

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

1200 New Jersey Avenue SE
West Building, W41-326
Washington, D.C. 20590

In re: _____)
)
BMW of North America, LLC)
AQ15-004)
_____)

CONSENT ORDER

This Consent Order is issued pursuant to the authority of the National Highway Traffic Safety Administration (“NHTSA”), an operating administration of the U.S. Department of Transportation, to resolve issues of liability raised in the above-captioned investigation, to mitigate and control risks of harm, and to promote public safety. This Consent Order sets forth the penalties, requirements, and performance obligations agreed to by BMW of North America, LLC, (“BMW NA”) in connection with BMW NA’s violations of the National Traffic and Motor Vehicle Safety Act of 1966 as amended and recodified (the “Safety Act”), 49 U.S.C. § 30101, *et seq.*, and applicable regulations thereunder, as detailed herein.

I. NATURE OF THE ACTION

1. The Safety Act provides for regulation of motor vehicles and motor vehicle equipment by the Secretary of Transportation. 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).

2. The Safety Act and applicable regulations impose certain obligations on manufacturers of motor vehicles and motor vehicle equipment to provide timely notice to NHTSA in particular circumstances where the manufacturer has determined in good faith that its

motor vehicles or items of equipment contain a defect related to motor vehicle safety or do not comply with an applicable Federal Motor Vehicle Safety Standard (“FMVSS”). *See* 49 U.S.C. § 30118(c); 49 C.F.R. § 573.6(a). Such notice, in the form of a Defect and Noncompliance Information Report (“Part 573 Report”), is required not more than five working days after the manufacturer knew or should have known of a defect in a motor vehicle or motor vehicle equipment that poses an unreasonable risk to safety, or knew or should have known of a noncompliance with an applicable FMVSS in its motor vehicles or equipment. *See* 49 C.F.R. § 573.6(b). *See also United States v. General Motors Corp.*, 656 F. Supp. 1555, 1559 n.5 (D.D.C. 1987); *United States v. General Motors Corp.*, 574 F. Supp. 1047, 1049-50 (D.D.C. 1983).

3. The Part 573 Report is required to contain the estimated date(s) on which the manufacturer will begin sending notifications to owners, dealers, and distributors. 49 C.F.R. § 573.6(c)(8)(ii). If a manufacturer subsequently becomes aware that the beginning or completion dates reported to the agency for its notifications to owners or dealers will be delayed by more than two weeks, it must promptly advise the agency of the delay, the reasons for the delay, and provide a revised estimate. *Id.*

4. The Safety Act and applicable regulations impose certain obligations on manufacturers to notify owners, purchasers, and dealers when the manufacturer determines that its motor vehicles or items of equipment contain a defect related to motor vehicle safety or do not comply with an applicable FMVSS. 49 U.S.C. §§ 30118-30119. The notification to owners must be sent no later than 60 days from the date the manufacturer files its Part 573 Report with NHTSA. 49 U.S.C. § 30118(c); 49 C.F.R. § 577.7(a)(1). A manufacturer must submit a copy of

its proposed owner notification to NHTSA's Recall Management Division no fewer than five Federal Government business days before it intends to begin mailing it to owners. 49 C.F.R. § 577.5(a). Manufacturers are required to submit representative copies of their notices to owners, purchasers, and dealers, along with any bulletins or other communications related to the recall, to NHTSA. 49 U.S.C. § 30166(f); 49 C.F.R. §§ 573.6(c)(10), 577.5(a), 577.7(c)(1).

5. The Safety Act and applicable regulations impose certain obligations on a manufacturer conducting a recall to remedy a defect or noncompliance to submit a report to NHTSA containing information about the manufacturer's progress in completing the recall "for each of six consecutive quarters beginning with the quarter in which the campaign was initiated ... or [until] corrective action has been completed on all defective or noncomplying vehicles." 49 C.F.R. § 573.7.

