

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0001687 CAF**

SUZANNE LEE, Complainant	§	BEFORE THE OFFICE
	§	
v.	§	OF
	§	
DRV, LLC, Respondent	§	ADMINISTRATIVE HEARINGS
	§	

DECISION AND ORDER

Suzanne Lee (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 DRV, LLC (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that qualifies for repurchase 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. The hearing in this case convened on April 20, 2021, in Fort Worth, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented herself. David Partin, Consumer Affairs Manager, represented the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.² 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.”³ 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.⁴ 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.⁵

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

² TEX. OCC. CODE § 2301.603.

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.604(a).

⁵ TEX. OCC. CODE § 2301.601(4).

vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁶

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.”⁷

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.⁸

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

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

⁷ *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.”).

⁸ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

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.¹⁰

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.¹¹

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.¹² 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.¹³

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;¹⁴ (2) the respondent was given an opportunity to cure the defect or

⁹ TEX. OCC. CODE § 2301.605(a)(2).

¹⁰ TEX. OCC. CODE § 2301.605(a)(3).

¹¹ TEX. OCC. CODE § 2301.605(c).

¹² *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.’”).

¹³ *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.”).

¹⁴ 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 satisfies the requirement to provide notice of the defect or nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).

nonconformity;¹⁵ and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.¹⁶

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.¹⁷ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”¹⁸

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁹ 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.²⁰ Accordingly, the Complainant cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely.

¹⁵ TEX. OCC. CODE § 2301.606(c)(2). A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer may satisfy the opportunity to cure requirement when the respondent authorizes 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. A respondent forgoes its opportunity to repair by replying to a written notice of defect with a settlement offer instead of arranging a repair attempt. *Id* at 2.

¹⁶ TEX. OCC. CODE § 2301.606(d)(2).

¹⁷ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁸ TEX. OCC. CODE § 2301.603(a).

¹⁹ 43 TEX. ADMIN. CODE § 215.66(d).

²⁰ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

4. The Complaint Identifies the Relevant Issues in this Case

The complaint identifies the relevant issues to address in this case.²¹ The complaint must state “sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law.”²² However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.²³ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²⁴ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.²⁵

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.²⁶ 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

²¹ “In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case.” TEX. GOV’T CODE § 2001.051; “Notice of a hearing in a contested case must include . . . either: (A) a short, plain statement of the factual matters asserted; or (B) an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.” 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.”).

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

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

²⁴ *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

²⁵ *See* TEX. GOV’T CODE §§ 2001.141(b)-(c), 2001.051-2001.052; TEX. R. CIV. P. 301.

²⁶ TEX. OCC. CODE § 2301.604.

or similar written documents).²⁷ However, the Department’s rules expressly exclude compensation for “any interest, finance charge, or insurance premiums.”²⁸

B. Summary of Complainant’s Evidence and Arguments

On July 5, 2020, the Complainant, purchased a new 2020 Mobile Suites 40KSSB4 from Explore USA RV Supercenter, an authorized dealer of the Respondent, in Mesquite, Texas. The Complainant went to the dealer on June 30, 2020, to purchase an RV. However, the subject RV had to be transported from a different location, so the Complainant did not execute the buyer’s order until July 5, 2020. The Complainant took delivery on July 25, 2020, after the installation of dealer added options. The vehicle’s limited warranty covers defects in material and/or workmanship for one year and covers structural defects in material and/or workmanship for three years. On October 5, 2020, the Complainant provided a written notice of defect to the Respondent. On October 5, 2020, the Complainant filed a complaint with the Department alleging that: a slideout came out while driving; the slideout coming out tore off the top cover (awning); the kitchen slideout leaked; and a trim piece broke. In relevant part, the Complainant took the vehicle for repair of the alleged issues as follows:

Date	Issue
08/01/2020 08/21/2020	Slideout awning replacement, kitchen slideout leaking, trim fell off, slideout kicks out
08/22/2020 10/03/2020	Slideout topper ripped off, slideout kicking out in transit,
10/3/2020 11/09/2020	[no work order]
11/19/2020 02/08/2021	Slides/jacks creep, replace toppers, kitchen slideout leaks
02/12/2021 03/03/2021	[no work order]

