

In the matter of arbitration entitled:

Murray vs. Hyundai Motor America

Case Number: 2016-2183



**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

Kenneth R. and Patricia M. Murray (jointly, the “Consumers”) purchased a **2016 Hyundai Tucson** (the “Vehicle”) from **Key Hyundai** located at **21 Hartford Turnpike in Vernon, Connecticut 06066** (the “Dealer”). The Consumers took delivery of this Vehicle on **August 31, 2015**. The registration is “passenger,” “combination,” or “motorcycle,” as defined in section 14-1 of the Connecticut General Statutes.

After reviewing the allegations, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. **Hyundai Motor America** (the “Manufacturer”) had contested the initial eligibility of the Vehicle at the start of the hearing, and the objection to eligibility was noted. Said hearing was held on **Thursday, January 12, 2017**. Mr. Tim Clark served as the State’s Technical Expert. The Manufacturer was represented by Loi Nguyen.

- A.** The Consumers reported to the Manufacturer, its authorized dealer, or its agent a defect pertaining to shuddering, unpredictable acceleration, sudden lunging, and stalling at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect/Repair Work Performed</u>
09-04-2015	294	Shuddering; unpredictable acceleration; lunging; stalling
09-15-2015	827	Shuddering; unpredictable acceleration; lunging; stalling
12-04-2015	4,133	Stalling episode
12-08-2015	4,191	Shuddering; unpredictable acceleration; lunging; stalling
07-12-2016	11,478	Shuddering; unpredictable acceleration; lunging
07-26-2016	11,764	Inability to accelerate from a stop; shuddering; lunging

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 32 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>
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(see the above-listed defects related to unpredictable acceleration, lunging, and stalling episodes)

II. REASONING

Nonconformity

The Consumers complained of the following nonconformities with the subject Vehicle: shuddering upon acceleration and on hills; unpredictable acceleration and the inability to accelerate from a stop; unexpected lurching; and stalling episodes. The Consumers claimed that these defects continued to exist as of the date of the hearing.

Eligibility and Reasonable Repair Attempts

The Consumers' Request for Arbitration revealed that the Vehicle experienced a severe transmission shudder at low speeds under acceleration and while the Vehicle was climbing hills, that acceleration was unpredictable or non-existent at times, that the Vehicle would unexpectedly lunge forward from a stop, and that the Vehicle stalled while being driven on several occasions. The claimed transmission defects began upon purchase of the Vehicle, and the Vehicle was first brought in for repair when it had just 294 miles on the odometer.

There were multiple visits to the Dealer for diagnosis, testing, and repair of these defects. Said defects were subject to multiple repair attempts during the first year and 12,000 miles of ownership, thereby meeting the statutory eligibility requirements of four or more repairs within the first two years or 24,000 miles of ownership, as detailed in Part 1 of this decision. The Vehicle was also out of service for more than thirty (30) days during the statutory period, as detailed in the Request for Arbitration and the repair orders. Given the nature of the transmission-related problems experienced by the Consumers, the Vehicle met the requirements for a safety-related defect likely to cause death or serious bodily injury, as set forth in Chapter 743b. The Manufacturer did not contest the initial eligibility of the Vehicle.

Substantial Impairment and Factual Discussion

The Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed the Vehicle defects experienced by the Consumers and the repair attempts by the Dealer. The record revealed that the Vehicle has a novel transmission, called "EcoShift" by the Manufacturer, that employs a dual clutch system whereby the transmission shifts as though it were a manual transmission, but all shifts are automatically performed through computer controls. Proper gear selection is the result of driver input, road conditions, engine speed, load, and other parameters, each monitored by computer. In addition, this transmission contains "adaptive" software, which allows shift points and shift quality to change (within pre-determined ranges) after learning the driver's style of driving. During several repair attempts, the learned parameters were erased by the Dealer and reset to their factory default generic settings.

Mr. Clark offered both written and oral evidence into the record including a Technical Service Bulletin entitled "DCT Control Logic Update (Service Campaign TMM)" related to the particular model transmission found in the Vehicle, as well as a copy of a report of the National Highway Traffic Safety Administration ("NHTSA") entitled "Part 573 Safety Recall Report 16V-628" (the "Safety Recall Report") related to vehicles of the same make and model as the Vehicle with the same transmission. The evidence revealed that on-board computer reprogramming was included in the Technical Service Bulletins issued by the Manufacturer, as well as the Safety Recall Report. The transmission's adaptive settings were erased and re-set several times during repair attempts.

The Consumers complained of intense shuddering when operating the Vehicle during normal driving conditions, but especially on hills and in stop-and-go traffic. Stalling of the Vehicle occurred on multiple occasions, but the Dealer was unable to verify that defect during their repair attempts. The Consumers

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were familiar with the “EcoShift” transmission operation; during the hearing, they testified that they expected it to shift more like a manual transmission but have some additional vibration when compared to a traditional automatic transmission.

However, the excessive vibration, the random periods where the Vehicle would hesitate unpredictably or not accelerate at all, the lunging from a stop, and the episodes of unexpected stalling while driving upon the roadway were conditions that the Consumers did not expect upon their purchase, and which they now believe to be serious driveability issues impacting their use of the Vehicle and their safety. The Consumers testified as to their apprehension when driving the Vehicle, and detailed the fear they experience when the transmission does not respond to driver requests for acceleration, or when the Vehicle stalls. The distractions caused by the shuddering during acceleration from a stop or while in “stop and go” traffic, as well as the unpredictable acceleration and stalling episodes, were described as major driveability and safety concerns of the Consumers (see Page 9 of the Request for Arbitration).

