

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0013009 CAF**

**MATTHEW HENNIGAN,
Complainant**

v.

**THOR MOTOR COACH, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Matthew Hennigan (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 Thor Motor Coach, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a defect covered by warranty. Consequently, the Complainant's 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 December 19, 2019, in Beaumont, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself. John Arnold, attorney, represented the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

A vehicle qualifies for repurchase or replacement if the respondent cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”² In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must currently exist after a “reasonable number of attempts” at repair.³ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a 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 Complainant.¹⁸ The Complainant must prove all facts required for relief by a preponderance of the evidence. That is, the Complainant must present sufficient evidence to show that every required fact more likely than not exists.¹⁹ Accordingly, the Complainant cannot prevail where the existence of any required fact appears equally likely or unlikely.

4. The Complaint Identifies the Issues in this Proceeding

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

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

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

¹⁷ TEX. OCC. CODE § 2301.603(a).

¹⁸ 43 TEX. ADMIN. CODE § 215.66(d).

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

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

for relief under the lemon law.”²¹ However, the parties may expressly or impliedly consent to 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 9, 2018, the Complainant, purchased a new 2018 Ace 30.2 from Camping World RV Sales, an authorized dealer of the Respondent, in Katy, Texas. The vehicle had 1,248 miles on the odometer at the time of purchase. The vehicle’s limited warranty provides coverage for 12 months after delivery or until 15,000 miles on the odometer, whichever occurs first. On June 21, 2019, the Complainant provided a written notice of defect to the Respondent. On July 3, 2019, the Complainant filed a complaint with the Texas Department of Motor Vehicles alleging that: water from roof and shower leaks damaged the interior; the generator turned off frequently;

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).

slideout weather seals were cut and did not fit properly; the black water tank vented into the interior and water splashed out of the toilet; and the slideout had a hole at the rear bottom corner.

The Complainant testified that the roof and shower no longer leaked. However, he did not consider the shower repair to be long term because the supporting 2x4s (under the shower pan) were not secured. He noted that water damage to cabinets were the main concern. In part, instead of fixing the "rib" in the cabinet with the DVD player, the dealer only replaced the bullnose. Regarding the generator, the Complainant stated that it would shut off intermittently when driving. He also indicated that the generator may not start at all. He would keep at least a quarter tank of fuel in the generator. He last noticed the generator malfunctioning during the weekend of October 19, 2019. The Complainant averred that the holes in the slideout seal were still evident. Regarding the black water tank/toilet issue, the Complainant testified that he had not been able to test the repairs, though he believed the issue had improved. He explained that for the first repair, a "T" in the vent line venting into the interior was capped. However, with the black water tank a little over two-thirds full, water would splash out of the toilet (from black water tank pressure). The Complainant did not notice the water splashing out after the last repair, but the black water tank had not filled to the level needed to cause the splashing. The Complainant described the hole in the slideout floor and the weather seal issues as overlapping. He estimated that the vehicle had been out of service for repair for about eight months.

On cross-examination, the Complainant confirmed that the awning damage occurred in September of 2019, while the warranty expired in June of 2019. He affirmed that the Respondent picked up the vehicle for repair on July 20, 2019. He acknowledged that the warranty did not cover seals or the generator. The Complainant agreed that the supports on the shower have not come loose and have supported the shower. He affirmed that he did not know of any leaks at the slide after repair and that the water damaged had been repaired to his knowledge, but the hole at the slide remained. Also, the door on the DVD cabinet would not hold itself up.

C. Inspection

Upon inspection at the hearing, the subject vehicle had 9,364 miles on the odometer. A trim piece had visible staple holes. The generator started and appeared to operate normally. The rear driver's side corner had damage from a collision. The interior floor of the slideout had a roughly dime-sized opening, which allowed light in. The opening was approximately three to four

inches inside of the body. The gaps in the seals of the slide appeared to result from the design of the vehicle and not any manufacturing defect. Mr. Stanley explained that either end of the slideout had a cup to allow water to drain out from around the slide. He elaborated that the vehicle was not watertight but managed the water and let it out. He pointed out that a slideout may normally have a gap like that in the subject vehicle and that other models may have even larger gaps. An awning arm showed signs of damage. Mr. Stanley noted that an RV toilet does not have a natural trap at the back like a household toilet. The Complainant asserted that the toilet's blowback resulted from improper venting. Mr. Stanley added that traps (in the plumbing) can dry out and leave an open airway, so water would need to be run to fill the traps.

