

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 22-0016945 CAF**

**COURTNEY ALVARADO
and SALVADOR VALDEZ,
Complainants**

v.

**WINNEBAGO INDUSTRIES, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Courtney Alvarado and Salvador Valdez (Complainants) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged warrantable defects in their recreational vehicle (trailer or vehicle) manufactured by Winnebago Industries, Inc. (Winnebago or Respondent). A preponderance of the evidence does not show that the vehicle has a current warrantable defect. Consequently, the vehicle does not qualify for repurchase/replacement or warranty repair.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

Notice and jurisdiction were not contested and are addressed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on April 4, 2023, in Denton, Texas, before Hearings Examiner Andrew Kang with the Department's Office of Administrative Hearings (OAH).¹ Complainants appeared in person and represented themselves. Respondent was represented by attorney Christopher Lowman. The hearing concluded and the record closed the same day.

¹ Hearings Examiner Lindy Hendricks reviewed the complete record of the hearing, inspection, and exhibits and issued this decision.

II. APPLICABLE LAW

The Texas Lemon Law and Warranty Performance Law require a manufacturer, converter, or distributor to make repairs necessary to conform a new motor vehicle to an applicable warranty.² If this cannot be accomplished, the owner of the vehicle may seek relief by filing a complaint with the Department.³ The case may be referred to OAH for a hearing on the merits to determine which type of relief, if any, is warranted pursuant to statute.⁴ The complaint filed with the Department identifies the relevant issues to address at the hearing.⁵

A. Burden of Proof

Complainants have the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.⁶ That is, Complainants must present sufficient evidence to show that it is more likely than not that every required fact for relief exists.⁷ Accordingly, Complainants cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely. Failure to prove even one required fact results in denial of relief. Complainants are seeking repurchase of the subject vehicle.

B. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.⁸ A new vehicle may qualify for repurchase or replacement of the vehicle, along with reimbursement of incidental expenses

² Tex. Occ. Code § 2301.603(a).

³ Tex. Occ. Code § 2301.204(a); 43 Tex. Admin. Code § 215.202.

⁴ Tex. Occ. Code § 2301.204(d); 43 Tex. Admin. Code § 215.202(b)(4).

⁵ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent. *See* Tex. Gov't Code §§ 2001.051-.052, .141(b)-(c); Tex. R. Civ. P. 301.

⁶ 43 Tex. Admin. Code § 206.66(d); *see Vance v. My Apartment Steak House, Inc.*, 677 S.W. 2d 480, 482 (Tex. 1984) (“[A] civil litigant who asserts an affirmative claim of relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

⁷ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

⁸ Tex. Occ. Code § 2301.603

resulting from the loss of use of the vehicle due to the defect(s).⁹ A vehicle qualifies for repurchase or replacement if all the following conditions are met:

- 1) the vehicle has 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” to repair the vehicle.¹⁰

The above terms are further defined by the Lemon Law statute and case law.

1. Serious Safety Hazard

The Lemon Law statute defines “serious safety hazard” as a life-threatening malfunction or non-conformity 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.¹¹

2. Substantial Impairment of Use or Value

a. Impairment of Use

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs use of the vehicle. 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.¹² For example, “while a vehicle with a

⁹ Tex. Occ. Code § 2301.604.

¹⁰ Tex. Occ. Code § 2301.604(a).

¹¹ Tex. Occ. Code § 2301.601(4).

¹² *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App. – Austin 2012).

non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”¹³

b. 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.”¹⁴ 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.”¹⁵

3. 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.¹⁶

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Tex. Occ. Code § 2301.605(a)(1).

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.¹⁷

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.¹⁸

The 30 days described above do not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁹

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.²⁰ 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.²¹

¹⁷ Tex. Occ. Code § 2301.605(a)(2).

¹⁸ Tex. Occ. Code § 2301.605(a)(3).

¹⁹ Tex. Occ. Code § 2301.605(c).

²⁰ *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.’”).

²¹ *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.”).

