

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0012460 CAF**

**KAREN AND SIDNEY CURRIN,
Complainants**

v.

**HEARTLAND RECREATIONAL
VEHICLES,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Karen and Sidney Currin (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) and/or Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in their recreational vehicle (RV) manufactured by Heartland Recreational Vehicles (Respondent). Complainants did not file their complaint in time for Lemon Law relief and a preponderance of the evidence does not show that the subject vehicle has a warrantable defect. Consequently, the Complainants' vehicle does not qualify for any 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 November 4, 2021, in Denton, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants represented themselves. 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

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs use. Under this standard, the factfinder considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle” from the perspective of a reasonable prospective purchaser. For instance, “while a vehicle with a non-functioning air

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).

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

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 Complainants.¹⁹ The Complainants must prove all facts required for relief by a preponderance of the evidence. That is, the Complainants must present sufficient evidence to show that every required fact more likely than not exists.²⁰ Accordingly, the Complainants 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 Complainants 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 Complainants' Evidence and Arguments

On March 27, 2017, the Complainants, purchased a new 2018 Heartland 4005 Cyclone from Explore USA RV Supercenter, an authorized dealer of the Respondent, in Denton, Texas. The Complainants took delivery of the vehicle on April 27, 2017. The vehicle's limited warranty provided coverage for one year.

On or about June 4, 2021, the Complainants provided a written notice of defect to the Respondent. On June 7, 2021, the Complainants filed a complaint with the Department alleging that: the bedroom slide leaked causing the decking to rot, center (living room) slide to bow, and living area decking to weaken; the button controlling the rear awning malfunctioned; the dealer misinformed the Complainants that the switch under the control panel shed air conditioner (AC) load instead of running the tank and underbelly heaters, so that the tanks may have been damaged; the pipes froze and the kitchen faucet fell off; the sink was apparently reinstalled incorrectly and fell out and subsequently mounted on top of the counter and the pipes under the sink leaked; and the center slide rubbed the table leg base and caused damage to the trim.

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

Date	Issue
03/14/2018	The trim under the fridge is loose and the slide out floor is bowed. Rear awning is not opening with switch. Bedroom slide leaks when open. Yeti package did not turn on and caused possible kitchen faucet damage.
07/19/2019	The Yeti package failed and water lines froze and are leaking. The bedroom slide leaks, there is water at the top of the stairs, and the floor is soft.
09/05/2019	Bedroom slide leaks, there is water on top of the stairs, and the floor is rotten.
03/11/2021 ²⁹	Bedroom slide leaks. The living room slide hangs up on table [base] when trying to extend. The kitchen sink falls out. The deck awning and awning wiring ripped off.

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

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

²⁹ The March 11, 2021, repairs were performed by a non-Heartland authorized dealer.

Mr. Currin testified that all issues were ongoing and unresolved. He recounted that he first noticed the bedroom slide leaking and the floor rotting in February of 2018. He described that the slide was out and rained on, which led to the floor becoming soft. He also described that he noticed the leaking coming from in front of the bathroom. He last noticed the issue around July 4, 2021, because he no longer left the slide out anymore while raining.

Mr. Currin stated that he first noticed the center slide bowing when he initially took the vehicle for repairs on March 14, 2018. He explained that the floor was bowed and the trim was catching on the pedestal base, breaking the trim. He estimated that he most recently noticed the issue on July 12, 2020. He testified that he reinstalled the base twice since the initial repair visit.

Mr. Currin said he first noticed the living area decking weakness around the same time as the issue with the floor in front of the bathroom. He stated that he was concerned it was connected to the leak because the area was down the steps from the area affected by the leak. He described that when you walk over the area you can feel it give every now and then like there is a soft spot. He stated that the area still felt weak as of the time of the hearing.

Mr. Currin testified that he first noticed the issue with the rear awning control around July 2017. He explained that when the extend button was pressed the awning worked fine, but when the button to retract was pressed, the awning moved a little bit and then stopped. When extended and retracted again, it worked like it was supposed to eventually. He described that the awning rolled in a back and forth movement. He stated that he most recently noticed the issue on July 5, 2021.

Mr. Currin claimed that the Yeti package was either not installed or not working properly. He stated he first noticed the issue on December 31, 2017. He described that he was camping and he had the central heat and the Yeti package on. He clarified that he was not sure if he had the tank heaters on. He claimed the water pipes froze from the kitchen sink to the back bathroom. He approximated that he most recently noticed this issue in November of 2019.

