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S. 921, THE RAECHEL AND JACQUELINE HOUCK SAFE RENTAL CAR ACT OF 2013

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT SAFETY, AND INSURANCE

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

MAY 21, 2013

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ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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S. 921, THE RAECHEL AND JACQUELINE HOUCK SAFE RENTAL CAR ACT OF 2013

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT SAFETY, AND INSURANCE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:33 a.m. in Room SR–253, Russell Senate Office Building, Hon. Claire McCaskill, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. CLAIRE MCCASKILL, U.S. SENATOR FROM MISSOURI

Senator MCCASKILL. This hearing will come to order. Thank you all for being here. Today's hearing will examine rental car safety, an issue that has received a great deal of attention over the past decade. Currently there is no federally mandated obligation for rental car companies to repair safety defects following a safety recall. Legislation we will examine today would change that.

In 2004, sisters Raechel and Jacqueline Houck were killed when driving a rental car that had been recalled for a power steering hose defect that had not been repaired. The car caught fire while traveling on the highway, causing a loss of steering and a head-on collision with a semi trailer truck.

Today's hearing is the result of several years of hard work by my colleagues, by the rental car industry, and by consumer advocates, including Cally Houck, the mother of Raechel and Jacqueline, who has dedicated so much time and energy to ensuring that other mothers do not suffer the tragedy she experienced.

When a version of this bill was introduced nearly two years ago, the rental car industry was adamantly opposed. They wanted to make their own decisions about how and when to ground their vehicles. Long, intense negotiations led us to the point where we are today, with agreement between the key stakeholders. Last September, after months of negotiations, the four leading rental companies—Enterprise, Hertz, Avis, Budget, and Dollar Thrifty—and the industry's trade association agreed to support legislation to address recalls, and they all agreed to voluntarily comply with the requirements of the bill until the legislation could be enacted into law. I thank the industry for its earnest efforts to reach agreement, commitment to this process, and particularly for the continued efforts to see legislation enacted.

Senator Schumer and Boxer's bill, S. 921, the Raechel and Jacqueline Houck Safe Rental Car Act of 2013, reflects that agreement. The bill establishes clear requirements for rental car companies and allows NHTSA to pursue enforcement action for violations. The bill would apply this standard to all companies engaged in renting cars because consumers rightly expect and deserve the same level of safety no matter where they are renting a car.

This is not a new concept. The Motor Vehicle Safety Act already requires auto dealers to remedy any safety recalls before selling or leasing a new car. Senate Bill 921 simply applies that same standard, not just to sold cars or leased cars, but also to rental cars.

Over the past several years bills have been introduced in at least two State legislatures and discussed in other states attempting to ground rental cars subject to recall. I have heard from the rental car industry and agree that this and other auto safety issues are best handled at the Federal level rather than creating a patchwork of State laws for the industry to navigate. By enacting this agreement into law, we can set a Federal standard for safety.

Today we will hear from NHTSA about the agency's investigation into rental car companies' practices when it comes to repairing recalled vehicles. As the agency responsible for implementing and enforcing the standards created in Senate Bill 921, we will also hear the agency's thoughts on the bill.

We will hear from the American Car Rental Association, the trade association for the rental car industry, on the actions the industry has taken to voluntarily improve its practices and the industry's support for the legislation that would codify those practices.

The advocacy group Consumers for Automobile Reliability and Safety previously spearheaded efforts to enact legislation on this issue in California and has since shifted those efforts to Congress. We will hear from them on their work with the rental car industry to reach an agreement on this legislation.

Despite the agreement reached between the rental companies and auto safety advocates, two separate but related industries have raised concerns about the impacts they believe the bill could have on them if it were to be enacted. The auto manufacturers, represented today by the Auto Alliance, have serious concerns about the liability that could be created through a mandate to ground vehicles. I'm sympathetic to this concern, believe it can be addressed, and look forward to hearing their proposals for doing so.

The National Automobile Dealers Association has also raised concerns about the bill applying to auto dealers who rent cars. Especially since dealers are already required to remedy a recall before they sell or lease a new car, I'm struggling to see why this same standard would be so problematic for dealers to adhere to for the cars they rent. However, I look forward to hearing the industry's thoughts on how their concerns could be addressed.

Before we get to our witnesses today, we will first hear from Cally Houck, who has worked tirelessly on this issue. We were also supposed to hear from Senator Schumer, but due to scheduling conflicts he will not be able to join us today. He will instead submit his statement for the record.

[The prepared statement of Senator Schumer follows:]

PREPARED STATEMENT OF HON. CHARLES SCHUMER, U.S. SENATOR FROM NEW YORK

Thank you Chairman McCaskill for holding this important hearing.

Millions of travelers will hit the road during the Memorial Day holiday weekend, many of them in rental cars. These travelers deserve total assurance that the cars they rent are safe. The Raechel and Jacqueline Houck Safe Rental Car Act would provide that assurance.

In 2004, sisters Raechel and Jacqueline Houck were killed driving a rental car that had been recalled for a power steering hose defect but had not been repaired. Raechel was 24. Jacqueline was 20. Today, Ms. Carol Houck, Raechel and Jacqueline's mother, is here to testify about the need for this legislation—the need to ensure this tragedy is not repeated. We owe it to Raechel and Jacqueline to move this bill through Congress. We owe it to their family. We owe it to all drivers to put their safety first.

Is this bill personal? You bet it is. My two daughters are almost exactly the same ages as Raechel and Jacqueline when they died.

But this bill is also practical. Federal law already prohibits new car dealers from selling recalled vehicles without first fixing the safety defects. Rental companies have agreed to be held to the same standard. If a car is not safe enough to be bought and driven off the lot, then that car is not safe enough to rent.

The Raechel and Jacqueline Houck Safe Rental Car Act is supported by companies representing virtually 100 percent of the rental car market. This includes both the large rental companies like Enterprise, Hertz, and Avis Budget, as well as small businesses represented by the American Car Rental Association (ACRA).

Pretty amazing, isn't it? Virtually the entire industry is behind this bill. It wasn't easy, but after many months of negotiations and multiple iterations of the bill, we finally reached a compromise. The end result is a proposal that provides rental car customers additional assurance that the vehicles they rent are safe and gives companies that rent cars a regulatory framework that meets their operational concerns.

It is apparent from testimony today that auto manufacturers and dealers have some additional concerns with the bill. While I am not sure I am in agreement with all of their requests, I am willing to continue working with manufacturers and dealers to try to address their outstanding issues.

But let me be clear on one point—we will not vitiate the core principle of this bill. Simply put, a rental vehicle subject to a safety recall cannot be rented or sold until the safety defect is remedied. This is a straightforward, common sense standard.

We hope that the auto manufacturers and the dealers will join in support of this bill. A bill that is supported by both large companies and small businesses. A bill that recognizes and embraces public safety as a top priority.

I would like to thank all the witnesses for their testimony today. I also would like to thank Chairman McCaskill and Senator Boxer for working with me to forge the compromise between auto safety groups and rental car companies.

We will continue to work to move this bill through Congress. We owe it to Raechel and Jacqueline. We owe it to their family. We owe it to all families.

Senator MCCASKILL. I also ask unanimous consent that the statements and letters of support from a coalition of consumer groups: Enterprise, Hertz, Avis Budget, AAA, State Farm, the Trucking Renting and Leasing Association, the Trauma Foundation, and Congresswoman Lois Capps be entered into the record.

[The information referred to follows:]

CAROL (CALLY) HOUCK, MOTHER OF RAECHEL AND JACQUELINE HOUCK, CONSUMERS FOR AUTO RELIABILITY AND SAFETY, ADVOCATES FOR HIGHWAY AND AUTO SAFETY, CENTER FOR AUTO SAFETY, CONSUMER ACTION, CONSUMER FEDERATION OF AMERICA, CONSUMERS UNION, NATIONAL ASSOCIATION OF CONSUMER ADVOCATES, TRAUMA FOUNDATION

May 9, 2013

Hon. JAY ROCKEFELLER, Chairman,
Hon. JOHN THUNE, Ranking Member,
United States Senate,
Committee on Commerce, Science, and Transportation,
Washington, DC.

RE: SUPPORT FOR THE RAECHEL AND JACQUELINE HOUCK SAFE RENTAL CAR ACT

Dear Chairman Rockefeller and Ranking Member Thune:

On behalf of each of our organizations, we write in support of the Raechel and Jacqueline Houck Safe Rental Car Act, sponsored by Sens. Charles Schumer, Lisa Murkowski, Barbara Boxer and Claire McCaskill. This bipartisan legislation will require that rental car companies ground vehicles that are subject to a safety recall until they are fixed.

This measure is named in memory of Raechel and Jacqueline Houck, daughters of Carol (Gaily) Houck, who were killed by a rental car that was recalled due to a defect in a steering component, which caused an under-hood fire and loss of steering control. The car had not been repaired before it was rented out. Raechel and Jacqueline were ages 24 and 20.

In addition to our organizations, the legislation is also supported by all the major rental car companies and the American Car Rental Association, which represents the major rental car companies and most of the smaller rental car companies. To have leading national auto safety organizations and the rental car industry in agreement on legislation that would place rental car companies under Federal safety regulation for the first time is truly historic. Other supporters include the Truck Renting and Leasing Association, the American Automobile Association, and State Farm Insurance Company.

This legislation represents a major improvement in auto safety, particularly since rental car companies are the largest purchasers of new vehicles in the nation. We hope that with enactment of this measure, consumers who rent or purchase rental cars, either as new or used vehicles, can do so with confidence that the vehicles do not have latent safety defects that are subject to a safety recall.

We respectfully request that you support the bill and work diligently with us, the sponsors, the rental car industry, the AAA and other supporters to enact the legislation this year. Thank you for your consideration of our views.

Sincerely,

Carol (Cally) Houck, Mother of Raechel and Jacqueline Houck

Rosemary Shahan, President, Consumers for Auto Reliability and Safety

Clarence Ditlow, Executive Director, Center for Auto Safety

Jacqueline S. Gillan, President, Advocates for Highway and Auto Safety

Ken McEldowney, Executive Director, Consumer Action

Ami V. Gadhia, Senior Policy Counsel, Consumers Union

Jack Gillis, Public Affairs Director, Consumer Federation of America

Ira Rheingold, Executive Director, National Association of Consumer Advocates

Ben Kelley, Director, Injury Control Policy, Trauma Foundation

Cc: Sen. Charles Schumer

Members of the Committee on Commerce, Science, and Transportation

SAN FRANCISCO GENERAL HOSPITAL
May 16, 2013

TRAUMA FOUNDATION

. . . preventing injuries for 30 years . . .

Sen. JAY ROCKEFELLER,
Chairman, Senate Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

RE: SUPPORT FOR S. 921

Dear Chairman Rockefeller,

On behalf of the Trauma Foundation at San Francisco General Hospital, I am writing to express our strong support for S. 921, The Raechel and Jacqueline Houck Safe Rental Car Act of 2013.

This urgently needed legislation will close a lethal loophole in existing laws and regulations governing the safety of motor vehicles. Because of that loophole, cars and trucks under open defect recall—vehicles for which safety hazards have been identified but left unrepaired—may be placed into the hands of unknowing rental car customers, with potentially deadly results.

The title of S. 921 commemorates one such tragedy, in which two sisters, Raechel and Jacqueline Houck, died in a rental-car crash caused by such an unrepaired defect. Carol Houck, the sisters' mother, has worked tirelessly to bring this serious problem to the attention of the public and its policymakers. S. 921 is a result of that work.

S. 921's passage will represent an important step forward for public health progress. The scourge of preventable motor vehicle crashes and crash deaths continues to afflict the nation's roadways, and recent data indicate that the occurrence of such fatalities is again on the increase. We commend the Committee and the bill's cosponsors for taking this important step toward reducing death and injury from crashes of unsafe motor vehicles.

Sincerely,

BEN KELLEY,
Director, Injury Control Policy,
The Trauma Foundation.

ENTERPRISE HOLDINGS
St. Louis, MO, May 17, 2013

Senator CLAIRE MCCASKILL,
United States Senate,
Chairman,
Subcommittee on Consumer Protection,
Product Safety, and Insurance,
Washington, DC.

Senator DEAN HELLER,
United States Senate,
Ranking Member,
Subcommittee on Consumer Protection,
Product Safety, and Insurance,
Washington, DC.

RE: SUPPORT FOR S. 921

Dear Senator McCaskill and Senator Heller:

On behalf of our senior management and ownership, our employees and our customers, I am writing to express strong support for S. 921. We are appreciative that you are holding a public hearing on this important legislation and it is our hope that this legislation will soon become law.

In short, S. 921 codifies practices that most rental car companies employ today, which is to ground any vehicle that has an open safety recall from the auto manufacturer. Those vehicles may not be re-rented or sold until the recall repairs have been completed.

S. 921 is the culmination of good faith negotiations between consumer advocates, legislators and the rental car industry. We believe it creates a uniform, nation-wide framework that will give our customers additional confidence and assurance that they are renting safe vehicles.

We would like to thank Senators Schumer and Murkowski and the other co-sponsors for introducing this legislation and we look forward to working with them and all other stakeholders for its successful passage.

Sincerely,

LEE R. KAPLAN,
Chief Administrative Officer.

STATEMENT OF RICHARD D. BROOME, EXECUTIVE VICE PRESIDENT, THE HERTZ CORPORATION

Chairman McCaskill, Ranking Member Heller and other Members of the Subcommittee, I am Richard Broome, Executive Vice President of The Hertz Corporation, headquartered in Park Ridge, New Jersey. On behalf of Hertz, Dollar and Thrifty car rental companies, I am pleased to submit testimony in support of the S. 921, the Raechel and Jacqueline Houck Safe Rental Car Act of 2013. All of us at Hertz thank Senators Boxer, McCaskill and Schumer, and your staffs, for taking the lead role on this legislation and for moving it forward towards enactment this year.

For decades, Hertz policy has been to ground vehicles subject to safety recall. It is also our policy and practice to rent and sell these recalled vehicles only after they have been repaired. Over the years, our internal processes and systems have been upgraded to the point where recalled vehicles can now be locked down centrally through our reservation and fleet management systems. An employee who circumvented the system and proceeds to rent or sell an unrepaired recall vehicle would be terminated, although we have no evidence that a Hertz employee has ever violated the company's safety recall policy.

We make vehicle safety a key element of our promise to customers, and we are proud of our performance over the years. We have grounded hundreds of thousands of recalled cars in just the past decade, at significant economic cost to the company. We work closely with our auto manufacturer partners to quickly repair these vehicles to minimize loss of use costs. In some instances, we are compensated for economic losses, in some instances we are not. Regardless, the safety of our rental vehicles and of our customers is our highest priority.

In fact, the performance of the major car rental companies with respect to safety recalls has been exemplary, with all of the companies now having tough policies prohibiting the sale or rental of unrepaired recalls. This includes Dollar Thrifty Group, which Hertz purchased in November 2012 and which has adopted Hertz's policy and practices.

Given the high level of compliance with the policy goal of S. 921 by companies that comprise well over 90 percent of the market, it is fair to ask why a new law is needed. Our view is that the Federal government has historically set the standard for safety recalls, and that this legislation is a logical extension of that historical role. We could argue that the law doesn't go far enough because it leaves out other commercial vehicle operators, such as taxi and limousine services, for reasons we do not understand. Nevertheless, the consuming public deserves the highest level of confidence that the rental cars they drive or ride in are not subject to safety recall or that any safety defects have been fixed. A Federal law helps to confer that higher level of public confidence, and we support the elimination of doubt on matters of safety.

Also, for a companies like Hertz, Dollar and Thrifty with tens of thousands of vehicles crossing state lines every day, a Federal law is imperative, if there is to be regulation in this area. The alternative is a patchwork quilt of state laws, which would be an operational and compliance nightmare for Hertz, Dollar and Thrifty, as well as consumers who would never know whether the car they drive is free of safety defects if states had inconsistent rules or none at all.

Finally, S. 921 represents the culmination of several months of negotiations between Hertz and consumer groups, and subsequently between other rental companies, congressional staff and consumers. As such, we believe the legislation represents a fair balance assuring consumer safety while allowing the companies to implement the underlying policy within their individual operational practices and systems. S. 921 reflects a combination of clear regulatory policy and operational flexibility, and is testament to the good will and balanced sensitivity of all of the stake-

holders. We applaud this example of consensus building among industry, consumers and legislators, and we support passage of S. 921.

Respectfully submitted,

RICHARD D. BROOME,
Executive Vice President,
Corporate Affairs and Communications,
The Hertz Corporation.

STATEMENT OF ROBERT MUHS, VICE PRESIDENT, GOVERNMENT AFFAIRS, CORPORATE COMPLIANCE AND BUSINESS ETHICS, AVIS BUDGET GROUP, INC.

Introduction

Chairwoman McCaskill, Ranking Member Heller, and members of the Subcommittee on Consumer Protection, Product Safety, and Insurance, my name is Robert Muhs. I am Vice President for Government Affairs, Corporate Compliance & Business Ethics of Avis Budget Group, Inc. (Avis Budget Group) and our subsidiary brands Avis Rent A Car System, LLC (Avis), Budget Rent A Car System. Inc. (Budget) and Zipcar. Avis Budget Group commends you for holding a hearing on S. 921, The Raechel and Jacqueline Houck Safe Rental Car Act of 2013, and we thank you for the opportunity to submit this statement for the hearing record.

Avis Budget Group is a leading global provider of vehicle rental and car share services, through the Avis, Budget and Zipcar brands. Headquartered in Parsippany, New Jersey, the company maintains an aggregate worldwide fleet of approximately 500,000 vehicles and conduct vehicle rental services in 10,000 rental locations in approximately 175 countries around the world. Given the very nature and scope of our business, vehicle safety is and always has been a matter of great concern to the company's nearly 28,000 employees and its senior management. Avis Budget Group is and has been fully committed to ensuring the safety of our renters, their passengers and the public.

S. 921—The Raechel and Jacqueline Houck Safe Rental Car Act of 2013

S. 921 is named in honor of Rachel and Jacqueline Houck, two young women who in 2004 lost their lives in a very tragic accident involving a rental car subject to a recall that had not been repaired. This was a horrific event. All involved or affected—consumers, rental car companies, safety advocates and The Congress—can agree that we should do our utmost to prevent such an event from occurring again. The hearing you are conducting on S. 921 is an important step in realizing that objective. Avis Budget Group commends the leadership that you and the co-sponsors of the legislation have shown on this matter.

S. 921 is a bipartisan solution that is fully supported by our company and other members of the rental car industry to provide a single nationwide standard that all rental car companies and consumers alike can look at and rely upon. Taken altogether, we believe the provisions of S. 921 advance the goal of consumer safety. They provide practical solutions and requirements that are very much consistent with Avis Budget Group's core values regarding the safety of our customers.

Avis Budget strongly supports S. 921 for several reasons. First, the legislation is the product of extensive discussion and dialogue between Members of Congress, consumers and auto safety advocates, our industry and other stakeholders. Either directly or in partnership with the American Car Rental Association, we have participated in every facet of the work to develop consensus on how to best achieve our shared goals.

Second, the bill provides a needed Federal solution. As you now, the rental car business inherently involves interstate commerce and as a consequence, the safety standards that would be codified by S. 921 should be addressed as a matter of Federal law and regulation.

Finally, requirements contained in the legislation are practical and workable. In very important aspects, they are grounded on the practices of our industry that we believe are effective and most importantly enhance consumer confidence and safety. We also believe these provisions may serve as a useful template if in the future the Subcommittee examines whether similar standards are appropriate for other commercial vehicle fleet operators.

Conclusion

S. 921 is a bipartisan measure which Avis Budget Group believes should be fully supported and enacted swiftly by the Congress. Avis Budget Group greatly appreciates the opportunity to submit this statement for the record in support of this reasonable and common sense measure. We are pleased to serve as a resource to the

Congress, the Committee, and the Subcommittee and we look forward to our continued work together on this important matter.

AAA
Heathrow, FL, September 14, 2012

Hon. BARBARA BOXER,
U.S. Senate,
Washington, DC.

Dear Senator Boxer:

I am writing to thank you for your continued efforts on the *Raechel and Jacqueline Houck Safe Rental Car Act,* which would prohibit car rental companies from renting or selling vehicles that are under a manufacturer safety recall. Currently, no law prohibits car rental companies from selling or renting such vehicles to unsuspecting consumers.

As an advocate for the safety and security of all motorists, AAA views this legislation as a common-sense solution that would help keep unsafe vehicles off the road. We commend your leadership in working with industry, consumer and safety interests to produce a bipartisan, compromise piece of legislation that is supported by all interested parties.

Once again, thank you for introducing this legislation to improve motorist safety. AAA looks forward to working with you to help ensure this bill becomes law.

Sincerely,

ROBERT L. DARBELNET,
President and Chief Executive Officer.

RLD/cs

STATE FARM INSURANCE COMPANIES
Washington, DC, September 25, 2012

Hon. BARBARA BOXER,
U.S. Senate,
Washington, DC.

Dear Senator Boxer:

On behalf of State Farm, I am writing to voice our support for the "Raechel and Jacqueline Houck Safe Rental Car Act," which would require car rental companies to conform to an automobile manufacturer's safety recall prior to renting or selling vehicles subject to the recall. Currently, no law prohibits car rental companies from selling or renting non-conforming vehicles to consumers.

As you are aware, State Farm has been a leader in advocating automobile and highway safety legislation at the state and Federal levels for decades. As the leading automobile insurer in the United States, State Farm relies greatly on the rental car industry to provide safe and reliable vehicles to our policyholders, employees, and agents. We join with Hertz, Enterprise, Avis, Budget, the American Car Rental Association (ACRA), AAA, the Advocates for Highway and Auto Safety, and the numerous consumer and safety organizations that support this revised bill.

We commend your leadership, as well as that of Senators Blunt, McCaskill, and Schumer, in sponsoring legislation that is supported by rental, safety, and consumer protection organizations and the insurance industry. We urge you to continue your efforts to build a broad, hi-partisan coalition of support in Congress.

