

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 19-0005546 CAF**

<b>TOMMY LONG,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainant</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>K-Z, INC.,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Tommy Long (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 K-Z, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect that qualifies for relief.

**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 July 30, 2019, in Carrollton, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself. Delbert Miller, vice president, represented and testified for 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

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<sup>1</sup> 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.”<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>

**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

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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).

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:

[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>

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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).

<sup>9</sup> 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.<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 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>

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<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.

<sup>15</sup> 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.<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 for relief under the lemon law.”<sup>21</sup> However, the parties may expressly or impliedly consent to

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<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.”).

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

hearing 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 July 31, 2018, the Complainant, purchased a new 2019 SportTrek 251VRK from United RV Center, an authorized dealer of the Respondent, in Fort Worth, Texas. The vehicle's limited warranty provides coverage for one year from the date of purchase or placement in service, whichever occurs first. On January 4, 2019, the Complainant provided a written notice of defect to the Respondent. On January 31, 2019, the Complainant filed a complaint with the Department alleging that the slideout decking was cut short, damaging the roofing material; the slideout had a gap between two seals; the wiper seal needed to be "synchronized"; the wiper seal had a gap between two seals; and the molding on the lower side of the slideout was angled and a metal piece below the molding was bent. Additionally, on July 22, 2019, the Complainant provided written notice of two additional issues: a small object under the slideout roofing material pushing upwards,

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<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).

and a gap in the slideout roof from the main body to the outer slideout wall. The Complainant indicated that only the issues identified in Complainant's Exhibit 51 remained unresolved: a hole, a tear, and two indentions in the slideout roofing (membrane); a 45-degree angle towards the rear without substructure; a small object, maybe a nail or staple, pushing from under the slideout roofing; a gap in the slideout roof, possibly where the pieces of slideout roof are separating.

The Complainant explained that the slideout had a 45-degree angle towards the rear. After first taking the RV to a dealer for repair, he saw glue on the roof. Subsequently, the dealer damaged the slideout. The slideout did not have indentions until the dealer tried to clean the glue. An invoice reflected a hole in the roofing material. The Complainant was not sure if the indentions and tear were caused by the dealer or the slideout but the RV did not have these indentions or tear when brought to the dealer. The Complainant testified that the slideout was so far out of alignment that he could hear it screeching. At that time, he also noticed the metal piece needing repair. The Complainant explained that the slideout was not raising off the floor and that the misaligned slideout was probably damaging the slideout roof by pushing it too high. Upon clarification questions, the Complainant responded that he noticed the seam on the slideout roof about two or three weeks before the hearing and he did not feel the decking sticking up when he purchased the RV. He did not think the decking was separating but believed there was a lap (joint) with one of the pieces rising, suggesting that a fastener had come loose.

### **C. Inspection**

The inspection at the hearing showed that the decking on top of the slideout was about 3/8ths of an inch short of being even with the back edge of the slideout, so that the membrane covering the decking formed a roughly 45-degree angle from the back edge of the decking to the end of the slideout. Also, the decking consisted of abutting sheets of wood, creating a seam that could be felt under the membrane. The slideout opened and closed normally. The top of the slideout appeared to have a nail or staple pushing up from under the membrane. The hole and tear in the roof membrane were extremely small and difficult to see. The hole was pin-hole sized but remained closed due to the elastic nature of the membrane. Similarly, the tear, about 1/16th of an inch long, also remained closed because of the elastic nature of the membrane.

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

Upon clarification questions regarding the difference between the end of the decking and the end of the slideout wall, Mr. Miller confirmed that the 3/8ths inch difference was within specifications. He explained that the specifications allowed a maximum variance of 50% of the wall width, slightly over one inch. In essence, the deck has to sit on at least half the thickness of the wall. With respect to the seam between the decking sheets, Mr. Miller explained that it was not a gap but an offset. There was a visible line - as RVs age and the slideout runs in and out, the rubber seal eventually leaves dark marks. However, he did not notice anything problematic, such as anything moving or being displaced. If the decking were loose and moving, this would be seen on the other end or there would be deflections in the rafters. He believed that what was felt between the pieces of decking was probably always there. There were no broken seals and no indication of displacement.

