood dust, apparently from the driver side slide-out rubbing against the sink. Mrs. Campbell stated that water leaked inside the RV from the driver side slide-out during a trip to South Dakota, for which they departed on June 28 or 29, 2018, and returned on July 5, 2018. The

Complainant confirmed that the present gap under the slide-out existed at the time of the water leak. The slide-outs opened and closed normally.

D. Summary of Respondent's Evidence and Arguments

Mr. Locke testified that the information he received, with respect to the issues with the vehicle, came from work orders and communications with Crestview RV Super-Store. The Respondent instructed Crestview RV Super-Store what to do and how they should fix the issues with the vehicle. Crestview RV Super-Store communicated with the Respondent on August 27, 2018, stating that the issues with the vehicle were fixed. Mr. Locke testified that he had not received any communication from Crestview RV Super-Store after August 27, 2018, after the Lemon Law complaint filing.

Mr. Locke also testified that the gap under the slide-out was not a problem because it was not a drainage or collection point for water, even while moving. Mr. Locke surmised that the wood and metal particles left by the slide-outs indicated an adjustment issue and the residual oil resulted from too much oil on the rollers when replaced. Mr. Locke also stated that the Complainant's vehicle had legitimate problems and the Respondent was willing to bring the vehicle to the factory in Indiana to fix all the issues filed in the Lemon Law complaint, as well as all other issues not listed in the complaint.

E. Analysis

1. Applicability of Warranty

To qualify for Lemon Law relief, the vehicle must have a currently existing defect covered by warranty (warrantable defect).²⁷ Lemon Law relief does not apply to all issues that a consumer may have with a vehicle but only to warrantable defects.²⁸ 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 provides that:

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.

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 or twelve thousand (12000) miles, whichever occurs first 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

Additionally, the warranty also contains the following exclusions:

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, optional generators, 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. This recreational vehicle is designed solely for its intended purpose of recreational camping and personal use. Warrantor makes no warranty with regard to any recreational vehicle used for commercial, rental, or business purposes, or any recreational vehicle not registered and regularly used in the United States or Canada.³⁰

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³¹ 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 the vehicle's design characteristics (which exist before manufacturing) or dealer representations and improper dealer repairs (which occur after manufacturing), are not warrantable

²⁹ Complainant's Ex. 5, Warranty.

³⁰ Complainant's Ex. 5, Warranty.

³¹ 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.").

defects. Design characteristics result from the vehicle's specified design and not from any error during manufacturing.³² In sum, the warranty only covers manufacturing defects and the Lemon Law does not apply to design characteristics or design defects.

2. Living Room Slide-Out

The vehicle continues to have a nonconformity: the misalignment leaving a gap under the slide-out. However, this defect does not substantially impair the use or value of the RV as required for Lemon Law relief. The inspection at the hearing showed that the living room slide-out continues to have a gap, roughly a half-inch wide, at the bottom of the slide-out between the exterior wall of the slide-out and the body of the RV. On the other hand, the inspection also showed that the slide-out closed tightly against the rubber seal, so the gap appears cosmetic rather than substantive. Further, the record is unclear whether any functional problems with the slide-out (failing to retract and leaking water inside) continued to occur after repair. The repair history shows the dealer completed the last repair on August 31, 2018, and Mrs. Campbell testified that they did not use the RV after August 2018. Given these considerations, a preponderance of the evidence does not show that the slide-out gap substantially impairs the use of the vehicle or creates a serious safety hazard. Moreover, under the reasonable prospective purchaser standard, the available evidence does not show that the nonconformity substantially impairs the value of the vehicle. Accordingly, the vehicle does not qualify for repurchase/replacement but does qualify for repair relief.

3. Miscellaneous Issues

Mrs. Campbell mentioned several issues not identified in the complaint apparently to provide context to her testimony: 110V power, generator, shower doors coming off rollers, refrigerator malfunctioning, and the bunk bed slide leaving wood/metal particles. The Complainant did not indicate an intent to have these issues addressed. Nevertheless, in an abundance of caution, these issues are addressed here. As explained in the discussion of applicable law, an issue must be included in the complaint to be considered in this proceeding. If the Respondent does not object to evidence on the issue, the issue may be considered. Here, the Respondent did not object to

³² 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).

Mrs. Campbell's testimony regarding these issues. As noted above, the Complainant did not use the RV after the final repair, leaving the continuing existence of these issues in doubt. Moreover, the warranty specifically excludes appliances (such as the refrigerator) and the generator from coverage. However, the inspection at the hearing appeared to show new wood/metal particles scraped off from operating the bunk bed slide-out. The bunk bed slide-out was not addressed in the notice of defect to the Respondent. Accordingly, the bunk bed slide-out qualifies for repair relief only.

