



BBB AUTO LINE

July 6, 2011

MR STEVEN FRASCA
2465 WISCONSIN DELLS
HENDERSON NV 89044

Re: FRD1116661-1R Frasca vs Lincoln 2LMDJ6JK5BBJ16944

Dear Mr Frasca:

Enclosed is the arbitrator's *Decision and Reasons for Decision* for your case.

We have also enclosed an *Acceptance/Rejection Form* that must be used to accept or reject the decision. Please complete the form and return it to us so that we receive it in our office **within 14 days** from the date of this letter. We recommend that you call to confirm receipt of this form a few days after you send it to us.

You may either mail the form to:
4200 Wilson Blvd., Ste 800
Arlington, VA 22203
or
Fax it to 1.703.247.9700

Please do not make any changes or additions to the *Acceptance/Rejection Form* as we will consider that a rejection of the decision.

If you have any questions about the decision, or if I may be of help to you, please feel free to call me at 800.955.5100. You may also fax the signed form to me at 703.247.9700.

Sincerely,

Todd Eikenberry at Extension 240

Council of Better Business Bureaus, Inc.

4200 Wilson Boulevard, Suite 800 · Arlington, VA · 22203-1838 · Phone 800.955.5100 · Fax: 703.247.9700



ACCEPTANCE OR REJECTION OF DECISION

Date: 07/06/11

Case Number: FRD1116661-1R

Customer: Steven Frasca

State: NV

Business: Ford Motor Company

Mfr-Info: 6701 NV 2LMDJ6JK5BBJ16944

Enclosed is the Arbitration decision in your case. We hope you have found the efforts of our staff and the volunteer arbitrator(s) to be satisfactory. Please call us if you have any questions about the decision.

COMPLETE THE FOLLOWING AND RETURN IT TO US IMMEDIATELY

Note: If this form is not received at the CBBB office within 14 days from the date of the cover letter, the decision will be considered rejected and the manufacturer will be notified. You may want to return the form via certified mail or fax it to the CBBB at 703.247.9700. We suggest you call your case specialist to confirm receipt.

Please check one of the following.

_____ I ACCEPT THE ARBITRATION DECISION. I understand this means:

- * the business will be legally bound to abide by this decision; and,
- * I, too, will be legally bound, which means I give up any right to sue the business in court on any claim that has been resolved at the arbitration hearing, unless the business fails to perform according to the Arbitrator's decision or unless otherwise provided by state or federal law.

_____ I REJECT THE ARBITRATION DECISION. I understand this means:

- * I may pursue other legal remedies under state or federal law;
- * depending on federal or state law, the decision may be introduced as evidence by me or the business in any civil court action relating to any matter considered in this arbitration hearing;
- * the business will not be obligated to perform any part of the decision; and,
- * this will end Better Business Bureau involvement in my case.

Signature(s) of Titled Owner(s): _____

Date: _____

Council of Better Business Bureaus, Inc.

4200 Wilson Boulevard, Suite 800 · Arlington, VA · 22203-1838 · Phone 800.955.5100 · Fax: 703.247.9700



Interim Repair Decision

Submitted Date: 07/05/11

FRD1116661-1R

VIN: 2LMDJ6JK5BBJ16944

Customer: Mr Steven I Frasca - Hearing Date: 06/21/11

Arbitrator: Ira W. David

Question 1

Vehicle (Year, Make, Model)

2011 Lincoln MKX

Question 2

The manufacturer shall repair, within 30 days from the manufacturer's receipt of the customer's acceptance of this Decision, the following components/symptoms of the above ("vehicle") owned or leased by the customer.

{List all components/symptoms to be repaired}

1

Engine noise, described as knock or tapping

2

3

4

5

6

7

8

9

The manufacturer will contact the customer to make all arrangements for the completion of these repairs which shall take place at a dealership chosen by the manufacturer.

The customer will have 30 days to test drive the vehicle after the repairs have been completed. If the repairs are not completed properly, the customer must notify the BBB in writing before the test drive period expires. The arbitrator will be informed and will make a decision in your case. .

The customer will have 30 days to test drive the vehicle after the repairs have been completed. If the repairs are not completed properly, the customer must notify the BBB in writing before the test drive period expires. The arbitrator will be informed and will make a decision in your case. .

Before making a decision, the arbitrator(s) will reconvene the hearing. If the customer does not notify the BBB within the test drive period, this decision will become final.

CASE: FRD1116661-1R

Customer: Mr Steven I Frasca

Arbitrator: Ira W. David

Date: 07/05/11



Reasons for Decision

Submitted Date: 07/05/11

FRD1116661-1R

VIN: 2LMDJ6JK5BBJ16944

Customer: Mr Steven I Frasca - Hearing Date: 06/21/11

Arbitrator: Ira W. David

Question 1

Please state your decision and then explain why it is a fair resolution of this dispute. (If relevant, explain how lemon law standards apply to the facts in this case)

For the following reasons, it is determined that the customer's request for a repurchase/replacement of his 2011 Lincoln MKX is denied. However, a repair request has been approved. (If relevant, explain how lemon law standards apply to the facts in this case.)

