

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

June 17, 2014

To: Subcommittee on Oversight and Investigations Democratic Members and Staff
Fr: Committee on Energy and Commerce Democratic Staff
Re: Hearing on “The GM Ignition Switch Recall: Investigation Update”

On Wednesday, June 18, 2014, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing titled “The GM Ignition Switch Recall: Investigation Update.” The hearing will review the circumstances surrounding the failure of General Motors (GM) to identify a deadly defect in the ignition switches of millions of the company’s cars and the delay in recalling vehicles with that defect. The hearing will focus on the findings of the internal investigation of this incident requested by the GM Board and conducted by Anton Valukas, a former U.S. attorney.¹

I. GM’s 2014 IGNITION SWITCH RECALLS

In February and March 2014, GM recalled more than 2.6 million Chevrolet Cobalts and HHRs, Saturn Ions and Skys, and Pontiac G5 and Solstices from model years 2003 through 2011 because of a condition that allows ignition switches to inadvertently turn to the “accessory” or

¹ Jenner & Block, *Report to Board of Directors of General Motors Company Regarding Ignition Switch Recalls* (May 29, 2014).

“off” position.² GM began replacing the ignition switches in affected vehicles on April 7, 2014, but the process has been slow and many vehicle owners will wait months for the repairs.³

GM has stated that the defect has caused 13 fatalities.⁴ However, consumer groups have questioned this estimate and believe that GM may be undercounting fatalities, partly due to a focus on single-car and frontal crashes, as well as airbag non-deployment cases.⁵

GM engineers first became aware of the potential for ignition switch problems in 2001, during pre-production of the 2003 Saturn Ion.⁶ By 2005, GM employees had received numerous consumer complaints and field reports of keys moving out of the “run” position, resulting in the vehicles losing power.⁷ GM engineers opened engineering inquiries, known as Problem Resolution Tracking System reports, in 2004 and 2005.⁸ The reports proposed numerous solutions, which were rejected after GM determined that none of the solutions presented “an acceptable business case.”⁹

In December 2005, GM issued a Technical Service Bulletin to its dealers, advising them of a key insert that could prevent the key from slipping out of the run position.¹⁰ On April 26, 2006, GM approved a switch redesign that addressed electrical issues as well as increasing torque that would prevent the switch from moving out of the “run” position. When the change to the switch was made, GM did not change the part number on the redesigned switch.¹¹

² National Highway Traffic Safety Administration, *Recall: Ignition Switch may Turn Off* (Mar. 28, 2014) (online at www-odi.nhtsa.dot.gov/owners/SearchResults?searchType=ID&targetCategory=R&searchCriteria.nhtsa_ids=14V047000); General Motors, *GM Expands Switch Recall* (Mar. 28, 2014) (online at media.gm.com/media/us/en/gm/news.detail.html/content/Pages/news/us/en/2014/mar/0328-ignition-service.html).

³ *Owners of Recalled GM Cars Face Long Repair Waits*, USA Today (May 8, 2014) (online at www.usatoday.com/story/money/cars/2014/05/08/gm-recall-repairs-waits/8851779/).

⁴ General Motors, *GM Expands Ignition Switch Recall* (Feb. 25, 2014).

⁵ *303 Deaths Seen in G.M. Cars with Failed Air Bags*, New York Times (Mar. 13, 2014) (online at www.nytimes.com/2014/03/14/business/gm-air-bag-failures-linked-to-303-deaths.html).

⁶ Letter from M. Carmen Benavides, Director, Product Investigations and Safety Regulations, General Motors, to Nancy Lewis, Associate Administrator for Enforcement, National Highway Traffic Safety Administration, re: NHTSA recall No 14V-047 (Mar. 11, 2014).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

In March 2007, the National Highway Traffic Safety Administration (NHTSA) presented GM employees with information on a crash involving a 2005 Cobalt in which the airbag did not deploy. NHTSA's Special Crash Investigations (SCI) report on this crash found that the ignition switch had been in the accessory position at the time of the crash.¹² Similarly, a second SCI report on a crash from October 2006 with similar conditions found, "The case vehicle's driver and front right passenger air bags did not deploy as a result of the impact with the clump of trees, possibly due to ... power loss due to movement of the ignition switch just prior to the impact."¹³ The report cited six similar complaints in the NHTSA database.¹⁴

In July 2011, following a meeting among GM legal staff, field performance assessment staff, and product investigations personnel, GM began an internal investigation into the non-deployment of airbags in the recalled vehicles.¹⁵ However, GM personnel failed to make the connection between airbag non-deployment and the problems with the ignition switch and no action was taken.

