



November 14, 2023

Nancy and Edward Hart
1821 N. Lake Forest Dr. #700-384
McKinney, TX 75071

**CERTIFIED MAIL AND
VIA E-MAIL**

Josh Fenner
Customer Affairs Manager
2831 Dexter Drive
Elkhart, IN 46514

**CERTIFIED MAIL AND
VIA E-MAIL**

NOTICE TO PARTIES

**TO: NANCY and EDWARD HART, Complainants
HEARTLAND RECREATIONAL VEHICLES LLC, Respondent
CASE NO. 23-0002811 CAF**

Enclosed is a copy of the Decision and Order in this case.

Pursuant to Texas Government Code §§ 2001.142 and 2001.144-2001.146, you are given notice that this Decision will become final unless a request for rehearing is timely filed. A motion for rehearing must be filed by a party not later than the 25th day after the date the decision or order that is the subject of the motion is signed. Any reply to a motion for rehearing must be filed not later than the 40th day after the date the decision or order that is the subject of the motion is signed.

A motion for rehearing, and any reply to the motion for rehearing, shall be directed to the Chief Hearings Examiner and filed with:

Office of Administrative Hearings
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731

A copy of the motion for rehearing must be sent to all parties, and the motion must include a certificate of service or other affirmation that a copy of the motion has been sent to all parties.

Enclosure

cc: **VIA EMAIL**

Texas Department of Motor Vehicles
Enforcement Division, Lemon Law Section

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 23-0002811 CAF**

**NANCY and EDWARD HART,
Complainants**

v.

**HEARTLAND RECREATIONAL
VEHICLES LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Nancy and Edward Hart (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 (RV or vehicle) manufactured by Heartland Recreational Vehicles LLC (Heartland or Respondent). After reviewing the evidence, the Hearings Examiner finds that the Lemon Law complaint was not timely filed and does not qualify for repurchase relief. However, the vehicle qualifies for repair relief.

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 May 12, 2023, in Plano, Texas, before Hearings Examiner Andrew Kang with the Department's Office of Administrative Hearings (OAH).¹ Complainants appeared in person and represented themselves. Respondent appeared in person through its representative Delbert Miller, Technical Director. The hearing concluded and the record closed the same day.

¹ Hearings Examiner Lindy Hendricks reviewed the record of the hearing 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 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 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:

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

⁹ Tex. Occ. Code § 2301.604.

- 1) the vehicle has a defect covered by an applicable warranty (applicable 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 non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”¹³

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).

¹³ *Id.*

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:

[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

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Tex. Occ. Code § 2301.605(a)(1).

¹⁷ Tex. Occ. Code § 2301.605(a)(2).

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

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

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.”).

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

- (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 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

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).

²⁶ 43 Tex. Admin. Code § 215.209(a).

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

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

III. DISCUSSION

A. Summary of Inspection and Evidence

On January 23, 2021, Complainants purchased a new 2020 Big Country Model 3895FK RV from San Antonio RVs LLC, an authorized dealer of Respondent, in Spring Branch, Texas. Complainants paid \$63,360.53 for the vehicle, plus additional add-ons worth \$10,709.59 and a

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.

camera system for \$1,774.38.³¹ The vehicle's limited warranty provided coverage for one (1) year.³²

On September 15, 2022, Complainants sent a letter to Respondent listing the problems they were having with their vehicle.³³ On October 27, 2022, Complainants filed a complaint with the Department, listing multiple issues with the vehicle.³⁴ Prior to the hearing, the parties inspected the vehicle. At the time of the hearing, Complainants stated there were four unresolved issues involving the leveling jack, the control panel's auto-hitch function, the brakes, and flipper tabs.³⁵

1. Leveling Jacks.

During the inspection, Complainants testified that, when raised, the jacks only have a 4" clearance from the ground, not the required 7" to 9" clearance. According to Complainants, the rear jacks were installed that way by Respondent. Complainants have been flagged down and pulled over by other RVers who told them their jacks were down, and they would lose one if they were not careful. According to Complainants, both service centers, Fun Town RV-Cleburne and Fun Town RV Dallas, have refused to raise the jacks because they were installed at that level by Respondent. If the jacks were raised, they would have to be reprogrammed. Complainants stated the service centers did not want to accept liability for modifying the manufacturer's installation of the jacks. Complainants testified that the jacks may be under warranty by Lippert Components, Inc. (LCI), but the jacks are not the issue. According to Complainants, the issue is in the installation

³¹ Complainants' Exhibit 1.

