

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0008386 CAF**

DAWN HARRIS, Complainant	§ § § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
FOREST RIVER, INC., Respondent		

DECISION AND ORDER

Dawn Harris (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 her recreational vehicle (RV) manufactured by Forest River, Inc. (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that qualifies for repair relief.

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. On July 16, 2020, Order No. 3, dismissed the claims for repurchase and replacement relief, leaving only a claim for repair relief for consideration in this proceeding. The hearing in this case convened on August 10, 2020, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. Bradford Condit, attorney, represented the Complainant. DG Majors, 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

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“We find that this interpretation of the standard required for demonstrating substantial impairment is reasonable and consistent with the statute’s plain language which requires a showing of loss in market value. . . . [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).

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

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

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 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. TEX. OCC. CODE § 2301.606(c)(1).

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

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

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

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

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

nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law.”²¹ However, the parties may expressly or impliedly consent to 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 March 8, 2018, the Complainant, purchased a new 2018 Coachmen Prism 24EF from Ron Hoover Co. of Corpus Christi, an authorized dealer of the Respondent, in Corpus Christi, Texas. The Complainant took delivery on March 9, 2020. The vehicle had 2,085 miles on the odometer at the time of purchase. The vehicle’s limited warranty covers the body structure (the “house”) for one year or 12,000 miles, whichever occurs first.

be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

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

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).

On February 2, 2020, the Complainant provided a written notice of defect to the Respondent. On February 26, 2020, the Complainant filed a complaint with the Department alleging problems with: the complete electrical system, water leaks, generator, and steps.

In relevant part, the work orders reflect the following repair attempts:

Date	Issue
August 16, 2018	Battery connections, leveling jacks, generator, replace air vents
February 19, 2019	Front cap window gap, water coming through monitor panel, lights flickering, battery not holding charge, jacks not working
March 9, 2019	Loose wire harness, front cap window gap, gasket coming off
August 8, 2019	Generator will not work properly, jack motors not working, kitchen lights not working properly, batteries go dead fast, water leaks through ceiling vent,

During the walk-through before taking delivery, the Complainant and the dealer's service manager identified 38 defects to be addressed at a future service visit. Subsequently, the Complainant found additional issues but the dealer did not have an available appointment until April 16, 2018. On April 16, 2018, she returned the RV to the dealer for repair of multiple items including but not limited to: various lights malfunctioning, generator not working, batteries draining quickly, loose wire harness, and exterior gaps. On June 5, 2018, she retrieved her RV from the dealer but found malfunctions with the slideout, directional signal camera and bathroom lighting. She returned the RV to the dealer on June 6, 2018. When picking up the RV on July 12, 2018, she discovered that the batteries would not stay charged – all power was dead – and the leveling lights did not work. She returned the RV to the dealer on July 13, 2018. Use of a trickle charger did not fix the battery drain. On August 16, 2018, the Complainant returned the RV to Ron Hoover for, among other things, the battery issue and generator not staying on. On August 31, 2018, the Complainant picked up her RV. She returned the RV to the dealer on February 19, 2019, to address, in part, major leaks, electrical failures, lights not working, rain water flowing into walls, batteries draining, inoperable leveling lights on jacks, generator not working, batteries for generator will not hold a charge, and rain water leaking from roof vents, main board not working. On March 8, 2019, the Complainant picked-up her RV. On March 11, 2019, returning to Corpus Christi, the RV leaked substantial amounts of rain water from differing areas. On April 1, 2019, the Complainant returned the RV to the dealer. 14. On May 8, 2019, the Complainant picked up

the RV; however, on May 17, 2019, she discovered that dealer failed to stop the leaks. On June 4, 2019, the RV leaked when raining. On June 19, 2019, she brought the RV to the dealer to address, inter alia, the generator not working, leveling jack lights not working, rain water leaking inside, and steps not working. On August 8, 2019, the dealer picked-up the RV for repairs. When picking up the RV on November 12, 2019, the generator and steps would not work. On December 9, 2019, the Complainant returned the RV to the dealer. The dealer did not repair the generator and took the generator to an Onan dealer. On February 7, 2020, the Complainant picked up the RV. On February 8, 2020, she attempted to use the RV but the steps would not work.

