

Court File No.: 45587

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

GRAHAM BARHAM

Plaintiff

- and -

HYUNDAI CANADA INC., HYUNDAI MOTOR AMERICA, INC. (c.o.b. as "HYUNDAI
AUTO CANADA"), HYUNDAI MOTOR COMPANY and KIA CANADA, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

Court File No.: SO46305 VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DON PETERS

Plaintiff

-- and --

HYUNDAI MOTOR AMERICA INC., HYUNDAI MOTOR COMPANY,
HYUNDAI CANADA INC. and KIA CANADA INC.

Defendants

Brought Under the *Class Proceedings Act*

SETTLEMENT AGREEMENT

This Settlement Agreement, made as of June 9, 2005, is entered into by and between, on the one hand, the Representative Plaintiffs, GRAHAM BARHAM and DON PETERS, on behalf of themselves and the Class, and, on the other, Defendants Hyundai Canada Inc., Hyundai Auto Canada, a division of Hyundai Motor America (named in the action as "Hyundai Motor America, Inc. (c.o.b. as 'Hyundai Auto Canada')") and Hyundai Motor Company (collectively, the "Settling Defendants"), to settle and compromise the Litigation and settle, resolve, and discharge the Released Claims (as those terms are defined below), in accordance with the terms and conditions herein.

1. **Definitions:** As used herein, the following terms have the meanings set forth below:

(a) "Approval Notice Date" means the date on which the Short Form Approval Notice is first published pursuant to the Plan of Notice, which shall be no more than thirty (30) days following the date of entry of the Approval Order or such other period as may be approved by the Ontario Court;

(b) "Approval Order" means the order of the Ontario Court which will certify the Ontario Proceeding as a class proceeding and approve this Settlement Agreement;

(c) "B.C. Court" means the Supreme Court of British Columbia;

(d) "B.C. Proceeding" means *Peters v. Hyundai Motor America Inc.* et al (Court File No.: SO46305), pending in the Vancouver Registry of the B.C. Court;

(e) "Canadian Resident" means a Person whose primary residence, or, in the case of a business entity, the primary place of business of which, is in Canada.

(f) "Claim Deadline" means sixty (60) days from the Approval Notice Date;

(g) "Claim Form" means a document, substantially in the form of Appendix A hereto, that an Eligible Class Member must complete and submit to receive compensation hereunder;

(h) "Claimant" means any Class Member who submits a Claim Form to Hyundai on or before the Claim Deadline.

- (i) "Class" means all Canadian Residents who have ever owned and/or leased a Subject Vehicle which was purchased/leased by the first retail owner/lessee prior to September 10, 2002 from a Hyundai dealer in any Province or Territory other than Québec. Excluded from the Class are the Settling Defendants' employees, officers, and directors; the Settling Defendants' legal representatives, successors, and assigns; and all Persons who timely and validly request exclusion from the Class pursuant to the Approval Notice;
- (j) "Class Counsel" means Siskind, Cromarty, Ivey & Dowler LLP;
- (k) "Class Member" means a Person who falls within the definition of the Class set forth in Paragraph 1(i);
- (l) "Courts" means the Ontario Court and the B.C. Court;
- (m) "CPA" means the *Class Proceedings Act*, R.S.B.C. 1996, c.50;
- (n) "CPA 1992" means the *Class Proceedings Act, 1992*, S.O. 1992, c.6;
- (o) "Dealer Shopping Card" mean a debit card which can be used, up to its face value, to purchase goods or services at any Hyundai dealer in Canada, except for Quebec, and is valid for a period of two years from the date of its issuance.
- (p) "Debit Card" means a prepaid debit card redeemable for a period of one year from the date of issuance and useable in a manner in which debit cards are customarily used to obtain cash or pay for goods or services at retail stores;
- (q) "Eligible Class Member" means a Class Member who was the owner or lessee, but not a lessor, of a Subject Vehicle on September 9, 2002, where the Subject Vehicle was not a Group E Vehicle, and the Settling Defendants have paid no compensation of any kind to the Class Member or any other Person (other than the Goodwill Program) in respect of a claim arising from or in any way relating to, or including, a Horsepower Disparity;
- (r) "Fee Application" has the meaning assigned to that term in Paragraph 23 hereof;

(s) "Fee Award" has the meaning assigned to that term in Paragraph 22 hereof;

(t) "Final" means, when used in relation to the Approval Order or Fee Award, the time at which the Approval Order or Fee Award, as the case may be, has been entered and all rights of appeal therefrom have been exhausted. Any proceeding, order or appeal pertaining solely to the Fee Award or Fee Application will not in any way delay or preclude the Approval Order from becoming Final for purposes of this Settlement Agreement;