By April 2013, litigation was underway in a lawsuit brought by the family of Brooke Melton, who was killed in a car crash while driving her 2005 Cobalt.¹⁶ During the case, the plaintiff's attorney disclosed to GM's attorneys evidence proving that the ignition switch was changed in 2006 without a change in the part number, and that switches installed in 2008 and later-model cars required a greater torque force in order to be turned.¹⁷

By October 2013, GM received records from Delphi on the 2006 ignition switch design change that explained a variation in torque performance between the 2003-2007 vehicles and the 2008-2011 vehicles. The variation helped to explain airbag non-deployment trends, by showing how the position of the key in the ignition switch could affect the activation of the airbag's sensing algorithm in a crash: when the ignition switches inadvertently switched to the accessory

¹² Calspan Corporation, *Calspan On-Site Air Bag Non-Deployment Investigation*, Case No: CA05-049 (Dec. 2006) (online at www-nass.nhtsa.dot.gov/nass/sci/CaseForm.aspx?xsl=main.xsl&CaseID=818083366).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Letter from M. Carmen Benavides, Director, Product Investigations and Safety Regulations, General Motors, to Nancy Lewis, Associate Administrator for Enforcement, National Highway Traffic Safety Administration, re: NHTSA recall No 14V-047 (Mar. 11, 2014).

¹⁶ *An Engineer's Eureka Moment With a G.M. Flaw*, New York Times (Mar. 28, 2014) (online at www.nytimes.com/2014/03/29/business/a-florida-engineer-unlocked-the-mystery-of-gms-ignition-flaw.html).

¹⁷ Letter from M. Carmen Benavides, Director, Product Investigations and Safety Regulations, General Motors, to Nancy Lewis, Associate Administrator for Enforcement, National Highway Traffic Safety Administration, re: NHTSA recall No 14V-047 (Mar. 11, 2014).

or off positions, the airbags would not deploy in a crash.¹⁸ Two committees within GM – the Field Performance Evaluation Review Committee (FPERC) and the Executive Field Action Decision Committee (EFADC) – reviewed this information in December 2013 and January 2014, which ultimately led to the recalls announced in February and March 2014.¹⁹

On April 10, 2014, GM announced that it was adding ignition lock cylinders to its ignition switch recall on Cobalts, HHRs, Ions and Skys, and G5s and Solstices.²⁰ The cylinders can allow the removal of the key while the engine is running, which can cause rollaway, crash, and occupant or pedestrian injuries.²¹ Several hundred complaints of keys coming out of the ignition switch have been made by consumers, but the company has attributed no deaths to this defect.²²

II. PREVIOUS SUBCOMMITTEE HEARING

On April 1, 2014, the Subcommittee on Oversight and Investigations held a hearing on the ignition switch recall with GM CEO Mary Barra and Acting Administrator of the National Highway Traffic Safety Administration (NHTSA) David Friedman.²³ The purpose of the hearing was to (1) review the ignition switch recalls, (2) understand why it took GM so long to recall the vehicles despite knowing about the ignition switch defect for more than a decade, and (3) consider whether NHTSA could have acted sooner to prevent these fatalities.

During the hearing, Subcommittee members asked Ms. Barra numerous questions trying to understand the failure of GM to act when a defect, known to GM employees since 2001, was causing injuries and deaths. Ms. Barra was unable to answer many of the questions regarding specific facts, such as when GM employees exactly knew about the ignition switch problems and who approved a below-specification ignition switch. Instead of directly answering, Ms. Barra repeatedly referred to the internal investigation requested to be conducted by Mr. Valukas. She did testify that she was not aware of the problems with the Cobalt until December 2013, and was not told about the ignition switch defect until January 31, 2013.

