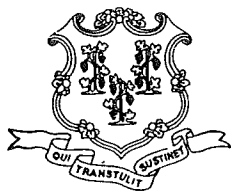


In the matter of arbitration entitled:

Curina vs. Ford Motor Company

Case Number: 2016-1733



**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

Jonathan and Aisha Curina (collectively, the "Consumers") purchased a **2012 Ford Focus** (the "Vehicle") from **Park City Ford** located at **60 North Avenue in Bridgeport, Connecticut 06606** (the "Dealer"). The Consumer took delivery of this Vehicle on **February 21, 2012**. 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. **Ford Motor Company** (the "Manufacturer") had contested the initial eligibility of the Vehicle at the start of the hearing, and the objection to eligibility was noted. Said hearing was held on **Monday, October 3, 2016**. Jonathan Curina appeared for the Consumers. Mr. Tim Clark served as the State's Technical Expert. The Manufacturer was represented by Curtis Berglund, Esq.

- A.** The Consumers reported to the Manufacturer, its authorized dealer, or its agent a defect pertaining to shuddering upon acceleration and when backing the Vehicle in reverse at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect/Repair Work Performed</u>
12-06-2013	19,772	Shuddering upon acceleration and backing in reverse
09-22-2014	27,733	Shuddering upon acceleration and backing in reverse
10-22-2014	28,731	Shuddering upon acceleration and backing in reverse
11-13-2014	29,631	Shuddering upon acceleration
01-26-2015	31,641	Shuddering upon acceleration
09-18-2015	39,250	Shuddering upon acceleration
07-11-2016	48,920	Shuddering 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 _____ 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 Consumers complained of the following nonconformity with the subject Vehicle: Shuddering upon acceleration and when backing the Vehicle in reverse. The Consumers claimed that this defect continued to exist as of the date of the hearing.

Eligibility and Reasonable Repair Attempts

The Consumers' Request for Arbitration revealed that the Vehicle experienced a severe transmission shudder at low speeds under acceleration and while the Vehicle was backing up in reverse gear. The claimed defect began when the Vehicle had 19,772 miles on the odometer. There were multiple visits to an authorized dealership for diagnosis, testing, and repair of this defect. Said defect was subject to one repair attempt during the first two years or 24,000 miles of ownership, and multiple repair attempts after the statutory eligibility period, as detailed in Part 1 of this decision. The Manufacturer contested the initial eligibility of the Vehicle for not meeting the eligibility presumptions within the statute, but this arbitrator allowed the case to go forward on the merits to ascertain the reasonableness of the repair attempts and to gauge the severity of the claimed defect and its impact on the Consumer.

One factor which prevented the Consumers from bringing the car in for additional repairs after the first repair attempt was revealed at the hearing. The Consumers testified that the Dealer told them during the first repair attempt that the subject Vehicle had to be driven for hundreds of miles (later written testimony detailed up to one thousand (1,000) miles) in order for the Vehicle's computer system to re-learn their particular driving style. The Vehicle has an adaptive transmission which sets several transmission parameters (within pre-determined ranges) after learning the driver's style of driving. During the first repair, as well as during several other repair attempts, the learned parameters were erased by the Dealer and reset to their factory default generic settings. Said representation by the Dealer is partly responsible for the Consumer failing to bring the Vehicle back for a second repair until September 22, 2014, when the car had been driven 27,733 miles, as listed in Part 1 of this decision. The Consumers had been experiencing the same severe transmission defects throughout this time (and through the date of the hearing), but had believed in the comments made by the Dealer representative.

Mr. Clark offered both written and oral evidence into the record which described the Manufacturer's troubleshooting and repair process related to the particular model Automatically Shifted Manual Transmission ("ASMT") found in the Vehicle. The evidence revealed that both reprogramming and mechanical repairs were included in the Technical Service Bulletins issued by the Manufacturer, and that reprogramming was typically the first repair unless there was evidence of leaking transmission fluid. In his extensive study of the ASMT, the shuddering concern was said by Mr. Clark to be most noticeable when the vehicle is accelerating from a stop, or operating at lower speeds under a load, such as going up a hill. The Consumers complained of intense shuddering when operating the Vehicle during those driving conditions. One repair during the statutory period is a reasonable number of repairs in this case, so the Consumers were therefore found to have met the eligibility requirements of the statute.

Due to the continual and severe transmission shuddering causing distracted driving and impaired acceleration, a safety concern was also proven by substantial evidence to exist. Said concern was subject to one repair attempt during the first year of ownership, and although the statutory presumption is for two repairs during that first year of ownership, the above-cited representations of the Dealer prevented the Consumers from bringing the car back for additional repairs during the first year. The Manufacturer's repair protocol, also described above, reveals that a known problem with the Vehicle's ASMT existed, which in the Consumers' case created a dangerous condition while driving. Eligibility based upon a safety-related concern, as set forth in Chapter 743b, was therefore also met.