The Complainant testified that both rear slideouts had come out (while driving) and a front jack came down and another jack leaked hydraulic fluid. She elaborated that the slideouts would come out two or three inches. She added that a jack was down on the morning of the hearing. She affirmed that the jack issues were not included in the complaint. She believed that the trim piece

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

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

was successfully repaired. The Complainant stated the RV had three repair visits to the dealer and two repair visits to the manufacturer. While waiting to take the RV to the dealer, a slideout leaked during a hard rain but the leak could not be located. The Complainant described that the slideout awnings (toppers) added by the dealer ripped every time (the slideouts opened). The dealer had incorrectly installed the awnings the first three times. The Complainant last noticed the slideout issue on October 3, 2020, returning from the third repair visit to the dealer. Also, she last noticed the awnings/toppers were torn on October 3, 2020. However, the current set of awnings were undamaged. Originally, the slideout ripped the awnings on July 25, 2020. The leak at the kitchen slide first occurred the week of July 25, 2020, through August 1, 2020. The slide leaked every day when raining for two three days. Mr. Lee estimated that more than a cup but less than a gallon leaked in. The Complainant did not believe the slide leaked after replacement of a rubber strip on top of the slide at the first visit to the manufacturer. The Complainant pointed out that the dealer did not provide a work order for one of the visits. She recalled that the dealer had the RV for 20 days for the first repair visit, 42 days for the second repair visit, and 46 days elapsed from the start of the third repair visit to when the RV was transported to the Respondent. The RV was transported to the Respondent sometime between November 9, 2020, and November 19, 2020. The RV was returned to the Complainant on February 8, 2021, after 81 days with the Respondent. The RV came back with water inside, which the Complainant believed was a different issue, from water coming from the wheel well, since the carpet was wet above the wheels. After about a week, the RV was transported back to the Respondent. The Complainant added that the dealer represented that the Respondent was involved at that time but the Respondent had no knowledge. The RV would have additional problems from each repair visit to the dealer and the dealer allowed the RV to sit for weeks without attempting any repairs. Further, the dealer had installed three sets of slideout toppers/awnings in the wrong place. The first repair visit to the Respondent, the Respondent found two previously unknown leaks. Upon clarification questions, the Complainant confirmed that the purchase price included the dealer added options.

C. Inspection

Inspection of the RV revealed a hole in the metal under rear curbside slideout.

D. Summary of Respondent's Evidence and Arguments

Mr. Partin testified that he warranty did not cover anything added after manufacture (the slideout awnings). The improperly installed awnings caused the slideouts not to operate properly and may have contributed to the slideout leak. Respondent installed items to address the slideout leak. Slideouts creeping out were found to be low on fluid and had small leaks, which the Respondent repaired. Mr. Partin concluded that to the best of his knowledge, these issues were resolved. On cross-examination, Mr. Partin stated that they inspected the seals but did not know if the technician saw the hole (under the slideout). The RV was dry when the Respondent received it and the seals themselves had no issues.

E. Analysis

A preponderance of the evidence shows that the subject RV qualifies for relief. 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)²⁹ that continues to exist, even after repair.³⁰ The Lemon Law does not require that a respondent provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. The Lemon Law only requires a respondent to conform its vehicles to whatever coverage the warranty provides. In part, the subject vehicle's warranty states that:

The DRV One (1) Year Limited Warranty covers defects in material and/or workmanship supplied and attributable to DRV in the construction of the recreational vehicle for a period of one (1) year. The warranty coverage starts, and begins to run, from the date of the original retail purchase.

...

The DRV Three (3) Year Limited Structural Warranty covers substantial defects in material and/or workmanship supplied and attributable to DRV in the construction and assembly of the "structural" (as defined below) portions of the recreational vehicle, arising under normal use and service to the structural components. The warranty coverage starts, and begins to run, from the date of the original retail purchase and covers only those defects in structural components that are discovered and reported during the three (3) years from date of purchase.

