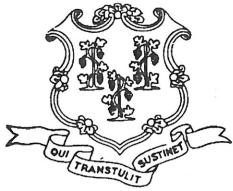


In the matter of arbitration entitled:

Dunn vs. FCA US, LLC (Jeep)

Case Number: 2019-860



**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

Sharon Dunn (the "Consumer") purchased a **2018** model year **Jeep Compass** (the "Vehicle") from **Crowley Chrysler Jeep Dodge** (the "Dealer") located at 1461 Farmington Avenue in Bristol, Connecticut, 06010. The Consumer took delivery of the Vehicle on **April 2, 2018**. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes, or the equivalent.

After reviewing the allegations, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. The arbitration was held on **Tuesday, July 7, 2019**. The Consumer appeared at the hearing with a witness, her father Art Giulietti. Mr. Tim Clark served as the State's Technical Expert. Katelynn R. Balsamico represented **FCA US, LLC** (the "Manufacturer") and stated at the start of the hearing that the Manufacturer did not contest its liability in this case.

- A.** The Consumer reported to the Manufacturer, its authorized dealer, or its agent defects pertaining to:
1. The emergency brake engaging spontaneously while the Vehicle was in motion, accompanied by engine stalling; and 2. Abnormally high engine oil consumption on the following occasions:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
06-05-2018	3,668	Emergency brake spontaneously engaged with engine stalling; very low engine oil
07-07-2018	5,740	Oil consumption test (follow-up from previous repair visit)
08-09-2018	7,829	Oil consumption test (follow-up from previous repair visit)
11-28-2018	14,478	Emergency brake spontaneously engaged with engine stalling; engine oil down 1qt
12-15-2018	15,551	Oil consumption test (follow-up from previous repair visit)
11-28-2018	14,478	Oil consumption test (follow-up from previous repair visit)
02-02-2019	18,511	Oil consumption test (follow-up from previous repair visit)
03-28-2019	21,698	Oil change
05-11-2019	24,450	Emergency brake spontaneously engaged with engine stalling; very low engine oil

The above defect or defects were claimed to 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 repair attempts occurred as follows:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
(See above repairs related to emergency brake spontaneously engaging, with engine stalling)		

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II. REASONING

Nonconformity

The Consumer complained of the following nonconformities or defects with the Vehicle: The spontaneous engagement of the emergency brake during normal driving, followed by the stalling of the Vehicle's engine. Said stalling defect was said to continue to exist as of the time of the hearing.

Eligibility and Repair Attempts

The Consumer's Request for Arbitration revealed that while driving the Vehicle during normal conditions, the Vehicle experienced engine stalling and an unrelated intermittent flashing of the cruise control indicator. These problems occurred on several occasions within the statutory period, necessitating multiple visits to the Dealer for diagnosis, testing, and repair, as detailed in Part 1 of this decision. The cruise control defect and the engine stalling concern were each subject to three repair attempts.

The first repair was related to the emergency brake engaging while the Vehicle was in motion, which also triggered an engine stalling episode. The Consumer offered the Vehicle for repair a reasonable number of times for this serious safety issue, but the Vehicle has not been successfully repaired. The Consumer was thereafter not confident driving the Vehicle, and her use of it was curtailed.

The Vehicle therefore met the statutory presumption of a reasonable number of repair attempts before the first two years or twenty four thousand (24,000) miles. The Consumer was therefore found to have met the statutory eligibility requirements set forth in Connecticut General Statutes Chapter 743b. The Manufacturer did not contest the initial eligibility of the Vehicle. The arbitration hearing then proceeded on the merits.

Substantial Impairment and Factual Discussion

In the present matter, this arbitrator holds that a substantial impairment to use exists in the form of nonconformities or defects that 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. Due to the emergency brake randomly engaging itself during normal driving, followed by the engine stalling, the Consumer's overall use and safety of the Vehicle were dramatically impacted. The Consumer advanced a claim that a substantial impairment to use and safety exist because of the noted safety-related defect. In addition, the engine suffered from a continual oil consumption issue, which was subject to multiple oil consumption tests and abnormally frequent oil fill-ups (said repairs are listed in Part I.A. of this decision), which also impacted the Consumer's normal use of the Vehicle.

The Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed the Vehicle defect experienced by the Consumer and the multiple repair attempts by the Dealer. The Manufacturer did not contest liability in this case. The Consumer testified that on November 26, 2018, the Vehicle's emergency brake suddenly engaged while she was driving under normal conditions, a dashboard warning message appeared instructing her to put the transmission in "drive" (the gear it had been in), followed by the engine stalling. Again, during a drive on November 26, 2018, the emergency brake engaged itself, and the engine stalled out. The Consumer testified that it took a while to release the emergency brake and to get the engine started again (see Request for Arbitration at page 5).

The Consumer's concern is that the emergency brake and engine stalling defect has not been repaired. The Consumer testified that some time passed after the November 26, 2018 episode, and she then thought that the emergency brake and stalling issue was resolved (see Request for Arbitration at page 5). However, another incident occurred on May 10, 2019, just 2,752 miles after the Vehicle was at the Dealer for service, then just two days later, on May 12, 2019, while driving near the Consumer's home, the emergency brake

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again engaged and the engine stalled, causing the Vehicle to be stranded for a time in the middle of a busy intersection (see Request for Arbitration at page 8). The Vehicle was towed to the Dealer for a repair effort (Repair Order 266658), finding that the engine oil was 3.5 quarts low, which is a substantial amount. Due to the emergency brake and stalling episodes, the Consumer has a fear of driving the Vehicle, and this arbitrator finds that her fear is not unfounded.

