

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 23-0003115 CAF**

**JENNIFER CARPER,
Complainant**

v.

**FOREST RIVER, INC.,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Jennifer Carper (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 Complainant's recreational vehicle (RV) qualifies for warranty repair relief.

I. Procedural History, Notice and Jurisdiction

Matters of notice¹ 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 June 8, 2023, in Huntsville, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. Greg Ahlgren, attorney, represented the Complainant. D.G. Majors, attorney, 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 October 2, 2021, the Complainant purchased a new 2021 Coachmen Freedom Express Ultra from Fun Town RV LP, an authorized dealer, in Cleburne, Texas. The RV's limited warranty provided coverage for one year from the date of purchase.

On January 2, 2022, the Complainant provided a written notice of defect to the Respondent, addressing a *leaking hot water connection* and *disconnected brakes*. On November 2, 2022, the Complainant filed a complaint with the Department alleging issues with: a leaking toilet supply line, tongue jack (malfunctioning), bathroom cabinet water damage, wood panel water damage beneath the refrigerator, bent front driver side stabilizer jack, kitchen sink pipes leak, *hot water drain - fixed three times*, using more than one appliance trips the power, unknown wires hanging behind the tires, *brakes not hooked up*, and freshwater tank (filling and leaking).

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

Date	Issue
10/02/2021	tongue jack will not work, stabilizer jack needs more screws, water heater cap leaks, deadbolt on entry door will not latch, shower leaking, freshwater tank leaking, water line leaking,
12/09/2021	toilet supply line leaking, shower leaking, bathroom cabinet water damage, water damaged wood beneath refrigerator

The Complainant noted the RV had issues with: the toilet supply line leaking, tongue jack - which worked intermittently, bathroom cabinet water damage, wood panel water damage beneath the refrigerator, bent front driver side stabilizer jack, water damage under the kitchen sink, hot water drain (cap) broken by the dealer during a repair attempt. The Complainant indicated that she paid out of pocket to have the hot water drain repaired. Additionally, the Complainant stated she could not use more than one appliance without tripping the power. The Complainant pointed out

²⁷ 43 Tex. Admin. Code § 215.209(a).

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

that unknown wires hung behind the tires. The Complainant explained that the brakes on the RV were previously unconnected; however, the brake controller was fine. The Complainant was unsure if the brake issue reoccurred, since she was unable to take the RV anywhere. The Complainant stated that she was unable to lock the door due to the latch issue. The Complainant stated that the door latch issue was reported to the Respondent and Fun Town, though not included in the complaint.

The Complainant stated that she experienced the first issue with the RV prior to leaving the dealership's parking lot. The Complainant explained that while her partner drove the RV, the RV would not stop with their truck. The Complainant did not feel braking in the RV, she then turned into a parking lot and contacted the dealer. The Complainant notified Fun Town of the issue and purchased an external braking system. The Complainant alleged that Fun Town technicians attempted to repair the issue and suggested that the issue may be due to the Complainant's truck or the external braking system. The Complainant alleged that she was instructed to purchase another braking system, which she then purchased from Fun Town. The new braking system did not remedy the issue with the brakes. The Complainant stated that the dealership determined that the brakes to the RV were not operating due to wires behind the RV's tires which needed to be connected. The Complainant indicated that the wires were underneath the travel trailer and were not visible during the walk around. The Complainant explained that Fun Town then connected the brakes, and she was able to drive home.

The Complainant stated that hot water began leaking and she made an appointment with a dealer in Conroe roughly a week after purchasing the RV. The Complainant stated that she could not lock the RV's door, the toilet leaked, water leaked from the shower and the bathroom sink, and water warped the wood underneath the refrigerator.

The Complainant explained that initially, it was possible for her to remain in the RV. The Complainant alleged that when the RV was taken in for repairs, Jose Rojas, an employee at Fun Town, indicated that the water issues occurred because of a missing silicone seal around the shower. The Complainant alleged that Jose then put silicone around the shower. The Complainant stated that under the bathroom sink there were issues with the fittings and the pipes, which caused damage to the cabinetry. The Complainant stated that Jose indicated that he tightened the toilet; however, the toilet was not tightened, and a towel remained under the toilet. The drip was minimal,

but continuous. The Complainant stated that there was damage near the bed in the RV from the leak in the bathroom.

