

In the matter of arbitration entitled:

**Hayes vs. Honda**

**Case Number: 2016-1294**



**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**

**Chris Hayes and Tracy Hayes** (collectively, the "Consumers") purchased a **2013 Honda Pilot** from **Liberty Honda** located at **71 West Service Rd.** in **Hartford, Connecticut, 06120** (the "Dealer"). The Consumers took delivery of this vehicle on **November 5, 2013**. 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. American Honda Motor Company (the "Manufacturer") did not contest the initial eligibility of the vehicle in this case. Said hearing was held on **Thursday, August 18, 2016**. Mr. Tim Clark served as the State's Technical Expert. Also appearing at the hearing were the Consumers and, for the Manufacturer, Mr. John Kerrigan, Assistant Zone Manager, and Jason Shone, Field Technical Specialist.

**A.** The Consumer first reported to the manufacturer, its authorized dealer, or its agent a defect pertaining to \_\_\_\_\_ on \_\_\_\_\_ with \_\_\_\_\_ miles on the vehicle's odometer. Subsequent repair attempts for this defect and others occurred on:

Repair Date      Miles      Defect

---

---

---

---

---

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 **35 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:

Date      Miles      Defect

---

---

## **II. REASONING**

### **Nonconformity**

The Consumers complained of the following nonconformities with the subject vehicle: multiple steering alignment issues, a cracked cylinder head, and noises while the vehicle was in motion. A high oil level concern and a skipping or hesitation issue were said to continue to exist as of the time of the hearing.

### **Eligibility and Reasonable Repair Attempts**

The Request for Arbitration revealed that the vehicle experienced multiple unrelated defects necessitating visits to an authorized dealership for diagnosis, testing, and repair. Said defects met the statutory presumption for eligibility, as they caused the vehicle to be out of service by reason of repair for thirty five (35) days within the first two years or 24,000 miles of ownership as detailed in Part 1 of this decision. The Manufacturer did not contest the vehicle's initial eligibility. The vehicle was subject to additional repairs after the statutory period. Given the documented repairs during the statutory period, the Consumers were found to have met the eligibility requirements set forth in Connecticut General Statutes Chapter 743b.

### **Substantial Impairment and Factual Discussion**

In the present matter, this arbitrator holds that both a substantial impairment to use exists in the form of 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 Consumers appeared and testified at the arbitration hearing. The Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed the vehicle defects experienced by the Consumers and the multiple repair attempts by the Dealer. The first repair, for the vehicle steering being misaligned and pulling to the left, occurred on May 29, 2014 with 5,005 miles on the vehicle's odometer. On July 25, 2014, a second repair attempt for the alignment issue was performed when the vehicle had been driven 6,545 miles. A third repair for the alignment issue was attempted on August 8, 2014, when the vehicle mileage was 6,892. A fourth repair on May 27, 2015 at 15,923 miles was the result of a loss of coolant, whereby the Dealer had to replace a cracked cylinder head. On July 3, 2015, a fifth vehicle repair visit was performed for a rattling noise from the air conditioning system and odd noises while the car was in motion. An additional repair visit for a hesitation concern and brake pulsation was performed on November 7, 2015, just two days outside of the two-year statutory window, at 23,494 miles.

The Consumers testified as to their apprehension when driving the vehicle when the steering alignment concern was present. This concern about safety was listed in the Request for Arbitration as a major concern (see the second paragraph of the narrative on page 9). The Consumers are presently concerned about a skipping or hesitation issue as well as continually high engine oil levels for which there is no explanation.

The Consumers felt that they did not have the full use of the vehicle, and given the thirty-five (35) days out of service and the multiple vehicle problems they experienced, they are justified in their concerns. Based on the days out of service and the ongoing defects, which have impacted the Consumers' normal, everyday use of the vehicle, I find a substantial loss of use in this case. A refund and exchange is appropriate in this case.

Given the constant steering alignment issue discovered upon the first trip home from the dealer's lot and continuing for the first 6,892 miles, together with the unresolved coolant level issue and the thirty-five (35) days that the subject vehicle was out of service during the first two years, balanced against and the number

In the matter of arbitration entitled:

**Hayes vs. Honda**

**Case Number: 2016-1294**

---

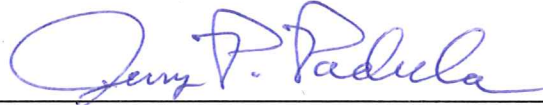
of miles on the odometer as of the date of the Request for Arbitration (30,060), a mileage deduction shall be awarded in favor of the Manufacturer, but only up through the date of the third repair. Given the number of days out of service, the nagging steering alignment and coolant issues, and the many inconveniences placed upon the Consumers, finance charges shall be awarded in full to the Consumers in this case.

The Dealer-installed option listed on the invoice as "Enviroguard-NG" (\$399.00) shall be reimbursed in full. Also to be reimbursed by the Manufacturer is the additional equipment added to the vehicle by the Consumers listed within the Request for Arbitration (see page 10) as "Roof Rails" (\$191.43) and "Cross Bars" (\$191.43). These items were custom-installed and shall remain with the vehicle. The "Easy Care" Extended Warranty purchased through the Dealer may be cancelled by the Consumers and a pro-rated refund provided to them. If such Extended Warranty contract cannot be so cancelled, the entire purchase price of \$995.00 shall be reimbursed by the Manufacturer.

### **III. CONCLUSION**

Given that the Consumers presented substantial evidence that the vehicle is not able to function normally, I hold for the Consumers 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.

09-07-2016

Date

***(See Section IV of this decision, entitled "Refund Award," on the following page.)***

In the matter of arbitration entitled:

**Hayes vs. Honda**

**Case Number: 2016-1294**

#### **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 **\$0.00** credit/rebate given to the purchaser.) The total vehicle price, as delivered, was **\$31,700.00**.

#### **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 **at the time of the third repair attempt** (at 6,892 miles), minus the mileage at the time of delivery (590 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$31,700.00 \times 6,302 \text{ miles (6,892 miles - 590 miles)}}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the vehicle shall be: **\$1,664.78**.

#### **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 Consumer shall be reimbursed for **all finance charges incurred**.
- The Consumer shall not be reimbursed for finance charges.

#### **Additional Expenses to be Reimbursed by Manufacturer:**

Conn. State Sales Tax: \$63.18	Conn. Title & Regis. Fees: \$21.00	Illinois Use Tax: \$2,434.27
Illinois Regis. Fees: \$101.00	Dealer Conveyance Fee: \$399.00	Enviroguard-NG: \$399.00
Roof Rails Installed: \$191.43	Cross Bars Installed: \$191.43	Lemon Law Filing Fee: \$50.00
Certified Mail Costs: \$3.30		

#### **Total Refund Award and Conditions:**

The total refund amount is **\$33,888.83** (thirty three thousand eight hundred eighty eight dollars and eighty three cents). **In addition to the total refund amount indicated, the finance charges indicated above are to be paid by the manufacturer.** A rental vehicle shall be provided by the Manufacturer, at the Manufacturer's sole cost, if the vehicle is inoperable for any time after the hearing up through the time of the vehicle exchange due to the named defect(s).

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 Consumers(s) shall surrender the vehicle's title to the Manufacturer at the time of receipt of the refund set forth in this decision.

In the matter of arbitration entitled:

**Hayes vs. Honda**

**Case Number: 2016-1294**

---

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: **Liberty Honda** located at **71 West Service Rd. in Hartford, Connecticut, 06120** OR at the **local manufacturer-authorized dealership of the Consumers' choice.**