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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 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.

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 repair attempts by the Dealer. The Consumers appeared and testified at the arbitration hearing as to their experiences driving the Vehicle with the intense shuddering occurring on a regular basis. In addition, Mr. Clark described the operation of the novel ASMT present in the Consumers' Vehicle, and provided additional evidence in the form of Technical Service Bulletins.

The Consumers first experienced the serious transmission shudder when the Vehicle had been driven 19,772 miles, as shown in Part I of this decision. At that time, the Vehicle was first brought back to the Dealer for diagnosis and repair. This transmission defect has remained a complaint since that time, and up through the date of the hearing. The Consumers testified as to their apprehension with driving the Vehicle, and detailed the fear they experience when the transmission shudders and does not respond to driver requests for acceleration. The distraction caused by the shuddering during acceleration from a stop or while in "stop and go" traffic was described as a major driveability and safety concern of the Consumers.

In addition, what was to be a safe mode of family transportation became too "unsafe to drive with our kids in the back seat" in the words of the Consumers (see Page 9 of their Request for Arbitration). The Consumers' intended use of the subject Vehicle was thwarted after the transmission issues revealed themselves at 19,772 miles, thereby substantially impacting their use of the Vehicle.

The written repair records and the oral testimony of both parties verified that the Dealer had performed diagnostic tests and had attempted to duplicate the Consumer's concerns. A Transmission Control Module software update was performed during the first repair attempt, to no avail. After that first repair, other reprogramming was performed and clutches were replaced, but the shuddering problem reappeared.

The Consumers felt that they did not have the full use of the Vehicle, and given the continual severe transmission issues experienced during daily driving, 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 substantial loss of safety due to the transmission's lack of performance has also been proven by convincing evidence. A refund and exchange is appropriate in this case.

Beginning at 19,772 miles, the Vehicle began suffering from severe transmission defects while being driven upon the road under normal conditions. The continual driveability and safety concerns presented due to the shuddering and unpredictable acceleration shall be balanced with the relatively high mileage recorded at the first repair attempt (19,772) and the Vehicle mileage on the date of the hearing (approximately 51,000 miles as reported by the Consumers). Given these facts, a mileage deduction in favor of the Manufacturer is appropriate given the facts presented, and shall be based upon the mileage at the first repair attempt. Finance charges will be awarded to the Consumers in full. The Consumers' cost to notify the Manufacturer by certified mail of their intent to file their Lemon Law claim shall also be reimbursed.

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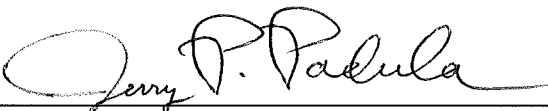
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III. CONCLUSION

Given that the Consumers presented substantial evidence that the Vehicle is not able to function normally due to a transmission defect, 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.



Arbitrator - Jerry P. Padula, Esq.

10-20-2016

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 Consumers are entitled to a **refund of the contract price**, including charges for any undercoating, Dealer preparation and transportation, and Dealer installed options, if applicable. The total Vehicle contract price, as delivered, was **\$18,115.00**. (The contract price is less the **\$2,000.00** credit/rebate given to the Consumers.)

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 Consumers' use of the Vehicle. It shall be calculated using the total mileage driven at the time of the first repair (at 19,772 miles), minus the mileage at the time of delivery (20 miles) and during the repair visit of 07-11-2016 (11 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$18,115.00 \times 19,741 \text{ miles } (19,772 \text{ miles} - 20 \text{ miles} - 11 \text{ miles})}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumers' use of the Vehicle shall be: **\$2,980.07**.

Finance Charges to be Reimbursed by Manufacturer:

- The Consumers shall be reimbursed for finance charges incurred on the following dates: _____
- The Consumers shall be reimbursed for finance charges incurred from: _____ to _____
- The Consumers shall be reimbursed for **all finance charges incurred**.
- The Consumers shall not be reimbursed for finance charges.

Additional Expenses to be Reimbursed by Manufacturer:

Conn. State Sales Tax: \$1,185.16 Title & Regis. Fees: \$120.00 Dealer Conveyance Fee: \$349.00
Lemon Law Filing Fee: \$50.00 Certified Mail Fee: \$4.24

Total Refund Award and Conditions:

The total refund amount is **\$16,843.33** (sixteen thousand eight hundred forty-three dollars and thirty-three 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(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 Consumer(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

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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 (Consumer's choice): **Park City Ford** located at **60 North Avenue in Bridgeport, Connecticut 06606**, OR at the **Manufacturer-authorized local dealership of the Consumers' choice**.