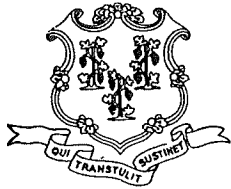


In the matter of arbitration entitled:

**Burson vs. GM**

**Case Number: 2017-868**



**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**

**William Burson** (the "Consumer") leased a **2015 GMC Terrain** (the "Vehicle") from **Gallagher Buick GMC, Inc.** located at **325 Columbus Boulevard** in **New Britain, CT 06050-1448** (the "Dealer"). The Consumer took delivery of the Vehicle on **August 31, 2015**. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes, or is an equivalent vehicle.

After reviewing the allegations, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. General Motors (the "Manufacturer") did not contest the initial eligibility of the Vehicle in this case. Said hearing was held on **Monday June 5, 2017**.

**A.** The Consumer first reported the defect pertaining to **malfunctioning of the GPS navigation system**, to the Manufacturer, its agent, or its authorized dealer on the following occasions for diagnosis and repair:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
03-14-2016	11,591	malfunctioning GPS navigation system
01-26-2017	21,750	malfunctioning GPS navigation system
04-03-2017	23,698	malfunctioning GPS navigation system
04-18-2017	24,822	malfunctioning GPS navigation system
04-24-2017	24,949	malfunctioning GPS navigation system

The above defect continues to exist.

**B.** The Vehicle has been out of service by reason of repair for a cumulative total of \_\_ calendar 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 with the Vehicle: Malfunctioning of the GPS navigation system. The Consumer presented substantial evidence that the defect existed, was not successfully repaired, and continued to exist.

### **Eligibility and Repair Attempts**

The Consumer's Request for Arbitration revealed that, within the presumptive statutory period, the Vehicle was out of service by way of repair on three occasions totaling nine (9) days, with two additional repair attempts totaling eight (8) days being made just past the 24,000 mile mark. The failure of the GPS navigation system was the sole reason behind each repair attempt. Of particular concern were episodes of sudden GPS navigation malfunction, including the failure of the system to correctly identify the Vehicle's location while the Consumer was depending upon the system for directions in unfamiliar surroundings. Five total repairs for these concerns were provided in the record, and the issues were said to still exist at the time of the hearing. The Consumer had also testified that while in Florida, a local dealer had refused him service when the GPS navigation system failed him. During repair attempts at the Dealer when back in Connecticut, the radio unit was replaced twice and the latest software had been updated and installed, but these repairs did not correct the problem. Said defect met the statutory presumption for eligibility, as it was subject to a reasonable number of repair attempts during the first 24,000 miles, as detailed in Part 1 of this decision.

The Consumer also claimed a safety defect in that the GPS navigation system incorrectly led him to unsafe locations and had commanded him to make turns onto roads which did not exist. This condition could cause a seriously dangerous accident to occur. The Consumer was therefore found to have met the requirements of the statute for a safety-related defect.

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

In the present matter, this arbitrator holds that a substantial impairment to use and safety exists 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 record revealed that the Consumer purchased the Vehicle mainly as his personal (non-work) transportation, including the specific task of carrying the Consumer and his wife across the country for a special trip in summer 2017 (hearing at 9:20; 18:40; 41:40). This was his first Sport Utility Vehicle, which was chosen above more traditional sedan models due to the usefulness and extra space of an SUV for the long-distance trip he had planned. He specifically purchased the GPS navigation system as an option, as each of his recent newly-purchased vehicles also had such a system.

The Consumer's Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed problems experienced by the Consumer on numerous occasions when attempting to operate the GPS navigation system. The Consumer testified that he usually employed the GPS navigation system when driving in unfamiliar locations, but that for the first months of ownership he had remained local and did not use the system. The first repair attempt was therefore at 11,591 miles. The Consumer's own credible testimony is that the GPS navigation system operated erratically, to the point that it could not be relied upon when driving in and around major cities like New York, Miami, Boston, and Washington, D.C. The Consumer provided detailed examples of being unable to rely upon the system when driving in those locations. The system also failed to work near his home in Avon, Connecticut. Video evidence was entered

into the record and discussed at the hearing to prove the failures of the GPS navigation system found in the Vehicle. The record included the GPS navigation screen showing half-English and Half-gibberish when the Consumer was driving in an unfamiliar part of New York City, when the screen suddenly commanded him to drive to the GM Tech Center in Ohio, which was over 800 miles away. Gibberish also appeared in Boston.