³² Complainants were provided a general owner's manual, but it was for the wrong fifth wheel. Complainants asked for the correct manual and was told by Heartland that anything they required could be obtained online at Heartland's website. At the hearing, the Hearings Examiner downloaded the manual from Heartland's website which was admitted as Complainants' Exhibit 5.

³³ Complainants' Exhibit 2.

³⁴ Complainants' complaint included vinyl floor torn, leveling jacks bleed and not at clearance height, flipper tabs fallen off, shower glass door cracked, kitchen window fabric coming off, kitchen slide trim missing, underbelly not reattached properly, and exposed staples.

³⁵ The remaining issues are not structural components that qualify for the three-year limited structural warranty. *See* Complainants' Exhibit 5 at 4.

of the jacks which is not an LCI issue. Complainants testified that the problems have been ongoing from September 2021 until January 2022 when the initial one-year warranty expired.

Mr. Miller stated that the 7" clearance requirement is the published standard. Mr. Miller stated it was hard to gauge the distance between the jack and the ground due to the surface at the inspection site. Therefore, Mr. Miller applied a standard test for clearance, using a measuring tape to create an angle from the meeting point of the rear tire to the surface to the back bumper of the fifth wheel. This clearance standard provides that nothing should protrude below that angle. He explained that there may be times when some apparatus may hang below that line; however, anything below string angle could bottom out. Mr. Miller noted that the leveling jack is right on the mark of the string angle. He stated that, without question, the jack was riding on the threshold of that clearance standard. Mr. Miller would need to look at the standard again to see if the jack could be on the line or if it had to be above the line. Complainants stated that Mr. Miller could not find another jack that low. When Complainants took pictures of the RV on a flat, leveled surface, the jacks were 4" above the ground.

On cross examination, Complainants testified that the original jacks were replaced and that they were under warranty by LCI. Complainants testified that they were replaced at the same height despite multiple requests to raise the level.

2. Control Panel's Auto-Hitch Function. According to Complainants, the auto-hitch function, which controls the jack, is not functioning. This has been an ongoing problem since they purchased the vehicle. The control panel should auto-retract the jacks. According to Complainants, the control panel skips past the auto-hitch function, causing the jacks do all sorts of things except raise the rear jack or adjust the front jack. Complainants have had to use the manual function because the auto-hitch did not work. The problem is constant and not intermittent. Complainants suspected the control panel also attributed to the original jacks bleeding down. Complainants stated that the control panel was allegedly replaced but they received no documentation to show that it was replaced. However, Complainants stated that the second repair facility replaced all six jacks.

Mr. Miller is familiar with the LCI screen model. Mr. Miller verified that when Complainants tried the auto-hitch function, the control panel jumped past auto-hitch and did not return to that screen. Complainants stated that on two occasions, instead of raising the middle and rear jacks, the auto-hitch started to drop the front jacks while leaving the knees in place. Complainants asked Respondent if LCI is the warrantor on the control panel issue. Mr. Miller confirmed the control panel is an LCI component.

3. Brakes. Complainants first noticed the brakes issue in June 2021 when the brakes failed on a trip to Colorado. The emergency brake control switch shorted out, burned, and locked up the brakes. Complainants thought the trailer was on fire because of the extensive smoke from the brakes. Complainants were travelling 75 miles per hour and felt the strong tug when the vehicle started braking. The failure of the breakaway switch caused the brakes to lock up. After the repairs, Complainants were told that the brakes had been fixed, however Complainants noted that the vehicle's brakes were still not operating properly.