The Complainant testified that she had not been using the RV, except to take it to the dealer. She explained that the steps would not go in, the generator would not work, and water leaked in. She noted that she kept the RV under a tarp because of water leaking. She described the electronics as completely soaked by water in the walls.

On cross-examination, the Complainant testified that she did not know about the Respondent's warranty. She explained that the dealer would repair the RV because of the defects, but with few charges for repair. She affirmed that she did not contact the Respondent in the first year of owning the vehicle. However, she called the Respondent regarding the RV's production date. The Complainant did not know what the owner's manual stated about replacing seals, but she pointed out that the seals were defective from the beginning. When purchased, the seals had holes and cracks. The dealer apparently discovered and fixed the seals. She explained that she never had a chance to do any seal maintenance herself. She estimated the RV had over 6,500 miles. She did not know the generator hours but elaborated that it had very few.

Upon clarification questions, the Complainant stated that she last noticed the electrical issues, water leaking, and generator not turning on in May of 2020. She noted that the steps were currently still out. She added that

C. Summary of Respondent's Evidence and Arguments

Michael Locke, owner relations manager, testified that the Respondent offered goodwill repairs even though the subject RV was out of warranty. He confirmed the vehicle was purchased on or before March 8, 2018. He acknowledged that the dealer, Ron Hoover, was not a part of the Respondent. Mr. Locke explained that the Respondent's warranty provided one year of coverage

of the house portion of the RV and did not cover every aspect of the vehicle, such as those excluded by the warranty. He stated that the allegation regarding the complete electrical system was too vague and the problem may be with the chassis. He confirmed that Mercedes-Benz USA warranted the chassis and the Respondent did not cover the generator, which was warranted by a separate company. Mr. Locke did not believe the evidence showed that the Complainant maintained the seals. The owner's manual specifies to inspect the seals every six months and to replace as needed. Cracks and movement out of place could cause leaks. He concurred that high winds and water could cause a leak. Mr. Locke testified that the Respondent had no record of the Complainant contacting it during the term of the warranty. In particular, the Respondent had no information about any attempted leak repairs at the dealership before the complaint. Mr. Locke affirmed that the notice of defect was the first time he heard from the Complainant.

On cross-examination, Mr. Locke confirmed that the dealer had not reported anything (about the subject RV) for 10 months. He explained that the gap (at the window) occurred after the warranty expired. He noted that wet electronics sometimes have problems and sometimes not.

D. Analysis

As explained below, the subject vehicle qualifies for repair relief of the water leak issues. However, as determined in Order No. 3, Granting Partial Dismissal, repurchase and replacement do not apply in this case.²⁷ Accordingly, only warranty repair relief will be addressed here.

1. Statutory Cause of Action

The causes of action in the Lemon Law and Warranty Performance Law are statutory in nature and differ from a breach of warranty under Texas common law. In this case, the Complainant argued that no express warranty applied because no warranty information was provided to the Complainant before purchasing the subject vehicle.²⁸ However, manufacturer's warranties under the Lemon Law and Warranty Performance Law differ from express warranties under the Uniform Commercial Code (UCC). The Texas Supreme Court explained, in relation to an express warranty under the UCC, that a breach of express warranty claim under Texas common

²⁷ Order No. 3, Granting Partial Dismissal (July 16, 2020). The Lemon Law complaint was untimely filed. The Lemon Law requires filing a complaint within six months of the warranty's expiration for repurchase and replacement relief.

