

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0006295 CAF**

**GARY L. and TERI D. BOGLE,
Complainants**

v.

**JAYCO, INC. and
FORD MOTOR COMPANY,
Respondents**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Gary L. and Teri D. Bogle (Complainants) 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 their recreational vehicle (RV) manufactured by Jayco, Inc. and Ford Motor Company (Respondents). A preponderance of the evidence does not show that the subject vehicle has a defect covered by a respondent's warranty. Consequently, the Complainants' vehicle does not qualify for repurchase/replacement or warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on October 22, 2019, in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on November 20, 2019, upon admission of Complainants' Exhibit 14. William Rice Jr, attorney, represented the Complainants. Christopher (Chris) Lowman, attorney, represented Jayco. Anthony Gregory, consumer affairs legal analyst, represented Ford.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

A vehicle qualifies for repurchase or replacement if the respondent cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”² In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must currently exist after a “reasonable number of attempts” at repair.³ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a written notice of the defect to the respondent, (2) an opportunity to cure by the respondent, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life-threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁴

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁵

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”⁶

c. Reasonable Number of Repair Attempts

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁷

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁸

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“[T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

⁸ TEX. OCC. CODE § 2301.605(a)(2).

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁰

The existence of a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹¹ Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.¹²

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner or someone on behalf of the owner, or the Department has provided written notice of the alleged defect or nonconformity to the respondent,¹³ (2) the respondent was given an opportunity to cure the defect or nonconformity;¹⁴ and (3) the Lemon Law complaint was filed within six months after the earliest

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.605(c).

¹¹ *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’”).

¹² *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

¹³ TEX. OCC. CODE § 2301.606(c)(1). 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department’s notice of the complaint to the Respondent may satisfy the requirement to provide notice of the defect or nonconformity to the Respondent.

¹⁴ A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer satisfies the opportunity to cure requirement when the respondent allows a dealer to attempt repair after written notice to the respondent. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 226 (Tex. App.—Austin 2012); *Texas Department of Transportation, Kennemer v. Dutchman Manufacturing, Inc.*, MVD Cause No. 09-0091 CAF (Motor Vehicle Division Sept. 25, 2009) (Final Order Granting Chapter 2301, Subchapter M Relief). An opportunity to cure does not require an actual repair attempt but only a valid opportunity. *Id* at 2.

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

2. **Warranty Repair Relief**

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a "defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle" and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect before the warranty's expiration.¹⁶ The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."¹⁷

3. **Burden of Proof**

The law places the burden of proof on the Complainants.¹⁸ The Complainants must prove all facts required for relief by a preponderance of the evidence. That is, the Complainants must present sufficient evidence to show that every required fact more likely than not exists.¹⁹ Accordingly, the Complainants cannot prevail where the existence of any required fact appears equally likely or unlikely.

4. **The Complaint Identifies the Issues in this Proceeding**

The complaint identifies the issues to be addressed in this proceeding.²⁰ The complaint must state "sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming the basis of the claim

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

¹⁶ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁷ TEX. OCC. CODE § 2301.603(a).

¹⁸ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁹ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

²⁰ "In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days." TEX. GOV'T CODE §§ 2001.051; "Notice of a hearing in a contested case must include . . . a short, plain statement of the factual matters asserted." TEX. GOV'T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) ("The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty."); TEX. OCC. CODE § 2301.204(d) ("A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.").

for relief under the lemon law.”²¹ However, the parties may expressly or impliedly consent to 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 Complainants 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 Complainants’ Evidence and Arguments

On August 29, 2018, the Complainants, purchased a new 2019 Entegra Emblem from Motor Home Specialist, an authorized dealer of Jayco, in Alvarado, Texas. The vehicle had 1,203 miles on the odometer at the time of purchase. The Jayco motorized limited warranty provides coverage of the “house” for two (2) years after delivery or 24,000 miles of use, whichever occurs first. The Ford new vehicle limited warranty provides powertrain coverage for five (5) years in service or 60,000 miles driven, whichever comes first. The Complainants’ attorney provided a written notice of defect to the Respondents on February 27, 2019, and an amended notice on July 29, 2019. On February 23, 2019, the Complainants filed a complaint with the Department alleging

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

²² 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

²³ See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

²⁴ TEX. OCC. CODE § 2301.604.

