TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0013059 CAF

ALVIN MCFARLAND,	**§**	**BEFORE THE OFFICE**
Complainant	**§**	
	§	
v.	**§**	**OF**
	§	
FOREST RIVER, INC.,	**§**	
Respondent	**§**	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Alvin McFarland (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 his recreational vehicle (RV) manufactured by Forest River, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement or warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing[1] 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 6, 2020, by telephone, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant represented himself. Dan Evans, general manager of parts service and warranty, represented the Respondent.

[1] TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

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."[2] 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.[3] In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed 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.[4]

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers "whether a defect or nonconformity hampers the intended normal operation of the vehicle." For instance, "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."[5]

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[2] TEX. OCC. CODE § 2301.604(a).

[3] TEX. OCC. CODE § 2301.604(a).

[4] TEX. OCC. CODE § 2301.601(4).

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

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."[6]

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: (A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.[7]

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: (A) at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.[8]

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

[7] TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

[8] 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 and: (A) the vehicle is out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.[9]

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.[10]

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.[11] 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.[12]

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 mailed written notice of the alleged defect or nonconformity to the manufacturer;[13]

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[9] TEX. OCC. CODE § 2301.605(a)(3).

[10] TEX. OCC. CODE § 2301.605(c).

[11] *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.'").

[12] *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.").

[13] TEX. OCC. CODE § 2301.606(c)(1). The Lemon Law does not define the words "mailed" or "mail", so under the Code Construction Act, the common usage of the word applies. TEX. GOV'T CODE § 311.011. Dictionary.com defines "mail" as "to send by mail; place in a post office or mailbox for transmission" or "to transmit by email." *Mail. Dictionary.com Unabridged*. Random House, Inc. http://www.dictionary.com/browse/mail (accessed: April 01, 2016). Also, 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 may satisfy the requirement that someone on behalf of the owner mailed notice of the defect/nonconformity to the Respondent.

(2) the manufacturer was given an opportunity to cure the defect or nonconformity;[14] 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.[15]

2. Warranty Repair Relief

Even 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" and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect before the warranty's expiration.[16] The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."[17]

3. Burden of Proof

The law places the burden of proof on the Complainant.[18] 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.[19] Accordingly, the Complainant cannot prevail where the existence of any required fact appears equally likely or unlikely.

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.[20] The complaint must state "sufficient facts to enable the department and the party complained against to know the

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[14] TEX. OCC. CODE § 2301.606(c)(2). A repair visit to a dealer can satisfy the "opportunity to cure" requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt the final repair on the manufacturer's behalf. *See Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

[15] TEX. OCC. CODE § 2301.606(d)(2).

[16] TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

[17] TEX. OCC. CODE § 2301.603(a).

[18] 43 TEX. ADMIN. CODE § 215.66(d).

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

[20] "In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days." TEX. GOV'T CODE §§ 2001.051; "Notice of a hearing in a contested case must include . . . a short,

nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law."[21] However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.[22] Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.[23]

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.[24] 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 or similar written documents).[25] However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."[26]

B. Summary of Complainant's Evidence and Arguments

On August 8, 2017, the Complainant, purchased a new 2017 Dynamax Isata 3 from Motorhome Specialist, an authorized dealer of the Respondent, in Alvarado, Texas. The vehicle had 1,198 miles on the odometer at the time of purchase. The vehicle's limited warranty provides coverage for two years or 24,000 miles, whichever occurs first. On May 28, 2019, the Complainant

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plain statement of the factual matters asserted." 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.").

[21] 43 TEX. ADMIN. CODE § 215.202(a)(3).

[22] 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

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

[24] TEX. OCC. CODE § 2301.604.

[25] 43 TEX. ADMIN. CODE § 215.209(a).

[26] 43 TEX. ADMIN. CODE § 215.208(b)(1).

provided a written notice of defect to the Respondent. On July 5, 2019, the Complainant filed a complaint with the Department alleging that slide and the stabilizer jacks do not operate with the RV connected to their tow vehicle.

