

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

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

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IN RE:)

Prevost, a division of Volvo Group Canada, Inc.)

Volvo Industrial de Mexico S.A. de C.V.)

Prevost Car (US) Inc.)

)

Untimely Reporting)

Violations of 49 U.S.C. §30118(c), 30165(a)(1),)

30165(a)(3), 30166)

)

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (“Agreement”) is entered into between the National Highway Traffic Safety Administration (“NHTSA”), an operating administration within the U.S. Department of Transportation; Prevost, a division of Volvo Group Canada, Inc. of Sainte-Claire, Quebec, Canada¹ (“Prevost Canada”); Volvo Industrial de Mexico S.A. de C.V. of Hidalgo, Mexico² (“Volvo Bus”); and Prevost Car (US) Inc. of Greensboro, North Carolina³ (“Prevost US”) (Prevost Canada, Volvo Bus, and Prevost US collectively referred to below as “Prevost,” and NHTSA, Prevost Canada, Volvo Bus, and Prevost US collectively referred to as the “Parties”), wherein they hereby administratively settle claims for civil penalties for alleged violations of certain provisions of federal law, commonly known as the National Traffic and Motor Vehicle Safety Act, as amended, 49 U.S.C. Chapter 301 (“Vehicle Safety Act”).

RECITALS

WHEREAS, Prevost Canada and Volvo Bus are, and, at all times relevant to this action, have been manufacturers of motor vehicles within the meaning of the Safety Act, as defined in 49 U.S.C. §30102(a)(5);

WHEREAS, Prevost Canada is a North American manufacturer of touring coaches and conversion shells/chassis for high-end motorhomes and corporate or specialty needs;

WHEREAS, Volvo Bus is a North American manufacturer of touring coaches;

¹ Prevost, a division of Volvo Group Canada, Inc. is a subsidiary of Volvo Holding Sverige AB, which is a subsidiary of AB Volvo.

² Volvo Industrial de Mexico S.A. de C.V. is a subsidiary of Volvo Holding Mexico S. DE R.L. DE C.V., which is a subsidiary of AB Volvo.

³ Prevost Car (US) Inc. is a subsidiary of VNA Holding, Inc., which is a subsidiary of AB Volvo.

WHEREAS, 49 C.F.R. §579.5 requires manufacturers to provide NHTSA with notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications sent to more than one manufacturer, distributor, dealer, lessor, lessee, owner, or purchaser, in the United States, “regarding any defect in its vehicles or items of equipment (including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications), whether or not such defect is safety-related,” and that a manufacturer “shall furnish to NHTSA a copy of each communication relating to a customer satisfaction campaign, consumer advisory, recall, or other safety activity involving the repair or replacement of motor vehicles or equipment,” that the manufacturer issued to others no later than five working days after the end of the month in which they are issued;

WHEREAS, on July 5, 2012, Prevost Canada acknowledged that, from 2008 to 2012, it sent its communications under 49 C.F.R. §579.5, specifically technical service bulletins (“TSB Reports”), in “six month batches” to NHTSA;

WHEREAS, since September 2009, 49 C.F.R. §579.22 requires manufacturers of 100 buses or 5,000 or more heavy vehicles annually to provide early warning reports (“EWR”) with aggregate data on production and certain consumer complaint and warranty claims, field reports and information on incidents involving death(s) or injuries based on claims and notices on a quarterly basis.

WHEREAS, 49 C.F.R. §579.28 requires that the 49 C.F.R. §579.22 reports be submitted no later than 60 days after the last day of the quarterly reporting period;

WHEREAS, Prevost Canada manufactures more than 100 buses annually and is required to provide early warning reports to NHTSA;

WHEREAS, on July 5, 2012, Prevost Canada acknowledged, since 2009, three reports required under 49 C.F.R. 579.22 (“EWR Reports”) were submitted more than 60 days after the last day of the quarterly reporting period;