4. Other Requirements for Repurchase/Replacement

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;²²
- (2) the respondent was given an opportunity to cure the defect or nonconformity;²³ and
- (3) the Lemon Law complaint was filed within 6 months after the earliest of:
 - (a) the warranty's expiration date; or
 - (b) 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.²⁴

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the complainant for reasonable incidental expenses resulting from the vehicle's loss of use due to the defect.²⁵ 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

²² Tex. Occ. Code § 2301.606(c)(1); 43 Tex. Admin. Code § 215.204.

²³ 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, 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. 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.

²⁴ Tex. Occ. Code § 2301.606(d).

²⁵ Tex. Occ. Code § 2301.604(a).

allowance for use. The expenses must be reasonable and verifiable.²⁶ However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."²⁷

C. Warranty Repair Relief

If repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair relief.²⁸ A vehicle may qualify for warranty repair relief if all the following conditions are met:

- 1) the vehicle has a "defect . . . that is covered by a manufacturer's, converter's, or distributor's warranty agreement applicable to the vehicle;"
- 2) the vehicle owner, or the owner's designated agent, provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty's expiration; and
- 3) the vehicle owner filed a complaint with the Department specifying the defect.²⁹

The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty" if during the term of the warranty, the owner reported the nonconformity to the manufacturer, converter, or distributor, or to a designated agent or franchised dealer of the manufacturer, converter, or distributor.³⁰

²⁶ 43 Tex. Admin. Code § 215.209(a).

²⁷ 43 Tex. Admin. Code § 215.208(b)(1).

²⁸ 43 Tex. Admin. Code § 215.208(e).

²⁹ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(3).

³⁰ Tex. Occ. Code § 2301.603.

III. DISCUSSION

A. Summary of Complainants' Evidence and Arguments

On May 10, 2021, Complainants purchased a new 2021 Winnabago Hike Model 172BH, a towable recreational vehicle, from McClain's RV Superstores, an authorized dealer of Respondent, in Corinth, Texas.³¹ Complainants took delivery of the trailer on May 10, 2021. Respondent provided a one-year basic warranty for defects in material or workmanship. The warranty excluded any components such as electronics and appliances which are covered under their own component manufacturer's warranty.³²

On June 28, 2022, Complainants filed a complaint with the Department alleging the following issues: vent motor over the shower stopped working; the air conditioner made a very loud noise; converter for solar panel failed; air conditioner failed; refrigerator failed; pilot light will not stay lit; lights failed; outlets in trailer failed; USB ports not working; and trailer was not built with all the framing.

Complainants brought the vehicle in for repair as follows:

Date	Invoice ³³	Issues
8/26/2021	2062612/C	Grey valve is leaking. Vent over bathroom won't go up or down. Entry door handle loose. A/C is making a noise.
1/10/2022	2064393	Replaced a/c making noise and screws falling out. A fan inside of the a/c had a loose bolt that came out and damaged both fan shrouds. Slide is crooked and the bottom is messed up. Vent over bathroom won't go up or down. No 12v to carriage. Handle at entry door very loose. Customer smells ammonia and detector goes off. USB port over main bed not operable. Customer felt an electrical shock when stepping on entry step with wet feet.
4/18/2022	2065710	Pressure test water system to check for leaks and rodent damage.

³¹ Complainants Exhibit 2.

³² Complainants Exhibit 1.

³³ Complainants Exhibit 4.

7/5/2022	2066789	A/C lower panel not screwed tight to ceiling and hangs down. Customer smells ammonia and detector goes off. Customer felt electrical shock on entry step. USB port over main bed and bunks not operable. Refrigerator not cooling. Propane leak at pigtails and regulator. Bottom of slide is dragging.
7/19/2022	2066976	Refrigerator is inoperable.
11/18/2022	2068572	Customer can smell propane at the front of the trailer.
12/6/2022	2068784	Bottom of slide is dragging and popping; drawer handle recall.

