

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 22-0018986 CAF**

**ANNIE MCMORRIS,
Complainant**

v.

**FOREST RIVER, INC.,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Annie McMorris (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in her recreational vehicle (RV) manufactured by Forest River, Inc. (Respondent). A preponderance of the evidence shows that the subject vehicle qualifies for warranty repair 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 March 9, 2023, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. William McMorris represented Complainant. Warren Murphy, Assistant Director, Parts, Service & Warranty, 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 Complainant.¹⁹ The Complainant must prove all facts required for relief by a preponderance of the evidence. That is, the Complainant must present sufficient evidence to show that every required fact more likely than not exists.²⁰ Accordingly, the Complainant cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely.

¹⁵ TEX. OCC. CODE § 2301.606(c)(2). A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer may satisfy the opportunity to cure requirement when the respondent authorizes a dealer to attempt repair after written notice to the respondent. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 226 (Tex. App.—Austin 2012); Texas Department of Transportation, *Kennemer v. Dutchman Manufacturing, Inc.*, MVD Cause No. 09-0091 CAF (Motor Vehicle Division Sept. 25, 2009) (Final Order Granting Chapter 2301, Subchapter M Relief). An opportunity to cure does not require an actual repair attempt but only a valid opportunity. *Id* at 2. A respondent forgoes its opportunity to repair by replying to a written notice of defect with a settlement offer instead of arranging a repair attempt. *Id* at 2.

¹⁶ TEX. OCC. CODE § 2301.606(d)(2).

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

¹⁸ TEX. OCC. CODE § 2301.603(a).

¹⁹ 43 TEX. ADMIN. CODE § 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 for relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

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 and limits what may be addressed 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 Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.²³ The parties may expressly or impliedly consent to hearing issues not included in the complaint.²⁴ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²⁵

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainant for reasonable incidental expenses resulting from the vehicle’s loss of use because of the defect.²⁶ Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle’s failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts

²¹ “In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case.” TEX. GOV’T CODE § 2001.051; “Notice of a hearing in a contested case must include . . . either: (A) a short, plain statement of the factual matters asserted; or (B) an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.” TEX. GOV’T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) (“The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.”); TEX. OCC. CODE § 2301.204(d) (“A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

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

²³ *See* TEX. GOV’T CODE §§ 2001.141(b)-(c), 2001.051-2001.052; TEX. R. CIV. P. 301.

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

²⁵ *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

²⁶ TEX. OCC. CODE § 2301.604.

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

B. Summary of Complainant's Evidence and Arguments

On April 14, 2021, the Complainant, purchased a new 2021 Sabre 37FLL from Camping World RV Sales, an authorized dealer of the Respondent, in Lubbock, Texas. The vehicle's limited warranty provides body structure coverage for one (1) year. On or about August 2, 2022, the Complainant mailed a written notice of defect; however, this notice was never delivered because it was addressed to Respondent's manufacturing plant rather than the address specified for notices in the warranty. On or about August 9, 2022, the Department's Lemon Law Section of the Enforcement Division provided a written notice of defect (a copy of the complaint) to the Respondent. On August 4, 2022, the Complainant filed a complaint with the Department alleging issues regarding: a soft spot in the floor; screws protruding through the linoleum and scratching grooves into the slideout; living area slideouts leaking water; window leaking; ceiling panel staples coming out; loose or damaged floor line molding, j-wrap, fender skirt, trim and beltline molding; and slideout actuator. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Issue
April 7, 2022	soft spot in the floor; screws protruding through the linoleum and scratching grooves into the slideout; living area slideouts leaking water; window leaking; ceiling panel staples coming out; loose or damaged floor line molding, j-wrap, fender skirt, trim and beltline molding; and slideout actuator

Mr. McMorris testified that only the dinette window leak was successfully repaired. He explained the linoleum had screws coming through, which rubbed the dinette slideout. He first noticed screws coming through the linoleum and scratching grooves into the slideout about January-February of 2022. The screws were repaired but the slideout still rubbed on the linoleum, causing it to wear down, which he last noticed in mid-February 2023. He described that a spot, about three inches around, on the floor felt like a knot in the plywood underlayment, which he first

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

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

noticed about January-February of 2022 and last noticed in mid-February 2023. About March 2022, when raining, water leaked, forming a puddle around each corner of the living area slideouts. The water damaged trim, carpet, and slideout flooring. Mr. McMorris last noticed the slideouts leaking in mid-February 2023. The ceiling panels in the living area were never stapled to the roof structure. The dealer could not repair the panels to factory condition, so the dealer just pulled the staples and filled the holes with putty. The loose or damaged floor line molding, j-wrap, fender skirt, trim and beltline molding were essentially one issue caused by the skirting (j-wrap) coming undone and damaging the other things, which was first noticed about January 2022 and last noticed in mid to late February 2023. Mr. McMorris explained that the dealer added the slideout actuator item to the work order, which was never repaired.