- a. "Structural" portions of the recreational vehicle consist of: (a) exterior sidewalls, laminated or non-laminated, including fiberglass and wall studs; (b) floors, laminated or non-laminated including decking and floor joists;

²⁹ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

³⁰ TEX. OCC. CODE § 2301.605.

(c) roofs, laminated or non-laminated, including decking and roof rafters; and, (d) slide out box exterior sidewalls; end walls; roofs; floors; skeletal framing; decking; and, roof material installation.

- b. This Warranty does not cover: front and rear fiberglass caps and any other cosmetic fiberglass attachments; aluminum siding (unless the root cause is the wall structure); exterior roof material (EPDM rubber, TPO, etc.); floor covering (carpet, linoleum, hardwood, tile, etc.); all sidewall, end wall, front and rear wall, roof and floor attachments; cosmetic issues; damage from water leaks not attributable to a defect; and, delamination caused by water intrusion from lack of required exterior seal maintenance as outlined in the Maintenance Schedule included in the Owner's Manual.³¹

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³² A manufacturing defect is generally an isolated aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Manufacturing defects exist when the vehicle leaves the manufacturing plant. Unlike manufacturing defects, issues that do not arise from manufacturing, such as the vehicle's design characteristics (which exist before manufacturing) or dealer negligence (which occur after manufacturing), are not warrantable defects. In sum, the warranty only covers manufacturing defects and the Lemon Law does not apply to design characteristics or design defects. Additionally, the warranty specifically excludes certain items, including, among others: "Accessories and equipment added or changed after the recreational vehicle leaves the factory"; "Damage or loss caused in whole or in part by misuse, abuse, neglect, off-road use, collision, fire, explosions, theft vandalism, accident, improper customer or dealer installation, improper stowing of equipment, overloading or improper balancing of the load, low or high voltage, or unauthorized repair"; and "Equipment, products, components, appliances, or accessories covered by their own manufacturer's warranty including, by way of example, the microwave, refrigerator, ice maker,

³¹ Respondent's Ex. 2, DRV, LLC, Limited Warranties for United States and Canada.

³² 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.").

stove, oven generator, frame, batteries, tires, roof air conditioners, water heater, furnace, washer, dryer, inverter, DVD players, televisions, stereo, radio, compact disc player, vacuum cleaners, power converters, and other items not specifically manufactured by DRV.” Even if the warranty covers the alleged defect, the Complainant must still comply with the notice and opportunity to cure requirements for Lemon Law relief and complaint requirements for Warranty Performance relief as specified in the discussion of applicable law.

1. Slideout Opening While Driving

The warranty excludes the slideout opening issue from coverage. The evidence shows that a third party, Lippert, manufactured the slideout mechanisms in the two slideouts that open while driving. However, the warranty expressly excludes components not manufactured by the Respondent. Consequently, the slideout opening issue cannot support any relief.

2. Torn Slideout Awnings/Toppers

The awning/topper issue does not support any relief, since the warranty excludes accessories and equipment added after the RV left the factory. Further, the dealer’s improper installation of the awnings is not a manufacturing defect. Additionally, the record reflects that the awnings have remained intact after installation by the Respondent.

3. Kitchen Slideout Leak.

Testimony shows that the leak at the kitchen slideout stopped after replacement of a rubber seal. However, to qualify for relief, the defect must continue to exist.

4. Broken Trim

The record shows that the broken trim was successfully repaired and not a currently existing defect that may qualify for relief.

5. Leveling Jacks

Ordinarily, an issue must be included in the complaint to be considered at the hearing. However, the Respondent did not object, so this issue may be addressed. As with the slideout opening issue, the warranty excludes components manufactured by third parties. In this case, Lippert manufactured the leveling jacks, so the warranty provides no coverage for the leveling jack issues.