WHEREAS, from June 19, 2012 to March 22, 2013 (“Recall Period”), Prevost formally notified NHTSA of its decisions to conduct safety-related recalls in the United States on vehicles that Prevost Canada manufactured. These Prevost Canada recalls are Safety Recalls 12V-303, 12V-304, 12V-309, 12V-315, 12V-435, 12V-564, 13V-015, 13V-021, and 13V-039. Similarly, Prevost US formally notified NHTSA of its decisions to conduct safety-related recalls in the United States on vehicles that Volvo Bus manufactured. These Volvo Bus recalls are Safety Recalls 12V-295 and 12V-313 (collectively, all recalls listed are referred to as “Identified Recalls”);

WHEREAS, during the Recall Period, the Parties have engaged in discussions regarding the actions leading to Prevost’s decision to conduct safety-related recalls in the United States;

WHEREAS, NHTSA alleges that Prevost did not report the Identified Recalls to NHTSA in a timely manner under the Vehicle Safety Act;

WHEREAS, NHTSA has a potential claim that Prevest violated the Vehicle Safety Act, including regulations thereunder, by not undertaking the Identified Recalls in a timely manner, and by not submitting reports required under 49 CFR Part 579 in a timely manner;

WHEREAS, Prevest denies that it has violated the Vehicle Safety Act or its implementing Regulations;

WHEREAS, NHTSA and Prevest desire to administratively resolve Prevest's civil penalty liability for the alleged violations of Chapter 301 of 49 U.S.C. arising out of, relating to, or concerning the Identified Recalls, TSB Reports, and EWR Reports;

WHEREAS, the Secretary of Transportation has the authority to compromise civil penalties under the Vehicle Safety Act, 49 U.S.C. § 30165(b);

WHEREAS, the Secretary's authority to administer 49 U.S.C. chapter 301 has been delegated to the Administrator of NHTSA, 49 CFR 1.95;

WHEREAS, the dollar amount of the civil penalty in this agreement takes into account the factors under 49 U.S.C. § 30165(c), including the size of Prevest;

WHEREAS, this Agreement constitutes a settlement and compromise of Prevest's civil penalty liability related to the Identified Recalls, TSB Reports, and EWR Reports, without NHTSA making any formal findings with respect to Prevest's alleged violations of the Vehicle Safety Act, and is made solely to avoid expensive and protracted litigation and to compromise disputed claims; and

WHEREAS, the Parties believe that the terms of this Agreement are a fair and reasonable resolution of this dispute;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the exchange of mutual releases by the Parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to the settlement of this matter on the following terms and conditions.

TERMS AND CONDITIONS

1. **Claim Payment.** Prevest, in order to resolve these disputed claims, shall pay the United States \$1,500,000 pursuant to the Vehicle Safety Act, 49 U.S.C. § 30165, as set forth in this paragraph.
 - a. Prevest shall pay the United States \$250,000 in civil penalties in one payment as set forth in this paragraph within ten business days of the Effective Date of this Agreement.
 - b. Prevest shall pay the United States \$250,000 in civil penalties in five separate payments, with the first payment occurring no later than December 31, 2013, the second payment occurring no later than December 31, 2014, the third payment

occurring no later than December 31, 2015, the fourth payment occurring no later than December 31, 2016, and the fifth payment occurring no later than December 31, 2017.

- c. Payment shall be made by electronic funds transfer to the U.S. Treasury.
- d. Upon receipt and clearing of the final settlement payment required under this Agreement, which shall occur no later than December 31, 2017, Prevest will be deemed to have satisfied the claim of the United States for civil penalties regarding the Identified Recalls, TSB Reports, and EWR Reports, under the Vehicle Safety Act.

2. **Mutual Releases**

- a. Upon receipt of all of the payments set forth in Paragraph 1 above, the Secretary of Transportation, by and through the Administrator of NHTSA, releases Prevest Canada, Prevest US, and Volvo Bus, including their 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 possible violations of the Safety Act and its implementing regulations relating to the Identified Recalls, TSB Reports, and EWR Reports, and the subject matter thereof.
- b. Prevest Canada, Prevest US, and Volvo Bus, for themselves and on behalf of all of their respective officers and employees, hereby release, waive and discharge the U.S. Department of Transportation, NHTSA, and the United States government as a whole, and their present and past employees, and each of them, from any and all liability and claims relating to Prevest's actions related to the Identified Recalls, TSB Reports, and EWR Reports.
- c. The Secretary of Transportation does not release Prevest from civil or criminal liability, if any, that may be asserted by (a) the U.S. Department of Transportation or NHTSA, except as set forth in Paragraph 2; or (b) any other government entity.

