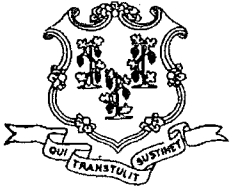


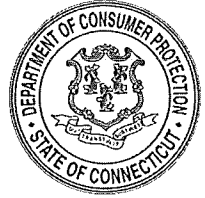
In the matter of arbitration entitled:

Anglim vs. Lexus, A Division of Toyota Motor Sales, Inc.

Case Number: 2017-1041



**STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION
Automobile Dispute Settlement Program**



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrator, Dennis J. Plevyak, 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

Patrick Anglim (the "Consumer") purchased a **2017 Lexus LX570** (the "Vehicle") from **Hoffman Lexus** located at **750 Connecticut Boulevard in East Hartford, Connecticut 061086** (the "Dealer"). The Consumer took delivery of this Vehicle on **March 31, 2017**. 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 **Thursday, July 13, 2017**. Mr. Timothy Clark served as the State's Technical Expert. **Lexus, A Division of Toyota Motor Sales, Inc.**, (the "Manufacturer") was represented by Clark Lance, Area Technical Training Manager, and Rick Holden, Field Technical Specialist. The Manufacturer's Statement, due June 23, 2017 was received June 28, 2017. The Consumer stated he had sufficient time to review the Statement and this Arbitrator allowed submission of the Manufacturer's Statement into the record in this matter.

- A.** The Consumer reported to the Manufacturer, its authorized dealer, or its agent defects pertaining to lunging, jerking, hesitation, and the transmission not engaging at the following times:

Repair Date Miles Defect/Repair Work Performed

04-21-2017 1,269 Transmission slippage at low speed, Lunging, Jerking. Transmission memory reset followed by transmission replacement

05-25-2017 2,125 Transmission slippage at low speeds, Lunging, Jerking. Dealer stated Vehicle operating within Manufacturer's specifications, **Manufacturer stated no known repair was available at this time**

The above defect or defects continued 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 ____ 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:

(see the above-listed defects related to: Transmission slippage at low speed, Lunging, Jerking)

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II. REASONING

Nonconformity

The Consumer complained of the following nonconformities with the subject Vehicle: Low speed transmission slippage, not engaging, lunging, and jerking. The Consumer claimed that these defects continued to exist as of the date of the hearing.

Eligibility and Reasonable Repair Attempts

The Consumers' Request for Arbitration indicated that the Vehicle experienced transmission slipping, not engaging, lunging, and jerking upon acceleration at low speeds. The claimed transmission defects began, and the Vehicle was first brought in for repair, with 1,269 miles on the odometer.

A second repair attempt at 2,125 miles was made for the same transmission issues. At that time no repair was made. The Manufacturer stated to the Consumer that it was aware of the issue and was working toward a solution but could not state when such a repair might be available for implementation.

Given the nature of the transmission-related problems experienced by the Consumer pertaining to inability to accelerate, the Vehicle met the requirements for a safety-related defect likely to cause death or serious bodily injury, as set forth in Chapter 743b.

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 will indicate the Vehicle has an eight speed transmission first utilized in model year 2016.

The Consumer complained of transmission slippage, not engaging, lunging, and jerking upon acceleration at low speeds when operating the Vehicle during normal driving conditions. These issues would occur in stop and go traffic conditions that might be encountered, for example, on the Merritt Parkway or I-95. If the vehicle slowed from cruising speed to 5-15 miles per hour ("mph") attempting acceleration from this slower speed would result in a delay followed by lunging and jerking. The condition would exhibit itself in any driving that would mimic this slowing to a low speed followed by acceleration. The Vehicle accelerates normally from a full stop.

The Consumer stated that on April 21, 2017 he brought the Vehicle to the Dealer, who verified a transmission shudder on the 1-2 gear upshift. The transmission memory was reset and upon testing the Vehicle exhibited the same transmission issue. The Dealer consulted with the Manufacturer who advised replacement of the transmission with an updated transmission that was available. The Vehicle was at the Dealer for twenty six (26) days for analysis and repair. During that period the Consumer met with Rick Holden, Field Technical Specialist for the Manufacturer who observed the condition on a test drive and authorized replacement of the transmission.

The Consumer stated he returned to the Dealer May 25, 2017 complaining of the same symptoms, despite replacement of the transmission as noted previously. After testing the Vehicle, the Dealer stated to the Consumer that the Vehicle was operating within Manufacturer specification. Clark Lance, Area Technical Training Manager for the Manufacturer, visited the Dealer and met with the Consumer and was present on a test drive of the Vehicle. The Consumer stated at this arbitration hearing that Mr. Lance told him the Manufacturer's engineering section was aware of a transmission issue in a limited number of that model and was working on a solution. Mr. Lance could not offer any timetable as to when a repair would be available. The Consumer consulted with the Dealer's Service Manager who told him his options were to wait

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for the Manufacturer to devise a solution or pursue Lemon Law relief. This inability to offer a timetable for a repair, and the possibility that a repair might not ever be forthcoming, can be construed as a refusal to attempt to repair.

