

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 19-0002744 CAF**

**GREGORY PINTO,  
Complainant**

**v.**

**GULF STREAM COACH, INC.,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Gregory Pinto (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 Gulf Stream Coach, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect. 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 May 14, 2019, in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on May 29, 2019, the deadline for responses. The Complainant, represented himself. Marie Pinto, the Complainant's wife, testified for the Complainant. Scott Pullin, vice president, 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 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 or someone on behalf of the owner, or the Department has 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

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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). 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.

<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.

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

## 2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle” and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect 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 January 8, 2018, the Complainant, purchased a new 2017 Gulf Stream Conquest 6316 from Holiday World of Katy, an authorized dealer of the Respondent, in Katy, Texas. The vehicle had 1,363 miles on the odometer at the time of purchase. The vehicle’s limited warranty generally covers the vehicle’s construction for one year and covers the construction of the floors, walls and roof for two years. On September 26, 2018, the Complainant provided a written notice of defect to the Respondent. On November 3, 2018, the Complainant filed a complaint with the Department alleging that water leaked from the fill spigot; the fill tube was installed in the wrong location and leaked; the shore power hook-up cable required replacement (contacts had burned from a short);

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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).

water pump pulsated; the Caltex paint treatment sold by Holiday World appeared blotchy and did not protect against staining; the dash radio malfunctioned. Although not included in the Complaint, the Complainant testified that the slide-out did not completely close. Of these issues, the leak from the fill spigot and the incorrectly located fill tube; and the pulsating water pump remain unresolved.

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

Date	Mileage	Issue
March 13, 2018 -		water leaking from the spigot on the side of the vehicle, water pump pulsates
April 5, 2018 - May 10, 2018		water leaking from the spigot on the side of the vehicle, water pump pulsates
June 24, 2018 - August 9, 2018	2,713	water leaking from the spigot on the side of the vehicle, radio dash is not functioning correctly, cable for electrical shore current needs to be replaced

The Complainant testified that water from the spigot leaked out of the tank in the vehicle. When the tank was filled and the vehicle was stopped the tank would leak water. Holiday World of Katy tried fixing the problem by putting a seal on the tank cap, installing a vent, and relocating the hoses. None of the repair attempts fixed the problem. The Complainant also testified that the water would leak on the outside of the vehicle and would stain the vehicle. Water from the tank would spill out when the vehicle turned. The tank would lose about 31% of the water in the tank from leaking. The leak was first noticed by the Complainant the first time the vehicle was used. The last time the Complainant noticed the leak from the fill spigot was on May 14, 2019, before the hearing. The fill tube issue was interrelated to the spigot issue because both were part of the same malfunctioning system.

The Complainant did not know what caused the water pump to pulsate. When running water within the vehicle, the water pressure would increase and decrease. The pulsating would cause the pipes to bang against the wall. The Complainant first noticed the pulsating water issue on March 13, 2018. The pulsating occurred every time using the bathroom and at various times in the other parts of the vehicle. Mrs. Pinto stated that since the pump was repaired, the pulsating had gotten worse. After repair, the pump would lose air and cause the water pressure to decrease and then surge. Mrs. Pinto last noticed the water pulsating on May 14, 2019, while using the bathroom sink.

The Complainant testified the slide-out did not close completely. There was about a one-inch gap between the slide-out and the outside surface of the cabin of the vehicle. The slide-out issue was first noticed during a trip to Colorado in mid-August 2018. The last time the issue was noticed was on May 14, 2019. On cross-examination, the Complainant testified that the tank was filled with a water hose placed slightly into the tank until the tank was full. The Complainant also stated that the water would drain out of the vent while filling. Finally, on cross-examination, the Complainant testified that the water pulsation issue was raised to Holiday World of Katy on four occasions. The first was not documented and no repair was made. The other three repairs were documented, in which dealership technicians installed a new pump, repaired the water pump and battery transfer switch, and installed a water pump cap. However, the problem remains unresolved.

### **C. Inspection**

Upon inspection at the hearing, the odometer displayed 7,200 miles. While testing the water pump, Mr. Pullin explained that noise produced was normal, the pipes had air in them, and the pump itself, which uses a diaphragm, would inject air into the pipes. Mr. Pullin pointed out that the water tank was located under the bed. The tank had a vent fitting located on the side, which allowed water to leak when sloshing against the side of the tank. In subsequent production, the vent was relocated (i.e., redesigned). The RV did not have any visible signs of water leaks. The slide-out opened and closed normally. When closed, the slide-out left an approximately one-inch gap between the vehicle's exterior wall and the edge of the slide-out wall.

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

Mr. Pullin testified that pursuant to the warranty of the vehicle, the Complainant must provide written notice to the Respondent for repairs taking more than seven days. The Complainants did not provide written notice to the Respondent on any occasion when the vehicle was held for repair for more than seven days.

Mr. Pullin testified the slide-out was not likely an issue because the slide-out did not leak and the gap between the slide-out and the vehicle cabin was minimal enough not to cause any issue to use of the vehicle. Mr. Pullin clarified that the retraction and extension motor was not strong enough to compress the seal when retracting the slide-out and therefore the slide-out stuck out about an inch.