#### **E. Analysis**

Lemon Law relief does not apply to all issues that a consumer may have with a vehicle but only to defects covered by warranty (warrantable defects).<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 the present case, the warranty states as follows:

**SUMMARY OF WARRANTY:** Venture RV warrants that every towable recreational vehicle or truck camper purchased from an authorized Venture RV dealer to the first retail consumer was free from substantial defects in materials and workmanship when it arrived on the dealer's lot, except those exclusions set forth below. Nothing contained herein shall be interpreted as a promise of future performance. The warranty period begins on the date of purchase or the date the unit is first placed in service, whichever is earlier. This Towable Limited Warranty ["TLW"] does not apply to towable recreational vehicles or truck campers purchased from any source other than an authorized Venture RV dealer.

**EXCLUSIONS FROM WARRANTY:** Excluded from coverage under the TLW are: (1) items added, changed, or modified after the unit left the possession of Venture RV; (2) units used for any commercial purpose; (3) units used for full-time residential use or more than occasional recreational use ; (4) wear and tear caused

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



by normal usage by the consumer, including but not limited to fading or discoloration of soft goods [e.g., tents, upholstery, drapes, carpet, vinyl, screens, cushions, and mattresses], fading or discoloration of exterior or fiberglass components, tear, punctures, soiling, mildew, mold, and the effects of moisture condensation inside the unit; (5) the effects of alteration, tampering, mishandling, neglect, abuse, misuse, weather, acts of nature, acts of God, or corrosive atmospheres that promote rusting, oxidation, or pitting; (6) minor imperfections that do not interfere or affect the suitability of the unit for its intended use; (7) the effects of consumer's or transferee's failure to perform normal and routine maintenance [e.g., inspections, lubrication, adjustments, tightening of screws and bolts, tightening of lug nuts and wheels, sealing, rotating, cleaning, or other damages resulting from failing to follow the maintenance schedule and procedures in the owners manual; (8) damages resulting from misalignment or adjustments to axles or spindles caused by improper maintenance, modification, loading, unloading, road hazards, road defects, off road travel, or tire failures; (9) damages caused by the negligent or intentional use or misuse of the unit by the consumer or transferee, including but not limited to occurrences while towing the unit; (10) loss or damage caused by a person or business as a result of transporting the unit after sale to the consumer, delivering the unit, or parking the unit; (11) loss or damage to the plumbing system caused by freezing; (12) claims for personal injuries of any type; (13) costs of transportation of the unit for repairs; and (14) components that are warranted separately by another manufacturer [the warranty provided by a component manufacturer is the sole responsibility of that manufacturer, and Venture RV does not warrant those components. Please refer to the warranties issued by the component manufacturers for the terms and conditions of such warranties].

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).<sup>28</sup> A manufacturing defect is generally an isolated aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Manufacturing defects exist when the vehicle leaves the manufacturing plant. Unlike manufacturing defects, issues that do not arise from manufacturing, such as the vehicle's design characteristics (which exist before manufacturing) or dealer representations and

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<sup>28</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.").

improper dealer repairs (which occur after manufacturing), are not warrantable defects. Design characteristics result from the vehicle's specified design and not from any error during manufacturing.<sup>29</sup> In sum, the warranty only covers manufacturing defects and the Lemon Law does not apply to design issues. Even though an issue may be undesirable or problematic, the Lemon Law provides no relief unless the issue constitutes a defect under the warranty.

