

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 21-0013923 CAF**

**BENJAMIN and SHARON SARABIA,  
Complainants**

**v.**

**THOR MOTOR COACH, INC.,  
Respondents**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Benjamin and Sharon Sarabia (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 Thor Motor Coach, INC. (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that qualifies for warranty repair.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice of hearing<sup>1</sup> 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 January 12, 2022, in Houston, Texas, before Hearings Examiner Andrew Kang, and the record closed on February 24, 2022. The Complainants represented themselves. John Arnold, Attorney, represented the Respondent. Mark Stanley, Consumer Affairs Manager, testified for the Respondent.

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<sup>1</sup> 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.<sup>2</sup> 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.”<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

##### **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

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<sup>2</sup> TEX. OCC. CODE § 2301.603.

<sup>3</sup> TEX. OCC. CODE § 2301.604(a).

<sup>4</sup> TEX. OCC. CODE § 2301.604(a).

<sup>5</sup> TEX. OCC. CODE § 2301.601(4).

conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”<sup>6</sup>

**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.”<sup>7</sup>

**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.<sup>8</sup>

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

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

<sup>7</sup> *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.”).

<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

#### **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;<sup>14</sup> (2) the respondent was given an opportunity to cure the defect or

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<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(2).

<sup>10</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>11</sup> TEX. OCC. CODE § 2301.605(c).

<sup>12</sup> *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.’”).

<sup>13</sup> *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.”).

<sup>14</sup> 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;<sup>15</sup> 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.<sup>16</sup>

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

## 3. Burden of Proof

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

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<sup>15</sup> 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.

<sup>16</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>17</sup> TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

<sup>18</sup> TEX. OCC. CODE § 2301.603(a).

<sup>19</sup> 43 TEX. ADMIN. CODE § 215.66(d).

<sup>20</sup> *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.<sup>21</sup> 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.”<sup>22</sup> However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.<sup>23</sup> Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.<sup>24</sup> Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.<sup>25</sup>

#### 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.<sup>26</sup> 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

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<sup>21</sup> “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.”).

<sup>22</sup> 43 TEX. ADMIN. CODE § 215.202(a)(3).

<sup>23</sup> 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

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

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

<sup>26</sup> TEX. OCC. CODE § 2301.604.

or similar written documents).<sup>27</sup> However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."<sup>28</sup>

### **B. Summary of Complainants' Evidence and Arguments**

On September 18, 2020, the Complainants, purchased a new 2020 Thor Aria from Camping World RV Sales Katy, an authorized dealer of the Respondent, in Katy, Texas. The vehicle had 1,361 miles on the odometer at the time of purchase. The vehicle's limited warranty provides coverage for one year or 15,000 miles, whichever occurs first.

On or about July 7, 2021, the Complainants provided a written notice of defect to the Respondent. On July 7, 2021, the Complainants filed a complaint with the Department alleging that the furnace, water pump, washer, and chassis need to be repaired. Additionally, the water control valve was frozen and there were battery issues and tire concerns. On August 13, 2021, the Complainants filed an amended complaint that included additional allegations that the washing machine never worked; the shower leaked and caused damage to the trim; the couch looked like dye had rubbed off; the window screens behind the couch could not be secured; the mirror on the driver's side had water in it; there were paint scratches on the RV; a low battery voltage warning came on when the vehicle started; the seat belt bolt covers were coming off; dinette cushions had torn covers from the Velcro; the low water drain pipes needed to be moved back; a PVC pipe was loose; the basement slide tray moved when weight was placed on the tray; the water diverter control valve was not working; there was a tear on the corner of the foot rest on the passenger seat; there was no way to blend hot and cold water and the water temperature was too hot; the central vacuum cleaner had very little suction from the hose; the power had gone out twice; the house batteries were dry and the chassis batteries tested bad; the water valve behind the washer had droplets of water; there was a lag screw wedged under the water holding tank; the panel that covered the water holding tank was loose; and there was a fault code on the diagnostic screen that stated there was a dead switch battery and to check the wireless switches page.

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<sup>27</sup> 43 TEX. ADMIN. CODE § 215.209(a).

<sup>28</sup> 43 TEX. ADMIN. CODE § 215.208(b)(1).