(u) "Goodwill Program" means the goodwill program announced concurrently with the disclosure of Horsepower Disparities, in September 2002, under which program Hyundai Auto Canada offered (a) to owners of 1999 and earlier model-year Subject Vehicles with respect to which the Horsepower Disparity exceeded four percent (4%), a free, three-year, unlimited kilometres, roadside assistance plan and, (b) to owners of 2000 and later model-year Subject Vehicles with respect to which the Horsepower Discrepancy exceeded four percent (4%), their choice of (i) an extra three years of roadside assistance, (ii) an extension of the three-year/60,000-kilometre, new vehicle warranty to four years/80,000 kilometres, or (iii) an extension of the five-year/100,000-kilometre power train warranty to six years/120,000 kilometres;

(v) "Group A Vehicles" means all Subject Vehicles with respect to which the Horsepower Disparity exceeded seven percent (7%), which Subject Vehicles are listed in the 6th column of the Horsepower Disparity table found at Appendix B hereto, and consist of the Accent 1.5 litre DOHC (1996), Santa Fe 2.4 litre (2002), Sonata 2.4 litre (2001-2002), and Sonata 2.0 litre (1997-1998);

(w) "Group B Vehicles" means all Subject Vehicles with respect to which the Horsepower Disparity was between five percent (5.0%) and seven percent (7.0%), which Subject Vehicles are listed in the 6th column of the Horsepower Disparity table found at Appendix B hereto, and consist of the Accent 1.5 litre DOHC (1997), Sonata 2.7 litre (2002), and Tiburon 2.7 litre (2003);

(x) "Group C Vehicles" means all Subject Vehicles with respect to which the Horsepower Disparity was between four percent (4.0%) and five percent (5.0%), which

Subject Vehicles are listed in the 6th column of the Horsepower Disparity table found at Appendix B hereto, and consist of the Accent 1.5 litre (1999), Santa Fe 2.7 litre (2001-2002), Sonata 2.5 litre (2000), Tiburon 2.0 litre (2003), Elantra 1.8 litre (1997), and XG300 3.0 litre (2001);

(y) "Group D Vehicles" means all Subject Vehicles with respect to which the Horsepower Disparity was between two and one-half percent (2.5%) and four percent (4%), which Subject Vehicles are listed in the 6th column of the Horsepower Disparity table found at Appendix B hereto, and consist of the Elantra 2.0 litre (2000-2002), Tiburon 2.0 litre (1997-2001), Accent 1.5 litre (2001-2002), Sonata 2.5 litre (2001), and Accent 1.6 litre (2002);

(z) "Group E Vehicles" means all Subject Vehicles with respect to which the Horsepower Disparity was less than two and one-half percent (2.5%), which Subject Vehicles are listed in the 6th column of the Horsepower Disparity table found at Appendix B hereto, and consist of the Accent 1.5 litre (1998, 2000), Accent 1.5 litre SOHC (1995-1997), Scoupe 1.5 litre Turbo (1993-1994), Scoupe 1.5 litre (1993-1995), Elantra 1.8 litre (1998), Tiburon 1.8 litre (1997), Sonata 2.0 litre (1992-1993, 1995-1996), and Sonata 2.4 litre (2000);

(aa) "Horsepower Disparity" means the difference between (i) a Subject Vehicle's horsepower rating as originally published by the Settling Defendants and as set out in the 3rd column of the table at Appendix B hereto, and (ii) a Subject Vehicle's horsepower rating as disclosed by testing, and as set out in the 4th column of the table at Appendix B hereto;

(ab) "Hyundai Auto Canada" means Hyundai Motor America, a division of Hyundai Motor America (named in the Ontario Proceeding as "Hyundai Motor America, Inc. (c.o.b. as 'Hyundai Auto Canada')" and in the B. C. Proceeding as "Hyundai Motor America Inc.");

(ac) "Litigation" means the B.C. Proceeding and the Ontario Proceeding;

(ad) "Long Form Approval Notice" means the notice which will be (a) substantially in the form of Appendix C hereto, (b) approved by the Ontario Court, and (c) posted on the

applicable websites, in accordance with the Plan of Notice, to provide Class Members with more detail regarding the certification of the Ontario Proceeding and the approval of this Settlement Agreement;

(ae) "Long Form Pre-Approval Notice" means the notice which will be (a) substantially in the form of Appendix D hereto, (b) approved by the Ontario Court, and (c) posted on the applicable websites, in accordance with the Plan of Notice, to provide Class Members with more detail regarding the hearing pending in the Ontario Court for the certification of the Ontario Proceeding and approval of this Settlement Agreement;

(af) "Notice of Denial" means a notice substantially in the form as set out in Appendix E hereto;