6. A person who violates the requirements of the Safety Act, or a regulation thereunder, is currently liable to the United States Government for a civil penalty of not more than \$7,000 for each violation, subject to a limit of \$35,000,000 for a related series of violations. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a). A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform a required act. *Id.*

7. BMW NA is a manufacturer of motor vehicles within the meaning of the Safety Act, *see* 49 U.S.C. § 30102(a)(5), and a person within the meaning of 49 U.S.C. § 30165.

8. On July 15, 2015, BMW NA submitted a Part 573 Report for the MY 2014-15 Mini Hardtop 2 Door Cooper and Cooper S, and the MY 2015 Mini Hardtop 2 Door John Cooper Works regarding a noncompliance with FMVSS 214. This recall was assigned NHTSA Recall No. 15V-450.

9. On September 24, 2015, NHTSA opened Audit Query (“AQ”) 15-004 to investigate the potential untimeliness of BMW’s Part 573 Report for NHTSA Recall No. 15V-450, as well as other potential violations of the Safety Act and regulations thereunder.

II. LEGAL AUTHORITY

10. NHTSA issues this Consent Order pursuant to its authority under the Safety Act, 49 U.S.C. § 30101, *et seq.*, as delegated by the Secretary of Transportation, 49 C.F.R. §§ 1.95, 501.2(a)(1), including, among other things, its authority to compromise the amount of civil penalties, 49 U.S.C. § 30165(b), to ensure that defective and noncompliant vehicles and equipment are recalled, 49 U.S.C. §§ 30118-30119, and to require any person to file reports or answers to specific questions, 49 U.S.C. § 30166(g). In consideration of BMW NA’s entry into this Consent Order and its commitments outlined below, it is AGREED by BMW NA and ORDERED by NHTSA as follows:

III. TERMS AND CONDITIONS OF CONSENT ORDER

Safety Act Admissions

11. BMW NA admits that it violated the Safety Act by failing to submit the required Part 573 Report to NHTSA for the noncompliance that is the subject of NHTSA Recall No. 15V-450 within five working days after it knew or should have known that a noncompliance existed in its motor vehicles, as required by 49 U.S.C. § 30118(c)(2) and 49 C.F.R. § 573.6(b).

12. BMW NA admits that it violated the Safety Act by failing to timely file certain quarterly reports, as required by 49 C.F.R. § 573.7.

13. BMW NA further admits that it violated the Safety Act by failing to timely notify vehicle owners of the existence of a defect or noncompliance; by failing to promptly advise the Agency of delays with beginning or completion dates for mailing its notifications to owners or

dealers, along with the reasons for the delay and a revised estimate for the notification mailing dates; and for failing to timely submit copies to NHTSA of communications relating to recalls, as required by 49 U.S.C. §§ 30118(c), 30119(c)(2), and 49 C.F.R. §§ 573.6(c)(8)(ii), 573.6(c)(10), 577.5, 577.7(a)(1).

Civil Penalty

14. Subject to the terms in the remainder of this Paragraph 14, BMW NA shall pay a civil penalty in the sum of forty million dollars (\$40,000,000) (“Total Civil Penalty”), in connection with the matters addressed in this Consent Order as follows:

a. The sum of ten million dollars (\$10,000,000) shall be paid as the Non-Deferred Amount in one lump-sum payment by electronic funds transfer to the U.S. Treasury in accordance with instructions provided by NHTSA, no later than sixty (60) calendar days following execution of this Consent Order.

b. The sum of ten million dollars (\$10,000,000) shall be expended by BMW NA as a Performance Obligation over the term of this Consent Order to fulfill the obligations identified in Paragraphs 21.b and 21.d, below.

c. The sum of twenty million dollars (\$20,000,000) shall be in the form of a Deferred Amount and held in abeyance pending BMW NA’s satisfactory completion, as reasonably determined by NHTSA, of the obligations described below in Paragraphs 18-28. NHTSA, at its sole discretion, will determine whether any civil penalty liability associated with any violation of the Safety Act or regulations thereunder occurring after the date of execution this Consent Order will result in the Deferred Amount becoming due and owing in accordance with the terms of this Consent Order, or will also result in civil penalties exclusive of the Deferred Amount.

