

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**
1200 New Jersey Avenue SE
Washington, DC 20590

In re: TQ14-002

NHTSA Recall No. 13V-489

CONSENT ORDER

This Consent Order is based on the agreement of the National Highway Traffic Safety Administration (“NHTSA”), an operating component of the U.S. Department of Transportation, and Hyundai Motor America (“HMA”) and Hyundai-Kia America Technical Center, Inc. (“HATCI”) (collectively, “Hyundai”), to resolve claims associated with NHTSA’s Timeliness Query TQ14-002 under the terms and conditions incorporated herein.

I. NATURE OF THE ACTION

1. The National Traffic and Motor Vehicle Safety Act of 1966 as amended and recodified (the “Safety Act”), 49 U.S.C. § 30101, *et seq.*, provides for regulation of motor vehicles and motor vehicle equipment by the Secretary of Transportation. 49 U.S.C. § 30111. The Secretary has delegated his authorities under the Safety Act to the NHTSA Administrator, 49 C.F.R. §§ 1.95(a), 501.2(a)(1). This delegation includes the authority to compromise the amount of civil penalties for violations of the Safety Act and regulations prescribed thereunder. *See* 49 U.S.C. § 30165(b); 49 C.F.R. § 1.95.

2. Under the Safety Act, a manufacturer of motor vehicles has a duty to notify NHTSA and owners, purchasers, and dealers of a vehicle if the manufacturer learns the vehicle contains a defect and decides in good faith that the defect is related to motor vehicle safety. 49 U.S.C. § 30118(c)(1). The manufacturer must provide this notice to NHTSA not more than five

working days after a defect in a vehicle has been determined to be safety related. 49 C.F.R. § 573.6(b). The manufacturer's notice to NHTSA must be in the form specified by regulation, and is known as a "Part 573 Report." 49 C.F.R. Part 573. The manufacturer must also provide NHTSA with copies of any Technical Service Bulletins ("TSBs") issued to more than one dealer, whether or not the TSB relates to a safety issue. 49 C.F.R. § 579.5.

3. A person who violates the notification requirements of the Safety Act or a regulation prescribed thereunder is liable to the United States Government for a civil penalty of not more than \$7,000 for each violation. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a). A separate violation occurs for each motor vehicle and for each failure or refusal to allow or perform a required act. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a). The maximum penalty for a related series of violations was \$17,350,000 until October 1, 2013, at which point it was increased to \$35,000,000.¹ 49 U.S.C. § 30165(a)(1).

4. HMA is a manufacturer of motor vehicles within the meaning of the Safety Act, 49 U.S.C. § 30102(a)(5), and a person within the meaning of 49 U.S.C. § 30165. HMA is the Importer of Record of vehicles assembled by Hyundai Motor Company ("HMC"). HATCI is a wholly owned subsidiary of HMC and is the Designated Agent of HMC pursuant to 49 CFR Part 551.

5. In 2012, both Hyundai and General Motors ("GM") were informed by the supplier of the hydraulic electronic control unit ("HECU") installed in the 2009-2012 Genesis vehicles that internal testing suggested that brake fluids prevalent in the Korean market did not sufficiently inhibit corrosion on certain critical components of the brake system. Among other things, corrosion resulting from the use of this fluid could inhibit or stop the operation of electronically actuated valves within the HECU. Consequently, the corrosion could lead to

¹ See Pub. L. 112-141, Div. C, Title I, § 31203(a)(1),(c), July 6, 2012, 126 Stat. 758.

low/soft brake pedal with reduced braking effectiveness, which may increase the risk of a crash.

6. In January 2012 and again in September 2012, GM initiated a safety recall in 67 foreign countries to replace the brake fluid in vehicles pairing the suspect brake fluid with the HECU unit at issue. In November 2012, GM issued a TSB to its dealers in the United States to replace the brake fluid, inspect the ABS module and replace it if necessary. The TSB described the reasons why the brake fluid was to be replaced and the ABS module inspected and replaced, if necessary, and the potential consequence(s) if the remedy was not performed. GM notified its customers of the TSB.

7. In March 2012, the supplier of the HECU changed the finish on the armatures of the electronically controlled valves from a zinc coating to a more corrosion resistant black oxide coating and the changed part was placed into the production of Genesis vehicles.