### E. Analysis

As an initial matter, to qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to 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 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: "[a] one (1) year warranty under normal and proper use against defects in Gulf Stream materials and/or workmanship in the construction of the recreational vehicle" and "[a] two (2) year warranty under normal and proper use against structural defects (exclusions apply) in Gulf Stream materials and/or workmanship in the construction of the floors, walls and roof."<sup>28</sup> Additionally, the warranty specifically excludes: "[a]ppliances and component parts not manufactured by Gulf Stream, including, but not limited to, auxiliary generator power source, refrigerator, air conditioner, water heater, furnace, inverter, television, audio/visual, back up camera, electronics, etc."<sup>29</sup> According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).<sup>30</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 at the factory, such as incorrect assembly or the use of a broken part. Unlike manufacturing defects, issues that do not arise from manufacturing, such as design characteristics or design defects are not warrantable defects. Design characteristics result from the vehicle's specified design, which exists before the vehicle is manufactured, and not from any error

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

<sup>28</sup> Complainant's Ex. 6, Limited Warranty.

<sup>29</sup> Complainant's Ex. 6, Limited Warranty.

<sup>30</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.").

during manufacturing.<sup>31</sup> Because the warranty only covers manufacturing defects, any flaws in the design, or other non-manufacturing problems, do not qualify for relief.

**1. Leaking Fill Spigot & Fill Tube**

The evidence shows that the water leaks resulted from a design flaw as opposed to a manufacturing defect. The Respondent originally produced the vehicle with a vent on the side of the water tank but subsequently redesigned the vehicle by locating the vent to the top of the tank, thereby correcting the leaking. However, as explained above, the warranty does not apply to design defects and therefore cannot support Lemon Law relief.

**2. Pulsating Water Pump**

The record appears to reflect that the level of vibration by the water pump is normal. In any event, the RV's warranty specifically excludes component parts like the water pump. Accordingly, because the water pump is not warranted, Lemon Law relief cannot apply.

**3. Slide-Out Gap**

A preponderance of the evidence shows that because of the type of slide-out mechanism used in the subject vehicle, the slide-out would not close as tightly as with other slide-out mechanisms. In other words, the gap results from the vehicle's design as opposed to a manufacturing defect. More importantly, the evidence shows that the slide-out is a component specifically excluded by the Respondent's warranty. The Respondent did not have a warranty repair claim for the slide-out because this issue was addressed under a separate warranty from Lippert Components, Inc. Because the Respondent's warranty does not cover the slide, the Lemon Law does not provide a remedy.

**III. Findings of Fact**

1. On January 8, 2018, the Complainant, purchased a new 2017 Gulf Stream Conquest 6316 from Holiday World of Katy, an authorized dealer of the Respondent, in Katy, Texas. The vehicle had 1,363 miles on the odometer at the time of purchase.

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<sup>31</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).

2. The vehicle's limited warranty generally covers the vehicle's construction for one year and covers the construction of the floors, walls and roof for two years.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Mileage	Issue
March 13, 2018 -		water leaking from the spigot on the side of the vehicle, water pump pulsates
April 5, 2018 - May 10, 2018		water leaking from the spigot on the side of the vehicle, water pump pulsates
June 24, 2018 - August 9, 2018	2,713	water leaking from the spigot on the side of the vehicle, radio dash is not functioning correctly, cable for shore power needs to be replaced

4. On September 26, 2018, the Complainant provided a written notice of defect to the Respondent.
5. On November 3, 2018, the Complainant filed a complaint with the Department alleging that water leaked from the fill spigot; the fill tube was installed in the wrong location and leaked; the shore power hook-up cable required replacement (contacts had burned from a short); water pump pulsated; the Caltex paint treatment sold by Holiday World appeared blotchy and did not protect against staining; the dash radio malfunctioned. Although not included in the Complaint, the Complainant testified that the slide-out did not completely close. Of these issues, the leak from the fill spigot and the incorrectly located fill tube; and the pulsating water pump remain unresolved.
6. On February 6, 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.
7. The hearing in this case convened on May 14, 2019, in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on May 29, 2019, the deadline for responses. The Complainant, represented himself. Marie Pinto, the Complainant's wife, testified for the Complainant. Scott Pullin, vice president, represented and testified for the Respondent.

8. The vehicle's odometer displayed 7,200 miles at the time of the hearing.
9. The warranty coverage of the vehicle's construction expired on January 8, 2019. The warranty coverage of the vehicle's floors, walls and roof expires on January 8, 2020.
10. Upon inspection at the hearing, while testing the water pump, Mr. Pullin explained that the noise produced was normal, the pipes had air in them, and the pump itself, which uses a diaphragm, would inject air into the pipes. Mr. Pullin pointed out that the water tank was located under the bed. The tank had a vent fitting located on the side, which allowed water to leak. In subsequent production, the vent was relocated (i.e., redesigned). The RV did not have any visible signs of water leaks. The slide-out opened and closed normally. When closed, the slide-out left an approximately one-inch gap between the vehicle's exterior wall and the edge of the slide-out wall.
11. The warranty generally provides: "[a] one (1) year warranty under normal and proper use against defects in Gulf Stream materials and/or workmanship in the construction of the recreational vehicle" and "[a] two (2) year warranty under normal and proper use against structural defects (exclusions apply) in Gulf Stream materials and/or workmanship in the construction of the floors, walls and roof."
12. The vehicle's warranty excludes "[a]ppliances and component parts not manufactured by Gulf Stream, including, but not limited to, auxiliary generator power source, refrigerator, air conditioner, water heater, furnace, inverter, television, audio/visual, back up camera, electronics, etc."
13. The slide-out mechanism, due to its design, will not compress the slide-out more tightly, leaving the approximately one-inch gap.
14. A third-party warranty covered the slide-out.
15. The vent fitting was located on the side of the tank by design.
16. The water pump is a component excluded by the warranty.

#### **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. 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.
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.

## 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 July 29, 2019

A handwritten signature in black ink, appearing to read "Andrew Kang", is written over a horizontal line.

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