During the inspection, the brakes were tested. When the brake controller was applied, the vehicle did not slow or stop, and there was no noticeable drag.³⁶ The breakaway switch had to be engaged in order to stop the vehicle.

4. Flipper tabs. Complainants testified that there is an issue with the flipper tabs on the slide out but acknowledged that it was a cosmetic and not a safety issue. Complainants first noticed the tabs were broken off in June 2021. They noticed the tabs were broken when they picked up the vehicle after repairs on February 9, 2023. Complainants believe it is an adhesive problem that Respondent is unable to resolve.

³⁶ Hearings Examiner Kang stated he heard some creaking, but it did not sound like the brakes were engaging.

Summary of Repairs. Complainants took the vehicle for repair as shown below:

Date	Repair Order	Issue
9/15/2021- 2/8/2022 ³⁷	RO12308856A	Living room floor torn up; living room slide crooked; Wi-Fi connection; leveling jacks bleeding down; emergency brakes failed causing brakes to lock up; kitchen rubber seal torn; tabs on slides falling off; middle burner will not stay lit; fabric surrounding front window coming off; center bar issue; middle and rear jacks will not come up in the auto-hitch function; auto-hitch causes front jacks to go down without middle and rear jacks retracting first; leveling jack not working on auto-hitch mode; drawer panels loose; shower door glass chips.
9/15/2021- 10/28/2021 ³⁸	RO12308856B	Bushing on door not installed properly; trim on kitchen slide coming off; bedroom drawers need reinforcement; trim under washer/dryer need reattachment; portable satellite dish issue; control panel skips past auto-hitch function; loose step paneling; metal trim loose screw.
6/30/2022- 11/25/2022 ³⁹	RO12308856C	Main awning making loud noise; black water tank reading; glass shower door slide seal cracked; missing kitchen trim; underbelly not resealed properly; add washer to lower refrigerator; rear and middle leveling jacks still creep down at storage; check for leaks with smell near front of unit; auto-hitch inoperable; plug will

³⁷ Complainants' Exhibit 3 at 14-20. Repair order shows the appointment was initiated on July 20, 2021, but the vehicle was placed in repair on September 15, 2021.

³⁸ Complainants' Exhibit 3 at 21-24.

³⁹ Complainants' Exhibit 3 at 25-30. Repair order shows the date appointment initiated was February 8, 2022. No cash out date shown so the promised date was used.

		not stay screwed; shower door glass chip at handle; rear lens cover broken; scratches on driver side.
9/15/2021-3/30/2022 ⁴⁰	RO12308856D	Living room floor torn up.
9/27/2022-2/9/2023 ⁴¹	RO 1818251	Damaged ladder; broken fenders; bleeding jacks; jacks not at proper road clearance height; damaged linoleum; flipper tabs fallen off; cracked shower glass door; loose fabric on front cap window; missing piece on front slide; falling underbelly; dresser drawer not secured; exposed staples in bathroom and bedroom; failed brake switch;

According to Complainants, the problems have been ongoing since September 2021 until January 2022 when the one-year warranty expired.⁴² At that point, Respondent started telling Complainants that none of the items were under warranty. While Complainants fought the out-of-warranty issue, the service dealership replaced the solenoids. Complainants noted that when they filed the Lemon Law complaint in October 2022, all the items initially listed were now under warranty. Respondent took care of most of the problems except the four remaining items. Complainants were puzzled that Respondent initially fought them on warranty items.

Complainants are happy with all the repairs inside the vehicle. The brakes, auto-hitch, and jacks are their main issues. Complainants testified that Respondent bought back two friends' RVs because of jack issues and cracks all the way up. Complainants have been RVers since the 1970's and are familiar with the vehicle.

⁴⁰ Complainants' Exhibit 3 at 31-32.

⁴¹ Complainants' Exhibit 3. Repair Order shows promised date of November 28, 2022; however, the cash out date was handwritten February 9, 2023.

⁴² Complainants' Exhibits 2 and 3 contain the communications between Complainants, Respondent, and its authorized service dealerships, including repair orders, the Prospect Activity Listing with Notes, and letter to Respondent.