8. On March 5, 2013, Hyundai initiated a Service Campaign (TL6) in the United States by issuing a TSB to its dealers. The TSB instructed dealers to replace the brake fluid in Model Year 2009-2012 Genesis and Equus vehicles with a DOT4 brake fluid. Although the corrosion by the brake fluid could have safety consequences over time, the TSB did not describe the reasons why the brake fluid was to be replaced or the potential consequence(s) should the brake fluid not be replaced. The Service Campaign documentation was submitted to NHTSA in accordance with 49 C.F.R. Part 579.5. Hyundai did not notify vehicle owners about this Service Campaign.

9. On October 17, 2013, NHTSA opened Preliminary Evaluation (“PE”) 13-033 following consumer complaints of reduced braking effectiveness in Genesis vehicles. The following day, October 18, 2013, Hyundai verbally indicated to NHTSA that it would file a Part 573 Report reporting the existence of a safety-related defect in these vehicles. On October 28,

2013, HATCI filed a Part 573 Report on behalf of HMC announcing a recall of the subject vehicles, Recall No. 13V-489.

10. On November 8, 2013, NHTSA sent Hyundai an information request letter (the “Information Request”). On January 14, 2014, Hyundai submitted its responses to NHTSA’s Information Request.

11. As reported by Hyundai to NHTSA on January 14, 2014, six consumers had reported collisions, including two reports of injuries (headaches, backache and whiplash). As of January 14, 2014, Hyundai had received 87 consumer complaints with regard to the Genesis vehicles, most of which allege increased difficulty in braking. As of the date of this Agreement, 70% of the Genesis vehicles subject to Recall No. 13V-489 are reported to have the recall repair conducted. There have been no reported fatalities or serious injuries.

12. NHTSA closed investigation PE13-033 on April 4, 2014.

13. NHTSA initiated a Timeliness Query, TQ14-002, on April 11, 2014 to evaluate the timing of Hyundai’s defect decision making and reporting of Recall No. 13V-489. Following NHTSA’s analysis of the evidence, and in an effort to resolve the agency’s investigation, NHTSA and Hyundai met on June 18-20, 2014, in Washington D.C.

WHEREAS, it is the mutual desire of NHTSA and Hyundai to resolve the TQ14-002 without the need for further action, to avoid the legal expenses and other costs of a protracted dispute and potential litigation;

THEREFORE, based on the agreement of the parties and pursuant to the authority of the Secretary of Transportation to issue orders under the Safety Act, 49 U.S.C. § 30118(e) (as delegated to the NHTSA Administrator, 49 C.F.R. § 1.50), it is ORDERED and AGREED as follows:

II. TERMS OF CONSENT ORDER

14. In the June 18-20, 2014 meetings, NHTSA alleged violations of the Safety Act. In order to resolve this matter, Hyundai admits that it failed to provide the required notice to NHTSA under the Safety Act for the safety-related defect that is the subject of Recall No. 13V-489 within five working days as required by 49 U.S.C. § 30118(c)(1), 49 U.S.C. § 30119(c)(2) and 49 C.F.R. § 573.6(b).

15. Hyundai shall pay the United States a maximum civil penalty for a related series of violations in the sum of seventeen million three hundred fifty thousand dollars (\$17,350,000) for its failure to provide notice to NHTSA of the safety-related defect that is the subject of Recall No. 13V-489 within five working days. Hyundai shall pay this civil penalty in one lump-sum payment by electronic funds transfer to the U.S. Treasury in accordance with instructions provided by NHTSA, no later than 30 calendar days following execution of this Consent Order.

16. Hyundai has agreed to and in some cases has already undertaken certain actions to ensure compliance with the notification requirements of the Safety Act. Hyundai commits and agrees to the following corporate organizational and process improvements:

- a. HMA has been authorized to make decisions relating to the need for a safety recall in the United States market, independently and without approval from HMC, its parent company in Korea. To implement this authority, Hyundai has established in the United States a Technical Committee to review and decide upon potential safety recalls and service campaigns.
- b. The head of the U.S. Technical Committee, or his designee, shall have direct access to the board of directors and the Chief Executive Officer (“CEO”) of HMA.
- c. Hyundai agrees not to delay holding any meeting of the U.S. Technical Committee or to decide whether or not to recommend or conduct a safety recall because Hyundai has not identified the precise cause of a defect, a remedy for the defect, or prepared a plan for remedying the defect.
- d. HMA shall provide the U.S. Technical Committee with all the information it

needs to consider when making a decision of whether a safety related defect exists. This information includes, but is not limited to, the consequences of a potential safety related-defect and the number or rate of allegations, complaints, incidents and warranty claims.