(ag) "Ontario Court" means the Ontario Superior Court of Justice;

(ah) "Ontario Proceeding" means *Barham v. Hyundai Canada Inc. et al* (Court File No.: 45587), pending in the Ontario Superior Court of Justice;

(ai) "Opt-out Deadline" means the date falling 60 days after the Approval Notice Date;

(aj) "Opt-out Form" means the form attached as Schedule A to the Long Form Approval Notice attached to this Settlement Agreement as Appendix C;

(ak) "Parties" means the Representative Plaintiffs and Settling Defendants;

(al) "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual's or entity's spouse, heirs, predecessors, successors, representatives, and assignees;

(am) "Plan of Notice" means that plan which will be (a) submitted to the Ontario Court substantially in the form of Appendix F hereto, and (b) approved by the Ontario Court;

(an) "Poyner" means Poyner Baxter LLP;

(ao) "Pre-Approval Order" means the order of the Ontario Court which will approve the Plan of Notice, the Short Form Pre-Approval Notice and the Long Form Pre-Approval Notice;

(ap) "Proof of Ownership" means (a) in the case of an owner of a Subject Vehicle, (i) a copy of the vehicle's registration certificate or (ii) an affidavit, duly sworn, attesting to the fact that the Class Member owned the Subject Vehicle on September 9, 2002, and (b) in the case of a leased Subject Vehicle, (i) a copy of the lease agreement relating to the vehicle or (ii) an affidavit, duly sworn, attesting to the fact that the Class Member was the lessee of the Subject Vehicle on September 9, 2002;

(aq) "Released Claims" means any and all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, matured or un-matured, at law or in equity, whether in tort, contract or under any other right at law, existing under federal or provincial law, that either of the Representative Plaintiffs, or any Class Member, has or may have against the Released Persons arising out of or in any way related to an alleged or actual Horsepower Disparity, however they might be described, including but not limited to the claims asserted in the Litigation;

(ar) "Released Persons" means Hyundai Canada Inc., Hyundai Auto Canada and Hyundai Motor Company and their past and present partners, affiliates (except Kia Canada Inc.), predecessors, successors, assigns, parents, subsidiaries, officers, directors, employees and dealers, and all Persons who could claim contribution and indemnity, with respect to Released Claims, from any of the foregoing Persons;

(as) "Representative Plaintiffs" means the named plaintiffs in the Litigation, Graham Barham (the "Ontario Lead Plaintiff") and Don Peters (the "B.C. Lead Plaintiff");

(at) "Settlement" means the settlement set forth in this Agreement;

(au) "Settling Defendants" means Hyundai Canada Inc., Hyundai Auto Canada, and Hyundai Motor Company;

(av) "Settling Defendants' Counsel" means Theall Group LLP;

(aw) "Settling Parties" means, collectively, the Released Persons, the Representative Plaintiffs, and all Class Members;

(ax) "Short Form Approval Notice" means the notice which will be (a) substantially in the form of Appendix G hereto, (b) approved by the Ontario Court, and (c) published in newspapers, in accordance with the Plan of Notice, to advise the Class Members of the certification of the Ontario Proceeding and the approval of this Settlement;

(ay) "Short Form Pre-Approval Notice" means the notice which will be (a) substantially in the form of Appendix H hereto (b) approved by the Ontario Court, and (c) published in the listed newspapers, in accordance with the Plan of Notice, to advise the Class Members of the hearing pending in the Ontario Court for the certification of the Litigation and approval of this Settlement Agreement;

(az) "Subject Vehicles" means all Group A, Group B, Group C, Group D and Group E Vehicles sold or leased to the first retail purchaser/lessee prior to September 10, 2002, by a Hyundai dealer in any Province or Territory other than Québec, which vehicles are set out in Appendix I hereto; and

(ba) "Valid Claim" means a Claim Form properly completed and signed by an Eligible Class Member, submitted with Proof of Ownership, and received by Hyundai Auto Canada on or before the Claim Deadline at 75 Frontenac Drive, Markham, Ontario L3R 6H2.

2. **Denial of Liability and Fault:** (a) The Settling Defendants deny the material factual allegations and legal claims asserted by the Representative Plaintiffs in the Litigation, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Nonetheless, the Settling Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement.

(b) If the Settlement is not approved by the Ontario Court in accordance with the terms of this Agreement, or if the Approval Order does not become Final following its

entry, no class will be certified pursuant to this Agreement or, if previously certified, such certification will be deemed to have been for purposes of this Settlement only, and will be voided, *nunc pro tunc*, for all other purposes, without prejudice to or effect on further motions for class certification. In such event, the Settling Defendants will not be deemed to have consented to certification of any class, and will retain all rights to object to or oppose any motion for class certification, including certification of the identical class provided for herein or any other class(es).

