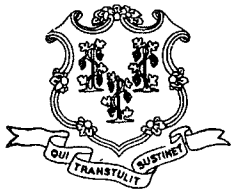


In the matter of arbitration entitled:

Palko vs. FCA US, LLC (Dodge)

Case Number: 2017-2191



**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

Andrea Palko (the "Consumer") leased a **2015 Dodge Durango Limited** (the "Vehicle") from **Milford Auto Group** (the "Dealer") located at 1470 Boston Post Road in Milford, Connecticut, 06460. The Consumer took delivery of the Vehicle on **February 28, 2016**. 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. **FCA US, LLC** (the "Manufacturer") did not contest the initial eligibility of the Vehicle in this case and additionally conceded liability. The arbitration, held on **Monday, January 8, 2018**, therefore proceeded as a hearing in damages.

- A.** The Consumer reported to the Manufacturer, its authorized dealer, or its agent a defect pertaining to **the intermittent slipping of the transmission on February 20, 2017 with 13,570 miles** on the Vehicle's odometer. Subsequent repair attempts for this defect and others occurred on:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
02-24-2017	13,739	intermittent slipping of the transmission; harsh shifting
03-22-2017	14,798	intermittent slipping of the transmission; harsh shifting
03-30-2017	14,973	intermittent slipping of the transmission; harsh shifting
05-20-2017	15,550	transmission shifting concerns
07-17-2017	17,924	transmission harsh shifting
08-31-2017	19,956	transmission failing to shift upon acceleration

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 42 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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II. REASONING

Nonconformity

The Consumer complained of the following defect with the Vehicle: The intermittent slipping and harsh shifting of the Vehicle's transmission. Said defect was said to continue to exist as of the date of the hearing.

Eligibility and Repair Attempts

The Consumer's Request for Arbitration revealed that the Vehicle experienced an intermittent slipping and harsh shifting of the transmission on many occasions within the statutory period, necessitating multiple visits to the Dealer for diagnosis, testing, and repair. Said defect met the statutory presumption for eligibility, as it was subject to four repair attempts for this transmission-related issue during just the first fifteen thousand miles since delivery, and several more after that time, as detailed in Part 1 of this decision. The Vehicle therefore met the statutory presumption of four (4) repairs before the first twenty four thousand (24,000) miles. The Vehicle was also out of service by reason of repair for forty-two days within the statutory period. The Consumer was therefore found to have met the eligibility requirements set forth in Chapter 743b. At the start of the hearing, the Manufacturer did not contest the initial eligibility of the case, and also conceded liability as to the defect, so the arbitration proceeded as a hearing in damages.

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 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 Manufacturer was represented by Cassandra M. Gipe, of the firm Rose Waldorf, PLLC. The leasing company, Milford Auto Group was not present. The Consumer's Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed the Vehicle defects experienced by the Consumer and the multiple repair attempts by the Dealer.

As shown in Part I of this decision, the Consumer first brought the transmission issue to the attention of the Dealer for diagnosis and repair on February 20, 2017, which was within one year of taking possession, when the Vehicle had been driven 13,570 miles. The written repair records and the oral testimony of both parties verified that the Dealer had performed diagnostic tests and had replaced parts to satisfy the Consumer's concerns. The Dealer replaced the transmission's valve body during the third repair attempt, and replaced the entire transmission during the fourth repair attempt, but the noted transmission slipping defect continued.

The Consumer felt that she did not have the full use of the Vehicle, and given the many episodes when the Vehicle failed to shift or accelerate normally during daily driving, I agree with the Consumer's assessment. Based on the ongoing transmission defect, which impacts the Consumer's normal, everyday use of the Vehicle, I find a substantial loss of use in this case. The shifting defect also impacted the ability of the Consumer to safely drive the Vehicle (See Section LLM 200 of the Consumer's Request for Arbitration).

The record indicates that the Consumer was made to drive the Vehicle for many miles with a randomly slipping transmission accompanied by harsh shifts and unpredictable acceleration, thereby impacting the Consumer's use and overall safety. However, the Consumer had not reported any Vehicle trouble or defect up through the date of the first repair. The record also indicated a reasonable effort by the Manufacturer and Dealer to repair the Vehicle. A mileage deduction shall be awarded in favor of the Manufacturer, based

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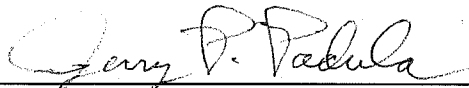
upon the mileage at the first repair attempt: 13,570 miles. It is noted that the Vehicle had twenty-five (25) miles on the odometer at the time of delivery.

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.)

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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 a credit due in favor of the Manufacturer in the amount of \$2,709.00 for accumulated mileage computed by using the mileage at purchase (25 miles) subtracted from the mileage at the time of the first repair on February 20, 2017 (13,570 miles), a distance of 13,545 miles, multiplied by the overage charge per mile listed in the lease agreement (\$0.20 per mile);
- 2) All lease costs paid;
- 3) State Sales Tax due at signing in the amount of \$319.85;
- 4) Vehicle title, registration, Clean Air Act, and Lemon Law fees in the amount of \$228.00;
- 5) Dealer documentation fee paid at signing in the amount of \$449.00;
- 6) VIN etching fee paid at signing in the amount of \$249.00;
- 7) Lease "Wear and Tear" charge due at signing in the amount of \$599.00;
- 8) Certified Mailing expense of the Consumer in the amount of \$6.59, and
- 9) The Department of Consumer Protection Lemon Law filing fee of \$50.00.

For the Leasing Company:

The Manufacturer shall pay the leasing company "**Milford Auto 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 **Milford Auto Group located at 1470 Boston Post Road in Milford, Connecticut, 06460** 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.