6. Leak Over Wheel Well

The complaint did not specify the new issue of the leak over the wheel well. However, the Respondent did not object so this issue it may be addressed here. The evidence shows that the RV returned from a repair attempt with the carpet wet. The Complainant addressed the water intrusion in an e-mail thread with Mr. Partin. After discussion with Mr. Brandon Fish, Service & Warranty Manager, the Respondent reduced the issues into a work order including “Rear carpet damp”. The Complainant testified the water may have come from the wheel well due to the proximity of the wet carpet to the wheel well. Significantly, the inspection at the hearing revealed a hole in the metal under the rear curbside slideout, in the wheel well area. Accordingly, a preponderance of the evidence shows that this instance of leaking arises from a warrantable defect. Under the Department’s reasonable prospective purchaser standard, the leak substantially impairs the value of the subject RV.

III. Findings of Fact

1. On July 5, 2020, the Complainant, purchased a new 2020 Mobile Suites 40KSSB4 from Explore USA RV Supercenter, an authorized dealer of the Respondent, in Mesquite, Texas. The Complainant went to the dealer on June 30, 2020, to purchase an RV. However, the subject RV had to be transported from a different location, so the Complainant did not execute the buyer’s order until July 5, 2020. The Complainant took delivery on July 25, 2020, after the installation of dealer added options.

2. The vehicle’s limited warranty covers defects in material and/or workmanship for one year and covers structural defects in material and/or workmanship for three years.

3. In part, the subject vehicle’s warranty states that:

The DRV One (1) Year Limited Warranty covers defects in material and/or workmanship supplied and attributable to DRV in the construction of the recreational vehicle for a period of one (1) year. The warranty coverage starts, and begins to run, from the date of the original retail purchase.

...

The DRV Three (3) Year Limited Structural Warranty covers substantial defects in material and/or workmanship supplied and attributable to DRV in the construction and assembly of the “structural” (as defined below) portions of the recreational vehicle, arising under normal use and service to the structural components. The

warranty coverage starts, and begins to run, from the date of the original retail purchase and covers only those defects in structural components that are discovered and reported during the three (3) years from date of purchase.

- a. “Structural” portions of the recreational vehicle consist of: (a) exterior sidewalls, laminated or non-laminated, including fiberglass and wall studs; (b) floors, laminated or non-laminated including decking and floor joists; (c) roofs, laminated or non-laminated, including decking and roof rafters; and, (d) slide out box exterior sidewalls; end walls; roofs; floors; skeletal framing; decking; and, roof material installation.
 - b. This Warranty does not cover: front and rear fiberglass caps and any other cosmetic fiberglass attachments; aluminum siding (unless the root cause is the wall structure); exterior roof material (EPDM rubber, TPO, etc.); floor covering (carpet, linoleum, hardwood, tile, etc.); all sidewall, end wall, front and rear wall, roof and floor attachments; cosmetic issues; damage from water leaks not attributable to a defect; and, delamination caused by water intrusion from lack of required exterior seal maintenance as outlined in the Maintenance Schedule included in the Owner’s Manual.
4. Additionally, the warranty specifically excludes certain items, including, among others: “Accessories and equipment added or changed after the recreational vehicle leaves the factory”; “Damage or loss caused in whole or in part by misuse , abuse, neglect, off-road use, collision, fire, explosions, theft vandalism, accident, improper customer or dealer installation, improper stowing of equipment, overloading or improper balancing of the load, low or high voltage, or unauthorized repair”; and “Equipment, products, components, appliances, or accessories covered by their own manufacturer’s warranty including, by way of example, the microwave, refrigerator, ice maker, stove, oven generator, frame, batteries, tires, roof air conditioners, water heater, furnace, washer, dryer, inverter, DVD players, televisions, stereo, radio, compact disc player, vacuum cleaners, power converters, and other items not specifically manufactured by DRV.”
5. The Complainant took the vehicle for repair as shown below:

Date	Issue
08/01/2020 08//21/2020	Slideout awning replacement, kitchen slideout leaking, trim fell off, slideout kicks out
08/22/2020 10/03/2020	Slideout topper ripped off, slideout kicking out in transit,
10/3/2020 11/09/2020	[no work order]
11/19/2020 02/08/2021	Slides/jacks creep, replace toppers, kitchen slideout leaks, damp carpet
02/12/2021 03/03/2021	[no work order]