²⁵ 43 TEX. ADMIN. CODE § 215.209(a).

²⁶ 43 TEX. ADMIN. CODE § 215.208(b)(1).

that the vehicle would not crank/start. On August 2, 2019, the Complainants amended the complaint to include the following issues regarding the: driver's side window, topper on large slide (torn before slide leveled), torn carpet under slide, front door not sealing (leaking when raining), back bathroom cabinet door, flooring needing repair, water heater (replaced by Complainants), bedroom wall not fixed properly (after a dealer repaired a water line wall), door screen (hard to open), cabinet over couch (ceiling coming loose), staples coming out of wood work, lines under coach not properly insulated, panel not registering in front, windshield leaking, emblem falling off, outside storage doors not level, roof vent seals and loose vent toppers, sink fillings, kitchen faucet (temporarily repaired by Complainants), and rubber under front door. The Complainants took the vehicle to a dealer for repair of the Ford chassis as follows:

Date	Miles	Issue
October 17-18, 2018	2,838	No start
January 2-3, 2019	4,100	No start
January 15-18, 2019	4,448	No start
February 22, 2019	4,812	No start
March 22, 2019	5,295	No start
August 22, 2019	6,661	No start

In relevant part, the Complainants took the vehicle to a dealer for repair of the Jayco house as follows:

Date	Miles	Issue
January 21, 2019 - August 9, 2019 - September 5, 2019	4,925	Floor torn when "doghouse" removed by Rush Truck Center, slide topper fabric torn, windshield needs to be reset, bathroom vents leaking, window frame cracked, staples need covering

Mrs. Bogle testified that on January 1, 2019, while stopping to refuel in Bastrop, the vehicle would not start. The vehicle had to be towed to a Ford dealership in Buda. The second time the vehicle would not start, the vehicle had 4,100 miles on the odometer. The Complainants scheduled a repair visit with Motor Home Specialists (MHS) in Alvarado for January 15, 2019. However, on January 14, 2019, the RV would not start. The RV was towed to Rush Truck Center in Dallas because of a three week wait time for a Ford facility. The Complainants took the RV to MHS after the repairs at Rush Truck Center. The RV was at MHS for 21 days but not all the warranty repairs were done. The slide required repair and had to be level before repairing the carpet/flooring. The

driver side window required replacement because it was cracked from the outside. On February 8, 2019, the RV would not start. After disconnecting the battery and sitting overnight, the RV started. But on February 13, 2018, the RV again would not start. Mr. Bogle contacted a Ford dealership, which dispatched a technician and assistant to the RV park to repair the RV. Jayco had the RV picked up on August 9, 2019 and returned on September 5, 2019. The window was not fixed but did not appear to leak. The driver's side slide topper was fixed while in Indiana (at Jayco's facilities). The Complainants contacted Motor Home Doctor to address the water heater not working. The RV had leaked when raining. But since the RV returned from Jayco, the Complainant's had not used the RV and could not determine whether the leak was fixed. The following issues had not been fixed: window, torn carpet, places on flooring, and bedroom wall rattles. A leaking pipe in the wall was fixed, but the wall would rattle when touching the wall because it was not put back together properly. Also, rubber under the entry door hung out. The seal had been repaired and did not currently leak. When Rush Truck Center took off the "doghouse"/"squirrel cage", Rush did not replace the passenger side screws and the screws remained missing. Water leakage had been a continuous problem. However, the Complainants had not used the RV since its return from Jayco. Mr. Bogle added that the bottom of the window was still cracked, which he noticed when leaving Alvarado. A window had ice inside. A technician stated that the window needed replacement.