i. Should NHTSA determine that BMW NA has violated the Safety Act, regulations thereunder, or the terms of this Consent Order, a lump-sum payment of five million dollars (\$5,000,000) from the Deferred Amount will become due and owing to the U.S. Treasury within ten (10) calendar days, in accordance with the instructions provided by NHTSA.

ii. Should NHTSA make a second determination that BMW NA has violated the Safety Act, regulations thereunder, or the terms of this Consent Order, an additional lump-sum payment of five million dollars (\$5,000,000) from the Deferred Amount will become due and owing to the U.S. Treasury within ten (10) calendar days, in accordance with the instructions provided by NHTSA.

iii. Should NHTSA make a third determination that BMW NA has violated the Safety Act, regulations thereunder, or the terms of this Consent Order, the remaining ten million dollars (\$10,000,000) of the Deferred Amount will become due and owing to the U.S. Treasury within ten (10) calendar days, in accordance with the instructions provided by NHTSA.

15. BMW NA admits that it owes a debt in the amount of forty million dollars (\$40,000,000), as provided for in Paragraph 14, arising from activities under the jurisdiction of the U.S. Department of Transportation, due and owing to the United States under the Federal Claims Collection Act of 1966, as amended and codified at 31 U.S.C. § 3701, *et seq.* (hereinafter the "Claims Collection Act").

16. If BMW NA fails to make the payment of the Non-Deferred Amount set forth in Paragraph 14(a) above, or any payments of the Deferred Amount as may be imposed in accordance with Paragraph 14(c)(i)-(iii), on or before their respective due dates, BMW NA shall be in default of this Consent Order and any unpaid amount of the Total Civil Penalty shall become immediately due and owing. In that event: (i) BMW NA agrees not to contest any

collection action undertaken by NHTSA or the United States pursuant to the Claims Collection Act and the U.S. Department of Transportation's regulations, 49 C.F.R. § 89, either administratively or in any court, and (ii) BMW NA affirmatively waives any and all defenses or rights that would otherwise be available to it in any such proceeding. In addition, in such a proceeding, BMW NA shall pay the United States all reasonable costs of collection and enforcement, including attorneys' fees and expenses.

17. In determining the appropriate amount of civil penalties, the agency has taken into consideration the purpose and objectives of the Safety Act (including the relevant civil penalty factors set forth in 49 U.S.C. § 30165(c)), as well as the actions and commitments of BMW NA.

BMW Performance Obligations

18. This Consent Order requires BMW NA to execute certain performance obligations, the objectives of which are to mitigate the risks of harm and promote safety by, among other things, making safety-related defect and noncompliance determinations and reporting such determinations to NHTSA in a timely manner, notifying dealers and owners of safety-related defects and noncompliances, and improving BMW NA's processes and procedures for complying with reporting requirements. The performance obligations will be satisfied through the activities described in this Consent Order.

19. No later than sixty (60) calendar days after execution of this Consent Order, BMW NA shall retain, at its sole cost and expense, an independent safety consultant (the "Consultant") with expertise in motor vehicle safety and the requirements of the Safety Act. The Consultant shall not be anyone or any firm representing BMW NA in a legal capacity with respect to matters encompassed by this Consent Order.

