

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0005111 CAF**

BRADEN JONES,	§	BEFORE THE OFFICE
Complainants	§	
	§	
v.	§	OF
	§	
KEYSTONE RV COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Braden Jones (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 Keystone RV Company (Respondent). A preponderance of the evidence shows that the subject vehicle has warrantable defects that qualify for warranty repair relief only.

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 September 4, 2019, in Waco, Texas, before Hearings Examiner Andrew Kang, and the record closed on October 4, 2019, upon admission of Complainant’s Exhibits 12 and 13. The Complainant, represented himself. Brent Giggy, senior product manager, represented the Respondent.

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

¹ TEX. GOV’T CODE § 2001.051.

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

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

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).

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:

[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

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).

⁹ TEX. OCC. CODE § 2301.605(a)(3).

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 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

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.

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

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 for relief under the lemon law.”²¹ However, the parties may expressly or impliedly consent to

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.”).

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

hearing 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 June 13, 2018, the Complainant, purchased a new 2018 Keystone Avalanche 395BH from GARV Inc d/b/a Great Adventure RV's, an authorized dealer of the Respondent, in Hewitt, Texas. The Complainant actually took delivery of the RV in July of 2018. The vehicle's limited warranty provides coverage for one year from the date of purchase. On August 25, 2019, the Complainant provided a written notice of defect to the Respondent. On January 21, 2019, the Complainant filed a complaint with the Department alleging that: the awning would not work (electrical issue) and needed repair before taking the RV off the lot; the refrigerator tripped the breakers; refrigerator overheated; outside running lights never worked; door handles did not work and kept getting stuck; the bathroom sliding door fell off the track; sink faucets were stopped; trim on the door was coming off; the couch in the living room had a cut in the fabric; outside walls had

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).

gaps in the silicone; the air conditioning (AC) was not properly sealed; the front axle slipped; the front jacks would sink after being pressurized; the entry door handle was extremely hard to open; the outdoor kitchen latches would not stay latched; the vinyl insert over slide was falling off; doors had dents; the backsplash popped out at the entry door; and the front jack leg twisted to the side where a weld had broken. The Complainant confirmed that the following items were successfully repaired: awning, running lights, door handles, bathroom sliding door, faucets, cut in couch fabric, AC (which appeared to function), front axle, outdoor kitchen latches, vinyl insert over the slideout, dented doors, backsplash at the entry, and the twisted jack leg. The following issues remained for resolution in this proceeding: the refrigerator, door trim, gaps in silicone, and front jacks sinking. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Issue
October 2, 2018 -	Running lights not working; front axle slipped; front jacks sink; bathroom sliding door; refrigerator tripping breakers; couch has a cut; entry door handle hard to open; outdoor kitchen latches not holding; vinyl insert over slideout falling off; doors dented; backsplash popped out.
January 17, 2019 March 4, 2019	Bathroom sliding door falling off; trim pieces coming apart; backsplash coming off; outdoor kitchen locks broken; entry door hard to open (door handle not opening straight)
February 19, 2019 May 1, 2019	Replace section of couch; trim coming loose; re-secure backsplash; replace kitchen compartment door; check rooftop AC units
May 7, 2019 June 17, 2019	Leveling jacks screen

The Complainant affirmed that he did not get a repair order or invoice for all repairs. He explained that he did not get a repair order for a missing septic handle. Ashley Jones, the Complainant's spouse, added that they did not get documentation for the refrigerator repair visit about two weeks after taking delivery of the RV. Mrs. Jones believed they had taken the RV for repair a total of five times. The Complainant elaborated that the undocumented visits occurred at the beginning. Mrs. Jones referred to the October 2, 2018, work order. The Complainant stated that the first repair visit occurred about two weeks after taking delivery of the RV. The Complainant testified that he actually took delivery of the vehicle about a month after June 13, 2018, so the first repair would have occurred in July of 2018. They first used the RV in August (2018). Mrs. Jones added that the RV was repaired before the August trip. The Complainant testified that the refrigerator would trip the breakers after anywhere from one day to a week.

