
CENTER FOR AUTO SAFETY

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June 2, 2014

Mr. Kenneth Feinberg
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Mr. Feinberg:

On March 12, 2014, the Center for Auto Safety and Joan Claybrook asked General Motors CEO Mary Barra to establish a \$1 billion Safety Victims Trust Fund to cover losses of victims and families of safety defects whose claims have been extinguished by the bankruptcy or barred by statutes of repose or limitations. On April 1, Ms. Barra announced your selection to advise GM and to "explore and evaluate options in its response to families of accident victims whose vehicles are being recalled for possible ignition switch defects." You stated: "My mandate from the company is to consider the options for dealing with issues surrounding the ignition switch matter, and to do so in an independent, balanced and objective manner based upon my prior experience."

Events since GM's first limited ignition switch recall on February 7, 2014, have dramatically changed GM's liability and responsibility to customers affected by defects dating back to before the bankruptcy. Vehicles could and should have been recalled earlier to prevent death and injury to consumers. As more becomes known about the extent of the cover-up in the ignition switch scandal, the number of victims has increased dramatically. GM has recalled other vehicles that it should have recalled years ago which reveals another class of victims above and beyond the ignition switch victims.

Ignition Switch Is More Than an Airbag Defect: The defective ignition switch in the recalled Delta platform vehicles goes beyond the airbag failing to deploy. The vehicle loses the electric power steering and power brakes which can lead to loss of control resulting in a crash. Look no further than the Brooke Melton case which first exposed the ignition switch defect. It involved a loss of control due to the ignition defect, not airbag nondeployment. GM has stubbornly refused to include Brooke Melton in its list of ignition switch death victims.

Ignition switch failure results in stalling which has been the subject of over 300 safety recalls as listed in our [May 21 letter to NHTSA Acting Administrator Friedman](#). GM is certainly aware that stalling is a safety defect because it litigated and lost the issue in a seminal case that established loss of vehicle power on the road as a safety defect. In *U.S. v. General Motors Corp.*, 413 F.Supp. 933 (D.D.C. 1976), (hereinafter "Carburetors") Judge June Green ruled:

Even if this "defect" were not *per se* related to "motor vehicle safety", the uncontested facts of this case establish that fuel inlet plug failure results in several obvious and undeniable safety hazards. First, once the plug fails, the car "will stop running". The driver must then either abandon his vehicle in the midst of oncoming traffic or, if he can, pull over to the side of the road. Both situations are dangerous.

Ignition Switch Has More Than 13 Victims: The Center has identified 2,004 death and injury Early Warning Reports (EWR) filed by GM on the various models covered by the ignition switch recall through 2013. ([Attachment A.](#)) Since the EWR system does not have a component code for ignition switch, GM could and has filed ignition switch claims under various component codes. For instance, GM reported the involved component as “Unknown” in the Brooke Melton’s 2010 death as it also did in the 2006 Wisconsin crash that was investigated by NHTSA’s Special Crash Investigations and specifically noted ignition switch movement. When Karen King and her 4-year old daughter Hannah were swept off the road by rising water on Mother’s Day 2004 after her 2003 Saturn Ion stalled, GM coded the involved component as “Engine and Engine Cooling.”

As a first step to identifying ignition switch victims, every GM recalled vehicle EWR report must be searched for deaths and injuries due to the ignition switch defect. As a second step to identifying ignition switch victims, the Fatal Analysis Reporting System (FARS) must be searched for deaths in all crashes with the recalled vehicles, not just the ones where the airbags failed to deploy. If the vehicle stalls on the road, it could be hit from behind causing a death that has nothing to do with airbag deployment. Or it could be a loss of control crash such as Brooke Melton’s that also has nothing to do with airbag deployment.