20. BMW NA shall submit the name of the Consultant whom it proposes to retain to NHTSA for approval within thirty (30) calendar days of the execution of this Consent Order. Such approval shall be withheld by NHTSA only if good cause exists to deny approval. For good cause shown, NHTSA may extend for an additional fifteen (15) calendar days the period to submit the name of the Consultant whom BMW NA proposes to retain to NHTSA for approval. Such extension shall not be unreasonably withheld and, if granted, does not alter any other due dates contained in this Consent Order. Failure to retain the Consultant shall not relieve BMW NA of any obligation under this Consent Order. Upon NHTSA's approval and within five (5) calendar days of its retaining the Consultant, BMW NA shall report to NHTSA in writing the identity of the Consultant and the date upon which the Consultant was officially retained. The Consultant may be terminated upon mutual agreement of NHTSA and BMW NA. In the event of the termination of the Consultant, BMW NA shall provide the name of an alternate Consultant whom it proposes to retain to NHTSA for approval within fifteen (15) calendar days after the original Consultant's termination. The scope of responsibilities of the Consultant are: (a) to assist BMW NA in developing the Best Practices specified in paragraph 21.a., (b) to evaluate the issues listed in the monthly reports specified in paragraph 21.c., and (c) to confirm the expenditure of the funds identified in Paragraph 14.b. above. In carrying out the responsibilities herein, the Consultant may interview BMW NA personnel and personnel of its parent. In general, the jurisdiction of the Consultant is to review processes and procedures with respect to vehicles offered for sale and distributed by BMW NA in the United States.

21. The Consultant shall advise and assist BMW NA in carrying out the obligations described below:

a. *Best Practices.* To improve safety culture, BMW NA shall develop process improvements and written procedures for complying with the Safety Act, including improving BMW NA and its parent's recall decision-making, execution, and communication (collectively, "Best Practices"). As part of the development of the Best Practices, BMW shall work with the Consultant to determine (a) whether process changes are necessary in order to allow BMW NA to have a voting representative on its parent company's recall decision making committee with respect to vehicles that are offered for sale and distributed by BMW NA in the United States, (b) whether BMW NA should designate a dedicated Safety Compliance Officer to ensure compliance by BMW NA and its employees and its affiliates with the Best Practices, the Safety Act, and regulations thereunder; (c) whether additional processes and procedures for complying with BMW NA's Safety Act obligations are appropriate; and (d) whether additional processes and procedures for complying with BMW NA's reporting obligations under 49 C.F.R. Part 579 are appropriate. No later than one hundred and eighty (180) calendar days after the execution of this Consent Order, BMW NA will submit a report to NHTSA summarizing the Best Practices, along with an estimated timeline for their implementation. If NHTSA reasonably determines that any changes to the Best Practices are warranted, and notifies BMW NA within twenty-one (21) calendar days of receipt, BMW NA shall revise the Best Practices Summary to address NHTSA's feedback; provided, however, that BMW NA will have an opportunity to respond to NHTSA's comments. BMW NA shall provide a revised copy of the Best Practices Summary to NHTSA no later than thirty (30) calendar days after receiving any such feedback from NHTSA. BMW NA agrees that the Best Practices Summary shall be publicly available. BMW NA shall not claim any portion of the Best Practices Summary is (i) subject to attorney-client privilege or

attorney work product, or (ii) confidential business information, not subject to public disclosure by NHTSA.

b. *Deter Dealer Sales of Unremedied Vehicles.* BMW NA shall develop and implement a program to train dealers on the importance of complying with the prohibition on selling unremedied recalled vehicles, and a program to use information technology to improve dealers' access to information necessary to maximize completion of open recalls on vehicles in the dealers' inventories (collectively, the "Deterrence Plan"). No later than one hundred and eighty (180) calendar days after the execution of this Consent Order, BMW NA will submit a written report detailing the Deterrence Plan, along with an estimated timeline for its implementation and cost. If NHTSA reasonably determines that any changes to the Deterrence Plan are warranted, and notifies BMW NA within twenty-one (21) calendar days of receipt, BMW NA shall revise its Deterrence Plan to address NHTSA's changes, provided, however, that BMW NA will have an opportunity to respond to NHTSA's changes. BMW NA shall provide a revised copy of its Deterrence Plan to NHTSA no later than thirty (30) calendar days after receiving any such changes from NHTSA. BMW NA agrees that a summary of this report shall be publicly available. BMW NA shall not claim any portion of the summary report is (i) subject to attorney-client privilege or attorney work product, or (ii) confidential business information, not subject to public disclosure by NHTSA.