The Complainant testified that he first noticed the slide and jacks issue after a repair in October of 2017. Anytime the tow vehicle, the Complainant's Jeep, was connected electrically, the jacks and slide would not operate. On the first trip, the USB ports overheated and melted. At the same time the clearance light was "blocked". The Respondent told the Complainant to remove the #11 fuse until he could return to the dealer. The Complainant had to remove the fuse when stopping and put the fuse back in when driving. Subsequently, the dimmed the lights would not work at all, even with the fuse in. When stopping for the night, the Complainant did not disconnect their Jeep but the slide and jacks worked. After taking the RV back to the dealer for repair, the RV continued to have electrical issues. The Complainant took the RV back to the dealer in October of 2017 since the power bar had no power because the factory had not connected it. At that time, the Complainant found that when connecting the Jeep, the slide and jacks would not work. When connecting the Jeep with other same model motorhomes, they worked.

On cross-examination, the Complainant asserted that four other motorhomes worked when hooked up to the Jeep. He stated that he took the Jeep to the people that wired it and they could not find a problem. When the Complainant brought his RV to Indiana, the Respondent wanted the VINs of the motorhomes tested with the Jeep but the Complainant had not taken pictures. However, he testified that several months before the hearing, he took the Jeep to the dealer and connected it to a same model and year motorhome as his and the RV did not have a problem; the Complainant provided the VIN and photographed the identification plate of this RV. He elaborated that the motorhomes he connected to the Jeep were 2017 or 2018 and the same model as his RV and they were in for repair on the service lot. The Complainant explained that the tow vehicles the dealer used to test his RV did not have battery chargers so the slide and jacks worked. He affirmed that if unplugging the Jeep, his motorhome worked and the lockout did not engage. He added that his RV was getting electrical current from the Jeep and expressed concern about the possibility of fire. When asked if the RV could be used to the fullest, the Complainant answered that he could use it but not without concern.

Upon clarification questions, the Complainant affirmed that the slide and jacks issue happened consistently with the Jeep connected. He last noticed the issue two days before the hearing. The Complainant stated that the RV was out of service for repair for over 14 months and the current mileage on the odometer was 12,248 miles.

C. Summary of Respondent's Evidence and Arguments

Dan Dobecki, parts, service and warranty manager for Dynamax, testified that he had not seen a similar issue as in this case. He explained that the slide and leveling jacks have a lockout mechanism that prevents the slide and jacks from operating if ignition is detected or the parking brake is not engaged. So, when the complainant unplugs the umbilical cords, the slide and jacks work as designed. He confirmed that when unplugged, the RV can be fully utilized. Mr. Dobecki concluded that the vehicle did not have a defect. Additionally, the warranty only covered substantial defects and Mr. Dobecki did not see the present issue as substantial. When asked if 2017 models would normally be at a dealership in 2019, Mr. Dobecki responded that this would be odd, except maybe for vehicles there for service. Four or five Dynamax RVs of the same model at a dealership in January or February of 2019 would more than likely be 2019 models. In 2018, the Lippert Components, Inc., the slide manufacturer, recommended that the engine be running when operating the slide to provide better amperage for the motors and the controller that stores the operation settings. The parking brake would still need to be set. Mr. Dobecki confirmed that now the ignition would have to be on to operate the slide and jacks. The issue could only be duplicated with the Complainant's tow vehicle and not with any shop vehicles. The dealer found an electrical signal coming from the Jeep to the subject RV. Mr. Dobecki learned that the Hopkins Towing Solutions 56200 (Jeep towed vehicle wiring kit) installed on the Complainant's Jeep should not be presenting a signal to the RV. Accordingly, the wiring kit was either improperly installed or was defective. Moreover, the wiring kit's description specifies that it "Isolates Towed Vehicle from Motorhome", which it did not do. Additionally, the RV's owner's manual explains that the RV should be clear of obstructions before operating the slide or jack system. Mr. Dobecki observed testing of the RV in which: the RV was connected to the Jeep and the slide/jacks would not operate; the Jeep was disconnected and the slide/jacks would operate; and the RV was connected to an unpowered trailer and everything operated on the RV. A technician tested the 7-way cord from the Jeep and found power signals from the Jeep to the motorhome. Further, the

motorhome's connection was found to be operating correctly. Mr. Dobecki explained that disconnecting the tow vehicle from the RV would take less than a minute and that ordinarily, a tow vehicle would not remain connected when using an RV at a campground.