²⁸ Dawn Harris' Response to Motion to Dismiss at 1 (July 3, 2020).

law requires reliance (i.e., the affirmation or promise must be part of the basis of the bargain).²⁹ The UCC as codified in the Texas Business and Commerce Code³⁰ provides that:

(a) Express warranties by the seller are created as follows:

- (1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
- (2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.
- (3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.³¹

However, Lemon Law and Warranty Performance Law claims have their own elements specified by the Legislature in the Texas Occupations Code. As an initial matter, § 2301.001 of the Texas Occupations Code provides that:

This chapter shall be liberally construed to accomplish its purposes, including the exercise of the state's police power to ensure a sound system of distributing and selling motor vehicles through:

- (1) licensing and regulating manufacturers, distributors, converters, and dealers of motor vehicles; and
- (2) enforcing this chapter as to other persons to provide for compliance with manufacturer's warranties and to prevent fraud, unfair practices, discrimination, impositions, or other abuse of the people of this state.³²

Accordingly, the Lemon Law and Warranty Performance Law must be liberally interpreted in favor of requiring compliance with manufacturer's warranties. Significantly, under the UCC, the seller makes express warranties. The UCC states that "'Seller' means a person who sells or contracts to sell goods."³³ However, in the context of retail motor vehicle sales, the dealer is the

²⁹ The Texas Supreme Court cited that "an express warranty is created when 'any affirmation of fact or promise [is] made by the seller to the buyer which relates to the goods and becomes part of the *basis of the bargain*.' TEX. BUS. & COM. CODE § 2.313(a)(1) (emphasis added). 'Basis of the bargain' loosely reflects the common-law express warranty requirement of reliance." *Compaq Computer Corp. v. Lapray*, 135 S.W.3d 657, 676-677 (Tex. 2004).

³⁰ TEX. BUS. & COM. CODE §§ 2.101-2.725.

³¹ TEX. BUS. & COM. CODE § 2.313.

³² TEX. OCC. CODE § 2301.001.

³³ TEX. BUS. & COM. CODE § 2.103.

seller but the manufacturer, converter, or distributor (collectively referred to as “manufacturer”) is the warrantor.³⁴ In contrast to the UCC, the Lemon Law and Warranty Performance Law address warranties made by a motor vehicle manufacturer and not a dealer (seller).³⁵ The Lemon Law specifies that any obligation to replace/repurchase, or repair a vehicle only pertains to a vehicle with “an applicable manufacturer’s, converter’s, or distributor’s express warranty.”³⁶ Similarly, the Warranty Performance Law specifies that any obligation to repair only pertains to “a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.”³⁷ A warranty in the context of the Lemon Law or Warranty Performance Law does not fit the definition of an express warranty (by a seller) under the UCC. Rather, “warranty” under the Lemon Law and Warranty Performance Law appears to refer to express assurances by a motor vehicle manufacturer regarding its vehicles. Unlike common law breach of warranty, neither the Lemon Law nor the Warranty Performance Law mention reliance by the buyer as a requirement for relief.

2. Warrantable Defect

To qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to have a defect covered by an express warranty (warrantable defect)³⁸ that continues to exist, even after repair.³⁹ In this case, the warranty generally states that:

Forest River Inc., 55470 CR 1, P.O. Box 3030, Elkhart, Indiana 46515-3030 (Warrantor) warrants to the ORIGINAL CONSUMER PURCHASER ONLY, when purchased from an authorized Forest River Inc. dealer, for a period of one (1) year or twelve thousand (12000) miles, whichever occurs first from the date of purchase (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.⁴⁰

³⁴ See TEX. OCC. CODE §§ 2301.601 and 2301.002.

³⁵ TEX. OCC. CODE §§ 2301.603 and 2301.604; TEX. OCC. CODE § 2301.204.

³⁶ TEX. OCC. CODE §§ 2301.603 and 2301.604.

³⁷ TEX. OCC. CODE § 2301.204.

³⁸ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204. Neither the Lemon Law nor Warranty Performance Law provide any relief for failing to conform to any implied warranties.

