In the matter of arbitration entitled:

Ventricelli vs. Subaru **Case Number: 2016-692**

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

Daniel Ventricelli and **Sheri Ventricelli** (collectively, the "Consumers") purchased a **2013 Subaru Legacy 2.5** from **Premier Subaru** located at **150 North Main Street** in **Branford, Connecticut, 06405**. The Consumers took delivery of this vehicle on **June 6, 2013**. 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. Subaru of America (the "Manufacturer") did not contest the initial eligibility of the vehicle in this case. Said hearing was held on **Tuesday, June 7, 2016**. Mr. Tim Clark served as the State's Technical Expert. Also appearing at the hearing were the Consumer Ms. Sheri Ventricelli (hereinafter, individually, the "Consumer") and Mr. Brian Griffen, District Field Operations Manager for the Manufacturer. The record closed on **Wednesday June 8, 2016** with the submission of additional evidence concerning unrepaired body damage to the vehicle.

☑ **A.** The Consumer first reported to the manufacturer, its authorized dealer, or its agent a defect pertaining to **low oil indicator warnings and excessive motor oil consumption** on **August 7, 2013** with **3,199 miles** on the vehicle's odometer. Subsequent repair attempts for this defect and others occurred on:

Repair Date	Miles	Defect
10-25-2013	7,488	low oil indicator warning; excessive motor oil consumption
03-22-2014	12,043	low oil indicator warning; excessive motor oil consumption
05-02-2015	20,336	low oil indicator warning; excessive motor oil consumption
07-28-2015	24,117	low oil indicator warning; excessive motor oil consumption
11-03-2015	25,630	low oil indicator warning; excessive motor oil consumption

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 _____ 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:

Date	Miles	Defect

II. REASONING

Nonconformity

The Consumers complained of the following nonconformities with the subject vehicle: multiple low motor oil level warnings and excessive motor oil consumption. Said defects were said to continue to exist.

Eligibility and Reasonable Repair Attempts

The Request for Arbitration revealed that the vehicle experienced multiple low oil warnings and had excessive oil consumption, necessitating multiple visits to an authorized dealership for diagnosis, testing, and repair. Said defects met the statutory presumption for eligibility, as they were subject to four repair attempts during the first two years or 24,000 miles of ownership, and the vehicle was subject to additional repairs for this defect after the statutory period, as detailed in Part 1 of this decision. Given the documented repairs during the statutory period, the Consumers were found to have met the eligibility requirements set forth in Connecticut General Statutes Chapter 743b.

Substantial Impairment and Factual Discussion

In the present matter, this arbitrator holds that both a substantial impairment to use exists in the form of 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.

The Consumer appeared and testified at the arbitration hearing. 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 multiple repair attempts by the authorized dealership.

As shown in Part I of this decision, the Consumers first experienced the oil level warning light and excessive oil consumption. The vehicle was first brought to a local authorized dealership for diagnosis and repair on August 7, 2013, when the vehicle had been driven just 3,199 miles. This date was exactly two months after delivery of the vehicle. Excessive oil consumption has remained an issue since that time, up through the date of the hearing. The record clearly indicated that motor oil had been added much more frequently than the Manufacturer-specified 7,500 mile interval. One oil change occurred at a local Walmart, as the local dealership in the area had closed for the weekend.

The Consumer testified as to her son and vehicle co-owner David Ventricelli's apprehension with driving the vehicle, and detailed the fear he experienced and continues to experience when driving on long trips in sparsely settled areas of Tennessee and West Virginia with the low oil warning light suddenly appearing. This apprehension and a concern about safety were listed in the Request for Arbitration as a major concern (see the second paragraph of the narrative on page 9).

The record referred to a Technical Service Bulletin, further described by Mr. Clark, related to excessive oil consumption for the specific model Subaru vehicle in this matter. Mr. Clark pointed to Repair Order No 6067855/1, which was "left open" in order to complete an oil consumption test, which the car failed due to the need for 1.5 quarts of motor oil in just 1,200 miles, well before the normal oil change interval had elapsed. A substantial repair was then approved by the Manufacturer and undertaken by an authorized dealership whereby the short block was rebuilt. This repair was summarized as replacing the top half of the engine.

The Manufacturer testified that "ninety-nine percent" of repaired vehicles exhibit no further engine oil consumption issues. Although the Manufacturer argued that there was no verification that excessive oil consumption existed after the repair, the next repair order, dated November 3, 2015 at 25,630 miles, showed that the vehicle was brought in for another low oil warning light (refer to Repair Order No. 6071830).

The Manufacturer's representative argued that given the extensive engine repair, the engine in this specific Subaru model vehicle has a "break-in" period, so engine oil consumption would improve over time. At the hearing, Mr. Clark vociferously disputed the fact that modern engines such as the one in the subject vehicle need any "break in" period in order to perform optimally. This arbitrator finds there was no need for a "break in" period given the facts presented.

