

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

1200 New Jersey Avenue, SE
West Building, W41-326
Washington, DC 20590

In re:)
)
EA15-001)
(formerly PE14-016))
Air Bag Inflator Rupture)
)
)
Docket No. NHTSA-2015-0055)
Coordinated Remedy Program)
)

PROTECTIVE ORDER

This Protective Order is entered into by and among: (i) the National Highway Traffic Safety Administration (“NHTSA”), an operating administration of the U.S. Department of Transportation; (ii) TK Holdings Inc. (“Takata”); and (iii) American Honda Motor Co., Inc. (“Honda”), BMW of North America, LLC (“BMW”), Daimler Vans USA, LLC (“DVUSA”), Daimler Trucks North America (“DTNA”), FCA US LLC (“Chrysler”), Ford Motor Company (“Ford”), General Motors LLC (“GM”), Mazda Motor of America, Inc. (“Mazda”), Mitsubishi Motors North America, Inc. (“Mitsubishi”), Nissan North America, Inc. (“Nissan”), Subaru of America, Inc. (“Subaru”), and Toyota Motor Engineering & Manufacturing North America, Inc. (“Toyota,”) (collectively, the “Vehicle Manufacturers”). (Takata and the Vehicle Manufacturers may also be individually referred to herein as a “Party,” and collectively as the “Parties.”)

It is the mutual desire of NHTSA and the Parties to formalize a process through which the Parties may exchange confidential or proprietary documents and information on a limited basis under NHTSA’s supervision, as described in Paragraph 21, in furtherance of NHTSA’s

Coordinated Remedy Program Proceeding. The purpose of the Coordinated Remedy Program Proceeding is to organize, prioritize, and expedite the various remedy programs associated with the Takata inflator-related recalls that are currently pending in the United States or that may arise in the future.

The information sought to be exchanged, and to be covered by this Protective Order, is information relating to historical production data, test failures, field incidents, and the sources and scheduled distribution of replacement parts. Such information is considered by NHTSA to be central to its risk analysis and the priority, organization, and phasing of the remedy. During the course of the Coordinated Remedy Program Proceeding, additional information may be brought within the scope of this Protective Order with the mutual consent of NHTSA and the Parties in accordance with Paragraph 12.

I. NATURE OF THE ACTION

1. On June 11, 2014, NHTSA opened a formal defect investigation (Preliminary Evaluation, PE14-016) into certain Takata air bag inflators that may become over-pressurized and/or rupture during air bag deployment, resulting in injury to the driver and/or passenger.

2. On February 24, 2015, NHTSA upgraded and expanded its investigation to include various model year 2001-2011 motor vehicles manufactured by the Vehicle Manufacturers, which contain air bag inflators manufactured by Takata (Engineering Analysis, EA15-001).

3. On May 18, 2015, Takata filed four Defect Information Reports with NHTSA in accordance with 49 C.F.R. § 573.6 (the "Takata DIRs"). In those Takata DIRs, Takata identified a defect related to motor vehicle safety that may arise in some of the frontal air bag inflator types that it manufactures, including PSDI, PSDI-4, PSDI-4K, SPI, PSPI, and PSPI-L. The Takata

DIRs have been designated by NHTSA as Recall Nos. 15E-040, 15E-041, 15E-042, and 15E-043.

4. The Vehicle Manufacturers named in the Takata DIRs have either filed corresponding Defect Information Reports or have filed letters confirming to NHTSA that affected vehicles are already covered by previously announced recalls.

5. On June 5, 2015, NHTSA issued a Notice of Coordinated Remedy Program Proceeding for the Replacement of Certain Takata Air Bag Inflators, Docket No. NHTSA-2015-0055 (the “CRP Proceeding”). *See* 80 Fed. Reg. 32197 (June 5, 2015). The CRP Proceeding, opened pursuant to 49 U.S.C. § 30120(c)(3) and other authority, seeks to prioritize, organize, and phase the Vehicle Manufacturers’ recall and remedy programs aimed at addressing the defective Takata inflators.