III. Findings of Fact

1. On, December 15, 2017, the Complainant, purchased a new 2018 Leprechaun 310 BHF from Crestview RV Super-Store, an authorized dealer of the Respondent, in Selma, Texas. The vehicle had 1,443 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides coverage of the body structure for a period of one year or 12,000 miles, whichever occurs first from the date of purchase.
3. The warranty excludes coverage of appliances and generators.
4. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Issue
March 31, 2018	
June 14, 2018	Driver side slide-out not closing at rear bottom
July 23, 2018	
August 31, 2018	Driver side slide-out not closing at rear bottom

5. On August 20, 2018, the Complainant provided a written notice of defect to the Respondent addressing the living room slide-out.,
6. On October 19, 2018, the Complainant filed a complaint with the Department alleging the driver side slide-out did not close properly.
7. On January 11, 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

- be held; particular sections of the statutes and rules involved; and the factual matters asserted.
8. The hearing in this case convened on May 7, 2019, in San Antonio, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself. Ida Campbell, the Complainant's spouse, also testified for the Complainant. Michael Locke, warranty relations manager, represented and testified for the Respondent.
 9. The vehicle's odometer displayed 5,482 miles at the time of the hearing.
 10. The warranty expired on December 15, 2018.
 11. At the inspection of the RV at the hearing, the driver side slide-out had a crease in the rear-most trim piece, which was angled towards the RV's outer wall. The bottom of the driver side (living room) slide-out had a gap, between the body and the exterior slide-out wall, about the width of a finger (roughly a half-inch), that ran almost the entire length of the slide-out. However, the exterior slide-out wall did compress the rubber seal. The Complainant confirmed that the seal on slide-out felt tight. Both the driver side slide-out and the passenger side (bunk bed) slide-out were not square with the openings, with a roughly half inch difference between the top and bottom of the slide-outs relative to the openings. Mrs. Campbell kept a bag of screws and pieces of wood that had broken off from the passenger side slide-out sometime in July 2018. The floor by the passenger side slide-out had some wood and metal particles apparently rubbed off the slide-out. Some oil was present between the driver side slide-out and the cab of the RV. The sink exhibited some wood dust, apparently from the driver side slide-out rubbing against the sink. Mrs. Campbell stated that water leaked inside the RV from the driver side slide-out during a trip to South Dakota, for which they departed on June 28 or 29, 2018, and returned on July 5, 2018. The Complainant confirmed that the present gap under the slide-out existed at the time of the water leak. The slide-outs opened and closed normally.
 12. Functional problems with the slide-out (failing to retract and leaking water inside) did not appear to continue after repair. The repair history shows the dealer completed the last repair on August 31, 2018. The Complainant and Mrs. Campbell did not use the RV after August 2018.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. TEX. OCC. CODE § 2301.704.
3. The Complainant filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052. 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the vehicle has a warrantable defect that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. TEX. OCC. CODE § 2301.604(a).
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 qualifies for warranty repair. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainant or an agent of the Complainant notified the Respondent or Respondent's agent of the alleged defect(s). TEX. OCC. CODE §§ 2301.204 and 43 TEX. ADMIN. CODE § 215.202(b)(3).

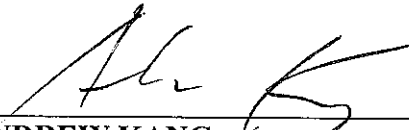
10. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.
11. The Respondent has a continuing obligation after the expiration date of the warranty to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's designated agent or franchised dealer before the warranty expired. TEX. OCC. CODE § 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the subject vehicle's living room and bunk bed slide-outs to the applicable warranty as specified here. Upon this Order becoming final under Texas Government Code § 2001.144:³³ (1) the Complainant shall deliver the vehicle to the Respondent within 20 days; and (2) the Respondent shall complete the repair of the vehicle within **40 days** after receiving it. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

³³ This Order does not become final on the date this Order is signed, instead: (1) this Order becomes final if a party does not file a motion for rehearing within 25 days after the date this Order is signed, or (2) if a party files a motion for rehearing within 25 days after the date this Order is signed, this Order becomes final when: (A) an order overruling the motion for rehearing is signed, or (B) the Department has not acted on the motion within 55 days after the date this Order is signed. Accordingly, this Order cannot become final (1) while a motion for rehearing remains pending; or (2) after the grant of a motion for rehearing.

SIGNED July 8, 2019



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