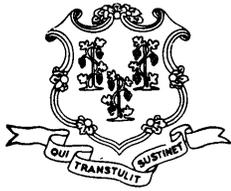


In the matter of arbitration entitled:

**Patel vs Toyota**

**Case Number: 2017-673**



**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**

Mr. Jigneshkumar Patel (the "Consumer") purchased a 2016 Toyota Highlander (the "Vehicle") from Hartford Toyota Superstore located at 158 Weston Street in Hartford, Connecticut, 06120 (the "Dealer"). The Consumer took delivery of this Vehicle on February 13, 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. Said hearing was held on Monday, May 8, 2017. Toyota Motor Sales, U.S.A., Inc. (the "Manufacturer") did not contest the initial eligibility of the Vehicle in this case. Mr. Tim Clark served as the State's Technical Expert. Also appearing at the hearing was the Consumer and, for the Manufacturer, Mike Ciesco, District Parts and Service Manager, John Loira, Field Technical Specialist with the Manufacturer, and Clarice Miller, Customer Relations Consultant for the Manufacturer.

- A. The Consumer reported to the Manufacturer, its authorized dealer, or its agent a defect pertaining to a paint defect, namely rust particles embedded in the paint surface at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
07-18-2016	6,634	Rust particles embedded in the paint surface
03-08-2017	20,191	Rust particles embedded in the paint surface

The above defect or defects was said to continue to exist as of the date of the hearing.

- 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>

## **II. REASONING**

### **Nonconformity**

The Consumer complained of the following nonconformity or defect with the subject Vehicle: Rust particles embedded in the paint surface. This defect was claimed by the Consumer to continue to exist as of the time of the hearing.

### **Eligibility and Reasonable Repair Attempts**

The Request for Arbitration revealed that the Vehicle experienced continual abnormal noises while being driven, necessitating visits to an authorized dealership for diagnosis, testing, and repair. Although the statutory presumption is that four (4) repairs made to a vehicle within the timeframe will meet the statutory presumption, a reasonable number of repair attempts can be inferred from the facts. This is the avenue by which the Vehicle met the eligibility requirements. The record indicated a paint defect which could not be corrected during the first repair attempt, and the record indicated that the Dealer had refused further repairs at the Consumer's second attempt at service. The Manufacturer did not contest the Vehicle's initial eligibility.

Given that the claimed Vehicle defect is related to the factory-applied paint, and that a refusal of service occurred, the Vehicle was found to have met the eligibility requirements set forth in Connecticut General Statutes Chapter 743b. The arbitration then proceeded on the merits.

### **Substantial Impairment and Factual Discussion**

In the present matter, this arbitrator holds that both a substantial impairment to value exists in the form of a defect 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 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 two repair visits to the Dealer. The Consumer first noticed that several body panels and trim pieces had pinhole-sized rust spots when the Vehicle had been driven 6,634 miles. The Consumer then took the Vehicle to the Dealer, where the Vehicle's body was cleaned and buffed, and a treatment to remove rust particles was performed.

The Consumer explained at the hearing that the rust spots returned, despite his diligent cleaning and waxing of the paint. He took the Vehicle back to the Dealer at 20,191 miles to address the paint issue. The record revealed that Mr. Mike Ciesco, the Manufacturer's District Parts and Service Manager, inspected the Vehicle on March 8, 2017 when the Vehicle was at the Dealer. No work was performed at that time to correct the rust particle issue, as Mr. Ciesco concluded that it was "not a manufacturing defect," as the handwritten note on Repair Order 456966 stated. His testimony at the hearing insisted that the rust spots were caused by environmental factors.

This Arbitrator ordered an inspection of the Vehicle by Mr. Clark. In his report on the record, Mr. Clark came to the conclusion that the Vehicle suffered from a condition known as "rail dust." Rail dust is a cloud of tiny, red-hot metal particles emanating from the wheels of trains as they brake. Mr. Clark explained that most new vehicles are transported from their place of manufacture to or near local dealers by rail. Rail dust can be embedded within the factory-applied clear coat which protects the paint in modern vehicles. The particles rust over time as a reaction to being exposed to air and water. Judging by the location of the particles, Mr. Clark posited that the Vehicle was parked backwards on the train, therefore while in transit, rail dust became embedded in the rear quarter panels, tail section, and to a lesser degree, on the roof.