The Complainant mentioned that the panel under the refrigerator needed replacing because a hose that was supposed to be on the outside of the RV, to allow for condensation to exit the RV, was tucked under the refrigerator and leaked into the RV. This caused damage to the cabinetry underneath the refrigerator. The Complainant stated that the freshwater tank would continuously fill and eventually water from the tank flooded into the RV and the tank spewed water from the freshwater tank connection. The Complainant mentioned that this issue was never resolved; however, a plumber removed the water pump from the RV.

To repair the RV, the Complainant took the RV to Fun Town, twice, on October 11, 2021, and on December 9, 2021. The Complainant alleged that Jose told her he would order the appropriate parts to fix the RV, but he never notified her that the parts were in. The Complainant attempted to contact the Respondent in January 2022, and did not receive any correspondence until she contacted her attorney. The Complainant tried to file a claim under the warranty, but allegedly was notified that she was outside of the manufacturer's warranty. The Complainant then tried to file a claim under the extended warranty, and allegedly was told the claim needed to be filed under the manufacturer's warranty.

Regarding incidental expenses, the Complainant explained that she was unable to travel as expected with the RV and needed housing accommodations while traveling for work, had to eat out, and used her own money to pay for repair. The Complainant stated that she picked up the RV from Fun Town on October 2, 2021.

The Complainant indicated that her RV was out of service for repair for one day, because the dealer had to order parts and she was supposed to come back and leave the RV at the dealership when the parts came in. The Complainant reiterated that Jose never notified her when the parts were in. The Complainant stated that she did not have a preference between repurchase or replacement. The Complainant mentioned that she lived in Palestine and whether she stayed in the RV in Huntsville or Austin depended on her work.

In closing, Complainant asserted that the RV problems were well documented. She commented that she did not live in the RV on a permanent basis. Instead, she lived in Palestine,

where she voted, and her children attended school. The Complainant noted that in January, she called twice and left two messages to try to arrange for warranty repair but could not reach anyone.

C. Inspection

The inspection of the RV during the hearing showed a bent stabilizer jack at the left front, and water damage to the bathroom cabinet, trim in the kitchen, and bedroom wall. Operating a hair dryer and microwave at the same time tripped the circuit breaker.

D. Summary of Respondent's Evidence and Arguments

Michael Locke, Owner Relations Manager, stated that extended warranties were sold as an aftermarket product through the selling dealers and mentioned that the Respondent had nothing to do with extended warranties. Mr. Locke indicated that under the terms of the warranty, due to the Complainant permanently residing in the RV periodically, the RV was not covered under the warranty due to the permanent residence exclusion. Mr. Locke explained that the Complainant sent an email regarding the RV's issues, in January 2022, to Mr. Brandenberger, a retired employee. Mr. Locke indicated that the Complainant canceled a repair visit scheduled at Fun Town for September 19, 2022, which was within the RV's warranty. Mr. Locke stated that the Complainant did not return phone calls to the Respondent regarding the appointment.

Mr. Locke stated that the RV was operating as designed when the microwave and hair dryer turned off when running at the same time. Mr. Locke averred that the appliances were pulling more amperage than the coach was designed to handle, and that usage would trip the breaker. Mr. Locke indicated that an added generator would allow for higher amperage.

Mr. Locke was unsure whether the RV had a dual system or a valve. Regarding the freshwater tank filling up on its own, Mr. Locke indicated the RV must have had a bad valve. Mr. Locke noted that the jacks were not used for leveling, but rather used for stabilizing. Mr. Locke mentioned that if the jacks were used for leveling, the door could be out of alignment which would result in the door not closing properly.

On cross-examination, Mr. Locke indicated that customer notices under the warranty were to be sent to the Freedom Express Service and Warranty division. Mr. Locke noted that they had a P.O. box in Indiana, and notices sent there would be considered adequate. If Locke stated that if a customer stayed overnight in the RV every week for two to three days a week, which was

considered permanent residency in the warranty. Mr. Locke stated that independent transport companies were responsible for transport between the factory and dealer.

In closing, the Respondent argued that the Complainant was not entitled to repurchase relief because the warranty excluded use as a permanent residence. The Respondent estimated that the Complainant stayed in the RV overnight roughly 200 days since purchase. The Respondent stated they had offered to repair the RV regardless of what the warranty stated. The Respondent represented that the RV was taken to Fun Town two times and repairs were completed the same day. The Respondent reiterated that the Complainant cancelled the third service visit, in September 2022. The Respondent alleged that they never refused the Complainants repairs under the warranty.