At the hearing, Complainants testified that the vent motor had been replaced. As for the noise from the air conditioner, the noise was initially caused by extremely loose bolts mounting the motor. The second time the noise was caused by a bolt that had backed out, spun, and hit the fan. Complainants testified that the air conditioner unit had been replaced twice, but they have not since turned it on. The converter for the solar panel had been replaced. However, when Complainants moved the trailer for the inspection, the battery was not charged even with the solar panel. They do not understand why the battery was not working Saturday and Sunday, but it was working at the hearing. It is Complainants' understanding that, between the converter and solar panel, there should be some power in the battery. The refrigerator unit had been replaced, but they have not since used it. They were informed that the propane leaks were addressed, but they can still smell propane. When tested, the USB ports worked. However, Complainants testified that the ports work intermittently when they are camping. Complainants testified that parts were replaced with non-OEM parts. As for the malfunctioning lights, outlets, and USB ports, Complainants were told that the lights and outlet's malfunction was related to the converter. Regarding the frame, Complainants were advised that there was not adequate framing where the air conditioning unit was installed. Complainants testified that the framing issue had been resolved with the addition of more framing.

Complainants documented the times they were unable to use the trailer when it was in the shop for repairs.³⁴ The RV was out of service for repairs for 199 days from May 2021 to December 2022. Complainants do not occupy the vehicle full-time. They had trips planned but

³⁴ Complainants Exhibit 9.

were unable to use the trailer for spring break, family birthdays, soccer tournaments, and Thanksgiving. During a trip in January 2022, they lost food when the refrigerator failed. In June 2022, the carbon monoxide detector went off when the refrigerator failed with an ammonia leak. Complainants stated their children were placed again in harm's way. Complainants had to drive more than 500 miles to take the trailer to McLane for repairs. During the time the trailer was in the shop for repairs, a good number of their extended warranties ran out, and they did not have a chance to use them.

In April 2022, Complainants contacted Winnebago directly after their trailer had been in the shop for approximately 3 months and they had no idea when the trailer would be repaired. Up to that point, they had been contacting the claims department. Complainants wanted to see if Winnebago would extend the warranty because of the length of time the trailer had been in the shop. Winnebago responded and asked for information. Complainants responded back with the information but did not get a reply from Winnebago.

When Complainants initiated the Lemon Law complaint in June 2022, the trailer had been in the shop from January through May 2022. There were a series of email communications and attempts to settle the matter.³⁵ Complainants did not agree to sign a settlement with spelling and grammatical errors. Winnebago agreed to correct the document only after Complainants signed and agreed to it. Complainants proceeded with the Lemon Law complaint. They realized through Camping World's independent evaluation that their trailer had no value despite having purchased the vehicle less than two years ago. Complainants are requesting a repurchase of the vehicle because Winnebago no longer makes these trailers and because of safety hazards with the vehicle.

On November 18, 2022, Complainants smelled propane at the front and around most of the trailer. McClain's came out to their house to inspect the trailer and did the repairs onsite because Complainants were leaving that day for a trip. McClain's found two propane tanks leaks at pigtails and regulator. After repairing the leaks, it was tested and found to be working as intended.³⁶

³⁵ Complainants Exhibits 6.

³⁶ Complainants Exhibit 4.

Independent Inspection. On February 4, 2023, Complainants took the vehicle to Camping World for an independent 45-point inspection.³⁷ Camping World found appliances, exterior, electrical, auxiliary generator system, plumbing, and L.P. gas system were “ok.” Camping World noted three items that needed attention: air conditioner has no foil tape, cracked ceiling panel, and air conditioner vent broken. Camping World summarized that what Complainants are smelling is the furnace burning. No leak was detected. The cracked ceiling panel is under the air conditioner panel and is not visible unless the panel is removed. Complainants testified the damage was not present before framing was added and that it was caused during the repairs to the frame. Complainants do not know who manufactured the air conditioner unit, but Dometic sounds familiar. Complainants do not recall if Winnebago warrants appliances. With regard to electrical complaints, Complainants reported USB ports and outlets are not operating. However, Complainants consider these as “conveniences,” whereas their focus is on safety. Under electrical, Camping World found all 12 systems were fine. Under L.P. gas system, Camping World found all checks were fine. Complainants stated the battery is original and agree that the battery is not covered under Winnebago’s warranty. As part of that evaluation, Complainants asked Camping World for a quote to repurchase the trailer and to determine the market value of the trailer. To that end, Complainants provided Camping World a copy of the service records to show what work was done on the unit in order to obtain a fair evaluation. According to Complainants, Camping World declined to repurchase the trailer based on their inspection and the vehicle’s service records.