³⁹ TEX. OCC. CODE § 2301.605.

⁴⁰ Respondent’s Ex. 3, Limited Warranty Motorized Products.

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects) in the body structure.⁴¹ The warranty lasts for one year or 12,000 miles after purchase. The buyer's order is dated March 8, 2018. However, the Complainant took delivery on March 9, 2018. Under UCC § 2.106, "[a] 'sale' consists in the passing of title from the seller to the buyer for a price (Section 2.401)."⁴² Title to the vehicle passes to the buyer upon physical delivery of the vehicle.⁴³ Therefore, the warranty expired on March 9, 2019. Additionally, the warranty specifically excludes certain items from coverage:

Warrantor expressly disclaims any responsibility for damage to the unit where damage is due to condensation, normal wear and tear or exposure to elements. Warrantor makes no warranty with regard to, but not limited to, the chassis including without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, optional generators, routine maintenance, equipment and appliances, or audio and/or video equipment. Their respective manufacturers and suppliers may warrant some of these items. Warranty information with respect to these items is available from your dealer.

This recreational vehicle is designed solely for its intended purpose of recreational camping and personal use. Warrantor makes no warranty with regard to any recreational vehicle used for commercial, rental, or business purposes, or any recreational vehicle not registered and regularly used in the United States or Canada. For purposes of this limited warranty, it shall be deemed conclusive evidence of commercial, rental, or business purposes if the recreational vehicle is licensed, titled, registered, or insured in the name of any corporation, LLC, or any other form of business or commercial entity.⁴⁴

In the present case, the complaint identified four issues: problems with the electrical system, water leaks, generator and steps.

⁴¹ 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.").

⁴² TEX. BUS. & COM. CODE §§ 2.106.

⁴³ TEX. BUS. & COM. CODE § 2.401(b); *Vibbert v. Par, Inc.*, 224 S.W.3d 317, 322 (Tex. App.—El Paso 2006).

⁴⁴ Respondent's Ex. 3, Limited Warranty Motorized Products.

a. Electrical System

The evidence does not show that the alleged electrical system problem is more likely than not a warranted defect. The Department's rules require the complaint to "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."⁴⁵ The complaint in this case only described the electrical issue as "Complete electrical system." Further, the electrical concerns described in the work orders (e.g, light flickering, battery not holding a charge, jack malfunctions) appear as likely to arise from the chassis, battery, generator, or other unwarranted component as from a warranted condition of the house. In sum, a preponderance of the evidence does not show that the electrical system problem is a warranted defect.

b. Water Leaks

A preponderance of the evidence shows that the water leaks are warrantable defects that qualify for repair relief. Under the Lemon Law, a manufacturer has a continuing obligation to repair a defect after the warranty expires if the warrantable defect is reported to the manufacturer, manufacturer's agent or dealer before the warranty expired.⁴⁶ In this case, the warranty expired on March 9, 2019. Consequently, any issues reported by March 9, 2019, that continue to exist, qualify for repair relief. The evidence shows that the first report of water leaking occurred on or before February 19, 2019. Moreover, the record reflects that the first report of the gap in front cap window occurred on or before March 9, 2018 (the "in" date on the first work order is the same as the date of delivery). Consistent with the March 9, 2018 work order, the testimony reflects that defects in the seals existed at the time of purchase, apparently discovered during a pre-delivery inspection. Significantly, the existence of defects in the seal before the six-month inspection/maintenance time frame specified in the owner's manual, indicates that at least the initial seal defects did not result from a failure of owner maintenance. The last repairs occurred in 2019, but the RV continued to leak in May of 2020. Accordingly, the record in this case indicates that the water leak issues are more likely than not qualify for repair relief.

