

In the matter of arbitration entitled:

Hadgkiss vs. Volkswagen

Case Number: 2017-1309



**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

Jamie Hadgkiss (the "Consumer") purchased a **2015 Volkswagen Jetta** (the "Vehicle") from **Mitchell Volkswagen** (the "Dealer") located at **51 Albany Turnpike in Canton, Connecticut 06019**. The Consumer took delivery of this Vehicle on **June 23, 2015**. 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. **Volkswagen of America** (the "Manufacturer") waived its right to contest the initial eligibility of the Vehicle at the start of the hearing, and additionally agreed to liability in this matter. The hearing then proceeded to determine damages. Said hearing was held on **Monday, August 14, 2017**. Mr. Tim Clark served as the State's Technical Expert. The Manufacturer was represented by Mr. Stephen Webber.

- A.** The Consumer reported to the Manufacturer, its authorized dealer, or its agent a defect pertaining to a water leak inside the trunk lid and trunk of the vehicle at the following times:

| <u>Repair Date</u> | <u>Miles</u> | <u>Defect/Repair Work Performed</u> |
|--------------------|--------------|---|
| 01-07-2016 | 13,380 | Water leak inside the trunk lid and trunk |
| 02-18-2016 | 14,821 | Water leak inside the trunk lid and trunk |
| 12-19-2016 | 35,317 | Water leak inside the trunk lid and trunk |
| 06-08-2017 | 46,197 | Water leak inside the trunk lid and trunk |

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 Consumer complained of the following defect with the Vehicle: a water leak inside the trunk lid and inside the trunk area.

Eligibility and Reasonable Repair Attempts

The Consumer's Request for Arbitration revealed that the Vehicle experienced a water leak problem. The Consumer discovered water inside the rear section of the trunk lid, which contains the rear brake lights and signal lights, as well as inside the trunk. The claimed defect was first discovered at approximately 10,000 miles, when the Vehicle was first scheduled for repair. Said first repair occurred on January 7, 2016 when the Vehicle had 13,380 miles on the odometer.

There were multiple visits to the Dealer for diagnosis, testing, and repair of the water leak defect. Said defect was subject to two repair attempts during the first two years and 24,000 miles of ownership, and two more repairs after that period. A reasonable number of repairs for the defect is found to have been undertaken within the statutory period, as detailed in Part 1 of this decision. The Manufacturer did not contest the initial eligibility of the Vehicle.

Substantial Impairment and Factual Discussion

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 repair attempts by the Dealer. The record revealed that the Vehicle suffered from a water leak, with water pooling inside the rear taillight area of the trunk lid, as well as within the trunk itself. The Dealer was able to verify the defect and attempt several repair attempts.

The Consumer did not expect this type of issue upon her purchase, impacting her use of the Vehicle. The Consumer testified as to her intent to keep the Vehicle for many years, and provided as an example one of her most recent vehicles which had been driven over 200,000 miles. To obtain a refund with a mileage deduction would therefore cause a greater than normal financial loss, as the Consumer's expectation to own and use the Vehicle for a longer than average period (see Page 8 of the Request for Arbitration) would no longer be realized. In this case, the Consumer should not be penalized for her driving habits and her ownership preference in keeping her vehicles until they have many miles on their odometers.

The Manufacturer did attempt to settle this matter, and their efforts were genuine, as evidenced by their representative Mr. Webber's desire to meet with the Consumer before the hearing began, which led to his making several phone calls to the Manufacturer. However, the Manufacturer was afforded multiple attempts to repair the Vehicle during the statutory period and afterward through the Dealer. The record revealed that the Dealer re-sealed the taillight gaskets during all four repair attempts. All of those efforts failed. In addition, the Consumer has legitimate concerns for her safety given the water pooled in the brake light and signal light area of the rear trunk lid where electrical wiring is present, as well as her realistic concern for potential mold growth inside the trunk, which is carpeted. The Consumer had been unable to store many items in the trunk due to the excessive water that would be pooled there.

Due to the ongoing, unresolved water leak issue, a substantial loss of use was proven by ample evidence to exist. Safety issues may also result from the water leak impacting the Vehicle's electrical systems or causing mold to form, but those issues had not revealed themselves as of the date of the hearing.

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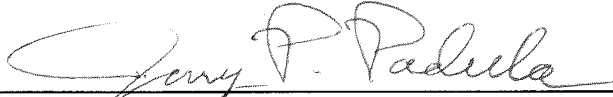
In the present matter, this arbitrator holds that both a substantial impairment to use exists in the form of a defect which meet the requirements of Connecticut General Statutes Section 42-179. The documents in the record and the testimony presented at the arbitration hearing indicate a violation of Connecticut General Statutes Chapter 743b.

Given the Consumer's preference to obtain a replacement vehicle with the same features present in the Vehicle, awarding a replacement is appropriate in this case. The record revealed that the currently-available Volkswagen Jetta is not equipped with the turbocharged 1.8 liter engine and manual transmission combination that the Consumer specifically ordered upon her initial purchase. The Consumer detailed that the Manufacturer produces another similar model from the same vehicle platform that contains the 1.8 liter turbo engine and manual transmission drivetrain combination as in the Vehicle. The Consumer further testified that in order to obtain a similarly-equipped Volkswagen Golf, she would pay the difference in Manufacturer Suggested Retail Price ("MSRP") between the Vehicle and a new Golf. The order in this case will reflect these facts.

III. CONCLUSION

Given that the Consumer presented substantial evidence that the Vehicle is not able to function normally due to a verified water leak 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 - Jerry P. Padula, Esq.

08-25-2017
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 Vehicle (a Volkswagen Jetta) with a new **Volkswagen Golf**. The replacement vehicle **shall have similar options (to be chosen by the Consumer)** as the 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. If the replacement vehicle, including any vehicle option or option package chosen by the Consumer, increases the MSRP value of the replacement vehicle above the MSRP of the nonconforming Vehicle, **the Consumer shall be responsible** for the difference in cost. The following dealer-installed option shall be included: **n/a**.

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 Vehicle.

Any increase between the MSRP cost of the 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.

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: **Mitchell Volkswagen**, located at **51 Albany Turnpike** in **Canton, Connecticut 06019**.

It was unclear at the time of the hearing if new 2018 model year vehicles were available for exchange.

If the Manufacturer provides a **2017 model year** replacement vehicle, the Manufacturer shall order the vehicle within **10 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 replacement vehicle being delivered to the Dealer.

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