In rebuttal, Complainants testified that they expected or hoped that the Camping World report would show the repairs were, in fact, completed since McClain’s told them they made the repairs. In the first year, the vehicle had been in the shop for 5 months. There were times when Complainants were told repairs were made, but they were not and had to be subsequently fixed. It is their understanding based on the service records and Camping World’s report that McClain’s made the repairs. Complainants are not disputing that.

³⁷ Complainants Exhibit 7.

Complainants argue that damages and failures to their trailer are extraordinary given its age and condition. In addition, Complainants argue that the value and safety of the trailer have been significantly diminished. They could not get a quote from any dealer to buy their trailer which they interpret to mean their trailer has no value. Every time they try to use the trailer, something else is wrong with it. Complainants argue that it took Winnebago 18 months to get the vehicle to where Respondent believes it is operational. Complainants questions the repairs and if the vehicle is operational. Complainants argue there has been a substantial impairment to the vehicle's market value.

B. Inspection at the Hearing

The vehicle was inspected at the hearing and the following was reported: vent motor over the shower worked; the air conditioner worked and had no usual noise; converter for solar panel worked; refrigerator worked; lights worked; outlets worked; USB ports worked; and trailer frame was corrected. Regarding the propane leak, there was no odor from tanks and no leak detected. The vehicle does not have a pilot light. It is all electronic. There is a burner that turns on and off with a regulator. When the regulator first turns on, there is a little "blip" and just a little smell of propane. There was a crack in the ceiling panel, behind the air conditioner. The crack was not there before repairs.

C. Testimony of Michael Muffelletto for Respondent

Mr. Muffelletto has been employed by Winnebago for 34 years and is currently the national field service manager and legal liaison for Winnebago. When a customer requests repurchase or there is an unresolved issue, Mr. Muffelletto gets involved with customers and sees what needs to be done and makes sure repairs are done. He works with customers and dealers to ensure work and warranty are covered. Mr. Muffelletto got involved in this case a month ago and inspected the trailer the day before the hearing. He checked the 12-volt battery which was completely dead. He purchased a new deep cycle battery. The first thing he found was a draw on the battery. Inside the coach he saw the refrigerator and various components (stereo, switch illuminations) were on. When he turned them off, the power draw went away. That was significant because one of the

complaints was the solar charger panel was not working. Mr. Muffelletto stated that the solar charger is a bare minimum charging system that was designed only to maintain the battery charge and not to operate anything or directly power components. He checked the vent motor, slide mechanisms, lights, USB ports, and solar charger which were all working. At the hearing, he checked the refrigerator. It was cooling. The freezer was getting frost which shows the refrigerator was working. The refrigerator and air conditioner are manufactured by Dometic and covered under Dometic's warranty. In fact, Dometic authorized replacement of the roof air conditioner. Winnebago paid for and replaced the roof air conditioner, and Dometic reimbursed them. Mr. Muffelletto checked the slides, opened them, and they worked. He checked lights which worked. He checked shower vent motors, and both switches worked. The A/C worked. There is no pilot on the refrigerator. It has a simpler system but requires power. The electrical outlets worked and were wired correctly. USB ports worked. The converter and solar charger were working. He checked charging to the battery. When he disconnected the battery and turned off the generator, the solar charger was working but again only at 12.45 volts. The solar charger and controller are components that are not covered by Winnebago. He also noted there was no propane smell, and the propane operated as it should. As for missing foil tape, it takes 5 minutes to pull the cover and put on tape. As for crack, he did not see it. Nevertheless, that is a cosmetic issue and is never seen. He does not know if the crack was present originally or occurred after repairs. The air conditioner vent panel was broken on the side and is due to being forced and not due to a defect.