E. Analysis

To qualify for repurchase or replacement, the Respondent must have been given written notice of the defect and an opportunity to cure the defect, and the vehicle must currently 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. 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 toilet supply line leak, malfunctioning tongue jack, bathroom cabinet water damage, wood panel water damage beneath the refrigerator, bent front driver side stabilizer jack, kitchen sink pipe leak, hot water drain leak (repaired at Complaint's expense), the power tripping when using more than one appliance, unknown wires hanging behind the tires, brakes not hooked up, and freshwater tank (filling and leaking). Additionally, the Complainant presented evidence of a misaligned door latch, which she reported to the dealer and Respondent but did not include in the complaint.

1. Written Notice and Opportunity to Cure

The Complainant initially sent a written notice of defect to the Respondent on January 2, 2022. However, the notice only specified two issues: the leaking hot water connection and

disconnected brakes.²⁹ This notice was apparently lost due to an employee retiring. Thereafter, the record reflects the Complainant attempted to arrange a repair, but the Respondent redirected the Complainant because the RV was out of warranty. Given these facts, the Respondent had an opportunity to cure the alleged defects in the notice. Though the initial notice only identified two issues, the complaint also serves as a notice of the defects. However, the record does not contain sufficient evidence to determine whether the Respondent, as opposed to a dealer, had an opportunity to cure after notice of the issues in the complaint. Additionally, the door latch issue was not included in any written notice. Consequently, only the leaking hot water connection and disconnected brakes satisfy the written notice and opportunity to cure requirements.

2. Warrantable Defect

The record shows that the subject RV has had a multitude of problems. However, 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.³⁰ The Lemon Law requires a respondent to conform its vehicles to whatever coverage the warranty provides. In part, the subject vehicle's warranty states that:

WARRANTY COVERAGE SUMMARY OF WARRANTY: 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.

EXCLUSIONS FROM THIS WARRANTY: 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.

²⁹ Complainant's Exhibit 5, Email to Forest River Corporate.

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

This recreational vehicle is designed solely for its intended purpose of recreational camping and personal use. Warrantor makes no warranty with regard to any recreational vehicle used for commercial, rental, or business purposes, or any recreational vehicle not registered and regularly used in the United States or Canada. For purposes of this limited warranty, it shall be deemed conclusive evidence of commercial, rental, or business purposes if the recreational vehicle is licensed, titled, registered, or insured in the name of any corporation, LLC, or any other form of business or commercial entity.

....

EVENTS DISCHARGING WARRANTOR FROM OBLIGATION UNDER THIS WARRANTY: Misuse or neglect, including failure to provide reasonable and necessary maintenance, unauthorized alteration, accident, and improper loading, use as a permanent or full time residence, commercial use or leasing of the recreational vehicle, shall discharge Warrantor from any obligation under this Warranty. Notwithstanding these or other terms discharging the Warrantor, the provision of service by a Forest River authorized service center, authorization of repairs by Forest River, or any other attempt to resolve a complaint or request for warranty service shall not constitute a waiver of Warrantor's rights.³¹

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³² Additionally, the warranty contains specific exclusions from coverage.

A defectively manufactured vehicle has a flaw so that it does not conform to the manufacturer's specifications and is not identical to other same model vehicles.³³ Stated another way, a defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Accordingly, manufacturing defects occur during manufacturing and exist when the vehicle leaves the manufacturing plant. In contrast, design issues

³¹ Respondent's Ex. 2, Limited Warranty Towable (underline added).

³² 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.").

³³ *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.—Texarkana 1985), *aff'd* in part on other grounds, *rev'd* in part on other grounds, 715 S.W.2d 629 (Tex. 1986) ("Manufacturing defect cases involve products which are flawed, i.e., which do not conform to the manufacturer's own specifications, and are not identical to their mass-produced siblings.").

result from the manufacturer's design of the vehicle, even though manufactured without any flaws.³⁴ Design characteristics, including design defects, exist in the vehicle's specifications and do not arise from any error during manufacturing.³⁵ Accordingly, a design characteristic exists in all vehicles of the same design, but the vehicle's intended configuration may produce unintended and unwanted results.³⁶ Unlike manufacturing defects, issues that do not arise from manufacturing, such as the vehicle's design characteristics, dealer negligence, or damage occurring after leaving the manufacturing plant, are not warrantable defects. Even though an issue may be unintended and unwanted, the Lemon Law provides no relief unless the issue constitutes a manufacturing defect.

