

**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

Jennifer Lapp (the "Consumer") purchased a **2016 Honda CR-V** (the "Vehicle") from **Schaller Honda** located at **1 Veterans Drive in New Britain, Connecticut 06051** (the "Dealer"). The Consumer took delivery of this Vehicle on **December 26, 2016**. 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. **American Honda Motor Co., Inc.** (the "Manufacturer") did not file a Manufacturer Statement with the Department, and also failed to appear at the hearing. The record indicated that the Manufacturer had properly received notice of the hearing and a copy of the Request for Arbitration on Monday, May 22, 2017 at its designated office in Torrance, California. Given that there was no Manufacturer response on record, the Manufacturer did not contest the initial eligibility of the Vehicle. Said hearing was held on **Monday, June 12, 2017**. Mr. Tim Clark served as the State's Technical Expert.

- A.** The Consumer reported to the Manufacturer, its authorized dealer, or its agent defects pertaining to hard-starting; illuminated and flashing dashboard warning lights; bucking and shuddering; unpredictable or weak acceleration; and "limp mode" being engaged at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect/Repair Work Performed</u>
03-09-2017	n/a	Hard-starting; warning lights; bucking; lack of acceleration; "limp mode"
03-29-2017	1,872	Hard-starting; warning lights; bucking; lack of acceleration; "limp mode"
05-01-2017	2,461	Hard-starting; warning lights; bucking; lack of acceleration; "limp mode"
05-08-2017	2,486	Hard-starting; warning lights; bucking; lack of acceleration; "limp mode"

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 episodes related to hard-starting; multiple illuminated and flashing dashboard warning lights; bucking/shuddering; unpredictable acceleration; and Vehicle going into "limp mode.")

II. REASONING

Nonconformity

The Consumer complained of the following nonconformities with the subject Vehicle: hard-starting; multiple dashboard warning lights being illuminated and/or flashing; bucking and shuddering upon acceleration; unpredictable acceleration; and the Vehicle going into "limp mode" (whereby the Vehicle is prevented from driving above approximately twenty (20) miles per hour and/or up-shifting past the lowest two gears). The Consumer claimed that these defects continued to exist as of the date of the hearing.

Eligibility and Reasonable Repair Attempts

The Consumer' Request for Arbitration revealed that the Vehicle experienced several episodes where the Vehicle would not start normally, requiring several minutes of starting attempts. Concurrent with the starting issue, multiple dashboard warning lights would illuminate, and some would flash. When the Consumer attempted to drive the Vehicle, it would buck and shudder, and go into "limp mode" during which the Vehicle controls prevented her from accelerating past approximately ten (10) miles per hour. On those occasions when an episode occurred, acceleration was unpredictable, and greatly reduced from normal. The Consumer documented four of these episodes in her Request for Arbitration in the repair order summaries and also on page nine (9).

The claimed defects began soon after delivery of the Vehicle to the Consumer, with the first hard-starting episode occurring on March 8, 2017 when the Consumer was at a "Baby's 'R' Us" store while on her way to a daycare facility to pick up her children. The distance home was less than 1.5 miles. Given the seriousness of the episode which occurred, the Consumer immediately brought the Vehicle to the Dealer for repair the following day: March 9, 2017.

There were three other visits to the Dealer for diagnosis, testing, and repair of these defects during just the first five months and 2,500 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. Given the serious nature of the drivability problems experienced by the Consumer, the Vehicle also met the requirements for a safety-related defect likely to cause death or serious bodily injury, as set forth in Chapter 743b. At the time of filing the Request for Arbitration, the Vehicle had been at the Dealer for repair for seventeen (17) days. With the latest repair order admitted into the record at the hearing, the Vehicle was out of service for more than thirty (30) days during the statutory period, thereby also meeting the statutory eligibility requirement of thirty (30) or more days out of service during the first two years or 24,000 miles.

The Manufacturer did not contest the initial eligibility of the Vehicle, as no Manufacturer Statement was provided to the Department, and the Manufacturer failed to appear at the scheduled arbitration hearing. This Arbitrator delayed the start of the hearing to account for traffic delays, but the Manufacturer never appeared during the entire arbitration proceeding.

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 Consumer and the repair attempts by the Dealer. The record revealed that the Vehicle suffered from several episodes where the Consumer could not normally start the engine. Only after several minutes' worth of tries and turning of the steering wheel did the Vehicle start. Once started, the Consumer viewed a dashboard with five (5) illuminated warning lights, including: "Check Engine," "Steering," "Traction Control," "All-Wheel-Drive," and "Tire Pressure." The "Tire Pressure" light flashed for several minutes before becoming a steady warning light, while the others remained

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illuminated for the entire duration of the Consumer's drive. When attempting to drive the vehicle after a hard-starting episode and the illumination of several dashboard warning lights, the Vehicle would buck and shudder, and go into "limp mode" during which the Vehicle controls prevented her from accelerating past approximately ten (10) miles per hour, according to her written and oral testimony. On those occasions when an episode occurred, acceleration was unpredictable, and greatly reduced from normal. During each episode experienced by the Consumer, the Vehicle repeated the same defects.

The ability to safely drive the Vehicle was entirely compromised when an episode occurred, due to the severe bucking and shuddering, as well as a general inability to accelerate. In addition, the Vehicle controls engaged the "limp mode" function, a condition described by Mr. Clark in which the Vehicle is purposely prevented from driving more than approximately twenty (20) miles per hour, and which holds the Vehicle in first or second gear with no further upshifting possible. In the Consumer's experience, the Vehicle was limited to a maximum speed of approximately ten (10) miles per hour.