Thank you for your efforts to improve automobile safety.

Sincerely,

ALAN MANESS,
Associate General Counsel.

TRUCK RENTING AND LEASING ASSOCIATION
Alexandria, VA, September 19, 2012

Hon. JOHN D. ROCKEFELLER IV,
Chairman,
Committee on Commerce, Science, and Transportation,
Washington, DC.

Hon. KAY BAILEY HUTCHINSON,
Ranking Member,
Committee on Commerce, Science, and Transportation,
Washington, DC.

Dear Senators Rockefeller and Hutchinson:

On behalf of the Truck Renting and Leasing Association (TRALA), I am pleased to support the Senate passage of compromise legislation that will soon be introduced that would prohibit the renting of light weight vehicles that are subject to a manufacturer's recall until a remedy is completed.

For much of the last year TRALA has worked with all the key industry stakeholders as well as the Senate offices for the sponsors of the proposed legislation to strike a fair and reasonable compromise approach on this issue. While there is not complete unanimity on this legislation—with one significant TRALA member still opposed—because of the changes that have been made to the final version of the bill this past week, TRALA now supports the legislation and would encourage your committee and the U.S. Senate to do the same.

We appreciate, especially in this political climate, the efforts on everyone's part to reach a consensus that will help protect the public but not overly infringe on the ability of industry to continue to operate and expand their business as we try to slowly recover from the economic downturn. In particular, we value the cooperation and dialogue with Senators Schumer, Boxer, McCaskill and Blunt to facilitate this final outcome.

Sincerely,

THOMAS M. JAMES,
President and CEO.

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Washington, DC, May 21, 2013

Hon. CLAIRE MCCASKILL, Chairman
Subcommittee on Consumer Protection, Product Safety, and Insurance,

Hon. DEAN HELLER, Ranking Member
Subcommittee on Consumer Protection, Product Safety, and Insurance

Dear Chairman McCaskill and Ranking Member Heller

I write to offer my strong support for the Raechel and Jacqueline Houck Safe Rental Car Act (S. 921), and thank the Subcommittee for holding a hearing on this important legislation.

While current law prohibits car dealerships from selling recalled vehicles to consumers, no law bans rental car companies from doing the same or renting them to unsuspecting consumers. This legal gap became an issue of public concern after Raechel and Jacqueline Houck were tragically killed in 2004 when the recalled PT Cruiser they had rented caught fire and crashed as a result of a safety defect in the car. This unspeakable tragedy could have and should have been prevented. Certainly, it should never be allowed to happen again.

That is why I introduced the Raechel and Jacqueline Houck Safe Rental Car Act in the House last Congress, and intend to introduce the House companion to S. 921 shortly. The legislation would simply prohibit rental companies from renting or selling vehicles that are under safety recall.

I am pleased that the rental car companies have come together with safety and consumer groups to support this common sense legislation, which would not have been possible without the courageous advocacy of Raechel and Jaqueline's mother. Cally, who has fought to call attention to this problem and ensure that this tragedy never happens again.

Again, thank you for your efforts, and I look forward to continuing to work with you and the sponsors of S. 921to move this critical legislation forward.

Sincerely,

LOIS CAPPS,
Member of Congress,
Committee on Energy and Commerce.

Senator MCCASKILL. I hope to have a productive discussion today that leads to the enactment of common sense legislation for the stakeholders represented today and, most importantly, for the consumers.

Senator Heller.

STATEMENT OF HON. DEAN HELLER,
U.S. SENATOR FROM NEVADA

Senator HELLER. Good morning.

Senator MCCASKILL. Good morning.

Senator HELLER. And thank you, Chairman McCaskill, for holding this hearing today. I want to thank our panelists and I want to thank everybody in the audience for taking time this morning.

I want to start by extending my condolences to you, Ms. Houck. We all know the origins of this issue and I want to personally thank you for your testimony today and for the insight that you will provide for this hearing.

I also want to apologize. There was some scheduling miscommunications between the full committee and staff and I will not be able to stay long today. However, I will be reviewing the hearing.

S. 921, the Raechel and Jacqueline Houck Safe Rental Car Act of 2013, will codify an agreement made by the auto rental industry to stop renting or selling vehicles that are under a safety recall before they are fixed. Among other things, the legislation provides rulemaking authority to NHTSA that will mandate all rental car companies have 24 to 48 hours to pull a vehicle subject to recall from their fleet. The legislation also gives NHTSA the authority to investigate and monitor the recall practices of rental car companies.

The legislation has the support of large rental car companies, insurance companies, and consumer and safety groups, some of which are represented here today. Because this legislation turns a voluntary agreement into a mandate, there are some who have raised concerns and I understand they're also represented here also. This hearing today is important to listen to all sides in this debate and inform members of this committee and the Senate on the details of this legislation.

Again, I appreciate the chairwoman for holding this hearing and I look forward to the testimonies and reviewing the information received from all the panelists today.

Thank you.

Senator MCCASKILL. Thank you. I want to vouch for Senator Heller in that we did have some scheduling issues. We're all doing our best here. I don't want anybody to interpret him having to leave as a lack of concern for the subject matter.

Would you like to make a statement?

Senator BOXER. I would, yes.

Senator MCCASKILL. Senator Boxer.

STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM CALIFORNIA

Senator BOXER. Senator McCaskill, thank you so much for this, Senator Heller as well.

On October 7, 2004, my constituent Cally Houck, who we will hear from, lost her two beautiful daughters, Raechel, 24, and Jacqueline, age 20. I want everyone to remember that's why she is here. This is what happened to her, and this is what could happen to any of our families if we don't act. Anyone standing in the way of this legislation ought to think about it if this had happened to their children, their grandchildren, their niece, their nephew. So I'm going to keep coming back to that.

Now, this accident was caused by an unrepaired safety defect in the rental car they were driving. I have a picture of the girls.

Now, if it weren't for Cally, who is an incredible woman, you'll soon see, Senators, they never would have really found out why this happened. I hope that in her testimony she will explain. If she doesn't, I want her to, because we can't question her because we have to move on to another panel. What she did, because she's an attorney, is to do discovery on her own until she found out why this happened.

So I want to say life moves in mysterious ways, but because of her work it's very possible, if we do our job, this will never happen to anyone else.

So for the last year and a half, when I got to know Cally, of course I couldn't stop thinking about how we needed to do this. I was fortunate to find such great partners in the Senate, Senators Schumer, Murkowski, McCaskill, and others, and the Raechel and Jacqueline Houck Safe Rental Car Act is a result of very, very long negotiation. Throughout this process, Congresswoman Lois Capps, who is the Congresswoman of Cally Houck, has also worked very hard on this.

I'm pleased consumer safety organizations, the rental car industry have come together to support this legislation. I want to say, it's pretty simple. You know, when anyone tells you something's complicated, just know that they're just trying to get you not to think about it. This is very simple. It says rental car companies may not rent or sell unsafe recalled vehicles until they're repaired. So those of you who are going to come up here and say, oh, this is terrible, think again. Maybe you'll think again, because the bottom line here is if you went out on the street, I say to my dear colleagues, and you ask anyone here or in Nevada or in Missouri or in my state, if there was such a law that says you can't rent a car out that's been recalled, everyone would say, "Of course there's a law; why would it be treated differently than anything else? It's common sense safety. It just makes a lot of sense."

Now, I want you to know, because this bill has been slow-walked I decided it was important for the major rental car companies to do this on their own. So on May 7, 2012, I wrote to the major rental car companies asking them to sign onto a pledge. This is the pledge: "Effective immediately, our company is making a permanent commitment to not rent or sell any vehicles under safety recall until the defect has been remedied."

I thank Hertz from the bottom of my heart. They stepped out, they took the lead, and they signed that pledge word for word. The other companies have improved their policies. But while these voluntary efforts are fine, we need permanent legislation to hold these companies accountable.

I want to conclude by again thanking Cally Houck, who is testifying. In the face of her unthinkable personal tragedy, losing the light of her life—and I ask my colleagues, look at this, it could be our kids—she found the strength and the determination that I find inspiring. Without her incredible advocacy and work to protect consumers, we would not have gotten this far.

We have a lot of work ahead of us. I worry that the special interests will pound and pound and make this something that it isn't. But I've got to just tell them if they're out there—I don't know if you are—that I for one, I'm going to be going all over this country on this one with Cally, and I'm just going to be saying, What are they doing to you? Because this is common sense safety legislation, and I intend to work with my colleagues—and anyone who knows Claire McCaskill and Chuck Schumer and myself and Lois and others, I'll tell you, they know we're going to be dogged about it, because when I make a commitment to someone who lost the center of their life, I don't take it lightly.

With that, I will yield, and I thank the Chairman.

Senator MCCASKILL. Thank you, Senator Boxer.

Now we'll hear from Cally Houck.

STATEMENT OF CAROL "CALLY" HOUCK, MOTHER OF RAECHEL AND JACQUELINE HOUCK

Ms. HOUCK. Good morning, Madam Chair. Thank you for allowing me to address this committee today. I'd first like to thank Senator Schumer for authoring this legislation, named for my daughters Raechel and Jacqueline, and to Senators Murkowski, Blumenthal, Gillibrand, Casey, and Schatz, and my own Senators, Barbara Boxer and Dianne Feinstein, and you, Madam Chair, for your co-sponsorship of this important consumer legislation. I especially thank you, Senator Schumer, and Senator Boxer, and your staffs for your hard work and leadership on this issue.

I appreciate the rental car industry for working with us for the past 2 years to resolve this issue. I'm pleased to say that all the major rental car companies now support this legislation. I especially thank Hertz for being the standard-bearer. Finally, I'd like to thank all of the consumer groups who have supported this effort, particularly Consumers for Auto Reliability and Safety.

On October 7, 2004, after a four-day visit south to see the family, my girls hugged me goodbye with words of love and appreciation. Raechel had just returned from two years in Italy and I was so proud of them for their conscientious and passionate look on life. Raechel had to work that evening and they wanted to stop and see friends before heading out to drive back to Santa Cruz. I tell them to drive safe and call me. Jackie said she'd see me in a few weeks when she was scheduled to fly from Los Angeles to Central America for a few months.

As I watched them drive away in the PT Cruiser upgrade they had rented up north, I didn't know this would be the last time I would ever hold them, kiss their precious faces. Hours later I received the phone call dreaded by every parent: my daughters had been involved in a terrible traffic collision that took both of their lives in a fiery crash with an 18-wheeler.

My life will never be the same without my treasured daughters. Our family and our lives are forever altered. The promise of life my talented daughters held was snuffed out in a matter of seconds. Raechel was 24 years young and Jacqueline had just turned 20.

In the weeks following our tragedy, still ravaged with excruciating grief and shock, we discovered through friends and acquaintances that the rental car my girls had been driving was under a safety recall. And after minimal investigation, we learned that the repairs had never been made. The defect involved the power steering hose that when it rubbed against another component caused a high pressure leak that ignited when it came into contact with the catalytic converter, causing an under-hood fire and the loss of steering control.

We were dumbfounded. Why didn't the rental car company fix this defect before renting out a vehicle that was a ticking time bomb? After the company had received the recall notice, the vehicle had been rented three other times before my daughters had rented it. Moreover, we were stunned to learn that there was no law and no regulation that prohibited this reckless business practice.

After 5 years of litigation and a few days before trial, the rental car company finally admitted 100 percent liability in the deaths of my daughters. The lawsuit wasn't about money. It was about learning the truth, holding the company accountable, and making sure the public learned the truth, too. We didn't agree to a confidentiality agreement and that is why I'm here today to tell you my story.

We walked out of the courtroom knowing that this would likely happen again to someone else who rented a car under an open safety recall. We learned the company that rented the car to my kids never had a specific policy for dealing with recalled cars. The policy was to rent the car even if the car was under an open safety recall.

During our campaign to bring this issue to the attention of lawmakers, we realized that the business of renting cars under open safety recalls, either through a rental company or an auto dealer, is a huge consumer problem. When the media reported on this issue, most consumers were stunned that in fact rental cars with dangerous defects can be rented out with impunity.

An online petition to pressure rental car companies into supporting this common sense legislation resulted in 150,000 signatures in 48 hours. We believe, as many consumers do, that rental car companies and auto dealers have a duty, since they're in the business of renting and selling cars, to ensure that the vehicles they are offering to the public are safe. Every provider of rental cars, whether from a big rental car company or a used car dealer, should be required to repair unreasonably dangerous defects before those cars are rented to the public.

Recalled cars endanger the lives of everyone who shares the roads, not only the people who are riding in them, but other drivers as well. While my daughters happened to collide with an 18-wheeler, resulting in minor injuries to the truck driver and his passenger, this could have easily been a minivan full of children, with more lives lost.

Nobody should have to worry about whether a car they rent is safe to drive. Nobody should have to endure the loss of a loved one

because a rental car company didn't bother to get an unsafe recalled car repaired. This is simple to fix. This is doable now. Please pass this law.

Thank you.

[The prepared statement of Ms. Houck follows:]

PREPARED STATEMENT OF CAROL "CALLY" HOUCK, MOTHER OF RAECHEL AND JACQUELINE HOUCK

Good Morning, Madam Chair. Thank you for allowing me to address the Committee today. I'd first like to thank Senator Schumer for authoring this legislation, named for my daughters Raechel and Jacqueline, and to Senators Murkowski, Blumenthal, Gillibrand, Casey, my own Senators Barbara Boxer and Dianne Feinstein, and you, Madam Chair, for your co-sponsorship of this important consumer safety legislation. I especially thank you and Senators Schumer and Boxer and your staffs for your hard work and leadership on this issue.

I also appreciate the rental car industry for working with us the past two years to resolve this issue. I'm pleased that all the major rental car companies now support this legislation. I especially thank Hertz for being the standard-bearer. And finally, I would like to thank all of the consumer groups who have supported this effort, particularly Consumers for Auto Reliability & Safety.

On October 7, 2004, after a four-day visit south to see the family, my girls hugged me goodbye, with words of love and thanks. Raechel had just returned from two years in Italy, and I was so proud of them as conscientious and passionate young adults. Raechel had to work that evening, and they wanted to stop and see some friends before heading out to drive back to Santa Cruz. I told them to drive safe and call me. Jackie said she'd see me in a few weeks when she was scheduled to fly from LA to Central America for a few months.

As I watched them drive away in the PT Cruiser "upgrade" they had rented up north, I did not know this would be the last time I would ever see them, hold them and kiss their precious faces. Hours later, I received the phone call dreaded by every parent. My daughters had been involved in a terrible traffic collision that took both of their lives in a fiery crash with an 18-wheeler. My life will never be the same without my treasured daughters. Our family and our lives are forever altered. The promise of life my talented daughters held was snuffed out in a matter of seconds. Raechel was 24 years young and Jacqueline had just turned 20.

In the weeks following our tragedy, still ravaged with excruciating grief and shock, we learned from friends and acquaintances that the rental car my girls were driving was under a safety recall, and after minimal investigation, we learned that the repairs had never been made. The defect involved a power steering hose that would rub against another component, causing a high-pressure leak that ignited when it came into contact with the catalytic converter, causing an under-hood fire and loss of steering control.

We were dumbfounded. Why didn't the rental car company fix this defect before renting out a vehicle that was a ticking time bomb? After the company had received the recall notice, the vehicle had been rented three other times before my daughters rented it. Moreover, we were stunned to learn that there was no law or regulation that prohibited this reckless business practice. After five years of litigation, and a few days before trial, the rental car company finally admitted 100 percent liability in the deaths of Raechel and Jacqueline. Our lawsuit was NOT about the money. It was always about learning the truth, holding the company accountable, and making sure the public heard the truth, too. We refused to settle the case and sign a confidentiality agreement. We never agreed to secrecy, which is why I am able to be here today to tell my story.

We walked out of the courtroom knowing that it was likely this would happen again to someone else who rented a car under an open safety recall. We learned the company that rented that car to my kids never had a specific policy for dealing with recalled cars. The policy was to rent the car, even if the car was under an open safety recall.

During our campaign to bring this issue to the attention of lawmakers we realized that the business of renting cars under open safety recalls, either through a rental car company, or through an auto dealer, is a huge consumer problem. When the media reported on this issue, most consumers were stunned, that in fact rental cars with dangerous defects can be rented out with impunity. An online petition to pressure rental car companies into supporting common-sense legislation resulted in 150,000 signatures in 48 hours. We believed, as many consumers do, that rental car

companies and auto dealers have a duty, since they are in the business of renting and selling cars, to ensure that the vehicles they are offering to the public are safe.

Every provider of rental cars, whether from a big rental car company, or a used car dealer, should be required to repair unreasonably dangerous defects before those cars are rented to the public. Recalled cars endanger the lives of everyone who shares the roads—not only the people who are riding in them. While my daughters happened to collide with an 18-wheeler, and as a result the truck driver and his co-worker suffered relatively minor injuries, it could just as easily have been a minivan full of kids, with even more lives lost. Nobody should have to worry about whether a car they rent is safe to drive. Nobody should have to endure the loss of a loved one because a rental car company didn't bother to get an unsafe, recalled car repaired. This is simple to fix. This is do-able NOW. Please pass this law.

Senator MCCASKILL. Thank you, Ms. Houck.

We now welcome David Strickland, the Administrator of the National Highway Traffic Safety Administration.

STATEMENT OF HON. DAVID L. STRICKLAND, ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Mr. STRICKLAND. Madam Chairman, Mrs. Boxer, Senator Blumenthal: thank you so much for giving me this opportunity to testify about this very important issue. The Raechel and Jacqueline Houck Safe Rental Car Act of 2013 is a very important piece of legislation that, frankly, addresses a safety gap that the National Highway Traffic Safety Administration has in order to make sure that we can enforce against rental car companies that do not fix their vehicles. I'd also like to thank Senator Schumer and Senator Boxer again for reintroducing this fantastic bill. This really is our opportunity to address something that, frankly, is a wrong that needs to be made right.

The tragedy surrounding the deaths of the two women for which this legislation is named cannot be overstated. Their mother, Cally Houck, has worked tirelessly to ensure that this does not happen to another family. I can also say, Senator Boxer, that she met with me and my staff as well, and I couldn't agree with you more, there isn't a greater American, a more passionate mother, than Cally.

The National Highway Traffic Safety Administration is tasked with ensuring the safety and the reliability of the United States vehicle fleet. We play a critical role in protecting drivers from the risks associated with auto safety recalls. The agency has one of the most effective defect investigation programs in the world. We receive and screen over 40,000 consumer complaints every single year, and we pursue investigations and recalls when warranted. We are continually working to provide drivers with the information that they need to stay safe behind the wheel.

All NHTSA safety recalls address an unreasonable risk to safety and should not be ignored. Unfortunately, we do not have the statutory authority to protect rental car customers. Currently there is no prohibition on rental car companies from renting vehicles that are under a recall but have yet to be remedied. This is precisely why the legislation the Senate is considering is so critical.

In November 2010, NHTSA opened an inquiry to learn about rental car companies' recall completion rates and the policies concerning the rental of recalled vehicles. We sent formal information requests to various auto manufacturers seeking information on recall completion rates for several different recall campaigns. The in-

formation requested focused on recall campaigns that involved new vehicles that were likely to include large numbers of vehicles found in rental fleets. The information submitted by the manufacturers provided an indication of the volume and speed with which recall-related repairs were performed in these rental car fleets.

The agency also sent an information request to the major rental car companies themselves, asking them to provide information about their recall policies. The information that we received at the time indicated that major rental car companies did not have firm written policies requiring the vehicle to be grounded until repaired. Instead, the companies allowed the recalled vehicles to be rented under certain circumstances.

While the inquiry is still ongoing, the information submitted by the manufacturers indicated that the recall completion rate of the major rental fleets was about 50 percent at 120 days after the start of the recall and about 60 percent one full year after the recall was started.

We want all drivers to be safe on the road, whether they're driving rental vehicles or their own personal cars. We believe that rental car companies should provide safe vehicles for consumers and that companies should promptly remedy these recalled vehicles. We understand that major rental car companies are supportive of this legislation and we appreciate their efforts to prevent tragedies like the one that occurred with the Houck family from ever happening again.

At the National Highway Traffic Safety Administration, we will continue to work to ensure the highest standards of safety on our nation's roadways. S. 921 will close a gap in current law and give us one more tool in protecting the driving public.

I am now ready to answer any questions the Committee may have, and I also want to take one moment to pray for the families in Oklahoma. Once again, as a person who works on public health and safety every single day, to see those types of tragedies, it really is just heartbreaking.

[The prepared statement of Mr. Strickland follows:]

PREPARED STATEMENT OF HON. DAVID L. STRICKLAND, ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Mr. Chairman, Ranking Member, and members of the Subcommittee, thank you for the opportunity to return again to the Commerce Committee to testify about S. 921, the "Raechel and Jacqueline Houck Safe Rental Car Act of 2013." I would also like to thank Senators Schumer and Boxer, for introducing and reintroducing this bill in the 112th and 113th Congresses. It is important legislation that would protect the American motoring public.

The tragedy surrounding the deaths of the two young women for whom this legislation is named cannot be overstated. Their mother, Cally Houck has worked tirelessly to ensure that this does not happen to another family, and her efforts have served to highlight a very serious gap in Federal law.

The National Highway Traffic Safety Administration (NHTSA) is tasked with ensuring the safety and reliability of the U.S. vehicle fleet; we play a critical role in protecting drivers from the risks associated with auto safety recalls. The NHTSA has one of the most effective defect investigation programs in the world. We receive and screen more than 40,000 consumer complaints every year, and we pursue investigations and recalls when warranted. We are continually working to provide drivers with the information that they need to stay safe behind the wheel. All NHTSA safety recalls address an unreasonable risk to safety and should not be ignored. Unfortunately, we do not have the statutory authority to protect rental car consumers. Currently, there is no prohibition on rental car companies renting vehicles that are

under a recall, but have not yet been remedied. That is precisely why the legislation you are considering today is so critical.

