

CL-10215006-9810

[REDACTED]

Mailing Address:

[REDACTED]

Baltimore, MD

Ph.

[REDACTED]

e-mail:

[REDACTED]

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December 19, 2007

ATTENTION: LEGAL
Nissan North America, Inc.
P.O. Box 685003
Franklin, TN 37064-5003

RE: Recall(s)

Campaign No.'(s) 01V357000 and/or R3022 03V-345 and/or 455;
Pertinent Applied VINS: 3N1*B*11L 004135 - 525647;**
Nissan Sentra VIN: 3N1CB51D61L [REDACTED]
Owner: [REDACTED] Title issued 10/19/04 - Maryland

To Those It May Concern:

This letter is an effort to initiate settlement between my client, [REDACTED], (owner/claimant) and Nissan North America, Inc., its agents, franchisees, dealers, subsidiaries, by example and not by limitation, of all claims and causes relative to the topics and concerns noted herein. To be sure, she is seeking reimbursement for recent auto expenses, incurred, as you will see, inasmuch as she was denied recall repair remedies. However, her claim is not limited to these expenses alone.

ISSUE

These repairs were the result of the very problems that brought about the recalls, though to this day Nissan, its employees, dealers and its agents contend that the vehicle is not subject to the recall or owner's reimbursement remedies. Curiously, no one will tell us why. However, those entities and individuals associated with the recall through Nissan North America, Inc. ("Nissan") are adamant that the vehicle is not subject to recall.

Notwithstanding, Nissan's Technical Bulletin of December 19, 2003, NTB03-124, which is provided to and for dealer principals, and the sales, parts and service managers, identifies the vehicle, by VIN, as subject to the recall. I have a copy of the NTB.

My client, [REDACTED], is the second owner of the vehicle, purchasing it, approximately, early October of 2004 from Melvin and Shirley Sandler of 7 Slade Avenue, Apt. 417, Baltimore, MD 21208. It was then re-titled into my client's name on October 19, 2004 in the State of Maryland. She has never received any information on

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the recall(s), most especially no notice to owner. The prior owners did have a crankcase sensor replaced on February 5, 2004, nothing more.

However, according to Nissan's Recall 03V455000 Customer Notice generated on or about January 12-13, 2004, Nissan states that the crank, cam and possibly the variable timing control sensor were to be replaced. In fact, the Net Broadcast Message of October 30, 2003 even tells Nissan's dealer principals, and sales, parts and service managers to order crank and cam sensors for recall purposes whether the diagnosis is crank or cam, as an interim measure, until such time, which the NTB (referenced above) mentions, as the special engine 'family' kits (part no. 23731-4M528) are supplied.¹ The point being two-fold for purposes of this letter, 1) that a crankcase sensor problem diagnosis would in fact be subject to recall, and 2) the cam sensor must be repaired simultaneously, as well (and vice versa).

Furthermore, the Updated "Nissan Net Broadcast Message", which was generated on or about February 12, 2004, makes clear that until the kits referred to within the NTB03-124 are available for use as a defect repair, the crank sensor, if replaced prior to the 23731-4M528 kit availability, will have to be replaced again, when the kits are available, "... using the procedures specified in the Engine Sensor Recall Campaign Bulletin (NTB03-124)." On page 3 of the NTB there are instructions for the entire procedure (crank and cam) as well as Figure "A", which is a diagram of the concept.

Were the vehicle, the one at issue within this letter, not subject to recall, then why is it listed in the NTB by VIN as applicable to the recall, and why did a dealer perform the crankcase sensor replacement on February 5, 2004? More for the inquisitive mind, had the kit been available to the dealer doing that work² at that time, would not the required replacement of the cam sensor have taken place also? My point is that when my client paid out-of-pocket for the two sensors to be installed (later, between December 5 and 7, 2007, each sensor was, according to the NTB procedure, required to be replaced. It was a justified repair.

HISTORY

The current owner (my client) began experiencing stalls while driving and stopping. Though she was unaware of the recall, she took the car to the mechanic she uses routinely (Royal Auto Service –see below) on or about October 4 of 2007 (see invoice identified in footnote "1" and attached hereto). Again on December 5th, 2007 she returned the vehicle to the shop's owner because of the continuing and worsening stalling. In a test drive, the vehicle displayed the symptoms of the defects – stalling while running.

After the test drive, Calvin of Royal Auto Service remembered a recall on this

¹ These include a new crankcase sensor to replace the previous one which was in the earlier recall kit (part number 23731-4M525) and used in Nissan's prior recall no. P1159). The new and proper "kit" for the vehicle at issue would be for the engine family QG18DE.