Mr. McMorris described the PowerPoint presentation slides (photos from February 26, 2023) as follows: slides 3-5: picture of door and moisture damage behind door; slide 6: moisture damage, silicone never redone allowing moisture in; slides 7-12: gaps in j-wrap, screw coming loose; slides 13-17: forward slideouts, gaps where water swelled boards/fascia trim; slide 18: marks where rubbing on the flooring; slide 19: tight slideout bottom when first coming in; slides 22-24: still shots from the slideout video; slide 29: ceiling panel; slide 30: still of video showing slideout opening, coming in at an angle; slides 31-34: emails referencing repair; slide 33: TxDMV filing online; slide 34: complaint tracking. Mr. McMorris stated that the RV was out of service for repair from April 7 to December 16, 2022.

On cross-examination, Mr. McMorris confirmed that the issue with the door was not presented to the Respondent for repair. He also affirmed that the dark portion above the j-wrap appeared to be a decal. He clarified that he believed moisture and mold was getting behind the j-wrap and fiberglass and wood and insulation inside the wall. He confirmed that the silicone had never been redone. When asked about maintenance done on the sealants around the exterior, Mr. McMorris replied they were inspected. He also responded that the RV had never been impacted or damaged by a collision or by being dragged against something. Mr. McMorris stated that they did not have any maintenance on the slideout seals between the RV's purchase and repairs.

During rebuttal testimony, Mr. McMorris noted that on October 10, 2022, they agreed to transporting the RV to Indiana for repair. However, on November 1, 2022, the dealer, Camping World RV Sales – Tallahassee, notified the McMorrises that it had already began repairs, so they

contacted Henry Sears (a warranty manager of the Respondent) and agreed to have the dealer complete repairs already in progress instead of having the RV repaired at the Respondent's facilities in Indiana.²⁹

C. Summary of Respondent's Evidence and Arguments

Mr. Murphy testified that the Respondent first received notice from the notice of hearing. He explained that the Complainant's notice letter was sent to a manufacturing plant and not the address for notices in the warranty. He elaborated that the manufacturing plants are not set up to receive notices or mail. Also, the Complainant's letter did not list the alleged defects so it never really provided notice of the issues. With respect to the RV's issues, the entry door had a problem with paint applied by vendor but this issue was never presented to the Respondent or any dealer. Mr. Murphy contended that the j-wrap issue was the shifting/buckling of the decal rather than water damage. Further, the loose molding was a cosmetic issue; the slideout contacting the linoleum was an adjustment issue and not a significant impairment; the slideout was moving in a normal angle; with the slideouts closed, the trim was even and close to the sidewalls; the slideout actuator item on the work order only reflected the dealer's routine check for technical service bulletins and recalls and not any problems.

On cross-examination, Mr. Murphy concluded that after viewing the photos of the floor, he did not see excessive wear on the linoleum, though he saw the slideout contacting the linoleum and the slideout may need an adjustment. Mr. Murphy added that the slideout would normally contact the floor over time; rather, the issue is whether the contact causes excessive wear or damage, which he did not see. Mr. Murphy observed that the ceiling panels were held up at the ends and by the air conditioner and also where light fixtures are affixed. Mr. Murphy noted that the tracking information for the Complainants' notice of defect shows "Notice Left (No Authorized Recipient Available)." Mr. Murphy identified Henry Sears as the Respondent's warranty manager for the Sabre Division.

²⁹ Under TEX. R. EVID. 801(e)(2)(D), the statements by an opposing party's employee are not hearsay.

D. Analysis

To qualify for repurchase or replacement, a vehicle must have a defect covered under warranty (warrantable defect) that creates a serious safety hazard or substantially impairs the use or market value of the vehicle after a reasonable number of repair attempts. In addition, the Respondent must have been given written notice of the defect and an opportunity to cure the defect. As explained in the discussion of applicable law, the law imposes the burden of proof on the Complainant. Accordingly, the Complainant must affirmatively prove every Lemon Law element by a preponderance of the evidence. In this case, the complaint includes the following issues: a soft spot in the floor; screws protruding through the linoleum and scratching grooves into the slideout; living area slideouts leaking water; window leaking; ceiling panel staples coming out; loose or damaged floor line molding, j-wrap, fender skirt, trim and beltline molding; and slideout actuator. Testimony reflects that the window leak and protruding screws have been resolved. In this case, a preponderance of the evidence shows that the subject vehicle qualifies for repair relief.