In November of 2010, NHTSA opened an inquiry to learn more about rental car companies' recall completion rates and policies concerning the rental of recalled vehicles. We sent formal information requests to various auto manufacturers, seeking information on recall completion rates for several different recall campaigns. The information requests focused on recall campaigns that involved new vehicles and were likely to include large numbers of vehicles typically found in rental vehicle fleets. The information submitted by the manufacturers provided an indication of the volume and speed with which recall-related repairs were performed in rental car fleets.

NHTSA also sent information requests to the major rental car companies asking them to provide information about their recall policies. The information that we received at the time indicated that the major rental car companies did not have firm written policies requiring a vehicle to be grounded until repaired. Instead, the companies allowed recalled vehicles to be rented under certain circumstances.

While this inquiry is still ongoing, the information submitted by the manufacturers indicated that the recall completion rates for the major rental fleets were about 50 percent at 120 days after the start of the recall, and about 60 percent one year after the start of the recall.

We want all drivers to be safe on the road, whether they are driving rental vehicles or their own personal vehicles. We believe that rental car companies should provide safe vehicles for consumers and that the companies should promptly remedy recalled vehicles. We understand that the major rental car companies are supportive of this legislation, and we appreciate their efforts to prevent tragedies, like what occurred to the Houck family, from happening again.

At NHTSA, we will continue to work to ensure the highest standards of safety on our Nation's roadways. S. 921 will close a gap in current law and give us one more tool in protecting the public.

Thank you for the opportunity to testify and I am happy to take any questions.

Senator MCCASKILL. I think we all share your prayers, Mr. Strickland. It was 2 years ago and 2 days that we had the tragedy strike Joplin and this all brings it back vividly, what a community in Missouri faced. I can only say to the people of Moore, Oklahoma, that the outpouring of support will be significant and it will be inspiring. It certainly was in Joplin, and the tenacity of the Joplin community was a sight to behold. I am sure that the good people in Moore, Oklahoma, will have that same inner strength that will help them through this, along with a lot of faith.

I'm going to try to have a habit to, with some frequency, to defer to my colleagues for questioning first in order to encourage participation in our subcommittee hearings. So I will turn over for the first set of questions to Senator Boxer.

Senator BOXER. Thank you.

As I said in my opening statement, this is a very straightforward and important reform. Frankly, it's shameful that this hasn't been fixed before. I just want to ask you, Mr. Strickland—thank you so much for being here and we're so happy to see you in this position.

Mr. STRICKLAND. Thank you.

Senator BOXER. Have you had a chance to look at the safety recall that was sent out on this power steering hose by DaimlerChrysler to the owners of that vehicle?

Mr. STRICKLAND. Yes, Senator Boxer. It's NHTSA policy, basically the way recalls work is that we will either screen and we'll see a particular issue or anomaly in a particular vehicle and we will notify the manufacturer that we believe there's an unreasonable risk to safety. The manufacturer can then make a decision to voluntarily recall the vehicle or, if they disagree with the agency, they can then go to a more formal process.

In this particular issue, this was an influence recall by NHTSA, but this was voluntarily done by Daimler-Chrysler. So yes, we knew of this recall and we knew of the importance of getting this thing fixed.

Senator BOXER. Well, I ask unanimous consent to place in the record this actual recall notice. Is that all right?

Senator MCCASKILL. Without objection.

[The information referred to follows:]

DAIMLERCHRYSLER

Buckle up for Safety!

SAFETY RECALL – POWER STEERING HOSE

Dear: (Name)

This notice is sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act.

DaimlerChrysler Corporation has decided that a defect, which relates to motor vehicle safety, exists in some **2001 through 2004 model year Chrysler PT Cruiser and 2005 model year Chrysler PT Cruiser Convertible vehicles equipped with a 2.4L non-turbocharged engine and an automatic transaxle.**

The problem is...	**The power steering pressure hose on your PT Cruiser** (VIN: xxxxxxxxxxxxxxxxx) **may contact the transaxle differential cover. Prolonged power steering hose contact can cause the hose to rub through and leak power steering fluid. Power steering fluid leakage in the presence of an ignition source can result in an underhood fire.**
What your dealer will do...	**DaimlerChrysler will repair your vehicle free of charge (parts and labor).** To do this, your dealer will inspect and reposition the power steering hose. Any damaged hoses will be replaced. The inspection and repositioning will take about ½ hour to complete. Hose replacement, if necessary, will require another hour. However, additional time may be necessary depending on how dealer appointments are scheduled and processed.
What you must do to ensure your safety...	Simply **contact your dealer** right away to schedule a service appointment. **Remember to bring this letter with you to your dealer.**
If you need help...	If you have questions or concerns which your dealer is unable to resolve, please contact DaimlerChrysler at 1-800-853-1403.

Please help us update our records, by filling out the enclosed prepaid postcard, if any of the conditions listed on the card apply to you or your vehicle. Be sure to print the last eight (8) characters of the VIN (VVVVVVVV) and notification code D18 on the postcard.

If you have already experienced this condition and have paid to have it repaired, you may send your original receipts and/or other adequate proof of payment to the following address for reimbursement: DaimlerChrysler, P.O. Box 610207, Port Huron, MI 48061-0207, Attention: Reimbursement.

If your dealer fails or is unable to remedy this defect without charge and within a reasonable time, you may submit a written complaint to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590, or call the toll-free Auto Safety Hotline at 1-888-327-4236.

We're sorry for any inconvenience, but we are sincerely concerned about your safety. Thank you for your attention to this important matter.

Customer Services Field Operations
DaimlerChrysler Corporation
Notification Code D18

Note to lessors receiving this recall: Federal regulation requires that you forward this recall notice to the lessee within 10 days.

Senator BOXER. Thank you.

Let me just share with my friends—and I'm so glad, Senator Blumenthal, you're here, because you and the chairman are attorneys. And this is just so straightforward. This was sent out by Daimler-Chrysler: "Dear" name: "This notice was sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act. Daimler-Chrysler Corporation has decided that a defect which relates to motor vehicle safety exists in some 2001 through 2004 model year Chrysler PT Cruiser and 2005 model year" blah, blah. It describes whom it's sent to.

They describe the problem. It's very straightforward: "The problem is the power steering pressure hose in your PT Cruiser may contact the transaxle differential cover." And it talks about how the hose could rub through and leak power steering fluid. Then it says: "Power steering fluid leakage in the presence of an ignition source can result in an under-hood fire."

Right here. And the rental car company got this notice. To my understanding, they got this notice; they did nothing. There was no law and they did nothing.

Now, this is the question I want to ask you. It's not complicated, but if this is so important, important enough that Chrysler told anyone who owned one of these vehicles that they should—what should they do? It says right here: "What you must do: Contact your dealer right away to schedule an appointment and bring this letter."

So if it was important enough to notify the owners and then to notify the rental company, isn't it exactly as important to notify the people who are unknowingly marching into a defective vehicle?

Mr. STRICKLAND. Not only is it more important, Mrs. Boxer——

Senator BOXER. As important.

Mr. STRICKLAND.—it's as important and it should be fixed. If it poses an unreasonable risk to safety, the car rental company frankly has a moral obligation to get that car fixed as soon as it possibly can. We want everybody to get their cars fixed.

Senator BOXER. Right. So if we're going to notify everybody else, and by law they have to, we need to fix this law just to make sure that this tragedy doesn't happen again.

Now, is there anything worse about a person who leases a car? No. We've got to protect all our people. Now, I understand one of the later panels, Madam Chairman, who's opposing us is going to point out: well, there are a lot of recall notices. And I would ask unanimous consent to place in the record another four of these that deal with lots of other issues. May I do that?

Senator MCCASKILL. Without objection.

[The information referred to follows:]

RECEIVED
By Recall Mgt Div. at 8:14 am, Nov 23, 2009

2010 Model Year Corolla
Non-Compliance Recall—Airbag Caution Label on Driver's Sun-Visor

Dear Toyota Owner:

This notice is being sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act. Toyota has decided that certain 2010 Model Year Toyota Corolla vehicles fail to conform to a provision of the Federal Motor Vehicle Safety Standards (FMVSS) that requires adhesive strength of the airbag caution label.

What is the problem?

On certain 2010 model year Corolla vehicles, the airbag caution label may have been affixed with an adhesive that does not meet the requirements of FMVSS 208. In the worst case, the airbag caution label may peel off and the driver could fail to heed the airbag caution information resulting in injury in the event of a crash.

What Toyota will do?

Any Toyota dealer will inspect the airbag caution label to assure the label was installed with the required strength adhesive. If the required strength adhesive was not utilized, the dealer will replace the driver's sun-visor with a new one at *NO CHARGE* to you.

What should you do?

Please contact your authorized Toyota dealer to make appointment to have your airbag caution label on the driver's sun-visor inspected. If the required strength label adhesive was not utilized, your dealer will need to order and receive the replacement sun-visor. We apologize for this inconvenience.

The repair will take approximately 15 minutes. However, depending upon the dealer's work schedule, it may be necessary to make your vehicle available for a longer period of time.

We request that you present this notice to the dealer at the time of your service appointment.

If you no longer own the vehicle, please indicate so on the enclosed postage paid form, providing us with the name and address of the new owner.

What if you have other questions?

Your local Toyota dealer will be more than happy to answer any of your questions and set up an appointment to perform the inspection and if necessary replacement. If you require further assistance, you may contact the Toyota Customer Experience Center at 1–888–270–9371 Monday through Friday, 5:00 am to 6:00 pm, Saturday 7:00 am through 4:00 pm Pacific Standard Time.

If you believe that the dealer or Toyota has failed or is unable to remedy the defect within a reasonable time, you may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue S.E., Washington, DC 20590 or call the toll free Vehicle Safety Hot Line at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *http://www.safercar.gov*.

If you are a vehicle lessor, Federal law requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the lessee within ten days.

We have sent this notice in the interest of your continued satisfaction with our products, and we sincerely regret any inconvenience this condition may have caused you.

Thank you for driving a Toyota.

Sincerely,

TOYOTA MOTOR SALES, U.S.A., INC.

BULLETIN NO.: 09298A
January 2010

Dear General Motors Customer:

This notice is sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act.

General Motors has decided that certain 2010 model year Chevrolet Equinox and GMC Terrain vehicles fail to conform to Federal/Canada Motor Vehicle Safety Standard 103, "Windshield Defrosting and Defogging Systems", and Standard 101, "Controls and Displays". As a result, GM is conducting a recall. We apologize for this inconvenience. However, we are concerned about your safety and continued satisfaction with our products.

IMPORTANT

- Your vehicle is involved in recall 09298.
- Schedule an appointment with your GM dealer.
- This service will be performed for you at *no charge.*

Why is your vehicle being recalled?

The software in the center instrument panel can cause the heating, air conditioning, defrost, and radio controls, as well as the panel illumination to become inoperative. Driving without a functioning defrost system can decrease your visibility under certain driving conditions and could result in a crash without warning. Driving without panel illumination can divert your attention while looking for a control.

What will we do?

Your GM dealer will replace the computer module in the center instrument panel. This service will be performed for you at *no charge.* Because of service scheduling requirements, it is likely that your dealer will need your vehicle longer than the actual service correction time of approximately 20 minutes.

If your vehicle is within the New Vehicle Limited Warranty, your dealer may provide you with shuttle service or some other form of courtesy transportation while your vehicle is at the dealership for this repair. Please refer to your Owner's Manual and your dealer for details on courtesy transportation.

What should you do?

You should contact your GM dealer to arrange a service appointment as soon as possible. *When scheduling your appointment, please provide your dealer with your vehicle's 17-character vehicle identification number (VIN).* Your VIN can be found above your name and address at the top of this letter, and will follow the numbers "09298". Your dealer will need your VIN to order parts for your vehicle so that they will be available on the day of your service appointment.

Do you have questions?

If you have questions or concerns that your dealer is unable to resolve, please contact the appropriate Customer Assistance Center at the number listed below. More information about your vehicle can be found at the Owner Center at *www.gmownercenter.com.*

Division	Number	Text Telephones (TTY)
Chevrolet	1–800–630–2438	1–800–833–2438
GMC	1–866–996–9463	1–800–462–8583
Guam	1–671–648–8450	
Puerto Rico—English	1–800–496–9992	
Puerto Rico—Español	1–800–496–9993	
Virgin Islands	1–800–496–9994	

If after contacting your dealer and the Customer Assistance Center, you are still not satisfied we have done our best to remedy this condition without charge and within a reasonable time, you may wish to write the Administrator, National Highway Traffic Safety Administration, 1200
New Jersey Avenue, SE, Washington DC 20590, or call the toll-free Vehicle Safety Hotline at 1.888.327.4236 (TTY 1.800.424.9153), or go to *http://www.safercar.gov.* Federal regulation requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the lessee within ten days.

SCOTT LAWSON,
Director, Customer and Relationship Services.

MOTOR VEHICLE RECALL

Dear 2006 Sonata Owner:

This notice is sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act.

Hyundai has decided that a defect, which relates to motor vehicle safety, exists in certain model year 2006 Hyundai Sonata vehicles that were produced during the period beginning on April 14, 2005 through August 31, 2005.

Federal law requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the lessee within ten days.

What is the problem?

- Labels containing air bag warning information, illustrated below, are attached to your vehicle's sun visors. Some of these labels may not have been properly installed, causing them to distort or separate from the sun visors. If the labels are distorted or missing, the driver or front seat passenger will not have information available that may help protect them in the event of a crash.

What should you do?

- We are asking you to inspect your sun visors to make sure that the air bag warning labels are securely attached. If the labels are secure, do not take any further action. If any label is distorted, not securely attached or missing, we urge you to replace that label. Enclosed with this letter are two replacement labels for each of the above air bag warning label types. An instruction sheet is enclosed to help you to properly install the replacement labels, if it is necessary.

What will Hyundai do?

- If any of your sun visor air bag warning labels are distorted or not securely attached, we are providing you with replacement labels and installation instructions, included with this letter. If you do not feel confident that you can properly check your vehicle's sun visor air bag warning labels or install replacement labels, we are asking you to schedule an appointment as soon as possible to take your vehicle to your Hyundai dealer. The Hyundai dealer will replace your vehicle's sun visor air bag warning labels, if necessary. This procedure will be performed at no charge to you. You should plan to leave your vehicle at your Hyundai dealer to have this service performed. Repair times will vary and depend on your dealer's appointment schedule.

What if you have other questions?

- If you have any difficulty having this repair performed, we recommend that you call the Hyundai Customer Assistance Center at 1-800-633-5151. If you are still not satisfied that we have remedied this situation without charge, and within a reasonable amount of time, you may wish to write to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S. W., Washington, D.C. 20590, or call their toll-free Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153), or go to http://www.safercar.gov.

We urge your prompt attention to this important safety matter.

Hyundai Motor America

Wed, Aug 1 2012

FORD SUES DANA OVER PART LINKED TO WINDSTAR RECALL

(Reuters)—Ford Motor Co (F.N: *Quote, Profile, Research, Stock Buzz*) has sued Dana Holding Corp (DAN.N: *Quote, Profile, Research, Stock Buzz*), one of its largest suppliers, over a part linked to the recall last year of more than 425,000 Ford Windstar minivans.

In a July 27 complaint filed in a Wayne County, Michigan state court, Ford said Dana has refused to accept responsibility for the "inadequate" subframes it had supplied for Windstars made during the 1999 to 2003 model years.

Ford said it has suffered "substantial damages" from the subframes and the recall, but that Dana has refused to cover its costs. The lawsuit seeks compensation for past and future damages related to the subframes, as well as other costs.

A spokesman for Dana, which is based in Maumee, Ohio, did not immediately respond to a request for comment.

On January 26, 2011, Ford recalled 425,288 Windstars in 22 mostly cold-weather U.S. states plus the District of Columbia, saying that subframe brackets and mounts might separate, causing a loss of steering control and a greater risk of a crash.

The recall followed a National Highway Traffic Safety Administration probe into dozens of reports of subframe problems, nearly all from what it called "Salt Belt" states.

"Ford is asking the court to enforce the cost sharing terms of our supply agreement with Dana," said Todd Nissen, a spokesman for the Dearborn, Michigan-based automaker.

Last month, Ford announced two recalls for its new 2013 Escape, including one urging owners to stop driving the sport-utility vehicles with 1.6-liter engines because of a fire risk.

In Wednesday trading, Ford shares fell 15 cents to $9.04, while Dana shares fell 53 cents to $12.65.

The case is *Ford Motor Co.* v. *Dana Holding Corp et al.,* Wayne County, Michigan Circuit Court, No. 12–009955.

(Reporting by Jonathan Stempel in New York; Editing by Bernard Orr)

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Senator BOXER. OK. Very, very clear—Corolla, this, that, a whole series of these. And I understand one of those against us is going to say: Well, it didn't say it was life-threatening—it didn't say "Do not drive." So if it doesn't say do not drive, the opponents say: Big deal. It didn't say "Do not drive" on this one, on Daimler-Chrysler. So if you come here with that argument, you are not making an argument that is going to hold up for one second, so don't even make it. And if you do, I'll be here.

What to do? Go right in and get it fixed. Every one of these says that. Somebody said: Oh, well, what if it's just a defogger or something like that? Big deal. And that's in here. One of them was a defogger. Did you ever try driving when a defogger doesn't work? It once happened to me. You can't see a damn thing. So don't tell me that a lot of these are so unimportant. They're all important.

Essentially, I want to thank you for your support for this legislation, and I urge the Obama Administration to work with us, because we've got to get it through this committee, we've got to get it through the Senate, and we've got to get the House to do it. And we cannot stop until it's done. So we're going to need the President's help, the administration's help.

So thank you very much.

Mr. STRICKLAND. Thank you, Ms. Boxer.

Senator MCCASKILL. Senator Blumenthal.

STATEMENT OF HON. RICHARD BLUMENTHAL, U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thank you, Senator McCaskill. I want to thank you for having this hearing on this critically important topic and using this subcommittee, which is so important, and thank you also to Senator Boxer and most especially Senator Schumer. I'm very proud to be joining them as well as Senator McCaskill in cosponsoring this very, very important bill.

I just want to say a particular thanks to Ms. Houck for being here today. I know how much courage and fortitude it takes. But your testimony puts a face and a voice to an issue that for many people is simply abstract and technical. There's nothing technical or abstract about the dangers or the damage suffered every day in America as a result of defects in automobiles that recalls can help to cure.

In Connecticut, a Greenwich man named Gary Massey was permanently disabled in a 2008 crash that involved his car, a Lexus ES–350 loaner, that had been recalled for an unsecure floor mat but not repaired. He hit a tractor-trailer on the highway while the car was careening out of control. Now, a floor mat doesn't involve what a lot of people think would be a critical part of an automobile's system. The position of the National Automobile Dealers, our friends in the association, is that only those recalls—and I'm quoting—"which require immediate repairs to systems such as steering, fuel delivery, accelerator controls, or other crucial components," end quote, should be considered before renting a car.

I respect their point of view, but my question for you, Mr. Strickland, is: Do you think that rental companies or auto dealers should be deciding which recalls are crucial? Aren't they all crucial?

Mr. STRICKLAND. Senator Blumenthal, there is one standard for safety that the National Highway Traffic Safety Administration follows and enforces. We deal with unreasonable risk to safety. We don't gradate them. If there is a judgment that it is an unreasonable risk, it's an unreasonable risk and it needs to be repaired.

The notion that there should be some gradation of unreasonable risk is frankly counter to the policy for safety and frankly dangerous. Senator, I just have to say on the unsecured mats, your constituent that was involved in a crash, the Saylor family in San Diego, four people died because of an unsecured mat. So you can't say that these risks are small or large. They can all possibly injure or kill someone and they have to be addressed equally.

Senator BLUMENTHAL. Anything that goes wrong while the driver is behind the wheel can involve a crash or some other kind of malfunction that can result in human injury or death, is that not so?

Mr. STRICKLAND. Absolutely right.

Senator BLUMENTHAL. Thank you very much, Mr. Strickland. Thank you for being here today and I really appreciate your testimony. Thank you.

Mr. STRICKLAND. Thank you, Senator.

Senator MCCASKILL. Thank you, Mr. Strickland, for being here. We appreciate your testimony.

Mr. STRICKLAND. Thank you, Madam Chairman.

Senator MCCASKILL. We will continue to be in consultation with you as we move toward final passage of this legislation.

If the second panel will come up, that would be terrific.

Welcome. I will introduce the panel. We have Ms. Sharon Faulkner, Executive Director of American Car Rental Association; Ms. Rosemary Shahan—Am I saying that correctly?

Ms. SHAHAN. "SHAY-han."

Senator MCCASKILL. "SHAY-han," President of Consumers for Auto Reliability and Safety; Mr. Mitch Bainwol, President and CEO, Alliance of Automobile Manufacturers; and Mr. Peter Welch, the President of the National Automobile Dealers Association.

We will begin with the testimony of Ms. Faulkner.

STATEMENT OF SHARON FAULKNER, EXECUTIVE DIRECTOR, AMERICAN CAR RENTAL ASSOCIATION (ACRA)

Ms. FAULKNER. Good morning and thank you, Senator McCaskill and Senator Heller and Senator Blumenthal and members of the Subcommittee. I appreciate the opportunity to be here in support of legislation of vital importance to the rental car and car sharing industry and to our customers.

My name is Sharon Faulkner and I'm the Executive Director of the American Car Rental Association, or ACRA. ACRA represents more than 235 companies in the rental car and car sharing industry. Our members range from the brands you would recognize, such as Enterprise, Avis, Hertz; it also includes many mid-sized companies, as well as small and mom-and-pop operations. Our members run fleets as large as 1 million vehicles and as small as 10 vehicles.