Mr. Currin testified that the center slide rubbed the table leg bases and damaged the trim. He stated that he first noticed this issue in January of 2018. He described that when the slide moved, he heard a pop. He claimed that he realized the sound was the trim catching the base of the table. He stated that this split the trim under the couch. He estimated that the last time he noticed this issue was July of 2020.

Mr. Currin responded that the RV was used recreationally and not occupied full time. He expressed a preference for repurchase of the vehicle. On cross-examination, Mr. Currin confirmed that he had submitted an insurance claim for the rear awning.

C. Inspection

During the inspection at the hearing, the center (living room) slide opened without any issues; however, Mr. Currin noted that the slide did not do so every time. Mr. Partin pointed out that the slide was out of adjustment, which was a maintenance item. He explained that the area under the floor with the heating duct did not have any cross members, so it was more flexible. The living area did not appear to have any pimpling/bubbling indicating water damage. Mr. Partin stated that the Yeti package only consisted of a line heater on the main water line to the tank and heaters on the tanks. The seal at the top front of the bedroom slide was torn. Mr. Currin did not know when the tear happened. Mr. Partin noted that the bedroom slide was also out of adjustment, specifically, the cables were not tight enough. Mr. Currin pointed out that the water came from the lower back corner of the slide. However, the wood in that area did not have any water stains. Mr. Currin noted that water came in every time when raining. The area around the window showed no bubbling or other indication of water. Mr. Currin explained that the rear awning ripped off on July 4, 2020, during a storm. He affirmed that he could not retract the awning and it tore off during the storm. Upon clarification questions, Mr. Partin replied that a third-party, Lippert Components, manufactured the rear awning. However, the Respondent installed the wiring between the awning and switch.

D. Summary of Respondent's Evidence and Arguments

David Partin, Consumer Affairs Manager, testified for the Respondent. Mr. Partin stated that a brochure addressed the Yeti package as including 110-volt holding tank heading pads, an insulated main water line, and a 12-volt autosensing heater line. But the Respondent did not advertise the RV as being for four seasons use. He added that the Respondent did not control what a dealer might say.

E. Analysis

Repurchase and replacement relief do not apply in this case. As described in the discussion of applicable law, a complaint for Lemon Law relief must be filed within: six months after the

earliest of: the warranty's expiration date or 24 months since the date of original delivery. The Complainants took delivery on April 27, 2017, and the one-year warranty expired on April 27, 2018. Accordingly, the Lemon Law complaint must have been filed by October 27, 2018. However, the complaint was filed on June 7, 2021. Nevertheless, the subject recreational vehicle may still qualify for warranty repair relief.

To qualify for warranty repair relief, the law requires the vehicle to have a defect covered by the Respondent's warranty (warrantable defect)³⁰ that continues to exist, even after repair.³¹ In part, the warranty generally states that:

Except as specifically excluded below, Heartland RV WARRANTIES for a period of ONE (1) YEAR to the original retail purchaser, who purchases the recreational vehicle from an authorized Heartland RV dealer and who uses the recreational vehicle, under normal use, for private single family recreational travel, camping and seasonal usage, that the recreational vehicle manufactured and assembled by Heartland RV shall be free from defects in material and/or workmanship supplied and attributable to Heartland RV in the construction of the recreational vehicle. "Defect" means the failure of the unit and/or materials used to assemble the unit to conform to Heartland's design and manufacturing specifications and tolerances. . . .

The warranty coverage starts from the date of the original retail purchase. Except as noted below, this Limited Warranty covers only those defects that occur within one year of the date of the original retail purchase.³²

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³³ A manufacturing defect occurs when the vehicle varies from the manufacturer's design standards, causing that vehicle to differ from other vehicles of the same

³⁰ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

³¹ TEX. OCC. CODE § 2301.605.

³² Complainant's Ex. 5, Warranty.