Troubling to hear was the testimony of the Consumer related to this first repair attempt. Despite her description of the hard-starting, the several warning lights, the bucking and shuddering, lack of acceleration, and the limp mode being engaged, the Consumer was told by a Dealer representative that there were no appointments available that day, and that she must make an appointment. The earliest appointment was twenty (20) days later, on March 29, 2017. No rental car was offered at that time. The Consumer recalled in her Request for Arbitration (on page 9) that she "questioned the safety of driving the vehicle with all its warning lights illuminated and the car bucking" but that the Dealer representative replied that "it's be safe to drive unless the lights were flashing." The record showed that at least one warning light was flashing during each of the episodes.

Mr. Clark offered oral evidence into the record indicating that when the dashboard warning lights illuminated, they indicated that the Vehicle's traction control and anti-lock braking systems were both rendered inoperable. The anti-lock braking system was said to make use of some of the same systems as the traction control. Mr. Clark considered this to be a major safety defect. Mr. Clark also stated that "limp mode" is purposely entered into when the Vehicle's control systems determine that a major failure has occurred, with the result that the Vehicle limits engine power and maximum speed so that the Vehicle can be removed from the roadway to a safer location. The Vehicle is not meant to be driven in this mode for any extended distance or for any extended time period. Luckily for the Consumer, she experienced each of the previously-described episodes when close to home. The Dealer's cavalier attitude about the warning lights and drivability restrictions revealed that a dangerous condition was created for the Consumer.

The random periods where the Vehicle would not start normally, the dashboard warning lights would illuminate, and the Vehicle would buck unpredictably, not accelerate normally, and be unable to drive upon the roadway above approximately ten (10) miles per hour due to being in "limp mode" were conditions that the Consumer did not expect upon purchase, and which she believes to be serious drivability issues impacting her use of the Vehicle and negatively impacting the safety of her and her small children.

The Consumer testified as to her apprehension when driving the Vehicle, and detailed the fear she experiences when the dashboard warning lights illuminate, the drivetrain bucks and does not respond to driver requests for acceleration, when the "limp mode" is suddenly engaged by the Vehicle, or when the Vehicle fails to timely start. These defects were described as major drivability and safety concerns of the Consumer (see Page 9 of the Request for Arbitration).

The Manufacturer was afforded multiple attempts to repair the Vehicle during the first few months of ownership through the Dealer. All of those efforts, totaling over thirty (30) days, have failed. In addition, the Consumer was placed in dangerous situations when the Vehicle refused to start in a timely manner, failed to accelerate due to bucking or being in "limp mode," as well as when the warning lights and flashing warning lights appeared. The Consumer's concerns for her safety and for the safety of her small children

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were confirmed. This arbitrator also notes the Manufacturer's lack of participation in this case by failing to respond to or provide any information to the Department by failing to file a Manufacturer Statement, and failing to attend the scheduled arbitration hearing despite having received proper notice.

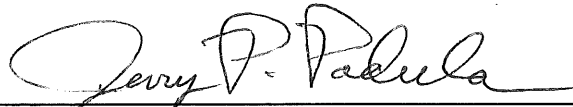
Due to the aforementioned episodes, this arbitrator holds that both a substantial impairment to use and a substantial impairment to safety exist in the form of a defect or defects which meet the requirements of Connecticut General Statutes Section 42-179. The documents in the record and the testimony presented at the arbitration hearing indicate a violation of Connecticut General Statutes Chapter 743b.

Given the Consumer's preference to obtain a replacement vehicle, awarding a replacement is appropriate in this case. Due to the serious impairment to safety if the Consumer is made to drive the Vehicle, I am awarding the cost to rent a comparable sport utility vehicle through the date of vehicle exchange, up to a maximum of \$80.00 per day (including taxes and fees), as a reasonable, related expense to be paid for by the Manufacturer. I am also allowing the Vehicle exchange to occur at the Consumer's residence, if that is her preference.

III. CONCLUSION

Given that the Consumer presented substantial evidence that the Vehicle is not able to function normally due to the noted defects, I hold for the Consumer 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.

06-21-2017
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 Consumer is entitled to a **replacement vehicle**. The Manufacturer shall replace the Vehicle with a new **Honda CR-V**. The replacement vehicle **shall have similar options (to be chosen by the Consumer)**, as the Vehicle, or contain the replacement model year's equivalent trim level and options.

The replacement vehicle shall have no more than **150 miles** on the odometer at the time of delivery. If the underlying vehicle, or any vehicle option or option package chosen by the Consumer increases the MSRP value of the replacement vehicle above the MSRP of the Vehicle, **the Consumer and Manufacturer shall be responsible** for the cost of said item or items, **each paying 50% of the cost**.

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

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

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

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 Consumer The Manufacturer

Other Reimbursements Paid by the Manufacturer:

Lemon Law Filing Fee: \$50.00 Conveyance Fee: \$399.00 Certified Mail Fees: \$3.84
Registration Fees: \$117.40 Rental Vehicle Costs: \$80.00 per day maximum, total to be determined
No additional costs other than those indicated above shall be borne by the Consumer.

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." If any policy change results in the imposition of taxes, said taxes shall be the responsibility of the Manufacturer.

The exchange shall occur at (Consumer' choice): **The Consumer' home OR at Schaller Honda** located at **1 Veterans Drive in New Britain, Connecticut 06051**.

The Manufacturer shall provide a **2017 model year** replacement vehicle. The exchange shall occur within **30 days** of the Manufacturer's receipt of this arbitration decision. The exterior color of the replacement vehicle shall be **black, or a color acceptable to the Consumer**, while the interior color shall be a **color acceptable to the Consumer**.

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