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

Date	Miles	Issue
09/10/2020	1,362	The water heater door needed to be replaced and painted. There were missing furnace parts.
10/21/2020	1,592	A drawer in the kitchen was difficult to open. There was a broken screw on solar charge controller. There was a faulty transfer switch. There was a button missing on the driver's side. There were cracked tiles by the bathroom door. The drawer under the bed would not close. The trim by the bathroom and bedroom were sticking out at the bottom. There was paint peeling on the generator compartment. The mirrors would shake vigorously when moving. The belt molding on both sides didn't have a seal. There was caulk missing on the driver's side front slide. The engine oil dipstick was loose. The middle door screw was rusted. The entry door skid tape glue is coming up and chipping off.
08/23/2021	4,747	The vehicle had paint issues. The washer and dryer needed replacement.

Benjamin Sarabia recounted the issues from the complaint and identified the issues that had been repaired. He explained that the washer had been replaced but was not secured properly. He stated that the shower leak was repaired and the window screens were repaired. He testified that the paint scratches were repaired. He explained that the drain pipes and the PVC pipe had been repaired, but he was not satisfied with the way the pipes were repaired. He stated that the basement slide and the tear in the corner of the passenger seat foot rest had been repaired. He added that the central vacuum was repaired and the screw was removed from the water holding tank. He stated that the panel covering the water holding tank looked secure as of the time of the hearing.

Mr. Sarabia addressed the issues that remained. He noted that the tear in the couch was caused by the dealer when they were repairing tiles. He stated that the couch tear had been repaired but the dye that was used has rubbed off. He testified that the light on the mirror on the driver's side had water in it. He explained that it had been replaced but it still contained water. He confirmed that the low battery voltage indicator on the dashboard would come on when turning on the ignition. He noted that the light turned off after the engine rans for a short period. Mr. Sarabia expressed that the seat belt bolt cover was designed poorly and fell off repeatedly. He stated that the hard-plastic clips broke off on the covers. He pointed out that the covers had been replaced



twice before and they were still broken as of the time of the hearing. He testified that the dinette cushions had Velcro on the bottom that tore the cover when trying to remove them. He added that the tears did not exist when they received the vehicle. He explained that the water diverter control valve was frozen when he first tried to use it. He noted that he was scared to break it and he had to get a wrench to turn it. He added that it was difficult to find the correct positioning to divert the water flow. He clarified that he could find the correct position but had difficulty turning the valve. Mr. Sarabia testified that there was no way to mix the hot and cold water. He recalled that he first noticed the issue on the first trip he took when he tried to take a shower. He described that the water was either burning or too cold. He noted that the system was a single handle system so there were no separate valves for hot and cold water. Mrs. Sarabia added that she had been burned by the hot water. Mr. Sarabia believed that the system had been replaced but the blending was still a concern. He approximated that he last noticed the issue around the end of November or the beginning of December 2021. Mr. Sarabia described that the vehicle power went out twice within a few days. He stated that the power went off in the driver's side front slide. He noted that the microwave and the lights all went out. Mrs. Sarabia recalled that she heard a strange noise. Mr. Sarabia indicated that he called the Respondent and they informed him to watch to see what happens. Mrs. Sarabia established that the first time the power went out was in July of 2021. Mr. Sarabia confirmed that the vehicle was plugged in to external power and was attached to an autoformer booster and surge protector. He approximated the second power outage occurred on July 14 or 15, 2021. He admitted that he did not call the respondent when we noticed the power outage. He established that he had taken the vehicle on a total of three trips, two of which occurred without power outages. He established that both trips were five days. Mr. Sarabia testified that he resolved the water valve behind the washer leaking on his own. He acknowledged that he had not noticed any leaks since. Mr. Sarabia stated that the coin battery casing caused the dead switch battery issue according to the Respondent.