The Consumer stated as an owner of his own business he understands "things happen" but that the inability of the Manufacturer to offer any timeframe for a repair left him no alternative but to pursue arbitration relief. The Consumer considered the hesitation and jerking when operating the Vehicle during normal driving conditions to be serious driveability issues impacting his use of the Vehicle and his safety due to the Vehicle's defect in accelerating normally from a low speed having the potential to cause an accident. The Consumer acknowledged the issues appear under a limited set of circumstances and believed a test by the State's Technical Expert would demonstrate his concerns. This Arbitrator authorized a test drive and the session was recessed to facilitate said test drive.

Upon reconvening, the State's Technical Expert, Timothy Clark, testified he observed the issue as described by the Consumer under driving conditions similar to those described by the Consumer. Mr. Clark stated that when slowing to a low speed and then attempting to accelerate, the transmission appeared reluctant to make the 1-2 upshift and normal acceleration was impaired. Acceleration from a full stop produced normal acceleration.

Clark Lance, Area Technical Training Manager for the Manufacturer, stated the Vehicle has an eight speed transmission and performs differently than the Consumer's prior automobile, a 2010 Lexus LX570, which had a six speed transmission. Mr. Lance stated 1866 automobiles of this model (introduced in 2016) have been sold in his area of responsibility and only three have displayed this defect. He stated it is a drivability issue under certain conditions that the Manufacturer is aware of and is attempting to address so that the Manufacturer may meet customer expectations. Mr. Lance stated the updated transmission installed in the Consumer's Vehicle became available to address perceived harshness on the 1-2 upshift and 2-1 downshift. He stated the Manufacturer's intent is to constantly improve its product even if the cars are not broken. He was unable to offer a timeframe for resolution of the Consumer's concerns. He stated the Vehicle performs as designed, its value has not been impacted, and he would not urge the Consumer to continue to drive the Vehicle if he believed it to be unsafe.

The Manufacturer was afforded two attempts to repair the Vehicle through the Dealer during the Consumer's ownership. Those efforts, totaling twenty six (26) days, have been unsuccessful. At this time, no further attempts at this time are likely to be successful, as the Manufacturer has stated no repair currently exists and cannot offer any timeframe for the future release of a repair. The inability to establish a timeframe for repair of the defect constitutes in effect, a refusal to repair as defined in Connecticut General Statutes Sec. 42-179(e).

Due to the prior and ongoing transmission hesitation and jerking when operating the Vehicle during normal driving conditions causing safety concerns due to impaired acceleration, a substantial loss of both use and safety were proven by substantial evidence to exist. The Vehicle's inability to accelerate in a normal fashion from low speed could result in a collision in rush hour highway conditions involving repeated slowing and accelerating. On surface streets this defect could result in a collision such as when making a turn across oncoming traffic during a gap in said oncoming traffic. The Manufacturer's transmission replacement, along with the testimony as to ongoing engineering efforts to remedy the defect, indicate that a known problem with the Vehicle's transmission exists.

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.

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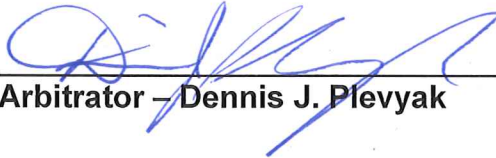
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The Consumer's preference is to be awarded a buyback of the Vehicle by the Manufacturer. Awarding a buyback of the Vehicle is appropriate in this case.

III. CONCLUSION

Given that the Consumer presented substantial evidence that the Vehicle is not able to function normally due to a severe transmission defect, 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 – Dennis J. Plevyak

07-20-2017

Date

(See Section IV of this decision, entitled "Replacement 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 contract price is less the \$0 credit/rebate given to the purchaser.) The total vehicle price, as delivered, was **\$95,968.30**.

Allowance for Use:

The contract price shall not be reduced by taking into account the mileage on the vehicle.

Finance Charges to be Reimbursed by Manufacturer:

The consumer shall be reimbursed for finance charges incurred on the following dates:

The consumer shall be reimbursed for finance charges incurred from:

_____ to _____

The consumers shall be reimbursed for **all finance charges incurred**.

The consumer shall not be reimbursed for finance charges.

Additional Expenses to be Reimbursed by Manufacturer:

Lemon Law Filing Fee: \$50.00

Total Refund Award and Conditions:

The total refund amount is **\$95,968.65** (ninety five thousand nine hundred sixty eight five dollars and sixty five cents). **In addition to the total refund amount indicated, the finance charges indicated above are to be paid by the manufacturer.**

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 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 **Hoffman Lexus** located at **750 Connecticut Boulevard in East Hartford, Connecticut**.

