

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0002383 CAF**

**DAWN SHUGART,
Complainant**

v.

**FOREST RIVER, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Dawn Shugart (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 Forest River, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect that qualifies for repurchase/replacement or warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on June 4, 2019, in Palestine, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for herself. Ralph Rosson, the Complainant's spouse, testified for the Complainant. Warren On cross-examination, the Respondent explained that he did not receive a list of all the new issues with the vehicle. He also stated that Judd, the representative the Complainant spoke to when explaining their grievances concerning the vehicle, no longer worked in the Vibe department., 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, *Kenemer 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 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 July 27, 2017, the Complainant, purchased a new 2017 Forest River Vibe from DeMontrond RV, an authorized dealer of the Respondent, in Houston, Texas. The Complainant took delivery on August 1, 2017. The vehicle’s limited warranty provides that the body structure of the recreational vehicle will be free of substantial defects in materials and workmanship for a period of one (1) year from the date of purchase. On September 4, 2018, the Complainant provided a written notice of defect to the Respondent. On October 21, 2018, the Complainant filed a complaint with the Department alleging that the vehicle’s plumbing leaked and rainwater leaked into the vehicle.

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).

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

Date	Issue
September 26, 2017 - November 21, 2017	Plumbing leak floods bathroom, hallway, and damaged cabinets and walls. Water leaks when it rains from a window, the walls, and the roof.
June 6, 2018 - August 13, 2018	Plumbing leak floods bathroom, hallway, and damaged cabinets and walls. Water leaks in when it rains from a window, the walls, and the roof.

On February 2, 2019, the RV was picked up for repair at the factory. On April 3, 2019, Mr. Rosson received the RV back from the factory.

The Complainant testified that every time the toilet was used, water would leak from underneath it. The Complainant took a picture of a toilet component, which contributed to the leak. The component appeared to have broken off then subsequently filled with silicon and reinstalled on the toilet in the damaged condition. The Complainant also took pictures that showed water leaking from underneath the shower. The leaking water from the shower would flood the hallway. The shower also backed up against the entertainment center and kitchen cabinets. Water from the shower leaked into the kitchen and entertainment center damaging the walls, cabinets, as well as warping the wall panels, causing them to come loose, and flooding the bedroom.

Mr. Rosson testified that the outside kitchenette and outside shower also leaked. Mr. Rosson stated he believed the leaks were pressure leaks from piping inside the vehicle, unrelated to the rain leaks. The outdoor kitchenette leaked from its faucet base and the outdoor shower leaked from the bottom of the vehicle. The kitchenette did not leak when the water was turned off; the water needed to be pressurized before leaking into the sink. The plumbing that connected the outside kitchenette and shower were built into the vehicle so it was impossible to investigate the leaks without dismantling a significant portion of the vehicle.

Mr. Rosson testified that he did not know if the plumbing issues were repaired because the vehicle had not been used after the second repair attempt. The plumbing leaks were last noticed before the vehicle was sent to Indiana for repair. The vehicle's outside leaks had not been repaired. The last time the outdoor kitchenette and shower leaks were noticed was about May 28, 2019.

Mr. Rosson testified that the slide-out in the living area would leak when raining. Water would leak through the seal in the living area slide-out and run down the walls. Water would also

leak in through the windows, around the cabinets, through the walls, and the bedroom slide-out. Additionally, the living area slide-out had part of the roof peeled up along with the damaged seal. On the first repair attempt on September 26, 2017, DeMontrond attempted to fix the slide-out roof and sealant issues by adding a layer of silicone and resealing the slide-out. However, the slide-out still experienced leaks after the repair attempt. On the second repair attempt on June 6, 2018, the vehicle had the sealant taped down and a rubber seal was replaced. The Complainant also stated that when they took the vehicle home after the repair, a seal from one of the slide-outs fell off. The last time rain leaks were noticed was during the second camping trip before the second repair attempt. The vehicle has not been used since the second trip and had been under the canopy since the Respondent returned the RV. Mr. Rosson testified that they did not test for rain leaks after the factory repairs.

The Complainant also testified that upon receiving the vehicle back from the Respondent, the water heater was broken. Switches and a diode were also broken when the Complainant received the vehicle.

On cross-examination, the Complainant testified that the outdoor kitchenette did not malfunction until the Respondent returned the RV after repair. Mr. Rosson stated that the vehicle appeared to have been used prior to purchase.

