

**Arbitrator Response to Clarification Request**

Date: 11/4/2024

Case Number: [REDACTED]

Customer: [REDACTED]

Business: Mazda

Mfr-Info: [REDACTED]

**I have reviewed the written correction request. My comments and response to the contentions contained in those submissions are below:**

The Manufacturer contests the dollar amount awarded the Consumer in the Arbitrator's August 9th, 2024 Repurchase Award, which was determined in accordance with the Texas Lemon Law. Manufacturer argues the amount of the Repurchase Award should be adjusted both as to the calculation of Consumer's "purchase price" under the Lemon Law.

The Consumer objects to Manufacturer's contentions and contends that the Texas lemon law does not provide for a negative equity deduction.

**DECISION:**

Both parties have made compelling arguments regarding the negative equity deduction that is the basis of the dispute of the repurchase amounts.

The consumer points out that Texas lemon law does not specify a deduction for negative equity.

The manufacturer points out that Texas lemon law refunds the actual purchase price of the vehicle in question rather than the "financed amount."

Unfortunately, Texas lemon law does not provide us with a clear cut guideline to follow. Under Mazda's program summary, "the arbitrator will decide whether the applicable state lemon law permits an adjustment to the award for any trade-in over-allowance or debt from a previous transaction" leaving this arbitrator the task of making a final determination.

To resolve this dispute, the arbitrator finds that Mazda can offset against the refund any amounts in the financing agreement involving the negative equity of the trade in vehicle, as it is not actually part of the original purchase price of this vehicle. The arbitrator then also finds that the negative equity should be deducted from the purchase price that is being used for the usage fee calculation. As this amount is being deducted from the repurchase, the arbitrator believes that it should also be deducted in the usage fee formula.

Secondly, the arbitrator finds that the service contract, maintenance plan, and GAP insurance were items added to the vehicle that should be reimbursed under Texas lemon law as noted below. After these contracts are canceled, the consumer should be reimbursed the difference.

- (g) items or accessories added to the vehicle at or after purchase, taking into consideration the permanent nature, functionality, and value added by the items or accessories and whether the items or accessories are original equipment manufacturer (OEM) parts or non-OEM parts;

Manufacturer's Disagreement with the Start Date for the Period of Impaired Mileage.

I read the Lemon Law provides that the period of impairment starts when the Consumer notifies the Manufacturer of the defect and seeks to have the defect repaired. Manufacturer believes that a reported defect can be ignored until the service department of Manufacturer's dealership decided to open a Repair Order which specifically mentions the defect, and to focus on repairing the defect. Consumer gave credible testimony that she had called the dealership at 400 miles to report alerts her vehicle was showing on her dashboard, and sought to have the dealer examine the car. She took pictures of the dashboard alerts and shared them with the dealer. The dealer persuaded her to wait to bring in the vehicle until its first scheduled servicing, but in the RO for the first servicing, for whatever reason, the dealer made no mention of the defects triggering the numerous dashboard alerts that the Consumer testifies she had reported to him. Consumer introduced at least 50 pictures of dashboard alerts about the defects into the records, and testified that she had shared these alert pictures with the dealer's service department each time an alert showed up on her dashboard. I have given great weight to the Consumer's testimony, and doubt seriously she took these numerous pictures for her own amusement. I conclude it is reasonable to conclude that she shared these pictures with the service department of the dealer each time the alerts occurred, starting at the 400 mile mark. The dealership did not open an RO specifying that the identified defects were at last being addressed until Consumer basically nagged him into checking out the cause for the alerts. This delay in attempting to repair the defects does not extend the period of unimpaired miles enjoyed by the Consumer. Consumer established she suffered the impairment starting at 400 miles, and it just took a fairly long time for her to persuade the dealer to attempt to repair the vehicle. My reasonable allowance for usage determination with the deduction for negative equity deduction from purchase as noted above will be applied to the transaction.

Respectfully Submitted,

NORMA R IACOVO

BBB ARBITRATOR