D. Summary of Respondent's Evidence and Arguments

Mr. Mark Stanley, technical manager, testified that the applicable warranty depended on the off-line date of the vehicle, in this case, May 2017. He affirmed that the Respondent did not guarantee cosmetic issues. Aside from the damage to the awning and bumper, Mr. Stanley did not find any impairment to the use or value of the vehicle or any serious safety hazards. Regarding the openings at the slide, Mr. Stanley explained that the slides are not air tight. He also acknowledged that the Respondent's slides may allow water in from a pressure washer or heavy sideways rain. He further elaborated that gaps in the slide were normal, though they may be made smaller. Moreover, the gap in the slideout was too far inboard to get water in. After operating the vehicle's slideout, Mr. Stanley found the seals and gaskets to be normal. The warranty did not cover the lack of sealant around the antenna and pin cord, which caused the roof leak. Whoever had possession of the vehicle had the responsibility for maintaining the sealant. In particular, with respect to the shower, the interior sealant was a wear item for which the Respondent may deny claims after 90 days. Mr. Stanley found the supports under the shower to meet specifications. The supports could have glue but would not fall over.

On cross-examination, Mr. Stanley explained that cups at the corners of the slideout directed water out of the slideout and cup seals existed between the cups and the bottom of the slideout seal. Mr. Stanley affirmed that the (DVD) cabinet was repaired and inspected for water damage. He concluded that the staples on bottom, warping, and split rib would not pose a problem unless something was hung from the cabinet. He noted that a visual inspection of the cabinet did not indicate that the split in the rib went all the way through. He elaborated that most of the three-

quarter inch blocks were used to attach luan (paneling). And the bull nose and face frame were the main structural components. He also indicated that the rib damage could have occurred from removal of the bullnose during repairs. Regarding the hole in the slideout, Mr. Stanley explained that the location of the generator did not pose a problem since its exhaust vented out the back of the vehicle.

E. Analysis

Lemon Law relief does not apply to all issues that may occur with a vehicle but only to defects covered by warranty (warrantable defects).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:

- i. **ONLY** those portions of a **NEW** motorhome not excluded under the section "What is Not Covered," when sold by an authorized dealership and used for its intended purpose of recreational travel and camping; and
- ii. **ONLY** defects in workmanship performed and/or materials used to assemble those portions of your motorhome not excluded under the section "What is Not Covered." "Defect" means the failure of the workmanship performed and/or materials used to conform with the design and manufacturing specifications and tolerances of Thor Motor Coach ("TMC").

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).²⁸ A manufacturing defect is generally an isolated aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or

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

²⁸ Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover design issues. *E.g., Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 ("The manufacturer's express warranty in the case sub judice provides: 'Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship' The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty."); *see GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) ("the language in the contract of May 12, 1980, expressly limited TCR's recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.").

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 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.²⁹ In addition, the warranty expressly excludes certain items including: "Appliances and components covered by their own manufacturer's warranty including the microwave, refrigerator, ice maker, stove, oven, generator, roof air conditions, DVD players, televisions, water heater, furnace, stereo, radio, compact disc player, washer, dryer, and inverter." In sum, even though an issue may be undesirable or problematic, the Lemon Law provides no relief unless the issue constitutes a defect covered by the warranty.

1. Roof and Shower Leaks

The record reflects that the roof and shower leaks, and associated water damage, had been repaired, though the Complainant did not believe the shower repair would endure. As explained in the discussion of applicable law, the Lemon Law relief requires the alleged defect to continue to exist after repair. However, the evidence shows that the complained of leaks did not continue after repair. Although the shower repair may not have been to the Complainant's satisfaction, the shower has not continued to leak, so the shower leak issue cannot support any relief. The Complainant's also addressed the broken cabinet rib, ostensibly in relation to the water leaking into the cabinet. However, the evidence does not show that the cracked rib resulted from water damage and the dealer could have caused the damage when replacing the bullnose, which would not be a warranted defect. Accordingly, this cabinet damage does not support any relief.

