

In the matter of an Arbitration pursuant to the Canadian Motor Vehicle Arbitration Plan  
("CAMVAP")

Between:

Randolph Nickerson  
("Consumer(s)")

-and-

FCA  
("Manufacturer")

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**Ruling on Eligibility**

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**Appearances:**

**For the Consumer:** Randolph Nickerson (with Paul Levasseur)

**For the Manufacturer:** Ed Winters

**Arbitrator:** Craig Sherburne

**Hearing Date(s):** January 30, 2017

**Hearing Location:** Teleconference

**Date of Eligibility Decision:** January 30 2017

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**Vehicle Details:**

VIN: 1C4BJWDG8DL582370 (the "Vehicle")

Make and Model: Jeep, Wrangler Sport

In Service Date: January 24, 2013

Date of Purchase: January 24, 2013

Kilometres at Hearing: 69,368 Kms

As provided for under the *Agreement for Arbitration* (the “Agreement”), I have been asked by the Manufacturer to rule on whether the application for Arbitration by the Consumer is eligible under said Agreement.

The Consumer presented the Vehicle to the dealer numerous times, the latest on the basis that the Vehicle was burning excessive (the “Symptom”) and that it has not been repaired (the “Allegation”). In addressing the Symptom, the dealer appears to have removed and disassembled the engine and to this date the engine remains separate from the body of the Vehicle.

The Manufacturer questioned whether the Consumer met the CAMVAP criteria, in particular that the Consumer failed to meet the requirements for eligibility under section 4.4.2 on the basis that the Allegation relates to the design of the vehicle.

For a dispute to be eligible for arbitration under the Agreement, it must both fall within the scope of Articles 4.2 and 4.3 of the Agreement, as well as *not* falling under an enumerated exemption from eligibility under section 4.4. An analysis is necessary under each of these sections before finding whether the dispute is eligible for Arbitration, and I shall do so sequentially.

The bar for eligibility under section 4.2.2 is low, requiring that the Consumer “allege” a Current Defect. A Current Defect is defined in the Agreement as:

*“A defect in Your Vehicle that You allege:*

*(i) is currently causing symptoms in Your Vehicle; and*

*(ii) has not been repaired properly.*

*A defect in the design of Your Vehicle or in the design of any Materials is not a Current Defect. “*

The Consumer has alleged that the Symptoms are occurring in the Vehicle, as well as alleging that the Vehicle has not been repaired to her satisfaction; and therefore meets the first half of the definition of a “Current Defect”.

Yet the definition exempts a defect in the design of the Vehicle from being a Current Defect. This also relates to the position of the manufacturer that the issue is ineligible for arbitration under section 4.4.2.

The Manufacturer is of the position that the Symptoms arise from ingestion of dirty water, and therefore do not represent a Current Defect. Although that may be borne out through the course of an Arbitration, the bar to be met for Eligibility is that there be an allegation of Current Defect, it is to the arbitration to determine whether it is to be considered a Current Defect. Thus I find that the Allegation meets the eligibility criteria of section 4.2 and is not excluded under section 4.4.2

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I therefore rule that the current dispute is eligible for Arbitration, and request that a hearing date be scheduled.

Dated this 30<sup>th</sup> day of January, 2017



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CAMVAP Arbitrator

Craig Sherburne