C. Inspection

At the inspection during the hearing, the subject RV exhibited a water leak at the outdoor kitchen faucet. Mr. Rosson stated that he did not know if the outdoor shower presently leaked. Mr. Rosson noted that the transport driver broke the license plate frame; a drawer stop was detached upon the RV's return; a slide-out left grease on the carpet, apparently needing adjustment; batten strips were wrinkled and showed fingerprints where replaced. He did not know whether the bunk slide-out still leaked.

D. Summary of Respondent's Evidence and Arguments

Mr. Murphy testified that when the vehicle was taken to Indiana for repair, the technicians found various leaks. The leaks were repaired with a sealant and the damaged seals were replaced. The shower was checked for leaks but no leaks were found. The Respondent replaced the p-trap on the shower as a precautionary measure. Mr. Murphy also testified that the tape on the vehicle

is EternaBond tape. EternaBond tape was a sealant that was the industry standard for repairing leaks on recreational vehicles. EternaBond tape was frequently used in places where slide-outs caused scraping or where there was previous damage. Mr. Murphy also stated that it is not uncommon for new vehicles to have the EternaBond tape on them. Mr. Murphy also explained that the cabinetry damaged by water was replaced. The wall paneling that was damaged by water was replaced with new batten strips. On cross-examination, Mr. Murphy explained that he did not receive a list of all the new issues with the vehicle. He also stated that the representative the Complainant spoke to when explaining her concerns with the vehicle no longer worked in the Vibe department.

E. Analysis

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 defects covered by warranty (warrantable defects).²⁷ In the present case, a preponderance of the evidence does not show that the vehicle has any currently existing warrantable defects that qualify for Lemon Law relief. 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 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.

Additionally, the warranty also identifies the following exclusions:

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, optional

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

generators, routine maintenance, equipment and appliances, or audio and/or video equipment.

Under these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects) due to the Respondent.²⁸ 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 by the Respondent in making it. Unlike manufacturing defects, issues that do not arise from manufacturing, such as improper dealer repairs (which occur after manufacturing) are not warrantable defects. In sum, the warranty only applies to manufacturing defects attributable to the Respondent. However, the majority of alleged defects relate to causes not attributable to a defect from the Respondent's manufacture of the vehicle. Even though an issue may be undesirable or problematic, the Lemon Law provides no relief unless the issue constitutes a warrantable defect, that is, a defect that occurred during manufacturing as opposed to a condition caused after the vehicle left the factory.

1. Rain Water Leaks

Under the Lemon Law, the Complainant has the burden of proving that the alleged defects continue to exist after repair. Critically, the record does not show any rain water leaking after the last repair attempt. Further, Mr. Rosson testified that the RV was kept under an awning and the they did not test the RV for any rain water leaks. Because the evidence does not indicate the rain water leaks continue to exist, this alleged leak does not support granting of any relief.

2. Interior Plumbing Leaks – Toilet and Shower

As with the rain water leaks, the evidence does not show that the interior plumbing leaks continue to exist after repair. Mr. Rosson testified that he did not know if the plumbing issues were

²⁸ 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.").

resolve because the vehicle had not been used after the second repair attempt. Because of the lack of evidence of leaking after repair, these alleged leaks cannot support granting any relief.

3. Outdoor Shower Leak

As with the rain water and interior plumbing leaks, the evidence does not show a currently existing outdoor shower leak that supports any relief. Mr. Rosson testified that he did not know whether the outdoor shower currently leaked after the manufacturer's repair attempt. Moreover, the Lemon Law prohibits granting repurchase or replacement for any issues without prior notice. Because neither the notice of defect nor the complaint identified the outdoor shower leak, the Lemon Law prohibits granting repurchase or replacement relief for this issue.

4. Outdoor Kitchenette Leak

The inspection at the hearing showed the current existence of a water leak at the outdoor kitchenette. However, this issue appears to have arisen after the warranty expired on August 1, 2018. The Complainant discovered the outdoor kitchenette leak after the Respondent returned the RV after repair, which occurred on April 3, 2019. Consequently, the outdoor kitchenette leak is not a warrantable defect subject to any relief. Further, because neither the notice of defect nor the complaint identified the outdoor shower leak, the Lemon Law prohibits granting repurchase or replacement relief for this issue.