c. *Evaluation of BMW Safety-Related issues.* The Consultant shall be entitled to review every issue concerning vehicles that have been or are intended to be sold to US retail customers that is under consideration by BMW NA and its parent, as a possible safety-related defect or noncompliance with an FMVSS ("safety-related issues"). BMW NA shall submit to NHTSA on a monthly basis a written report containing the following information on

the safety-related issues under consideration: make, model, model year, description of issue, root cause if known, current status, BMW's timing of next steps, and the Consultant's independent evaluation of BMW's actions. The first monthly report is due no later than one hundred and twenty (120) calendar days after the execution of this Consent Order, and monthly thereafter during the first twelve (12) months of this Consent Order. NHTSA may require, by providing written notice to BMW NA, that BMW NA provide the monthly report information in an alternate form than that required above. For good cause shown, NHTSA may, by providing written notice to BMW NA, continue the monthly report filing requirement after the initial twelve (12) months of the effective date of this Consent Order for an additional period not to exceed the term of the Consent Order.

d. BMW NA will invest in an information technology pilot to determine whether BMW NA can use data analytics capabilities to detect emerging safety-related defect trends on its vehicles ("Data Analytics Pilot"). BMW NA shall meet with NHTSA no later than sixty (60) calendar days after the execution of this Consent Order to discuss the design of the Data Analytics Pilot. No later than one hundred and eighty (180) calendar days after the execution of this Consent Order and prior to any execution by BMW NA of the Data Analytics Pilot, BMW NA will submit to NHTSA a written proposal for a Data Analytics Pilot, along with an estimated timeline for its implementation and cost. If NHTSA reasonably determines that any changes to BMW NA's proposed Data Analytics Pilot proposal are warranted, and notifies BMW NA within twenty-one (21) calendar days of receipt, BMW NA shall revise its proposed Data Analytics Pilot to incorporate NHTSA's changes provided, however, that BMW NA will have an opportunity to respond to NHTSA's changes. BMW NA shall provide a revised Data Analytics Pilot to NHTSA no later than thirty (30) calendar days after receiving any such

changes from NHTSA. BMW NA will notify NHTSA in writing when it has commenced the Data Analytics Pilot. No later than three hundred and ninety (390) calendar days after execution of this Consent Order, BMW NA will provide NHTSA with a report of the results of the Data Analytics Pilot, including a summary best practices report of the learning about safety trend data analytics. BMW NA shall not claim any portion of the summary best practice report is (i) subject to attorney-client privilege or attorney work product, or (ii) confidential business information, not subject to public disclosure by NHTSA.

22. To substantiate completion and satisfaction of the Performance Obligation amount identified in Paragraph 14(b), above BMW NA shall provide the Consultant on a bi-annual basis, documentation with sufficient detail to enable the Consultant to prepare a declaration to NHTSA, confirming the amount that BMW NA actually expended during the prior one hundred and eighty (180) calendar days in furtherance of its obligations to implement the Deterrence Plan and Data Analytics Pilot. No later than thirty (30) calendar days after the expiration of the term of this Consent Order the Consultant shall report to NHTSA whether BMW NA has expended the full amount of the Performance Obligation amount identified in Paragraph 14(b). In the event that BMW NA has not expended the full amount of the Performance Obligation then the value for the unachieved portion of the Performance Obligation, as determined in good faith by the parties, shall become immediately due and owing to the U.S. Treasury.

23. BMW NA shall implement the Best Practices and Deterrence Plan and Data Analytics Pilot. No later than three hundred and ninety (390) calendar days after execution of this Consent Order, BMW NA shall submit a written report to NHTSA detailing the efforts to implement the Best Practices, the Deterrence Plan, Data Analytics Pilot and any other

recommendations of the Consultant. After this report is submitted, the Consultant's remaining duties relate solely to confirming the expenditure of the funds identified in Paragraph 14(b), above, if necessary.

