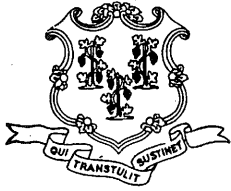


In the matter of arbitration entitled:

Venditti vs. Land Rover

Case Number: 2017-2423



**STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION
Automobile Dispute Settlement Program**



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrator, Jerry P. Padula, Esq., having been duly sworn and having given due consideration to the proofs and allegations of the parties, hereby decides the following in regard to the above captioned matter:

I. FINDINGS OF FACT

Vito Venditti (the "Consumer") leased a 2015 Range Rover Evoque (the "Vehicle") from Land Rover Farmington Valley (the "Dealer") located at 95 Albany Turnpike in Canton, Connecticut, 06019. The Consumer took delivery of the Vehicle on September 29, 2015. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes, or the equivalent.

After reviewing the allegations, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. Jaguar Land Rover North America, LLC (the "Manufacturer") did not submit a Manufacturer's Statement in this case. The arbitration hearing was held on Monday, January 11, 2018.

- A. The Consumer reported to the Manufacturer, its authorized dealer, or its agent a defect which was subject to repair on the following occasions:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
03-15-2016	7,760	Vehicle failing to accelerate
04-07-2016	10,924	Vehicle failing to accelerate
12-15-2016	17,283	Vehicle failing to accelerate

The above defect or defects continue to exist.

- B. The Vehicle has been out of service by reason of repair for a cumulative total of _____ days during the statutory eligibility period (the earlier of: two years from the date of purchase or 24,000 miles driven).

- C. Two repair attempts during the first 12 months and the defect still exists that is life threatening or likely to cause serious bodily injury, if the Vehicle is driven. The defects occurred as follows:

<u>Date</u>	<u>Miles</u>	<u>Defect</u>
<u>(See Section I.A. above)</u>		

II. REASONING

Nonconformity

The Consumer complained of the following defect with the Vehicle: An intermittent failure of the Vehicle to normally accelerate. Said defect was said to continue to exist as of the date of the arbitration.

Eligibility and Repair Attempts

The Consumer's Request for Arbitration revealed that the Vehicle experienced an intermittent failure to accelerate on many occasions within the statutory period, necessitating multiple visits to the Dealer for diagnosis. Said defect met the statutory presumption for eligibility, as it was subject to three documented repair attempts for the lack of acceleration defect during the statutory period. The unrepaired Vehicle was later given back to the Dealer, where it remains. The number of repairs is judged to be reasonable given the facts of this case, therefore allowing the Vehicle to meet the statutory eligibility requirements. Additionally, the Vehicle was subject to three repair attempts for this safety-related lack of acceleration defect during the one-year statutory period for a defect likely to cause serious injury or death, as detailed in Part 1 of this decision. The Consumer was therefore found to have met the eligibility requirements for a substantial loss of use, and a substantial loss of safety, as set forth in Chapter 743b.

Substantial Impairment and Factual Discussion

In the present matter, this arbitrator holds that both a substantial impairment to use and a substantial impairment to safety exist in the form of a defect which meets the requirements of Connecticut General Statutes Section 42-179. The documents in the record and the testimony presented at the arbitration hearing indicate a violation of Connecticut General Statutes Chapter 743b.

The Consumer appeared and testified at the arbitration hearing. The Manufacturer failed to submit a Manufacturer's Statement, and did not appear at the arbitration hearing. The leasing company, Land Rover Financial Group, was likewise not present. The Manufacturer and leasing company were given proper statutory notification of the arbitration by the Consumer (see the two mailing receipts in the Request for Arbitration), and the Department received confirmation via e-mail that both of these parties received notice of the arbitration hearing, the Manufacturer on December 12, 2017 and the leasing company on December 20, 2017. Mr. Don Connolly, the Service Manager at the Dealer, attended the hearing. At the start of the hearing, this arbitrator allowed the Mr. Connolly an attempt to contact the Manufacturer, but said attempt was unsuccessful. The Consumer's Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed the Vehicle defect experienced by the Consumer and the multiple repair attempts by the Dealer.

The Consumer indicated that he experienced the lack of acceleration defect on several occasions before bringing the Vehicle to the Dealer for repair, and also stated that he had mentioned to a Dealer representative his desire to return the Vehicle before the first repair attempt. The Vehicle would only reach thirty to thirty-five miles per hour before refusing to accelerate further, despite the engine revving to around 5,000 RPM. The Consumer's testimony was that the engine would rev higher but the engine's power would not be transmitted to the transmission and the drive wheels. These episodes lasted for up to one minute. This defect presented a serious safety condition that could result in serious injury or death due to the utter lack of Vehicle response to a driver's demand for acceleration. As shown in Part I of this decision, the first attempt by the Dealer to diagnose and repair the Vehicle was on March 15, 2016. The written repair records and the oral testimony of the Consumer verified that the Dealer had performed diagnostic tests and updated the transmission software, but was unable to replicate the Consumer's defect. The defect continued to present itself, particularly when the Consumer called upon the Vehicle to accelerate from a stop or from a low speed.