Mrs. Jones stated that the refrigerator issue was last noticed on July 28, 2019. The Complainant described the trim on the door as falling and sagging with nails coming out. Mrs. Jones, stated that the trim issue was last noticed in July 2019. The Complainant explained that silicone had come off in some areas. Mrs. Jones added that some places had no sealant at all. She stated that they last noticed the silicone issue when picking up the RV in May 2019. Mrs. Jones and the Complainant concurred that the silicone was not an issue when they took delivery of the RV. The Complainant estimated the silicone problem did not occur until the second service visit. Regarding the AC, the Complainant explained that he could feel heat around the AC unit but did not feel such heat after the last repairs although they had not used the RV or been in the RV since then. The Complainant first noticed the jacks sinking when first picking up the RV. When leveling the RV, the jacks will creak and sink. Mrs. Jones testified they noticed the jack issue in July or August 2019 as well as when parking the RV at the hearing. The Complainant added that the RV had a handle missing from one of the tanks, which was an original issue. Mrs. Jones pointed out that starting in June 2019, the RV's tank gauge did not read tank levels. The Complainant elaborated that the problem occurred with the black tank. Mrs. Jones confirmed that the black tank gauge and tank handle did not have any repair attempts. The Complainant pointed out that the leveling system control board malfunctioned so that the RV could not be unhitched from the truck. The control board was initially replaced by the dealer with a control board from another RV during the first repair visit.

C. Inspection

During the inspection of the RV at the hearing, Mr. Giggy noted that the Respondent did not get notice of the black tank handle until recently. The Complainant clarified that he previously addressed the tank handle with the dealer but not with the Respondent's representative. At the inspection, the leveling system control board was beeping. The Complainant stated that the board was not beeping at the last repair attempt. One of the jacks was bent. The Complainant explained that the jack got hung up on the way to the hearing. Mr. Giggy responded that the Respondent purchased the leveling system, including the jacks and control board, from Lippert Components. Although the trim piece had been repaired, it appeared to be coming off. With respect to the refrigerator, the Complainant explained that the refrigerator would trip the GFCI outlet and indicate "no AC" while beeping. The Complainant confirmed that the refrigerator would run on gas.

D. Summary of Respondent's Evidence and Arguments

Mr. Giggy testified that the seal voids were the responsibility of the customer as a maintenance issue. The jacks and refrigerator were not manufactured by the Respondent although the Respondent will try to administer the warranty (on behalf of the component manufacturer). He asserted that the loose trim was a cosmetic issue that did not affect the RV's use. Mr. Giggy noted that the Respondent just recently received the notice dated August 25, 2019, which references similar but different items as compared to the complaint. The hydraulics issue is new and the Respondent did not have an opportunity to repair.

E. Analysis

The record shows that the Complainant has experienced a variety of problems with his RV. However, 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).²⁷ 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 states that:

The Keystone RV Company ("Keystone") warranty covers this recreational vehicle ("RV") for a period of one (1) year from the date of purchase by the first retail owner. This limited warranty covers defects in materials and workmanship supplied by and attributable to Keystone's manufacturing and assembly of the RV, when the RV is used for its intended purposes of recreational camping.²⁸

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).²⁹ A defectively manufactured vehicle has a flaw because of some error

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

²⁸ Complainant's Ex. 11, Limited One-Year Warranty.