Mr. Clark also addressed the Manufacturer's argument that environmental factors caused the rust. He ruled out sand and salt, or being parked under a metal bridge as causes as these were not consistent with the location of the rust spots or the fact that they were embedded within the clear coat. Plastic panels also showed rust spots, which were obviously not caused by the underlying rust-proof material, but instead by the paint surface being afflicted by rail dust. The Manufacturer had pointed to the Dealer-installed aluminum rear license plate frame having rust on it as an argument for an environmental cause of the rust, but this argument was de-bunked when Mr. Clark wiped off the dirt which appeared to be rust with his finger. In addition, he stated that rail dust, due to its high temperature, can pass through the thin plastic material that manufacturers use to wrap their vehicles before transit, and that inspections by dealers as vehicles arrive for sale could miss rail dust damage, allowing such a vehicle to be placed on the lot for sale. The Consumer's frequent cleaning and waxing of the Vehicle was said by Mr. Clark to have staved off the earlier re-appearance of the rust, but it would surely re-appear again.

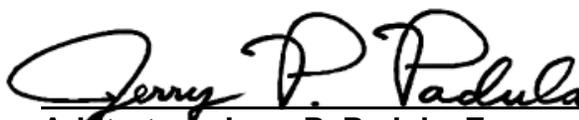
The Consumer felt that the Vehicle was damaged prior to his ownership, and that the value of the vehicle has been significantly impacted. The Consumer testified that he paid \$500.00 extra for the Vehicle's special "Blizzard Pearl" exterior paint color, and that the rail dust is especially noticeable due to this color. Given the "rail dust" defect that is clearly visible on the body of the vehicle, he is justified in his concerns. I therefore find a substantial loss of value in this case, despite no written documentation being presented to verify the extent of the financial loss. The rust spots indicate an unsatisfactory paint finish which cannot be easily repaired to factory specifications. A refund and exchange is appropriate in this case.

Although the inception of the rail dust defect was before the Consumer obtained ownership of the Vehicle, said defect was first discovered by the Consumer when the Vehicle had been driven 6,634 miles. At that time, the Vehicle was brought back to the Dealer for the first time. Balancing the ever-present rail dust issue with the relatively high number of miles on the odometer as of the date of the hearing (24,294 miles as verified by Technical Expert Mr. Clark), a mileage deduction shall be awarded in favor of the Manufacturer, but only up through 6,634 miles, the time of the first repair attempt at the Dealer. Finance charges shall be awarded in full to the Consumer in this case. Any warranty purchased through the Dealer may be cancelled by the Consumer and a pro-rated refund provided to him. If any such contract cannot be so cancelled, the entire purchase price shall be reimbursed by the Manufacturer.

### **III. CONCLUSION**

Given that the Consumer presented substantial evidence that the Vehicle is not able to be brought back to factory specifications, I hold for the Consumer 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.

  
Arbitrator - Jerry P. Padula, Esq.

05-24-2017  
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 **\$37,000.00**.

**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 (at 6,634 miles), yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$37,000.00 \times 6,634 \text{ miles (6,634 miles - 0 miles)}}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the vehicle shall be: **\$2,045.48**.

**Finance Charges to be Reimbursed by Manufacturer:**

- The Consumer(s) shall be reimbursed for finance charges incurred on the following dates: \_\_\_\_\_.
- The Consumer(s) shall be reimbursed for finance charges incurred from: \_\_\_\_\_ to \_\_\_\_\_.
- The Consumer(s) **shall be** reimbursed for **all finance charges incurred**.
- The Consumer(s) shall not be reimbursed for finance charges.

**Additional Expenses to be Reimbursed by Manufacturer:**

Conn. State Sales Tax: \$2,374.84    Title & Regis. Fees: \$188.00    Dealer Conveyance: \$399.00  
 Lemon Law Filing Fee: \$50.00

**Total Refund Award and Conditions:**

The total refund amount is **\$37,966.36** (thirty seven thousand nine hundred sixty-six dollars and thirty-six 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 if the vehicle is inoperable for any time after the hearing up through the time of the vehicle exchange.

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 in the amount of the balance of the refund. The Consumer 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 shall surrender the vehicle at the time of the refund.

If the vehicle is not financed, the Consumer 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 within **30** days of the manufacturer's receipt of this arbitration decision. The Consumer shall surrender the vehicle to the manufacturer upon

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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 the **Dealer**, or at another Manufacturer-authorized dealership in Connecticut of the Consumer's choice.