On cross examination, Mr. Sarabia explained that the cover on the couch had to be pulled back to see the tear and where the dye had rubbed off. He was uncertain whether the water in the mirror was from rain or condensation. He admitted that the light in the mirror still functioned. Mr. Sarabia confirmed that the paint scratch on the vehicle was resolved. He stated that he was somewhat satisfied that the low voltage light resulted from the grid heater turning on at start up. He added that he knew that the warranty did not cover the batteries. He admitted that he did not

look in the owner's manual to figure out how to set the water heater. He noted that the water heater was not heating to his satisfaction. He claimed that he noticed the Velcro issue occurred the first time he pulled the cushion off. He described that he was unable to determine if the diverter valve was in the correct position for hours until he noticed leaking. He admitted that he could use the valve to fill his water tank, but it was not a simple process. Mr. Sarabia confirmed that he was not able to replicate the power outage and he was not able to view the valve behind the washer during the inspection of the vehicle. He confirmed that the Respondent paid their settlement agreement on time. He also agreed that he accepted all the benefits of the settlement agreement and did not return them. He acknowledged that many complaint issues were cosmetic. He claimed the he received no benefits from the service warranty. He recounted that he bought the service contract because he was concerned with the condition of the vehicle when he purchased it. Mr. Sarabia expressed a preference for a repurchase of the vehicle. He answered that they did not occupy the vehicle full time.

### **C. Inspection**

The vehicle's odometer displayed 5,491 miles at the time of the hearing. During the inspection, the low voltage indicator did not turn on. The seat belt bolt covers were broken off. The water diverter exhibited about 30 degrees of play. A couch cushion had lighter areas, which appeared abraded. The amber light on the driver's side mirror contained water droplets. The low battery indicator turned on when starting. The Velcro was torn on a dinette cushion. Moving a faucet handle away from hot turned the water heater off. Mr. Stanley commented that he believed the water valve froze during the ice storm and the RV was not winterized. However, Mrs. Sarabia believed that the RV had been winterized.

### **D. Summary of Respondent's Evidence and Arguments**

Mr. Stanley explained that the warranty covered the fabric in the vehicle up to the time of sale to the dealer. He continued that any damage occurring after that point was not covered under the warranty. He pointed out there was no evidence that the tears in the fabric and the Velcro were present at the time the vehicle was delivered to the dealer. He expressed that he believed that the water in the light in the mirror was condensation and the warranty did not cover condensation. He added that the LED light in the mirror was sealed and should not be affected by water. Mr. Stanley

established that the engine had a grid heater that turned on at certain temperatures. He explained that when the heater turned on, the voltage would dip and might trigger the low voltage warning light. He observed that the water diverter valve appeared to have been damaged internally. He opined that it had been frozen but stated there was no way to know for sure. He commented that the vehicle did not appear to have been winterized and he contended that with the 2021 winter storm, it would not surprise him that the valve had been damaged in the freeze. He confirmed that the valve was a ball valve and must be seated properly to block water. He confirmed that it was possible to seat the valve correctly even though it was damaged. Mr. Stanley explained that the water pressure in the vehicle could vary from day to day and those variations could affect the hot water heater. He established if the flow setting was not adjusted properly the hot water heater may not function properly. He reported that appliances were not covered under the vehicle's warranty. Mr. Stanley believed that Mr. Sarabia had repaired the water valve behind the washer himself. Mr. Stanley explained that the "dead switch battery" issue just needed replacing the coin batteries. He claimed there were no issues on the vehicle that would impact the value of the vehicle. He testified that he did not see an issue in the vehicle that could constitute a serious safety hazard. He believed that the vehicle complied with the limited warranty. He recalled that he had seen the vehicle a few months before the hearing. He claimed that Mr. Sarabia did not accept an opportunity for Mr. Stanley to correct the issues with the vehicle. Mr. Stanley opined that the water in the light in the mirror did not create a safety hazard and did not substantially impair the value of the vehicle. He added that the water control diverter valve also did not substantially affect the use or value of the vehicle. He expressed that the water heater issue was an owner maintenance issue and excluded from the warranty. He testified that the warranty did not cover design issues. On cross examination, Mr. Stanley expressed that there was a possibility the mirror light could blow a fuse if there was enough water in the light but there had never been enough water in the light to cause that. Mr. Stanley noted that a blown O-ring in the water diverter valve caused the issue. He stated that the valve did not work properly and there was no way to tell the exact position of the valve.

On redirect, Mr. Stanley stated the Complainants had a limited repair warranty that was the same as the original warranty but the only remedy was repair.

