



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 17-C0004]

Kawasaki Heavy Industries, Ltd.; Kawasaki Motors Corp., U.S.A.; and Kawasaki Motors Manufacturing Corp., U.S.A., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission

ACTION: Notice

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of the Consumer Product Safety Commission's regulations. Published below is a provisionally-accepted Settlement Agreement with Kawasaki Heavy Industries, Ltd., Kawasaki Motors Corp., U.S.A., and Kawasaki Motors Manufacturing Corp., U.S.A., containing a civil penalty in the amount of five million, two hundred thousand dollars (\$5,200,000), within thirty (30) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by **[INSERT DATE 15 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 17-C0004, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Philip Z. Brown, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7645.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.¹

Dated: May 31, 2017.

Todd A. Stevenson,

Secretary.

¹ The Commission voted (4-1) to provisionally accept the Settlement Agreement and Order regarding Kawasaki Heavy Industries, Ltd., Kawasaki Motors Corp., U.S.A., and Kawasaki Motors Manufacturing Corp., U.S.A. Commissioner Adler, Commissioner Kaye, Commissioner Robinson and Commissioner Mohorovic voted to provisionally accept the Settlement Agreement and Order. Acting Chairman Buerkle voted to reject the Settlement Agreement and Order.

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

| | | |
|--------------------------------|---|---------------------------|
| In the Matter of: |) | |
| |) | |
| KAWASAKI HEAVY INDUSTRIES, |) | |
| LTD.; |) | |
| KAWASAKI MOTORS CORP., U.S.A.; |) | CPSC Docket No.: 17-C0004 |
| and |) | |
| KAWASAKI MOTORS |) | |
| MANUFACTURING CORP., U.S.A. |) | |
| |) | |
| |) | |

SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (“CPSA”) and 16 C.F.R. § 1118.20, Kawasaki Heavy Industries, Ltd., Kawasaki Motors Corp., U.S.A., and Kawasaki Motors Manufacturing Corp., U.S.A. (collectively, “Kawasaki”), and the United States Consumer Product Safety Commission (“Commission”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order resolve staff’s charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues this Order under the provisions of the CPSA.

3. Kawasaki Heavy Industries, Ltd. (“KHI”) is a corporation, organized and existing under the laws of Japan, with its principal place of business in Japan.

4. Kawasaki Motors Corp., U.S.A. (“KMC”) is a corporation, organized and existing under the laws of the state of Delaware, with its principal place of business in Foothill Ranch, CA. KMC is a wholly-owned subsidiary of KHI.

5. Kawasaki Motors Manufacturing Corp., U.S.A. (“KMM”) is a corporation, organized and existing under the laws of the state of Nebraska, with its principal place of business in Lincoln, NE. KMM is a wholly-owned subsidiary of KHI.

STAFF CHARGES

6. Between October 2011 and December 2015, Kawasaki manufactured, distributed, and offered for sale in the United States approximately 11,000 model year 2012 and 2013 Teryx4 750 4x4s (“Teryx4 750”) and approximately 19,500 2014-2016 model year Teryx4 800 4x4s (“Teryx4 800”) and Teryx 800 4x4s (“Teryx 800”) (collectively, “Teryxs” or “Subject Products”). The Teryxs are four-wheel recreational off-highway vehicles that have automotive style controls and seating for two or four persons, depending on model type.

7. KMM manufactures and assembles the Subject Products, which are then sold to KMC for distribution.

8. KMC is responsible for, among other things, the distribution, marketing, and Quality Assurance of the Subject Products in the United States.

9. KHI is primarily responsible for the design, development, and engineering of the Subject Products. KHI retains ultimate control over the operations of KMC and KMM, including retaining recall authority.

10. The Teryxs are a “consumer product,” “distribut[ed] in commerce,” as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. § 2052(a)(5) and

(8). Kawasaki is a “distributor” or a “manufacturer” of the Teryxs, as such terms are defined in section 3(a)(7) and (11) of the CPSA, 15 U.S.C. § 2052(a)(7) and (11).

