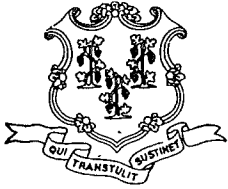


In the matter of arbitration entitled:

Bethke vs. FCA US, LLC (Jeep)

Case Number: 2016-693



**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

Shealah Bethke (the "Consumer") purchased a **2015 Jeep Grand Cherokee** (the "Vehicle") from **Branhaven Chrysler Jeep Dodge** located at **348 Main Street in Branford, Connecticut, 06405** (the "Dealership"). The Consumer took delivery of this vehicle on **July 27, 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. The manufacturer of the subject vehicle, FCA US, LLC (the "Manufacturer") did not contest the initial eligibility of the vehicle in this case. Said hearing was held on **Thursday, June 23, 2016**, during which Mr. Tim Clark served as the State's Technical Expert.

II. VEHICLE COMPLAINT & ELIGIBILITY

The Consumer's Request for Arbitration set forth the following complaint with the subject vehicle: An intermittent squeaking noise emanating from the braking system, accompanied by a rubbing sensation in the brake pedal, most noticeable during normal stops in cold weather. The Consumer claimed that the alleged defect continued to exist as of the date of the hearing. This condition caused the Consumer to become apprehensive when she called upon the vehicle to decelerate.

As a result of the complaint, the Consumer made multiple visits to the Dealership for diagnosis, testing, and repair. Said vehicle concern met the statutory presumption for eligibility for a loss of use and as a safety-related issue, as it was subject to a four repair attempts during the first year of ownership. A listing of the visits to the dealership for this complaint follows below:

| <u>Repair Date</u> | <u>Miles</u> | <u>Complaint</u> |
|--------------------|--------------|---|
| <u>01-08-2016</u> | <u>8,435</u> | <u>Brakes squeaking & brake pedal rubbing sensation in cold weather stops</u> |
| <u>01-16-2016</u> | <u>8,734</u> | <u>Brakes squeaking & brake pedal rubbing sensation in cold weather stops</u> |
| <u>01-18-2016</u> | <u>8,816</u> | <u>Brakes squeaking & brake pedal rubbing sensation in cold weather stops</u> |
| <u>01-25-2016</u> | <u>8,889</u> | <u>Brakes squeaking & brake pedal rubbing sensation in cold weather stops</u> |

Given the facts presented, the Consumer's concern that a defect existed was reasonable. This is indicated by the Dealership verifying the brake system exhibited a squeaking noise. I note that the Manufacturer did not contest the initial eligibility of the Vehicle in this case. The Consumer was therefore found to have met the eligibility requirements of the statute in order to initiate an arbitration hearing in accordance with Chapter 743b of the Connecticut General Statutes for loss of use, and for a safety-related concern.

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III. DECISION

The arbitrator **rules adversely to the Consumer**. **No action** shall be taken by the Manufacturer.

IV. REASONING

The documents in the record and the testimony presented at the arbitration hearing do not indicate a violation of Connecticut General Statutes Chapter 743b. In analyzing the facts in this matter, this arbitrator carefully reviewed and considered the Consumer's Request for Arbitration, the Manufacturer's Statement, the written repair records, the Technical Expert's comments, and the oral testimony and closing statements that the parties provided at the hearing. The Consumer represented herself at the hearing and also presented Diane Barbera as a witness. Attorney Michael Gregg served as third party representative of the Manufacturer. Mr. Chad Allison, the Service Manager from the Dealership, attended as a witness for the Manufacturer.

The Consumer claimed a substantial impairment to the use and safety due to the vehicle's braking system exhibiting a squeaking noise, and the brake pedal having a simultaneous rubbing sensation. The alleged braking defect was said to appear during cold weather. The arbitrator construed all of the Consumer's claims in her favor, including all claims made within the Request for Arbitration, together with all statements at the hearing. However, even in giving heightened deference to all of the Consumer's assertions and arguments, there is no actionable claim for relief pursuant to Chapter 743b.