The Center did a search of FARS for just deaths to Ion and Cobalt occupants in the front seats of vehicles where the airbag did not deploy and found 303 deaths. This excluded rear impacts and crashes where the airbag deployment status was marked as unknown. ([Attachment B.](#)) What must be done is to search for all the recalled vehicle for every fatal crash involving the recalled vehicles, obtain the police report and any additional information on the crash, then review the information and determine whether the death and any injuries in the crash were due to the ignition switch defect. In the Wisconsin SCI crash, Natasha Weigel was killed in the crash of a 2005 Cobalt while riding in the back seat. GM does not count Natasha as a victim of the ignition switch defect even though loss of control after the ignition switch failed was the cause of the crash. This crash also killed Amy Rademake, who was in the front seat and who GM counts as a victim. Such cruel distinctions make no sense.

GM Cost Culture Claimed Other Victims Who Should be Compensated: In testimony before the Senate, Ms. Barra said:

[T]he culture of the company at that time [pre-bankruptcy] had more of a cost-culture focus, and I can tell you we have done several things since the bankruptcy to create a new culture at General Motors, to be focused on the customer, starting with rewriting our values: the first value is the customer is our compass, the second is relationships, matters, and individual excellence. . . . If there is a safety defect, there is not a calculation done on business case or cost. It's how quickly can we get the repair and put the right part or fix or inspection, whatever needs to be done to make sure the vehicles are safe that our customers are driving.

The GM cost culture prior to the bankruptcy admitted to by Ms. Barra led to vehicles not being recalled and consumers being killed or injured as a result both before and after the bankruptcy. The ignition switch defect and recall is Exhibit A. But there are others. In 2014, GM has recalled 13,791,211 vehicles in 29 recalls ([Attachment C](#)). Of these, 11 recalls of 9,191,592 vehicles involve at least one model year with vehicles sold prior to the July 2009 bankruptcy. There are four pending defect investigations that could result in more pre-bankruptcy vehicles recalled, with the largest being EA11-001 involving brake line corrosion in 1.8 million 1999-02 C/K pickups and SUV’s in salt-belt states alone.

Recommendation on How to Compensate GM Victims: All victims of concealed GM defects and delayed recalls deserve compensation just as do victims of the ignition switch defect. While GM seems willing to compensate all ignition switch personal injury victims both before and after the bankruptcy, GM's intentions as to other victims are not so clear. Already GM has gone to the Bankruptcy Court in New York and asked Judge Gerber to block the ignition switch economic loss class actions. That's not right. Nor is it right to use the bankruptcy shield or statutes of limitations to preclude victims of other GM defects, particularly ones GM concealed, from recovering compensation.

The Center for Auto Safety believes the testimony of GM CEO Mary Barra before Congress provides guidance on how to proceed. According to Ms. Barra, the culture at GM has changed from one of cost that short changed safety to one of safety and customer value. The test of whether GM has changed its culture is whether it deals fairly with victims of past defects that resulted from the cost culture that existed prior to Ms. Barra's testimony. To firmly establish a new safety and customer responsive culture, GM must do the following:

- Search the federal and company databases to seek out all victims of the ignition switch defect and fully compensate them for their losses.
- Search the federal and company databases to seek out all victims of the delayed recalls already done and to be done in 2014 and fully compensate them for their losses.
- Waive the bankruptcy shield and or statutes of limitations that preclude victims of GM defects from utilizing the justice system to recover compensation for their losses. One has to recognize that the bankruptcy proceeding was fatally flawed by lack of due process. Unlike the ignition switch defect where there should be automatic compensation for personal injury losses, consumers injured by other GM would be put back in the same position they had before the bankruptcy, the right to their day in court prove that their injury was due to a GM defect.

The Center for Auto Safety would be glad to amplify on these principles. We do not have any financial interest in this matter and only want to see what is right for consumers and for General Motors to move forward to become a successful auto company that places consumer safety ahead of corporate profits.

Sincerely,



Clarence Ditlow
Executive Director

CC:

Senator Jay Rockefeller
Senator John Thune
Senator Claire McCaskill
Senator Richard Blumenthal
Senator Edward Markey
Senator Dean Heller
Rep. Fred Upton
Rep. Henry Waxman
Rep. Tim Murphy
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