According to Complainants, the vehicle was out of service for repairs for 11 months, including the last service attempt where the vehicle was at the service center for 4½ months. Complainants do not occupy the RV full time and request repurchase of the vehicle.

Respondent had no closing statement or argument.

C. Analysis

Complainants requested repurchase or replacement of the subject vehicle. To qualify for repurchase or replacement, the complaint for Lemon Law relief must be filed within six months after the earliest of the warranty's expiration date or 24 months since the date of original delivery.⁴³ Complainants purchased the vehicle on January 23, 2021, and the one-year warranty expired on January 23, 2022. Accordingly, the Lemon Law complaint must have been filed by July 23, 2022. However, the complaint was filed on October 27, 2022. Therefore, the vehicle does not qualify for repurchase or replacement relief.

If a vehicle does not qualify for repurchase or replacement, the vehicle may still qualify for warranty repair relief.⁴⁴ To qualify for warranty repair relief, the law requires the vehicle to have a warrantable defect, written notice of the defect to the manufacturer or its authorized agent before the warranty's expiration, and a complaint filed with the Department specifying the defect.⁴⁵

With respect to warrantable defect, the vehicle had a one-year limited warranty that did not cover brakes after 90 days beyond retail sale⁴⁶ or cosmetic issues.⁴⁷ Complainants first noticed the brakes issue in June 2021, more than 90 days after the purchase of the vehicle. The flipper tabs, as

⁴³ Tex. Occ. Code § 2301.606(d).

⁴⁴ 43 Tex. Admin. Code § 215.208(e).

⁴⁵ Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202(b)(3).

⁴⁶ Complainants' Exhibit 5 at 6.

⁴⁷ Complainants' Exhibit 5 at 4.

conceded by Complainants, were cosmetic issues. Based on the terms of the warranty and evidence presented, the Hearings Examiner finds the flipper tabs and brakes are not warrantable defects.

Regarding the auto-hitch and leveling jacks, the one-year warranty states, in relevant part:

[Respondent's] One (1) Year Limited Warranty covers defects in material and/or workmanship supplied and attributable to [Respondent] in the construction of the recreational vehicle for a period of one (1) year...and does not cover those items excluded under the section titled "What Is Not Covered."⁴⁸

Under the "What Is Not Covered" section, Respondent does not warrant components that are covered by their own manufacturer's warranty, including leveling jacks and other items not specifically manufactured by Respondent.⁴⁹ According to the warranty, Respondent did not warrant any component or appliance.⁵⁰ Consequently, the warranty does not apply to defects in components produced by third parties.⁵¹ The evidence shows the auto-hitch is an LCI component, covered by LCI's warranty, and thus its defect is not warranted by Respondent.

With respect to the leveling jacks which are also LCI components, the issue is not with the jacks themselves but rather their placement. The evidence shows that the leveling jacks were

⁴⁸ Complainants' Exhibit 5 at 3. Although Respondent's warranty states that its primary remedy is to repair a defect, the Lemon Law statute controls and provides for repurchase or replacement if the required facts are shown. The warranty cannot limit the relief provided by the Lemon Law statute.

⁴⁹ Complainants' Exhibit 5 at 6-7.

⁵⁰ Complainants' Exhibit 5 at 7. The warranty reads in relevant part: "Some component part and appliance manufacturers issue limited warranties covering their products that are separate from Heartland's limited warranties. If a component or appliance manufacturer provides a warranty on its products, these warranties are separate and distinct from Heartland's Limited Warranties. However, to assist the retail customer, during Heartland's one (1) year Limited Warranty coverage period, Heartland will administer those warranties; except for separate warranties covering tires, batteries, and generators, as Heartland does not administer those components' separate warranties. Therefore, during the one (1) year Limited Warranty coverage period, all warranty service claims on applicable components and appliances should be directed to Heartland through an authorized Heartland dealer or service center. After the Heartland one (1) year Limited Warranty coverage period expires, all component and appliance warranty claims should be directed to the respective component or appliance manufacturers. Heartland is not warranting any component or appliance, only administering separately offered warranties from the component or appliance manufacture. In no way shall Heartland's limited warranties be modified or amended by this provision." Since Respondent only administered those warranties, third party components are not warranted for purposes of the Lemon Law statute.