D. Analysis

As explained below, the evidence does not show that the subject RV more likely than not has a defect covered by warrant. As described in the discussion of applicable law, the Complainant has the burden of proving every required element by a preponderance. To qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to have a defect covered by the Respondent's warranty (warrantable defect).[27] The Lemon Law does not require that a manufacturer provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. The Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. In part, 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 two (2) years from the date of purchase or (24,000) twenty four thousand miles, whichever occurs first (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).[28] A defectively manufactured vehicle has a flaw because of some error in making it at the factory, such as incorrect assembly or the use of a broken part. Manufacturing defects exist when the vehicle leaves the manufacturing plant. Unlike manufacturing defects, issues that do not arise from manufacturing, such as design characteristics or design defects are

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[27] TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

[28] 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.").

not warrantable defects. Because the warranty only covers manufacturing defects, any non-manufacturing problems do not qualify for relief. Additionally, the warranty also contains express 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 motorhome chassis including without limitation, the engine and drivetrain, any mechanical parts or systems of the chassis, 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.

Even though an issue may be undesirable or problematic, the Lemon Law provides no relief unless the issue constitutes a warrantable defect.

In the present case, a preponderance of the evidence does not show that the subject vehicle has a warrantable defect. Instead, a problem with the Hopkins Towing Solutions wiring kit appears to have caused the slide/jacks inoperability. The record reflects that the RV, by design, has a lockout mechanism that responds to indications of ignition. Although the Hopkins wiring kit is supposed to isolate the tow vehicle from the RV, the Complainant's Jeep transmitted electrical signals to the RV, thereby triggering the lockout of the slide and jacks. Although the Complainant's Jeep was tested with different RV's of the same model as the subject RV, the evidence is unclear whether those vehicles had the same lockout mechanism. The evidence shows that the Respondent redesigned the Isata 3 lockout mechanism in 2018 so that the slide and jack systems would operate with the engine running. Though the Complainant stated that his Jeep was tested with the same model and year RV's, he relied on hearsay statements of a dealership employee who was not available for questioning at the hearing, making those statements less probative. On the other hand, the record indicates a dealer would not likely have four 2017 Isata 3s on the lot in 2019. In sum the evidence does not show that a manufacturing defect in the RV caused the slide/jack system inoperability.

Furthermore, the warranty specifies that it only applies to substantial defects but the evidence shows no substantial impairment of the use of the RV. The Complainant testified that the complained of issue did not prevent the RV's use. The evidence clearly shows that the slide and jacks operate with no impairment without the Jeep connected. The record reflects that in ordinary

use, the tow vehicle will be disconnected from the RV and such disconnection should take less than a minute. In sum, even if a manufacturing defect in the RV caused the slide and jacks not to operate, the warranty would not cover such a defect because it does not rise to the level of a substantial defect.

III. Findings of Fact

1. On August 8, 2017, the Complainant, purchased a new 2017 Dynamax Isata 3 from Motorhome Specialist, an authorized dealer of the Respondent, in Alvarado, Texas. The vehicle had 1,198 miles on the odometer at the time of purchase.

2. The vehicle's limited warranty 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 two (2) years from the date of purchase or (24,000) twenty four thousand miles, whichever occurs first (Warranty Period), that the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.

3. On May 28, 2019, the Complainant provided a written notice of defect to the Respondent.

4. On July 5, 2019, the Complainant filed a complaint with the Department alleging that slide and the stabilizer jacks do not operate with the RV connected to a tow vehicle.

5. On October 21, 2019, 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.

6. The hearing in this case convened on March 6, 2020, by telephone, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant represented himself. Dan Evans, general manager of parts service and warranty, represented the Respondent.

7. The vehicle's odometer displayed 12,248 miles at the time of the hearing.

8. The vehicle's warranty expired on August 8, 2019.

9. The subject RV, by design, has a lockout mechanism that prevents operation of the slide and jacks in response to ignition. Although the Hopkins wiring kit is supposed to isolate the tow vehicle from the RV, the Complainant's Jeep transmitted electrical signals to the RV, thereby triggering the lockout of the slide and jacks.

10. Even if a manufacturing defect in the RV caused the complained of slide and jacks inoperability, the warranty would not cover such a defect because it does not rise to the level of a substantial defect. The RV's slide and jacks operate with no impairment without the Jeep connected to the RV. When situated at a campground, an RV is ordinarily used without a tow vehicle attached.

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 vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603 and 2301.604(a).

7. The Complainant's vehicle does not qualify for warranty repair. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603.

8. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

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**.

SIGNED May 7, 2020

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