


NATIONAL CENTER FOR DISPUTE SETTLEMENT

In the matter of the  
Arbitration between


  
("Customer(s)")

and

Lexus


**DECISION**

**Case # 3407007**

We, Scott Mers, Angela Rutherford, and Pamela Spencer were appointed pursuant to NCDS rules as Arbitrators to hear and determine disputes, which had arisen between the Customer(s),  and Lexus regarding a 2007 Lexus ES350.

By a notice given on February 23, 2007, the parties were advised that a hearing would be conducted at Holiday Inn on March 1, 2007 at 10:30 AM.

Present on that date were:

  
Leonard St. Amand

Customer  
Customer's Spouse  
Lexus Field Technician  
(By Speakerphone)

The complaint(s) existing between the parties were set forth on a "Customer Claim Form" received by NCDS on January 24, 2007, and may be summarized as follows:

Customer states that the car experienced sudden acceleration in excess of 100 miles per hour, in which the Customer was unable to stop the car.

## SUMMARY OF PRESENTATION:

The parties presented and we reviewed and considered the following evidence:

- Manufacturer Response Form
- Customer Claim Form
- Affidavit of Tommy Clayton
- NHTSA ODI Search Results
- Customer Letter dated 2/6/07
- Customer Letter dated 1/31/07
- Certificate of Title
- Customer Letter dated 10/13/06
- Manufacturer Letter dated 12/4/06
- Customer Letter dated 2/14/07
- Customer Report to NHTSA

The position of the Customer was that while the Customer's Wife was driving the vehicle unaccompanied, gently accelerating onto an interstate highway, she lost control of the vehicle's acceleration. The car went into passing gear and the cruise control light went on. Although the driver's foot was not on the accelerator pedal and she took the cruise control off, the vehicle continued to accelerate. Despite applying both the primary and emergency brakes, and shifting into all gears except park, the vehicle continued to accelerate to at least 100 mph. Eventually, the vehicle began to slow. The driver was able to pull over to the left median and turn the engine off at 33 mph. The affidavit of Tommy Clayton confirmed excessive brake wear. The vehicle has not been driven by the Customer or the Customer's Wife since this incident due to safety concerns, and the vehicle was brought to the hearing on a wrecker.

The Customer requested that the vehicle be repurchased.

The Manufacturer's position was that the Manufacturer Response Form stated that the vehicle was inspected by Field Technical Specialist Leonard St. Amand, and found to be operating as designed.

At the hearing, the Field Technical Specialist ("FTS") stated that in order for the incident to have happened as described by the Customer, numerous redundant systems in the vehicle would have had to have failed simultaneously, and then return to normal operation during the FTS inspection. The FTS stated that this scenario was not possible given the design of the vehicle. Further, the vehicle's braking system is designed to stop the vehicle while the engine is operating at full throttle. The vehicle's transmission was replaced because it was found to be shifting roughly during the above-referenced inspection. The FTS also stated that he observed brake

wear consistent with the notarized statement referenced above.

At the Customer's request, a visual inspection of the brakes was conducted at the hearing. The Customer pointed out signs of excessive brake wear.

**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 be repurchased is hereby DENIED.

We have reached this unanimous conclusion because the evidence presented at the hearing was insufficient to conclude that the vehicle currently contains a warrantable defect. At the time of hearing, the vehicle odometer reading was 2,728 miles.