## E. Analysis

As explained in the discussion of applicable law, the law requires the Complainant to prove every element under the Lemon Law, or Warranty Performance Law for repair relief, by a preponderance. In other words, the Complainant must prove that every required fact is more likely than not true. In this case, a preponderance of the evidence shows that the subject vehicle has a defect covered under warranty (warrantable defect) that qualifies for repair relief.

### 1. Outstanding Issues

The record shows that some issues were successfully resolved prior to the hearing. However, the following issues from the amended complaint remain unresolved:

1. Couch tear that was repaired looks like the dye has rubbed off.
2. Mirror on driver's side light marker has water in it.
3. Low battery voltage comes on when the ignition is turned on to start motor.
4. Seat belt bolt round cover is coming off on driver and passenger seats.
5. Dinette cushions on the bottoms have Velcro that have torn the covering when trying to remove.
6. Water diverter control valve not working.
7. Water is ether hot or cold and there is no way to blend the hot and cold water coming out of the shower head or other faucets.
8. Part of the electric power went out twice.
9. On diagnostic screen receiving a fault "Dead switch battery. Check wireless switches page".

Accordingly, these nine issues still require resolution in this case.

### 2. Settlement

The March 23, 2021, settlement agreement executed by the Complainant eliminates certain issues from this case. The courts have explained that a release extinguishes a claim and bars recovery on the discharged issue.<sup>29</sup> Here, the agreement specifies that the Complainant discharges the Respondent from:

any and all known or unknown contract, warranty, equity and statutory claims, demands, administrative proceedings and lawsuits of any kind arising prior to the date this letter agreement is signed relating to your purchase, ownership and use of the RV, including any known or unknown claims based upon prior warranty repairs and the time taken to complete the same.<sup>30</sup>

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<sup>29</sup> *Ysasaga v. Nationwide Mutual Insurance Company*, 279 S.W.3d 858, 867-68 (Tex. App.—Dallas 2009).

<sup>30</sup> Respondent's Ex. 9, Settlement.

Consequently, the settlement agreement extinguishes all claims arising before March 23, 2021. However, the nine remaining issues appear to have arisen after the agreement date.

### 3. Warranty Coverage

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<sup>31</sup> that continues to exist, even after repair.<sup>32</sup> In part, the warranty generally states that:

#### THIS LIMITED WARRANTY COVERS

- i. ONLY the first retail owner and any second retail owner of the NEW motorhome;
- ii. ONLY those portions of a NEW motorhome not excluded under the section "What is Not Covered," when sold by an authorized dealership and used for its intended purpose of recreational travel and camping; and,
- iii. ONLY defects in workmanship performed and/or materials used to assemble those portions of your motorhome not excluded under the section "What is Not Covered." "Defect" means the failure of the workmanship performed and/or materials used to conform with the design and manufacturing specification and tolerances of Thor Motor Coach ("TMC").<sup>33</sup>

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).<sup>34</sup> Furthermore, the warranty specifies the following exclusions from the warranty:

#### WHAT IS NOT COVERED

- Any motorhome used for rental purposes or sold or registered outside of the United States or Canada;
- Any motorhome not used solely for recreational travel and camping;

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<sup>31</sup> TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

<sup>32</sup> TEX. OCC. CODE § 2301.605.

<sup>33</sup> Respondent's Ex. 2a, Warranty Guide; Respondent's Ex. 2b, Warranty Guide.

<sup>34</sup> 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.").

- Accessories and equipment added or changed after the motorhome leaves the factory;
- Accessories and equipment that are working as designed, but which you are unhappy with the design;
- Normal wear and usage, such as fading or discoloration of fabrics, or damage caused by condensation;
- Defacing, scratching, dents and chips on any surface or fabric;
- Owner maintenance, including replacement of wiper blades, bulbs, filters, wheel alignments and resealing exterior sealant areas (see “Care and Maintenance” section of the Owner’s Manual);
- The leveling jacks, the automotive chassis and power train, including, by way of example the engine, drive-train, steering, ride and handling, braking, wheel balance, muffler, tire wear or failure, tubes, batteries and gauges;
- Appliances and components covered by their own manufacturer’s warranty including the microwave, refrigerator, ice maker, stove, oven, generator, roof air conditioners, DVD players, televisions, water heater, furnace, stereo, radio, compact disc player, washer, dryer, and inverter;
- Rust and corrosion; or flaking, peeling and chips or other defects or damage in or to the exterior or finish caused by rocks or other road hazards, the environment, including chemical off-gassing, airborne pollutants, salt, tree sap and hail causing any damage including but not limited to rust and corrosion.<sup>35</sup>

Additionally, the warranty coverage ends as follows:

#### COVERAGE ENDS

Twelve (12) months after the first retail owner takes delivery of the motorhome from an authorized dealership OR after the odometer reaches 15,000 miles, whichever occurs first.<sup>36</sup>

In this case, the warranty ended on September 18, 2021.