Mr. Muffelletto reviewed the Camping World inspection report and agreed with their findings that all systems were operating as designed. His findings at the hearing were similar to the findings made by Camping World two months ago. He observed the photographs of the crack taken by Camping World.

Respondent argues that, based on the service reports and Camping World's report, Winnebago has fulfilled its warranty obligations. They try to build every trailer perfectly. It is an impossible goal, but they strive for it every time. Realistically, there are hundreds, if not thousands, of moving parts on a travel trailer. They have a warranty which says if it fails, we will fix it. Winnebago did that in this case. Complainants had problems with the slide-out. Winnebago fixed it. Complainants had problems with the refrigerator. It was fixed. Complainants had problems with

the air conditioner. It was fixed. Winnebago and component manufacturers have stood behind their warranties. Dometic replaced the refrigerator and air conditioner. Winnebago worked on the slide-out. Winnebago concedes that Complainants had a rough time initially, but based on the last three inspections by Camping World, Mr. Muffelletto, and the inspection at the hearing, the trailer is working and operating as designed. It took some time to accomplish, but the trailer is now fixed. Winnebago argues that it has honored and fulfilled its warranty obligations.

D. Analysis

Complainants had the burden of proof to show that the subject vehicle qualified for relief pursuant to statute. To qualify for relief, Complainants must prove the required elements by a preponderance of the evidence. Failure to prove even one of the required facts causes the vehicle to be ineligible for relief. Based on the evidence presented, Complainants failed to establish the facts necessary for repurchase relief.

The Lemon Law (and Warranty Performance Law) does not apply to all problems that may occur with a vehicle but only to warrantable defects that continue to exist (i.e., currently exist) after repairs.³⁸ In order to qualify for repurchase or replacement, the defects must be covered by warranty and currently exist. The warranty excludes components covered under a warranty issued by the component's manufacturer, including appliances.³⁹ The evidence shows the air conditioner and refrigerator are covered by Dometic's warranty and not covered under Respondent's warranty. Moreover, the preponderance of the evidence shows that the defects have been repaired, and no defects alleged in the Lemon Law complaint currently exist. Specifically, the vent motor, air conditioner, converter, refrigerator, lights, outlets, and USB ports were replaced or repaired and were working at the hearing. The trailer frame was also corrected. Although Complainants believe the propane leak was caused by the pilot light not staying lit, the evidence shows the vehicle does not have a pilot light. Further, Camping World found all systems were operating, and no propane leak was detected. As for the three outstanding items noted by Camping World: air conditioner has

³⁸ Tex. Occ. Code §§ 2301.204, .603(a), .604(a).

³⁹ Complainants Exhibit 1.

no foil tape, cracked ceiling panel, and air conditioner vent broken, these defects were not raised in the complaint. A complaint filed with the Department identifies the relevant issues to address in this case. 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.⁴⁰ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint.⁴¹ Nevertheless, as stated above, issues with the air conditioner are not covered by Respondent's warranty and does not constitute a warrantable defect. As for the crack in the ceiling panel, the evidence shows the crack was caused during a repair and thus is not a manufacturing defect. Because the evidence was insufficient to show a warrantable defect continues to exist, the Hearings Examiner finds the vehicle does not qualify for repurchase, replacement, or repair relief.

IV. FINDINGS OF FACT

1. On May 10, 2021, Courtney Alvarado and Salvador Valdez (Complainants) purchased a new 2021 Winnabago Hike Model 172BH, a towable recreational vehicle, from McClain's RV Superstores, an authorized dealer of Winnebago Industries, Inc. (Respondent), in Corinth, Texas.
2. Complainants took delivery of the trailer on May 10, 2021.
3. Respondent provided a one-year basic warranty for defects in material or workmanship. The warranty excluded any components such as electronics and appliances which are covered under their own component manufacturer's warranty.
4. On June 28, 2022, Complainants filed a complaint with the Department alleging the following issues: vent motor over the shower stopped working; the air conditioner made a very loud noise; converter for solar panel failed; air conditioner failed; refrigerator failed; pilot light will not stay lit; lights failed; outlets in trailer failed; USB ports not working; and trailer was not built with all the framing.
5. Complainants took the vehicle for repair as shown below:

⁴⁰ 43 Tex. Admin. Code § 215.202(a)(3), (b)(1).