1. Notice of Defects and Opportunity to Cure

As an initial matter, the Lemon Law prohibits granting repurchase or replacement relief unless the respondent has been given written notice of the defects and an opportunity to cure the defects. In this case, the evidence shows that Complainants' failed to provide notice of the defects as required by law. The tracking information for the notice shows that it was not delivered.³⁰ Nevertheless, a notice provided by the Department satisfies the Lemon Law's notice requirement. Though Mr. Murphy cited the Notice of Hearing as the first notice of the defects, the Department's Lemon Law Section of the Enforcement Division sent a copy of the complaint to the Respondent on August 9, 2022. Additionally, a preponderance of the evidence shows the Respondent has been given an opportunity to cure the alleged defects after receiving notice. In particular, the evidence shows that on October 10, 2022, the parties arranged for the RV to be repaired at the Respondent's facilities before the decision to complete repairs at a dealership. However, the issue regarding the blemished entry door was raised for the first time in evidence at the hearing and not previously included in a complaint or presented for warranty repair.

³⁰ Complainant's Ex. 5, PowerPoint: Photos & Videos of the 37FLL Forrest River taken on Sunday, February 26th, 2023 ("We attempted to deliver your item at 9:10 am on August 5, 2022 in GOSHEN, IN 46528 and a notice was left because an authorized recipient was not available.").

2. Warrantable Defect

Lemon Law relief does not apply to all problems that may occur with a vehicle but only to defects covered under warranty (warrantable defects) that continue to exist (i.e., currently exist) after repairs.³¹ The Lemon Law does not require that a respondent provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. Rather, the Lemon Law requires a respondent to conform its vehicles to whatever coverage the warranty provides. The warranty generally states that:

Forest River Inc., 55470 CR 1, P.O. Box 3030, Elkhart, Indiana 46515-3030 (Warrantor) warrants to the ORIGINAL CONSUMER PURCHASER ONLY, when purchased from an authorized Forest River Inc. dealer, for a period of one (1) year from the date of purchase (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.³²

The warranty also contains the following exclusions:

Warrantor expressly disclaims any responsibility for damage to the unit where damage is due to condensation, normal wear and tear or exposure to elements. Warrantor makes no warranty with regard to, but not limited to, the chassis including without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, optional generators, routine maintenance, equipment and appliances, or audio and/or video equipment. Their respective manufacturers and suppliers may warrant some of these items. Warranty information with respect to these items is available from your dealer.³³

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³⁴

³¹ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

³² Complainant's Ex. 4, Forest River Limited Towable Warranty.

³³ Complainant's Ex. 4, Forest River Limited Towable Warranty.

³⁴ 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.").

The entry door blemish was raised for the first time at the hearing on March 9, 2023, after the warranty expired on April 14, 2022. Consequently, the door blemish is not a warrantable defect. The evidence is unclear whether the soft spot in the floor is a defect. The dealer's technician could not discern any greater softness in the area in question. Further, the record does not include an inspection of the RV. Though the protruding screws have been resolved, the Complainant asserts that the slideout still rubs against the floor. However, the evidence is not clear whether the contact with the floor arises from a manufacturing defect or the need for adjustments that may normally occur over time (i.e., routine maintenance, which is not warranted). Likewise, the evidence is unsettled whether any existing water leaks result from the need for routine maintenance (e.g., reapplying sealant) or a defect from manufacturing. Significantly, the exterior sealants have had no maintenance other than to be inspected. The ceiling panels clearly suffer from faulty manufacturing, since the staples have been coming out due to not being secured to the structure of the RV. Similarly, the issues with the loose or damaged floor line molding, j-wrap, fender skirt, trim and beltline molding also appear to result from manufacturing defects. However, the slideout actuator issue is not a defect. This job on the work order is merely an inspection to determine if the actuator needs to be replaced. In any event, the actuator does not appear warranted since the warranty excludes "mechanical parts or systems" and "equipment" from coverage.

3. Serious Safety Hazard or Substantial Impairment of Use or Market Value

None of the warrantable issues above fall within the Lemon Law's definition of a serious safety hazard. Further, none of the warrantable issues substantially impair the use or market value of the vehicle under the reasonable prospective purchaser standard, particularly since the issues are cosmetic. Accordingly, the RV does not qualify for repurchase or replacement.