2. Generator

As specified in the warranty terms above, the vehicle's warranty excludes the generator from coverage. Consequently, generator issues cannot support any relief.

²⁹ 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).

3. Slideout Seals and Gap/Hole

The evidence shows that slideouts may normally have gaps though the size of the gaps may vary. Moreover, the slideouts are not designed to be airtight or to be waterproof in all conditions. Though the slideout is designed to channel out water, water may still intrude under certain extreme conditions. However, this is a limitation in the design and not a defect in manufacturing. Although a condition may be unsatisfactory, design issues are not warrantable defects.

4. Black Water Tank and Toilet

As previously explained, granting of any relief requires that the alleged defect continue to exist after repair. However, the evidence here does not show that either the black water tank venting to the interior nor the toilet splashing from the black water tank pressure occurred after repair. As a result, the evidence does not support granting of any relief.

5. Awning

The complaint in this case did not include the awning damage. However, the parties addressed this issue at the hearing, so it will be addressed here. The record shows that the awning damage occurred in September of 2019, while the warranty expired in June of 2019, which conclusively excludes the awning issue from the warranty's coverage.

III. Findings of Fact

1. On June 9, 2018, the Complainant, purchased a new 2018 Ace 30.2 from Camping World RV Sales, an authorized dealer of the Respondent, in Katy, Texas. The vehicle had 1,248 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides coverage for 12 months after delivery or until 15,000 miles on the odometer, whichever occurs first.
3. The warranty generally states that:
 - i. **ONLY** those portions of a **NEW** motorhome not excluded under the section "What is Not Covered," when sold by an authorized dealership and used for its intended purpose of recreational travel and camping; and
 - ii. **ONLY** defects in workmanship performed and/or materials used to assemble those portions of your motorhome not excluded under the section "What is Not Covered." "Defect" means the failure of the workmanship performed and/or materials used to conform with the design and

manufacturing specifications and tolerances of Thor Motor Coach (“TMC”).

4. The warranty specifically excludes: “Appliances and components covered by their own manufacturer’s warranty including the microwave, refrigerator, ice maker, stove, oven, generator, roof air conditions, DVD players, televisions, water heater, furnace, stereo, radio, compact disc player, washer, dryer, and inverter.”
5. On June 21, 2019, the Complainant provided a written notice of defect to the Respondent.
6. On July 3, 2019, the Complainant filed a complaint with the Texas Department of Motor Vehicles alleging that: water from roof and shower leaks damaged the interior; the generator turned off frequently; slideout weather seals were cut and did not fit properly; the black water tank vented into the coach and water splashed out of the toilet; and the slideout had a hole at the rear bottom corner.
7. On September 20, 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 December 19, 2019, in Beaumont, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented himself. John Arnold, attorney, represented the Respondent.
9. The vehicle’s odometer displayed 9,364 miles at the time of the hearing.
10. The warranty expired on June 9, 2019.
11. Upon inspection at the hearing, the subject vehicle had 9,364 miles on the odometer. The generator started and appeared to operate normally. The rear driver’s side corner had damage from a collision. The interior floor of the slideout had a roughly dime-sized opening, which allowed light in. The opening was approximately three to four inches inside of the body. The gaps in the seals of the slide appeared to result from the design of the vehicle and not any manufacturing defect. An awning arm showed signs of damage.

12. The roof and shower leaks were repaired and have not recurred after repair.
13. The evidence does not show that the damaged cabinet rib is a warrantable defect.
14. The warranty expressly excludes the generator.
15. The gaps/hole in the slideout are not manufacturing defects.
16. The black water tank venting to the interior and the toilet splashing from the black water tank pressure did not recur after repair.
17. The awning damage occurred in September of 2019, after the warranty expired.

IV. Conclusions of Law

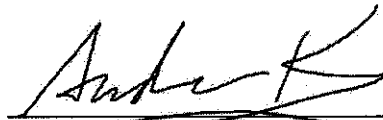
1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the 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. 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).

8. The Complainant's vehicle does not qualify for warranty repair. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
9. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

V. Order

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

SIGNED February 18, 2020



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