It was pointed out by the Consumer that the vehicle was never able to drive a normal 7,500 mile oil change interval without the low motor oil warning light coming on. The Consumers felt that they did not have the full use of the vehicle, and given the continual oil consumption issues experienced since two months after the vehicle was purchased, they are justified in their concerns. Based on the ongoing defects, which impact the Consumers' normal, everyday use of the vehicle, I find a substantial loss of use in this case. A refund and exchange is appropriate in this case.

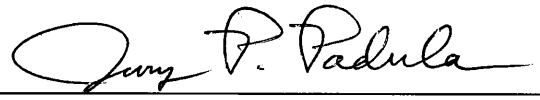
Given the ongoing, unresolved motor oil consumption issue discovered early in the vehicle's ownership and continuing for three years, and the number of miles on the odometer as of the date of the hearing (28,956), a mileage deduction shall be awarded in favor of the Manufacturer, but only up through the date of the first repair. Given the overall mileage driven with the vehicle during the past three years, finance charges shall not be awarded to the Consumers in this case. Due to the difficulty in proving the monetary costs resulting from the additional oil changes and oil "top offs," the Consumers shall not be reimbursed for these indeterminate, rather minimal expenses. Dealer-installed options listed on the invoice as "Rear Bumper Application" ($95.00) and "Splash Guards" ($161.00) shall also be reimbursed.

The Consumers provided additional evidence into the record regarding body damage that was unrepaired as of the date of the hearing. The $696.20 cost to replace the bumper shall be paid by the Consumers directly to the Manufacturer, and shall therefore not be shown in Section IV of this decision.

III. CONCLUSION

Given that the Consumers presented substantial evidence that the vehicle is not able to function normally, I hold for the Consumers in this case. A refund and exchange, 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.



06-20-2016

Arbitrator - Jerry P. Padula, Esq. Date

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

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IV. REFUND AWARD

The arbitrator finds that the Consumer is entitled to a **refund of the contract price**, including charges for any undercoating, dealer preparation and transportation, and dealer installed options, if applicable. (The contract price is less the **$0.00** credit/rebate given to the purchaser.) The total vehicle price, as delivered, was **$20,327.00**.

Allowance for use:

☐ The contract price shall not be reduced by taking into account the mileage on the vehicle.

☑ The contract price **shall be** reduced by an allowance for the Consumer's use of the vehicle. It shall be calculated using the total mileage driven **at the time of the first repair attempt** (at 3,199 miles), minus the mileage at the time of delivery (15 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$20,327.00 \quad X \quad 3,184 \text{ miles (3,199 miles - 15 miles)}}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the vehicle shall be: **$539.34**.

Finance Charges to be Reimbursed by Manufacturer:

☐ The Consumer shall be reimbursed for finance charges incurred on the following dates:

_____.

☐ The Consumer shall be reimbursed for finance charges incurred from:

_____ to _____.

☐ The Consumer shall be reimbursed for all finance charges incurred.

☑ The Consumer **shall not be** reimbursed for finance charges.

Additional Expenses to be Reimbursed by Manufacturer:

Conn. State Sales Tax: $1,344.93
Title & Regis. Fees: $106.00
Dealer Conveyance Fee: $398.00
VIN Etching: $199.00
Greenhouse Gas Fee: $5.00
Lemon Law Surcharge: $3.00
Dealer-installed options: $256.00
Lemon Law Filing Fee: $50.00

Total Refund Award and Conditions:

The total refund amount is **$22,149.59** (twenty two thousand one hundred forty nine dollars and fifty nine cents). **In addition to the total refund amount indicated, the finance charges indicated above are to be paid by the manufacturer**. A rental vehicle shall be provided by the Manufacturer, at the Manufacturer's sole cost, if the vehicle is inoperable for any time after the hearing up through the time of the vehicle exchange due to the named defect(s).

If the vehicle is financed and the loan has an outstanding balance, the Manufacturer shall prepare one check payable to the lien holder as its interest may appear, and one check payable to the Consumer(s) in the amount of the balance of the refund. The Consumer(s) shall sign an authorization that will assign the Consumer's right, title, and interest of the vehicle to the Manufacturer upon receipt of the refund. The Consumer(s) shall surrender the vehicle at the time of the refund.

If the vehicle is not financed, the Consumers(s) shall surrender the vehicle's title to the Manufacturer at the time of receipt of the refund set forth in this decision.

The Manufacturer shall provide the total refund to the Consumer(s) within **30** days of the Manufacturer's receipt of this arbitration decision. The Consumer(s) shall surrender the vehicle to the manufacturer upon receipt of the refund, but if the vehicle is in the possession of the Manufacturer or their agent, the vehicle title shall be so surrendered when the refund is provided. The exchange shall occur at: **Wallace Imports, 3101 East Oakland Avenue, Johnson City, TN 37601, OR** at the **local manufacturer-authorized dealership of the Consumers' choice**.