

**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 ADVANCED CARBON COMPOSITES, INC.)

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Manufacture, Certification and Sale of Motorcycle)
Helmets – Violations of 49 U.S.C. Chapter 301;)
Implementation of Recalls 05E-052, 07E-083,)
and 09E-017)

)

SETTLEMENT AGREEMENT AND CONSENT ORDER

This Settlement Agreement and Consent Order pursuant to 49 U.S.C. §§ 30118(e) and 30120(e) (“Agreement and Order”) is made between the National Highway Traffic Safety Administration (“NHTSA”), an operating administration of the U.S. Department of Transportation, and Advanced Carbon Composites, Inc. (“ACC”), a Florida corporation, (collectively, the “parties”), wherein they hereby administratively settle claims for alleged violations of various provisions of federal law commonly known as the National Traffic and Motor Vehicle Safety Act, as amended, 49 U.S.C. Chapter 301 (“Safety Act”). These claims include civil penalties in connection with ACC’s manufacture, sale and certification of motorcycle helmets that have failed to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 218, 49 C.F.R. § 571.218, as well as ACC’s failures to provide adequate remedies in three recall campaigns for ACC motorcycle helmets that failed to comply with FMVSS No. 218:

WHEREAS, ACC is, and at all times relevant to this matter has been, a manufacturer and distributor of motor vehicle equipment under the Safety Act, as defined in 49 U.S.C. § 30102(a)(3), (5) and (7);

WHEREAS, the Safety Act prohibits a person from manufacturing for sale, selling, or offering for sale any motor vehicle or motor vehicle equipment manufactured after the date an applicable FMVSS takes effect, unless the vehicle or equipment complies with the FMVSS and is covered by a certification of compliance with all applicable FMVSSs, 49 U.S.C. §§ 30112(a), 30115;

WHEREAS, the Safety Act requires the manufacturer of a motor vehicle or motor vehicle equipment to provide notification if the motor vehicle or motor vehicle equipment does not comply with applicable FMVSSs, 49 U.S.C. § 30118(c), and that the manufacturer remedy the noncompliance, 49 U.S.C. § 30120;

WHEREAS, manufacturers conducting recall campaigns are required to file quarterly reports with NHTSA detailing the manufacturer's progress, 49 C.F.R. § 573.7;

WHEREAS, from 2005 to the present, ACC has initiated three noncompliance recall campaigns for its EXT-001, EXT-002 and EXT-003 motorcycle helmets:

a. Recall No. 05E-052 (the "EXT-001 recall"). On August 23, 2005, ACC submitted a defect and noncompliance information report under 49 C.F.R. § 573.6 ("Part 573 Report"), initiating a recall of the EXT-001 helmet because it did not comply with FMVSS No. 218. Thereafter, ACC modified the fabricating process for the inner liner of the EXT-001 helmet and denominated the modified helmet as the "EXT-002" helmet. ACC's recall remedy was to repair the EXT-001 helmets such that they were the same as an "EXT-002" model. 1,195 EXT-001 helmets are subject to this recall. ACC has not reported the number of EXT-001 helmets

remedied as provided by ACC. ACC has never filed a quarterly report for this recall campaign with NHTSA. As stated below, the remedy (transforming the EXT-001 helmet into an EXT-002 helmet) did not bring the helmet into compliance with FMVSS No. 218;

b. Recall No. 07E-083, which superseded its predecessor campaign, Recall No. 07E-011 (the “EXT-002 recall”). On February 1, 2007, ACC submitted a Part 573 Report initiating a recall of the EXT-002 helmet because it did not comply with FMVSS No. 218. Thereafter, ACC modified the fabricating process for the EXT-002 helmet, as well as the composition of the EXT-002 helmet shell and liner, and denominated the modified helmet as the “EXT-003” helmet. ACC’s recall remedy was to repair the EXT-002 helmets such that they were the same as an “EXT-003” model. 5,109 EXT-002 helmets are subject to this recall. As of ACC’s September 1, 2009 quarterly report, which is the most recent quarterly report ACC has filed with NHTSA for this recall campaign, ACC remedied only 1,969 EXT-002 helmets (a 38% completion rate). As stated below, the remedy (transforming the EXT-002 helmet) into an EXT-003 helmet did not bring the helmet into compliance with FMVSS No. 218;

c. Recall No. 09E-017 (the “EXT-003 recall”). On April 21, 2009, ACC submitted a Part 573 Report initiating a recall of the EXT-003 helmet because it did not comply with FMVSS No. 218. Thereafter, ACC attempted to modify the design of the helmet a fourth time by using a different shell material and liner, and ACC’s recall remedy was to repair the EXT-003 helmets and designate them as a different, successor helmet model. ACC was unable to successfully modify the shell and liner to bring the helmets into compliance with FMVSS No. 218. 10,780 EXT-003 helmets are subject to this recall. As of ACC’s January 4, 2010 quarterly report, which is the most recent quarterly report ACC has filed with NHTSA for this recall campaign, ACC remedied only 282 EXT-003 helmets (a 2.6% completion rate), but as noted

above, ACC's remedy did not bring the helmet into compliance with FMVSS No. 218;