⁵¹ Claims against third party components are outside the scope of the Lemon Law statute.

installed by Respondent below the 7” clearance threshold. The placement of the leveling jacks appears to be a defect in Respondent’s workmanship, which is covered by Respondent’s warranty.

Regarding notice, the undisputed evidence shows that, prior to the expiration of the warranty, Complainants reported the nonconformity to Respondent or its designated agent or franchised dealer. Between July 2021 and October 2022, Complainants remained in constant communications with service centers and Respondent, as memorialized in the repair orders,⁵² documented in the Prospect Activity Listing with Notes,⁵³ and summarized in the written notice to Respondent.⁵⁴ Complainants reported the issue to authorized service centers who replaced the leveling jacks but would not raise the leveling jacks because they were installed at that level by Respondent.⁵⁵ At the time of the hearing, the defect regarding the height of the leveling jacks still existed after repair. Since the issue of the leveling jacks occurred and was reported prior to the expiration of the warranty and Complainant’s complaint included the issue, Respondent is still obligated to repair the leveling jack.⁵⁶

Based on the foregoing, the Hearings Examiner finds the vehicle does not qualify for repurchase or replacement but does qualify for repair relief with regard to the leveling jacks.

IV. FINDINGS OF FACT

1. On January 23, 2021, Nancy and Edward Hart (Complainants) purchased a new 2020 Big Country Model 3895FK, a recreational vehicle manufactured by Heartland Recreational Vehicles LLC (Respondent), from San Antonio RVs LLC, an authorized dealer for Respondent, in Spring Branch, Texas.
2. The purchase price of the vehicle was \$68,360.53. Complainants also paid \$10,709.59 in add-ons and \$1,774.38 for a camera system.
3. The vehicle’s limited warranty provided coverage for one (1) year.

⁵² Complainants’ Exhibit 3 at 2-32.

⁵³ Complainants’ Exhibit 2 at 9-77.

⁵⁴ Complainants’ Exhibit 2 at 1-2.

⁵⁵ Complainants’ Exhibit 3 at 26.

⁵⁶ Tex. Occ. Code § 2301.603.

4. Complainants took the vehicle to an authorized service center for repair as shown below:

Date	Repair Order	Issue
9/15/2021- 2/8/2022	RO12308856A	Living room floor torn up; living room slide crooked; Wi-Fi connection; leveling jacks bleeding down; emergency brakes failed causing brakes to lock up; kitchen rubber seal torn; tabs on slides falling off; middle burner will not stay lit; fabric surrounding front window coming off; center bar issue; middle and rear jacks will not come up in the auto-hitch function; auto-hitch causes front jacks to go down without middle and rear jacks retracting first; leveling jack not working on auto-hitch mode; drawer panels loose; shower door glass chips.
9/15/2021- 10/28/2021	RO12308856B	Bushing on door not installed properly; trim on kitchen slide coming off; bedroom drawers need reinforcement; trim under washer/dryer need reattachment; portable satellite dish issue; control panel skips past auto-hitch function; loose step paneling; metal trim loose screw.
6/30/2022- 11/25/2022	RO12308856C	Main awning making loud noise; black water tank reading; glass shower door slide seal cracked; missing kitchen trim; underbelly not resealed properly; add washer to lower refrigerator; rear and middle leveling jacks still creep down at storage; check for leaks with smell near front of unit; auto-hitch inoperable; plug will not stay screwed; shower door glass chip at handle; rear lens cover broken; scratches on driver side.