4. Reasonable Repair Attempts

The repair history shows the RV out of service for repair from April 7, 2022 to December 16, 2022, for the complaint issues. Accordingly, the RV satisfies the 30 days out of service required to meet the statutory presumption for reasonable repair attempts.

5. Conclusion

As explained above, to qualify for repurchase or replacement, a vehicle must have a warrantable defect that creates a serious safety hazard or substantial impairment of use or value, reasonable repair attempts, as well as written notice of the defect. However, none of the existing

issues meet all of the requirements for repurchase or replacement. If a vehicle does not qualify for repurchase or replacement, repair relief may still apply, if it otherwise meets the requirements for repair relief. In this case, the evidence shows that the ceiling panels and the loose or damaged floor line molding, j-wrap, fender skirt, trim and beltline molding qualify for warranty repair.

III. Findings of Fact

1. On April 14, 2021, the Complainant, purchased a new 2021 Sabre 37FLL from Camping World RV Sales, an authorized dealer of the Respondent, in Lubbock, Texas.

2. The warranty generally provides that:

Forest River Inc., 55470 CR 1, P.O. Box 3030, Elkhart, Indiana 46515-3030 (Warrantor) warrants to the ORIGINAL CONSUMER PURCHASER ONLY, when purchased from an authorized Forest River Inc. dealer, for a period of one (1) year from the date of purchase (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.

3. The warranty also contains the following exclusions:

Warrantor expressly disclaims any responsibility for damage to the unit where damage is due to condensation, normal wear and tear or exposure to elements. Warrantor makes no warranty with regard to, but not limited to, the chassis including without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, optional generators, routine maintenance, equipment and appliances, or audio and/or video equipment. Their respective manufacturers and suppliers may warrant some of these items. Warranty information with respect to these items is available from your dealer.

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

Date	Issue
April 7, 2022	soft spot in the floor; screws protruding through the linoleum and scratching grooves into the slideout; living area slideouts leaking water; window leaking; ceiling panel staples coming out; loose or damaged floor line molding, j-wrap, fender skirt, trim and beltline molding; and slideout actuator

5. On or about August 2, 2022, the Complainant mailed a written notice of defect; however, this notice was never delivered because it was addressed to Respondent's manufacturing plant rather than the address specified for notices in the warranty. On or about August 9,

2022, the Department's Lemon Law Section of the Enforcement Division provided a written notice of defect (a copy of the complaint) to the Respondent.

6. On August 4, 2022, the Complainant filed a complaint with the Department alleging issues regarding: a soft spot in the floor; screws protruding through the linoleum and scratching grooves into the slideout; living area slideouts leaking water; window leaking; ceiling panel staples coming out; loose or damaged floor line molding, j-wrap, fender skirt, trim and beltline molding; and slideout actuator.
7. On January 10, 2023, 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 March 9, 2023, by videoconference, before Hearings Examiner Andrew Kang, and the record closed on the same day. William McMorris represented Complainant. Warren Murphy, Assistant Director, Parts, Service & Warranty, represented the Respondent.
9. The vehicle's warranty expired on April 14, 2022.
10. The ceiling panels were defectively installed, causing the staples to come loose.
11. The loose or damaged floor line molding, j-wrap, fender skirt, trim and beltline molding resulted from defective workmanship.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 and 2301.204.
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. TEX. OCC. CODE § 2301.704.

3. The Complainant filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052. 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the blemished door, soft spot in the floor; the linoleum flooring rubbing the slideout; living area slideouts leaking water; window leaking; and slideout actuator issues are covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a). Additionally, the Complainant did not prove that the ceiling panel staples coming out; loose or damaged floor line molding, j-wrap, fender skirt, trim and beltline molding are warrantable defects that create a serious safety hazard or substantially impair the use or market value of the vehicle. TEX. OCC. CODE § 2301.604(a).
7. Reimbursement of incidental expenses does not apply 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 Complainant's 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 Complainant's vehicle qualifies for warranty repair. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainant or an agent of the Complainant 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 §§ 2301.204 and 2301.603.

11. The Respondent has a continuing obligation after the expiration date of the warranty to repair any warrantable nonconformities in a new motor vehicle reported to the Respondent or Respondent's designated agent or franchised dealer before the warranty expired.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. 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 resolve the following issues: ceiling panel staples coming out, and loose or damaged floor line molding, j-wrap, fender skirt, trim and beltline molding. Upon this Order becoming final under Texas Government Code § 2001.144:³⁵ (1) the Complainant shall deliver the vehicle to the Respondent within 20 days; and (2) the Respondent shall complete the repair of the vehicle within **60 days** after receiving it. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the Complainant 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 23, 2023



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

³⁵ 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.