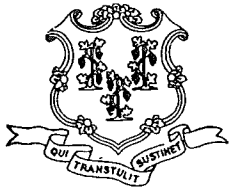


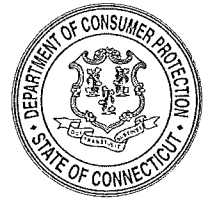
In the matter of arbitration entitled:

Zhitnitsky vs. FCA US, LLC (Jeep)

Case Number: 2016-568



**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

The consumer **Karina Zhitnitsky** (the "Consumer") purchased a **2015 Jeep Cherokee** from **Bradshaw Jeep** located at **554 Main Street in Oakville, Connecticut, 06779** (the "Dealership"). The Consumer took delivery of this vehicle on **December 18, 2014**. 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. The manufacturer of the subject vehicle, FCA US, LLC (the "Manufacturer") did not contest the initial eligibility of the vehicle in this case. Said hearing was held on **Thursday, May 19, 2016**, during which Mr. Tim Clark served as the State's Technical Expert.

II. VEHICLE COMPLAINT & ELIGIBILITY

The Consumer set forth the following complaint with the subject vehicle: A hesitation upon acceleration or when the vehicle was under a load, such as driving up hill. The Consumer claimed that the alleged defect continued to exist as of the date of the hearing.

The Consumer's Request for Arbitration set forth a complaint that the vehicle hesitated and there was a lack of power when attempting to accelerate from a stop, during normal driving, and when driving up hills. This condition caused the Consumer to avoid certain hilly roads and to become apprehensive when she called upon the vehicle to accelerate quickly. As a result of the complaint, the Consumer made multiple visits to two Manufacturer-authorized dealerships for diagnosis, testing, and repair. Said vehicle concern met the statutory presumption for eligibility for a safety-related issue, as it was subject to a reasonable number of repair attempts during the first year of ownership. A listing of the visits to the dealership for this complaint follows below:

<u>Repair Date</u>	<u>Miles</u>	<u>Complaint</u>
<u>04-06-2015</u>	<u>5,135</u>	<u>Transmission Control Module ("TCM") programming update</u>
<u>09-30-2015</u>	<u>12,860</u>	<u>Lack of power; Check Engine Light; update TCM & Body Control Module</u>
<u>12-21-2015</u>	<u>15,744</u>	<u>Lack of power; Check Engine Light flashing; Vehicle towed to Dealer</u>

Given the facts presented, the Consumer's concern that a defect existed was reasonable. This is especially indicated by the two Check Engine Light episodes, despite the second one (with a more serious flashing light) being just days beyond the one-year anniversary of the Consumer's purchase date. I note that the Manufacturer did not contest the initial eligibility of the vehicle in this case. The Consumer was therefore found to have met the eligibility requirements of the statute in order to initiate an arbitration hearing in accordance with Chapter 743b of the Connecticut General Statutes for a safety-related concern.

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III. DECISION

The arbitrator **finds adversely to the Consumer** and orders that **no action** be taken by the Manufacturer.

IV. REASONING

The documents in the record and the testimony presented at the arbitration hearing do not indicate a violation of Connecticut General Statutes Chapter 743b. In analyzing the facts in this matter, this arbitrator carefully reviewed and considered the Consumer's Request for Arbitration, the Manufacturer's Statement, the written repair records, the Technical Expert's comments, and the oral testimony and closing statements that the parties provided at the hearing. Attorney Michael Gregg served as third party representative of the Manufacturer. Mr. Victor Atkins, a manager from the Dealership, attended as a witness for the Manufacturer. The Consumer Ms. Zhitnitsky represented herself at the hearing.

The Consumer claimed that the lack of power and hesitation issues caused a substantial impairment to the use and safety of the vehicle, in that the acceleration was unpredictable. The arbitrator construed all of the Consumer's claims in her favor, including all claims made within the Request for Arbitration, together with all statements at the hearing. However, even in giving heightened deference to all of the Consumer's assertions and arguments, there is no actionable claim for relief pursuant to Chapter 743b.

In this case, the subject model Jeep Cherokee vehicle was subject to multiple "transmission enhancements" by the Manufacturer, as stated by Mr. Clark (refer to the hearing at 25:45). The relevant enhancements in this case were programming updates which are each formally titled "Customer Satisfaction Notification" by the Manufacturer, according to Manufacturer representative Attorney Gregg (refer to the hearing at 32:40).

The first repair visit was for an update to the Transmission Control Module ("TCM"), which occurred on April 6, 2015, when the vehicle had been driven just 5,135 miles. However, the record did not indicate that the Consumer complained of a lack of power issue, there was no Check Engine Light illuminated, and the transmission performance was not complained of at that time. The sole reason for the repair visit to Milford Auto Group was to have Customer Satisfaction Notice R-01 performed.

The second repair order in the record, on April 18, 2015, was for an oil change. There was no complaint for lack of power or transmission issues at that time.