“This is a safety issue because the car will just engage the parking brake and stall out without any warning. I have trouble releasing the emergency brake and getting my car to start again. When I do get it started it’s always a weak start with little power. I have anxiety while driving the car because I have a fear that it will continue to happen and will cause me to get into an accident” (Request for Arbitration at page 9).

The Consumer testified that she had not driven the Vehicle since May 31, 2019 due to this safety concern. The Consumer’s use of the Vehicle has been extremely limited since that time. The Consumer’s main concern was that of safety, as she felt that the intermittent, random emergency brake applications accompanied by engine stalling under normal driving conditions was a serious safety concern. She testified that the episodes happened in an unexpected manner, were not normal operation, impacted her use of the Vehicle, and caused the Vehicle to be unsafe. As noted in the Request for Arbitration and during the hearing, even after the several repairs, the Consumer testified that the emergency brake concern has caused her use of the Vehicle to fall dramatically.

The Consumer felt that she did not have the full use of the Vehicle, and given the random emergency brake and engine stalling episodes during normal daily driving, together with the ongoing engine oil concern, I agree with the Consumer’s assessment. Based on the existence of this unpredictable, intermittent defect, which impacts the Consumer’s normal, everyday use of the Vehicle, as well as the ability to drive the Vehicle safely, I find a substantial loss of use and safety in this case. In addition, the ongoing oil consumption issues led to many repair visits, culminating in the recent decision of the Manufacturer to replace the engine.

The record indicated that the Consumer was made to drive the Vehicle for many miles with random episodes of the engaging emergency brake accompanied by stalling, thereby impacting the Consumer’s use and overall safety. The oil consumption issues plagued the Vehicle since the first repair attempt. However, a mileage deduction shall be awarded in favor of the Manufacturer, based upon the mileage as of the Vehicle’s first repair attempt (at 3,668 miles). No issues were reported to the Dealer from the date of purchase up through that time.

Finance charges and payments shall be awarded in full to the Consumer in this case, up through the date of the Vehicle exchange. The cost of any warranty contracts entered into upon purchase of the Vehicle that can be pro-rated shall be refunded directly to the Consumer, if said contracts can be pro-rated. The Manufacturer shall pay the warranty costs awarded in the arbitration directly to the Consumer. The Manufacturer shall cancel any pro-rated warranties directly with the warrantee company, with the costs pro-rated as of the date of compliance with the arbitration decision. If said contracts cannot be pro-rated, then the Manufacturer shall be responsible for reimbursement of these costs in full to the Consumer.

If the Vehicle becomes inoperable, but no rental vehicle has been provided, then the Manufacturer shall commence direct payment for a rental vehicle from an authorized dealership or nationally recognized car rental establishment within two business days from the date of the arbitration decision. The rental vehicle shall be comparable in size, style and seating capacity as the Vehicle. Any costs incurred by the Consumer prior to direct payment being made by the Manufacturer for the rental vehicle shall be reimbursed to the Consumer within seven calendar days after the Manufacturer commences payment. As of the time of the hearing, the Vehicle is determined to be **inoperable**.

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III. CONCLUSION

Given that the Consumer presented substantial evidence that the Vehicle is not able to function normally, I hold for the Consumer in this case. A **refund**, 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. 26-July-2019
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 Consumer is 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 **\$3,500.00** credit/rebate given to the Consumer.) The Vehicle contract price, as delivered, was **\$22,627.00**.

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 Consumer's use of the Vehicle. It shall be calculated using the total mileage driven on the date of the Vehicle's first repair attempt (on June 5, 2018 at 3,668 miles) minus the mileage at time of purchase (9 miles), yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$22,627.00 \times 3,659 \text{ miles } (3,668 - 9)}{120,000 \text{ miles}}$$

The allowance (reduction from contract price) for the Consumer's use of the Vehicle shall be: **\$689.93**.

Finance Charges to be Reimbursed by Manufacturer:

- The Consumer(s) shall be reimbursed for finance charges incurred on the following dates: _____.
- The Consumer(s) shall be reimbursed for finance charges incurred from: _____ to _____.
- The Consumer(s) shall be reimbursed for all finance charges incurred.
- The Consumer(s) shall not be reimbursed for finance charges.

Additional Expenses to be Reimbursed by Manufacturer:

Conn. Sales Tax: \$1,707.83	Title & Regis. Fees: \$202.20	Dealer Conveyance Fee: \$599.00
Locate/Procurement Fee: \$150.00	VIN Etching Fee: \$169.00	Lemon Law Filing Fee: \$50.00

Total Refund Award and Conditions:

The total refund amount is **\$24,815.10** (twenty four thousand eight hundred fifteen dollars and ten cents). In addition to the total refund amount indicated, the finance charges indicated above (and the warranties noted above, amounts to be determined), 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: The **Dealer OR** at a local Manufacturer-authorized dealer of the Consumer's choice.