The Manufacturer argued that the “EcoShift” transmission in the Vehicle is performing as designed, and that any repairs performed were simply reprogramming of the computer modules, with no mechanical parts needing to be replaced. Such reprogramming was said to happen on a continual basis to improve shift quality or to address other drivability issues. The Safety Recall also highlighted additional computer reprogramming. Despite the multiple reprogramming efforts already undertaken by the Dealer, the Manufacturer claimed at the hearing that the latest reprogramming will fix the transmission concerns raised by the Consumers. The Manufacturer’s written statement, read into the record, seemed to dismiss the Consumers’ concerns as merely normal vibrations and noise. The Manufacturer’s arguments are not convincing and do not allow for the dismissal of the Consumers’ very legitimate concerns.

The Manufacturer was afforded multiple attempts to repair the Vehicle during the first months of ownership through the Dealer. All of those efforts, totaling over thirty (30) days, failed. In addition, the Consumers were placed in very dangerous situations when the Vehicle refused to accelerate, or stalled on the road.

Due to the continuous and severe transmission shuddering causing distracted driving and impaired acceleration, together with the lunging issue, unpredictable acceleration concern, and the sudden stalling episodes, a substantial loss of both use and safety were proven by substantial evidence to exist. The Manufacturer’s repair protocol, the service bulletins, and the NHTSA Safety Recall Report described above, reveals that a known problem with the Vehicle’s transmission existed, which in the Consumers’ case created a dangerous condition while driving. I also call attention to the fact that the Consumers failed to receive the Safety Recall Report, although the timing of the Vehicle repair attempt just before the release of the Safety Recall Report may have been the cause for this omission.

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 or defects which meet 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.

Given the Consumers’ preference to obtain a replacement vehicle with the same safety features present in the Vehicle, awarding a replacement is appropriate in this case. The Consumers detailed that the Manufacturer produces another model that does not have the seven-speed “EcoShift” Dual Clutch Transmission present in the Vehicle, yet contains all the safety features they coveted upon purchase, and testified that they would pay the difference in Manufacturer Suggested Retail Price (“MSRP”) to obtain a similarly-equipped Hyundai Santa Fe. The order in this case will reflect these facts.

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III. CONCLUSION

Given that the Consumers presented substantial evidence that the Vehicle is not able to function normally due to a severe transmission defect, I hold for the Consumers in this case. A replacement award, 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. 01-23-2017
Date

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

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IV. REPLACEMENT AWARD

This arbitrator finds the Consumers are entitled to a **replacement vehicle**. The Manufacturer shall replace the Vehicle (a Hyundai Tucson) with a new **Hyundai Santa Fe**. The replacement vehicle **shall have similar options (to be chosen by the Consumers)**, as the Vehicle, or contain the replacement model year's equivalent trim level and options.

The replacement vehicle shall have no more than **250 miles** on the odometer at the time of delivery. If the underlying vehicle, or any vehicle option or option package chosen by the Consumers increases the MSRP value of the replacement vehicle above the MSRP of the nonconforming Vehicle, **the Consumers shall be responsible** for the cost of said item or items. The following dealer-installed option shall be included: **VIN Etching**.

The Manufacturer shall provide at its expense a **warranty** for the new vehicle which shall be equivalent to, or better than, the warranty originally purchased by the Consumers, effective from the date of delivery of the replacement vehicle. A warranty equivalent to any purchased by the Consumers, shall also be provided. The Consumers shall leave all external decals in place (if any), and **all appurtenances** shall remain with the nonconforming Vehicle.

Any increase between the MSRP cost of the Vehicle and the replacement vehicle shall be:

- Borne by the Consumers** Borne by the Manufacturer
 Allocated as follows: 50 percent paid by the Manufacturer and 50 percent by the Consumers.

The Manufacturer shall be responsible for the cost of registering the replacement vehicle. The party responsible for securing the registration for the replacement vehicle from the Department of Motor Vehicles shall be: The Consumers The Manufacturer

Other Reimbursements Paid by the Manufacturer:

Lemon Law Filing Fee: \$50.00 Mud Guard Kit installed by Dealer: \$156.76 Floor Mats: \$148.89
No additional costs other than those indicated above shall be borne by the Consumers.

Neither party will be subject to any sales or use tax. An advisement dated May 24, 1991 from the Commissioner of Revenue Services states, "In the event that manufacturers of motor vehicles are required, in accordance with Conn. Gen. Stat. Sec. 42-179, to replace motor vehicles with new motor vehicles, sales and use tax shall not apply to such replacements." Any policy change resulting in the imposition of taxes shall be the responsibility of the Manufacturer.

The exchange shall occur at (Consumers' choice): **Key Hyundai** located at **21 Hartford Turnpike** in **Vernon, Connecticut 06066**, OR at the **Consumers' home**.

It was unclear at the time of the hearing if new 2016 model year vehicles were available for exchange.

If the Manufacturer provides a **2017 model year** replacement vehicle, the Manufacturer shall order the vehicle within **14 days** of the Manufacturer's receipt of this arbitration decision, **giving the Consumers the choice of exterior and interior color, as well as the options and trim to be included**. The Consumers shall be notified within **2 days** of the replacement vehicle being delivered to the Dealer listed above.

If the vehicle is financed, the Consumers shall sign an authorization that will assign the Consumers' right, title and interest of the Vehicle to the Manufacturer upon receipt of the replacement vehicle. If the Vehicle is not financed, the Consumers shall surrender to the Manufacturer the title to the Vehicle at the time of receipt of the replacement vehicle.