Violation of CPSA Section 19(a)(4)

11. The Teryxs contain a defect which could create a substantial product hazard and create an unreasonable risk of serious injury because sticks or other debris can break through the Teryxs’ floor board and protrude into the foot rest area, posing an injury hazard to the operator and front passenger.

12. Between April 2012 and July 2014, Kawasaki received more than 400 incident reports of Teryx4 750 floorboards cracking or breaking during normal operation due to impact with, or penetration by, debris from outside the vehicle. At least three of the incident reports resulted in injuries to consumers, including one serious injury.

13. In April 2012, Kawasaki began an investigation into the Teryx4 750 incidents. In October 2012, Kawasaki approved a design change to the Teryx4 750. The design change consisted of a metal strike plate to address the hazard and was implemented on Teryx4 750 models beginning in early 2013.

14. In May 2013, Kawasaki stopped manufacturing the Teryx4 750 and began manufacturing the Teryx 800 and Teryx4 800.

15. In December 2013, in anticipation of production for the 2015 model year, Kawasaki approved an additional design change. This design change involved enhanced floorboard guards for implementation on the 2015 model year Teryx 800 and Teryx4 800.

16. Kawasaki did not immediately inform the Commission under 15 U.S.C. § 2064(b) regarding the defect and risk posed by the Teryx4 750 and did not file a Full Report as required by 16 C.F.R. § 1115.13(d) until July 9, 2014.

17. Kawasaki and the Commission jointly announced a recall of approximately 11,000 Teryx4 750s on July 30, 2014.

18. Between July 2013 and August 2015, Kawasaki received more than 150 incident reports of Teryx4 800 or Teryx 800 floor boards cracking or breaking during normal operation due to impact with, or penetration by, debris from outside the vehicle. At least three of the incident reports resulted in injuries to consumers, including two serious injuries.

19. Kawasaki did not immediately inform the Commission under 15 U.S.C. § 2064(b) regarding the defect and risk posed by the Teryx4 800 and Teryx 800 and did not file a Full Report as required by 16 C.F.R. § 1115.13(d) until August 19, 2015.

20. Kawasaki and the Commission jointly announced a recall of approximately 19,500 Teryx4 800s and Teryx 800s on December 15, 2015.

21. Despite having information reasonably supporting the conclusion that the Teryxs contained a defect and created an unreasonable risk of serious injury, Kawasaki did not immediately inform the Commission of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

22. Because the information in Kawasaki's possession constituted actual and presumed knowledge, Kawasaki knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

23. Pursuant to Section 20 of the CPSA, 15 U.S.C. § 2069, Kawasaki is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

Violation of CPSA Section 19(a)(13)

24. Kawasaki's July 9, 2014, Full Report reported a single incident and an unspecified number of injuries related to the Subject Products' floorboards. The Full Report did not identify more than 400 similar incidents involving the Subject Products about which Kawasaki had actual or presumed knowledge, and excluded any incidents relating to the Teryx4 800 and Teryx 800. This omission constitutes a material misrepresentation under section 19(a)(13) of the CPSA, 15 U.S.C. § 2068(a)(13).

25. Kawasaki's misrepresentation impeded CPSC staff's investigation into the hazard posed by the Subject Products' floorboards and Kawasaki's proposed repair, and hampered staff's ability to accurately communicate the prevalence of the hazard to the public.

26. By knowingly making a material misrepresentation to an officer or employee of the CPSC in the course of an investigation under the CPSA, Kawasaki knowingly violated section 19(a)(13) of the CPSA, 15 U.S.C. § 2068(a)(13), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d). Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Kawasaki is subject to civil penalties for its knowing violation of section 19(a)(13) of the CPSA, 15 U.S.C. § 2068(a)(13).