a. Permanent Residence Exclusion

As a threshold matter, the Respondent argued that Complainant used the RV as a permanent residence, which would essentially void the warranty. However, the warranty does not define "permanent residence." On the other hand, the Texas Supreme Court found that the generally accepted meaning of permanent residence "requires a home and fixed place of habitation to which a person intends to return when away."³⁷ In this case, the evidence shows that the RV serves as a temporary residence that changes locations depending on where the Complainant's work takes place. Furthermore, the record reflects that the Complainant has a permanent residence in Palestine, to which she returns after being away for work. Accordingly, the Complainant's use of the RV as a non-permanent residence does not discharge the Respondent's warranty obligations.

b. Unwarranted Issues

The warranty broadly excludes mechanical parts, systems, equipment and appliances, such that the warranty does not cover the tongue jack and stabilizer jack. The kitchen sink pipe no longer

³⁴ *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.--Texarkana 1985), *aff'd* in part on other grounds, *rev'd* in part on other grounds, 715 S.W.2d 629 (Tex. 1986) ("Defective design cases, however, are not based on consumer expectancy, but on the manufacturer's design of a product . . . even though not flawed in its manufacture.").

³⁵ In contrast to manufacturing defects, "[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves." *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

³⁶ *Harduvel v. Gen. Dynamics Corp.*, 878 F.2d 1311, 1317 (11th Cir. 1989) ("This distinction between 'aberrational' defects and defects occurring throughout an entire line of products is frequently used in tort law to separate defects of manufacture from those of design. . . . Stated another way, the distinction is between an unintended configuration [a manufacturing defect], and an intended configuration that may produce unintended and unwanted results [a design defect].").

³⁷ *Owens Corning v. Carter*, 997 S.W.2d 560, 571 (Tex. 1999).

leaked after repair. Likewise, the hot water drain cap had been repaired and consequently is not a currently existing issue. The brakes had been connected but not tested, so the available evidence does not show that this issue continues to exist. The record reflects that the appliances tripping the breaker is not a defect but a consequence of the RV's design/configuration.

c. Warrantable Issues

In the present case, the record indicates that the leaking toilet supply line, bathroom cabinet water damage, wood panel water damage beneath the refrigerator, water tank issue, and misaligned door latch are more likely than not warrantable manufacturing defects.

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

None of the issues fall within the Lemon Law's definition of a serious safety hazard as described in the discussion of applicable law. Further, only the door latch and water tank issues substantially impair either the use or market value of the vehicle, under the reasonable prospective purchaser standard.

4. Reasonable Repair Attempts

The statutory presumption for reasonable repair attempts requires at least four repair attempts for the same issue in the first two years. However, because the applicable warranty only covers one year, the circumstances support finding a reasonable number of repair attempts based on two repair attempts in the first year, prorating the number of repair attempts from the statutory presumption. Note, however, only the shower leak has had two repair attempts according to repair records.

5. Complaint

As explained in the discussion of applicable law, if a vehicle has a warrantable defect that does not qualify for repurchase or replacement it may still qualify for repair relief. However, the defect(s) must have been reported to the Respondent or dealer and must be included in the complaint.

6. 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 number of repair attempts, as well as written notice of the defect and an opportunity to repair. However, none of the existing issues meet all 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 leaking toilet supply line, bathroom cabinet water damage, wood panel water damage beneath the refrigerator, and water tank filling/leaking issues are warrantable defects identified on the complaint, and therefore eligible for warranty repair relief.

III. Findings of Fact

1. On October 2, 2021, the Complainant purchased a new 2021 Coachmen Freedom Express Ultra from Fun Town RV LP, an authorized dealer of the Respondent in Cleburne, Texas.
2. The RV's limited warranty provides as follows:

WARRANTY COVERAGE SUMMARY OF WARRANTY: 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.

EXCLUSIONS FROM THIS WARRANTY: 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.

This recreational vehicle is designed solely for its intended purpose of recreational camping and personal use. Warrantor makes no warranty with regard to any recreational vehicle used for commercial, rental, or business purposes, or any recreational vehicle not registered and regularly used in the United States or Canada. For purposes of this limited warranty, it shall be deemed conclusive evidence of commercial, rental, or business purposes if the recreational vehicle is licensed, titled, registered, or insured in the name of any corporation, LLC, or any other form of business or commercial entity.