Preface

The vehicle owner ("Frasca") asserts that, when the vehicle is cold, there is a severe engine knock for the first few minutes, until sufficient lubrication is in circulation at which point the sound stops. Ford claimed that there is a problem report noting this situation, and that the problem will not affect the vehicle. Initially, Ford claimed that the problem had been corrected, but after further review, admitted that there was still a noise under the conditions reported.

Frasca has a video clip on his website "www.cyberworldusa.com" showing the car during startup and with a tapping sound clearly audible. He admitted that this clip was made prior to Ford's asserted repair, but claimed that the sound is still there, albeit not as bad. He was going to produce a new video clip, but as the weather has warmed up was unable to recreate the problem. This decision was written under the assumption that, when the vehicle is cold, there is still a tapping noise for the first few minutes after startup.

This decision was delayed while Ford researched the repair reports and Frasca attempted to produce the new video clip. The inability to create a new clip did not prejudice this decision. The material which was submitted by both parties was repetitive of earlier material and so did not affect this decision.

The Analysis

The Ford Motor Company - Nevada BBB Auto Line Program Summary specifies that an arbitrator may authorize a repurchase or replacement of a vehicle only if several conditions are all met, namely:

1. The defect is reported to Ford within 18 months or 18,000 miles of the start date of the warranty;
2. The vehicle was brought in for repair for the reported defect at least four times, or the vehicle was out of service for at least 30 days for repair of all reported defects; and
3. The defect "substantially impairs the use, value, or safety of the vehicle to the reasonable consumer."

This differs slightly from the Nevada Lemon Law which does not mandate the number of repair attempts or time out of service, but only proffers the indicated values as a guide for the arbitrator to consider. However, this distinction is moot in this instance for the reasons stated below.

The defect was reported to Ford well within the indicated time limits. The vehicle is only about 4 months old and has barely 5,000 miles of total usage. The number of repair attempts is somewhat clouded by the consumer's assertion that the dealer told him not to bring the vehicle back as they would not do any more work on the problem. However, the primary reason that this request for repurchase/replacement is denied is that I do not feel that it "substantially impairs the use, value,

or safety of the vehicle to the reasonable consumer.”

I come to this conclusion for several reasons. First of all, I do not believe there is an engine knock. An engine knock is a problem with fuel combustion. According to both Ford and Frasca, he has been experiencing a problem with lubrication, not combustion. This distinction is more than semantics. While an engine knock may be a very serious problem (although it could also be inconsequential), I believe that the problem Frasca is experiencing is unlikely to be more than a minor annoyance, at worst. I do not believe that it will rise to the level of impairment which justifies the requested remedy.

Second, only one attempt was made to repair this problem. If the Ford service manager told Frasca not to bring the car back for this problem, that request has now been negated. It is my belief that Ford is now ready to take appropriate steps to remedy the problem, or to confirm its non-destructive nature, and is hereby directed to do so within the next 30 days.

Frasca says he is afraid that the vehicle will fail in the middle of the desert and he will be unable to get help. I do not find this a plausible scenario. He also says that this problem will be worse once he moves back to upstate New York. Driving in the cold of the Northeast, drivers are aware of the need to allow their vehicle to warm up before going out on the road. This is just one more reason to do so.

It is my belief that, now that they are aware that the last (and only) repair attempt was not successful, Ford should be willing and able to put the proper resources to work to fix the problem, providing the necessary oil flow in a more expedited manner. In addition, they can also expend the effort to confirm whether or not the problem is in fact benign. If it is not, and if there is a risk of vehicle damage, the problem must be fixed, but if it is at worst an annoyance, proper assurances must be provided.

While Frasca was unable to produce a new video, produced subsequent to Ford's asserted repair, his reasons for not doing so were credible and the presumption in this decision is that the engine noise persists. It is simply not a defect warranting a repurchase/replacement decision.

Conclusion

For the reasons stated above, I do not find that there is any need to order a vehicle repurchase/replacement and therefore deny the vehicle owner's request for such remedy. However, I believe vehicle repair to be indicated and therefore order that arrangements be made to undertake such repair within thirty days.

Question 2

If awarding a repurchase/replacement, identify the problem(s) upon which the award is based and the number of repair attempts for each problem.

N/A

Question 3

Statistical Information:

We are required to track specific statistical information. If a repurchase/replacement is awarded under the lemon law please indicate:

a Cumulative number of days the vehicle was out of service for all problems:

4

b Was final notice given to the manufacturer (YES, NO or N/A)?

N/A

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Arbitrator: Ira W. David

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Date: 07/05/11