5. Miscellaneous Damage After the Respondent's Repair

After receiving the RV back from the repair at the Respondent's factory, the Complainant found that the water heater, switches, and a diode were broken, and a drawer stop was detached. Additionally, the transport driver damaged the license plate frame. As an initial matter, the vehicle's warranty expired on August 1, 2018, prior to the RV being transported to the Respondent's factory for repair. As a result, the warranty would not have covered any of these issues. Further, the warranty only applies to manufacturing defects but all of the damage alleged here occurred after manufacturing, apparently the result of negligence during repair or transport, which is not covered by warranty. As a result, none of these issues can support any relief. Moreover, neither the notice of defect nor the complaint identified any of these issues, so these issues cannot qualify for Lemon Law relief.

6. Replaced Batten Strips

Batten strips in the RV appeared wrinkled and showed fingerprints where replaced as a result of repair. Because this condition resulted from a repair occurring after the manufacture of the vehicle as opposed to a defect occurring during manufacturing at the factory, the wrinkled, finger-printed batten strips are not warrantable defects subject to any relief. Further, because neither the notice of defect nor the complaint identified the batten issue, the Lemon Law prohibits granting repurchase or replacement relief for this issue.

7. Slide-Out Needing Adjustment

The inspection at the hearing showed that a slide-out had left grease on the carpet, apparently indicating the need for an adjustment. However, the warranty expired on August 1, 2018, and the record does not indicate whether the slide-out went out of adjustment during the warranty period. Accordingly, a preponderance of the evidence does not show that the slide-out qualifies for any relief. Additionally, because neither the notice of defect nor the complaint identified the slide-out issue, the Lemon Law prohibits granting repurchase or replacement relief for this issue.

III. Findings of Fact

1. On July 27, 2017, the Complainants, purchased a new 2017 Forest River Vibe from DeMontrond RV, an authorized dealer of the Respondent, in Houston, Texas. The Complainant actually took delivery on August 1, 2017.
2. The vehicle's limited warranty provides that the body structure of the recreational vehicle will be free of substantial defects in materials and workmanship for a period of one (1) year from the date of purchase.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Issue
September 26, 2017 - November 21, 2017	Plumbing leak floods bathroom, hallway, and damaged cabinets and walls. Water leaks when it rains from a window, the walls, and the roof.
June 6, 2018 - August 13, 2018	Plumbing leak floods bathroom, hallway, and damaged cabinets and walls. Water leaks in when it rains from a window, the walls, and the roof.

4. On February 2, 2019, the RV was picked up for repair at the factory. On April 3, 2019, Mr. Rosson received the RV back from the factory.
5. On September 4, 2018, the Complainant provided a written notice of defect to the Respondent.
6. On October 21, 2018, the Complainant filed a complaint with the Department alleging that the vehicle's plumbing leaked and rainwater leaked into the vehicle.
7. On February 14, 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 June 4, 2019, in Palestine, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for herself. Ralph Rosson, the Complainant's spouse, testified for the Complainant. Warren Murphy, assistant director, parts, service, & warranty, represented and testified for the Respondent.
9. The warranty expired on August 1, 2018, prior to the Respondent's final repair.
10. At the inspection during the hearing, the subject RV exhibited a water leak at the outdoor kitchen faucet. Mr. Rosson stated that he did not know if the outdoor shower presently leaked. Mr. Rosson noted that the transport driver broke the license plate frame; a drawer stop was detached upon the RV's return; a slide-out left grease on the carpet, apparently needing adjustment; batten strips were wrinkled and showed fingerprints where replaced. Mr. Rosson did not know whether the bunk slide-out still leaked.
11. The RV did not exhibit any rain water leaks, interior plumbing leaks, or exterior shower leaks after the Respondent's final repair.
12. The Complainant discovered the outdoor kitchenette leak after the Respondent's final repair.

13. The Complainant discovered the broken water heater, switches, and a diode, and a drawer stop after the Respondent's final repair.
14. Batten strips in the RV appeared wrinkled and showed fingerprints due to repair after manufacturing and not from manufacturing.
15. When the slide-out fell out of adjustment is unknown.

IV. Conclusions of Law

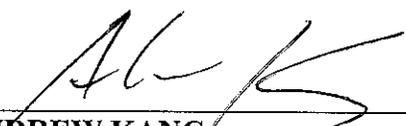
1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the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

9. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED August 5, 2019



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