²⁹ 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.").

in making it at the factory, such as incorrect assembly or the use of a broken part. Manufacturing defects exist when the vehicle leaves the manufacturing plant. Unlike manufacturing defects, issues that do not arise from manufacturing, such as design characteristics or design defects are not warrantable defects. Because the warranty only covers manufacturing defects, any non-manufacturing problems do not qualify for relief. Additionally, the warranty expressly excludes: “Routine maintenance including, without limitation, caulking, re-caulking and waxing of the body of the RV, tightening screws, brake squeak/lock-up/adjustment, latches, locks, combustion systems, changing fuses, or light bulbs, and maintaining the air conditioning and heating systems;” “Adjustments to all doors, drawers, locks, latches, slide outs, awnings and window treatments beyond 90 days after retail sale;” and “Equipment, products, components, appliances, or accessories not manufactured by Keystone.”³⁰

1. Refrigerator

As explained above the warranty only applies to defects from the Respondent’s manufacturing of the vehicle and specifically does not apply to appliances, which the Respondent did not manufacture. Accordingly, any defects in the refrigerator does not support any relief.

2. Door Trim

The door trim issue constitutes a warrantable defect. However, the evidence does not show that the defective trim creates a serious safety hazard or substantially impairs the use or market value of the RV. Therefore, the door trim qualifies for repair relief but does not support repurchase or replacement.

3. Gaps in Silicone

The warranty specifically excludes “caulking, re-caulking” so that any gaps in the silicone are not warrantable defects that qualify for relief.

4. Front Jacks Sinking - Leveling System

As with the refrigerator, the record reflects that a third party, not the Respondent, manufactured the leveling system, including the jacks. As a result, the warranty does not apply to the leveling system and any defects in the jacks cannot support any relief.

³⁰ Complainant’s Ex. 11, Limited One-Year Warranty.

5. Other Issues

The Complainant addressed a missing black water tank handle and malfunctioning leveling system control board, which the Complainant did not identify in the complaint or the written notice of defect. Ordinarily, only issues identified in the complaint may be addressed at the hearing. However, the Respondent did not object to the consideration of these issues. The evidence reflects that the Respondent neither had prior written notice nor an opportunity to cure either of these issues. Consequently, the Lemon Law prohibits granting repurchase or replacement relief based on these issues. However, if a condition does not qualify for repurchase or replacement, it may still qualify for warranty repair relief as described in the discussion of applicable law. Section 215.202(b)(3) of the Department's rules states that "[a] complaint may be filed with the department in accordance with this section if the defect in the motor vehicle subject to the warranty performance complaint was reported to the manufacturer, converter, distributor, or to an authorized agent prior to the expiration of the warranty period." The Complainant appears to have addressed the tank handle and leveling control board with the dealer. However, as explained above, to qualify for any type of relief, the warranty must apply to the alleged defect. Here, the control board, as with the refrigerator and leveling jacks, is a component manufactured by a third party and not the respondent. Therefore, the warranty does not apply to the control board. However, the evidence supports that the missing black tank handle resulted from a manufacturing error to which the warranty applies. In sum, the missing tank handle qualifies for repair relief but the control panel does not.

III. Findings of Fact

1. On June 13, 2018, the Complainant, purchased a new 2018 Keystone Avalanche 395BH from GARV Inc d/b/a Great Adventure RV's, an authorized dealer of the Respondent, in Hewitt, Texas. The Complainant actually took delivery of the RV in July of 2018.
2. The Respondent's limited warranty covers the RV for a period of one year from the date of purchase by the first retail owner. This limited warranty covers defects in materials and workmanship supplied by and attributable to the Respondent's manufacturing and assembly of the RV, when the RV is used for its intended purposes of recreational camping.