A defectively manufactured vehicle has a flaw so that it does not conform to the manufacturer’s specifications. Stated another way, 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. Accordingly, manufacturing defects occur during manufacturing and exist when the vehicle leaves the manufacturing plant. In contrast, design issues result from the manufacturer’s design of the vehicle, even though manufactured without any flaws. Design characteristics, including design

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<sup>35</sup> Respondent’s Ex. 2a, Warranty Guide; Respondent’s Ex. 2b, Warranty Guide. Note: the wording of this section in Respondent’s Ex. 2a and 2b is identical but “Or flaking” is capitalized in 2a but not in 2b, “or flaking.”

<sup>36</sup> Respondent’s Ex. 2a, Warranty Guide; Respondent’s Ex. 2b, Warranty Guide.

defects, exist in the vehicle's specifications and do not arise from any error during manufacturing. Accordingly, a design characteristic exists in all vehicles of the same design, but the vehicle's intended configuration may produce unintended and unwanted results. 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. Even though an issue may be unintended and unwanted, the Lemon Law provides no relief unless the issue constitutes a manufacturing defect. The remaining issues are addressed individually below.

**a. Couch tear that was repaired looks like the dye has rubbed off.**

The warranty specifically excludes defacing of any surface or fabric from coverage. Further, consistent with the exclusion and the coverage of only manufacturing defects, Mr. Stanley elaborated that the fabric was covered until the sale of the RV to the dealer.

**b. Mirror on driver's side light marker has water in it.**

The mirror was previously replaced for water in the amber light and the replaced mirror assembly had water in the amber light at the hearing. The presence of water even after replacement suggests an issue with the design of the mirror/light. Further, the warranty expressly excludes damage caused by condensation. In sum, a preponderance of the evidence does not show that the water in the light is a warrantable defect.

**c. Low battery voltage comes on when the ignition is turned on to start motor.**

The evidence shows that the low battery voltage indicator may normally come on because of the increased voltage drawn by the engine's grid heater when turning on.

**d. Seat belt bolt round cover is coming off on driver and passenger seats.**

The seat belt bolt cover/cap appeared to come off due to a deficiency in the cover's design. However, the warranty only applies to manufacturing defects (defects in workmanship or materials) and not any flaws in design.

**e. Dinette cushions on the bottoms have Velcro that have torn the covering when trying to remove.**

As with the couch tear and repair, the warranty specifically excludes defacing of any surface or fabric from coverage.

**f. Water diverter control valve not working.**

The sum of the evidence indicates that the loose water diverter constitutes a warrantable defect. Though The water diverter knob exhibited some play upon inspection at the hearing. Though the loose knob made positioning the knob more difficult, the valve still functioned. Accordingly, this defect does not constitute a substantial impairment of use or value.

**g. Water is ether hot or cold and there is no way to blend the hot and cold water coming out of the shower head or other faucets.**

The water temperature issue appears to result from the normal operation of the water heater. In particular, an RV's water pressure may vary, affecting the water heater's performance. The flow setting must be adjusted properly for the water heater to function properly, which is an owner maintenance issue excluded by the warranty. Additionally, the warranty specifically excludes water heaters from coverage.

**h. Part of the electric power went out twice.**

As explained above, a warrantable defect must continue to exist to qualify for relief. In this case the power outage issue only occurred twice, with the last instance in mid-July 2021, and has not reoccurred. Accordingly, the evidence is equivocal whether a defect more likely than not exists.

**i. On diagnostic screen receiving a fault "Dead switch battery. Check wireless switches page".**

The record reflects that the dead battery message relates to the need for the routine replacement of expended coin-type batteries. However, such battery replacement appears to fall under the owner maintenance exclusion and does not otherwise appear to arise from any manufacturing defect.