3. **Claim Owing to the United States.** Prevest agrees that it owes a claim (sometimes referred to as a debt) of \$1,500,000 to the United States under the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and the Debt Collections Amendments of 1986 (Pub. L. 99-578, 100 Stat. 3305 (1986), now codified at 31 U.S.C. §§ 3701 *et. seq.* (hereinafter the "Debt Collection Act")), arising from activities under the jurisdiction of the U.S. Department of Transportation.

4. **Default.** Prevest shall be in default of this Agreement if it fails to make one or more of the payments set forth in Paragraph 1 on or before its due date. NHTSA shall provide written notice of any default. If Prevest fails to cure the default within ten (10) business days after receiving notice of the default, NHTSA may pursue any and all remedies available under the Vehicle Safety Act, 49 U.S.C. chapter 301, and/or pursue collection of the balance of the Settlement Amount as a debt due and owing the United States. Prevest agrees not to contest any collection action undertaken by NHTSA or the United States pursuant to the Debt Collection Act and the U.S. Department of Transportation's regulations, 49 CFR Part 89, either administratively or in any State or Federal court. In addition, in such a

proceeding, Prevoist shall pay the United States all reasonable costs of collection and enforcement, including attorneys' fees and expenses.

5. **Waiver of Certain Defenses.** With respect to any collection of all or part of the Settlement Amount, Prevoist expressly agrees not to plead, argue, or otherwise raise any defenses other than that the payments set forth in Paragraph 1 were made to NHTSA, if applicable.
6. **Quarterly Meetings.** Prevoist staff will participate in a meeting with NHTSA staff once every quarter for six quarters, each occurring no later than September 30, 2013; December 31, 2013; March 31, 2014; June 30, 2014; September 30, 2014; and December 31, 2014. In the meetings, Prevoist shall discuss the status of its recalls for which it is still submitting reports to NHTSA, new technical service bulletins, and any communications to dealers or distributors. The meetings can be conducted in-person at NHTSA's office in Washington, D.C. or by telephone, or its equivalent.
7. **Attorneys' Fees and Costs.** The Parties shall bear their own respective attorneys' fees, costs, and expenses with respect to the matters settled by this Agreement.
8. **Reservation of Rights.** In the event of Prevoist's breach of any term of this Agreement, NHTSA reserves the right to pursue any and all appropriate administrative and/or judicial remedies, including, but not limited to, assessing interest for untimely settlement payment(s), and/or commencing litigation in a court of competent jurisdiction.
9. **Governing Law and Integration.** This is a fully integrated Agreement and shall in all respects be interpreted, enforced and governed under the federal law of the United States, except that parol evidence shall not be admissible to interpret, vary, or modify any terms of this Agreement. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement as it relates to this action shall be the United States District Court for the District of Columbia. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. This Agreement sets forth the entire agreement between the Parties with regard to the subject matter hereof. All agreements expressed or implied, oral or written, of the Parties with regard to the subject matter hereof are contained herein. All prior and contemporaneous conversations, negotiations, and possible and alleged agreements with respect to the subject matter hereof are expressly waived, merged herein, and superseded hereby.
10. **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 the Agreement, and shall in no way affect, impair or invalidate any other provision of this Agreement. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, it shall be deemed valid to the extent of the scope or breadth permitted by law.
11. **Notices.** All notices, requests, demands, and other communications under the Agreement shall be in writing and delivered by personal delivery, facsimile, overnight carrier, or electronic mail, and shall be deemed having been duly delivered on the date of receipt of personal delivery, facsimile, or overnight carrier or on the date of sending of electronic mail. Notices shall be addressed to the undersigned to this Agreement, or as the Parties

may subsequently designate by written notice.

12. Joint and Several Liability. The Terms and Conditions specified above apply jointly and severally between the Parties referred to as Prevost.