In the matter of arbitration entitled:

Venditti vs. Land Rover

Case Number: 2017-2423

The record indicated that the Consumer returned the Vehicle to the Dealer and had removed his insurance coverage months before filing his Request for Arbitration. The Consumer recounted during the arbitration hearing how the Dealer was to prepare a "civil case" that would result in a refund of the Consumer's purchase price and a return of the Vehicle. The Consumer was unsure what the phrase "civil case" meant in relation to his problems with the Vehicle, but he testified how he had trusted that the Dealer representatives were working on a legal strategy to provide the Consumer with a full refund. During the arbitration, the Technical Expert, Mr. Clark, opined that the Dealer may have simply been referring to their need to formally reach out to the Manufacturer to arrange for a refund and return of the Vehicle. Whichever terminology they used, and whatever their intent may have been, the Dealer representatives never followed through on their promise to assist the Consumer to obtain a satisfactory resolution. Thereafter, the Vehicle remained parked on the Dealer lot for many months with no resolution to the Consumer's plight while the Consumer faithfully made his monthly lease payments.

The Consumer felt that he did not have the full use of the Vehicle, and given the many episodes when the Vehicle failed to accelerate normally during daily driving, coupled with the fact that the Vehicle has been parked on the Dealer's lot for many months, I agree with the Consumer's assessment. The lack of acceleration defect also impacted the ability of the Consumer to safely drive the Vehicle (page six of the Consumer's Request for Arbitration). The record indicates that the Consumer was made to drive the Vehicle for many miles with episodes of unpredictable acceleration, thereby impacting the Consumer's use and overall safety. Based on the ongoing lack of acceleration defect, which impacts the Consumer's normal, everyday use of the Vehicle, I find a substantial loss of use and safety in this case.

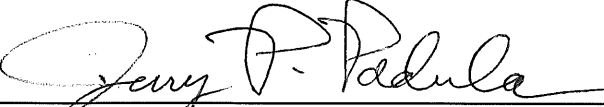
Because the Vehicle acceleration defect presented a substantial safety issue while the Vehicle was being driven under normal conditions, and that the Vehicle has been in the possession of the Dealer for many months while the Consumer has continued to pay for the Vehicle as set forth in the lease agreement, a mileage deduction in favor of the Manufacturer is therefore inappropriate in this case.

The cost of any warranty contracts entered into upon purchase of the Vehicle that can be pro-rated shall be refunded directly to the Consumer, if said contracts can be pro-rated. If said contracts cannot be pro-rated, then the Manufacturer shall be responsible for reimbursement of these costs in full to the Consumer.

III. CONCLUSION

Given that the Consumer presented substantial evidence that the Vehicle is not able to function normally, I hold for the Consumer in this case. A **refund**, as noted in Part IV of this decision, is appropriate given the facts presented.

The decision of this arbitrator does not replace any other remedies available under the applicable warranties, Connecticut General Statutes Chapter 743b, or the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 88 Stat. 2183 (1975), 15 USC 2301 et seq., as in effect on October 1, 1982. Either party to the dispute may apply to the Superior Court within 30 days receiving this decision to have the decision vacated, modified, or corrected or within one year to have it confirmed as provided in Sections 42-181, 52-417, 52-418, and 52-420 of the Connecticut General Statutes.



Arbitrator - Jerry P. Padula, Esq.

01-24-2018

Date

(See Section IV of this decision, entitled "Refund Award," on the following page.)

In the matter of arbitration entitled:

Venditti vs. Land Rover

Case Number: 2017-2423

IV. REFUND AWARD - FOR LEASED VEHICLE

This arbitrator finds in favor of the Consumer, and holds that the Consumer and lease holder are entitled to a refund based upon the terms of the Vehicle lease agreement and this decision, as set forth below:

For The Consumer:

The Manufacturer shall refund to the Consumer the total of all amounts detailed below:

- 1) All lease payments made by the Consumer since February 28, 2016 (the date of the lease agreement) with no credit due in favor of the Manufacturer.
- 2) All lease costs paid;
- 3) State Sales Tax due at signing in the amount of \$181.08;
- 4) Vehicle title, registration, Clean Air Act, and Lemon Law fees in the amount of \$178;
- 5) Acquisition fee paid at signing in the amount of \$795.00;
- 6) Document preparation fee paid at signing in the amount of \$474.00;
- 7) United States Postal Service expenses of the Consumer in the amount of \$53.00, and
- 8) The Department of Consumer Protection Lemon Law filing fee of \$50.00.

For the Leasing Company:

The Manufacturer shall pay the leasing company "**Land Rover Financial Group**" the balance necessary to terminate the lease and release the Consumer from any further obligation of the lease. The Manufacturer shall also pay the leasing company the "purchase option," and therefore ownership shall revert to the Manufacturer. The Manufacturer shall be responsible for any early termination fees, if applicable.

Other Reimbursements by the Manufacturer:

The Manufacturer shall reimburse to the leasing company all of the following fees or expenses:

NONE

Vehicle Exchange:

The Manufacturer shall provide the total refund to the Consumer and the leasing company, as their interests may appear. The exchange shall occur at **Land Rover Farmington Valley, 95 Albany Turnpike in Canton, Connecticut, 06019** within **twenty-five (25) days** of the Manufacturer's receipt of this arbitration decision. Payment of the refund shall be conditional upon the assignment of any right, title, and interest in the Vehicle by the leasing company and the Consumer, to the Manufacturer. The Consumer and the leasing company shall surrender the Vehicle at the time of receipt of the refund.