....

EVENTS DISCHARGING WARRANTOR FROM OBLIGATION UNDER THIS WARRANTY: Misuse or neglect, including failure to provide reasonable and necessary maintenance, unauthorized alteration, accident, and improper loading, use as a permanent or full time residence, commercial use or leasing of the recreational vehicle, shall discharge Warrantor from any obligation under this Warranty. Notwithstanding these or other terms discharging the Warrantor, the provision of service by a Forest River authorized service center, authorization of repairs by Forest River, or any other attempt to resolve a complaint or request for warranty service shall not constitute a waiver of Warrantor's rights.

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

Date	Issue
10/02/2021	tongue jack will not work, stabilizer jack needs more screws, water heater cap leaks, deadbolt on entry door will not latch, shower leaking, freshwater tank leaking, water line leaking,
12/09/2021	toilet supply line leaking, shower leaking, bathroom cabinet water damage, water damaged wood beneath refrigerator

4. On January 2, 2022, the Complainant provided a written notice of defect to the Respondent, addressing a *leaking hot water connection* and *disconnected brakes*.
5. On November 2, 2022, the Complainant filed a complaint with the Department alleging issues with: a leaking toilet supply line, malfunctioning tongue jack, bathroom cabinet water damage, wood panel water damage beneath the refrigerator, front driver side stabilizer jack, kitchen sink pipes leak, *hot water drain cap tightened and fixed three times*, using more than one appliance trips the power, unknown wires hanging behind the tires, *brakes not hooked up*, and freshwater tank.
6. On March 30, 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.

7. The hearing in this case convened on June 8, 2023, in Huntsville, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. Greg Ahlgren, attorney, represented the Complainant. D.G. Majors, attorney, represented the Respondent.
8. The warranty expired on October 2, 2022.
9. The inspection of the RV during the hearing showed a bent stabilizer jack at the left front, and water damage to the bathroom cabinet, trim in the kitchen, and bedroom wall. Operating a hair dryer and microwave at the same time tripped the circuit breaker.
10. The leaking toilet supply line, bathroom cabinet water damage, wood panel water damage beneath the refrigerator, and water tank issues currently exist.
11. The leaking hot water drain/cap was successfully repaired.
12. The brakes were repaired but not tested.
13. Complainant used the RV as a temporary residence when working away from her permanent residence.

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 generally accepted meaning of permanent residence “requires a home and fixed place of habitation to which a person intends to return when away.” *Owens Corning v. Carter*, 997 S.W.2d 560, 571 (Tex. 1999).
7. Because the applicable warranty only covers one year, the circumstances warrant finding a reasonable number of repair attempts based on two repair attempts in the first year. 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. *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ).
8. The Complainant’s vehicle does not qualify for replacement or repurchase. The vehicle did not have a reasonable number of repair attempts for any currently existing defects. Tex. Occ. Code §§ 2301.604(a) and 2301.605(a); the Complainant or a person on behalf of the Complainant did not provide sufficient notice of the door latch defect to the Respondent. This Order may not require repurchase or replacement of the vehicle without written notice of the defect/nonconformity to the Respondent. Tex. Occ. Code § 2301.606(c)(1); the Respondent did not have an opportunity to cure the leaking toilet supply line, malfunctioning tongue jack, bathroom cabinet water damage, wood panel water damage beneath the refrigerator, front driver side stabilizer jack, kitchen sink pipes leak, using more than one appliance trips the power, unknown wires hanging behind the tires, and freshwater tank defect(s) alleged in the complaint. This Order may not require repurchase or replacement of the vehicle without an opportunity to cure by the Respondent. Tex. Occ. Code § 2301.606(c)(2).
9. 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.
10. 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).
11. The Complainant’s vehicle qualifies for warranty repair. The Complainant proved that the vehicle has defects 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 defects. Tex. Occ. Code §§ 2301.204 and 43 Tex. Admin. Code § 215.202(b)(3).


12. 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.
13. 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. Tex. Occ. Code § 2301.603.

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: the leaking toilet supply line, bathroom cabinet water damage, wood panel water damage beneath the refrigerator, and water tank filling/leaking. Upon this Order becoming final under Texas Government Code § 2001.144:³⁸ (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).

³⁸ 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.

SIGNED October 27, 2023

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

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