- e. The head of the U.S. Technical Committee will serve as the ultimate point of contact and have ultimate responsibility to respond in a timely manner to any concerns raised by NHTSA.

17. Hyundai agrees to take the following actions for the purpose of identifying, reporting and communicating safety-related defects in a timely manner:

- a. Report Hyundai's own foreign safety campaigns and recalls in countries where there are substantially similar vehicles or which may have an effect on or presence in the U.S. market, including, but not limited to, those which effect or may be related to components fabricated by common component suppliers.
- b. Include in all communications to dealers that involve a vehicle service procedure or part number change, a statement in plain-English describing the purpose of the communication, and, if applicable, the symptoms the vehicle and/or driver may be experiencing, the root cause, if known, and the potential consequences if the condition is not remedied.
- c. Implement a process to integrate and analyze information received from various sources including, but not limited to, reports to the consumer complaint hotline(s), technical hotline(s) and warranty claim hotline(s) and develop it into a warning system to be used in identifying and evaluating safety related defects.
- d. Maintain accurate, current and regularly updated information for consumers regarding safety recalls on Hyundai's website. This information should be located in a place that is visible to consumers and easily found when searching the Internet and stated in plain-English. This information may also be communicated via social media outlets, e-mail notification(s) to consumers and print media.
- e. Work collaboratively with NHTSA to explore creative ways to increase recall response rates. This may include communicating with registered vehicle owners through new forms of media, including social media and e-mail and by other means, as appropriate.
- f. Encourage owners of all recalled vehicles whose native language is not English to obtain a remedy, including through the use of communications in languages other than English.

18. Hyundai shall meet with NHTSA on a monthly basis for one year following the execution of this Agreement and Consent Order to report, in a manner specified by NHTSA, on new TSBs or other dealer communications, Hyundai's decision-making associated with safety-related or high warranty claims or potentially safety-related field reports, and any other actual or potential safety-related defects. Hyundai will also discuss potential safety-related issues concerning vehicles already in the U.S. fleet that are under consideration by the U.S. Technical Committee. NHTSA, in its sole discretion and subject to Paragraph 22, may extend the period of time for monthly meetings beyond the term of this Consent Order, but not to exceed past August 2016.

19. Upon NHTSA's request and in the agency's sole discretion, officials from Hyundai who are responsible for engineering evaluations and global recall decisions will meet with NHTSA on a quarterly basis to ensure that Hyundai is meeting its recall obligations under the Safety Act.

20. Hyundai will meet with NHTSA no later than 120 calendar days after execution of this Consent Order to conduct simulations – i.e., an exercise to discuss hypothetical scenarios, for the purpose of assessing the effectiveness of the improvements specified herein – and to discuss and identify any further needed improvements. Hyundai agrees that the head of the U.S. Technical Committee will attend the meeting, along with any other officials Hyundai deems appropriate attendees. Hyundai will promptly respond to any feedback from NHTSA following this meeting. To the extent necessary, Hyundai agrees to conduct further simulations at NHTSA's request.

21. Hyundai agrees to use its best efforts to cooperate with NHTSA in carrying out the requirements of this Consent Order, including, but not limited to: (i) providing prompt notice

to NHTSA in the event any requirement of this Consent Order cannot be met or timely met, and (ii) ensuring employees involved with implementation of the performance requirements of this Consent Order are kept well informed about developments and are allocated sufficient time during their working hours to prepare reports and to prepare for meetings with NHTSA.

III. TERM OF CONSENT ORDER

22. Unless otherwise specified, the term of Hyundai's performance obligations under this Consent Order is one year, provided, however, that the commitments in Paragraphs 16 and 17 and shall survive the term of this Consent Order. Notwithstanding such survival, Hyundai retains the right to change its internal safety review and reporting structure provided that the Hyundai official(s) charged with this responsibility retain direct access to HMA's CEO and Board of Directors.

IV. AMENDMENT

23. This Consent Order cannot be modified, amended or waived except by an instrument in writing signed by all parties, and no provision may be modified, amended or waived other than by a writing setting forth such modification, amendment or waiver and signed by the party making the modification, amendment or waiver.