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

⁴⁶ TEX. OCC. CODE § 2301.603.

c. Generator

The warranty specifically excludes generators from coverage. Therefore, the generator issue cannot support any relief.

d. Steps

The record reflects that the steps are not a warranted item. Rather, the steps, the step sensor in particular, appear to be a third-party manufactured component not covered by the Respondent's warranty. Accordingly, the malfunctioning steps do not support any relief.

III. Findings of Fact

1. On March 8, 2018, the Complainant, purchased a new 2018 Coachmen Prism 24EF from Ron Hoover Co. of Corpus Christi, an authorized dealer of the Respondent, in Corpus Christi, Texas. The Complainant took delivery on March 9, 2020. The vehicle had 2,085 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty covers the body structure for one year or 12,000 miles, whichever occurs first.
3. In relevant part, the work orders reflect the following repair attempts:

Date	Issue
March 9, 2018	Loose wire harness, chassis windshield gap, front cap window gap, gasket coming off
August 16, 2018	Battery connections, leveling jacks, generator, replace air vents
February 19, 2019	Front cap window gap, water coming through monitor panel, lights flickering, battery not holding charge, jacks not working
August 8, 2019	Generator will not work properly, jack motors not working, kitchen lights not working properly, batteries go dead fast, water leaks through ceiling vent,
December 9, 2019	Generator shutting down

4. On February 2, 2020, the Complainant provided a written notice of defect to the Respondent.
5. On February 26, 2020, the Complainant filed a complaint with the Department alleging problems with: the complete electrical system, water leaks, generator, and steps.

6. On May 4, 2020, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the factual matters asserted.
7. The hearing in this case convened on August 10, 2020, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. Bradford Condit, attorney, represented the Complainant. DG Majors, attorney, represented the Respondent.
8. The vehicle's odometer displayed over 6,500 miles at the time of the hearing.
9. The warranty expired on March 9, 2019.
10. The first report of water leaking occurred on or before February 19, 2019.
11. The first report of the gap in front cap window occurred on or before March 9, 2018 (the "in" date on the first work order is the same as the date of delivery).
12. Consistent with the March 9, 2018 work order, the testimony reflects that defects in the seals existed at the time of purchase, apparently discovered during a pre-delivery inspection.
13. The existence of defects in the seal before the six-month inspection/maintenance time frame specified in the owner's manual, indicates that at least the initial seal defects did not result from a failure of owner maintenance.
14. The RV continued to leak in May of 2020.

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 timely file the complaint for repurchase or replacement relief. The proceeding must have been commenced not later than six months after the earliest of: (1) the expiration date of the express warranty term; or (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner. TEX. OCC. CODE § 2301.606(d).
7. The Complainant does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
8. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
9. The Complainant's vehicle qualifies for warranty repair. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainant or an agent of the Complainant notified the Respondent or Respondent's agent of the alleged defect(s). TEX. OCC. CODE §§ 2301.204 and 43 TEX. ADMIN. CODE § 215.202(b)(3).
10. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.
11. The Respondent has a continuing obligation after the expiration date of the warranty to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's designated agent or franchised dealer before the warranty expired. TEX. OCC. CODE § 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the subject vehicle to the applicable warranty; specifically, the Respondent shall resolve the following issues: water leaks generally, and in particular, the gap in the front cap window. Upon this Order becoming final under Texas Government Code § 2001.144:⁴⁷ (1) the Complainant shall deliver the vehicle to the Respondent within 20 days; and (2) the Respondent shall complete the repair of the vehicle within **60 days** after receiving it. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED October 16, 2020



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

⁴⁷ This Order does not become final on the date this Order is signed, instead: (1) this Order becomes final if a party does not file a motion for rehearing within 25 days after the date this Order is signed, or (2) if a party files a motion for rehearing within 25 days after the date this Order is signed, this Order becomes final when: (A) an order overruling the motion for rehearing is signed, or (B) the Department has not acted on the motion within 55 days after the date this Order is signed. Accordingly, this Order cannot become final (1) while a motion for rehearing remains pending; or (2) after the grant of a motion for rehearing.