3. **Benefits of Settlement:** The Representative Plaintiffs believe that the Released Claims have merit. The Representative Plaintiffs recognize and acknowledge, however, the expense and duration of continued proceedings that would be necessary to prosecute the Released Claims against the Settling Defendants through trial and appeals. The Representative Plaintiffs also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. The Representative Plaintiffs are mindful of the inherent problems of proof of, and possible defenses to, the Released Claims. The Representative Plaintiffs believe that the proposed Settlement confers substantial benefits upon the Class. Based on their evaluation of all of these factors, the Representative Plaintiffs have determined that the Settlement is in the best interests of the Class.

4. **Consent to Certification:** Subject to the Ontario Court's approval, and for the purpose of this Settlement, the Parties consent to the certification of the Ontario Proceeding pursuant to sections 2, 5 and 6 of the CPA 1992.

5. **Pre-Approval Order:** Promptly after execution of this Agreement, Class Counsel will move the Ontario Court for approval of the Pre-Approval Notice and for entry of the Pre-Approval Order and, in support of such motion, will submit to the Ontario Court the Statements of Claim in the Litigation, the draft Pre-Approval Notice, and such other documents as may be necessary, in the judgment of Class Counsel, to obtain the Ontario Court's approval of the Pre-Approval Notice.

6. **Scheduling Approval Hearing:** Contemporaneously with their motion for approval of the Pre-Approval Order, Class Counsel will request that the Ontario Court,

after dissemination of the Pre-Approval Notice to the Class in accordance with the Pre-Approval Order, hold a hearing on whether the Ontario Proceeding should be certified as a class proceeding, the Settlement should be granted final approval, and the Fee Application should be granted.

7. **Motion for Approval Order:** Promptly following entry of the Pre-Approval Order, Class Counsel, on behalf of the Representative Plaintiffs, and on consent of the Settling Defendants, will bring a motion returnable before a Justice of the Ontario Court, for approval of the Approval Notice and entry of the Approval Order. In support of such motion, Class Counsel will submit to the Ontario Court a copy of this executed Agreement with Exhibits, and such other documents as may be necessary, in the judgment of Class Counsel, to obtain the Ontario Court's approval of the Settlement and the Approval Notice and the entry of the Approval Order. The Approval Order will, subject to the Ontario Court's approval:

- (a) certify the Ontario Proceeding as a class proceeding;
- (b) certify a class comprised of all Class Members;
- (c) appoint Graham Barham as representative plaintiff in the Ontario Proceeding;
- (d) declare that this Settlement is fair, reasonable and in the best interests of the Class Members;
- (e) approve this Settlement and order the Parties and the Class Members to comply with it;
- (f) require that the Approval Notice be provided to the Class Members by the Approval Notice Date;
- (g) declare the deadline for filing a claim will be the Claims Deadline;
- (h) declare that the deadline for opting out will be the Opt-out Deadline;
- (i) declare that any Class Member who does not opt out by the Opt-out Deadline will be bound by the Approval Order and the Settlement;
- (j) order that the Ontario Proceeding be dismissed as against the settling Defendants only, with costs against the Settling Defendants in the amount of \$200,000 (plus applicable taxes), which costs shall be payable to Class Counsel by the Settling Defendants in accordance with the terms of this Agreement; and

(k) make such further and other orders as to the approval, implementation and administration of this Settlement as the Ontario Court may deem just.

8. **Dismissal of B.C. Proceeding:** Promptly after the Approval Order has become final, Poyner, on behalf of plaintiff in the B.C. Proceeding, and the Settling Defendants will jointly file a consent order dismissing with prejudice the B.C. Proceeding as against the Settling Defendants only. The Settling Defendants will consent to the dismissal with prejudice of the B.C. Proceeding without costs to any party.

9. **Eligibility:** Only Eligible Class Members are entitled to compensation under this Settlement. The amount of compensation to which each Eligible Class Member will be entitled will vary according to (a) whether the offer of the Goodwill Program was accepted for the Subject Vehicle and (b) if the offer of the Goodwill Program was accepted for the Subject Vehicle, whether the Eligible Class Member is eligible to waive, and elects to waive, the Goodwill Program benefits.

10. **Waiver of Goodwill Program Benefits:** The Goodwill Program can only be waived if (a) the Eligible Class Member owns the Subject Vehicle at the time of waiver, (b) Roadside Assistance was not selected for the Subject vehicle at the time of the acceptance of the offer of the Goodwill Program, (c) no claim has been made with respect to the Subject Vehicle under the Goodwill Program, and (d) coverage under the extended warranty period selected under the Goodwill Program has not commenced with respect to the Subject Vehicle.