6. On June 18, 2015, in connection with the CRP Proceeding, NHTSA sent letters to the Vehicle Manufacturers, requesting that they voluntarily provide information relevant to the prioritization, organization, and phasing of the various remedy programs.

7. On June 19, 2015, NHTSA issued a Special Order to Takata, in which it requested certain documents and information relevant to the CRP Proceeding.

8. In submitting their responses to NHTSA, certain Parties have requested, in whole and in part, confidential treatment under Exemption 4 of the Freedom of Information Act and/or other FOIA Exemptions, 5 U.S.C. § 552(b) (“FOIA Exemption 4”).

9. As of the date of this Protective Order, NHTSA has not yet determined whether or not confidential treatment will be afforded to the responses described in Paragraph 8.

10. NHTSA and the Parties anticipate that, in connection with the CRP Proceeding, including the analysis of the risk presented by the rupturing air bag inflators and the

prioritization, organization, and phasing of the various remedy programs, NHTSA may ask the Parties to provide additional documents and information, both in writing and through individual and group meetings. NHTSA and the Parties further anticipate that the Parties will request confidential treatment under FOIA Exemption 4 for at least some of this additional information.

11. NHTSA and the Parties anticipate that, in connection with the CRP Proceeding, NHTSA will establish a “risk matrix” based on historic production data, test failures, and field ruptures in order to determine the appropriate prioritization and phasing of remedy programs. NHTSA may also consider in its “risk matrix” other relevant information, including but not limited to test data collected from recalled inflators. NHTSA will then compare the “risk matrix” to information from the Vehicle Manufacturers concerning the sources and scheduled distribution of replacement parts, to determine whether the replacement part supply schedule appropriately matches the priority and phasing established in the “risk matrix.”

12. It is contemplated that, in connection with the CRP Proceeding, NHTSA and the Parties may desire to share with each other, under NHTSA’s supervision, certain other putatively confidential or proprietary documents and information in order to facilitate a full and frank dialog consistent with the objects and purposes of the CRP Proceeding. Accordingly, it is agreed that provision should be made for amendments to this Protective Order, as mutually agreed upon by NHTSA and all of the Parties, to facilitate the sharing of additional documents and information. Under such circumstances, a description of the additional putatively confidential or proprietary documents and information shall be appended hereto, and the terms of this Protective Order shall apply to all such documents and information to the same extent as if they were identified in Paragraphs 15-16 below.

13. This Protective Order furthers NHTSA's safety mission by: (a) providing more complete information upon which to fashion a comprehensive and unified remedy program (if appropriate); (b) encouraging the Parties to continue providing comprehensive information to NHTSA that is relevant to the CRP Proceeding; and (c) facilitating collaboration in connection with NHTSA's Investigation No. EA15-001 (formerly PE14-016), the CRP Proceeding, and other NHTSA decision-making.

II. LEGAL AUTHORITY

14. NHTSA issues this Protective 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, but not necessarily limited to, its authority to inspect and investigate, 49 U.S.C. § 30166(b)(1), to ensure that defective vehicles and equipment are recalled, 49 U.S.C. §§ 30118-30119, to ensure the adequacy of recalls, 49 U.S.C. § 30120(c)(1), to accelerate remedy programs, 49 U.S.C. § 30120(c)(3), to require any person to file reports or answers to specific questions, 49 U.S.C. § 30166(g), and to disclose confidential information in certain circumstances, 49 U.S.C. § 30167(a). It is AGREED by the Parties, and ORDERED by NHTSA as follows:

III. TERMS OF PROTECTIVE ORDER

15. This Protective Order shall apply to documents and/or information relating to historic production data, test failures, field ruptures, and replacement part sources and supply schedules produced to NHTSA by the Parties in connection with NHTSA's Investigation No. EA15-001 (formerly PE14-016), and/or the CRP Proceeding, to the extent such documents or information constitute Confidential Business Information, for which confidential treatment pursuant to FOIA Exemption 4 has been requested and not denied.