³³ 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.").

kind.³⁴ In other words, 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. In contrast, design issues result from the manufacturer's design of the vehicle, even though manufactured without any flaws.³⁵ Unlike manufacturing defects, issues that do not arise from manufacturing, such as the vehicle's design characteristics or dealer representations and improper dealer repairs, are not warrantable defects. In addition, the warranty specifies the following exclusions from coverage:

- This Limited Warranty does not cover retail sold units for which Heartland RV has not received the Heartland RV, LLC Warranty Registration Notice.
- Additional components which have been installed in the recreational vehicle, including but not limited to microwave ovens, ranges, refrigerators, leveling jacks, furnaces/heaters, DVD/CD players, air conditioning, icemakers, vacuum cleaners, televisions, hot water heaters, generators, power converters, batteries, and other items not specifically manufactured by Heartland RV, LLC, are warranted by the component manufacturers as detailed in their individual manufacturers' warranties, and are not covered by this Limited Warranty. Copies of the warranties may be found in the product owner's packet or by contacting Heartland RV, LLC.
- Problems which may result from not following proper operating practices, instructions, warnings or regulations, including but not limited to those contained in the owners manuals, on labels or otherwise provided by law.
- Failure which may be caused by, or related to abuse, misuse, negligence, or accident, failure which may be related to alteration or modification, failure as a result of not following instructions contained in the owners manuals.
- Normal deterioration due to wear or exposure, such as fading of fabrics or drapes, carpet wear, exterior surfaces, etc.
- Maintenance items: such as light bulbs, fuses, lubricants, minor adjustments.
- Use of the recreational vehicle for any commercial or rental purpose voids the warranty from the time that the vehicle is first used for commercial or rental purposes and at all times thereafter.
- Transportation to and from dealer or manufacturing plant locations for any purpose, including but not limited to warranty purposes.

³⁴ *Ridgway v. Ford Motor Co.*, 82 S.W.3d 26, 31-32 (Tex. App.—San Antonio 2002), *rev'd on other grounds*, 135 S.W.3d 598 (Tex. 2004) ("A manufacturing defect may be distinguished from a design defect. A manufacturing defect occurs when the product varies from the manufacturer-established design standards, causing that product to deviate from the normal safety of other products of its kind.).

³⁵ *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.—Texarkana 1985), *aff'd in part on other grounds*, *rev'd in part on other grounds*, 715 S.W.2d 629 (Tex. 1986) ("Defective design cases, however, are not based on consumer expectancy, but on the manufacturer's design of a product . . . even though not flawed in its manufacture.").

- All consequential and incidental expense such as, but not limited to, loss of time, commercial loss, loss of use, towing charges, lodging, food, phone calls, inconvenience, bus and plane fares, or rental charges.
- Any defect or shortages readily apparent on delivery to the initial retail purchaser unless noted on the delivery sheet completed by the driver transporting the RV to the independent dealer.
- Environmentally caused conditions such as rust, or sealant deterioration.

In sum, the warranty only applies to manufacturing defects arising during the warranty period and not otherwise expressly excluded by the warranty. As explained in the discussion of applicable law, the law imposes the burden of proof on the Complainant. Accordingly, the Complainant must prove that the subject vehicle more likely than not has a defect covered by the Respondent's warranty (warrantable defect). But as detailed below, a preponderance of the evidence does not show that the subject RV has a currently existing defect covered by warranty.

The warranty's coverage expired on April 27, 2018. Consequently, any issues raised after April 27, 2018, cannot qualify for relief, leaving only the following issues for consideration here: bowed slide floor/broken trim, rear awning, bedroom slide leak, and the Yeti package.

1. Bowed Living Room Slide Floor/Broken Trim

The testimony reflects that the Complainants last noticed slide bowed on July 12, 2020. At the inspection during the hearing, the slide operated normally without the slide's trim impacting the table base. Mr. Currin noted that the slide did not operate normally every time. However, the slide was out of alignment, which may allow the slide to contact the table base. As previously noted, slide alignment is an unwarranted maintenance item. Given the available information, a preponderance of the evidence does not show that this issue arises from a warrantable defect.

2. Rear Awning

A preponderance of the evidence does not show that the rear awning issue arose from a manufacturing defect. Specifically, a third-party manufactured the awning and the warranty expressly excludes third-party components. Though the Respondent installed the wire between the awning and switch, the available evidence does not show the issue more likely resulted from the wire as opposed to a third-party component. In any event, the destruction of the rear awning during

a storm made this issue moot, that is, the law requires the alleged defect to currently exist. But the casualty loss of the awning makes the existence of a defect uncertain.