11. **Compensation:** The compensation amounts otherwise payable to Eligible Class Members under this paragraph 11 will be subject to such reduction as will be necessary to pay the Fee Award to Class Counsel. To all Eligible Class Members who submit a Valid Claim, Hyundai Auto Canada will deliver, at its option, either a cheque drawn on a Canadian bank account or a Debit Card in the following amounts (less any amounts payable to Class Counsel as part of the Fee Award):

(a) To each Eligible Class Member (i) owning or leasing a Subject Vehicle with respect to which the offer of the Goodwill Program was not accepted, and (ii) who waives the Goodwill Program in accordance with the terms of this Settlement Agreement, the amount set out under the applicable row of Column 3 in Appendix I hereto;

(b) To each Eligible Class Member (i) owning or leasing a Subject Vehicle with respect to which the offer of the Goodwill Program was accepted, and (ii) who is not eligible to waive, or elects not to waive, the Goodwill Program in accordance with the terms of this Settlement Agreement, the amount set out under the applicable row of Column 4 in Appendix I hereto.

Hyundai Auto Canada will mail or cause to be mailed the cheque or Debit Card, as the case may be, to each Eligible Class Member who submits a Valid Claim by the later of forty-five (45) days after the Claim Deadline or twenty (20) days after the Fee Award becomes Final.

12. **Alternative Compensation:** In lieu of the compensation stipulated in paragraph 11 of this Settlement Agreement, Hyundai Auto Canada will have the option, but not the obligation, to offer to Eligible Class Members residing in a Province or Territory other than Québec a Dealer Shopping Card. All Dealer Shopping Cards will have a face value equivalent to no less than one hundred fifty percent (150%) of the cash or debit card amount to which the Eligible Class Member would otherwise be entitled under this Settlement Agreement. The Eligible Class Member will have the option, but not the obligation, to accept a Dealer Shopping Card in lieu of the compensation stipulated in paragraph 11 of this Settlement Agreement. The Settling Defendants will send to Eligible Class Members all Dealer Shopping Cards offered to, and accepted by, such Class Members within the time specified in the last sentence of Paragraph 11 hereof. In the event that Hyundai offers Dealer Shopping Cards to Eligible Class Members, then for the purpose of calculating the Fee Award, an Eligible Class Member who accepts a Dealer Shopping Card will be deemed to have received the amount of compensation to which such Class Member is entitled under paragraph 11 of this Settlement Agreement.

13. **Manner of Notice:** The form, contents and method of dissemination of the Long Form and Short Form Pre-Approval Notices and the Long Form and Short Form Approval Notices will be as described in the Plan of Notice. The Parties will co-operate and do all that is reasonably necessary to ensure that the Long Form and Short Form

Pre-Approval Notices and the Long Form and Short Form Approval Notices are disseminated on a timely basis.

14. **Administration of Claims:** Hyundai Auto Canada will be responsible for administering the claims and Claim Forms, and will take all actions reasonably necessary to ensure that such claims and Claim Forms are correctly processed in a timely manner.

15. **Claim Website:** Promptly following the execution of this Agreement, the Settling Defendants will establish, and will thereafter maintain until administration of all claims hereunder is complete, a web-site which will advise Class Members how they can obtain material information relating to the Litigation, this Settlement and the procedures for obtaining compensation hereunder. The text of the Approval Order and Claim Form will be posted on this website prior to the first publication of the Short Form Approval Notice.

16. **Denied Claims:** Hyundai Auto Canada will mail a Notice of Denial to each Claimant whose claim Hyundai Auto Canada considers not to be a Valid Claim. Each Claimant who receives a Notice of Denial will be entitled to dispute Hyundai Auto Canada's decision to deny to such Claimant such compensation as he, she or it has claimed in a Claim Form. Each such Claimant may dispute Hyundai Auto Canada's disposition of his, her or its Claim Form by submitting to Class Counsel a written statement of the reasons why such Class Member believes his, her or its Claim is a Valid Claim. Such written statement must be sent by such Claimant to Class Counsel within thirty (30) days of his, her or its receipt of a Notice of Denial. Each such Claimant will be deemed to have received the Notice of Denial five (5) business days after it is mailed to such Claimant by Hyundai Auto Canada. Within sixty (60) days of the Claim Deadline, Class Counsel and Settling Defendants' Counsel will confer and consult in good faith for the purpose of resolving the disputes of all Claimants who have disputed a Notice of Denial in accordance with this Paragraph 16, and the Settling Defendants will then re-evaluate the claims of such Claimants in good faith. If after a further thirty (30) days any such disputes remain unresolved, then Class Counsel, on behalf of the Claimants whose disputes remain unresolved, may apply in writing to the Ontario Court

for an order compelling the Settling Defendants to pay to such Claimants such compensation as such Claimants consider themselves to be entitled to under this Settlement. The decision of the Ontario Court with respect to such dispute will be final and not subject to appeal.