9/15/2021- 3/30/2022	RO12308856D	Living room floor torn up.
9/27/2022- 2/9/2023	RO 1818251	Damaged ladder; broken fenders; bleeding jacks; jacks not at proper road clearance height; damaged linoleum; flipper tabs fallen off; cracked shower glass door; loose fabric on front cap window; missing piece on front slide; falling underbelly; dresser drawer not secured; exposed staples in bathroom and bedroom; failed brake switch;

5. The warranty covers defects in material and/or workmanship supplied and attributable to Respondent in the construction of the recreational vehicle for a period of one (1) year.
6. The warranty did not cover brakes after 90 days beyond retail sale or cosmetic issues.
7. The brakes issue was first noticed in June 2021, more than 90 days after the purchase of the vehicle and is not covered by warranty.
8. The flipper tabs are cosmetic issues and are not covered by warranty.
9. The warranty does not warrant components that are covered by their own manufacturer's warranty, including leveling jacks and other items not specifically manufactured by Respondent.
10. Respondent did not warrant any components produced by third parties and thus the warranty did not apply to defects in those components.
11. The auto-hitch is an LCI component, covered by LCI's warranty, and its defect is not warranted by Respondent.
12. The leveling jacks are LCI components, but the issue is not with the jacks themselves but rather in their placement.
13. The leveling jacks were installed by Respondent below the 7" clearance threshold.
14. The placement of the leveling jacks is a defect in Respondent's workmanship, which is covered by Respondent's warranty.
15. Prior to the expiration of the warranty, Complainants reported the nonconformity to Respondent or its designated agent or franchised dealer.

16. Between July 2021 and October 2022, Complainants remained in constant communications with service centers and Respondent, as memorialized in the repair orders, documented in the Prospect Activity Listing with Notes, and summarized in the written notice to Respondent.
17. Complainants reported the issue to authorized service centers who replaced the leveling jacks but would not raise the leveling jacks because they were installed at that level by Respondent.
18. At the time of the hearing, the defect regarding the height of the leveling jacks still existed after repair.
19. Complainants purchased the vehicle on January 23, 2021, and the one-year warranty expired on January 23, 2022.
20. The Lemon Law complaint must have been filed by July 23, 2022.
21. On October 27, 2023, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) alleging eight issues, including the leveling jacks not installed properly.
22. The issue of the leveling jacks occurred and was reported prior to the expiration of the warranty.
23. On September 15, 2023, Complainant sent a letter to Respondent, providing written notice of the alleged defect(s).
24. On January 10, 2023, 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.
25. On March 10, 2023, OAH issued Order No. 4 Modifying Order of Proceedings and reset the hearing to May 12, 2023.
26. The Notice of Hearing and Order No. 4 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.
27. On May 12, 2023, a hearing on the merits convened in Plano, Texas, before OAH Hearings Examiner Andrew Kang. Complainants appeared and represented themselves. Respondent appeared through its representative Delbert Miller. 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. Complainants 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 ch. 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) to Respondent. Tex. Occ. Code § 2301.606(c)(1).
7. Complainants' vehicle does not qualify for replacement or repurchase as the complaint was not timely filed. Tex. Occ. Code §§ 2301.606(d).
8. If Complainants' vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with Respondent's warranty. Tex. Occ. Code §§ 2301.204,.603; 43 Tex. Admin. Code § 215.208(e).
9. Complainant's vehicle qualifies for warranty repair. The Complainants proved that the vehicle has a defect covered by Respondent's warranty. Tex. Occ. Code §§ 2301.204,.603.
10. Complainants or an agent of Complainants notified Respondent or Respondent's agent of the alleged defect(s). Tex. Occ. Code §§ 2301.204; 43 Tex. Admin. Code § 215.202(b)(3).
11. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranty. Tex. Occ. Code § 2301.603.

VI. 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 Respondent shall make any repairs needed to conform the subject vehicle to the applicable warranty; specifically, Respondent shall resolve the following issue: leveling jack to minimum 7" standard. Upon this Order becoming final under Texas Government Code § 2001.144:⁵⁷ (1) Complainants shall deliver the vehicle to Respondent within 20 days; and (2) Respondent shall complete the repair of the vehicle within **20 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 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 November 14, 2023.



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

⁵⁷ 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.