On cross-examination, Mrs. Bogle affirmed that the Complainants had not used the RV since its return from Jayco and had not tested the repairs. Mrs. Bogle acknowledged that the RV started the day of the hearing. She also answered that the RV non-start issue last occurred on February 13, 2019. But she elaborated that the Complainants had not used the RV since March 11, 2018, when having the RV transported to Indiana. On cross-examination, Mr. Bogle answered that water entered the RV during tropical storm Imelda with almost 50 mph winds.

Upon clarification questions, Mrs. Bogle testified that, other than during tropical storm Imelda, the driver side window leaked at San Marcos on October of 2018, during their first trip. The Complainants needed to use a towel to soak up the leaking water. The window last leaked right after tropical storm Imelda. The complainants had not observed the window in the rain lately. Mrs. Bogle confirmed that they did not know if the windows worked properly because they had not been driving the RV. Mrs. Bogle explained that the Complainants were living in the RV full-

time when Jayco had the RV picked up and that they had sold their house intending to occupy the RV full-time.

C. Inspection

Upon inspection at the hearing, the subject vehicle's odometer displayed 8,092 miles. The inspection of the vehicle showed that: the rubber seal had come out from under the entry door; the front right fender exhibited damage (apparently occurring after pick-up for transport to Jayco's facilities); screws came out of the interior motor cover (after repairs at Rush Truck Center); carpet damage; peeling laminate on the half-bath door frame; crack in the washer/dryer closet; and a crack in the fiberglass at the rear (found after transport back from Jayco's facilities).

D. Summary of Jayco's Evidence and Arguments

Mr. Phil Houser, consumer affairs manager for Jayco, explained the process for reviewing and testing an RV's issues. Occasionally misunderstandings occur, such as with the carpet being listed as no problem found. The hole in the carpet was probably large enough that it could not be repaired without replacement. Some of the issues were not on the repair order because they appeared after repairs. Mr. Houser explained the time and procedures for various repairs, which were all cosmetic. He noted that the windows have weep holes but water can build up and under extreme conditions/high winds, the windows can leak. He elaborated that the side slider window did not seal the same as a car window that goes up and down. He affirmed that the window had weep holes because water can collect there. He believed the repairs would cost between \$800 and \$1,000 and over \$1,000 if including body work. But none of the remaining issues affected safety or substantially impaired the use or value of the RV.

E. Summary of Ford's Evidence and Arguments

Mr. Gregory testified that the vehicle appeared repaired with no further repairs needed (to the chassis). On cross-examination, he explained that the RV did not have a defect in the Ford portion of the RV and that circumstances, not due to Ford, may have caused the non-start issue, in particular, modification of the chassis after it left Ford. Mr. Asad Bashir, automotive technical consultant, summarized the repairs for the no-start issue, including the problems found and repairs made. At the August 22, 2019, repair visit, the technician noted that the engine would crank but not start and found a concern with a ground (for the fuel pump) on the driver side frame rail that

had a poor connection on the frame, causing intermittent cranking problems. The ground was cleaned and reinstalled. Mr. Bashir elaborated that the ground was in front of the front axle where the leaf springs go into the frame rail. Nothing protected the ground, so it could have been disturbed and not completely secure so that it would test normally at times but at others would not power on.

F. 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).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 Jayco limited warranty generally states that it covers: "The Motorhome when it is used only for its intended purpose of recreational travel and camping"; "Only those portions of the Motorhome not excluded under the section 'What is Not Covered'"; and "Only defects in workmanship performed and/or materials used to assemble those portions of the Motorhome not excluded under the section 'What is Not Covered.'"²⁸ The Ford new vehicle limited warranty generally provides:

Under your New Vehicle Limited Warranty if:

- your Ford vehicle is properly operated and maintained, and
 - was taken to a Ford dealership for a warranted repair during the warranty period,
- then authorized Ford Motor Company dealers will, without charge, repair, replace, or adjust all parts on your vehicle that malfunction or fail during normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship.²⁹

According to these terms, the warranties only apply to defects in materials or workmanship (manufacturing defects).³⁰ 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. 3, Jayco Motorized Limited Warranty.