⁴¹ See Tex. Gov't Code §§ 2001.051-.052, .141(b)-(c); Tex. R. Civ. P. 301.

Date	Invoice	Issues
8/26/2021	2062612/C	Grey valve is leaking. Vent over bathroom won't go up or down. Entry door handle loose. A/C is making a noise.
1/10/2022	2064393	Replaced a/c making noise and screws falling out. A fan inside of the a/c had a loose bolt that came out and damaged both fan shrouds. Slide is crooked and the bottom is messed up. Vent over bathroom won't go up or down. No 12v to carriage. Handle at entry door very loose. Customer smells ammonia and detector goes off. USB port over main bed not operable. Customer felt an electrical shock when stepping on entry step with wet feet.
4/18/2022	2065710	Pressure test water system to check for leaks and rodent damage.
7/5/2022	2066789	A/C lower panel not screwed tight to ceiling and hangs down. Customer smells ammonia and detector goes off. Customer felt electrical shock on entry step. USB port over main bed and bunks not operable. Refrigerator not cooling. Propane leak at pigtails and regulator. Bottom of slide is dragging.
7/19/2022	2066976	Refrigerator is inoperable.
11/18/2022	2068572	Customer can smell propane at the front of the trailer.
12/6/2022	2068784	Bottom of slide is dragging and popping; drawer handle recall.

6. The air conditioner and refrigerator are covered by Dometic's warranty and not covered under Respondent's warranty.
7. The vent motor, air conditioner, converter, refrigerator, lights, outlets, and USB ports were replaced or repaired and were working at the hearing. The trailer frame was also repaired.
8. The vehicle does not have a pilot light, all systems were operating, and no propane leak was detected.
9. Three items were not listed in the complaint and may be outstanding: air conditioner has no foil tape, cracked ceiling panel, and air conditioner vent broken.
10. The air conditioner is not covered by Respondent's warranty and issues with the foil tape and vent do not constitute warrantable defects.
11. The crack in the ceiling panel was caused during a repair and is not a manufacturing defect.
12. A warrantable defect does not currently exist.

13. On November 3, 2022, the Department's Office of Administrative Hearings (OAH) issued a Notice of Hearing directed to all parties, providing not less than 10 days' notice of the hearing date and advising the parties of their rights under the applicable rules and statutes.
14. The Notice of Hearing advised the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the Department.
15. On February 8, 2023, Order No. 2 continued the hearing to April 4, 2023.
16. On April 4, 2023, a hearing on the merits convened by teleconference before OAH Hearings Examiner Andrew Kang. Complainants appeared and represented themselves. Respondent was represented by attorney Christopher Lowman. The hearing concluded and the record closed the same day.

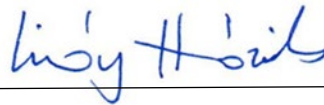
V. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204, 601-.613.
2. A Hearings Examiner with the Department's OAH 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. Complainant filed a sufficient complaint with the Department. 43 Tex. Admin. Code § 215.202.
4. Proper and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainants bear the burden of proof in this proceeding. 43 Tex. Admin. Code § 206.66(d).
6. Complainants, or a person on behalf of Complainants, or the Department provided sufficient notice of the alleged defect(s) in the complaint to Respondent. Tex. Occ. Code § 2301.606(c)(1).
7. Complainants failed to show, by a preponderance of the evidence, that the vehicle has a defect covered by Respondent's warranty or a warrantable defect currently exists. Tex. Occ. Code §§ 2301.204, .604.

VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-.613 is **DISMISSED**.

SIGNED December 22, 2023.



LINDY HENDRICKS
Hearings Examiner
Office of Administrative Hearings
Texas Department of Motor Vehicles