On a personal note, before becoming Executive Director I along with my husband operated one of those smaller rental car companies in upstate New York for more than 30 years. While I was a franchisee or licensee of one of the major brands, we were truly a smaller business, operating about 6 locations and 300 vehicles. When my husband and I decided to sell our business several years ago and I was asked to assume my current role as the Executive Director of our trade association, I jumped at that opportunity because I believe the car rental industry provides a very important service and this role allows me to continue to promote outstanding customer satisfaction.

It is critically important to understand the makeup of ACRA and that our organization actively participated in the process that produced the legislation embodied in S. 921. Safety in our industry is paramount. It's about trust between our customers and our individual businesses. The minute our customers don't feel safe is the minute we lose customers and potentially our livelihoods. Therefore, our industry has always placed a high priority on providing cars that are properly maintained and safe for our customers to use.

Over the last several years, with the sad and unfortunate loss of Raechel and Jacqueline Houck, the issue of recalls in rental cars has been raised. Senators Schumer and Boxer ultimately introduced legislation in 2011 attempting to address these safety concerns. We as an industry initially had serious reservations with the broad scope of the legislation as well as the implementation of it. Additionally, we believed as an industry we were already taking the appropriate steps to protect our customers by following the guidance from the auto manufacturers.

Over time, many of our members adopted conservative policies of grounding most, if not all, vehicles with an open recall. As a result, we believed legislation was not necessary and opposed the original legislation.

However, we ultimately concluded that our customers would expect us to support this type of legislation, and if we could achieve a workable solution we would do just that. We then proactively engaged in a dialogue with the staffs of Senators Schumer, Boxer, McCaskill, and Blunt, along with other stakeholders such as key members of our industry and consumer advocates, including Ms. Houck.

Over the course of several months last year, our industry worked diligently through the scope and the operational concerns we had with the initial bill. We wanted to ensure that the legislation would be something that ACRA could emphatically support, and S. 921 is such a bill. I am happy to highlight for you the key compromise components of the bill.

An industry-supported provision in the bill defines the time-frame in which rental companies need to ground the vehicles after receiving the safety recall notice. There is a period of time that the companies need in order to receive the notice and successfully ground the appropriate vehicles. The original bill had no defined time-frame and many members were concerned how that may be interpreted. At our urging, the legislation now calls for the vehicles to be grounded within 24 hours of receiving the safety recall notice, and we do have 48 hours in the case of larger recalls. The only exemption to the "Do not rent" requirement is when the manufacturer has issued a safety recall and has not developed a permanent repair, but offers a temporary fix or an interim remedy that eliminates the safety risk. If the rental car company performs the interim remedy, then the car may be continued to be rented.

The best real life example of this is when there was a recall due to a faulty accelerator pedal. Our industry, along with other consumers, at the direction of the manufacturer pulled the floor mats out of the vehicles and continued to keep the cars in service. Thousands of private consumers did the same and the vehicles remained safely on the road. The bill now contains language that specifically permits an interim remedy when appropriate.

Our industry also sells a large number of cars each year. The legislation requires rental car companies to permanently repair any safety recall prior to selling a vehicle either through retail or wholesale markets. The only exception to this requirement, at the behest of the industry, is when a vehicle has been so severely damaged that it can only be sold for parts.

I would like to underscore here that this sales prohibition for rental car companies will be unique. We will be the only used car seller that will be required to perform any recall work prior to sale, either at retail or wholesale.

In conclusion, we have come together with the sponsors, supporters, and staff in good faith negotiations. The consumer advocates listened and were pragmatic about many of our early objections, and I firmly believe that our industry did likewise. This is the way the process is supposed to work and we're thankful to be a part of it.

We're often asked why as an industry we are willing to accept new regulations upon ourselves. The response to that is easy: we engaged and became part of the process. The end result is a proposal that will provide our customers additional assurance that the vehicles they rent are safe and provides our industry with a uniform Federal standard across the country and that addresses our original operational concerns. I encourage those who oppose S. 921 to engage toward that same important goal that we have.

I respectfully ask you to support S. 921. I look forward to any questions that you might have.

[The prepared statement of Ms. Faulkner follows:]

PREPARED STATEMENT OF SHARON FAULKNER, EXECUTIVE DIRECTOR, AMERICAN CAR RENTAL ASSOCIATION (ACRA)

Good afternoon and thank you, Senator McCaskill and Senator Heller and members of the Subcommittee on Consumer Protection, Product Safety and Insurance. I truly appreciate the opportunity to be here today to speak in support of legislation of vital importance to the rental car industry and to our customers.

My name is Sharon Faulkner and I am the Executive Director of the American Car Rental Association—or ACRA. ACRA represents 235 companies in the rental car industry. Our members range from the brands you would recognize such as Enterprise, Alamo and National Car Rental; Avis, Budget, Hertz, Dollar and Thrifty. It also includes many mid-size, regional companies as well as the smaller, Mom & Pop operators. Our members run fleets as large as one million cars and as small as ten.

On a personal note, before becoming the Executive Director, I—along with my husband—operated one of those smaller, Mom & Pop rental car companies in Upstate New York for more than 30 years. While I was a franchisee or licensee of one of the major brands, we were truly a small business, operating six locations and 300 vehicles.

We were the typical small business in America and it allowed us to raise our three boys. But, it was a labor of love. . .and I grew to love our business, our customers and this industry.

That is why when my husband and I decided to sell our business several years ago and I was asked to assume my current role as Executive Director of our trade association, I jumped at that opportunity. I believe the car rental industry provides a very important service and this role allows me to continue promoting outstanding customer service.

I share this with you because it is critically important to understand the makeup of ACRA and that our organization actively participated in the process that produced the legislation embodied in S. 921.

Our organization unanimously endorsed it and we—along with many of our members—are working hard for its passage.

Rental Car Safety

Safety in our industry is paramount. It's about trust—between our customers and our individual businesses. The minute our customers don't feel safe is the minute we lose customers and potentially our livelihoods. Therefore, our industry has always placed a high priority on providing cars that are properly maintained and safe for our customers to use.

From Opposition to Support

Over the last several years, the issue of safety recalls and rental cars has been raised. Senators Schumer and Boxer ultimately introduced legislation in 2011 attempting to address these safety concerns. We, as an industry, had serious reservations with the broad scope of the legislation as well as the implementation of it. Additionally, we believed we were already taking the appropriate steps to protect our customers by following the guidance from the manufacturers. Over time, many of our members adopted conservative policies of grounding most, if not all, vehicles with an open recall. To further demonstrate our commitment, most ACRA members adopted a formal pledge to this voluntary grounding. As a result, we believed legislation was not necessary and opposed the original legislation.

However, we ultimately concluded that our customers would expect us to support this type of legislation and if we could achieve a workable solution, we would do just that.

We then pro-actively engaged in a dialogue with the staffs of Sens. Schumer, Boxer, McCaskill and Blunt—along with other stakeholders such as key members of our industry and consumer advocates, including Mrs. Houck.

Collaboration and Compromise

Over the course of several months last year, our industry worked through the scope and the operational concerns we had had with the initial bill. We wanted to ensure that as an organization that we didn't just support a bill for the sake of supporting it. . .but that it would be a bill we could emphatically get behind and support.

S. 921 is such a bill.

S.921

The bill is fairly simple. At the heart of it is the requirement that rental car companies remove from service any vehicle that has a manufacturer safety recall and has not yet been repaired. Rental companies may not re-rent or sell any unrepaired vehicle.

I am happy to highlight for you the key compromise components of the bill:

Timing of Notice and Grounding

An industry-supported provision in the bill defines the time-frame in which rental companies need to ground the vehicles after receiving the safety recall notice. There is a period of time the companies need in order to receive the notice and successfully lock down the appropriate vehicles. The original bill had no defined time-frame and many members were concerned how that may be interpreted. At our urging, the legislation now calls for the vehicles to be grounded within 24 hours of receiving the safety recall notice. In the situation of a particularly large recall—one that affects more than 5,000 vehicles for one company, the lock down time-frame is 48 hours.

Interim Remedy

The only exception to the "do not rent" requirement is when the manufacturer has issued a safety recall and has not developed the permanent repair, but offers a temporary fix—or interim remedy—that eliminates the safety risk. If the rental car company performs the interim remedy, then the car may continued to be rented. Once the permanent repair is offered by the manufacturer, the vehicle must be pulled from service and permanently repaired before being re-rented.

The best real life example of this is when there was a recall due to a faulty accelerator pedal. While there was no permanent fix at the time of the notice being sent, the manufacturer communicated to all consumers, including rental car companies, that if they removed the driver's side floor mat, the pedal would un-stick and the risk would be mitigated. Our industry, along with thousands of other consumers, pulled out the floor mats and continued to keep the cars in service. Thousands of other consumers did the same and the vehicles remained safely on the road. Many members were concerned that the original legislation did not specifically address this circumstance. Language was agreed to by all parties and an interim remedy is permissible under S. 921.

Car Sales

Our industry purchases the largest number of cars from the manufacturers every year . . . and we also sell a large number of cars each year through retail and wholesale channels. To ensure the stream of commerce maintains integrity, the legislation requires that rental car companies permanently repair any safety recall to any vehicle prior to selling that vehicle—either through retail or wholesale markets. The only exception to this requirement—at the behest of industry—is when a vehicle has been so severely damaged that it will only be sold for parts, the rental company does not need to perform the recall work.

One point I would like to underscore here is that this sales prohibition for rental car companies will be unique in the used car market. We will be the only used car seller that will be required to perform any recall work prior to sale—either at retail or wholesale.

Conclusion

In conclusion, the process has worked. We came together with the sponsors, supporters and staff in good-faith negotiations to work through the issues and address

our concerns. The consumer advocates listened and were pragmatic to many of our early objections . . . and I firmly believe that our industry did likewise. This is the way the process is supposed to work. We at ACRA are thankful to be a part of it.

As we continue to talk to members of Congress and their staff in support of the bill, we are often asked why as an industry we are willing to accept new regulations upon ourselves. The response to that is easy. After listening to our customers, we engaged and became part of the process. The end result is a proposal that will provide our customers additional assurance that the vehicles they rent are safe and provides our industry with a uniform Federal standard across the country and addresses our original operational concerns. I encourage those who oppose S. 921 to engage toward the same important goal.

Therefore, I respectfully ask you to support S. 921. I look forward to any questions you may have.

Thank you.

American Car Rental Association—November/December 2012—***AUTO RENTAL NEWS***

A CAUSE WE ALL EMBRACE, A BILL WE CAN ALL SUPPORT

A proposed bill governing recalled rental vehicles shows that collaboration between the auto rental industry and key stakeholders can result in a legislative solution that advances the public good.

"NOTHING GETS DONE IN WASHINGTON." UNFORTUNATELY,that's become the conventional wisdom in the face of a growing sense that the art of constructive legislative compromise is all but dead.

But as we move through this election season, we just had a most encouraging example of how people with differing viewpoints can get beyond those differences and arrive at legislative solutions that advance the public good. We're talking about the recent compromise agreement struck between the rental car industry and consumer groups on legislation governing rental vehicles subject to a manufacturer's recall.

This landmark bill—and the coalition that came together behind it—showed that important things *can* get done in Washington through hard work and honest communication. Our industry can be proud to have played a role in that process. The goal is to have the legislation introduced when Congress returns to work after the November elections.

This proposed legislation is the result of a great deal of thoughtful industry collaboration by the American Car Rental Association (ACRA), and all the major car rental players: Enterprise Holdings, Avis Budget Group, Hertz Corp. and Dollar Thrifty Automotive Group. We arrived at a solution that will give our customers what they've asked for: Increased confidence that the car they rent is properly maintained and safe to drive. This is a principle we all want to deliver, but converting internal policies into legislation is no easy task. After all, ACRA members were already committed to not renting cars under recall.

Therefore, there were significant practical considerations that had to be worked through, including the time needed to review recall notices, identify affected vehicles, and alert all branch offices and employees. We needed lawmakers to take such operational realities into account. We had legitimate concerns and needed to have a place at the table in the development of legislation that would have significant impact on those operations.

To that end, ACRA and a number of our member companies worked for many months with other stakeholders, including Sens. Charles Schumer, Barbara Boxer, Claire McCaskill and Roy Blunt, as well as Reps. Leonard Lance, G.K. Butterfield, John Barrow and Lois Capps, the Consumers for Auto Reliability and Safety (CARS) and Carol Houck, whose daughters were tragically killed in 2004 in an accident involving a recalled rental car.

When all parties sat down at the table together, we were able to work out our differences and develop a legislative solution that standardizes our existing safeguards and gives us a uniform, industry-wide approach to addressing recalled vehicles.

The legislation we're supporting prohibits the rental of any vehicle subject to a safety recall notice—including vehicles rented from car sharing services—and prohibits car rental companies from selling used vehicles subject to an open recall. We also believe it can be a model for the broader discussion about fleet safety in all corners of the automotive industry.

At the end of the day, we believe this compromise represents a workable and enforceable law that will be much more effective in practice because it reflects the re-

alities of our business. This is because the industry had a voice in the process and collaborated with all parties on its development.

Now it's time for all of you to make your voices heard. We urge you to join with ACRA and our members who have worked to develop this bill in working for its passage. Contact your elected representatives to help us serve the best interests of our customers and our industry by moving this legislation forward.

Senator MCCASKILL. Thank you very much, Ms. Faulkner.

Ms. Shahan.

STATEMENT OF ROSEMARY SHAHAN, PRESIDENT, CONSUMERS FOR AUTO RELIABILITY AND SAFETY

Ms. SHAHAN. Madam Chair, Senator Boxer, Senator Blumenthal, Senator Blunt: Thank you very much for the invitation to testify for the Raechel and Jacqueline Houck Safe Rental Car Act of 2013. I'm Rosemary Shahan. I'm President of Consumers for Auto Reliability and Safety. We're based in Sacramento, California, and we're probably best known for initiating California's auto lemon law that helped inspire the lemon law that Senator Blumenthal worked so diligently to pass in Connecticut and was enacted in all 50 states.

I would especially like to thank Senator Schumer, Senator Boxer, and you, Senator McCaskill, and your staffs for your excellent and inspiring leadership and hard work, and Senator Blumenthal, Senators Murkowski, Feinstein, Gillibrand, Casey, and Schatz for cosponsoring this vitally important auto safety legislation.

When I first heard from Cally Houck about what had happened, I've been working on auto safety issues since 1979 and I had no idea that rental car companies were exempt from our safety recall system. To me it just seemed like a no-brainer. Since then we've done polling on this issue. In the great State of Missouri, we polled and found that among the public, 86 percent supported requiring rental car companies to ground vehicles when they're under safety recall and get them fixed. In fact, the most common reaction that we get from people is: "You mean this isn't the law already?" The other reaction we get is: "You mean they have to be told?" Clearly, the answer to the first one is: no, it's not the law already; and yes, they do have to be told.

I'm very pleased to be here today with the rental car industry. We worked very diligently with them, with your leadership and help, and reached a workable compromise that improves safety for consumers and takes into account their business model. It's a very balanced compromise.

Really, the question before you, as Senator Boxer has mentioned, is whether Congress should allow rental car companies to rent vehicles to the public that are so unsafe that it's a violation of Federal law to sell them as new cars and whether the decision to risk the public safety should depend on the type of the transaction and not on how unsafe the vehicle is. To consumers it really doesn't make any sense to decide whether you're exposed to the risk based on whether you buy this as a new car from the car dealer or you rent it from a rental car company. People expect that when they rent a vehicle, whether it's from a rental car company like Enterprise, Hertz, or Avis, or whether it's from a car dealer, they expect it to be safe. They just feel like this is something that is so basic.

Once the safety recall is issued, it's a violation of Federal law for a new car dealer to sell it as a new car, but it's still legal to rent the same car to a family that's going to get into it and take it to Disneyland. That's what we really hope that you will help us change.

This legislation applies only to vehicles that are being recalled by the manufacturer under a Federal motor vehicle safety recall. It does not require rental car companies to ground vehicles for things like service campaigns or less risky types of problems or for recalls of the emissions system. It applies only to vehicles where the rental car company is the registered owner and receives the notice that Senator Boxer showed, a very specifically mandated and worded notice.

It requires them to ground them as soon as practicable or within 24 hours for smaller recalls or 48 hours for the largest recalls, involving 5,000 vehicles or more in a particular company's fleet. It allows them to continue to rent vehicles pending an ultimate repair when the manufacturer's notice provides for an interim measure that eliminates the safety risk.

We believe it has the flexibility for the industry at the same time it protects consumers. It doesn't do everything we wanted to accomplish, but we really need this law. We agreed with the rental car companies to join together in support of this legislation in order to create a uniform Federal standard rather than pursuing legislation State by State. California Senator Bill Monning, who represents the district where Raechel and Jackie were killed, has agreed to forestall enactment of legislation he authored in 2011 in order to allow Congress time to address the problem nationally, where it really should be addressed.

We hope and pray that you will vote to enact this Act named for Raechel and Jackie. It's beyond your power to bring them back to life, but the fate of others who rent vehicles to visit their parents, take a vacation, or go on a business trip or share the roads with them rests in your hands.

Thank you again and I look forward to your questions.

[The prepared statement of Ms. Shahan follows:]

PREPARED STATEMENT OF ROSEMARY SHAHAN, PRESIDENT, CONSUMERS FOR AUTO RELIABILITY AND SAFETY

Madame Chair and Senators, I'm Rosemary Shahan, President of Consumers for Auto Reliability and Safety, based in Sacramento, California. Thank you for the invitation to testify for the Raechel and Jacqueline Houck Safe Rental Car Act of 2013. I would especially like to thank Senator Schumer, Senator Boxer, and you and your staffs for your leadership and hard work, and Senator Blumenthal, Senators Murkowski, Feinstein, Gillibrand and Casey for co-sponsoring this vitally important auto safety measure.

CARS is a national award-winning non-profit auto safety and consumer advocacy organization dedicated to preventing motor vehicle-related injuries, fatalities and economic losses. We greatly appreciate that there is bi-partisan support for this bill, and also welcome the support from all the major rental car companies, the American Car Rental Association, State Farm Insurance Company, and the American Automobile Association.

When I first heard from Cally Houck about the tragic crash that killed Raechel and Jacquie, I was horrified, as anyone would be. And of course my heart went out to Cally. But in addition to my natural human reaction—as a safety advocate, I was aghast to learn that the rental car company was not prohibited from renting cars that are under a Federal safety recall. I knew that new car dealers are prohibited from selling new vehicles that are subject to a Federal safety recall. That's been the

law since the 1960s. But I hadn't realized that law does NOT apply to rental car companies. I had always just assumed that of course rental car companies would not be allowed to rent unsafe, recalled cars to the public. Unfortunately, I was wrong.

The question before you is whether Congress should continue to allow rental car companies to rent vehicles to the public that are so unsafe, it is a violation of Federal law to sell them as new cars. It is whether the decision to risk the public's safety, should depend on the type of transaction—and not on how unsafe the vehicle is.

Under the Federal Motor Vehicle Safety Act, when a vehicle fails to comply with Federal safety standards or presents an otherwise unreasonable risk to safety, the manufacturer is required to recall it and fix it without any charge to the owner. Typical defects that result in auto safety recalls include: brakes that fail, axles that break, fires, faulty steering, air bags that don't inflate when you need them or do inflate when you don't, seat belts that don't stay buckled, and other serious, life-threatening defects. Almost always, the manufacturers agree that the vehicles are unsafe, and recall them without waiting for the National Highway Traffic Safety Administration to force their hand. But occasionally manufacturers resist issuing safety recalls and the National Highway Traffic Safety Administration, the public, and sometimes Congress have to pressure them to act.

Once a safety recall is issued, it is a violation of Federal law for a new car dealer to sell it as a new car, but perfectly legal to rent the same car to a family headed for Disneyland. I hope you will agree there is no rational basis for that type of double standard, where some people are protected because they are buying a new car, while others' lives are put at risk merely because they are renting.

We know from doing polling about rental cars and safety recalls that the public overwhelmingly supports requiring rental car companies to ground recalled vehicles until they are fixed. In fact, that question polled in the great state of Missouri at 86 percent support. The most common reaction we get from people when they are told about this bill is "What? You mean there isn't a law already?" News anchors for all the major networks, including Fox News, have expressed the same reaction.

While we heartily support this bill, it is the result of lengthy, hard-fought negotiations among the rental car industry and the auto safety community. It fairly balances the public's interest in safety with the rental car industry's business model. It represents a reasoned, rational compromise with the rental car companies. Our top priority was for it to be effective, and also workable, given the realities of the auto rental marketplace.

- This bill applies only to vehicles that are being recalled by the manufacturer under a Federal motor vehicle safety recall. It does NOT require rental car companies to ground vehicles when manufacturers conduct "service campaigns" or "customer satisfaction campaigns" for less threatening defects, or for recalls of the emissions system. It applies only to Federal safety recalls. Period.
- This bill applies only to vehicles where the rental car company is the registered owner and receives the federally mandated notice that manufacturers must send to each registered owner, and only when the rental car company receives the specific Vehicle Identification Number, or VIN, of the vehicle that is being recalled. That is the bright line that triggers the obligation for rental car companies to ground recalled vehicles—not when they first become aware of the problems, or when they receive an earlier heads-up notification from the manufacturer. This would also apply to auto dealers who rent vehicles to the public. Their obligation to ground and repair a recalled vehicle would kick in only after they receive the official recall notice for a specific vehicle.
- This bill requires rental car companies to ground vehicles under a safety recall "as soon as practicable" or within 24 hours for smaller recalls, or 48 hours for the largest recalls, involving over 5,000 vehicles in their fleet. This gives them some flexibility for dealing with logistics when they have thousands of recalled vehicles scattered around the country.
- This bill specifically allows rental car companies to continue to rent vehicles pending a final repair when the manufacturer's notice provides for an interim measure that eliminates the safety risk, pending availability of parts for the "permanent" fix.

This bill does not do everything we wanted to accomplish.

- It does not apply to larger rental vehicles over 10,000 pounds GVWR. Instead, it provides for the National Highway Traffic Safety Administration to conduct a study about those vehicles and report to Congress within a year about its findings.

