

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 12-0012402 CAF**

JOHN and RHONDA THOMPSON, Complainants	§ § § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
JAYCO, INC., Respondent		

DECISION AND ORDER

John and Rhonda Thompson (Complainants) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in their vehicle manufactured by Jayco, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle currently has a warranted defect as identified in the complaint. Further, the non-complaint issues do not comply with the requirements for relief. 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 October 5, 2021, in Carrollton, Texas, before Hearings Examiner Andrew Kang, and the record closed on October 21, 2021. The Complainants, represented themselves. Phil Houser, Consumer Affairs Manager, appearing telephonically, 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

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).

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

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

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.”).

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

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”; the vehicle owner provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty's expiration; and the owner filed a complaint with the Department specifying the defect.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

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).

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).

Complainant cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely.

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

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.

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).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 October 9, 2020, the Complainants, purchased a new 2021, Jayco Redhawk from Gander RV Sales, an authorized dealer of the Respondent, in Mesquite, Texas. The vehicle had 1,540 miles on the odometer at the time of purchase. The vehicle’s limited warranty generally provides coverage for two years or 24,000 miles, whichever occurs first, and provides structural component coverage for three years.

On June 6, 2021, the Complainants filed a complaint with the Department alleging that the passenger door did not fit properly and allowed wind, air, and noise into the vehicle. The vehicle also had issues with the slide-out bed refusing to move, the refrigerator not working, tears in the seat covers, and small structural trim issues. On or about June 10, 2021, the Department provided a written notice of the complaint defects to the Respondent.

In part, the Complainants took the vehicle to a dealer for repair issues as follows:

Date	Miles	Issue
10/10/2020	1,140	Toilet and bathroom shower are leaking.
11/20/2020	1,165	Table cushion is torn.
11/30/2020	1,404	Passenger door is not aligned properly.
04/19/2021	4,200	Passenger door has a gap. The table cushion needs to be replaced. The bed slide-out keeps binding up and stops. There is some lose trim.
08/06/2021	6,306	Power issues under the hood. Awning arms stick when extending. Radio doesn’t pick up channels because the antenna has been cut. Back up camera does not work. The bed slide-out is still not working. The muffler pipe has fallen. The TV is not getting any channels. The dinette slide-out gasket is bunched up. The bathroom faucet is rusty.

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

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

The passenger door was successfully repaired prior to the hearing as well as the seat covers, interior trim, and the refrigerator. The sticking bed slide-out remained unresolved. Mr. Thompson added that the muffler bolt was missing, the rearview camera worked intermittently, the radio antenna was clipped at the factory and did not pick up a signal properly, the HD amplifier for the TV did not work, the bathroom sink faucet was corroded, the grey water pipe leaked, exterior trim around the window needed repair, and the awning did not open properly.

Mr. Thompson described the issue with the bed slide-out. He explained that the bed slide-out would move a few inches, skew sideways, and gets stuck. He further explained that to reset the system, he would have to remove all the drawers to reach the system. He stated that it took about 30 minutes to open fully. He noted that when the slide was out, the vehicle could not be driven. He claimed that he first noticed the issue on March 25, 2021, and he most recently noticed the issue on September 27, 2021.

Mr. Thompson testified that the refrigerator did not cool. He most recently noticed the issue on March 28, 2021. He stated that the refrigerator was working by the time they got home.

Mr. Thompson explained he noticed the muffler almost dragging on the ground on June 30, 2021. He explained that he temporarily fixed it with a gear clamp but it was still broken. He explained that the rearview camera would show no signal and he could not reset it. He mentioned that it would turn on and off by itself. He stated he first noticed the refrigerator issue on June 29, 2021, and he most recently noticed the issue on the day of the hearing.

Mr. Thompson commented that he noticed the antenna was clipped on June 17, 2021. He explained that the HD amplifier for the TV would show a light but would not receive a signal while at a campground. He pointed out that it was installed upside down and believed that it may have been wired backwards. He first noticed the issue on June 17, 2021, and he most recently noticed that it was not working on September 27, 2021.

Mr. Thompson described the bathroom faucet corrosion as small dots that looked like paint splatter. He stated that he first noticed the issue on July 2, 2021. He explained that the leak in the grey water pipe came from a joint. He first noticed this issue on November 10, 2020, and most recently noticed the issue on July 2, 2021.

