

[REDACTED]
New York, N.Y.

MAY 17 2017

[REDACTED]
May 11, 2017

I hereby enclose the following in response to your communication:

- (1) Copy of your communication
 - (2) My original letter to NHTSA-dtd 9/2016
 - (3) Up to date continuation of above letter
 - (4) Copy of decision by arbitration panel of NCDS
- [REDACTED]

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LD



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue SE.
Washington, DC 20590

May 2, 2017

[REDACTED]
New York, NY

NEF-109
Ref. No. 10916895

Dear [REDACTED]:

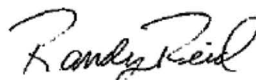
The National Highway Traffic Safety Administration's (NHTSA), Office of Defects Investigation appreciates the report you provided concerning your MY 2016 Lexus ES350. Last year our office received an unprecedented increase in the number of correspondence due to the Takata air bag recalls. Our limited resources were overwhelmed and we are now just getting to your letter. We regret any inconvenience this delay may have caused you.

You can be assured that your complaint has been reviewed and will be considered along with other complaints for future defect investigations and to identify safety-related defect trends. If you feel the vehicle issue you experienced still poses a safety risk and has not been resolved by the manufacturer or dealer; we would appreciate an updated report of your problem. If you send another letter, please indicate that you sent your original complaint to NHTSA in 2016, to ensure we expedite our review and send an appropriate response if warranted.

If your letter requests general information about a motor vehicle or motor vehicle equipment, we recommend that you visit our Internet website at www.safercar.gov. This site provides information concerning motor vehicle recalls, manufacturers' service bulletins, complaints from vehicle owners, etc. You can enter your vehicle identification number (VIN) into our VIN Look-Up Tool, which searches for open recalls through a direct link to the manufacturer's database (www.nhtsa.gov/recalls). You can also file complaints on line at www.nhtsa.dot.gov/ivoq or call our toll-free Auto Safety Hotline at 888-327-4236.

Please note that vehicle issues concerning warranty, maintenance, dealer customer service, and reimbursement claims do fall under NHTSA's jurisdiction. You may consider contacting your local Consumer Protection Agency, Better Business Bureau, Federal Trade Commission, or the Office of Attorney General in your State for assistance regarding these matters.

Sincerely,

A handwritten signature in cursive script that reads "Randy Reid".

Randy Reid, Chief
Correspondence Research Division
Office of Defects Investigation
Enforcement

[REDACTED]
New York, N.Y. [REDACTED]
September 19, 2016

Re: Recall of 2016Lexus ES350
VIN-VINJTHBK1GG4G2 [REDACTED]

I leased the above vehicle in January, 2016. About 6 weeks later, the Pre Collision system of Brake Actuator System engaged for no cause, bringing vehicle to an uncontrolled abrupt stop while driving at 30 mph. Car's recorder confirmed the event.

Subsequent evaluations over the past 7-8 months by Lexus mechanics, engineers, specialists indicate that system is "operating as designed." One engineer even speculated that it could be activated by a piece of paper or billboard reflection. That's operating "as designed?"

My requests to have the PCS disconnected were met by it could not be done and further, that since the PCS is part of the actuator system, disconnecting one part might affect other parts. Lexus will not write a repair order that assures it can be done and will not affect the total system.

In May 2016, after above recall and service by a Lexus dealer, it again became "operating as designed." The only "positive" solution for me is to press 6 buttons on the steering wheel each time the vehicle is started. That means manually disabling the PCS 4-5,000 times till the end of the lease.

Lexus refuses to correct this defect by replacing the actuator system, which was indicated in the recall and they will not take the vehicle back without me paying them additional thousands of dollars.

Lexus is adamant in their stance. Does the NHTSA have any jurisdiction to resolve this situation fairly?

Thank you in advance for any assistance in this matter.

Sincerely,

[REDACTED]

May 11,2017

Subsequent to the above letter to you, a hearing was held by NCSD. While agreeing that the event occurred, they speak of "as designed." (copy enclosed) How can a "safety" feature operate "as designed" when it can operate for no apparent reason. A sudden stop without cause with a truck/car behind could end up in a life threatening situation.

Several months ago, I was informed that Lexus could disconnect the PCS but could not guarantee or put in writing that this would not impact on connected safety features. I naturally refused this "repair."

Subsequently, Lexus sent me a payment of \$1,000 indicating the cost of the PCS option. I accepted the payment in disgust: (1) Did not hear from NHTSD and; (2) NCSD did not respond to my request for a second hearing as I accused the initial hearing of being "tainted", arbitrator and Lexus rep knew each other.

I now am locked into a vehicle where with every start, I must press 6 buttons to disengage the PCS. Being a relatively "normal" human being, I sometimes forget! It is then that I must pull off the highway, and press 6 buttons to disengage the PCS.

This is a recalled vehicle for a defect labelled by NHTSA! Is "as designed" an accepted reason for Lexus to be held non-compliant when they ADMIT the PCS did not operate as designed? My request remains the same: I should be able to return this vehicle to Lexus and the lease cancelled.