During a trip to Miami, the GPS navigation system failed by making the Consumer drive in circles, and then leading him and his wife to a dangerous section of Miami where they became lost. Getting out of that situation required the help of local police. After becoming lost during a trip to Washington, D.C., the Consumer's daughter installed a program called "Waze" on the Consumer's Apple iPhone in order to provide audio turn-by-turn directions with a video display (albeit a smaller one than in the Vehicle's dashboard) to provide GPS navigation features. His wife had to operate the iPhone and coordinate the phone's directions with his driving, which is not an optimal situation. They employ this method during those times when the Vehicle's GPS navigation fails.

The written repair records and the oral testimony verified that the Dealer had replaced the radio unit, which is the main GPS navigation system component, on two occasions, replaced the antenna once, and attempted software reprogramming several times in an attempt to address the Consumer's concerns. However, the GPS navigation system continued to malfunction intermittently as of the date of the hearing.

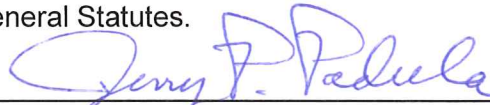
The Manufacturer's arguments were not persuasive, as the optional GPS navigation system did have a dramatic impact on the Consumer's use of the Vehicle, as well as the Vehicle's safety, particularly when the Consumer was relying upon the GPS navigation system while driving and the system instead randomly provided distracting information, or brought him to areas of cities of which he was unfamiliar. The record revealed that the Vehicle cannot perform the duties it was purchased to perform, including the specific task of carrying the Consumer and his wife across the country for a special trip this summer. Given these facts, the use and safety of the Vehicle has been compromised. The Consumer felt that he did not have the full use of the Vehicle, and given the specific testimony about the difficulties encountered when using the GPS navigation system, he is justified in his concerns. The Consumer was clearly not able to use the Vehicle as he had intended. Based on the claimed defect, which impacts the Consumer's normal, everyday use of the Vehicle, I find a substantial loss of use and safety in this case.

As shown in Part I of this decision, the Consumer first brought the Vehicle back to the Dealer to diagnose and fix the GPS navigation system on March 14, 2016, when the Vehicle had been driven 11,591 miles. A reasonable mileage deduction will therefore be given to the Manufacturer, as outlined in Part IV.

### **III. CONCLUSION**

Given that the Consumer presented substantial evidence that the Vehicle is not able to function as he had intended upon purchase, 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.      06/15/2017  
Date

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

In the matter of arbitration entitled:

**Burson vs. GM**

**Case Number: 2017-868**

#### **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 August 31, 2015 (the date of the lease agreement) with a credit due in favor of the Manufacturer of \$2,884.00 for accumulated mileage computed by using the mileage during the March 14, 2016 repair (11,591 miles) subtracted from the mileage at time of delivery (55 miles), a total distance of 11,536 miles, multiplied by the overage charge per mile listed in the lease agreement (\$0.25 per mile);
- 2) All lease costs paid;
- 3) State Sales Tax due at signing on Capitalized Cost Reduction in the amount of \$206.03;
- 4) State Sales/Use Tax due at signing in the amount of \$40.40;
- 5) Vehicle title, registration, and Clean Air Act fees in the amount of \$147.20;
- 6) Documentation fees in the amount of \$489.00;
- 7) Certified mailing fees in the amount of \$7.64; 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 "**ACAR Leasing, Ltd.**" 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 **Gallagher Buick GMC, Inc., located at 325 Columbus Boulevard in New Britain, CT 06050-1448** within **thirty (30) 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.