24. BMW NA shall develop and implement a plan to use its best efforts to include in any protective order, settlement agreement, or equivalent, for safety-related litigation in the U.S., a provision that explicitly allows BMW NA to provide information and documents to NHTSA.

25. BMW NA shall ensure that any committee or individual responsible for decision-making on safety recalls is informed of safety-related defect concerns or potential noncompliance with FMVSS in a reasonably expeditious manner, including by ensuring that BMW NA's corporate structure enables its safety officers to promptly bring these issues to the attention of those with authority to make safety recall decisions.

26. BMW or its parent shall ensure that it does not delay holding any meeting to decide whether or not to recommend or conduct a recall because BMW has not identified the precise cause of a safety-related defect or noncompliance, a remedy for a safety-related defect or noncompliance, or prepared a plan for implementing a remedy for a safety-related defect or noncompliance.

Cooperation with NHTSA

27. On a recurring quarterly basis during the term of this Consent Order, BMW NA shall meet with NHTSA to discuss the actions BMW NA has taken to satisfy the terms of this Consent Order. The first meeting shall take place no later than one hundred and twenty (120) calendar days after the execution of the Consent Order, and subsequent meetings shall occur at least every ninety (90) calendar days thereafter. BMW NA will provide updates on BMW NA's progress to implement the Data Analytics Pilot at these meetings.

28. BMW NA shall comply with its obligations under the Safety Act, and regulations thereunder, to take all actions necessary to comply with this Consent Order and to cooperate with NHTSA in carrying out the requirements of this Consent Order. BMW NA's reasonable best efforts shall include, but shall not be 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 that employees involved with implementation of the performance requirements of this Consent Order are kept well-informed and are allocated sufficient time during their working hours to enable them to thoroughly and effectively perform actions to carry out or implement the performance requirements of this Consent Order.

IV. TERM OF CONSENT ORDER

29. Unless otherwise specified, the term of this Consent Order and BMW NA's performance obligations is two years from the date of execution; provided, however, that NHTSA may, at its sole option, extend the term of this Consent Order for one year if NHTSA reasonably decides that BMW NA should not be released from this Consent Order for failure to comply with one or more terms of the Consent Order, or for other good cause.

V. AMENDMENT

30. This Consent Order cannot be modified, amended or waived except by an instrument in writing signed by all parties.

VI. MISCELLANEOUS

31. **Notice.** BMW NA shall provide written notice of each required submission under this Consent Order by electronic mail to the Director of NHTSA's Office of Vehicle Safety Compliance (currently Jeffrey Giuseppe at Jeffrey.Giuseppe@dot.gov) and the Director of NHTSA's Office of Defects Investigation (currently Otto Matheke at Otto.Matheke@dot.gov),

and with copies to NHTSA's Associate Administrator for Enforcement (currently Frank Borris, Frank.Borris@dot.gov) and NHTSA's Assistant Chief Counsel for Litigation and Enforcement (currently Timothy H. Goodman, Tim.Goodman@dot.gov). For any matter requiring notice by NHTSA to BMW NA under this Consent Order, such notice shall be by mail to the Manager of Safety Engineering and ITS and the Office of the General Counsel, 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07677. The parties shall provide notice if the individuals currently holding these positions or their addresses change.

32. **Application of Federal Law.** 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.

33. **Release.**

a. Upon the expiration of the term of this Consent Order, the Secretary of Transportation, by and through the Administrator of NHTSA, will be deemed to have released BMW NA, including its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns from liability for any additional civil penalties pursuant to 49 U.S.C. § 30165 in connection with BMW's conduct and violation of its Safety Act obligations as identified in this Consent Order, from the inception of the Safety Act through the execution date of this Consent Order.

b. This Consent Order does not release BMW NA 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 as described in this Consent Order.

c. None of the specific reporting obligations described in this Consent Order relieves BMW NA of its obligation to submit any other reports required by the Safety Act or its corresponding regulations.