Ms. Barra also testified regarding the culture at GM that allowed the delay to occur, namely a lack of communication between departments. She stated that “there was information in one part of the company, and another part of the company didn’t have access to that” because

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ General Motors, *GM to Replace Lock Cylinder During Ignition Switch Recall: Second Repair Added To Vehicles Recalled Earlier* (Apr. 10, 2014).

²¹ *Id.*

²² *Id.*

²³ Subcommittee on Oversight and Investigations, *Hearing on The GM Ignition Switch Recall: Why Did It Take So Long?*, 113th Cong. (Apr. 1, 2014).

“they didn’t recognize that the information would be valuable to another area of the company.”²⁴ She also discussed changes in process at GM to improve the company’s safety culture and the safety of GM vehicles, specifically the creation of a new position of Vice President of Global Vehicle Safety, who, with additional staff, is tasked with “quickly identify[ing] and resolv[ing] any and all product safety issues.”²⁵ In addition, recall decisions made by the technical community within GM will now be reviewed by the head of Global Product Development and Ms. Barra to determine if anything more should be done.²⁶

On behalf of NHTSA, Mr. Friedman testified regarding NHTSA’s investigation of possible defects in the Chevrolet Cobalt. Mr. Friedman indicated that although NHTSA had reviewed enough early warning reports (EWR) and consumer complaints to raise concerns about the vehicle, its investigations were inconclusive and it lacked sufficient information to conclude that a safety defect existed. In his opening statement, Mr. Friedman stated, “General Motors has now provided new information definitively linking airbag non-deployment to faulty ignition switches ... Had this information been available earlier, it would have likely changed NHTSA’s approach to this issue.”²⁷

III. THE VALUKAS REPORT

On Thursday, June 5, 2014, GM released a detailed report of the result of the investigation conducted by Anton Valukas.²⁸ Mr. Valukas was hired by the GM Board to investigate the circumstances that led to the recall of more than two million GM vehicles as a result of the defective ignition switches. Mr. Valukas and his investigative team interviewed more than 230 witnesses and reviewed more than 41 million documents.²⁹

The report primarily attributes fault only to lower-level employees and committees, summarizing the failures as follows:

While the issue of the ignition switch passed through numerous hands at GM, from engineers to investigators to lawyers, nobody raised the problem to the

²⁴ Subcommittee on Oversight and Investigations, Testimony of Mary Barra, Chief Executive Officer, General Motors, *Hearing on The GM Ignition Switch Recall: Why Did It Take So Long?* at 41, 113th Cong. (Apr. 1, 2014).

²⁵ *Id.* at 24.

²⁶ *Id.* at 60.

²⁷ Subcommittee on Oversight and Investigations, Testimony of the Honorable David Friedman, Acting Administrator, National Highway Traffic Safety Administration, *Hearing on The GM Ignition Switch Recall: Why Did It Take So Long?*, 113th Cong. (Apr. 1, 2014).

²⁸ General Motors, *GM CEO Mary Barra’s Remarks to Employees on Valukas Report Findings* (June 5, 2014) (online at media.gm.com/media/us/en/gm/news.detail.html/content/Pages/news/us/en/2014/Jun/060514-mary-remarks.html).

²⁹ *Id.*

highest levels of the company. As a result, those in the best position to demand quick answers did not know questions needed to be asked.³⁰

The report noted a lack of urgency in investigations of the problem as well as in discussions about ways to fix the problem.³¹ In addition, the report noted a complete failure to communicate between the various departments that dealt with the issue and between lower-level employees and supervisors and others up the chain of command.³² The report also explained that, from the beginning, GM officials viewed the defective ignitions switch as a customer convenience issue, not a safety concern, affecting the speed with which they addressed the problem.³³

Mr. Valukas found that senior executives, including Ms. Barra, were not told of the specific problems with the ignition switch until January of this year.³⁴

As made clear in the report, the defective ignition switch was problematic from the beginning. The switch had a number of electrical problems during the design phase, in addition to failing to meet torque specifications.³⁵ The report identifies Design Release Engineer Ray DeGiorgio as the individual who approved the switch despite his knowledge that it did not meet the specifications.³⁶ Mr. DeGiorgio was also identified in the report as the individual responsible for approving the redesign of the switch without a change of the part number in 2006.³⁷

