

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

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

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**In re:** )  
)  
**Michelin North America, Inc.** )  
Violation of 49 U.S.C. § 30112 )  

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**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into pursuant to the authority of the National Highway Traffic Safety Administration (“NHTSA”), an operating administration of the U.S. Department of Transportation, to resolve, mitigate, and control risks of harm, and promote safety. This Settlement Agreement sets forth the penalties and requirements agreed to by Michelin North America, Inc. (collectively, “MNA”), in connection with MNA’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 requires manufacturers of motor vehicles and motor vehicle equipment to certify at delivery to the distributor or dealer that the vehicles or equipment complies with all applicable federal motor vehicle safety standards (“FMVSS”) issued under the Safety Act. 49 U.S.C. § 30115(a).

3. Tires for motor vehicles with a gross vehicle weight rating (“GVWR”) of more than 10,000 pounds must be marked with the symbol “DOT,” which constitutes a certification that the tire complies with all applicable FMVSS. 49 C.F.R. § 571.119, S6.5.

4. The Safety Act prohibits any person from manufacturing for sale, selling, offering for sale, introducing or delivering for introduction in interstate commerce, or importing into the United States any motor vehicle or motor vehicle equipment unless the motor vehicle or equipment complies with all applicable FMVSS in effect at the time of manufacturer and is covered by a certification issued under 49 U.S.C. § 30115. 49 U.S.C. § 30112(a)

5. A person who violates the requirements of the Safety Act, or a regulation thereunder, is liable to the United States Government for a civil penalty of not more than \$21,000 for each violation. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a)(1). A separate violation occurs for each item of motor vehicle equipment 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)(1). Effective December 27, 2012, the maximum civil penalty increased from \$6,000 to \$7,000 per day.<sup>1</sup> On March 17, 2016, the maximum penalty for each violation increased from \$7,000 to \$21,000.<sup>[1]</sup>

6. MNA is a manufacturer within the meaning of the Safety Act, *see* 49 U.S.C. § 30102(a)(6), and a person within the meaning of 49 U.S.C. § 30165.

7. Between January 1, 2011 and August 1, 2015, MNA sold in the United States approximately 247 tires for motor vehicles with a GVWR of more than 10,000 pounds that were not marked with the symbol “DOT” as required by 49 C.F.R. § 571.119, S6.5 and therefore were not certified.

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<sup>1</sup> Final Rule, 77 FED. REG. 70,710, 70,713 (Nov. 27, 2012)

[1] Notice of Increase in Civil Penalty for Violations of Nat'l Traffic & Motor Vehicle Safety Act, 81 Fed. Reg. 15,413 (Mar. 22, 2016). The maximum penalty for a related series of violations was \$35,000,000 until March 17, 2016, at which point it was increased to \$105,000,000. *Id.*

## II. LEGAL AUTHORITY

8. NHTSA enters into this Settlement Agreement 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), and by the NHTSA Administrator, 49 C.F.R. § 501.8, including, among other things, its authority to compromise the amount of civil penalties, 49 U.S.C. § 30165(b); and ensure that all motor vehicles and motor vehicle equipment manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States are certified as complying to all applicable FMVSS as required by 49 U.S.C. §§ 30112(a) and 30115(a). In consideration of MNA's entry into this Settlement Agreement and its representations outlined below, it is AGREED by MNA and NHTSA as follows:

## III. TERMS OF SETTLEMENT AGREEMENT

### Safety Act Admission

9. MNA admits that it violated the Safety Act by failing to certify that motor vehicle equipment it manufactured complied with all applicable FMVSS, as required by 49 U.S.C. § 30115(a).

10. MNA further admits it violated the Safety Act by manufacturing for sale, selling, offering for sale, introducing or delivering for introduction in interstate commerce, or importing into the United States motor vehicle equipment that was not covered by a certification of compliance, in violation of 49 U.S.C. 30112(a)(1).

### Civil Penalty

11. MNA shall pay a civil penalty in the sum of twenty thousand dollars (\$20,000) ("Civil Penalty") in connection with the matters addressed in this Settlement Agreement. MNA

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 Settlement Agreement.

### **Representations**

12. MNA agrees to conduct a recall in accordance with 49 U.S.C. §§ 30118-31020 and applicable regulations for all tires that were sold without the symbol "DOT" as described in this Settlement Agreement.

13. MNA represents that it has no knowledge of selling in the United States any uncertified tires since August 1, 2015 and that it has taken steps to prevent the sale of uncertified tires in the future.

### **IV. AMENDMENT**

14. This Settlement Agreement cannot be modified, amended or waived except by an instrument in writing signed by all parties.

### **V. MISCELLANEOUS**

15. **Application of Federal Law.** Nothing in this Settlement Agreement 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 Settlement Agreement, or as amended thereafter.

16. **Release.**

A. Upon payment of the Civil Penalty, the Secretary of Transportation, by and through the Administrator of NHTSA, will be deemed to have released MNA, 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 any and all violations of MNA's Safety Act obligations related to the events

identified in Paragraph 7 of this Settlement Agreement from the inception of the Safety Act through the execution date of this Settlement Agreement.

B. This Settlement Agreement does not release MNA 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 Settlement Agreement.

17. **Breach.** In the event of MNAs breach of, or failure to perform, any term of this Settlement Agreement, 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 Settlement Agreement, assessing interest for untimely settlement payments, and/or commencing litigation to enforce this Settlement Agreement in any United States District Court. MNA agrees that, in any such enforcement action, it will not raise any objection as to venue. MNA expressly waives any and all defenses, at law or in equity, and agrees not to plead, argue, or otherwise raise any defenses other than (i) that the payment of the Civil Penalty was made to NHTSA as set forth herein, and (ii) that MNA has substantially complied with the terms of this Settlement Agreement.

18. **Attorney's Fees.** The parties shall each bear their own respective attorneys' fees, costs, and expenses.

19. **Authority.** The parties who are the signatories to this Settlement Agreement have the legal authority to enter into this Settlement Agreement, and each party has authorized its undersigned representatives to execute this Settlement Agreement on its behalf.

20. **Tax Deduction/Credit.** MNA 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 Settlement Agreement.

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

22. **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 Settlement Agreement and shall in no way affect, impair or invalidate any other provision of this Settlement Agreement.

23. **Third Parties.** This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Settlement Agreement.

24. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall be considered effective as an original signature.

25. **Effective Date.** This Settlement Agreement shall be effective upon its full execution.

26. **Integration.** This Settlement Agreement is a fully integrated agreement and shall in all respects be interpreted, enforced and governed under the federal law of the United States. This Settlement Agreement 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 Settlement Agreement.

[SIGNATURES ON NEXT PAGE]

APPROVED AND AGREED:


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

Dated: January 17, 2017

By:  \_\_\_\_\_

Stephen P. Wood  
Acting Chief Counsel

Dated: January 13, 2017

By:  \_\_\_\_\_

Kerry E. Kolodziej  
Acting Assistant Chief Counsel  
for Litigation and Enforcement

Dated: January 13, 2017

By:  \_\_\_\_\_

Thomas P. Healy  
Trial Attorney

AGREED:

MICHELIN NORTH AMERICA, INC.

Dated: January 11, 2017

By:  \_\_\_\_\_

Paul Sparks  
Vice President of Quality, PLNA  
Michelin North America, Inc.

Dated: January 11, 2017

By:  \_\_\_\_\_

Matthew Staab  
Corporate Counsel  
Michelin North America, Inc.