The third repair visit, which occurred on May 29, 2015, was for an unrelated "Occupant Restraint Control Module" programming update. Said update, "Recall R-05," impacted the vehicle's safety airbags. In reviewing the repair order, there is no mention of a transmission issue or lack of power concern. The Consumer testified at the hearing that she mentioned the transmission concern to the Milford Auto Group dealership, but upon further questioning by the Manufacturer's representative Mr. Gregg, the Consumer stated that her comment was made to a secretary, not to a technician or service writer, and said comment happened after the repair was made and she was picking up the vehicle. So the Manufacturer did not have an opportunity to address the concern raised by the Consumer during later repair visits and in her Request for Arbitration.

During the fourth repair visit on September 30, 2015, the Consumer first brought the vehicle in to diagnose or repair the lack of power concern along with a steady Check Engine Light (refer to the hearing at 35:00). A steady, not flashing, Check Engine Light was the concern at that time. The Body Control Module and Transmission Control Module were both updated with new programming during this fourth repair visit.

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The fifth repair visit, on December 12, 2015, was for an oil change, and to check the key fob. The Consumer made no mention of a lack of power concern or any transmission irregularities for diagnosis by the Dealer.

The second time that the lack of power issue was brought to the attention of an authorized dealership was during the sixth repair visit, on December 21, 2015, when the vehicle was towed in with a flashing Check Engine Light and lack of power concern. At that time, a serious engine defect was repaired over a period of two weeks. Namely, the replacement of a cylinder head due to a 45% leak-down in cylinder number four. The Check Engine Light issue has never re-appeared, up through the date of the hearing. There is one new transmission update which supersedes the last update performed on the Consumer's vehicle. Said update, recently released by the Manufacturer, has not yet been performed on the Consumer's vehicle. Said fact was verified by Mr. Clark.

The seventh repair visit, on January 26, 2016, was for a malfunctioning key fob and for an unrelated radio security software update. "Recall R-40" had already been performed by the Consumer via a Manufacturer-supplied USB drive containing the new software. The key fob was replaced. No mention of a lack of power or transmission irregularities was made by the Consumer for diagnosis by the Dealer.

During the eighth repair visit, on April 16, 2016 at 20,018 miles, the Consumer requested an oil change, and did not mention any lack of power concern or transmission irregularities.

The transmission in the subject model Jeep Cherokee has nine forward speeds, and includes "adaptive" electronics which set the shifting patterns by learning the Consumer's driving style and driving conditions. The transmission was said by Mr. Clark to be "busy" in that it continually hunts for the correct gear. The main reason for this type of transmission is for increased fuel economy. It is not uncommon for this type of electronically-controlled transmission, regardless of manufacturer, to have reprogramming to improve the shift quality. Such updates are not to be automatically viewed as "defects" or "nonconformities" pursuant to Chapter 743b. Updates may be the result of a manufacturer listening to customer input and acting upon it. Changes in shift patterns can only go so far, as these updates may impact fuel economy, and if an update were to negatively impact fuel economy, it would thereby require difficult federal EPA approval.

The Manufacturer claimed during the hearing that the vehicle had no defects in materials or workmanship and was performing as designed. Given the ample testimony of the Manufacturer that the Consumer's vehicle is operating as designed, I find that the subject vehicle is not deemed to be "substantially impaired" in any way under the definition provided Chapter 743b of the Connecticut General Statutes.

The Manufacturer also claimed that the Consumer did not allow the Manufacturer a reasonable opportunity to diagnose and repair her vehicle. Given the repair record, this argument was rational and dispositive in this case. Although the Transmission Control Module was reprogrammed with Service Bulletin R-01 by authorized dealership Milford Auto Group on April 6, 2015, there have been just two repair attempts for a lack of power concern. The Manufacturer in this case did not have a reasonable number of repair attempts to diagnose the concern raised by the Consumer in her Request for Arbitration.

Therefore, convincing evidence that the claimed defect caused a substantial impairment to the use, value, or safety of the vehicle was not presented. Relief pursuant to Chapter 743b is not warranted in this case. I remind the parties that the vehicle remains under warranty in the circumstance that any issue arises that may cause a substantial loss of use, value, or safety.

It was obvious that the Consumer was inconvenienced in both her work duties and in her personal life because of the number of visits to authorized dealerships for repair attempts, as well as having received at least one substandard rental vehicle. However, the inconveniences experienced by the Consumer cannot be the basis for relief pursuant to the statute.

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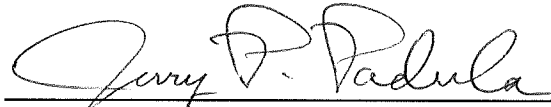
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V. CONCLUSION

Given the above facts, the Consumer did not present substantial evidence that the claimed defect or defects caused a substantial impairment to the vehicle's use, value, or safety. Based upon the evidence, I do not find a violation of Chapter 743b. I agree with the Manufacturer's assessment of the vehicle, as presented during the arbitration hearing and as listed in their Manufacturer's Statement, and hold that the Consumer's application will not allow relief pursuant to Chapter 743b. Accordingly, no action is being ordered on this application.

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), U.S.C. 2301 et seq., as in effect on October 1, 1982. Either party to the dispute may apply to Connecticut Superior Court within 30 days of 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, 52-419, and 52-420 of the Connecticut General Statutes.



Jerry P. Padula, Esq. - Arbitrator

05-26-2016

Date