16. This Protective Order also shall apply to any additional Confidential Business Information, for which confidential treatment pursuant to FOIA Exemption 4 has been requested and not denied, and that the parties have submitted or may submit to NHTSA in connection with NHTSA's Investigation No. EA15-001 (formerly PE14-016) and/or the CRP Proceeding, *provided that* the Parties and NHTSA have mutually agreed that any such putative Confidential Business Information should be covered by this Protective Order and have amended this Protective Order to include any such information in accordance with Paragraph 12.

17. The term "Confidential Business Information," as used in this Protective Order, means non-public, confidential, or proprietary business information that is relevant to the CRP Proceeding, that has been or may be submitted to NHTSA by the Parties, that has been marked as confidential, and for which a confidentiality request has been submitted to NHTSA and granted by NHTSA in accordance with 49 C.F.R. Part 512. Confidential Business Information includes: trade secrets and/or commercial or financial information that was voluntarily provided to NHTSA and that is not customarily disclosed to the public; and trade secrets and/or commercial or financial information that was compelled to be produced, the disclosure of which would hinder the effectiveness of government programs or cause impairment to the Government or is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

18. The Parties shall be responsible for designating documents and information as confidential in accordance with 49 C.F.R. § 512.6, and for complying with all other requirements of 49 C.F.R. Part 512. It is understood and agreed that the sharing and distribution of such Confidential Business Information under the terms of this Protective Order shall not be deemed to be inconsistent with paragraphs (2), (5), (6), and (7) of the required Part 512 Certificate, which

is set forth in Appendix A to 49 C.F.R. Part 512. The Parties shall submit public versions of such Confidential Business Information in accordance with 49 C.F.R. § 512.5(a)(2), which public versions shall be entered in the public docket, Docket No. NHTSA-2015-0055.

19. The Parties acknowledge that Confidential Business Information may include documents and information normally protected from disclosure under the Trade Secrets Act, 18 U.S.C. § 1905. The Parties agree that, to the extent such Confidential Business Information is encompassed by the disclosure provisions of this Protective Order, any such disclosure by a NHTSA employee to any Qualified Person is authorized by applicable law.

20. By entering into this Protective Order, NHTSA has not made a determination that any of the documents and information designated by a Party as confidential in accordance with 49 C.F.R. § 512.6, or for which a Party may request confidential treatment is, in fact, protected from disclosure to the public under FOIA Exemption 4. FOIA disclosure decisions shall be made upon individualized consideration of the particular documents and information. Information received by NHTSA, for which a properly filed confidentiality request is submitted, will be kept confidential until the Chief Counsel makes a determination regarding confidentiality. 49 C.F.R. § 512.20(a).

21. Except as provided in Paragraph 24 below, any disclosure by NHTSA of Confidential Business Information (and any copies thereof and any documents or information incorporating the contents of the Confidential Business Information) made pursuant to this Protective Order shall be made solely for the purpose of furthering the CRP Proceeding and shall be made only to "Qualified Persons." To be eligible for "Qualified Persons" status, an individual must fall within the defined categories in subsections a through d below; *and* (with the exception of NHTSA and the individuals identified in subsection a of this Paragraph 21) he or she must be

provided with a copy of this Protective Order, agree to be bound by the terms of this Protective Order, and sign the Certificate Concerning Confidentiality attached hereto as Exhibit A. Copies of signed Certificates Concerning Confidentiality must be provided to NHTSA before any Confidential Business Information may be disclosed to a Qualified Person. Categories of persons eligible for “Qualified Persons” status include only the following:

a. NHTSA, its employees, and any third-party consultants, investigators, contractors, or experts retained by NHTSA in connection with NHTSA Investigation No. EA15-001 (formerly PE14-016) and/or the CRP Proceeding;

b. Counsel for the Vehicle Manufacturers, as well as employees of counsel for the Vehicle Manufacturers who have direct functional responsibility for the CRP Proceeding;