²⁹ Complainant's Ex. 3, Ford Warranty Guide.

³⁰ 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

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, improper dealer repairs, or damage during transport. Because the warranty only covers manufacturing defects, any non-manufacturing problems do not qualify for relief. Additionally, the Jayco warranty expressly excludes, among other things:

Any Motorhome not used solely for recreational travel and camping; . . .

The effects and damage caused by condensation or moisture;

Mold;

Any damage caused by mold; . . .

Damage caused by misuse, mishandling, neglect, abuse, failure to maintain the Motorhome in accordance with the owner's manual, or failure to perform other routine maintenance such as inspections, lubricating, adjustments, tightening of screws and fittings, tightening of lug nuts, sealing, rotating tires;

Damage caused by accident, whether or not foreseeable;

Damage caused by weather or corrosion due to the environment; . . .

Defacing, scratches, dents, chips on any surface or fabric of the Motorhome; . . .

Any component, system or part that warranted by another entity. Examples are: automotive chassis, (including the power train, steering, handling, braking, wheel balance, muffler, tires, tubes, batteries and gauges); generator; awning; inverter; converter; microwave; television; DVD/CD player; radio; speakers; television; refrigerator; range; water heater; water pump; stove; carbon monoxide detector; smoke detector; propane detector; furnace; and, any air conditioner. The written warranty provided by the manufacturer of the component part is the direct and exclusive responsibility of that manufacturer).³¹

1. Ford Chassis No-Start Issue

The no-start issue does not support any relief. As outlined in the discussion of applicable law, to qualify for relief, the nonconformity must continue to exist after being subject to repair. The subject vehicle clearly has had starting problems in the past. However, the record does not

("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.").

³¹ Complainant's Ex. 3, Jayco Motorized Limited Warranty.

show any evidence of the no-start problem occurring after the last chassis repair. Mrs. Bogle testified that the vehicle last failed to start on February 13, 2019; whereas the last the no-start repair occurred on August 22, 2019. Consequently, the no-start issue cannot support any relief.

2. Jayco House Issues

Critically, the Jayco warranty expressly excludes “Any Motorhome not used solely for recreational travel and camping.”³² In this case, the record reflects that the Complainants used the vehicle as a full-time residence in addition to any recreational travel and camping use. Mrs. Bogle testified that the Complainants sold their house and occupied the vehicle full-time until Jayco transported it for repair. Additionally, the Complainants’ February 27, 2019, notice of defect stated that a dealer sent a service technician and an assistant “to the RV park where they [the Complainants] are residing and continue to reside.”³³ Consequently, because the subject vehicle was used as a full-time residence and not solely for recreational travel and camping, the Jayco warranty provides no coverage and therefore no relief applies.

3. Reimbursement of Incidental Expenses

The Lemon Law requires granting of repurchase or replacement relief as a prerequisite for reimbursement of incidental expenses. Because the vehicle does not qualify for repurchase or replacement, incidental expenses, including attorney’s fees, are not reimbursable. Further, as explained in the discussion of applicable law, a complainant’s attorney’s fees are only reimbursable “if the complainant retains counsel after notification that the respondent is represented by counsel.”³⁴ In this case, the billing statement from the Complainants’ attorney shows that their counsel began providing them legal services on February 19, 2019. However, Jayco’s counsel filed a notice of appearance in this case on September 4, 2019, and Ford never had representation by counsel. Consequently, attorney’s fees cannot be reimbursed.

³² Complainant’s Ex. 3, Jayco Motorized Limited Warranty.

³³ Complainant’s Ex. 3, Complainants’ Ex. 5, Notice of Defect.