### **1. Hole, Tear, and Indentions**

The hole, tear, and two indentions in the slideout roofing (membrane) do not qualify for any relief. As an initial matter, the warranty only covers "substantial defects in materials and workmanship when it arrived on the dealer's lot" from the manufacturer. However, the Complainant testified that the dealer damaged the slideout and that the slideout did not have indentions until the dealer tried to clean the glue. However, the Complainant was not sure if the indentions and tear were caused by the dealer or the slideout but the RV did not have these indentions or tear when brought to the dealer. In sum, the complainant did not prove by a preponderance that these issues existed when the manufacturer delivered the RV to the dealer. Further, the warranty specifically excludes "the effects of alteration, tampering, mishandling, neglect, abuse, misuse," such as dealer negligence as suggested by the Complainant's evidence. Additionally, the small indentions do not appear substantial, as required for warranty coverage, but rather appear cosmetic in nature.

### **2. 45-Degree Angle Towards Rear of Slideout**

The evidence shows that the 45-degree angle caused by decking not being flush with the rear wall of the slideout is not a defect. The manufacturer's specifications allow a maximum variance of 50% of the wall width, slightly over one inch. As observed during the inspection at the hearing, the decking was about 3/8ths of an inch short of the rear slideout wall, so the decking was manufactured according to specifications, and therefore is not a defect covered by warranty.

### **3. Gap in Slideout Roof**

A preponderance of the evidence does not show that the gap in the slideout roof is a warrantable defect. The record shows that the slideout roof is composed of two sheets of wood

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<sup>29</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).

decking, with a seam occurring where the two sheets of wood meet. Although the seam could be felt under the membrane, the inspection at the hearing provided no indication of separation, looseness, or movement in the decking. On the other hand, the Complainant testified that he did not notice the gap at the time of purchase and he also asserted that the gap resulted from the multiple repairs on the slideout. But as previously noted, any defects arising after delivery to the dealer and defects from dealer negligence are specifically excluded from the warranty.

#### **4. Object Under Slideout Roofing**

Inspection of the RV at the hearing showed a small object pushing up from under the slideout roof membrane. However, this does not appear to be a substantial defect as required for coverage under the warranty. The object does not have any effect on the use of the RV. Further, any potential damage from the object appears speculative given the available evidence. Accordingly, a preponderance of the evidence does not show that the object under the roofing is a warrantable defect.

### **III. Findings of Fact**

1. On July 31, 2018, the Complainant, purchased a new 2019 SportTrek 251 VRK from United RV Center, an authorized dealer of the Respondent, in Fort Worth, Texas.
2. The vehicle's limited warranty provides coverage for one year from the date of purchase or placement in service, whichever occurs first. Specifically, the warranty states as follows:

SUMMARY OF WARRANTY: Venture RV warrants that every towable recreational vehicle or truck camper purchased from an authorized Venture RV dealer to the first retail consumer was free from substantial defects in materials and workmanship when it arrived on the dealer's lot, except those exclusions set forth below. Nothing contained herein shall be interpreted as a promise of future performance. The warranty period begins on the date of purchase or the date the unit is first placed in service, whichever is earlier. This Towable Limited Warranty ["TLW"] does not apply to towable recreational vehicles or truck campers purchased from any source other than an authorized Venture RV dealer.

EXCLUSIONS FROM WARRANTY: Excluded from coverage under the TLW are: (1) items added, changed, or modified after the unit left the possession of Venture RV; (2) units used for any commercial purpose; (3) units used for full-time residential use or more than occasional recreational use ; (4) wear and tear caused by normal usage by the consumer, including