c. Officers, directors, and employees of the Vehicle Manufacturers who have the direct functional responsibility for participating in the CRP Proceeding, and only those additional officers, directors, and employees of the Vehicle Manufacturers whose consultation and/or approval is necessary to make decisions in connection with, or to further the objectives of, the CRP Proceeding; and

d. Counsel, officers, directors, and employees of other motor vehicle manufacturers whose vehicles may become covered, in the future, by a recall involving Takata air bag inflators, which recall is brought under the Coordinated Remedy Program (to the extent such Coordinated Remedy Program is established and maintained by NHTSA), but only if those manufacturers become signatories to this Protective Order and only to the extent set forth in subsections b and c of this Paragraph 21.

22. With the exception of testing data required to develop the “risk matrix,” documents and information covered by this Protective Order shall only be disclosed to Qualified Persons during meetings held by NHTSA and solely at NHTSA’s direction. Testing data may be shared by NHTSA with Qualified Persons via the Department of Transportation’s secure file transfer.

23. The Parties will use, at a minimum, the same efforts to maintain the confidentiality of the Confidential Business Information covered by this Protective Order that they use to protect their own Confidential Business Information. All Confidential Business Information shall be controlled and properly secured to prevent unauthorized access to, or reproduction of, the Confidential Business Information. The Parties shall not use Confidential Business Information covered by this Protective Order for any purpose other than in connection with the CRP Proceeding. The Parties shall not discuss with each other Confidential Business Information covered by this Protective Order outside the confines of the NHTSA meetings. Nothing in this Protective Order shall preclude any of the Parties from using its own information, regardless of any confidentiality designation, in any manner it sees fit, or from revealing its own Confidential Business Information in any lawful manner.

24. If any Party or Qualified Person receives a request or demand by legal means (including, but not limited to, oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Business Information belonging to another Party, whether in connection with *In re: Takata Airbag Products Liability Litigation*, MDL No. 2599 (S.D. Fla.) or otherwise, that Party or Qualified Person will provide the originating Party with prompt written notice prior to making the compelled disclosure, so that the originating Party may seek a protective order or other

appropriate remedy in any such proceeding and/or waive compliance with the provisions of this Protective Order.

IV. TIME PERIOD OF PROTECTIVE ORDER

25. Upon NHTSA closing the docket for the CRP Proceeding, each Party will, at its own expense, promptly return all documents containing Confidential Business Information in its possession (if any), including documents or data in possession of all Qualified Persons associated with the Parties, to the originating Party or, at the option of the receiving Party, destroy documents with written verification to the originating Party. In addition, each Party shall also destroy all copies of all notes, analyses, reports, summaries, interpretations, and other materials that contain, or otherwise reflect, in whole or in part, any Confidential Business Information from other Parties, and certify in writing to each of the other Parties that such copies have been destroyed. The Parties acknowledge that NHTSA is not, and shall not be, bound by the terms of this Paragraph 25.

V. AMENDMENT

26. Other than as expressly provided in Paragraph 12, this Protective Order cannot be modified, amended, or waived other than by a writing agreed to by NHTSA and the Parties setting forth such modification, amendment, or waiver. NHTSA reserves all authority to take any further action permitted by law.

VI. MISCELLANEOUS

27. Nothing in this Protective Order shall be interpreted or construed in a manner inconsistent with, or contravening, any federal law, rule, or regulation in effect at the time of the execution of this Protective Order. In particular, nothing in this Protective Order shall be interpreted or construed as permitting or encouraging the Parties to exchange confidential

business information other than under NHTSA's direct supervision as described herein or to engage in any other conduct that would be unlawful under the antitrust laws.

28. This Protective Order shall be publicly available and placed in the docket for the CRP Proceeding.

29. This Protective Order shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Protective Order, other than as expressly provided herein.