34. **Breach.** In the event of BMW NA's breach of, or failure to perform, any term of this Consent Order, NHTSA reserves the right to pursue any and all appropriate remedies, including, but not limited to, actions compelling specific performance of the terms of this Consent Order, assessing interest for untimely settlement payments, and/or commencing litigation to enforce this Consent Order in any United States District Court. BMW NA agrees that, in any such enforcement action, it will not raise any objection as to venue.

35. **Attorneys' Fees.** The parties shall each bear their own respective attorneys' fees, costs, and expenses, except as provided in Paragraph 16 above.

36. **Authority.** 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.

37. **Tax Deduction/Credit.** BMW NA agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, local, or foreign tax for any fine or civil penalty paid pursuant to this Consent Order.

38. **Corporate Change.** This Consent Order shall be binding upon, and inure to the benefit of, BMW NA and its current and former directors, officers, employees, agents, parent, subsidiaries, affiliates, successors, and assigns. BMW NA agrees to waive any and all defenses that may exist or arise in connection with any person or entity succeeding to its interests or obligations herein, including as a result of any changes to the corporate structure or relationships among or between BMW NA and any of its parents, subsidiaries, or affiliates.

39. **Severability.** Should any condition or other provision contained herein be held invalid, void or illegal by any court of competent jurisdiction, it shall be deemed severable from the remainder of this Consent Order and shall in no way affect, impair or invalidate any other provision of this Consent Order.

40. **Third Parties.** This Consent Order shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Order.

41. **Counterparts.** This Consent Order may be executed in counterparts, each of which shall be considered effective as an original signature.

42. **Effective Date.** This Consent Order shall be effective upon its full execution.

43. **Integration.** This Consent Order is a fully integrated agreement and shall in all respects be interpreted, enforced and governed under the federal law of the United States. This Consent Order sets forth the entire agreement between the parties with regard to the subject matter hereof. There are no promises, agreements, or conditions, express or implied, other than those set forth in this Consent Order and the attachments thereto.

[SIGNATURES ON NEXT PAGE]

APPROVED AND SO ORDERED:

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

Dated: December 17, 2015

By: // ORIGINAL SIGNED BY //

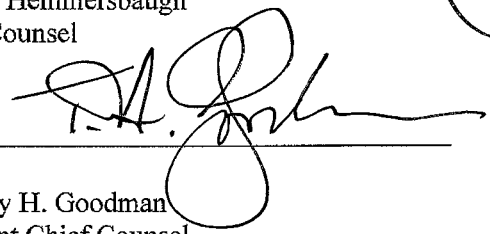
Mark R. Rosekind, Ph.D.
Administrator

Dated: December 17, 2015

By: 


Paul A. Hemmersbaugh
Chief Counsel

Dated: December 17, 2015

By: 

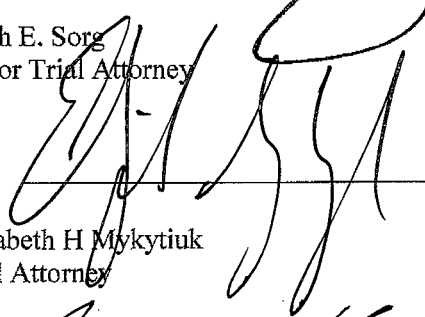
Timothy H. Goodman
Assistant Chief Counsel
for Litigation and Enforcement

Dated: December 17, 2015

By: 

Sarah E. Sorg
Senior Trial Attorney

Dated: December 17, 2015

By: 

Elizabeth H. Mykytiuk
Trial Attorney

Dated: December 17, 2015

By: 

Thomas P. Healy
Trial Attorney

AGREED:

BMW of North America, LLC

Dated: December 17, 2015

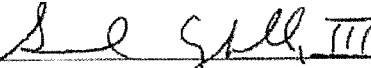
By:



Christoph Huss
Vice President for Safety and Engineering

Dated: December 17, 2015

By:



Samuel Campbell
Manager for Safety Engineering and ITS

Dated: December 17, 2015

By:



Erika Z. Jones
Mayer Brown, LLP
Counsel for BMW North America, LLC