NATIONAL CENTER FOR DISPUTE SETTLEMENT

In the matter of the
Arbitration between

[REDACTED]
("Customer(s)")

and

Lexus

DECISION

Case # [REDACTED]

We, Paul G. Huck, Joan Hogarth, and Steven Dunne were appointed pursuant to NCDS rules as Arbitrators to hear and determine disputes, which had arisen between the Customer(s), [REDACTED] and Lexus regarding a 2016 Lexus ES 350.

By a notice given on July 1, 2016, the parties were advised that a hearing would be conducted at Hilton Garden Inn New Manhattan Midtown East on July 14, 2016 at 11:00 AM.

Present on that date were:

[REDACTED]

Karen Rotola

Michael Scamardella

Customer

Customer's Spouse

Lexus Representative

Lexus Field Technician

The complaint(s) existing between the parties were set forth on a "Customer Claim Form" received by NCDS on June 20, 2016, and may be summarized as follows:

The Customer stated issues with the collision alarm system initiated. The Customer requested a repurchase.

SUMMARY OF PRESENTATION:

The parties presented and we reviewed and considered the following evidence: Customer Claim Form dated June 15, 2016 with accompanying write-up; Manufacturer's Response Form; Customer's Lease documentation; Work order # [REDACTED] from Lexus of Palm Beach (in March 24, 2016 and out March 30, 2016); Work Order [REDACTED] from Lexus of Manhattan (in and out May 24, 2016); and pages 183-195 from the Lexus Owners' Manual.

The position of the Customer was that the pre-collision system actuated for no reason, breaking heavily on its own with nothing in front of the vehicle. That the Customer was afraid to drive the vehicle with the pre-collision system being on based on this experience. That this occurred while in Florida on a clear day and on an open road and the vehicle was immediately taken into Lexus of Palm Beach where they held the vehicle for a week allowing Lexus Engineers from various parts of the country to determine the cause of the system actuating. That the Engineers reached a conclusion that the system was working correctly and was set off by something that mimicked a near collision. The Customer further investigated the issue and found on a U.S. Government website that there was a possible issue with a brake actuator that read like it could have caused the issue. That he then received a letter from Lexus asking him to bring in the vehicle to determine if there was an issue with the actuator in the vehicle. He brought the vehicle into Lexus of Manhattan where it was inspected and determined that the actuator in the vehicle was not one with a potential defect. That the Customer and his wife are afraid to drive the vehicle with the system being in effect, thus, they deactivate the system every time they start the vehicle.

While the Customer would have been happy with a replacement vehicle without the pre-collision system, due to issues with the Lease, the Customer requested that the vehicle be repurchased.

The position of the Manufacturer was that the vehicle is functioning as designed. That a full review of the vehicle was made by multiple Lexus Engineers and it was found to be functioning as designed. That the pre-collision system is new and the Owners' Manual provides three pages of instances where it is possible for the system to "operate even if there is no possibility of a collision," at p. 190. That such situations rarely, but do, occur, and that the Engineers were unable to determine the specific reason the actuation of the system occurred in this vehicle. That the vehicle has only been taken into a Dealer on two

occasions and neither occasion resulted in an repair attempt.

DECISION:

After reviewing the complaint(s) and hearing the proofs and arguments of the parties and taking into consideration the applicable manufacturer's new vehicle warranty, and the applicable warranty law including the applicable State Statute commonly referred to as the "Lemon Law," and after due deliberation, we find and Award as follows:

The Customer's request that the vehicle is repurchased is hereby DENIED.

We have reached this UNANIMOUS conclusion because: while we believe and understand the Customer's concerns -- insufficient proof was provided that the vehicle has a manufacturing defect. Based on the documentation provided, it appears that the vehicle is functioning within the designed specification and there have been no repair attempts made.

This constitutes the panels complete DECISION as to all the complaint(s) submitted to the panel for determination.

7/14/16

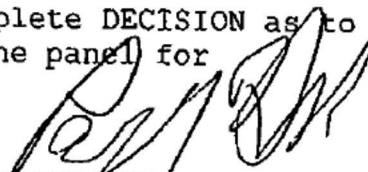
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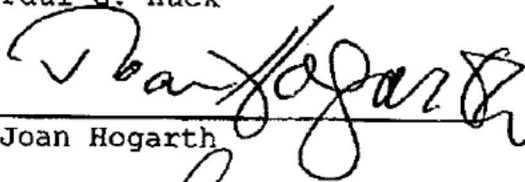
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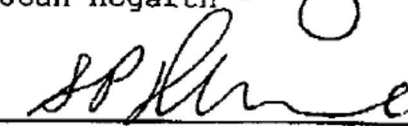
DATE



Paul G. Huck



Joan Hogarth



Steven Dunne



National Highway Traffic Safety Administration
1800 New Jersey Avenue SE
Washington, D. C. 20590