RESPONSE OF KAWASAKI

27. The signing of this Agreement does not constitute an admission in any respect by Kawasaki of the staff charges, set forth above in paragraphs 6 through 26, including, but not limited to, that: (a) the Teryx4 750, Teryx4 800, and Teryx 800 contained a defect which could create a substantial product hazard and created an unreasonable risk of serious injury; (b) Kawasaki failed to inform the Commission of any reportable issues related to the Teryxs in a timely manner, in accordance with sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. §§

2064(b)(3) and (4); (c) Kawasaki failed to furnish information as required by the statute (sections 15(b)(3) and (4), 15 U.S.C. §§ 2064(b)(3) and (4)), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4); and (d) there was any “knowing” violation of the CPSA as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

28. The Teryx4 750, Teryx4 800, and Teryx 800 are side-by-side recreational off-highway vehicles which are used in a variety of challenging off-road environments where breakage of various parts, including floor boards, can occur.

29. Kawasaki conducted a reasonable and diligent investigation of reported incidents of floor board breakage, including the smaller number of reported instances of stick penetration and the handful of reports of injury. Due to the nature of the products and the variety of ways and environments in which they are used, incident reports can be difficult to evaluate, since use of the Teryx4 750, Teryx4 800, and Teryx 800, like all side-by-side recreational off-highway vehicles, involves the possibility of parts breakage.

30. The voluntary recalls of the Teryx4 750, Teryx4 800, and Teryx 800 and related reporting to the Commission under section 15(b) of the CPSA, 15 U.S.C. § 2064(b), were conducted by Kawasaki out of an abundance of caution and without having determined or concluded that the Teryx4 750, Teryx4 800, and Teryx 800 contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury. Kawasaki may submit a corrective action plan to the Commission without admitting that either reportable information or a substantial product hazard exists. *See* 16 C.F.R. § 1115.20(a)(1)(xiii).

Kawasaki also makes design changes to its products to address customer satisfaction.

31. Kawasaki denies the staff charges that Kawasaki committed a material misrepresentation by omission in the July 9, 2014 Full Report in violation of section 19(a)(13) of

the CPSA, 15 U.S.C. § 2068(a)(13), and further denies that Kawasaki committed a “knowing” violation of section 19(a)(13) as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

32. Pursuant to section 20(a)(1) of the CPSA, 15 U.S.C. §2069(a)(1), the amount of the agreed civil penalty which can be attributable to the claim of material misrepresentation by omission under section 19(a)(13) of the CPSA, 15 U.S.C. §2068(a)(13), cannot exceed \$100,000.

33. Kawasaki believes that it did nothing wrong in this matter and that it complied with the CPSA in all respects. Kawasaki disputes the staff’s allegations that Kawasaki had information that the Teryxs contained a defect which could create a substantial product hazard and created an unreasonable risk of injury. Kawasaki believes that it informed the Commission of any reportable issues regarding the Teryxs in a timely manner and furnished information to CPSC as required by the CPSA. Kawasaki does not believe that it knowingly violated the CPSA as that term is defined in the statute.

34. Pursuant to paragraphs 43 through 45, Kawasaki will maintain its program for current and future compliance with the CPSA.

35. Kawasaki enters into this Agreement in order to settle this matter without the delay and unnecessary expense of litigation.

AGREEMENT OF THE PARTIES

36. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products and over Kawasaki.

37. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by Kawasaki, or a determination by the

Commission, that Kawasaki violated the CPSA's reporting requirements or made material misrepresentations to an officer or employee of the Commission.

38. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Kawasaki shall pay a civil penalty in the amount of five million, two hundred thousand dollars (\$5,200,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via: <http://www.pay.gov>, for allocation to, and credit against, the payment obligations of Kawasaki under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

39. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Kawasaki to the United States, and interest shall accrue and be paid by Kawasaki at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). Kawasaki shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Kawasaki agrees not to contest, and hereby waives and discharges, any defenses to any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Kawasaki shall pay the United

States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

40. After staff receives this Agreement executed on behalf of Kawasaki, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

41. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) Commission's final acceptance of this Agreement and service of the accepted Agreement upon Kawasaki, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

42. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Kawasaki, and (ii) the date of issuance of the final Order, for good and valuable consideration, Kawasaki hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether Kawasaki failed to comply with the CPSA and the

underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

43. Kawasaki shall maintain a compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by the Firm, and which shall contain the following elements: (i) written standards, policies and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance (including information obtained by quality control personnel) is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury is referenced; (ii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary; (iii) effective communication of company compliance-related policies and procedures regarding the CPSA to all applicable employees through training programs or otherwise; (iv) the Firm's senior management responsibility for, and general board oversight of, CPSA compliance; and (v) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to staff upon request.