30. All terms of this Protective Order are deemed to be material and this Protective Order should be construed as a whole. Notwithstanding the foregoing, should any provision of this Protective Order be held invalid, void, or illegal, NHTSA and the Parties agree that the obligations to maintain the confidentiality of documents and information covered by this Protective Order remain valid. 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 Protective Order and shall in no way affect, impair, or invalidate any other provision of this Protective Order.

31. The parties who are the signatories to this Protective Order have the legal authority to enter into this Protective Order, and NHTSA and each of the Parties have each authorized its undersigned representative to execute this Protective Order on its behalf.

32. This Protective Order may be executed in counterparts, each of which shall be considered effective as an original signature. This Protective Order shall be effective following its full execution.

33. This Protective 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 Protective

Order sets forth the entire agreement between NHTSA and the Parties with regard to the subject matter hereof. There are no promises, agreements, or conditions, express or implied, between NHTSA, on the one hand, and any Party(ies), on the other hand, other than those set forth in this Protective Order.

[SIGNATURES ON PAGES 13-27]

APPROVED AND SO ORDERED:

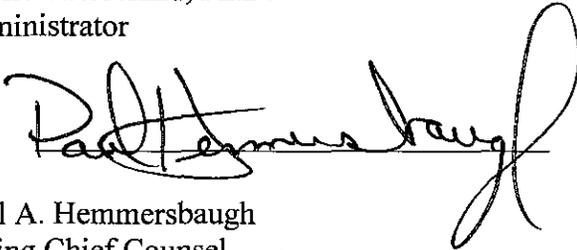
NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION

Dated: September 4, 2015

By: //ORIGINAL SIGNED BY//

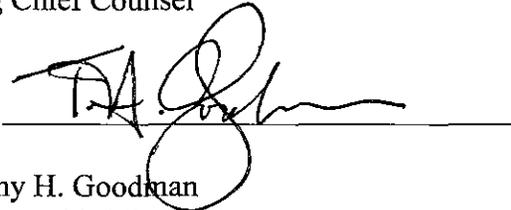
Mark R. Rosekind, Ph.D.
Administrator

Dated: September 4, 2015

By: 

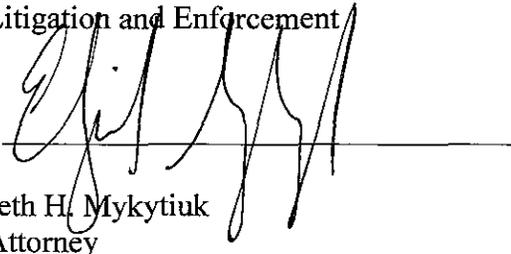
Paul A. Hemmersbaugh
Acting Chief Counsel

Dated: September 4, 2015

By: 

Timothy H. Goodman
Assistant Chief Counsel
for Litigation and Enforcement

Dated: September 4, 2015

By: 

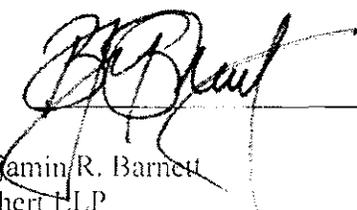
Elizabeth H. Mykytiuk
Trial Attorney

AGREED:

Dated: September 1, 2015

TK HOLDINGS INC.

By:


Benjamin R. Barnett
Dechert LLP
Counsel for TK Holdings Inc.

AGREED:

Dated: August 31, 2015

AMERICAN HONDA MOTOR CO.

By: _____

NAME

Doug Bishop

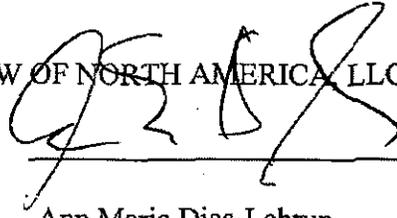
TITLE

Assistant General Counsel,
Honda North America, Inc.

AGREED:

Dated: September 3, 2015

BMW OF NORTH AMERICA, LLC

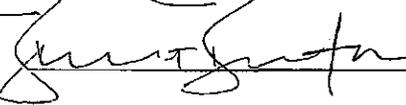
A handwritten signature in black ink, appearing to read 'A. M. Dias-Lebrun', is written over a solid horizontal line.