but not limited to fading or discoloration of soft goods [e.g., tents, upholstery, drapes, carpet, vinyl, screens, cushions, and mattresses], fading or discoloration of exterior or fiberglass components, tear, punctures, soiling, mildew, mold, and the effects of moisture condensation inside the unit; (5) the effects of alteration, tampering, mishandling, neglect, abuse, misuse, weather, acts of nature, acts of God, or corrosive atmospheres that promote rusting, oxidation, or pitting; (6) minor imperfections that do not interfere or affect the suitability of the unit for its intended use; (7) the effects of consumer's or transferee's failure to perform normal and routine maintenance [e.g., inspections, lubrication, adjustments, tightening of screws and bolts, tightening of lug nuts and wheels, sealing, rotating, cleaning, or other damages resulting from failing to follow the maintenance schedule and procedures in the owners manual; (8) damages resulting from misalignment or adjustments to axles or spindles caused by improper maintenance, modification, loading, unloading, road hazards, road defects, off road travel, or tire failures; (9) damages caused by the negligent or intentional use or misuse of the unit by the consumer or transferee, including but not limited to occurrences while towing the unit; (10) loss or damage caused by a person or business as a result of transporting the unit after sale to the consumer, delivering the unit, or parking the unit; (11) loss or damage to the plumbing system caused by freezing; (12) claims for personal injuries of any type; (13) costs of transportation of the unit for repairs; and (14) components that are warranted separately by another manufacturer [the warranty provided by a component manufacturer is the sole responsibility of that manufacturer, and Venture RV does not warrant those components. Please refer to the warranties issued by the component manufacturers for the terms and conditions of such warranties].

3. On January 4, 2019, the Complainant provided a written notice of defect to the Respondent.
4. On January 31, 2019, the Complainant filed a complaint with the Department alleging that the slideout decking was cut short, damaging the roofing material; the slideout had a gap between two seals; the wiper seal needed to be "synchronized"; the wiper seal had a gap between two seals; and the molding on the lower side of the slideout was angled and a metal piece below the molding was bent.
5. On July 22, 2019, the Complainant provided written notice of two additional issues: a small object under the slideout roofing material pushing upwards, and a gap in the slideout roof from the main body to the outer slideout wall.
6. The Complainant indicated that only the issues identified in Complainant's Exhibit 51 remained unresolved: hole, tear, indentions in slideout roofing (membrane); 45-degree angle towards the rear without substructure; small object, maybe a nail or staple, pushing

- from under the slideout roofing; gap in the slideout roof, possibly where the pieces of slideout roof are separating.
7. On March 19, 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 July 30, 2019, in Carrollton, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself. Delbert Miller, vice president, represented and testified for the Respondent.
  9. The vehicle's warranty was in effect at the time of the hearing.
  10. The inspection at the hearing showed that the decking on top of the slideout was about 3/8ths of an inch short of being even with the back edge of the slideout, so that the membrane covering the decking formed a roughly 45-degree angle from the back edge of the decking to the end of the slideout. Also, the decking consisted of abutting sheets of wood, creating a seam that could be felt under the membrane. The slideout opened and closed normally. The top of the slideout appeared to have a nail or staple pushing up from under the membrane. The hole and tear in the roof membrane were extremely small and difficult to see. The hole was pin-hole sized but remained closed due to the elastic nature of the membrane. Similarly, the tear, about 1/16th of an inch long, also remained closed because of the elastic nature of the membrane.
  11. The Complainant testified that the dealer damaged the slideout and that the slideout did not have indentions until the dealer tried to clean the glue. However, the Complainant was not sure if the indentions, hole and tear were caused by the dealer or the slideout but the RV did not have these indentions or tear when brought to the dealer. Additionally, the small indentions do not appear substantial, but rather appear cosmetic in nature.

12. With respect to the difference between the decking and the back wall of the slideout, the manufacturer's specifications allow a maximum variance of 50% of the wall width, slightly over one inch. As observed during the inspection at the hearing, the decking was about 3/8ths of an inch short of the rear slideout wall, so the decking was manufactured according to specifications.
13. The slideout roof is composed of two sheets of wood decking, with a seam occurring where the two sheets of wood meet. Although the seam could be felt under the membrane, the inspection at the hearing provided no indication of separation, looseness, or movement in the decking. On the other hand, the Complainant testified that he did not notice the gap at the time of purchase and he also asserted that the gap resulted from the multiple repairs on the slideout.
14. Inspection of the RV at the hearing showed a small object pushing up from under the slideout roof membrane. However, this does not appear to be a substantial defect. The object does not have any effect on the use of the RV. Further, any potential damage from the object appears speculative.

#### **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'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).
8. 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.
9. 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).
10. 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.
11. 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 September 29, 2019**



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