17. **Administration Costs:** The Settling Defendants will bear (a) all costs and expenses of disseminating the Long-Form and Short Form Pre-Approval Notices and the Long Form and Short Form Approval Notices, in accordance, respectively, with the Pre-Approval Order and the Approval Order, and (b) all costs and expenses of administering the Settlement, including, but not limited to, the costs and expenses associated with receiving, processing and responding to Claim Forms, establishing and maintaining the website described in Paragraph 15 hereof, issuing and mailing cheques, Debit Cards and/or Dealer Shopping Cards, and the use of Debit Cards and/or Dealer Shopping Cards by their bearers, provided, however, that the Settling Defendants will not be liable, except as otherwise expressly provided herein, for any costs or expenses incurred by the Representative Plaintiffs, Class Counsel or Poyner in connection with the resolution of disputes under Paragraph 16 of this Settlement Agreement. Under no circumstances will the Representative Plaintiffs, Class Counsel or Poyner have any liability to the Settling Defendants for any of the costs or expenses referred to in the first sentence of this Paragraph 17 or any other fees, costs, expenses, or charges of the Settling Defendants in connection with the Litigation or the Settlement.

18. **Opt Out Provisions:** Class Members may exclude themselves from the Ontario Proceeding, and exercise their right to opt out pursuant to section 9 of the CPA 1992, by delivering to Class Counsel, by regular mail or courier, a duly completed Opt-out Form before the Opt-out Deadline.

19. **Binding Effect:** Class Members who do not opt out of the Ontario Proceeding will be bound by this Settlement and, in the absence of a Valid Claim, will not be entitled to any compensation in respect of the Released Claims.

20. **Releases:** Upon the Approval Order becoming Final, the Representative Plaintiffs and each of the Class Members will be deemed to have, and by operation of the Approval Order will have, fully, finally, and forever released, relinquished, and

discharged the Released Persons from all Released Claims. To the extent any claims of non-Class Members are asserted in the Litigation, the Approval Order will dismiss those claims without prejudice.

21. **Costs and the Payment of Costs:** The Settling Defendants agree to pay costs to Class Counsel in the amount of two hundred thousand dollars (\$200,000), plus applicable taxes, and the Settling Defendants will not be liable to pay any other costs or fees to the Representative Plaintiffs, Class Counsel or Poyner, except for the legal fees referred to in Paragraph 22 hereof. No later than five business days after entry of the Approval Order, the Settling Defendants will deposit two hundred thousand dollars (\$200,000), plus applicable taxes, into a dedicated and separately identifiable interest-bearing bank account that cannot be accessed without the approval of Class Counsel and Defendants' Counsel. Within five business days of such deposit, the Settling Defendants will provide all Parties and the Ontario Court with notice of such deposit. No later than five business days after the Approval Order becomes Final, the Settling Defendants, upon receipt of banking coordinates, will transfer such sum plus any accrued interest from such account to a bank account under the sole control of Class Counsel. In the event this Settlement Agreement is not finally approved, the deposited funds and all interest thereon shall remain the exclusive assets of the Settling Defendants subject to no lien or other interest by any other Person.

22. **Class Counsel Fees:** Subject to the approval of the Ontario Court, Class Counsel will be entitled to receive, in addition to the costs referred to in Paragraph 21 hereof, class counsel fees in an amount equivalent to up to 25% of all sums payable by the Settling Defendants in satisfaction of Valid Claims, plus applicable taxes. Such fees and taxes will be payable out of, and will be deducted by the Settling Defendants from, the sums due to Eligible Class Members pursuant to Paragraph 11 hereof. The aforesaid class counsel fees and the costs referred to in Paragraph 21 hereof are collectively referred to herein as the "Fee Award".

23. **Fee Application:** Contemporaneously with its motion for certification of the Ontario Proceeding and approval of this Settlement Agreement, or promptly following the certification of the Ontario Proceeding and the Ontario Court's approval of this

Settlement Agreement, Class Counsel will submit an application, on behalf of the Ontario Lead Plaintiff, to the Ontario Court for such court's approval of the Fee Award ("Fee Application"). The Fee Application will seek counsel fees equivalent to the sum of (a) \$200,000, plus applicable taxes, and (b) twenty-five percent (25%) of all amounts payable by the Settling Defendants in satisfaction of Valid Claims, plus applicable taxes (collectively, the "Fee Award"). Notwithstanding the preceding sentence, Class Counsel may request, but under no circumstances will be obliged to request, less than twenty-five percent (25%) of all amounts payable by the Settling Defendants in satisfaction of Valid Claims. The Settling Defendants will not file or submit, directly or indirectly, any objections to the Fee Application and will pay the Fee Award in accordance with the terms of this Agreement.