² Len Stoller, Inc. Nissan, 11275 Reisterstown Road, Owings Mills, MD 21117, (410) 356-7000.

model having to do with stalling. He then contacted a Nissan/Chevrolet dealer for any recall information from Nissan, which may have authorized repair remedies to dealers. The dealer contacted is Bob Bell Chevrolet-Nissan, 7900 Eastern Avenue, Baltimore, Maryland, (410) 282-9111.

The dealer's service representative reported that no recall existed for the crank and cam sensors for the vehicle. The representative, without asking to view the vehicle, relied on the data on his computer screen and refused therefore the choice of seeing the vehicle before providing inaccurate information. In this case, the inaccuracy placed a 73 year old owner directly in harm's way. This is because of the nature of the defects and the fact that the vehicle had not been given the NTB03-124 treatment (as it is the dealer's responsibility to monitor and/or inform itself about whether on of the identified vehicles have been properly and completely repaired – *see*, "Dealer Responsibility", Recall Campaign Bulletin, NTB03-124, December 19, 2003). The telephone call to the dealer was sufficient to place a responsibility on the dealer to ask to see the vehicle. This responsibility is created in part when the owner's mechanic (Calvin) called with a diagnosis of the crank/cam sensor problem, and the vehicle VIN is contained within the referenced NTB which is created for the dealership.

After the dealer denied/refused acknowledgement of and therefore did not offer to correct the problem, the non-dealer was concerned for the safety of the owner based on his knowledge of the danger such potential defects can cause. Therefore, the non-dealer offered to do the work and told the owner to delay payment, until there was proof of recall or until it was certain the repair he performed corrected the problem. The problem was diagnosed, repair was completed, and the owner retrieved the vehicle all on December 5th. The repairs (crankshaft and cam sensor replacement) have corrected the problems she was experiencing with the vehicle.

I learned of the matter that same afternoon when approached by Ms. Wade to look into a possible recall on the vehicle. I found the recall proof that same day (and actually much more information) within 15 minutes, especially the applicability of the VIN. If I could do this all without a dealer network, a Nissan dealer parts and service manager, or a NHTSA compliance officer in the time mentioned, what is the problem at the dealership (and as you will see, your Consumer Affairs Office's inability to verify needed repairs)? The owner then paid the labor on the replacement of the sensors given my findings and the improved vehicle performance.

I had not yet been brought into this matter at the time that they contacted this dealer. However, fair comment allows me to mention that my own dealings with Bob Bell's dealerships concerning recalls resulted in a nearly identical situation with a Chevy recall (high safety concerns). However, I was actually at the dealership with the car, and still they chose to believe the database, and refused to look at the car. (So there is no argument that the dealer had no obligation to do due diligence simply because my client's vehicle was not on the Nissan dealer's lot at the time the dealer was telephoned for recall information). All the same, I pursued the matter with Bob Bell's own consumer affairs officer (in my own personal matter). Needless to say that the dealership ate crow, their words, and my contempt while they were forced to 'look' at the vehicle, admit their

mistake, and repair the defect.

The entire Nissan organization involved in the recall, also are exposing themselves to liability by denying answers to me and my client, failing to look at the vehicle, failing to do the work, failure of the those at consumer affairs to provide any information (when all the notices give the number as a refuge of resolution of problems), most noticeably the "specialist's" utter refusal to give names of persons, phone numbers, or answer questions concerning those with whom she claims I am to correspond. Also her refusal to provide her own name, her phone, address, (especially after Consumer Affairs will not speak with me because they say that she is the very one with whom I must speak) leads one to believe that a deception is in the works. Therefore Nissan will understand that the costs of hiring an attorney in this matter must also be reimbursed as the costs are the created consequence of Nissan's acts.

Nissan North America has gone far beyond the recklessness of the Bell dealerships. For proof, just read on.

NISSAN'S DENIALS

On the morning of December 6, 2007, I phoned your National Consumer Affairs Office, Nissan North America, Inc. ("Nissan") Gardena, California (800) 647-7261 on behalf of a client, [REDACTED]. Following the procedure as outlined in your notifications to owners, I was hoping to resolve (simply) a mistake made by a Nissan dealership (Bob Bell Chevrolet-Nissan) at 7900 Eastern Avenue, Baltimore, Maryland, (410) 282-9111.