WHEREAS, NHTSA alleges that ACC has violated various provisions of the Safety Act, including that: (1) ACC manufactured, certified and sold helmets that failed to comply with FMVSS No. 218; (2) ACC failed to provide adequate recall remedies by fashioning non-compliant replacement helmets during ACC's recalls of the EXT-001, EXT-002, and EXT-003 helmets; (3) ACC failed to make adequate progress on its recalls; and, (4) ACC failed to file quarterly reports with NHTSA detailing ACC's progress, as required by 49 C.F.R. § 573.7;

WHEREAS, NHTSA asserts that the history and gravity of ACC's various violations of the Safety Act would be sufficient for NHTSA to issue orders to ACC to provide a remedy that complies with FMVSS No. 218, as well as allow a court to enjoin ACC from manufacturing and selling helmets;

WHEREAS, ACC does not dispute that it has violated the Safety Act as set forth herein;

WHEREAS, the Secretary of Transportation has the authority to issue orders under the Safety Act, 49 U.S.C. §§ 30118(e), 30120(e), and to compromise civil penalties under the Safety Act, 49 U.S.C. § 30165(b). The Secretary's authority has been delegated to the Administrator of NHTSA, 49 C.F.R. § 1.50;

WHEREAS, ACC asserts that it is a small business with limited ability to pay penalties;

WHEREAS, it is the mutual desire of NHTSA and ACC to administratively resolve this matter through this binding Agreement and Order to avoid a hearing and litigation, including claims for injunctive relief;

WHEREAS, it is the mutual desire of NHTSA and ACC to enter into this Agreement and Order under which, if ACC does not comply, the Agreement and Order shall be immediately enforceable in a United States District Court;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Pursuant to 49 U.S.C. §§ 30118(e) and 30120(e), the Secretary of Transportation, by and through the Administrator of NHTSA, hereby ORDERS ACC to take, and ACC hereby agrees to take, the following actions with respect to the EXT-001, EXT-002 and EXT-003 recalls:

a. Separately, for the EXT-001, EXT-002 and EXT-003 recalls, ACC shall file amended Part 573 Reports. The amended Part 573 Reports shall be filed with NHTSA's Recall Management Division no later than April 30, 2010. Each Part 573 Report shall include a detailed description of ACC's remedy and remedy program, which shall include, among other things, a program by which ACC will provide notice to, and obtain helmets from, owners and purchasers, and refund an owner or purchaser for the purchase price of the helmet. ACC's remedy shall be limited to refunds to owners or purchasers, and under no circumstances may ACC attempt to repair or replace recalled helmets. After review of the Part 573 Reports, NHTSA, in its sole discretion, will determine whether or not ACC's amended Part 573 Reports, or the remedy program detailed therein, is sufficient, and subsequently NHTSA will notify ACC of its determinations. In the event NHTSA determines that there are any deficiencies, NHTSA shall notify ACC of said deficiencies, and, promptly thereafter, ACC shall correct these deficiencies.

b. Separately, for the EXT-001, EXT-002 and EXT-003 recalls, ACC shall send a notice of the non-compliance with FMVSS No. 218 to all owners and purchasers of the helmets. Pursuant to 49 C.F.R. § 577.5(a), a draft of the notice shall be sent to

NHTSA's Recall Management Division no fewer than five (5) Federal Government business days before ACC intends to begin issuing the notice to owners. The notices shall be sent to all affected owners and purchasers on or before May 31, 2010. ACC will publish notice of the recalls on ACC's website within seven (7) days of the effective date of this Agreement and Order. ACC shall provide NHTSA with a representative copy of all notices, bulletins, and other communications directly related to the non-compliance ("notices") that are sent to the owners and purchasers. ACC shall also provide NHTSA with a list of recipients of the notices, and the date the notices were sent, by June 15, 2010. If subsequent notices are sent, ACC shall send NHTSA a representative copy of any such notice within seven (7) days of sending the notice.

c. Separately, for the EXT-001, EXT-002 and EXT-003 recalls, ACC shall file quarterly reports, as described in 49 C.F.R. § 573.7, starting on July 1, 2010. In the event NHTSA determines that there are any deficiencies in ACC's quarterly reports, NHTSA shall notify ACC of said deficiencies, and, promptly thereafter, ACC shall correct these deficiencies.

d. If, by September 1, 2010, less than 50 percent of the notified owners or purchasers for any recall have responded to ACC's notice, ACC shall notify NHTSA and send a second notification to the owners and purchasers that did not respond.

e. ACC shall provide one of each helmet model (EXT-001, EXT-002, EXT-003) to NHTSA no later than May 31, 2010.