24. **Payment of the Balance of the Fee Award to Class Counsel:** Within the later of (a) the date falling thirty (30) days after the Claim Deadline and (b) the date the Fee Award becomes Final, the Settling Defendants (c) will deliver to Class Counsel a written summary of all Valid Claims made, and all sums payable in satisfaction of Valid Claims, and (d) upon reasonable receipt of banking coordinates, will transfer to a bank account under the sole control of Class Counsel a sum equivalent to twenty-five percent (25%) (or such lower percentage, if any, as may have been approved by the Ontario Court in response to the Fee Application), plus applicable taxes, of all sums payable (without regard to the Fee Award) by the Settling Defendants in satisfaction of Valid Claims. The Settling Defendants will pay to Eligible Class Members who have submitted a Valid Claim the balance of the compensation due to them under Paragraphs 11 and 12 hereof. For purposes of illustration, if \$100 in cash is payable to an Eligible Class Member under Paragraph 11 hereof, and if the Ontario Court has approved a Fee Application requesting that Class Counsel receive twenty-five percent (25%) of all amounts payable by the Settling Defendants in satisfaction of Valid Claims, plus applicable taxes, then the Settling Defendants will be obliged to pay \$26.75 of such \$100 to Class Counsel and the balance, being \$73.25, to the Eligible Class Member.

25. **Fee Award for Denied Claims** If one or more Claimants dispute Notices of Denial in accordance with Paragraph 16 hereof, and if any such disputes are subsequently resolved in favour of such Claimants, then within thirty (30) days of the

payment of such disputed claims by the Settling Defendants, the Settling Defendants, upon reasonable receipt of banking coordinates, will transfer to a bank account under the sole control of Class Counsel a sum equivalent to twenty-five percent (25%) (or such lower percentage, if any, as may have been approved by the Ontario Court in response to the Fee Application), plus applicable taxes, of all sums payable to such Claimants (without regard to the Fee Award) in satisfaction of such disputed claims.

26. **Allocation of Fee Award:** The Fee Award will be allocated among Class Counsel and Poyner in proportions mutually agreed between them and in their sole discretion.

27. **Effect of Fee Award or Dispute:** The procedure for, and the grant or denial or allowance or disallowance by the Ontario Court, of the Fee Application are not part of the Settlement, and are to be considered by the Ontario Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceeding relating to the Fee Application, with the exception of an application for, or an award in excess of the amounts specified in Paragraph 23 hereof, or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement or affect or delay the finality of the Approval Order. Until the Fee Award becomes Final, however, the Settling Defendants will not be required to make any payments under this Settlement Agreement, except for the costs that the Settling Defendants must pay into a separately identifiable, interest-bearing bank account pursuant to Paragraph 21 hereof and within five (5) business days of entry of the Approval Order.

28. **The Settling Defendants' Right to Set Aside Settlement.** The Settling Defendants will have the right to set aside or rescind this Agreement, in their sole discretion, if any of the following events occur:

- (a) **Opt Outs Are Significant.** If the number of opt-outs exceeds ten percent (10%) of the total number of Class Members, the Settling Defendants may exercise their option to set aside or rescind this Settlement by filing with the Ontario Court written notice of such election, with proof of service on Class Counsel, no later than thirty (30) days after the Opt Out Deadline;

(b) **Objection(s) to Settlement Sustained.** If any objection to the Settlement is sustained; or

(c) **Modification(s) by Ontario Court.** If there are any modifications to this Agreement (including its Appendices) by the Ontario Court, or by any other court, or by any tribunal agency, entity or person that increase the costs or legal exposure to the Settling Defendants of entering into, or carrying out, this Settlement.

29. **Non-Approval:** If this Settlement is not approved by the Ontario Court, or the Settlement is terminated or fails to become effective in accordance with the terms of this Agreement, the Settling Parties will be restored to their respective positions in the Litigation as of June 8, 2005. In such event, the terms and provisions of this Agreement, with the exception of Paragraphs 2(b), 17, 21, 27, 29, 30, and 31(e), (f), (h), (i) and (q), will have no further force and effect with respect to the Settling Parties and will not be used in this Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Courts in accordance with the terms of this Settlement Agreement will be treated as vacated, *nunc pro tunc*. No order of the Courts or modification or reversal on appeal of any order of the Courts concerning any award of counsel fees, expenses, or costs to Class Counsel will constitute grounds for cancellation or termination of this Agreement, unless the order increases the Settling Defendants' financial responsibility in connection with the Settlement or imposes responsibilities on the Settling Defendants that increase the costs or legal exposure to the Settling Defendants.