Mr. Thompson explained that the exterior window trim was missing the gasket around the dining room window and water entered when raining. He stated that he first noticed the missing gasket on June 15, 2021, and it was still missing. He mentioned that the amount of water that leaked in was about the size of a silver dollar. He described that the awning would unroll but the arms would not extend unless he hit the arms. He first noticed this issue around July 5, 2021, and he most recently noticed the issue on September 27, 2021.

Mrs. Thompson testified that the issues impacted their ability to use the vehicle to sight see. She stated that it was their vehicle as well as a place to stay when they traveled. Mr. Thompson explained that they would probably have to cancel a trip they had planned. Mr. Thompson added that she had no confidence in the vehicle. Mrs. Thompson expressed a preference for repurchase of the vehicle.

On cross-examination, Mr. Thompson confirmed that the work orders represented the actual issues with the vehicle. He noted that the dealership had ordered parts to fix the hanging muffler. Mr. Thompson stated that he gave the dealership the list of items that needed repair on August 6, 2021. Mr. Thompson stated that they were without their vehicle for a total of about sixty days.

C. Inspection

The vehicle's odometer displayed 6,453 miles at the time of the hearing. During the inspection, the bed slide-out did not open properly. The slide-out would not move out straight and it would get caught. The sink had noticeable corrosion, especially by the handles. The backup camera screen displayed a blue screen with a "no signal" message with the RV's main power switch turned on or off. The muffler was loose and held up by a small temporary clamp. The awning unrolled the canvas but the arms did not extend until Mr. Thompson hit them. The exterior window trim had a little less than an inch gap visible. The antenna was cut off at the top and was not the full length. There was no water in the grey water tank so the leak was not observed during the inspection.

D. Summary of Respondent's Evidence and Arguments

Mr. Houser testified that to the best of his knowledge, everything needed for the vehicle repair has arrived. He testified that his records only showed that one repair attempt has occurred for each of the issues except for the slide-out.

In response, Mr. Thompson explained that there were multiple attempts to repair the slide-out issue that occurred without the vehicle leaving the lot. Mr. Thompson also stated that he believed that the dealership was just going to attempt the same repair that had already been attempted. Mr. Houser responded that he believed that the dealership previously replaced one motor and the other motor was currently acting up, so it was a different repair.

Mr. Houser testified that Lippert Components manufactured the slide-out motor and wiring harnesses. He established that Norcold manufactured the refrigerator. He explained that the rearview camera was not made in house. He claimed that the rearview camera, the wiring for the camera, and the TV amplifier were supplied by the same company but he did not know the manufacturer. He reported that he did not know who manufactured the bathroom faucet but he affirmed that the faucet would have its own warranty from its manufacturer. He believed that the awning was manufactured by Carefree.

Mr. Houser claimed that he did not believe that the Complainants had given the Respondent an adequate number of repair attempts to fix the vehicle. He also stated that many issues that the Complainants listed were covered by different warranties provided by the manufacturers of those specific items.

E. Analysis

As an initial matter, to qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to have a defect covered by the Respondent's warranty (warrantable defect)²⁹ that continues to exist, even after repair.³⁰ In part, the warranty generally states that:

THIS LIMITED WARRANTY COVERS:

...

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

³⁰ TEX. OCC. CODE § 2301.605.

- Only those portions of the Motorhome not excluded under the section “What is Not Covered”;
- . . .
- Only defects in workmanship performed and/or materials used to assemble those portions of the Motorhome not excluded under the section “What is Not Covered”.³¹

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³² Additionally, the warranty specifies the following exclusions from coverage:

WHAT IS NOT COVERED:

- Equipment and appliances installed after the Motorhome is assembled by Jayco;
- . . .
- Damage caused by accident, whether or not foreseeable;
- . . .
- Any component, system or part warranted by another entity. Examples are: the automotive chassis, (including the power train, steering, handling, braking, wheel balance, muffler, tires, tubes, batteries and gauges); generator; awning; inverter; converter; microwave; television; DVD/CD player; radio; speakers; television; refrigerator; range; water heater;[] water pump; stove; carbon monoxide detector; smoke detector: propane detector; furnace; and, any air conditioner. The written warranty provided by the manufacturer of the component part is the direct and exclusive responsibility of that manufacturer).³³

In the present case, the complaint identified the following issues: passenger door not fitting properly; the bed slide-out refusing to move; the refrigerator not working; tears in the seat covers; and small structural trim issues. The record shows that the passenger door, seat cover, interior trim,

³¹ Complainant’s Ex. 3, Warranty.

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.”).