- It does not require rental car companies to notify consumers who have already rented vehicles when the rental car company receives the safety recall notice from the manufacturer. We agonized over that and decided that there were too many different scenarios to legislate a solution for each one that would protect the public and be fair to the rental car companies.

We agreed with the rental car companies to join together in support of this legislation in order to create a uniform Federal standard, rather than pursuing legislation state by state. California Senator Bill Monning, who represents the district where Raechel and Jacquie were killed, has agreed to forestall enactment of legislation he authored in 2011, in order to allow Congress time to address the problem nationally.

I hope and pray that you will vote to enact this Act, named for Raechel and Jacqueline. It is beyond your power to bring them back to life, but the fate of others who rent vehicles to visit their parents, take a vacation, or go on a business trip—or share the roads with them—rests in your hands. Thank you again, and I look forward to your questions.

Senator MCCASKILL. Thank you.

Mr. Bainwol.

STATEMENT OF MITCH BAINWOL, PRESIDENT AND CEO, ALLIANCE OF AUTOMOBILE MANUFACTURERS

Mr. BAINWOL. Chairman McCaskill, Senator Boxer, Senator Blunt: Thank you for the opportunity today to testify. My name is Mitchell Bainwol. I am President of the Alliance of Automobile Manufacturers. Our 12 members produce and/or sell about three of four cars in this country.

Before I begin, I'd like to make a comment as a dad. I have three kids ages 15 to 21. Two drive. The third is about to learn to drive, which is a tough process for any father. Every time they go on a trip, I wait for that text or that call that says they've made it to the destination, and I can't imagine what it would be like not to get that call. So I get the impetus behind this hearing in a very personal, real way.

I'm moved by the work that Mrs. Houck has done to address the tragedy that occurred in 2004. She's made a difference. Rental car policies are forever changed. Her experience and her commitment moved the rental car industry. With the big four voluntary agreement, in many ways this is a settled question.

So we're now focused on two questions: one, how to lock in the commitment that she received; and two, whether the proposed statutory response generates side effects that warrant modification as we move through the legislative process in the Senate. I would like to say nothing more than that we expect smooth sailing as we move forward, but we do have some concerns that we hope can be addressed. We were not part of the crafting process. Our input was not part of that exercise and this is our first opportunity to really engage.

So let's step back and look at the fact situation. First, the awful crash that killed the Houck sisters in 2004 caused the rental car industry to revise its practices regarding the repair of recalled vehicles. The safety benefits are evident, that there have not been any other fatalities in the almost 9 years that have transpired. We're not complacent about this at all, yet we are very, very thankful, especially given the huge magnitude of activity that characterizes the U.S. rental market.

Second, the rental car companies representing 94 percent of the market have pledged to maintain that policy. So the scope of the issue is really how to protect the insurance policy and then how you deal with the 6 percent of the market that hasn't made the same commitment.

So we view this as important progress, and we turn now to the effect of this bill from a public policy perspective. I understand that things can be simple, but I think we have to unpack it a bit to understand the implications of Federalizing the voluntary action. We're most fearful that it creates a dual-track system, a new system for rental car companies that would ground every vehicle, period, essentially overriding manufacturer guidance and overriding the guidance of NHTSA as reflected in that process; and two, the current but now separate system for moms, dads, and other vehicle owners who also want their vehicles repaired in a timely fashion.

The dual-track system would have significant real world consequences that we should all find concerning, because they would create future problems that we can avoid. Those two problems are these: one, it would place families at a disadvantage relative to rental car companies because the bill creates enormous economic pressure to move those companies to the front of the line for the repairs, ahead of the rest of your constituents; and two, it would increase costs for all rental car customers, families and business folks, because the legislation introduces loss of use liability that ultimately will be passed on to consumers.

Given that the safety benefits have already been realized for 94 percent of the market, it is fair to evaluate whether introducing these adverse consequences is prudent. Our conclusion is that the bill needs some work and we're pledging to work with you to get to a fix that meets the objective that you're looking for without introducing these adverse consequences.

One option the Committee should look at carefully would be to convert the legislation into a meaningful, precise, and prescriptive notification program that would both eliminate the dual-track challenge as well as address the liability concern. Senator Boxer, you introduced your first question to Administrator Strickland on the question of notification. We agree with you absolutely. When a customer goes to the rental car counter to get a car, they should be notified. That's exactly the right approach.

We're open to other approaches. We're not prescriptive in terms of how to deal with it, but we do think that we need to continue to try to craft something that in fact meets the very noble objective that you've laid out. We agree with the objective, we agree with the intent, and we want to make sure that we solve this problem without introducing adverse consequences.

So thank you very much.

[The prepared statement of Mr. Bainwol follows:]

PREPARED STATEMENT OF MITCH BAINWOL, PRESIDENT AND CEO, ALLIANCE OF AUTOMOBILE MANUFACTURERS (ALLIANCE)

Thank you, Chairman McCaskill, Ranking Member Heller and Subcommittee members. My name is Mitch Bainwol and I am President and CEO at the Alliance of Automobile Manufacturers (Alliance). The Alliance is a trade association of twelve car and light truck manufacturers including BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz,

Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America and Volvo. For Alliance members, who account for roughly three quarters of all vehicles sold in the U.S. each year, safety absolutely ranks as our top priority. The Alliance appreciates the opportunity to comment on S. 921, the Raechel and Jacqueline Houck Safe Rental Car Act of 2013.

Let me say up front that we completely identify with the goals of the bill sponsors—to promote speedy repair of recalled vehicles and to prevent another accident like the one that killed Raechel and Jacqueline Houck in 2004.

The Commerce Committee has been considering how to address this issue for some time. Since more than 9 out of 10 vehicle recalls do not involve instructions or recommendations to "stop driving" the vehicle until repaired, how rental car companies should manage these situations has been the subject of some debate. Among the steps that could be taken is to make sure rental car customers should have the same recall information provided to vehicle owners, so they can make an informed decision prior to renting a vehicle, in the unusual event that a recalled vehicle has not yet been repaired. The Commerce Committee considered such an approach in early drafts of MAP–21.

Grounding affected vehicles certainly is warranted and appropriate for recalls that direct owners to stop driving vehicles, but a broad, Federal mandate grounding all vehicles regardless of the nature of the recall triggers potential negative impacts that consumer notifications would not. Without accompanying consumer protection provisions, a fleet-wide grounding mandate could negatively impact both prospective renters and ordinary vehicle owners.

Unfortunately, the bill as currently drafted will give rise to unintended, negative consequences for consumers.

First, this bill pits businesses against ordinary consumers in recall situations. To minimize out of service time, rental car companies will demand (and have demanded) "front of the line" access to parts and service, which may force ordinary consumers—moms and dads driving their family vehicles—to the back of the line for recall repairs. These businesses, which may have affected vehicles sitting unrented on their lots, should not be allowed to "jump the line" ahead of individuals that rely on their vehicles every day. Public policy that has the potential to bias compliance in favor of business over families ought to be reviewed very carefully, no matter how noble the intent.

Second, this bill would increase costs by giving rental car companies the opportunity to pursue "loss of use" damages against manufacturers. They entered into the voluntary agreements without loss of use benefits; legislation that fundamentally changes the economic relationship by instituting this claim is problematic and will produce increased costs that ultimately will be passed along to consumers.

It is critical to note two points: (1) not all recalls are the same, and (2) all recalls are subject to review and approval by NHTSA. Most recalls are initiated by auto manufacturers without any involvement of NHTSA in the decision to recall. However, whether a defect or noncompliance is initially identified by the manufacturer or by NHTSA, the proposed remedy and conditions of the recall—even the language of the notice to consumers—is reviewed by and subject to NHTSA approval. In short, the recall process is very well supervised by our regulator.

The overwhelming majority of recalls do not direct consumers to stop driving their vehicles. However, this bill requires all rental cars to be grounded no matter the circumstances of the recall. This provision gives rise to a myriad of anti–consumer impacts.

To be more specific, in 2010 (the most recent year complete data is available), only 8 percent of recalls included instructions to consumers to stop driving their vehicles. The flip side of that equation is relevant; NHTSA did not require a "stop drive" instruction for 92 percent of recalls.

And here's why. Most recalls involve issues that could result in unsafe driving conditions IF left unaddressed over time, rather than posing an immediate danger. For example, one company recently issued a recall because the HVAC knobs in two of its models could break and the inability to operate the "defrost" could create a hazard in icy or snowy weather. Under the language of this bill, these vehicles would have to be grounded . . . in Florida . . . in August. This is one example that demonstrates that a one size fits all approach compromises broader consumer interests.

To their credit, the sponsors recognized that the grounding requirement is overly broad and included an exception for certain cases. However, the exception established in Section 3 is not effective because it is inconsistent with current recall practices. The exception in Section 3 requires that interim steps specified in recall notices "alter the vehicle" in order to "eliminate" safety risks. In the defrost knob recall example, there was no interim means to "alter the vehicle." The old knobs need-

ed to be replaced with new knobs. To the extent instructions are included in a recall notice, they typically describe actions that drivers should take—not ways to "alter the vehicle." Moreover, "elimination" of safety risks is not a workable legal standard. It is unlikely that a manufacturer would be willing to assert that some interim measure would actually "eliminate" all safety risks posed by the defect. Further, we do not believe that NHTSA would allow manufacturers to issue a recall notice advising consumers that some step short of complete remedy would "eliminate" the safety risk posed by the defect. Thus the exception, while well motivated, does not effectively mitigate the grounding requirement.

Establishing a Federal mandate that rental car companies ground any vehicle subject to a recall regardless of the circumstances of the recall effectively prioritizes rental car companies above other vehicle owners for service and repairs.

Under the current recall program, once NHTSA has reviewed and approved a manufacturer's proposed recall notice, the exact same notice language is sent to all vehicle owners. The language in a notice to rental car companies is identical to the language Joe or Jane Consumer receives. Both the rental car company and the average citizen owner are treated equally under the recall. That strikes us as entirely appropriate.

This bill would introduce the first legal distinction amongst owners in the recall process. While it wouldn't require manufacturers to treat rental car companies differently *per se,* it would incentivize prioritizing recall repairs on rental fleets to avoid economic harm in a way that simply doesn't exist today. Even if rental companies did not receive special treatment, the mere fact that all of the recalled vehicles in their fleets would have to be repaired immediately would result in average vehicle owners being pushed to the back of a long line. Imagine your constituents receiving a recall notice and taking their vehicles to their dealers to be repaired, only to learn that there are 100 rental cars in line in front of them.

In 2000, this Committee rewrote the laws governing recalls with a bias toward initiating recalls as quickly and as widely as possible. By all measures, you were extremely successful. Problems are being identified sooner, and manufacturers and NHTSA are taking swift action. Any requirement that has the potential to change the equities in this process must be evaluated carefully.

If rental fleets are grounded regardless of the recall, rental car companies would want immediate access to parts and service to get their fleets up and running as soon as possible. They would demand priority treatment both from manufacturers and repairers and potentially threaten manufacturers who did not provide priority with "loss of use" lawsuits. It simply is not tenable—or appropriate—to ask manufacturers and repairers to choose or assign priority amongst customers.

It is the longstanding position of both auto manufacturers and NHTSA that recalls should be taken seriously by every vehicle owner and every recalled vehicle should be repaired. We do not want to frustrate consumers seeking to have their vehicles repaired as soon as possible, and we are concerned about potential delays for a class of non-corporate owners.

Establishing a Federal mandate that rental car companies ground any vehicle subject to a recall—regardless of the circumstances of the recall—will ultimately increase costs to consumers without any additional safety benefit.

Rental car companies today theoretically could attempt to pursue damages against manufacturers for "loss of use" of the vehicle for the period it is out of service while waiting for repair. However, absent a Federal mandate, they likely would not prevail in state courts. Imposing a Federal requirement mandating the wholesale grounding of recalled vehicles owned by rental car companies significantly changes the legal equation, going well beyond the purpose of the bill.

"Loss of use" damages can be profoundly anti-consumer. For instance, the Supreme Court of Colorado recently ruled that rental car companies don't even need to show that a vehicle would otherwise have been rented to receive loss of use damages. To combat abuse of consumers, some states, including California and New York, legally prohibit rental car companies from seeking "loss of use" claims directly against consumers or their insurance companies in cases where a consumer damages a vehicle.

This bill mandates that rental car companies ground recalled vehicles until they are repaired, but it puts no time limit on the repair. It is very easy to imagine a rental agency, particularly one in a seasonal market or with low take rates, not worrying about slow completion of recall remedies if the company is able to seek compensation for all of the time the vehicle is "out of service." Today, rental car companies have enormous incentives to perform repairs as soon as possible to get vehicles

back in service. They also have means of minimizing costs. This bill unintentionally removes those pro-consumer, pro-safety incentives.

Some argue that "loss of use" damages could be addressed by manufacturers and rental companies up front, in their contracts—after all, in most cases, both parties are large corporations with a symbiotic relationship. This is not universally true—there are large and small manufacturers and large and small rental businesses, and they will not always be bargaining on a "level playing field." But even in cases where both parties are on a similar footing, consumers will wind up paying the tab for a cost that doesn't currently exist. What otherwise seems to be a reasonable attempt to put the agreement by the rental car companies into statute will, in practice, generate new costs.

Given the current state of the industry's practice with respect to recalls, the practical safety effects of S. 921 are likely to be limited. The tragic crash that killed the Houck sisters in 2004 caused the rental car industry to revise its practices regarding the repair of recalled vehicles in order to prevent a similar tragedy. The Alliance commends these companies for voluntarily reforming their process. Last fall, the "Big Four" car rental companies—which account for 94 percent of rentals—announced an agreement to voluntarily stop renting recalled vehicles until they are repaired. Consequently, special attention needs to be paid to the potential for unintended consequences.

At a minimum, this legislation needs to recognize the adverse impacts noted above and include a pro-consumer provision that explicitly prohibits "loss of use" claims. This will reinforce the existing incentive toward speedy repair of the affected vehicle and minimize costs that ultimately would be passed to consumers. To their credit, some of the rental car companies have clearly stated that pursuing "loss of use" is not their intent and that they would be amenable to a provision prohibiting "loss of use" damages. S. 921 should be amended to include this prohibition. "Loss of use" simply cannot be contracted away without harming the consumer.

The Alliance stands ready to work with the Committee to address potential unintended impacts.

Auto safety is an incredibly important issue, and while the Congress, the Administration, auto manufacturers and other stakeholders have devoted enormous resources to reducing traffic deaths, the fact is that more than 30,000 people die in crashes every year. This Committee has a long history of focusing thoughtfully on policies that will significantly improve road safety. You deserve your share of credit for the historic decline in traffic deaths in the last seven years.

We recommend that the Committee consider further requiring rental companies to provide their customers with recall notices in the unusual case that a recalled vehicle has not yet been repaired. It would provide a very strong incentive for rental companies that have not taken the pledge to ground all recalled vehicles to repair them as quickly as possible, without creating two classes of vehicle owners under the recall statutes. We also recognize that there could be other ways to address the potential unintended consequences, and we are open to considering alternatives. The bottom line is that the Alliance stands ready to work with you to ensure that we can continue to achieve our shared goals without creating new, unintended, and negative consequences for the driving public.

Senator MCCASKILL. Thank you, Mr. Bainwol.

Mr. Welch.

STATEMENT OF PETER K. WELCH, PRESIDENT, NATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. WELCH. Thank you, Madam Chair, Senators. My name is Peter Welch. I'm the relatively new President of the National Automobile Dealers Association. NADA represents over 16,000 franchise new car and truck dealer members, 40 percent of which sell fewer than 200 new cars a year. We're in virtually every community in the country.

As you know, dealers play a vital role in ensuring that recalled vehicles are fixed and made safe. For millions of consumers it's the dealer alone who remedies a recalled vehicle. When owners receive a recall notice but fail to act, many dealers will contact their customers to schedule an appointment. When a consumer brings her

car in for routine service, it's the dealer who performs the recall or warranty work outstanding and at no charge to the consumer. During the 2010 Toyota unintended acceleration recall, many Toyota dealerships stayed open 24 hours a day to meet demand. The recall system Congress created is dependent on new car dealers to faithfully fix the millions of vehicles that are recalled annually.

We support the purpose behind S. 921. Vehicles that are unsafe to operate should not be rented. Not only is it irresponsible, but the legal liability that a dealership would face for doing so would probably bankrupt most of them.

We do have a few concerns and, as the other witnesses indicated, we'd like to work with the Committee and the authors and the coauthors to make it even a better bill and to hopefully address some of our concerns. Our concerns are not many, but notwithstanding some of the testimony we heard this morning, not all recalls are the same. Some recalls it has been our experience don't render a vehicle unsafe to drive in the near term. But S. 921 in its current form really doesn't distinguish between recalls that pose an immediate danger and those of a more technical nature or those that could manifest themselves over a long period of time. But regardless of that, all of the vehicles would have to be grounded.

We gave a couple examples in my submitted testimony. I won't elaborate, but we have others, some where there's a misprint, for instance, in an owner's manual that violates the federal Motor Vehicle Safety Standards and Regulations. We have another example that we submitted on a visor sticker that had a propensity to separate. A dealer may not have that replacement visor in stock, yet that would have to be grounded as well.

We also believe that it's somewhat overly broad, in that it globs in the same category these multinational rental car companies that have thousands of vehicles of all makes and models in the same pool with franchise new car dealers, many of which have very small loaner fleets, nine or ten. But anybody that has five would be covered under the bill.

Recall work can sometimes be delayed through no fault of the dealer because parts are unavailable or have not yet been designed, tested, manufactured, or distributed. The standard where an auto manufacturer can do a so-called temporary fix that would eliminate a safety risk—it has been our experience that eliminating a safety risk is a very high bar, and we doubt that any manufacturers would issue to us.

Senator Boxer mentioned earlier that some manufacturers do issue stop-drive notices. About 10 percent of them are there. There are a larger category of vehicles that would be unsafe to drive and we would not advocate, for all the reasons stated above, that those vehicles be rented or operated.

Finally, the bill would subject dealers to new inspections, new reporting requirements, new penalties, and give NHTSA the authority to add more regulatory burdens as it deemed appropriate. In tax law, health care, and other areas, Congress has recognized the difference between big businesses and small businesses. We believe there is a vast difference between a multinational corporation with fleets of hundreds of thousands of rental cars and auto dealers with a fleet of five vehicles.

We pledge to work with the Subcommittee to ensure that dealers are not disproportionately impacted by the well-intentioned legislation, and we thank you for the opportunity to testify today.

[The prepared statement of Mr. Welch follows:]

PREPARED STATEMENT OF PETER K. WELCH, PRESIDENT, NATIONAL AUTOMOBILE DEALERS ASSOCIATION

Madame Chairman, Ranking Member Heller and Subcommittee members, thank you for inviting me to testify. My name is Peter Welch and I am President of the National Automobile Dealers Association (NADA). NADA is a national trade association that represents the interests of over 16,000 franchised new car and truck dealer members. NADA members are primarily engaged in the retail sale and lease of new and used motor vehicles, but also engage in automotive service, repairs and parts sales. Last year America's franchised new car and truck dealers collectively employed nearly a million individuals, and sold or leased over 14.4 million new vehicles. NADA members operate in every congressional district in the country, and 40 percent of our members sell fewer than 200 new vehicles per year. NADA appreciates the opportunity to comment on the Raechel and Jacqueline Houck Safe Rental Car Act of 2013, a bill that would regulate most rented vehicles under open recall, but not taxis or limousines for hire.

Dealers play a vital role in ensuring that defective and non-conforming vehicles are fixed and made safe to drive. For millions of customers, it is the dealer alone who remedies a recalled vehicle. When motorists receive a recall notice but fail to act on it, many dealers will independently contact their customers to alert them to the recall and schedule an appointment. When a customer brings her car in for routine service, it is the dealer who performs any recall or warranty work outstanding—and at no consumer charge. And the quality of the repair can be assured because the work performed at franchised new car dealerships will be done by a factory trained technician. During extraordinary circumstances, such as the 2010 Toyota unintended acceleration recall, many Toyota dealerships stayed open 24 hours a day to meet demand. Our recall system, which Congress created, is entirely dependent on the franchised new car dealers who faithfully fix millions of recalled vehicles every year.

Before I get to the concerns we have with the bill, I would like to make one thing perfectly clear: America's franchised new car dealers support the purpose behind S. 921. Vehicles that are not mechanically sound or are unsafe to operate should never be rented to members of the public. Not only is it irresponsible, the legal liability for doing so is so severe that it would bankrupt most of our members.

However, we do have a number of concerns that we respectfully ask the Subcommittee to consider.

Not all "safety recalls" render a vehicle unsafe to operate. We agree that recalls which require immediate repairs to systems such as steering, fuel delivery, accelerator controls, or other crucial components should not be rented to the public until the defect is remedied. On the other hand, many recalls are due to defects or noncompliance with technical Federal motor vehicle standards which, depending on the circumstances, may not render a vehicle unsafe to operate until a recall fix has been completed. For example, a July 2012 recall was issued for certain vehicles equipped with a front sunroof glass panel that was susceptible to breakage in extremely cold weather. While this recall could be of concern to a motorist in Minnesota in January, it is unlikely to cause anyone in a warm climate harm. Another recent recall was due to the owner's manual containing an inaccurate description of the operation of the front passenger occupant classification system. Since owner's manuals are no longer routinely found in the glove box, it is unlikely this recall if left unremedied for a short while would cause injury. Yet another recall involved a passenger car being recalled because the air bag label installed on the driver's side sun visor could separate from the surface of the visor. In this example, if the dealer did not have a replacement sun visor in stock, the mere possibility of the air bag label peeling off would have been enough to ground the vehicle under this bill.

These examples demonstrate that S. 921 does not distinguish between serious recalls and minor recalls, and would require a vehicle to be grounded until the recall is addressed, no matter how minor.