6. On October 5, 2020, the Complainant provided a written notice of defect to the Respondent.
7. On October 5, 2020, the Complainant filed a complaint with the Department alleging that: a slideout came out while driving; the slideout coming out tore off the top cover (awning); the kitchen slideout leaked; and a trim piece broke.
8. On December 23, 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.
9. The hearing in this case convened on April 20, 2021, in Fort Worth, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented herself. David Partin, Consumer Affairs Manager, represented the Respondent.
10. The vehicle's warranty was in effect at the time of the hearing.
11. Inspection of the vehicle at the hearing revealed a hole in the metal under rear curb side slideout.
12. The carpet dampness by the wheel well area more likely than not resulted from a manufacturing defect, specifically a hole, under the rear curbside slideout.
13. The Complainant addressed the water intrusion in an e-mail thread with Mr. Partin. After discussion with Mr. Brandon Fish, Service & Warranty Manager, the Respondent reduced the issues into a work order including "Rear carpet damp."

14. Lippert, a third party, manufactured the leveling jacks and the mechanisms of the rear slideouts.
15. The dealer installed the slideout awnings to the subject RV, after the RV left the factory.
16. The kitchen slideout leak and broken trim were successfully repaired.

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 provided sufficient notice of the alleged defect (leak by the wheel well area) to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
7. The Respondent had an opportunity to cure the alleged defect. TEX. OCC. CODE § 2301.606(c)(2).
8. The Complainant timely filed the complaint commencing this proceeding. TEX. OCC. CODE § 2301.606(d).
9. The Complainant's vehicle qualifies for replacement or repurchase. A warrantable defect that substantially impairs the use or market value of the vehicle continues to exist after a reasonable number of repair attempts. TEX. OCC. CODE § 2301.604(a).

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 repurchase calculations are as follows:

Purchase price, including tax, title, license & registration	\$137,918.58
Date of delivery	07/25/20
Date of first report of defective condition	08/01/20
Date of hearing	04/20/21
Days out of service	189
Useful life determination	3,650

Purchase price, including tax, title, license & registration				\$137,918.58
<i>Unimpaired Days:</i> Date of first report of defective condition less date of delivery	08/01/20	-	07/25/20	= 7
<i>Impaired Days:</i> Date of hearing less date of first report of defective condition	04/20/21	-	08/01/20	= 262
Less days out of service for repair				<u>-189</u>
				73
<i>Reasonable Allowance for Use Calculations:</i> Unimpaired days	7	÷	3,650	× \$137,918.58 = \$264.50
Impaired days	73	÷	3,650	× \$137,918.58 × 50% = <u>\$1,379.19</u>
Total reasonable allowance for use deduction				\$1,643.69
Purchase price, including tax, title, license & registration				\$137,918.58
Less reasonable allowance for use deduction				<u>-\$1,643.69</u>
Plus filing fee refund				\$35.00
Plus incidental expenses				<u>\$0.00</u>
TOTAL REPURCHASE AMOUNT				\$136,309.89

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 **GRANTED**. It is further **ORDERED** that the Respondent shall repair the warrantable defect(s) in the reacquired vehicle identified in this Order. **IT IS THEREFORE ORDERED** that:

1. The Respondent shall accept the return of the vehicle from the Complainant. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond

ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;

2. The Respondent shall repurchase the subject vehicle in the amount of **\$136,309.89**. The refund shall be paid to the Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to the Respondent, then the full refund shall be paid to the Complainant. At the time of the return, the Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, the Complainant is responsible for providing the Respondent with clear title to the vehicle;
3. The parties shall complete the return and repurchase of the subject vehicle within **20 days** after the date this Order becomes final under Texas Government Code § 2001.144.³³ However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to the Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by the Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and

³³ 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.

6. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 days of the transfer.

SIGNED July 1, 2021



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