According to Mr. Valukas, soon after production of Saturn Ions and Cobalts began, GM received reports that the vehicles experienced moving stalls caused by a driver bumping the key fob or chain with his knee and moving the key from the run to the accessory or off position.³⁸ From the very beginning, GM employees failed to recognize this problem as a safety concern.³⁹

Beginning in 2006, GM was subject to lawsuits for a number of crashes in which airbags did not deploy,⁴⁰ which sparked inquiries into the root cause of the airbag non-deployment. For more than five years, GM engineers and product investigators failed to make the connection

³⁰ Jenner & Block, *Report to Board of Directors of General Motors Company Regarding Ignition Switch Recalls* at 4 (May 29, 2014).

³¹ *Id.* at 4-5.

³² *Id.* at 3-4.

³³ *Id.* at 2-3.

³⁴ *Id.* at 221-223.

³⁵ *Id.* at 42.

³⁶ *Id.* at 33.

³⁷ *Id.* at 100.

³⁸ *Id.* at 53.

³⁹ *Id.* at 53, 63.

⁴⁰ *Id.* at 102.

between the airbag non-deployments and the problems with the ignition switches. In April 2013, the plaintiff's attorney in the Brooke Melton lawsuit deposed Mr. DeGiorgio. During the deposition, the plaintiff's attorney provided evidence that conclusively showed that the ignition switch had been changed sometime between 2005 and 2008.⁴¹ In November 2013, GM's internal investigation reached the conclusion that the airbag non-deployment was related to the low torque in the ignition switch.⁴² This conclusion resulted in the recall that finally occurred in 2014.

The report also provided recommendations "to improve the speed and manner in which GM addresses safety issues."⁴³ These recommendations focus on improvements to corporate culture to increase the emphasis on safety and increase accountability and to improve communication between and within departments. In addition, the report makes recommendations for improving communication with outside entities, such as NHTSA and GM's suppliers. The report also provides substantial recommendations for improving the product investigation and decision making process.

Following the release of the Valukas report, 15 GM employees have been fired, and five others have been disciplined.⁴⁴ GM has not publicly released the names of these individuals.

IV. VICTIM COMPENSATION FUND

Under the terms of its restructuring pursuant to its bankruptcy proceedings in 2009, the new General Motors Company is liable only for accidents that occurred after July 10, 2009. GM could be shielded from claims relating to accidents in the recalled vehicles that occurred prior to the bankruptcy. To address this problem and compensate victims fairly, GM announced that it will launch a compensation program for the families of crash victims and those who suffered injuries as result of the ignition switch defect.⁴⁵ The program will be administered by Ken Feinberg, who administered the September 11 Victim Compensation Fund and funds for victims of the Boston Marathon bombing and the BP oil spill.⁴⁶

V. NHTSA TIMELINESS QUERY AND SPECIAL ORDER

⁴¹ *Id.* at 199.

⁴² *Id.* at 209-210.

⁴³ *Id.* at 259.

⁴⁴ *G.M. Inquiry Cites Years of Neglect Over Fatal Defect*, New York Times (June 5, 2014) (online at www.nytimes.com/2014/06/06/business/gm-ignition-switch-internal-recall-investigation-report.html).

⁴⁵ General Motors, *GM CEO Mary Barra's Remarks to Employees on Valukas Report Findings* (June 5, 2014).

⁴⁶ *General Motors Launches Compensation Program for Crash Victims Linked to Faulty Switches*, U.S. News & World Report (June 5, 2014) (online at www.usnews.com/news/business/articles/2014/06/05/gm-launches-compensation-program-for-crash-victims).