S. 921 is also overly broad in that it regulates auto dealerships that operate small rental or loaner fleets in the same manner as multi-national rental car giants. The Hertz, Avis/Budget, and Enterprises of the world have hundreds of thousands of vehicles in their rental fleets because their primary business purpose is to rent vehicles. In comparison, the primary business of a franchised new car dealer is to sell,

lease, and service vehicles. Renting cars or providing loaner vehicles to service customers is incidental to a dealer's primary business, and no dealer has tens of thousands of vehicles for rent.

Unlike large rental car companies that maintain a wide array of vehicle makes and models in their fleets, many dealers only maintain a single vehicle model in their loaner pools. S. 921 could cause an economic hardship for small dealers if a part necessary to fix a dealer's only loaner vehicle model is unavailable. Large rental car companies have the model mix and wherewithal to avoid this problem; many dealers do not.

Every day across America, dealers start fixing recalled vehicles as soon as they receive the necessary parts and instructions from their manufacturers. Indeed, it is standard practice for a new car dealer to check every vehicle it is franchised to service for any outstanding warranty or recall work whenever that car enters its service department. But sometimes recall work cannot be performed through no fault of the dealer. These cases involve situations where recall parts are unavailable or, in some cases, have not yet been designed or manufactured by the automaker. Section 3 of the bill purports to address this problem by allowing rental car companies (which under the sweeping definition in the bill of "rental company" would include many auto dealers) to perform a "temporary fix", but only if the vehicle's manufacturer includes in its recall notice a provision that "specifies actions to temporarily alter the vehicle that ***eliminate*** the safety risk posed by the defect or noncompliance" *(emphasis added).*

As a practical matter we do not believe that an auto manufacturer would ever include such a provision in one of its recall notices. An interim measure may "reduce" a safety risk or in rarer instances make it safe to operate for an interim period, but "eliminating" a safety risk is a very high bar. We are interested to learn whether the National Highway Traffic Safety Administration (NHTSA) would permit automakers to allow a dealer to take an interim measure to alter a vehicle in a manner that "eliminates" a noticed safety risk. In those recalls where no interim eliminating measure is specified by the manufacturer, the vehicle would have to be put out of service. Moreover, there is no provision in the bill to make a dealer whole for this loss of use.

S. 921 would also create friction between large rental companies, auto manufacturers, franchised new car dealers and members of the public who own recalled vehicles. The friction point would revolve around the priority of access to recall parts. The bill would create a tug-of-war between large rental companies who have the economic power to demand they receive recall parts first, and franchised new car dealers who will try to keep recall parts in stock so that they can fix vehicles for members of the public who have received recall notices sent by automakers.

Finally, we are also concerned that the bill would subject auto dealers to new inspections [49 U.S.C. § 30166(c)(2)], additional reporting requirements [49 U.S.C. § 30166(e)], and significant monetary penalties (up to $15 million) for violations [49 U.S.C. § 30165(a)(1)]. In addition, Section 9 of the bill gives NHTSA open-ended authority to add more regulatory burdens "as appropriate."

In conclusion, I urge the Subcommittee to mindful of the unique needs of small business during your consideration of this bill. The large rental car companies that support this legislation comprise 93 percent of the market. While this bill is unlikely to put any dealer out of business, it has the power to make it uneconomical or impractical for dealers to provide loaner or rental cars to a number of their customers.

In tax law, health care law, and many other areas, Congress has understood the differences between big business and small business and has legislated accordingly. We urge this subcommittee to closely examine whether a multinational corporation with nearly a million vehicle rental fleet should be regulated the same as an auto dealer on Main Street with a fleet of 5 loaner vehicles. We are ready to work with the Chairman and Ranking Member to ensure that small dealers are not disproportionately impacted by this well-intentioned legislation.

Thank you for your consideration.

Senator MCCASKILL. Thank you.

I think I want to start out by just making a statement that all car rental companies sell cars and the vast majority of car dealerships rent cars. So we're talking about two different commercial enterprises where the emphasis may be on one or the other, but they're both engaging in the same category.

So let me start with you, Mr. Bainwol. You say that you're worried about a dual track. Wouldn't that same worry I guess exist

right now? If they're voluntarily grounding all their cars right now and they are without a doubt—if you take the big four together, they're not as good a customer as your dealers, but they are a very big customer right now. So I don't understand why making it mandatory creates any more of a dual track than making it voluntary.

Mr. BAINWOL. The biggest reason—and I'm not a lawyer, but the biggest reason is that by making it mandatory you've introduced loss of use liability. Once you introduce loss of use liability, you then change the cost equation and you make it—you set up the incentive structure such that the pressure will be to solve the Enterprise problem and not your constituent's problem.

Senator MCCASKILL. Well, what about the dealers——

Senator BOXER. But——

Senator MCCASKILL. It'll be your turn in a minute.

I'm trying to hold her down here, honestly. She's about to come out of her chair.

I'm trying to figure out, though. Don't you have to do that now for your dealers for them to be able to sell these cars? I mean, don't they have a loss of use in terms of being able to move their product? And they're all—— believe me, they're paying that floor plan. I don't think you're taking over the floor plan while they're waiting for the recalled vehicles to be fixed before sale, are you?

Mr. BAINWOL. We definitely want to keep this question as simple as we possibly can, but we have to also make sure we unpack this to the point that we understand what we're talking about.

Senator MCCASKILL. But you understand the point I'm making?

Mr. BAINWOL. I think I do. But let me just make this point. You cannot sell a car where there's a recall, right. So what happens is when a recall is issued the customer receives, the owner of the car receives, the notification. In the case of the rental car companies, they are the owner, so they're receiving that notification. The problem that we have today is that the customer who goes to the rental car counter is not getting that notification like the moms and dads are who have bought the car when they buy it themselves.

Senator MCCASKILL. I get that.

Mr. Welch, don't you guys make money on the back end when there's a recall?

Mr. WELCH. We are reimbursed by the auto manufacturers.

Senator MCCASKILL. Isn't it profitable? I mean, I remember once upon a time I was very involved in a car dealership, and I remember, even in the darkest hours, the back end was reliable and recalls were not a bad thing. They were a bad thing in terms of the disruption of the business, but they're profitable, aren't they? Aren't recall repairs profitable for you?

Mr. WELCH. Yes, they are, Senator.

Senator MCCASKILL. OK. So if they're profitable for you—and are most of the rental cars that you guys do, I assume they're part of your floor plan and you're moving them through and you move them back out for sale?

Mr. WELCH. That's not correct, Senator.

Senator MCCASKILL. OK.

Mr. WELCH. Vehicles that are in our inventory would be untitled vehicles. They would be new vehicles. Vehicles that would be in a loaner fleet or that would be in a rental fleet of a dealer would be

licensed and registered. Our insurance carriers wouldn't allow us to just pluck vehicles out of our inventory and put them in a rental.

Senator MCCASKILL. But after you license them and you loan them or you rent them, I assume you're going to sell them?

Mr. WELCH. We would eventually sell them——

Senator MCCASKILL. And you would sell them on the used lot as opposed to wholesale, correct?

Mr. WELCH. We may take them to the auction or wholesale them. It would all depend on the circumstances.

Senator MCCASKILL. Well, I would just say that I think there certainly is an impetus, if you know the history of the car and you know—and you can control how many miles you put on it, it certainly would be decent used car inventory as opposed to some of the other cars that you would typically wholesale. So I guess my question is, if you know you've got to fix it before you can either wholesale it or put it on the used lot, why would you mind fixing it as quickly as possible as opposed to waiting until after you move it out of your rental or loaner fleet into the used lot or off to the auction?

Mr. WELCH. Senator, you're absolutely correct when you stated earlier that we have an incentive to do it. As soon as the parts are available, we immediately fix the car. The bottleneck occurs, quite frankly, because of back order on parts and for really no other reason.

Senator MCCASKILL. Well, the interesting thing is we're dealing with two big folks here. For the automobile manufacturers, the rental car companies are a big customer, but nobody's bigger than your dealers. So the irony is we've got these big folks up here trying to figure out how to get this done and all we're trying to do is make sure the little folks down here are not somehow caught up in how you prioritize what gets fixed when.

But I know this: The dealers are incentivized to fix, and I have a hard time imagining that most dealers aren't going to move those recall notice cars that are in their rental or loaner fleet immediately into the back and get that cash-flow going on that recall as quickly as possible.

I will turn it over to Senator Blunt now for questions.

Senator BLUNT. If Senator Boxer wants to go ahead——

Senator BOXER. Really? Senator Blunt, you've always been my friend.

Well, I am out of my seat, Mr. Bainwol, at some of the things you say. Honestly, I don't know what planet you're living on. You are trying to say that, oh, if these rental car companies get first dibs at the fix it's going to hurt my constituents? Who do you think's renting these cars? Our constituents. It's all about the people. So don't——

Mr. BAINWOL. Senator——

Senator BOXER. Wait a minute. I will ask you my question when I ask you my question. I have to get this off my chest.

We're trying to protect, Senator McCaskill, the little people. We're trying to protect our constituents, whether they own a car, whether they lease a car, whether they rent a car for a weekend, like Cally's daughters did or your kids might.

You know, you said it really well when you opened up: As a dad, I wait for that text or that call that they made it to their destination, quote unquote.

Now, it's bad enough when we teach our kids to drive—in my case, my grandson's now learning; I have post-traumatic stress thinking back—even if they step into a perfectly safe car. But if I know they could be in a recalled car, my stress will go exponentially up.

I'll tell you something. After this happened to Cally, the first call I made was to my family and then to my staff, and you know what I said? I said, only go to Hertz, because they were the only ones that stepped up to the plate immediately and said, we'll do this voluntarily. And then, happily, the others came along. Thank you, all of you, and I'm going to keep looking at that every day until we pass this law.

But to also sit here and say it's a settled question, the companies are doing it on their own. I know you're not a lawyer. I'm not either, but I've got to tell you, it ain't a settled question until there's a law. You've got people of goodwill now. What happens in 5, 10, 15 years? So don't tell me it's a settled question when you're treating people differently. Her children, Cally's children, were not treated the same as somebody who went in to buy a new car. So let's be clear.

I want to ask each of you to respond yea or nay, yes or no, to this question. I'm going to start with Ms. Faulkner and go right down: Do you believe a rental car company should be allowed to rent out or sell a vehicle that is under a safety recall, understanding that we do have interim fixes? Do you believe a rental car company should be allowed to rent out or sell a vehicle that is under a safety recall?

Ms. FAULKNER. Nay.

Ms. SHAHAN. No.

Mr. BAINWOL. It's not a fair question, ma'am.

Senator BOXER. It certainly is. Yes or no?

Mr. BAINWOL. The answer is that in today's world most of the marketplace does not do it, so it's an academic question, not a practical question.

Senator BOXER. Do you think—do you think, sir—I didn't ask you whether they do it or they don't. I asked you if they should. Do you believe a rental car company should be allowed to rent out or sell a vehicle that is under a safety recall?

Mr. BAINWOL. It——

Senator BOXER. Yes or no?

Mr. BAINWOL. Well——

Senator BOXER. You don't answer.

Mr. Welch?

Mr. WELCH. If the vehicle's unsafe it shouldn't be rented.

Senator BOXER. Thank you.

Let me say, there are other things that you're saying here. Mr. Welch, I want to talk to you about this. You said that the problem is there are not enough parts. Now—and Mr. Bainwol said: oh, we've got to deal with the people who own the cars first and we can't, we don't—we can't. Here's the deal. Suppose there was no rental car business at all and we had a certain number of cars that

had to be fixed because there was no rental car business. Are you saying that there ought to be some type of priority? If we had no rental car business but we had the same number of cars sold, are you saying you couldn't handle it, sir, in terms of the parts?

Mr. Bainwol, I'm asking you.

Mr. BAINWOL. I'm not a parts administrator. What I'm saying is that the bill as you've drafted it introduces a bias to put Enterprise ahead of a regular customer, ahead of a regular mom and dad.

Senator BOXER. Show me in the bill where we do that?

Mr. BAINWOL. You do that by——

Senator BOXER. You're making it up.

Mr. BAINWOL. No, I'm not.

Senator BOXER. Show me the page.

Mr. BAINWOL. Senator, first of all——

Senator BOXER. Show it to me.

Mr. BAINWOL. Senator, let's back up for a second.

Senator BOXER. Show me the page.

Mr. BAINWOL. Senator, can we back up for a second? May I have a chance to respond?

Senator BOXER. I'm asking you. You said our bill gives priority for the fixes to go to the rental car company first. Show me where we do that in the bill, sir?

Mr. BAINWOL. Once you federalize a voluntary agreement, you've introduced absolutely a loss of use liability. That by definition produces an economic incentive to treat Enterprise over other customers.

Senator BOXER. I don't agree with you.

Now, let me say this. You talk about this voluntary agreement. Do you know how this agreement came about, sir?

Mr. BAINWOL. I know you invested much time and effort into it.

Senator BOXER. That's not the point. I wrote a pledge. We took it out to the companies. Hertz was right there and the others signed the pledge. So don't say this was something that they came together and did. They did it because they were challenged.

But they support this law. Good for them.

Mr. BAINWOL. Senator, may I add one point?

Senator BOXER. No. Just a minute. I want to ask you another question. This is my last question. If you as a manufacturer don't have enough parts to repair your defective vehicles, you better figure that out. One, don't make a defective product in the first place. That's the best idea. Second, announce the recall sooner so fewer defective cars are sold. And third, make more parts.

You created the problem if the car is broken and you should fix it. So I'm not sympathetic to this point, we don't have enough parts, because if we had no rental car industry and everyone owned their cars you'd have to fix everybody's cars. You wouldn't make these false distinctions. These are all our constituents. All we're trying to do is protect them. And I have to say, I am greatly disappointed. I hope when you offer to help us fix our legislation you mean it.

Mr. BAINWOL. I do. Senator, there is no question that we have a shared commitment to deal with the problem, OK. And we say that with absolute commitment.

Ninety-four percent of the problem has been solved by the voluntary action. The question is how you deal with the 6 percent and how you deal with the problem in a fashion that doesn't introduce adverse consequences.

Senator MCCASKILL. Understand that voluntary is voluntary, and they could change their minds tomorrow, Mr. Bainwol. So I get that you're saying right now let 6 percent go and——

Mr. BAINWOL. I'm not saying that at all, Senator. I'm saying let's deal with it in a different fashion. The core problem here is that you have a breakdown in notification. So my suggestion is you take the voluntary action, you go ahead and you move a bill that requires notification, so that no consumer ever again rents a car without being fully notified about the recall status, and then you move forward.

Senator MCCASKILL. Senator Blunt.

STATEMENT OF HON. ROY BLUNT,
U.S. SENATOR FROM MISSOURI

Senator BLUNT. I'm assuming, Mr. Bainwol, your point is that all recalls are not equal?

Mr. BAINWOL. That is part of the point. My broader point is that the marketplace has solved this problem and when you Federalize a voluntary agreement you introduce adverse consequences that are anti-consumer.

Senator BLUNT. But you're saying if you told somebody that was renting a car that it was under recall there might be reasons they would still want to rent that car?

Mr. BAINWOL. Correct. If there's a loose, as Mr. Welch said, if there's a loose slip of paper on the visor, then a rational human being might say I'll accept the car, I want the car, that's OK.

Senator BLUNT. But you wouldn't have a recall on that, would you, a loose slip of paper on the visor?

Mr. WELCH. That was the subject of one recall, Senator, yes.

Mr. BAINWOL. Or if the defroster doesn't work in Florida in August, you might make the choice that that's OK.

Senator BLUNT. So you're saying that all recalls would not be the same, which is what I asked?

Mr. BAINWOL. That's correct.

Senator BLUNT. Now, Ms. Faulkner, maybe I'm a little—I thought in your testimony you said there was something in this bill that allowed for accommodation of some recalls. You mentioned the floor mat-accelerator problem earlier. Would you tell me a little more about—am I wrong on that? Is there something in here that lets you accommodate some recalls by an adjustment onsite, or what did you mean by that?

You said that the floor mats were taken out and that's exactly what should have been—I believe that's what you said, that that was exactly what should have been done.

Ms. FAULKNER. That is what I said. But that was a directive from the manufacturer to all consumers, including the car rental industry. They said that was a safety fix. That is the only time that we would be allowed to make a decision on a recall, is if the manufacturer tells us: Here is your interim fix, the car is now safe, and you can rent it or you can drive it as a consumer. Otherwise, we

get it repaired. We were just showing you an example of what a possible interim remedy could be.

Senator BLUNT. And does the law as it's drafted now allow for that interim remedy?

Ms. FAULKNER. It allows for that interim remedy if the manufacturer gives us the guidelines to do so.

Senator BLUNT. Not to be argumentative here, but do you read this the same way as the representative of the manufacturers, Mr. Bainwol?

Mr. BAINWOL. Senator Blunt, I apologize. I was lost in thought about something entirely different.

Senator BLUNT. Well, it was the idea that this bill would allow you, if there was an interim remedy like taking the floor mat out, to tell everybody and they would do that, and that was an interim——

Mr. BAINWOL. We believe that the notion of a interim fix here is a—doesn't really work in the real world. The idea that you would eliminate the risk, as Mr. Welch said, is a bar that I don't think a manufacturer would be able to meet.

Senator BLUNT. But in the case of the floor mat, did that actually do——

Mr. BAINWOL. No, I'm speaking more conceptually in terms of the exemption in the bill that allows a product where the risk is eliminated. That is a bar that makes exemption from a practical purpose meaningless.

Senator BLUNT. So since it eliminates it, that would be the problem you'd have? You'd have to say this eliminates the risk?

Mr. BAINWOL. Right.

Senator BLUNT. Mr. Welch, do you think loaner cars and rental cars from a dealership should be treated differently in this area of recall and disclosure?

Mr. WELCH. Well, I think there are two or three different standards. First of all, if the vehicle is unsafe, if there's compromise to a critical component of the vehicle, it shouldn't be rented in any circumstance, period. If it falls into that category where the rubber on the tire may separate after 50,000 miles and there are only 10,000 miles on the vehicle or, by the way, there's a condition on the vehicle that isn't even subject to a recall, for instance it has cracked windshields or worn-out brakes or something, those vehicles just should not be on the road, period.

Our problem is one of proportionality. Many of our small dealers only have a single model in their entire loaner fleet and if that vehicle happens to be subject to one of these what I would call technical recalls, our entire fleet, unlike a Hertz or Avis that has thousands of vehicles of all line makes, it may be an economic hardship for them, but we're just plain out of luck for the average dealer that has nine or ten loaner vehicles that are put out there on the road.

Senator BLUNT. But you wouldn't loan that vehicle out if you thought it was unsafe?

Mr. WELCH. The tort liability for negligence, Senator, is so huge that we would be sued and lose.

Senator BLUNT. And you don't think in the case of—if you also had a rental car, you wouldn't treat it differently than you'd treat that loaner car?

Mr. WELCH. No differently whatsoever.

Senator BLUNT. You said in response to Senator Boxer's question that everybody was asked, that you wouldn't be for unsafe vehicles being rented. I think that's—you actually changed the question, I thought, a little bit.

I assume, Mr. Bainwol, you're not for unsafe vehicles being rented either?

Mr. BAINWOL. That's correct.

Senator BLUNT. Most everything I thought of to ask I thought that Senator Boxer and Senator McCaskill asked and I've benefited from the answers. I'm going to yield back my—well, actually I'm over my time.

Thank you, Chairman.

Senator MCCASKILL. Thank you, Senator Blunt.

Just briefly, I don't have a lot of followup questions. I think I understand where everyone is and I get it. I get—believe me, I understand the car dealers not welcoming more Federal Government to the dealership. I understand that in terms of an overall thematic problem, although I do have a sense that, while on a much smaller scale, there is still a high probability that somebody could get a rental car from a dealership that had a problem that hadn't been fixed. I certainly know you have incentives profit-wise to get those things fixed as quickly as possible.

It seems to me that a lot of this is fear about being sued, Mr. Bainwol, that the manufacturers are worried that you're opening up a new line of vulnerability in terms of your liability for loss of use in terms of the profits of the rental car company, their loss of profits during the time period in which the recalls are being performed and the repairs are being done.

I'm just curious. Does that same fear exist about loss of profits and costs associated with your dealers when they have a number of vehicles that they have to take off the floor, that they have to continue to pay interest on their floor plan? Have the manufacturers ever been sued by the dealers for loss of profits due to a recall?

Mr. BAINWOL. Peter may know the answer to that.

Mr. WELCH. Senator, actually there is a provision in the law that if a franchise new car dealer has a grounded fleet, that the provisions do allow us to collect monetary damages up to 1 percent of the MSRP per month. So we are compensated in circumstances, as were our Toyota dealers recently.

Senator MCCASKILL. So my colleague just asked what "MSRP" is.

Mr. WELCH. Manufacturer's suggested retail price. Excuse me.

Senator MCCASKILL. Most of us don't know that because most of us don't pay that, right?

[Laughter.]

Senator MCCASKILL. I don't know very many consumers that are paying MSRP. If they are, they need to see me because I can help them.

So you collect 1 percent?

Mr. WELCH. The regulations and the law does allow us, in those limited circumstances.

Senator MCCASKILL. So it looks like we have a solution, Mr. Bainwol. How about one percent?

Mr. BAINWOL. Well, remember, we go back to the core proposition at the very beginning, which is that's a case of a dealer selling a car. What we're talking about here is where a purchase has already been made and it's what to do about a recall post-purchase. So it's a different animal. But your broader point about the concern about loss of use is completely valid and it does get introduced by virtue of an approach that is a mandate rather than a notification.

Senator MCCASKILL. But you get the point I'm making.

Mr. BAINWOL. Oh, I do, I do.

Senator MCCASKILL. You would have had the same fear for your dealers except we put 1 percent in the law. I didn't hear you suggest that when we met that 1 percent might solve the problem.