³⁴ 43 TEX. ADMIN. CODE § 215.209(a).

III. Findings of Fact

1. On August 29, 2018, the Complainants, purchased a new 2019 Entegra Emblem from Motor Home Specialist, an authorized dealer of Jayco, in Alvarado, Texas. The vehicle had 1,203 miles on the odometer at the time of purchase.
2. The Jayco motorized limited warranty provides coverage for two (2) years after delivery or 24,000 miles of use, whichever occurs first. The Ford new vehicle limited warranty provides powertrain coverage for five (5) years in service or 60,000 miles driven, whichever comes first.
3. The Complainants took the vehicle to a dealer for repair of the Ford chassis as follows:

Date	Miles	Issue
October 17-18, 2018	2,838	No start
January 2-3, 2019	4,100	No start
January 15-18, 2019	4,448	No start
February 22, 2019	4,812	No start
March 22, 2019	5,295	No start
August 22, 2019	6,661	No start

4. In relevant part, the Complainants took the vehicle to a dealer or the manufacturer for repair of the Jayco house as follows:

Date	Miles	Issue
January 21, 2019 - August 9, 2019 - September 5, 2019	4,925	Floor torn when "doghouse" removed by Rush Truck Center, slide topper fabric torn, windshield needs to be reset, bathroom vents leaking, window frame cracked, staples need covering

5. The Complainants' attorney provided a written notice of defect to the Respondents on February 27, 2019, and an amended notice on July 29, 2019.
6. On February 23, 2019, the Complainants filed a complaint with the Department alleging that the vehicle would not crank. On August 2, 2019, the Complainants amended the complaint to include the following issues regarding the: driver's side window, topper on large slide (torn before slide leveled), torn carpet under slide, front door not sealing (leaking when raining), back bathroom cabinet door, flooring needing repair, water heater (replaced by Complainants), bedroom wall not fixed properly (after a dealer repaired a

- water line wall), door screen (hard to open), cabinet over couch (ceiling coming loose), staples coming out of wood work, lines under coach not properly insulated, panel not registering in front, windshield leaking, emblem falling off, outside storage doors not level, roof vent seals and loose vent toppers, sink fillings, kitchen faucet (temporarily repaired by Complainants), and rubber under front door.
7. On May 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.
 8. The hearing in this case convened on October 22, 2019, in Conroe, Texas, before Hearings Examiner Andrew Kang, and the record closed on November 20, 2019, upon admission of Complainants' Exhibit 14. William Rice Jr, attorney, represented the Complainants. Christopher (Chris) Lowman, attorney, represented Jayco. Anthony Gregory, consumer affairs legal analyst, represented Ford.
 9. The vehicle had 8,092 miles on the odometer at the time of the hearing.
 10. The Jayco warranty and Ford powertrain warranty were in effect at the time of the hearing.
 11. Upon inspection at the hearing, the subject vehicle's odometer displayed 8,092 miles. The inspection of the vehicle showed that: the rubber seal had come out from under the entry door; the front right fender exhibited damage (apparently occurring after pick-up for transport to Jayco's facilities); screws came out of the interior motor cover (after repairs at Rush Truck Center); carpet damage; peeling laminate on the half-bath door frame; crack in the washer/dryer closet; and a crack in the fiberglass at the rear (found after transport back from Jayco's facilities).
 12. The no-start issue did not recur after the August 22, 2019, repair.
 13. The Jayco warranty excludes any motorhome not used solely for recreational travel or camping.
 14. The subject vehicle was used as a full-time residence in addition to use for recreational travel and camping.


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 Complainants 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 Complainants bear the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainants' vehicle does not qualify for replacement or repurchase. The Complainants did not prove that the vehicle has a defect covered by a respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
7. The Complainants do 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 Complainants' vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with a respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
9. The Complainants' vehicle does not qualify for warranty repair. The Complainants did not prove that the vehicle has a defect covered by a 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 a 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 Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED January 21, 2020



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