The Manufacturer claimed during the hearing that the vehicle had no defects in materials or workmanship and was performing as designed. The Dealership and the Manufacturer had provided technical analysis to diagnose the vehicle concern. Several high-level technicians worked on the vehicle and replaced various components. During the January 8, 2016 repair visit, a technician named Matt with "Level 3" training in braking systems said of the brakes: "Nothing abnormal felt or heard." During the January 16, 2016 repair visit, a Manufacturer's technical service bulletin directed the Dealership to replace certain pins in the braking assembly, work which was performed. However, the record indicated that no abnormal noise had been heard before this repair or after the repair. Other components were replaced during subsequent repair visits, including the brakes pads and the brake booster, the booster being described by Mr. Clark to be a major braking component.

The Manufacturer's witness, Mr. Allison, testified as to the impressive credentials of the multiple technicians who performed diagnostic and repair work on the Consumer's vehicle, and the braking system in particular. He also had personal knowledge of the vehicle from taking part in diagnosing it, as well as supervising the technicians at the Dealership. Multiple test drives were commenced, and the conclusion was that the braking system was operating as designed. The record contained evidence that the vehicle's brakes were actuated with normal brake effort and produced a normal stopping distance. Mr. Allison, when specifically asked by the Manufacturer's Representative, confirmed that no trouble codes were found in the vehicle's computer, that no warning lights were illuminated, that the brakes did not feel abnormal, that stopping distances were normal, that the pedal did not feel "spongy" or abnormal, and that the vehicle was fixed, with no safety impairment. Given the ample testimony of the Manufacturer that the Consumer's vehicle is operating as designed, I find that the subject vehicle is not deemed to be "substantially impaired" in any way under the definition provided Chapter 743b of the Connecticut General Statutes.

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During the hearing, a recording of the alleged noise was played by the Consumer. This Arbitrator commented at the time that the noise "sounded like a monkey" given the high-pitched erratic tone. However, the intermittent noise itself is not found to be a "substantial impairment" to the use, value, or safety of the vehicle. During the examination of Mr. Allison, he replied in the affirmative to Mr. Gregg's question, "Is a noise sometimes just a noise?" Although the Consumer's concern about the intermittent noise was not unfounded, by all measures the braking system is operating normally and safely. Also important to note is that the vehicle performed without incident until reaching 8,435 miles, when the noise concern was first brought to the attention of the Dealership.

Therefore, convincing evidence that the claimed defect caused a substantial impairment to the use, value, or safety of the vehicle was not presented in this case. Relief pursuant to Chapter 743b is not warranted in this case. I remind the parties that the vehicle remains under warranty in the circumstance that any issue arises that may cause a substantial loss of use, value, or safety. The Manufacturer had claimed that the Consumer did not allow the Manufacturer a reasonable opportunity to diagnose and repair her vehicle in regard to an emergency brake issue. The record indicated one single repair up through the date of the hearing. To the extent that this issue is different than the braking issue subject to this matter, the Consumer shall be allowed to present additional evidence and file a Request for Arbitration regarding that emergency brake issue.

It was obvious that the Consumer was inconvenienced in both her work duties and in her personal life because of the number of visits to authorized dealerships for repair attempts. However, the inconveniences experienced by the Consumer cannot be the basis for relief pursuant to the statute.

V. CONCLUSION

Given the above facts, the Consumer did not present substantial evidence that the claimed defect or defects caused a substantial impairment to the vehicle's use, value, or safety. Based upon the evidence, I do not find a violation of Chapter 743b. I agree with the Manufacturer's assessment of the vehicle, as presented during the arbitration hearing and as listed in their Manufacturer's Statement, and hold that the Consumer's application will not allow relief pursuant to Chapter 743b. Accordingly, no action is being ordered on this application.

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), U.S.C. 2301 et seq., as in effect on October 1, 1982. Either party to the dispute may apply to Connecticut Superior Court within 30 days of 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, 52-419, and 52-420 of the Connecticut General Statutes.



Jerry P. Padula, Esq. - Arbitrator

07-20-2016
Date