Ann Marie Dias-Lebrun
Assistant General Counsel

AGREED:

Dated: August 4, 2015

DAIMLER TRUCKS NORTH AMERICA

By: 

Brian Burton
General Counsel

AGREED:

Dated: September 04, 2015

DAIMLER VANS USA, LLC

By:  _____

Mark Schoenmetzler
Senior Counsel /Rechtsanwalt

AGREED:

Dated: August __, 2015

DAIMLER VANS USA, LLC

By: 

NAME

MARC NIEFER

TITLE

DIRECTOR AFTER SALES

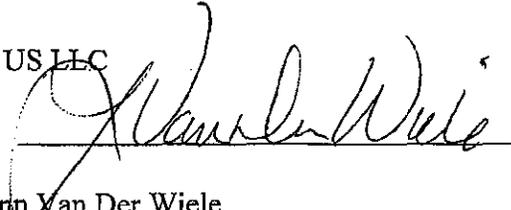
FB VANS

AGREED:

Dated: September 3, 2015

FCA US LLC

By:


Louann Van Der Wiele

Vice President & Associate General Counsel

AGREED:

Dated: September 2, 2015

FORD MOTOR COMPANY

By:  _____

Emily E. Frascaroli
Counsel

AGREED:

Dated: August 24, 2015

GENERAL MOTORS LLC

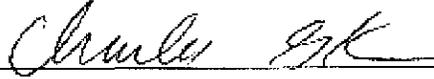
By:  _____

Jeffrey Boyer
Vice President, Global Vehicle Safety

AGREED:

MAZDA MOTOR OF AMERICA, INC.

Dated: August 31, 2015

By: 

NAME Charles S. Kim
TITLE Assistant General Counsel,
Product Litigation

AGREED:

MINITUBISHI MOTORS NORTH
AMERICA, INC.

Dated: August 24, 2015

By: Mark Chaffin

NAME Mark CHAFFIN

TITLE VP- Fixed Operations

AGREED:

Dated: August 25, 2015

NISSAN NORTH AMERICA, INC.

By: George Feygin

George Feygin
Senior Managing Counsel

AGREED:

September
Dated: August 3, 2015

SUBARU OF AMERICA, INC.

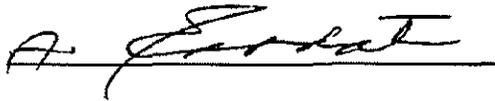
By: 

NAME GARY D. PALANJIAN
TITLE VICE PRESIDENT-
PARTS & SERVICE

AGREED:

TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA, INC.

Dated: August 28, 2015

By: 

Abbas Saadat
Vice President
Vehicle Safety & Compliance Liaison Office
Toyota Motor Engineering & Manufacturing
North America, Inc.

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

1200 New Jersey Avenue, SE
West Building, W41-326
Washington, DC 20590

In re:)
)
EA15-001)
(formerly PE14-016))
Air Bag Inflator Rupture)
)
)
Docket No. NHTSA-2015-0055)
Coordinated Remedy Program)
)

EXHIBIT A

CERTIFICATE CONCERNING CONFIDENTIALITY

I, _____, hereby certify that:

1. I have read the Protective Order entered in the above-captioned matter, and understand its terms.
2. I agree to be bound by the terms of the Protective Order, including, but not limited to, the limitations on the use and disclosure of Confidential Business Information.
3. I agree that I am being provided access to Confidential Business Information solely for use in connection with the Coordinated Remedy Program Proceeding, 80 Fed. Reg. 32197 (June 5, 2015).
4. I agree to use reasonable care in controlling and properly securing Confidential Business Information in order to prevent unauthorized access or reproduction.
5. I agree to return or dispose of all Confidential Business Information that I receive consisted with Paragraph 25 of this Protective Order.
6. I make this certificate this ____ day of _____, 2015.

By: _____

Name: _____

Company: _____

Title: _____