3. Bedroom Slide Leak

The Complainants last noticed the bedroom slide leaking about July 4, 2021, after the last repair visit. However, the inspection at the hearing showed that slide was out of alignment, which may allow water in through gaps between the slide and the wall. However, slide alignment is a maintenance item not covered under warranty. Additionally, the seal around the slide had a tear, creating another potential point of water ingress. Mr. Currin did not know when the tear occurred so that its warrantability cannot be determined. In sum, the evidence is inconclusive as to the existence of a warrantable defect.

4. Yeti Package

As shown in testimony, the dealer appears to have misinformed the Complainants about the operation of the Yeti package, leading them to activate the Yeti feature under the wrong circumstances and possibly damaging the tanks. Notwithstanding, the warranty only covers manufacturing defects, which does not include dealer representations. Moreover, the Respondent itself did not present the subject RV as a “four-seasons” RV. Additionally, the dealer found the Yeti heaters to be working according to specifications. Overall, the available evidence does not show that the freezing is more likely due to a defect in the Yeti package as opposed to a limitation in the design. Further, any representations regarding the Yeti package are not manufacturing defects that can support any relief in this case.

III. Findings of Fact

1. On March 27, 2017, the Complainants, purchased a new 2018 Heartland 4005 Cyclone from Explore USA RV Supercenter, an authorized dealer of the Respondent, in Denton, Texas.
2. The vehicle’s limited warranty provided coverage for one year. In particular, the warranty states:

Except as specifically excluded below, Heartland RV WARRANTS for a period of ONE (1) YEAR to the original retail purchaser, who purchases the recreational vehicle from an authorized Heartland RV dealer and who uses the recreational

vehicle, under normal use, for private single family recreational travel, camping and seasonal usage, that the recreational vehicle manufactured and assembled by Heartland RV shall be free from defects in material and/or workmanship supplied and attributable to Heartland RV in the construction of the recreational vehicle. “Defect” means the failure of the unit and/or materials used to assemble the unit to conform to Heartland’s design and manufacturing specifications and tolerances. . . .

The warranty coverage starts from the date of the original retail purchase. Except as noted below, this Limited Warranty covers only those defects that occur within one year of the date of the original retail purchase.

3. The warranty specifies the following exclusions from warranty coverage:

- This Limited Warranty does not cover retail sold units for which Heartland RV has not received the Heartland RV, LLC Warranty Registration Notice.
- Additional components which have been installed in the recreational vehicle, including but not limited to microwave ovens, ranges, refrigerators, leveling jacks, furnaces/heaters, DVD/CD players, air conditioning, icemakers, vacuum cleaners, televisions, hot water heaters, generators, power converters, batteries, and other items not specifically manufactured by Heartland RV, LLC, are warranted by the component manufacturers as detailed in their individual manufacturers’ warranties, and are not covered by this Limited Warranty. Copies of the warranties may be found in the product owner’s packet or by contacting Heartland RV, LLC.
- Problems which may result from not following proper operating practices, instructions, warnings or regulations, including but not limited to those contained in the owners manuals, on labels or otherwise provided by law.
- Failure which may be caused by, or related to abuse, misuse, negligence, or accident, failure which may be related to alteration or modification, failure as a result of not following instructions contained in the owners manuals.
- Normal deterioration due to wear or exposure, such as fading of fabrics or drapes, carpet wear, exterior surfaces, etc.
- Maintenance items: such as light bulbs, fuses, lubricants, minor adjustments.
- Use of the recreational vehicle for any commercial or rental purpose voids the warranty from the time that the vehicle is first used for commercial or rental purposes and at all times thereafter.
- Transportation to and from dealer or manufacturing plant locations for any purpose, including but not limited to warranty purposes.
- All consequential and incidental expense such as, but not limited to, loss of time, commercial loss, loss of use, towing charges, lodging, food, phone calls, inconvenience, bus and plane fares, or rental charges.
- Any defect or shortages readily apparent on delivery to the initial retail purchaser unless noted on the delivery sheet completed by the driver transporting the RV to the independent dealer.

- Environmentally caused conditions such as rust, or sealant deterioration.

4. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Issue
03/14/2018	The trim under the fridge is loose and the slide out floor is bowed. Rear awning is not opening with switch. Bedroom slide leaks when open. Yeti package did not turn on and caused possible kitchen faucet damage.
07/19/2019	The Yeti package failed and water lines froze and are leaking. The bedroom slide leaks, there is water at the top of the stairs, and the floor is soft.
09/05/2019	Bedroom slide leaks, there is water on top of the stairs, and the floor is rotten.
03/11/2021	Bedroom slide leaks. The living room slide hangs up on table [base] when trying to extend. The kitchen sink falls out. The deck awning and awning wiring ripped off.