Mr. BAINWOL. No, no, no, no, no, no. The concern here is that this changes the incentive structure and the relationship and the economics between the rental car companies and the manufacturer. So for instance, if you're in slow season and the utilization rate is very low and a call is recalled, all of a sudden it becomes a revenue source because of the recall, because a car that's otherwise not rented is generating revenue. That's the concern on loss of use liability.

So I guess I would raise the question here if loss of use liability is not something that the rental car companies want to pursue. Perhaps Ms. Faulkner could clarify that.

Senator MCCASKILL. And I think that's something you can talk among yourselves about, because if it's a slow season and they're going to try to make a loss of use case against you, first of all, this is a sophisticated buyer-seller relationship. This isn't Joe Average coming in to buy a car. This is Enterprise and Hertz buying hundreds and thousands of cars from you guys every single year.

Mr. BAINWOL. There was——

Senator MCCASKILL. Let me finish. I guess my point is that if you were going to try—let's just say that it's the slow season and Budget decides: Hey, we've got a recall out here; let's ship all those cars in for repair and then let's sue them for not being able to rent the cars for loss of use, and it's the slow season, and you're saying you're afraid of that revenue stream. Well, can't we just put in the law that you have to show actual loss of use profits, not augment your slow season by turning in recalled cars and then sue them for it?

First of all, I can't imagine they'd be motivated to sue because they're biting the hands that feed them. You're going to turn around and charge them a lot more per vehicle the next year, which really impacts their bottom line.

Mr. BAINWOL. There's a more basic point here, and the basic point is simple. That is, in the voluntary action there is no loss of use. Once you convert it, you introduce that risk. Why introduce that risk? Why throw into a system that has a workable solution an economic problem that has all sorts of adverse consequences? Why not just simply carve it out?

Senator MCCASKILL. I think what you've got, Mr. Bainwol—and you may think that you can kill this legislation this year, but I

think you're on the losing side potentially of a very bad public relations situation if you're not careful.

Second, I think this is something we can work out. I think this is something particularly that you ought to work out with you really good customers the rental car companies, because nobody buys more, and I bet you make more money off the cars you sell to rental companies than the price you make the dealers pay you for them.

Mr. BAINWOL. We've established a relationship here as though we don't want to see a bill move forward. We do. We want to see a bill move forward that is productive, meets the goals, but doesn't introduce adverse consequences.

Senator MCCASKILL. Well, let's work out that loss of use thing. Let's make sure that it's actual loss of use, so nobody can use the slow season to milk you guys.

Mr. BAINWOL. Why not just carve it out?

Senator MCCASKILL. I think that when you start carving out whole causes of action from the Federal level, it gets to be a pretty dicey proposition. So I think that we've got to be careful about that.

I'm open to talking about anything. I just don't want us to leave here under the assumption this bill is going to move, with the plan that maybe it's really not going to move with some help from you guys maybe down the hall. So I want to make sure we try to get this worked out now rather than ending up six, 9 months from now with Ms. Houck going, what happened? We got all the rental companies to agree and everyone agreed, and the only people that were outside of the circle, so to speak, were the people who were making the cars, that I think provide a pretty good, solid, safe vehicle, especially the strides you have made in terms of safety is remarkable in this country. I'm very proud of it and I'm very proud of the automobile manufacturing industry. So this should not be an adversarial situation. I remain hopeful that we can get it worked out.

Thank you.

Senator BOXER. May I follow up, please? May I follow up?

Senator MCCASKILL. Sure.

Senator BOXER. I want to pick up on this whole question. It sounds to me like you want to write our bill. And it's fine that you'll be at the table. I'd love to hear from you. But I want to pick up on—you've got to be very careful because you don't—you might get something that has bad ramifications for you, and I wanted to see what you think about this argument.

You suggest the bill should include language prohibiting rental car companies from seeking loss of use damages from a manufacturer for having to ground rental cars for a long time. My philosophy on this one is you shouldn't take that long to figure out how to work this out and fix it, and if you act in a reasonable time I don't think you should be sued.

But set it aside. Let's say for argument's sake we were to put that in. Look what this opens up. Should Congress also prohibit manufacturers from suing their parts suppliers for making faulty parts that trigger expensive recalls? Do you think we ought to get into that?

Mr. BAINWOL. You know, we don't want to write this bill.

Senator BOXER. Well, I just asked you a question.

Mr. BAINWOL. But let——

Senator BOXER. Can you answer the question?

Mr. BAINWOL. You raised a series of questions. Let me——

Senator BOXER. No, no, it's not a series. I asked one question. Please answer my question, sir?

Mr. BAINWOL. Please restate it.

Senator BOXER. Should Congress prohibit manufacturers from suing their parts suppliers for making faulty parts that trigger expensive recalls?

Mr. BAINWOL. I think that's an entirely different question.

Senator BOXER. Should we do it?

Mr. BAINWOL. I think that——

Senator BOXER. Of course not. Of course not.

Mr. BAINWOL.—that is a different question.

Senator BOXER. Wait a minute. Once we wade into this question—and my chairman is an attorney. Once you wade into this question of who can sue for what and how and when and where, watch out, because that's a whole other issue. In 2009 General Motors sued a supplier saying it spent more than $30 million fixing problems with the steering system of Chevrolet Cobalt, it's best-selling car. From 2008, Chrysler LLC is proceeding with its suit against Canadian auto parts maker Magna International to recoup money spent on a recall involving defective heated seats in minivans.

[The article about the lawsuit follows:]

The Blade—Published: 6/18/2008

CHRYSLER SUES SUPPLIER TO RECOUP RECALL COSTS

DETROIT Chrysler LLC is proceeding with its lawsuit against Canadian auto parts maker Magna International Inc. to recoup money it spent on a recall involving defective heated seats in minivans.

Chrysler recalled 161,500 Dodge Grand Caravan and Chrysler Town & Country minivans from the 1999–2001 model years three years ago because the heating element in some of the seats overheated and burned through the fabric, Chrysler spokesman Mike Palese said.

He declined to reveal the amount Chrysler is seeking from Magna in the action filed in February, but said it is significant. He said Chrysler sued after exhausting all other options available in the normal course of business.

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Senator BOXER. The point is of course we shouldn't do that, and we shouldn't also wade into this issue. If you don't fix recalled cars in a timely fashion, it's a problem. As I said before, it's part of your business. You have to take care of business. You have to take care of fixing these cars.

So I ask unanimous consent to place in the record an article, "GM sues over millions spent on steering repairs." If I might put that in the record, Madam Chairman.

Senator MCCASKILL. Absolutely.

[The article referred to follows:]

By *The Associated Press* on November 23, 2009 at 11:58 AM, updated November 23, 2009 at 6:56 PM

GM SUES OVER MILLIONS SPENT ON STEERING REPAIRS

AP photo

General Motors says it's costing tens of millions of dollars to repair shaky steering columns in its best-selling small car and other models.

General Motors Co. has sued a supplier, saying it has spent more than $30 million fixing problems in the steering systems of the Chevrolet Cobalt, its best-selling small car, and other vehicles.

GM said customers have complained about unusual rattles, "clunks" and other noises. It pinpointed the flaw to "excessive gear backlash," which causes problems in the steering column when driving on rough roads.

The lawsuit names JTEKT North America Inc., based in Plymouth, Mich., and an affiliated company, JTEKT Automotive Virginia Inc. of Daleville, Va.

GM said it wants to be paid for replacing thousands of parts under customer warranty claims on the Cobalt, Pursuit, G5, HHR and other cars, starting with 2005 model year.

By fall, the cost had exceeded $30 million, and "GM's damages are expected to continue to increase as additional warranty claims are made," the automaker's lawsuit said.

"JTEKT contends the components all met the specifications and testing requirements that GM gave it," said Bob Haddad, a lawyer for the supplier. "The issues do not affect the operator's ability to control the vehicle. This is a noise issue."

Changes were made at GM's request, and JTEKT continues to provide steering assemblies, Haddad said Monday.

The steering systems are in tens of thousands of GM cars. It is not considered a safety issue, said Alan Adler, a GM spokesman.

He said the lawsuit likely will be settled out of court. It was filed in August in Macomb County Circuit Court, amended there in October and moved Nov. 17 to Federal court in Detroit.

The Cobalt is GM's best-selling small car and its highest-mileage vehicle. The company sold 90,940 Cobalts through October, but sales are down 46 percent from the same period in 2008.

The car, built in Lordstown, Ohio, is due to be replaced next year by the Chevrolet Cruze, which GM promises will get around 40 miles per gallon on the highway and be competitive with the best small cars in the world.

Mr. BAINWOL. May I make one comment, Senator?

Senator BOXER. Yes.

Mr. BAINWOL. We agree with you, we want to see these vehicles fixed as quickly as possible. There's not a debate about the safety

desire here. Nobody wants to see an event like what transpired in 2004 transpire. We're with you on that.

Senator BOXER. Well, that's good.

Mr. BAINWOL. The challenge here—and we don't want to write the bill. But we want to contribute to crafting the bill, which we were not.

Senator BOXER. Well, that's fine. That's fine. We will look and see as to whether what you recommend is in the public interest. But some of the things you said today are disturbing and maybe you'll rethink them. You hinted that you definitely feel a young person comes to the counter at one of the rental car companies and said, I want to rent a car, that they say there's one car left on the lot, and you seem to indicate you would support the rental people having to say, but we want you to know there has been a recall notice about this car, there's a faulty floor mat or there's a faulty windshield wiper or the defogger system is out—and by the way, with the weather the way it is, don't say if a system goes out in Florida in August it's a good thing. I don't know if you've ever experienced getting stuck without a defogger in a car. You might as well not—you can't see anything. So let's be clear.

And then we heard about these floor mats. Now, I think we've—so in my opinion, if it's my 18-year-old or 21-year-old who's going to the counter, they're ready to go on a vacation and they're told, oh, there's this little thing over here in the steering, you know, it's not going to rain this weekend, the windshield wiper is broken, has to be recalled—I don't want to give that decision to my grandson or your kid or my chairman's, one of her daughters. And I don't think that should be on their shoulders to make a decision. We're the grown-ups in the room.

Fix it if it's broken. Don't fight us.

And I would say in closing, I'd like to hear from Ms. Shahan, because she's worked so hard. You've heard a lot of things here today and I would like you to state, because you speak from the heart and also from facts, is our bill a danger to anybody? Is it going to do something bad, or is it going to protect our constituents?

Ms. SHAHAN. Senator, it will save lives and prevent injuries, there's no question about it. To me, it's disturbing to hear the auto manufacturers propose notification in lieu of fixing the car.

Mr. BAINWOL. I'm not proposing it in lieu of fixing the car. I'm saying fix the car as expeditiously as you possibly can. Please do not put words in my mouth. Fix the car, achieve the safety objective that we all share, and give notification, just as we do to every other consumer that buys a car. They get notification of the recall. The gap in the process right now is that when you rent a car there is no notification because the car companies receive the notification, not the car company—— the rental car customer.

Senator BOXER. Well, I've got news for you. I own a car and everybody contacts me about it. So it's just not true.

Please continue. Sorry you were interrupted.

Ms. SHAHAN. Yes. I had understood Mr. Bainwol to indicate that notification was important.

Senator BOXER. Yes, he just said it again.

Ms. SHAHAN. Right. And we don't see that as a substitute for fixing the car.

As far as the cases that have been raised about so-called technical problems, a lot of times what are seen as technical really aren't that technical. For instance, the notice on the visor. In most vehicles these days, there's a notice on the visor that's very important for parents to see, and it says: Danger. Warning. Do not have a child under a certain age or size sitting in the front seat because of the possible problems with air bags. That's a federally mandated notice that goes on the visor, and if it's missing it's an important thing. Plus it's illegal to sell that car in the first place.

We believe that the manufacturers should comply with the Federal safety standards. If they have a problem with the Federal safety standards, come to Congress, come to NHTSA, try to change the Federal safety recall system.

That's not what this bill does. This bill does not change the existing Federal safety recall system. It keeps it intact, and all it does is extent the existing system to rental car companies, including car dealers. That's all it does. It doesn't overhaul the existing safety recall system. Basically what they're doing is complaining about the existing safety recall system and saying, we shouldn't have to recall this, we shouldn't have to recall that. This is not the bill to have that debate about. This is a very simple, straightforward consumer protection measure. We desperately need it.

Thank you.

Senator BOXER. Thank you very much.

I want to say, Madam Chairman, thank you very much for this opportunity. I hope we will be successful, and I know working with you has been a real experience because—— because, because, you're a no-nonsense Senator. I think what we heard today is a little bit of nonsense, to be honest with you.

Senator MCCASKILL. Well, I'm going to remain optimistic. We began this process with a lot of the rental car companies not on board, and we have been able to negotiate and work toward a solution that is I think a good one. Now I want to make sure that we work with the manufacturers and the dealers to try, if we can, to address their concerns in a way that protects the integrity of the bill, with the overall goal of, obviously, protecting consumers.

So I will remain optimistic about that and, Mr. Bainwol and Mr. Welch, we'll look forward to working with you and your staffs to try to see if we can't figure out a way to address some of the concerns that you've expressed today without harming the integrity of the bill.

I will tell you, Ms. Houck, that my daughter will have her 24th birthday on Thursday and her younger sister is 21. I cannot imagine the grief that you must feel each and every day. So on behalf of all of my colleagues, we thank you for channeling that grief in such a constructive way, with integrity and intellect and passion, and I know how proud your daughters would be of you. Thank you.

[Whereupon, at 11:08 a.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. BRIAN SCHATZ, U.S. SENATOR FROM HAWAII

Thank you, Chairwoman McCaskill, for holding this important hearing. I also want to thank Senator Schumer for his leadership and sponsoring this common sense legislation. As you know, Hawai'i enjoys the company of more than 10 million visitors each year and a large portion of our guests choose to rent cars. With that, I applaud every effort to improve the safety, security and peace of mind of those visiting our wonderful island State.

The Raechel and Jacqueline Houck Safe Rental Car Act will advance efforts to protect Americans renting vehicles for any occasion, whether it is for business or pleasure. Our current law requires that auto dealers address recall notices before vehicles can be sold. This bill takes the same pragmatic approach by extending that law to rental car companies by requiring them to comply with safety recalls and fix defective vehicles before renting them to consumers.

Every major rental car company in the country supports this bill, as does the American Car Rental Association. The Truck Renting and Leasing Association that represents nearly all truck rental and leasing operations in the United States also supports this important effort. The widespread industry support should be a sign that these kinds of consumer protections are essential and long overdue.

The Raechel and Jacqueline Houck Safe Rental Car Act promotes common sense consumer protections that will guard America's rental car patrons wherever they drive. I look forward to working with you, Madam Chairwoman, and our colleagues in making every effort to advance this legislation to the floor.

Thank you, Chairwoman McCaskill.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO HON. DAVID L. STRICKLAND

Question 1. Currently, NHTSA has no regulatory authority over rental car companies' compliance with recall notices. By endorsing S. 921, the industry has agreed to subject itself to NHTSA oversight and enforcement with regard to recalls. What, if any, additional funding or manpower resources do you expect the agency would need to implement and enforce S. 921 if it were to become law?

Answer. NHTSA believes it can implement and enforce S. 921 without additional funding or manpower. However, the addition of a full time person and about $100,000 per year would allow us to conduct outreach to increase consumer awareness as well as rigorous enforcement without compromising other priorities. These additional resources are not included in the President's Fiscal Year 2014 budget request for NHTSA.

Question 2. The issue of disclosure often has been discussed as a possible alternative to mandatory grounding of vehicles when a recall occurs. In other words, allow the rental company to notify the consumer at the rental counter that the vehicle he is about to rent is under safety recall and allow the consumer to then make the decision as to whether or not to rent the car. What are NHTSA's thoughts on this option versus the mandatory grounding included in S. 921?

Answer. NHTSA does not believe this is a realistic option. Consumers should not be expected to make an important decision about safety while in an often stressful and distracting travel scenario. Assuming a consumer is able to actually focus on the notice, it may put them in the very difficult position of having to choose their immediate transportation needs over their personal safety.

Question 3. Section 30120 of the Motor Vehicle Safety Act already prohibits auto dealers from selling or leasing a new car under safety recall until it has been remedied. This bill expands that provision to cover rental companies and rental vehicles.

Question 3a. How does NHTSA currently enforce the prohibition as it applies to the sale and lease of cars?

Question 3b. How it would enforce the provision with regard to rental companies if S. 921 were to become law?

Question 3c. What penalties exist for violations?

Answer. NHTSA has a very effective hotline. We receive about 42,000 complaints from consumers each year. Some of these have involved dealers selling and delivering new vehicles subject to recalls that have not been completed. We recently resolved a case involving substantial penalties with respect to a large dealer that was selling motorcycles in violation of the prohibition. We envision enforcing the rental car provision the same way as we currently enforce the new car dealer provision. When we learn of an alleged violation, we investigate the claims, and take the appropriate action as necessary. The penalties for violations by auto dealers are in 49 U.S.C. 30165.

Question 4. We heard from industry witnesses in the hearing that made the case for some form of a small business exemption to S. 921. Are you aware of any auto safety standards which include a small business exemption for businesses?

Answer. Manufacturers are not relieved of their responsibilities to report and conduct safety recalls based on their size. Nor is there an exemption based on dealer size in the context of prohibitions against the sale and delivery of new cars with an outstanding safety defect or noncompliance with a Federal Motor Vehicle Safety Standard (FMVSS). NHTSA considers the small business status of manufacturers, dealers, and other businesses in every case in which it needs to assess a penalty for violations of the Motor Vehicle Safety Act and our regulations.

NHTSA often includes phase-in provisions that allow small manufacturers additional time to comply with new or revised FMVSS. Furthermore, we have authority to, and do, grant exemptions to low-volume manufacturers from certain FMVSS under limited circumstances.

Question 5. You testified that NHTSA's audit of the rental car industry showed data that rental car companies repaired 50 percent of its recalled vehicles within the first 120 days of receiving the recall notice and 60 percent within the first year.

Question 5a. What is the age and source of this data?

Question 5b. Did NHTSA receive any other data related to the audit of rental car industry compliance with recall notices that contradicted the data cited?

Answer. This information represents a summary of data from an audit query NHTSA initiated in 2010. The source of the information was several vehicle manufacturers who provided us with recalls completion information broken down by rental car companies. Several major rental car companies provided responses to NHTSA that disputed this information.

We do not regularly receive any data on the rental car industry's performance. This was a specific inquiry and there is no ongoing obligation on anyone to produce this information.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BARBARA BOXER TO HON. DAVID L. STRICKLAND

Question 1. Are safety recalls issued for trivial defects, or only for defects that pose a serious safety risk?

Answer. All safety recalls are conducted either because the vehicle contains a safety defect, which by definition means it presents an unreasonable risk, or a failure to comply with Federal motor vehicle safety standard.

Question 2. Are there other types of notices a manufacturer can issue, besides a safety recall, if a defect does not pose a true safety concern?

Answer. Manufacturers have a wide variety of campaigns they use to address non-safety defects. Some campaigns involve active notification to owners, and some do not. This area is not regulated by NHTSA and is left to the discretion of the manufacturers.

Question 3. If the defroster knob isn't working on a vehicle, and that vehicle is being driven in Florida during the summer rather than in a cold environment, why is that a safety concern?

Answer. Weather patterns and conditions change sometimes suddenly, even in places with a mild climate. For example, Florida experiences extremely humid conditions in the summer that can cause windshields to fog up. Temperatures and humidity are what make a defroster a necessary item. People in Florida also often

drive their vehicles to other states with colder climates, for example, New York, and parts of Florida do experience freezing temperatures during the winter.

Nevertheless, if a manufacturer does not believe a particular issue presents a safety defect in a particular region, it can conduct a regional recall that pertains only to certain regions, so long as it is consistent with the data on the incidence of the problem and there is a reasonable technical basis for excluding other regions.

Question 4. If a vehicle is missing a warning label inside the passenger cabin telling drivers about the danger the passenger-side airbag can pose to children in car seats or under the age of 12, why is that a safety concern?

Answer. Particularly in an unfamiliar rental vehicle, an uninformed driver or adult passenger may place a child in a child safety seat in the front passenger seat not knowing the potential deadly consequences.

Question 5. The *Moving Ahead for Progress in the 21st Century Act* (P.L. 112–141) required that all safety recall information be publicly available on a website, and searchable by make, model, and VIN. When does NHTSA anticipate completing rulemaking on that provision?

Answer. NHTSA published the final rulemaking in the Federal Register on August 20, 2013. It is available at *https://www.federalregister.gov/articles/2013/08/20/2013–19785/early-warning-reporting-foreign-defect-reporting-and-motor-vehicle-and-equipment-recall-regulations.*

Question 6. Please describe the process by which NHTSA works with the manufacturer to determine what types of defects pose a serious safety concern and warrant a safety recall. How does NHTSA work with auto manufacturers to develop an appropriate remedy and wording for recall notices to owners?

Answer. While NHTSA does have frequent communications with the entities it regulates, we do not work with manufacturers to determine what types of defects pose a serious safety concern. Manufacturers have a statutory duty to identify safety defects and conduct recalls. When a manufacturer has not done so and a possible defect exists, NHTSA conducts an independent investigation that may include data analysis and testing to determine whether a safety defect trend exists.

Similarly, recall remedies are at the discretion of the manufacturer, and NHTSA does not dictate them. NHTSA limits its involvement on choice of remedy only to those situations where it appears that the remedy is not complete or may be likely to fail.

The wording of recall notices is, in part, dictated by Federal law. NHTSA reviews every draft notification a manufacturer submits on a recall to ensure the notices are compliant. We also use this opportunity to offer suggestions that may help the success of a recall campaign. Where appropriate, we encourage manufacturers to use a number of means of communication, including e-mails, phone calls, and website postings, to inform owners and users about recalls.

Question 7. Is a lack of sufficient parts to remedy a safety defect a common problem? If so, what steps can manufacturers take to avoid this problem? Do some manufacturers have a better track record than others with producing enough parts?