### **III. Findings of Fact**

1. On September 18, 2020, the Complainants, purchased a new 2020 Thor Aria from Camping World RV Sales Katy, an authorized dealer of the Respondent, in Katy, Texas. The vehicle had 1,361 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides coverage for one year or 15,000 miles, whichever occurs first.
3. The Complainants took the vehicle to a dealer for repair as shown below:



Date	Miles	Issue
09/10/2020	1,362	The water heater door needed to be replaced and painted. There were missing furnace parts.
10/21/2020	1,592	A drawer in the kitchen was difficult to open. There was a broken screw on solar charge controller. There was a faulty transfer switch. There was a button missing on the driver's side. There were cracked tiles by the bathroom door. The drawer under the bed would not close. The trim by the bathroom and bedroom were sticking out at the bottom. There was paint peeling on the generator compartment. The mirrors would shake vigorously when moving. The belt molding on both sides didn't have a seal. There was caulk missing on the driver's side front slide. The engine oil dipstick was loose. The middle door screw was rusted. The entry door skid tape glue is coming up and chipping off.
08/23/2021	4,747	The vehicle had paint issues. The washer and dryer needed replacement.

4. On or about July 7, 2021, the Complainants provided a written notice of defect to the Respondent.
5. On July 7, 2021, the Complainants filed a complaint with the Department alleging that the furnace, water pump, washer, and chassis need to be repaired. Additionally, the water control valve was frozen and there were battery issues and tire concerns. On August 13, 2021, the Complainants filed an amended complaint that included additional allegations that the washing machine never worked. The shower leaked and caused damage to the trim. The couch looks like dye has been rubbed off. The window screens behind the couch are not able to be secured. The mirror on the driver's side has water in it. There are paint scratches on the RV. A low battery voltage warning comes on when the vehicle is started. The seat belt bolt covers are coming off. Dinette cushions have torn covers from the Velcro. The low water drain pipes need to be moved back. A PVC pipe is loose. The basement slide tray moves when weight is placed on the tray. The water diverter control valve is not working. There is a tear on the corner of the foot rest on the passenger seat. There is no way to blend hot and cold water and the water temperature is too hot. The central vacuum cleaner has very little suction from the hose. The power has gone out twice. The house batteries were dry and the chassis batteries tested bad. The water value behind the washer had droplets of water. There is a lag screw that is wedged under the water holding tank.

The panel that covers the water holding tank is loose. There is a fault code on the diagnostic screen that states there is a dead switch battery and to check the wireless switches page.

6. On September 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 January 12, 2022, in Houston, Texas, before Hearings Examiner Andrew Kang, and the record closed on February 24, 2022. The Complainants represented themselves. John Arnold, Attorney, represented the Respondent. Mark Stanley, Consumer Affairs Manager, testified for the Respondent.
8. The vehicle's odometer displayed 5,491 miles at the time of the hearing.
9. The vehicle's warranty expired on September 18, 2021.
10. During the inspection at the hearing, the water diverter exhibited about 30 degrees of play. Mr. Stanley commented that he believed the water valve froze during the ice storm and the RV was not winterized. However, Mrs. Sarabia believed that the RV had been winterized.

#### **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 prove that the vehicle has a warrantable defect that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. TEX. OCC. CODE § 2301.604(a).
7. The Complainants does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
8. If the 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 qualifies for warranty repair. The Complainants proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainants or an agent of the Complainants notified the Respondent or Respondent's agent of the alleged defect(s). TEX. OCC. CODE §§ 2301.204 and 43 TEX. ADMIN. CODE § 215.202(b)(3).
10. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.
11. The Respondent has a continuing obligation after the expiration date of the warranty to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's designated agent or franchised dealer before the warranty expired. TEX. OCC. CODE § 2301.603.

## V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the subject vehicle to the applicable warranty; specifically, the Respondent shall repair

the water diverter control valve. Upon this Order becoming final under Texas Government Code § 2001.144:<sup>37</sup> (1) the Complainants shall deliver the vehicle to the Respondent within 20 days; and (2) the Respondent shall complete the repair of the vehicle within **30 days** after receiving it. However, if the Department determines the Complainants' refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainants to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

**SIGNED May 3, 2022**



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

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<sup>37</sup> 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.