2. As of the effective date of this Agreement and Order, ACC, any successor entity to ACC, as well as any other business entity owned or controlled by Mr. Kim Davis or in which Mr. Kim Davis owns or holds other than a passive investment of less than three percent (3%) of

the outstanding securities of such entity, shall cease and desist from designing, manufacturing, and selling motorcycle helmets (whether certified to comply with FMVSS No. 218 or novelty helmets). ACC, any successor entity to ACC, and Mr. Kim Davis agree that they shall not circumvent, or attempt to circumvent, this or any other term of this Agreement and Order.

3. ACC shall not file any petition for an exemption from the notice and remedy requirements of the Safety Act under 49 U.S.C. §§ 30118(d), 30120(h) or 49 C.F.R. Part 556.

4. Without NHTSA making any formal findings with respect to ACC's violations of the Safety Act, ACC shall pay the United States civil penalties pursuant to the Safety Act, 49 U.S.C. § 30165, under the following terms and procedures:

a. On or before May 31, 2010 ACC shall pay the United States an initial civil penalty payment of Five Thousand and no/100 Dollars (\$5,000.00).

b. Following its refund to all purchasers or owners of its EXT-001, EXT-002 or EXT-003 model helmets who returned these helmets to ACC for refund as part of the recall, ACC shall also pay the United States a second, final civil penalty payment in the amount of Five Thousand and no/100 Dollars (\$5,000.00), payable as soon as is practicable by ACC from its earnings from other lines of business. Until this second, final civil penalty is paid in full, ACC agrees to (i) notify NHTSA within five (5) business days of the date when it has issued refunds to all purchasers or owners of its EXT-001, EXT-002 and EXT-003 model helmets who returned these helmets for refund; and (ii) submit annual financial statements to NHTSA within forty-five (45) days following the end of each calendar year showing its revenue, expenses and earnings from operations for such calendar year.

c. Payments shall be made by certified or cashier's check, payable to the

order of the U.S. Treasury.

d. All payments shall be sent via overnight carrier (not U.S. Mail) to Timothy H. Goodman, Office of the Chief Counsel, National Highway Traffic Safety Administration (W41-227), U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

e. NHTSA represents that these civil penalty amounts take into account the size of ACC and the gravity of the violations, 49 U.S.C. § 30165(c).

5. Upon receipt of both the initial payment and second, final payment of civil penalties set forth in Paragraph 4 above, the Secretary of Transportation, by and through the Administrator of NHTSA, releases ACC and all of its officers and employees, from liability for civil penalties pursuant to 49 U.S.C. § 30165 in connection with violations of the Safety Act arising out of NHTSA's allegations that: (1) ACC manufactured, certified and sold helmets that failed to comply with FMVSS No. 218; (2) ACC failed to provide adequate recall remedies by fashioning non-compliant replacement helmets during ACC's recalls of the EXT-001, EXT-002, and EXT-003 helmets; (3) ACC failed to make adequate progress on its recalls; and, (4) ACC failed to file quarterly reports with NHTSA detailing the manufacturer's progress, as required by 49 C.F.R. § 573.7. However, NHTSA expressly does not release ACC, or its officers and employees, for potential liability for civil penalties under the Safety Act that NHTSA may pursue against ACC in the future with respect to matters arising from events which occur after the date this Agreement and Order is executed or are unrelated to the subject matter of this Agreement and Order, nor does NHTSA release ACC, or its officers and employees, for potential liability if litigation is commenced to enforce this Agreement and Order.

6. This Agreement and Order does not waive or limit in any way NHTSA's

authority to investigate, take enforcement action against, or in any other way pursue other potential or actual claims against ACC under applicable law, whether under the Safety Act, or otherwise.

7. For purposes of this Agreement and Order, ACC waives any and all administrative remedies, including any right to an administrative hearing, in connection with violations of the Safety Act and applicable regulations.

8. ACC waives its right to contest the terms of this Agreement and Order, either as a challenge to this Agreement and Order or as a defense to the enforcement of any of the terms and conditions set forth therein.

9. ACC waives any defenses as to the validity of this Agreement and Order, or as to the binding nature of the terms and conditions set forth therein.

10. In the event of ACC's breach of any term of this Agreement and Order, NHTSA reserves the right to pursue any and all appropriate administrative and/or judicial remedies, including, but not limited to, assessing interest and administrative charges for untimely payment(s), and/or commencing litigation in a court of competent jurisdiction.