Answer. It can be a concern, particularly with very large volume recalls or recalls where a part is no longer produced or was not a universal part.

We are not certain manufacturers can completely avoid this problem, other than not manufacturing products with defects, which responsible manufacturers are already taking every step to avoid.

We have not studied in any exacting detail whether some manufacturers have more problems than others in this area. We reiterate that the problem, in our view, stems more from the size of the particular recalls a manufacturer conducts, as well as the type of part. Manufacturers should make defect and noncompliance decisions and conduct recalls promptly without any concern that they will be labeled as deficient if those recalls results in reasonable parts delays.

Question 8. If stakeholders have concerns about safety recall notices to owners (including the clarity or content of these recall notices, or the types of defects that warrant safety recalls in the first place), is there a mechanism for stakeholders to present those concerns to NHTSA and work with the agency to address them? Does NHTSA currently have authority to prescribe changes to the content of safety recall notices, or the requirements that trigger a safety recall, as needed?

Answer. Owners are always welcome to file a complaint on *www.safercar.gov* or call our toll-free hotline to voice their concerns.

NHTSA has the authority to require changes to safety recall notices. Manufacturers frequently revise their proposed owner notification letters after discussions with NHTSA staff.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO SHARON FAULKNER

Question 1. The Automobile Alliance testified that a mandatory grounding of vehicles for rental fleets would require automakers and their dealers to grant preferential treatment for repairs to rental car companies, at the expense of individual consumers. How do the largest rental companies typically handle recall-related repairs today?

Answer. It is our understanding at the American Car Rental Association (ACRA) that the major rental car companies today ground all vehicles when they have received from the manufacturer the safety recall notice and vehicle identification numbers (VINs) for the affected vehicles. Those vehicles are not re-rented until the prescribed work is complete.

Question 2. In what way, if any, would a mandatory grounding of vehicles change the way in which rental companies respond to recall repairs versus the voluntary agreement that much of the industry already abides by?

Answer. For all practical purposes, ACRA does not believe that the mandatory grounding would change the way in which our members respond to the safety recall notices. As stated above, we believe most are doing this already. However, not all rental car companies are members of ACRA, but ACRA did develop a "pledge" to adopt the grounding policy two years ago and asked all its members to adhere to it. We believe most members are complying with the pledge. Certainly if S. 921 passes as written, our members' voluntary actions would be obligatory and all rental car companies would be required to follow this policy.

Question 3. Administrator Strickland of NHTSA testified that NHTSA's audit query for the rental car industry from several years ago produced data that showed rental car companies repaired 50 percent of its recalled vehicles within the first 120 days of receiving the recall notice and 60 percent within the first year. Do you agree with those statistics?

Answer. ACRA respectfully, yet strongly, disagrees with the statistics presented by Administrator Strickland regarding the completion rates of rental car companies. Unfortunately, Mr. Strickland continues to use old and incomplete data to measure our industry's completion rates. The data NHTSA originally received came from auto manufacturers, which cautioned NHTSA that the information was likely incomplete due to the high turnover rate of vehicles for rental car companies. NHTSA then sought information from the largest rental car companies.

Question 4. Did the rental car industry provide more current data on this matter?

Answer. Several of the larger members did respond to NHTSA's audit query and demonstrated that the completion rate for the specified recalls requested was above 90 percent within the first 90 days of the recall notice. These responses were posted on NHTSA's website. These completion rates are typical if there are sufficient parts available from the manufacturers. It is unfortunate that Mr. Strickland continues to quote incorrect statistics, or at least present them without the appropriate context.

However, as quickly as many of our members are repairing their vehicles due to recalls under most circumstances, how quickly we repair is not the issue. The issue is that these vehicles for the most part are being pulled from service until repaired.

Question 5. Among the reasons you stated for why ACRA supports this legislation is that your members do not want a patch-work of state regulations governing your recall practices and, therefore, would like to see Congress act. However, S.921 as currently drafted does not contain an expressed state pre-emption clause. Why does S. 921 not contain a preemption clause?

Answer. Originally ACRA supported a specific preemption clause as our members thought it would be an appropriate provision in this legislation. However, as we discussed with several Senators and staff, we came to understand that preemption clauses in general are controversial and continuing to advocate for one could impede ultimate passage of the legislation. Therefore, in the interest of compromise and moving forward, we agreed to not include such a provision in the bill.

Question 6. Despite the absence of an explicit preemption clause in what way(s) does the legislation effectively address the industry's concerns about a potential patchwork of state laws?

Answer. ACRA believes that even without a specific preemption clause in the legislation, the ultimate effect of this Federal legislation will be to deter states from pursuing additional legislation on the matter. In fact, there is legislation in several states currently that are being held from further advancement pending this Federal legislation. This leads us to conclude that states will defer to Congress if Congress acts.

Question 7. One idea that has been proposed by NADA is some sort of small-business carve-out. Based on Small Business Administration (SBA) definitions, an auto dealership with 200 or fewer employees is a small business and a rental car company with $35.5 million or less in annual revenue is a small business. Ms. Faulkner: Do you know how many rental car companies, or what percentage of companies in the industry, would still be covered by the provisions of the bill if such an exemption existed?

Answer. ACRA has more than 250 rental car company members. However, our best estimate is that there are approximately 2,000 rental car companies operating in the United States. Of those, there are three companies that account for the majority of the total rental car market. Therefore, there are thousands of rental car companies that would likely meet the SBA definition and would be exempted if the exemption was based upon that definition.

Question 8. Mr. Welch and Ms. Faulkner: Are you aware of any other auto safety standards that include a small business exemption?

Answer. No.

Question 9. Concerns have been raised about a new Federal mandate for the grounding of vehicles creating a situation where automakers would be more susceptible to lawsuits from rental companies for loss of use. Mr. Bainwol and Ms. Faulkner: What if any obstacles exist for the automakers and rental car companies to address this liability issue contractually?

Answer. ACRA is unaware of any potential impediments to addressing this issue on a contractual basis. However, our members believe that any attempt to require a vehicle purchaser to waive its right to sue for defects would be against public policy.

Question 10. Mr. Bainwol and Ms. Faulkner: Are you aware of any instances in which a rental car company has sued an automaker for loss of use?

Answer. ACRA is not aware of any lawsuits against any automaker for loss of use.

Question 11. Ms. Faulkner: Would the rental car industry support the type of loss of use liability protection the automakers are seeking?

Answer. ACRA would oppose any attempt to foreclose our members from pursuing loss of use claims against an auto manufacturer. As stated above, we believe any such action would be against general public policy and would unfairly shift the costs of defective vehicles from the manufacturers, who are responsible for any defects, to rental car companies and their customers who are not responsible for the existence of the defects.

Question 12. In the hearing, the mechanism in place by which auto dealers are currently compensated by automakers for loss of use when a new car is grounded due to a recall was raised. It was stated that auto dealers receive 1 percent of value per month from automakers in such cases. It appears this framework exists through voluntary or contractual agreement between auto dealers and automakers. What is your position on creating such a compensation structure between automakers and rental companies (including auto dealers who rent cars) when loss of use occurs due to grounding?

Answer. Actually under the Motor Vehicle Safety Act (Title 49 Sec. 30116), auto manufacturers are required to compensate dealers when a new car cannot be sold due to a recall. It is neither voluntary, nor part of a contractual agreement, but rather the law requires it. ACRA would be open to discuss the compensation issue. History has shown that the parties (rental car company and auto manufacturer) can and do most often work these issues out. Assuming there are not parts delays, our members are able to get the vehicles repaired quickly (as cited above) and back into their active fleets. There are on occasion more extreme circumstances where there are significant parts delays; but, again, the parties generally work that out privately among themselves.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BARBARA BOXER TO SHARON FAULKNER

Question 1. Is it true that most rental vehicles end up being sold on the used car market once the rental car company is ready to dispose of them? In addition to keeping rental car customers safe, would this legislation help make consumers safer when they purchase a used car that was previously owned by a rental car company?

Answer. Most ACRA members sell their rental cars through wholesale channels. Those vehicles are then purchased by licensed dealers. The vast majority of these vehicles will have the recall completed—along with any other defects remedied–prior to a retail sale. To the extent that some rental car companies are not currently

completing recalls prior to sale, this law, if passed, would ensure that they are required to do so, and consumers would benefit. Under the proposed bill rental car companies as defined in the legislation will be the only seller of used vehicles to have this requirement.

Question 2. Despite several rental car companies' voluntary efforts to strengthen their recall compliance policies, why is it important to enact these protections into law?

Answer. While we believe that most members of ACRA are complying with the provisions of this legislation, as mentioned above, our membership does not include all rental car companies operating in the US. It is critical that there is one uniform standard that applies across the board for our industry. This ensures fairness and certainty in the law.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO ROSEMARY SHAHAN

Question 1. The vast majority of bills introduced never become law. If we are unsuccessful in enacting S. 921 or other Federal legislation effectively dealing with the safety of rental cars subject to recall what would be the likely plan of action for your organization and other auto safety advocates?

Answer. We would work to get the legislation enacted in key states, either through legislation or through the initiative process.

Question 2. You heard in the testimony from Mr. Bainwol and Mr. Welch the concerns auto manufacturers and auto dealers have with the bill. If additional compromises had to be made to get this bill across the finish line—what you see as the single most important, most immovable component of the bill?

Answer. The most important component is the prohibition against renting or selling vehicles under a Federal safety recall, once the rental car company has received notice of the safety recall, until they are fixed.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO MITCH BAINWOL

Question 1. Concerns have been raised about a new Federal mandate for the grounding of vehicles creating a situation where automakers would be more susceptible to lawsuits from rental companies for loss of use. Mr. Bainwol and Ms. Faulkner: What if any obstacles exist for the automakers and rental car companies to address this liability issue contractually?

Answer. While it may be possible for auto makers and rental car companies to address this issue when negotiating contracts that is not the only issue associated with mandating this change in the way recalls are handled by rental car companies and it certainly would come with costly side effects. First, forcing automakers and rental car companies to specifically address this issue will add cost elements in the purchase and rental of vehicles that will adversely impact consumers. While both industries will absorb some expenses, ultimately most of those costs will be pushed on to the consumer—some of whom will no doubt then be priced out of a rental vehicle or even out of the vacation they were looking to take. Second, such a system will not have uniform impacts on the various companies that are involved. Smaller auto companies or smaller rental companies will be disadvantaged in the negotiation process. Depending on the magnitude of the costs involved, these smaller businesses could potentially be pushed out of the market place entirely.

While the accident that claimed the lives of the Houck sisters was indeed tragic, the rental car companies have adjusted their practices and no longer rent vehicles that are under a recall. This voluntary commitment by the major rental car companies effectively covers 96 percent of the rental vehicles and we are not aware of another incident that has occurred over the past eight years. The call for Federal action to codify the current practices of the large rental car companies is simply not needed at this point, and if pursued will create unintended consequences for consumers, rental vehicle companies and automakers.

Question 2. Mr. Bainwol and Ms. Faulkner: Are you aware of any instances in which a rental car company has sued an automaker for loss of use?

Answer. The Alliance is unaware of any such litigation at this time, however, it is possible that the proposed bill would make such actions more likely.

Question 3. In the hearing, the mechanism in place by which auto dealers are currently compensated by automakers for loss of use when a new car is grounded due to a recall was raised. It was stated that auto dealers receive 1 percent of value

per month from automakers in such cases. It appears this framework exists through voluntary or contractual agreement between auto dealers and automakers. What is your position on creating such a compensation structure between automakers and rental companies (including auto dealers who rent cars) when loss of use occurs due to grounding?

Answer. The auto industry remains committed to safety. One element of this commitment includes significant investment in order to research and test vehicles with the goal of ensuring that our customers receive safe and reliable products. Another element of this commitment is to respond quickly and proactively when an issue arises. In fact, of 586 safety recalls last year, a staggering 444 were manufacturer initiated.

A recall system that differentiates rental car companies from all other regular customers would create a tiered or class system with unintended and potentially costly consequences. We treat all of our vehicle purchase customers equally and ensure their safety equally. No legislation should attempt to bifurcate customers or prioritize one class of customer over another. Legislation that seeks to impose penalties for loss of use is inadvisable because it arbitrarily creates unnecessary expenses that will be very difficult to define and measure. Realistically, some portion of these needless added costs will be passed on to consumers.

Automaker relationships with their franchise dealers are entirely different. The dealers are the sales arms for the companies, and as such financial arrangements with them are managed differently. Even so, when automakers provide repair parts to dealers for recalled vehicles, it is done to accommodate equally the dealer inventory of affected vehicles and the other customers who make arrangements to get the recalls repaired by those dealers. Furthermore, while there is a statutory mechanism in place that provides for auto makers to compensate dealers for unsold, new inventory subject to a recall, it is rarely the basis for any such transactions between the dealers and the automakers. It is not a good basis for creating some new process for dealing with these issues with vehicle purchase customers.

Finally, when looking for any needed "solutions", we must keep the consumer in mind and ensure that they have the proper information in order to make the best decision for themselves and their families. By assuring prompt notification to the consumer of the recall, whether the consumer is the vehicle owner, leasee or a renter, the consumer is able to make the decision that best suits his or her needs. Instead of imposing higher costs on to the rental car process, allow consumers the right to decide what is best for them at that time.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BARBARA BOXER TO MITCH BAINWOL

Question 1. Dealers are already required by law to fix new cars under a safety recall before they're sold. Do manufacturers currently give dealers access to the repair parts first, before making parts available to repair cars owned by the general public?

Answer. During a recall, owners are directed to take their vehicles to their local dealership or repair shop to be remedied at no cost. As a result, manufacturers send repair parts to these repair facilities to accomplish this process. So, it is true that dealerships get the repair parts needed to address the recall, but that is not done to provide those parts for dealer repairs to be done first. They may be the first vehicles repaired, but not because of some special consideration they are given. However, this question may be better answered by the dealers themselves.

Question 2. It is my understanding that if my car is recalled for a safety defect, the manufacturer would pay to repair it. Does the Auto Alliance believe that protecting passenger safety is worth this cost to the manufacturers?

Answer. Yes.

Question 3. Do manufacturers ever have to address costly lawsuits for safety defects that injure or kill passengers? If we could get more defective vehicles off the road before they injure or kill someone, would that help manufacturers avoid the cost of such lawsuits?

Answer. Although NHTSA data indicates that roughly 93 percent of vehicle crashes are the result of driver error, it is certainly true that auto manufacturers occasionally face law suits from plaintiffs alleging safety defects. As for the second question, it certainly is in the best interest of our reputation and our relationships with our customers to make sure that we do what we can to provide safe vehicles in the first place, and to remedy defects as quickly as possible.

Question 4. Have the Alliance or its members opposed any prior efforts, legislative or administrative, to impose more stringent requirements on the safety recall system?

Answer. The Alliance and its Members always work as constructively as possible on any legislative or administrative efforts to address recalls. We hope those efforts will result in provisions and actions that are reasonable, responsible and effective in addressing concerns.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO PETER K. WELCH

Question 1. Car companies also sell cars and auto dealers also rent cars. When rental companies sell cars they are regulated as auto dealers. Since many auto dealers also rent cars, and press accounts indicate it is a growing part of many dealers' business, why should the rental activities of an auto dealer be treated any differently from those of a rental car company?

Answer. The primary business of franchised auto dealerships is to sell, lease and service vehicles. Franchised auto dealerships that provide rental or loaner vehicles do so primarily and incidentally as a service for their customers. We are unaware that rental car operations constitute a "growing part" for franchised auto dealerships.

In contrast, the primary business of a rental car company is to rent vehicles to the general public.

The largest multi-national rental car companies have hundreds of thousands of vehicles in their fleets. They have the legal and regulatory compliance resources necessary to devote to the regulatory, recordkeeping and inspection mandates set out in S. 921. Most franchised auto dealerships are small businesses as defined by the Small Business Administration who do not have dedicated legal or regulatory compliance resources. Under S. 921, however, a small business dealership with five loaner vehicles would have the same regulatory burden as a multi-national rental car company with several hundred thousand vehicles.

Question 2. What percentage of auto dealers also rent cars?

Answer. NADA estimates that less than half of all franchised dealerships directlyrent vehicles (as opposed to most new car dealers that maintain a number of "loaner" vehicles for use by servce customers). Dealerships that do not maintain rental fleets often partner with a rental car company to provide vehicle rental services for their customers.

Question 3. What is the size of a typical auto dealer's rental fleet?

Answer. NADA lacks data on this topic and thus cannot suggest a "typical" fleet size. For those dealers who do rent vehicles, the size of their rental fleet at a particular location is usually commensurate with the needs of their customers. Additionally, no dealer we are aware of has a rental fleet even one percent the size of the large multi-national rental car companies.

Question 4. Is there a standard practice among auto dealers today to verify whether or not a vehicle is subject to an open safety recall before it is rented to a customer?

Answer. Dealerships receive safety recall notices from the manufacturer(s) of those vehicles they sell new. Those notices detail which vehicles are covered by a recall, what the "fix" is likely to be, and when the parts necessary for the "fix" are likely to be available. Dealerships are then able to determine which, if any, vehicles in their rental fleet are subject to the recall. A dealership typically only receives recall notices for rental vehicles outside of the brand(s) it is franchised to sell if the vehicle is registered in the name of the dealership (this is the same type of notice that any registered owner of the vehicle would receive).

Question 5. One idea that has been proposed by NADA is some sort of small-business carve-out. Based on Small Business Administration (SBA) definitions, an auto dealership with 200 or fewer employees is a small business and a rental car company with $35.5 million or less in annual revenue is a small business. Mr. Welch: Do you know how many auto dealers, or roughly what percentage, would be excluded from the bill's requirements under such an exemption?

Answer. The average franchised auto dealership has 55 employees. An exclusion based on small businesses as defined by the SBA would exclude a majority of dealerships from the bill.

Question 6. Mr. Welch and Ms. Faulkner: Are you aware of any other auto safety standards that include a small business exemption?

Answer. National Highway Traffic Safety Administration (NHTSA) regulations generally focus on new motor vehicles up until the point they are bought by the ultimate purchasers. The National Traffic and Motor Vehicle Safety Act generally requires that franchised automobile dealerships not "tamper" with a new vehicle safety compliance.

NHTSA routinely analyzes and accounts for the impact of its new rules on small businesses, and on businesses managing or producing small volumes of vehicles. For example, it is not unusual for adjustments to be made in the context of a rulemaking to accommodate final stage manufacturers of vehicles made in 2 or more stages, businesses that alter vehicles before first sale, and small volume manufacturers (SVMs). One such example involved accommodations made in the tire pressure monitoring rule (FMVSS 138). In addition, NHTSA reviews its existing rules for potential small business impacts. (See Docket No. NHTSA–2012–0155; Federal Motor Vehicle Safety Standards; Small Business Impacts of Motor Vehicle Safety).

Importantly, NHTSA has excluded from its motor vehicle theft standard "insurer reporting" by all but the largest (50,000 vehicles and above) rental and leasing companies. 49 CFR Part 544. This exclusion is based on a recognition that the burden on smaller rental and leasing companies outweighs the benefit of imposing the mandate. Similarly, NHTSA's Early Warning Rules set reporting mandates tailored to the size of the reporting entity. 49 CRF 579.21–29.

Question 7. In the hearing, the mechanism in place by which auto dealers are currently compensated by automakers for loss of use when a new car is grounded due to a recall was raised. It was stated that auto dealers receive 1 percent of value per month from automakers in such cases. It appears this framework exists through voluntary or contractual agreement between auto dealers and automakers. What is your position on creating such a compensation structure between automakers and rental companies (including auto dealers who rent cars) when loss of use occurs due to grounding?

Answer. The "1 percent" compensation for new vehicles grounded due to a recall arises out of a statutory mandate. 49 USC § 30116(b). Applying a similar regime to rental vehicles under recall would add another layer of complexity to the dealer-automaker financial relationship. As a practical matter, automakers may seek to recoup losses sustained due to a "loss of use" provision in the form of higher new vehicle prices.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BARBARA BOXER TO PETER K. WELCH

Question 1. What proportion of revenues do your members obtain from renting vehicles versus selling vehicles? I understand that this may vary from company to company, so please give a range and median.

Answer. NADA does not have data on what proportion of total revenues franchised dealerships derive from renting vehicles to their customers and can only characterize such revenues as small and incidental.

Question 2. How many rental vehicles do your members maintain in their fleets? Please give a range and median to account for differences among companies.

Answer. NADA does not have data on the aggregate number of rental vehicles among America's 17,704 franchised auto dealers. For those dealers who do rent vehicles, the size of their rental fleet at a particular location is usually commensurate with the needs of their customers. Additionally, no dealer we are aware of has a rental fleet even one percent the size of the large multi-national rental car companies.

Question 3. For your member companies that maintain rental fleets, what proportion of their rental vehicles are the same make and model? Please give a range and median to account for differences among companies.

Answer. NADA has no empirical data on what proportion of a dealership's rental vehicles are the same make and model. It is safe to assume that for those dealerships who rent vehicles, the majority of vehicles they rent are the same brand(s) for which they hold a franchise.

Question 4. Do your members currently rent out vehicles under a safety recall prior to repairing them? If so, how do they decide which customers get the defective cars?

Answer. To our knowledge, NADA's members do not knowingly rent vehicles that are mechanically unsound or unsafe to operate.

Question 5. Has NADA opposed any prior efforts, legislative or administrative, to impose more stringent requirements on the safety recall system?

Answer. The last time Congress legislated in this area was in 2012, when Congress passed the conference report to H.R. 4348, the "Moving Ahead for Progress in the 21st Century Act". NADA supported this legislation. NADA did oppose previous iterations of this bill, as those versions contained a new tax on vehicles, or new government mandates that would have increased costs to consumers without a commensurate safety benefit. Additionally, NADA has in the past and will in the future look for opportunities to work with NHTSA to enhance the effectiveness of the existing safety recall system.

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