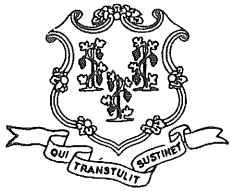


In the matter of arbitration entitled:

Frizen vs. Ford Motor Company

Case Number: 2016-2074



**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

Susan Frizen (the "Consumer") purchased a **2014 Ford Focus** (the "Vehicle") from **Monaco Ford** located at **767 New London Turnpike in Glastonbury, Connecticut 06033** (the "Dealer"). The Consumer took delivery of this Vehicle on **June 11, 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. **Ford Motor Company** (the "Manufacturer") did not contest the initial eligibility of the Vehicle at the start of the hearing. Said hearing was held on **Thursday, December 8, 2016**. Mr. Tim Clark served as the State's Technical Expert. The Manufacturer was represented by Sam Hoff, Esq.

- A.** The Consumer reported to the Manufacturer, its authorized dealer, or its agent defects pertaining to shuddering upon acceleration at low speeds and when climbing hills, and a lunging condition at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect/Repair Work Performed</u>
06-26-2014	894	Shuddering upon acceleration and climbing hills
10-13-2014	7,269	Shuddering upon acceleration and climbing hills
06-09-2015	15,130	Shuddering upon acceleration and climbing hills; lunging
06-30-2015	15,641	Shuddering upon acceleration and climbing hills; lunging
06-16-2016	25,382	Shuddering upon acceleration and climbing hills; lunging
07-14-2016	26,549	Shuddering upon acceleration and climbing hills; lunging
08-08-2016	27,611	Shuddering upon acceleration and climbing hills; lunging

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>
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(see above repair attempts for shuddering and lunging defects.)

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II. REASONING

Nonconformity

The Consumer complained of the following nonconformities with the subject Vehicle: Shuddering upon acceleration at low speeds, shuddering when climbing hills, and a lunging condition whereby the Vehicle continued to accelerate after acceleration was no longer being called upon by the driver. The Consumer claimed that these defects continued to exist as of the date of the hearing.

Eligibility and Reasonable Repair Attempts

The Consumer's Request for Arbitration revealed that the Vehicle experienced a severe transmission shudder at low speeds under acceleration and also while the Vehicle was climbing hills. The claimed shudder defect began upon the Consumer's purchase of the Vehicle: The Consumer testified that she called the Dealer on the day of her purchase to report the shuddering condition, and the record indicated that the Vehicle was first brought back to the Dealer for diagnosis when it had just eight hundred ninety four (894) miles on the odometer. Up through the date of the hearing, there were seven (7) visits to the Dealer for diagnosis, testing, and repair of the shuddering defect, as detailed in Part 1 of this decision.

The Consumer later reported an additional defect when the Vehicle began to "lunge" or accelerate after acceleration was no longer being called upon by the driver. Said lunging defect was subject to two repair attempts during the first two years or 24,000 miles of ownership, and additional 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 Consumer from bringing the car in for repair immediately after her purchase was revealed at the hearing. The Consumer testified that during her first phone call about the shudder condition, on the day of her purchase, the Dealer told her that the subject shudder was normal. However, the Consumer testified that the shudder only grew worse in intensity as time passed. The first repair attempt occurred at 894 miles. Significant to note is that among the repairs performed, the original clutches within the transmission were replaced three times. All four sets of clutches produced the same shudder condition, and these repairs also did not prevent the manifesting of the lunging condition.

Mr. Clark offered 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 Consumer complained of intense shuddering when operating the Vehicle during those driving conditions. The Consumer had multiple transmission-related repairs performed during and after the statutory period, so the Consumer was 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. The Manufacturer's repair protocol, also described above, reveals that a known problem existed with the Vehicle's ASMT, which in the Consumer's 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 Consumer and the multiple repair attempts by the Dealer. The Consumer appeared and testified at the arbitration hearing as to her experiences driving the Vehicle with the intense shuddering and lunging occurring on a regular basis. In addition, Mr. Clark described the operation of the novel ASMT present in the Consumer's Vehicle.


The Consumer first experienced the serious transmission shudder when she drove the Vehicle home after purchase, and first brought it in for service at just 894 miles, as shown in Part I of this decision. This transmission defect has remained a complaint since that time, and up through the date of the hearing. The Consumer testified as to her apprehension with driving the Vehicle, and detailed the fear she experiences when the transmission shudders and the Vehicle does not respond to driver requests for acceleration. The distraction caused by the shuddering during acceleration from a stop, while in low speed traffic, and when going up hills was described as a major driveability and safety concern of the Consumer. The use and safety of the Vehicle has been substantially impaired due to the well-documented transmission defects.

The Consumer felt that she did not have the full use of the Vehicle, and given the continual severe transmission issues experienced during daily driving, she is justified in her concerns. In addition, the Consumer stated that she does not drive the Vehicle every day, as asserted by the Manufacturer. She instead testified that her brother lives just a half-mile from her and he frequently drives her, at least locally. Based on the ongoing defects, which impact the Consumer's 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 replacement 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 transmission defect, 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.

13-December-2016
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 current vehicle with a new **Ford Focus** with an **equivalent (as close as possible) MSRP value** to the original Vehicle. The replacement vehicle **shall have similar options (to be chosen by the Consumer)**, as the original Vehicle, or contain the replacement model year's equivalent trim level and options.

The replacement vehicle shall have no more than **300 miles** on the odometer at the time of delivery. The following dealer-installed options shall be included: **"SE" Trim Package (or equivalent); "Powershift" Transmission.**

Any increase between the MSRP cost of the original 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

No additional costs other than those indicated above shall be borne by the Consumer.

The Manufacturer shall provide at its expense a **warranty** for the new 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 nonconforming Vehicle.

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." Any policy change resulting in the imposition of taxes shall be the responsibility of the Manufacturer.

The exchange shall occur at (Consumer's choice): **Monaco Ford** located at 767 New London Turnpike in Glastonbury, Connecticut 06033, OR at **the Consumer's home.**

If the Manufacturer provides a **2017 model year** replacement vehicle, the Manufacturer shall order the vehicle within **14 days** of the Manufacturer's receipt of this arbitration decision, **giving the Consumer the choice of exterior and interior color, as well as the options and trim to be included.** The Consumer shall be notified within **2 days** of the vehicle being delivered to the local dealer listed above.

If the vehicle is financed, the Consumer shall sign an authorization that will assign the Consumer's right, title and interest of the original 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 original Vehicle at the time of receipt of the replacement vehicle.