³³ Complainant’s Ex. 3, Warranty.

and refrigerator issues were successfully resolved prior to the hearing, so they do not need to be addressed here. However, the bed slide-out issue remained. In addition, the Complainants raised other issues at the hearing not included in the complaint: missing muffler bolt, backup camera working intermittently, clipped radio antenna, HD TV amplifier not working, faucet corrosion, grey water pipe leaks, exterior window trim needing repair, and awning not opening properly. Ordinarily, the issues that may be addressed are limited to the complaint. However, the Respondent did not object to these additional issues, so they may be addressed here.

1. Bed Slide-Out

The evidence shows that a third-party, Lippert Components, manufactured the slide-out mechanism in the complained of bed slide-out. However, the warranty expressly excludes such components from coverage. Further, the record Accordingly, the record does not show that the bed slide-out issue is more likely than not a warrantable defect that qualifies for Lemon Law relief.

2. Issues Not Included in the Complaint

The remaining issues, relating to the muffler bolt, backup camera, radio antenna, HD TV amplifier, faucet, grey water pipe, exterior window trim, and awning, which were not included in the complaint, do not comply with the requirements for relief. As explained in the discussion of applicable law, the Lemon Law prohibits granting repurchase or replacement without a written notice of the defects provided to the Respondent. However, the evidence does not show that notice of the non-complaint issues was provided to the Respondent. As a result, these issues cannot support repurchase or replacement. Even if an issue does not qualify for repurchase/replacement relief, an issue may still support repair relief. However, repair relief requires the complaint to specify the warranted defects. In this case, the complaint did not address the muffler bolt, backup camera, radio antenna, HD TV amplifier, faucet, grey water pipe, exterior window trim, or the awning. Consequently, these issues also do not qualify for repair relief.

III. Findings of Fact

1. On October 9, 2020, the Complainants, purchased a new 2021, Jayco Redhawk from Gander RV Sales, an authorized dealer of the Respondent, in Mesquite, Texas. The vehicle had 1,540 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty generally provides coverage for two years or 24,000 miles, whichever occurs first, and provides structural component coverage for three years.
3. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
10/10/2020	1,140	Toilet and bathroom shower are leaking.
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4. On June 6, 2021, the Complainants filed a complaint with the Department alleging that the passenger door is not fitted properly and allows wind, air, and noise into the vehicle. The vehicle also had issues with the slide-out bed refusing to move, the refrigerator not working, tears in the seat covers, and small structural trim issues.
5. On or about June 10, 2021, the Department provided a written notice of the complaint defects to the Respondent.
6. On August 24, 2021, 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 October 5, 2021, in Carrollton, Texas, before Hearings Examiner Andrew Kang, and the record closed on October 21, 2021. The Complainants, represented themselves. Phil Houser, Consumer Affairs Manager, appeared telephonically and represented the Respondent.
8. The vehicle's odometer displayed 6,453 miles at the time of the hearing.
9. The vehicle's warranty was in effect at the time of the hearing.
10. During the inspection, the bed slide-out did not open properly. The slide-out would not move out straight and it would get caught. The sink had noticeable corrosion, especially by the handles. The backup camera screen displayed a blue screen with a "no signal" message with the RV's main power switch turned on or off. The muffler was loose and held up by a small temporary clamp. The awning unrolled the canvas but the arms did not extend until Mr. Thompson hit them. The exterior window trim had a little less than an inch gap visible. The antenna was cut off at the top and was not the full length. There was no water in the grey water tank so the leak was not observed during the inspection.
11. The Respondent did not receive written notice of the muffler bolt, backup camera, radio antenna, HD TV amplifier, faucet, grey water pipe, exterior window trim, or awning issues.
12. The complaint did not include the muffler bolt, backup camera, radio antenna, HD TV amplifier, faucet, grey water pipe, exterior window trim, or awning issues.

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 bed slide-out issue does not support replacement or repurchase relief. The Complainant did not prove that the bed slide-out has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).
7. The muffler bolt, backup camera, radio antenna, HD TV amplifier, faucet, grey water pipe, exterior window trim, and awning issues do not support for replacement or repurchase. The Complainant or a person on behalf of the Complainant did not provide sufficient notice of these alleged defects to the Respondent. This Order may not require repurchase or replacement of the vehicle without written notice of the defect/nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
8. The Complainant does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
9. The 7. The muffler bolt, backup camera, radio antenna, HD TV amplifier, faucet, grey water pipe, exterior window trim, and awning issues do not qualify for warranty repair. The Complainant did not specify the alleged defects in the complaint. 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.

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 December 22, 2021



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