5. On or about June 4, 2021, the Complainants provided a written notice of defect to the Respondent.
6. On June 7, 2021, the Complainants filed a complaint with the Department alleging that: the bedroom slide leaked causing the decking to rot, center slide to bow, and living area decking to weaken; the button controlling the rear awning malfunctioned; the dealer misinformed the Complainants that the switch under the control panel shed air conditioner (AC) load instead of running the tank and underbelly heaters, so that the tanks may have been damaged; the pipes froze and the kitchen faucet fell off; the sink was apparently reinstalled incorrectly and fell out and subsequently mounted on top of the counter and the pipes under the sink leaked; and the center slide rubbed the table leg base and caused damage to the trim.
7. 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.

8. The hearing in this case convened on November 4, 2021, in Denton, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants represented themselves. David Partin, Consumer Affairs Manager, represented the Respondent.
9. The warranty expired on expired on April 27, 2018.
10. During the inspection at the hearing, the center (sofa) slide opened without any issues; however, Mr. Currin noted that the slide did not do so every time. Mr. Partin pointed out that the slide was out of adjustment, which was a maintenance item. He explained that the area under the floor with the heating duct did not have any cross members. The living area did not appear to have any dimpling indicating water damage. Mr. Partin stated that the Yeti package only consisted of a line heater on the main water line to the tank and heaters on the tanks. The seal at the top front of the bedroom slide was torn. Mr. Partin noted that the bedroom slide was also out of adjustment, specifically, the cables were not tight enough. Mr. Currin did not know when the tear happened. He pointed out that the water came from the lower back corner of the slide. However, the wood in that area did not have any water stains. Mr. Currin noted that water came in every time when raining. The area around the window showed no bubbling or other indication of water. Mr. Currin explained that the rear awning ripped off on July 4, 2020, during a storm. He affirmed that he could not retract the awning and it tore off during the storm. Upon clarification questions, Mr. Partin replied that a third-party, Lippert Components, manufactured the rear awning. However, the Respondent installed the wire between the awning and switch.
11. The testimony reflects that the Complainants last noticed slide bowed on July 12, 2020. At the inspection during the hearing, the slide operated normally without the slide's trim impacting the table base. Mr. Currin noted that the slide did not operate normally every time. However, the slide was out of alignment, which may allow the slide to contact the table base. As previously noted, slide alignment is an unwarranted maintenance item. Given the available information, a preponderance of the evidence does not show that this issue arises from a warrantable defect.
12. A third-party manufactured the awning and the warranty expressly excludes third-party components. Though the Respondent installed the wire between the awning and switch,

the available evidence does not show the issue more likely resulted from the wire as opposed to a third-party component. Also, the casualty loss of the awning makes the existence of a defect uncertain.

13. The Complainants last noticed the bedroom slide leaking about July 4, 2021, after the last repair visit. However, the inspection at the hearing showed that slide was out of alignment, which may allow water in through gaps between the slide and the wall. However, slide alignment is a maintenance item not covered under warranty. Additionally, the seal around the slide had a tear, creating another potential point of water ingress. Mr. Currin did not know when the tear occurred.
14. The dealer appears to have misinformed the Complainants about the operation of the Yeti package, leading them to activate the Yeti feature under the wrong circumstances and possibly damaging the tanks. Notwithstanding, the warranty only covers manufacturing defects, which does not include dealer representations. Moreover, the Respondent itself did not present the subject RV as a “four-seasons” RV. Additionally, the dealer found the Yeti heaters to be working according to specifications.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.
2. A hearings examiner of the Department’s Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. TEX. OCC. CODE § 2301.704.
3. The Complainants filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV’T CODE §§ 2001.051, 2001.052. 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).

6. The Complainants' vehicle does not qualify for replacement or repurchase. The Complainants did not 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 Complainants do not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
8. If the Complainants' vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
9. The Complainants' vehicle does not qualify for warranty repair. The Complainants did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.
10. The Respondent remains responsible to address and repair or correct any defects that are covered by 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 Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 and/or § 2301.204 is **DISMISSED**.

SIGNED January 4, 2022

A handwritten signature in black ink, appearing to read "Andrew Kang", is written over a horizontal line.

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