11. ACC warrants that it has been given a reasonable period of time to consider the terms of this Agreement and Order before signing it. ACC further warrants that it consulted with its own counsel with respect to the advisability of executing this Agreement and Order, including but not limited to the term under which ACC, any successor entity to ACC, as well as any other business entity owned or controlled by Mr. Kim Davis or in which Mr. Kim Davis owns or holds other than a passive investment of less than three percent (3%) of the outstanding securities of such entity, shall cease and desist from designing, manufacturing, and selling motorcycle helmets (whether certified to comply with FMVSS No. 218 or novelty helmets) as of

the effective date of this Agreement and Order. ACC further warrants that it has independently decided, without coercion, duress, or reliance on any other person, to enter into this Agreement and Order, and that there have been no inducements or representations upon which this Agreement and Order has been entered into, except as set forth herein.

12. The parties shall each bear their own respective attorneys' fees, costs and expenses.

13. This Agreement and Order shall be effective following its execution by the parties.

14. This Agreement and Order will be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

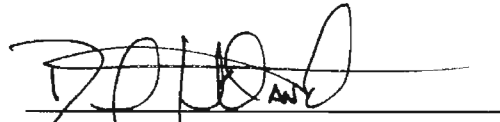
15. ACC's obligations under this Agreement and Order shall survive any receivership, bankruptcy reorganization or liquidation of ACC to the extent allowed under applicable law. If ACC or Mr. Kim Davis intends to file for bankruptcy, or seek any other protection from creditors under applicable law at any time, ACC shall notify NHTSA of its intent no later than thirty (30) days prior to any such filing.

16. This Agreement and Order constitutes the entire agreement between the parties regarding the settlement of the subject matter herein, and supersedes any and all prior or contemporaneous written or oral agreements or representations of the parties, all of which have become merged and finally integrated into this Agreement and Order. This Agreement and Order may not be modified or waived, in whole or in part, unless such modification or waiver is in writing and executed by the parties.

17. Mr. Kim Davis represents that he has the authority to sign this Agreement and Order, which binds ACC to its terms.

18. This Agreement and Order 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.

IT IS SO ORDERED.



DAVID L. STRICKLAND
Administrator

Dated: March 25, 2010

[Signatures appear on next page.]

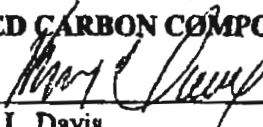
IN WITNESS WHEREOF, the parties hereto have read and fully understand the terms and conditions of this Agreement and Order and have set their hands and seals:

DATE:

March 25, 2010

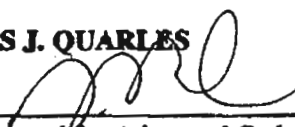
ADVANCED CARBON COMPOSITES, INC.

By:


Kim L. Davis
President
6127 Anno Avenue
Orlando, FL 32809

March 26, 2010

THOMAS J. QUARLES

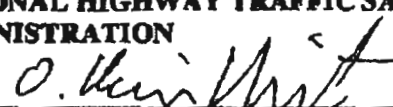

Counsel for Advanced Carbon Composites, Inc.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
Suite 2200
150 West Flagler Street
Miami, Florida 33130

DATE:

March 25, 2010

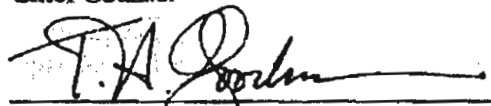
U.S. DEPARTMENT OF TRANSPORTATION,
NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION

By:


O. Kevin Vincent
Chief Counsel

March 25, 2010

By:


Timothy H. Goodman
Senior Trial Attorney

Office of the Chief Counsel
National Highway Traffic Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E., Room W41-227
Washington, D.C. 20590

IN WITNESS WHEREOF, the parties hereto have read and fully understand the terms and conditions of this Agreement and Order and have set their hands and seals:

DATE: **ADVANCED CARBON COMPOSITES, INC.**

March _____, 2010

By: _____
Kim L. Davis
President
6127 Anno Avenue
Orlando, FL 32809

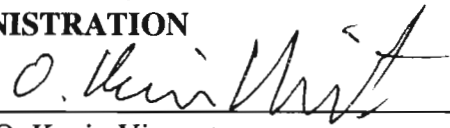
THOMAS J. QUARLES

March _____, 2010

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150 West Flagler Street
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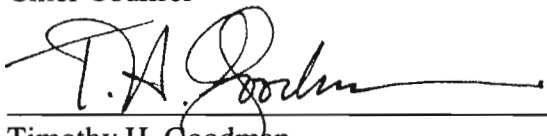
DATE: **U.S. DEPARTMENT OF TRANSPORTATION,
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ADMINISTRATION**

March 25, 2010

By: 

O. Kevin Vincent
Chief Counsel

March 25, 2010

By: 

Timothy H. Goodman
Senior Trial Attorney

Office of the Chief Counsel
National Highway Traffic Safety Administration
U.S. Department of Transportation
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Washington, D.C. 20590