V. INTERPRETATION CONSISTENT WITH FEDERAL LAW

24. Nothing in this Consent Order shall be interpreted or construed in a manner inconsistent with, or contravening, any Federal law, rule, or regulation at the time of the execution of this Consent Order, or as amended thereafter.

VI. FULL AND AUTHORIZED SETTLEMENT

25. Upon receipt of the payment set forth in Paragraph 15 above, the Secretary of Transportation, by and through the Administrator of NHTSA, releases Hyundai, including its

current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns from liability for civil penalties pursuant to 49 U.S.C. § 30165 in connection with the untimeliness of Recall No. 13V-489.

26. NHTSA has reviewed Recall Nos. 14V-433, 14V-434 and 14V-435, and based upon the information submitted to NHTSA by Hyundai, has no basis to investigate the timeliness of those recalls. NHTSA hereby releases Hyundai from liability for civil penalties pursuant to 49 U.S.C. § 30165 in connection with Recall Nos. 14V-433, 14V-434 and 14V-435, based upon information presently known to NHTSA. NHTSA may investigate and pursue any allegations of untimeliness related to such recalls that is based upon information made known to NHTSA subsequent to the date of this Consent Order, that NHTSA determines is material to the question of timeliness.

27. The parties shall each bear their own respective attorneys' fees, costs, and expenses.

28. This Consent Order shall be effective following the execution of this Consent Order. Any breach of the obligations under this Consent Order shall be immediately enforceable in any United States District Court. Hyundai agrees that it will not raise any objection as to venue.

29. This Consent Order constitutes the entire agreement regarding the resolution of the subject matter therein, and supersedes any and all prior or contemporaneous written or oral agreements or representations.

30. This Consent Order does not release Hyundai from civil or criminal liabilities, if any, that may be asserted by the United States, the Department of Transportation, NHTSA, or any other governmental entity, other than its civil penalty liability under 49 U.S.C. § 30165 as

described in Paragraphs 14-15, above.

31. The parties who are the signatories to this Consent Order have the legal authority to enter into this Consent Order, and each party has authorized its undersigned to execute this Consent Order on its behalf.

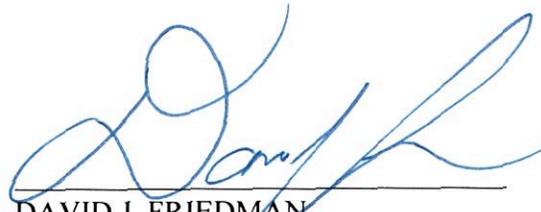
32. This Consent Order shall be binding upon, and inure to the benefit of, Hyundai and its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns.

33. This Consent Order shall not be construed to create rights in, or grant any cause of action to, any third party or person not party to this Consent Order.

[SIGNATURES TO FOLLOW]

APPROVED AND SO ORDERED:

Dated: August 7, 2014



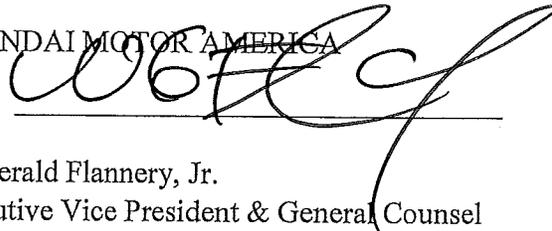
DAVID J. FRIEDMAN
Acting Administrator
National Highway Traffic Safety Administration

AGREED:

Dated: August 7, 2014

HYUNDAI MOTOR AMERICA

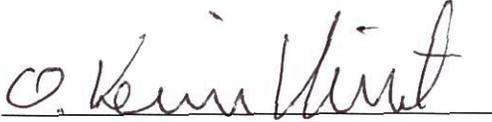
By: _____


W. Gerald Flannery, Jr.
Executive Vice President & General Counsel
Hyundai Motor America

AGREED:

NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION

Dated: August 7, 2014

By: 

O. Kevin Vincent
Chief Counsel

Dated: August 7, 2014

By: 

Otto G. Matheke, III
Acting Assistant Chief Counsel
for Litigation & Enforcement

Dated: August 7, 2014

By: 

Christie L. Iannetta
Senior Trial Attorney