A representative named Amanda (extension 51615) took my call. [REDACTED] the owner of the vehicle at issue, was with me at the time. She spoke with Amanda, and Amanda and I then briefly discussed the subject; however, she explained that based upon the VIN, the vehicle was not shown to be eligible for repair. I explained that I was looking at Nissan's Technical Bulletin of December 19, 2003, NTB03-124, wherein it identified the vehicle as applicable to the recall. I was unable to obtain from her any reason for her position (that the car was not eligible for sensor replacements or reimbursements therefor). She explained that she would have to assign it to another individual, whom she referred to as a "specialist." She asked me what it was we sought from Nissan. I answered that at a minimum, we were seeking reimbursement for the monies spent relating to the problems experienced as a result of the non-complying parts identified in the recalls.³ Amanda provided me with a confirmation number of 5961768 and concluded by telling me the specialist would call me within 24 hours.

DENIAL AND FAILURE TO ASSIST

I was not contacted within the 24 hour period. Therefore I again phoned your consumer affairs unit on December 7 at 4:30 pm and spoke with Mr. Edsel Cabrera,

³ There are enclosed 3 invoices from Royal Auto Service indicating the reason the vehicle was in for repair and/or diagnosis, attached payment receipts for the invoices; the totality which along with this letter, comply with the standard for the documentation requirements found at 49 CFR §573.13(d)(4). However, the claimant is not limiting either her complaint to a particular class (e.g., pre-notification expense remedy) or her expenses to those of reimbursement of the three paid invoices.

another representative. I provided the Nissan confirmation number relating to the problem and explained to this representative that I was to have been contacted by a specialist by then.

He responded that he could not speak with me on the matter because I was an attorney. I explained that I was authorized to handle the matter as the previous day my client had specifically told the first consumer affairs representative that I was representing the client/owner in this matter. Also, the prior representative not only had partially discussed the matter with me (after confirmation of my authorization) but also then assigned a confirmation reference no. which she provided to me.

Mr. Cabrera then also told me that a specialist had been assigned and she would call me by December 9th. I asked whether he would provide me with a means by which I could contact this person, a name, phone, e-mail address, or fax number. He responded only that he would send her an e-mail to contact me and that most certainly I could count on her call to assist in resolving this claim. I received her call about thirty minutes later.

DISMISSAL AND REFUSAL TO PROVIDE INFORMATION

Incredibly, when this expected call came, she would provide no information, neither her name, contact phone, nor address by which to communicate. She would only disclose the address to which I now direct this letter (a post office box in Franklin, TN). She told me, despite my authorized involvement, that she could not talk with me since I was an attorney. I sought to obtain from her a name and/or a phone number that I may use to identify someone or some group with the address (Nissan North America, Inc., P.O. Box 685003, Franklin, TN 37064-5003). She declined both and would not respond to any other requests for information. She refused even to tell me the name of the department at Nissan that would receive this letter I now write.

SERIOUSNESS OF THE DEFECTS

The National Highway Transportation Safety Administration's Defects & Recalls, issued publicly in response to your manufacturer's report of November 16, 2001, stated that at least one "consequence" of the defect(s) was the potential to crash. By your October 30, 2003 Net Broadcast Message, over 364,000 of the model/engine 1.8L were affected by the defects. The crash potential was reiterated by your own public correspondence, and you made known (at least as late as January 12, 2004) that the crash potential existed without necessarily providing any advanced warning.⁴

I am in a position to use case law (which I have already located related to recalls) which allows my client private rights of suit. Additionally, there are a number of agencies, federal and state that have a direct, public-safety interest, at a compelling level, in such a case as this: the Federal Trade Commission, NHTSA's Recall Management Division, and Maryland's Office of the Attorney General – Consumer Safety.

I am familiar with the regulations governing both manufacturer (voluntary) recall, pre-notice repair reimbursement, but most importantly, the equitable arguments and legal/equitable remedies which I think attach in this matter. I know I have to give you 60

⁴ Nissan's RONL "Summary" of Recall Number 03V455000 published on or about January 12-13, 2004.

days to respond. However, the detail provided herein is for the purpose of helping you not use 60 days finding the screw ups I bring to your attention. My client would like to be reasonable by not having to open a civil case.

Consider all I have said, reimburse my client for her expenses, including my time which I will provide, decide it quickly (contact me by phone as a way to expedite the matter) as the more time that passes is time my client does without the money she spent on the car and me (on her very limited income – at Christmas). She is a widow, without savings, and lives in a basement apartment on her social security and partial pension together which make for an annual income of approximately [REDACTED]. She should not have to go through this.

Very truly,



Encl.: Invoices from Royal Auto
Oct. 4, Dec. 5 & 7, 2007

Payment receipts respectively
for the invoices

Copies to:

✓ U.S. Department of Transportation
National Highway Traffic Safety Administration
Office of Defects Investigation (NVS-210)
Recall Management Division
1200 New Jersey Avenue SE
Washington, DC 20590

w/o enclosures