13. Miscellaneous Provisions.

- a. This Agreement cannot be amended, altered, modified, waived, or superseded, in whole or in part, except by a written agreement that is signed by all Parties to this Agreement. No delay or omission on the part of any party shall operate as a waiver of any such right or any other right. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.
- b. Section headings are for convenience only and are not part of this Agreement.
- c. The Parties agree that facsimile or electronic signatures of the Parties shall be binding and enforceable as original signatures.
- d. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- e. Each person who executes this Agreement on behalf of any party represents and warrants that he has been duly authorized to execute this Agreement on behalf of that party.
- f. Neither the offer nor acceptance of the terms and conditions of this Agreement represents the admission of liability, fault or concession on the part of any Party.
- g. All dollar amounts are stated in U.S. currency.

14. Effective Date. This Agreement is effective on the date of signature of the last signatory to the Agreement.

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement in their names as set forth below.

DATE:

**PREVOST, A DIVISION OF VOLVO GROUP
CANADA, INC.**

July 19, 2013

By:


Gaetan Bolduc
President & CEO
35 Gagnon Blvd.
Sainte-Claire, Quebec
G0R2V0 Canada

VOLVO INDUSTRIAL de MEXICO S.A. de C.V.

July _____, 2013

By:

Rafael Kisel
Managing Director
Lago de Guadalupe 289
54900 Tultitlan
Mexico

PREVOST CAR (US) INC.

July _____, 2013

By:

Ulf Nilsson
Vice President and Chief Financial Officer
7900 National Service Rd. Mailstop AP5-63
Greensboro, NC 27409

July _____, 2013

By:

Steven B. Epstein
Counsel for Prevost, a division of Volvo Group
Canada, Inc., Prevost Car (US) Inc., and Volvo
Industrial de Mexico S.A. de C.V.
Poyner Spruill LLP
301 Fayetteville Street, Suite 1900
Raleigh, NC 27601

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**PREVOST, A DIVISION OF VOLVO GROUP
CANADA, INC.**

July _____, 2013

By: _____
Gaetan Bolduc
President & CEO
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VOLVO INDUSTRIAL de MEXICO S.A. de C.V.

July 19, 2013

By: _____
Rafael Kijel
Managing Director
Lago de Guadalupe 289
54900 Tultitlan
Mexico

PREVOST CAR (US) INC.

July _____, 2013

By: _____
Ulf Nilsson
Vice President and Chief Financial Officer
7900 National Service Rd. Mailstop AP5-63
Greensboro, NC 27409

July _____, 2013

By: _____
Steven B. Epstein
Counsel for Prevost, a division of Volvo Group
Canada, Inc., Prevost Car (US) Inc., and Volvo
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CANADA, INC.**

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By: _____
Gaetan Bolduc
President & CEO
35 Gagnon Blvd.
Sainte-Claire, Quebec
G0R2V0 Canada

VOLVO INDUSTRIAL de MEXICO S.A. de C.V.

July _____, 2013

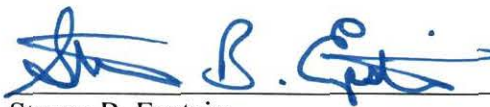
By: _____
Rafael Kisel
Managing Director
Lago de Guadalupe 289
54900 Tultitlan
Mexico

PREVOST CAR (US) INC.

July 19, 2013

By:  _____
Ulf Nilsson
Vice President and Chief Financial Officer
7900 National Service Rd. Mailstop AP5-63
Greensboro, NC 27409


July 24, 2013

By:  _____
Steven B. Epstein
Counsel for Prevost, a division of Volvo Group
Canada, Inc., Prevost Car (US) Inc., and Volvo
Industrial de Mexico S.A. de C.V.
Poyner Spruill LLP
301 Fayetteville Street, Suite 1900
Raleigh, NC 27601


DATE:

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

July 30, 2013

By: 
O. Kevin Vincent
Chief Counsel

July 30, 2013

By: 
Zachary S. Dunlap
Trial Attorney

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U.S. Department of Transportation
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