On February 26, 2014, following the first of two recalls for the ignition switch defect, NHTSA opened a timeliness query (TQ) “to evaluate the timing of GM’s defect decision-making and reporting of the safety defect to NHTSA.”⁴⁷ Subsequently, NHTSA issued a Special Order to GM, containing 107 detailed requests about the recall decision.⁴⁸ The Special Order designated that GM provide complete and correct responses by April 3, 2014. On April 8, 2014, following GM’s failure to fully respond to the Special Order, NHTSA demanded that the company pay a civil penalty of \$7,000 per day, the maximum allowed by regulation. NHTSA ordered that GM pay \$28,000 for each full day that had elapsed since the April 3 deadline, and continued to penalize the company \$7,000 per day for each additional day the company did not issue a complete response.⁴⁹

NHTSA and GM signed a Consent Order on May 16, 2014.⁵⁰ By the terms of the Consent Order, “GM admits it violated the Safety Act by failing to provide notice to NHTSA of the safety-related defect that is the subject of Recall No. 14V-047.” GM agreed to pay \$35 million – the maximum civil penalty for a related series of violations – to the U.S. Treasury in addition to the penalty owed for the company’s failure to respond completely to NHTSA’s February 2014 inquiry. The Consent Order further established that GM must provide periodic reports to NHTSA on the status of the recall.

GM further agreed to continue efforts to improve employee training with regard to documentation and discussion of safety issues, particularly in response to a 2008 slide presentation directing GM employees how to write about “product risks,”⁵¹ which advised employees of certain words to avoid in reports and presentations. The presentation also dissuades the use of the term “Safety,” instead advising “Has Potential Safety Implications. Instead of “Defect” or “Defective,” it advises “Does not perform to design.”⁵²

VI. ADDITIONAL GM RECALLS SINCE MARCH 2014

⁴⁷ National Highway Traffic Safety Administration, ODI Resume on Timeliness of Defect Determination (Feb. 26, 2014) (online at www.nhtsa.gov/staticfiles/communications/pdf/2014-02-26_TQ_Opening_Resume.pdf).

⁴⁸ Special Order In re: TQ14-001, NHTSA Recall No. 14V-047 from O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration directed to M. Carmen Benavides, Director, Product Investigations and Safety Regulations, General Motors LLC (Mar. 4, 2014) (online at www.nhtsa.gov/staticfiles/communications/pdf/2014-03-04_Special_Order_Directed_GM_LLC.pdf).

⁴⁹ Letter from O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration, to Lucy Clark Dougherty, GNMA Vice President & General Counsel, General Motors Company (Apr. 8, 2014) (online at www.nhtsa.gov/staticfiles/communications/pdf/2014-04-08_Letter_to_L._Dougherty.pdf).

⁵⁰ Consent Order In re: TQ14-001, NHTSA Recall No. 14V-047 (May 16, 2014) (online at www.nhtsa.gov/staticfiles/communications/pdf/May-16-2014-TQ14-001-Consent-Order.pdf).

⁵¹ *Id.*

⁵² *Id.*

Following the February and March 2014 ignition switch recalls, GM has recalled more than 13 million additional vehicles in the United States for a variety of reasons.⁵³

In the last week alone, GM recalled almost four million additional cars due to problems related to faulty ignition switches. On June 13, 2014, GM announced a recall of just over 500,000 Chevrolet Camaros due to a problem with the ignition switches.⁵⁴ According to GM's recall announcement, a driver's knee can bump the key fob and cause the key to move out of the "run" position, with a corresponding loss in power.⁵⁵ The ignition switches in these Camaros apparently meet GM's specifications and, according to GM, are unrelated to the ignition switch system used in the Cobalt and other small cars.⁵⁶

On June 16, 2014, GM announced the recall of 3.16 million Buick Allures, Lucernes, Regals and LaCrosses, Chevrolet Impalas, Cadillac Devilles and DTSs, and Chevrolet Monte Carlos to "rework or replace keys."⁵⁷ GM stated that "the ignition switch may inadvertently move out of the "run" position if the key is carrying extra weight and experiences some jarring event."⁵⁸ In addition, GM announced five other recalls for 165,770 cars for other, unrelated issues.⁵⁹

VII. WITNESSES

The following witnesses have been invited to testify:

Ms. Mary T. Barra
Chief Executive Officer
General Motors Company

Mr. Anton R. Valukas
Chairman
Jenner & Block

⁵³ General Motors, *GM 2014 Year-to-Date North American Recalls Including Exports* (June 16, 2014).

⁵⁴ General Motors, *GM Proactively Announces Four New Recalls* (June 13, 2014).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ General Motors, *GM Will Rework or Replace Keys on 3.16 Million U.S. Cars* (June 16, 2014).

⁵⁹ *Id.*