30. **Notices:** Any notification, request, instruction or other document to be given by any Party to any other Party to this Agreement (other than Class-wide notification) shall be in writing and,

(a) if to the Settling Defendants, delivered to Theall Group LLP, 4 King Street West, Suite 1410, Toronto, Ontario M5H 1B6, Attention: Lawrence Theall; and

(b) if to the Representative Plaintiffs or the Class Members, to Siskind, Cromarty, Ivey & Dowler LLP, 680 Waterloo Street, London, Ontario N6A 3V8, Attention: A. Dimitri Lascaris.

31. **Miscellaneous Provisions:** (a) The plural of any defined term in this Agreement includes the singular, and the singular of any defined term in this Settlement includes the plural, as the case may be;

(b) No Class Member shall be considered ineligible to receive a payment pursuant to this Settlement on the basis of any statute of limitation or repose, prescription period or any other limitation or prescription defence;

(c) The Parties acknowledge that it is their intent to consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement;

(d) The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defence. The Parties agree that the consideration provided to the Class and the other terms of the Settlement were negotiated in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel;

(e) Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of the Settling Defendants; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault, omission, wrongdoing or liability of the Settling Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. The Settling Defendants may file this Agreement and/or the Approval Order in any action that may be brought against them in order to support any defense or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defence or counterclaim;

(f) All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information will survive this Settlement Agreement;

- (g) All of the Appendices to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by this reference;
- (h) This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest;
- (i) This Settlement Agreement and the Appendices attached hereto constitute the entire agreement among the Parties, and supersedes the Letter of Agreement dated June 9, 2005, and no representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement or its Appendices other than the representations, warranties, and covenants covered and memorialized herein. Except as otherwise provided herein, the Parties will bear their own respective costs;
- (j) Class Counsel, on behalf of the Class, are expressly authorized by the Representative Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to this Settlement Agreement to effectuate its terms, and are expressly authorized to enter into any modifications or amendments to this Settlement Agreement on behalf of the Class that Class Counsel deem appropriate;
- (k) Each counsel or other Person executing this Settlement Agreement or any of its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to do so;
- (l) This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of original counterparts will be filed with the Courts;
- (m) This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties, but for greater certainty it is expressly acknowledged that there can only be a single Eligible Class Member with a Valid Claim for any one Subject Vehicle;
- (n) The Ontario Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement and all parties hereto submit to the

jurisdiction of the Ontario Court for purposes of implementing and enforcing the Settlement;

(o) None of the Settling Parties, or their respective counsel, will be deemed the drafter of this Agreement or its Appendices for purposes of construing the provisions thereof. The language in all parts of this Agreement and its Appendices will be interpreted according to its fair meaning, and will not be interpreted for or against any of the Settling Parties as the drafter thereof;

(p) This Settlement Agreement and the Appendices hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the Province of Ontario without giving effect to that Province's choice-of-law principles;

(q) Nothing in this Agreement will be construed so as to prejudice or interfere with the rights of Class Members who own or lease, or have owned or leased, Kia vehicles to pursue any remedies against Kia Canada Inc; and

(r) In the event that the Settling Defendants wish to obtain a further search authorization from a Claimant pursuant to paragraph 6 of the Declaration contained in the Claim Form, the Settling Defendants will supply the Claimant with a completed search form, requiring only the Claimant's signature, and will use the form of cover letter attached as Appendix J hereto.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized attorneys, dated as of June 9, 2005.

Siskind/Cromarty, Ivey & Dowler LLP

Per: _____

Poyner Baxter LLP

Per: *Kj Baxter*

Theall Group LLP

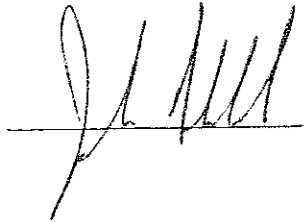
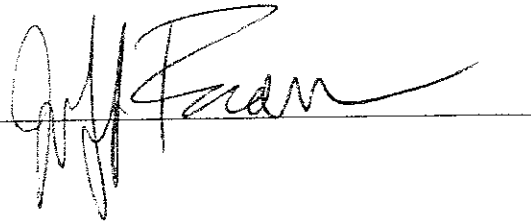
Per: _____

Poyner Baxter LLP

Per: _____

Theall Group LLP

Per: _____

A handwritten signature in black ink, appearing to be 'J. Hill', written over a horizontal line.A handwritten signature in black ink, appearing to be 'G. Fran', written over a horizontal line.