3. The Respondent's limited warranty specifically excludes: "Routine maintenance including, without limitation, caulking, re-caulking and waxing of the body of the RV, tightening screws, brake squeak/lock-up/adjustment, latches, locks, combustion systems, changing fuses, or light bulbs, and maintaining the air conditioning and heating systems;" "Adjustments to all doors, drawers, locks, latches, slide outs, awnings and window treatments beyond 90 days after retail sale;" and "Equipment, products, components, appliances, or accessories not manufactured by Keystone."
4. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Issue
October 2, 2018 -	Running lights not working; front axle slipped; front jacks sink; bathroom sliding door; refrigerator tripping breakers; couch has a cut; entry door handle hard to open; outdoor kitchen latches not holding; vinyl insert over slideout falling off; doors dented; backsplash popped out.
January 17, 2019 March 4, 2019	Bathroom sliding door falling off; trim pieces coming apart; backsplash coming off; outdoor kitchen locks broken; entry door hard to open (door handle not opening straight)
February 19, 2019 May 1, 2019	Replace section of couch; trim coming loose; re-secure backsplash; replace kitchen compartment door; check rooftop AC units
May 7, 2019 June 17, 2019	Leveling jacks screen

5. The vehicle had an initial repair attempt in July of 2018, which the dealer did not document.
6. On August 25, 2019, the Complainant provided a written notice of defect to the Respondent.
7. On January 21, 2019, the Complainant filed a complaint with the Department alleging that: the awning would not work (electrical issue) and needed repair before taking the RV off the lot; the refrigerator tripped the breakers; refrigerator overheated; outside running lights never worked; door handles did not work and kept getting stuck; the bathroom sliding door fell off the track; sink faucets were stopped; trim on the door was coming off; the couch in the living room had a cut in the fabric; outside walls had gaps in the silicone; the air conditioning (AC) was not properly sealed; the front axle slipped; the front jacks would sink after being pressurized; the entry door handle was extremely hard to open; the outdoor kitchen latches would not stay latched; the vinyl insert over slide was falling off; doors had

dents; the backsplash popped out at the entry door; and the front jack leg twisted to the side where a weld had broken.

8. The Complainant confirmed that the following items were successfully repaired: awning, running lights, door handles, bathroom sliding door, faucets, cut in couch fabric, AC (which appeared to function), front axle, outdoor kitchen latches, vinyl insert over the slideout, dented doors, backsplash at the entry, and the twisted jack leg. Accordingly, the following issues remained for resolution in this proceeding: the refrigerator, door trim, gaps in silicone, and front jacks sinking.
9. On May 6, 2019, the Department's Office of Administrative Hearings issued an amended 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.
10. The hearing in this case convened on September 4, 2019, in Waco, Texas, before Hearings Examiner Andrew Kang, and the record closed on October 4, 2019, the date Complainant's Exhibits 12 and 13 were admitted. The Complainant, represented himself. Brent Giggy, senior product manager, represented the Respondent.
11. The warranty expired on June 30, 2019.
12. The refrigerator was manufactured by a third party and not the Respondent.
13. The door trim is not properly attached. The door trim issue is cosmetic.
14. The silicone sealant on the RV's exterior has gaps in the seal.
15. The leveling system, including the jacks and control board, were manufactured by a third party and not the Respondent.
16. The black water tank is missing its handle, which the Complainant addressed with the dealer.

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). Further, the Complainant or a person on behalf of the Complainant did not provide sufficient notice of the missing black tank handle to the Respondent. This Order may not require repurchase or replacement of the vehicle without written notice of the defect/nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1). Also, the Respondent did not have an opportunity to cure the alleged defect(s). This Order may not require repurchase or replacement of the vehicle without an opportunity to cure by the Respondent. TEX. OCC. CODE § 2301.606(c)(2).
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).

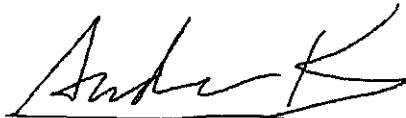
9. The Complainant's vehicle qualifies for warranty repair of the loose door trim and the missing black tank handle. The Complainant proved that the Respondent's warranty covers these defects. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainant or an agent of the Complainant notified the Respondent or Respondent's agent of these 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 loose door trim and missing black water tank handle to the applicable warranty as specified here. Upon this Order becoming final under Texas Government Code § 2001.144:³¹ (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).

³¹ 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 December 3, 2019

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

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