44. Kawasaki shall maintain and enforce a system of internal controls and procedures designed to ensure that, with respect to all consumer products imported, manufactured, distributed or sold by Kawasaki: (i) information required to be disclosed by Kawasaki to the Commission is recorded, processed and reported in accordance with applicable law; (ii) all reporting made to the Commission is timely, truthful, complete, accurate and in accordance with applicable law; and (iii) prompt disclosure is made to Kawasaki's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are

reasonably likely to affect adversely, in any material respect, Kawasaki's ability to record, process and report to the Commission in accordance with applicable law.

45. Upon reasonable request of staff, Kawasaki shall provide written documentation of its internal controls and procedures, including, but not limited to, the effective dates of the procedures and improvements thereto. Kawasaki shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and personnel deemed necessary by staff to evaluate Kawasaki's compliance with the terms of the Agreement.

46. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

47. Kawasaki represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Kawasaki, enforceable against Kawasaki in accordance with its terms. Kawasaki will not directly or indirectly receive any reimbursement, indemnification, insurance-related payment, or other payment in connection with the civil penalty to be paid by Kawasaki pursuant to the Agreement and Order. The individuals signing the Agreement on behalf of Kawasaki represent and warrant that they are duly authorized by Kawasaki to execute the Agreement.

48. The signatories represent that they are authorized to execute this Agreement.

49. The Agreement is governed by the laws of the United States.

50. The Agreement and the Order shall apply to, and be binding upon, Kawasaki and each of its successors, transferees, and assigns; and a violation of the Agreement or Order may subject Kawasaki, and each of its successors, transferees, and assigns, to appropriate legal action.

51. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

52. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

53. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

54. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Kawasaki agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

(continued on next page)

KAWASAKI HEAVY INDUSTRIES, LTD.

Dated: May 12, 2017

By: _____
Hideto Yoshitake
General Manager and Associate Officer

KAWASAKI MOTORS CORP., U.S.A.

Dated: May 12, 2017

By: _____
Yoshitaka Tamura
President and Chief Executive Officer

KAWASAKI MOTORS MANUFACTURING CORP., U.S.A.

Dated: May 12, 2017

By: _____
Masanobu Kurushima
President

Dated: May 16, 2017

By: _____
Michael A. Wiegard, Esq.
Eckert Seamans Cherin & Mellott, LLC
Counsel to Kawasaki

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Mary T. Boyle
General Counsel

Mary B. Murphy
Assistant General Counsel

Dated: May 22, 2017

By: _____
Philip Z. Brown
Trial Attorney
Division of Compliance
Office of the General Counsel

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

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| In the Matter of: |) | |
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| KAWASAKI HEAVY INDUSTRIES, |) | |
| LTD.; |) | |
| KAWASAKI MOTORS CORP., U.S.A.; |) | CPSC Docket No.: 17-C0004 |
| and |) | |
| KAWASAKI MOTORS |) | |
| MANUFACTURING CORP., U.S.A. |) | |
| _____ |) | |

ORDER

Upon consideration of the Settlement Agreement entered into between Kawasaki Heavy Industries, Ltd., Kawasaki Motors Corp., U.S.A., and Kawasaki Motors Manufacturing Corp., U.S.A. (collectively, “Kawasaki”), and the U.S. Consumer Product Safety Commission (“Commission”), and the Commission having jurisdiction over the subject matter and over Kawasaki, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED that Kawasaki shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of five million, two hundred thousand dollars (\$5,200,000) within thirty (30) days after service of the Commission’s final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: <http://www.pay.gov>. Upon the failure of Kawasaki to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Kawasaki at the

federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Kawasaki fails to make such payment or to comply in full with any other provision of the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the 31st day of May, 2017.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2017-11567 Filed: 6/2/2017 8:45 am; Publication Date: 6/5/2017]