

**EXAMINING ACCOUNTABILITY AND CORPORATE
CULTURE IN WAKE OF THE GM RECALLS**

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

SECOND SESSION

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JULY 17, 2014
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**EXAMINING ACCOUNTABILITY
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THURSDAY, JULY 17, 2014

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 10:02 a.m. in room 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. All right. This hearing will come to order. Today we revisit the tragic management failures at General Motors that killed people. First, I want to acknowledge in my opening remarks that from my viewpoint the CEO of General Motors, Mary Barra, has stepped up and, with courage and conviction, has confronted head-on the problem and the corporate culture that caused it. Some see the record number of recalls at General Motors as a problem. I see it as a good sign.

Second, I want to briefly say that I think I speak on behalf of all Members of Congress who have asked very difficult questions surrounding these tragic events that while we are asking tough questions, we have great respect for the workers of General Motors. I would like to take this moment to thank the workers at General Motors. You are terrific, you build good cars, and you are also the victims of outrageously incompetent management. Management was the problem here, not the workers.

The Valukas Report I have spent some time with. I find it thorough and damning. There was indifference, incompetence and deceit among engineers in positions of important responsibility. And second, it is very clear that the culture of lawyering up and whack-a-mole to minimize liability in individual lawsuits killed innocent customers of General Motors.

I have many questions about the failures of the legal department today. I am also interested today in hearing from Mr. Feinberg, who has been asked to put together a plan to compensate those who have suffered from these management failures. He is here independently of the witnesses from General Motors. He is appearing independently of the witnesses of General Motors, and he will

exert independence in his role as he makes decisions about compensation to the many people who have suffered, and I certainly thank him for being here today in that regard.

But perhaps I am even more interested today in understanding how, in the aftermath of this report, how in the world in the aftermath of this report, did Michael Millikin keep his job. I do not understand how the general counsel for a litigation department that had this massive failure of responsibility, how he would be allowed to continue in that important leadership role in this company, and the questions I ask today will be surrounding what he knew and why he didn't know it and what kind of direction did he give a legal department that would allow them to do nothing in the face of the evidence they were confronting over years of litigation by people who were trying to get the attention of General Motors about the fatal defect in the product they were selling.

Senator Heller?

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

Senator HELLER. Chairman McCaskill, thank you, and I would like to thank the witnesses who are here today for both hearings, and also thank Chairman McCaskill for this second hearing on General Motors.

Today, based on the findings of the Valukas Report, we can confirm that this is, in fact, one of the darkest chapters in the history of General Motors. An ignition switch supplied by Delphi was approved by GM even though it failed to meet GM's own standard specification for torque resistance. Due to these failures, the ignition switch would slip from "Run" to "Accessory" with little more than a knee hitting the key or the car driving over a bump. The car's power shut off while it was being driven.

I have raced cars my entire life. I will tell you, even for the most experienced drivers, there is nothing more terrifying than a loss of power while moving at high speeds. I can only imagine the sheer terror of the individual who was driving these vehicles the moment the ignition slipped out of "Run." What those drivers didn't know as their cars swerved across lanes, hit walls, inclines, ravines and trees, was that the one thing that could have saved their life, the airbag, was not going to deploy because the power to the airbag itself was shut off.

If—and this is a big if—after a few crashes General Motors was able to understand the ignition switch problem, many more lives could have been saved. But as the Valukas Report points out, group after group, committee after committee within GM failed to take action, or acted too slowly for over a decade.

Two critical factors have been identified as reasons for this. First, GM failed to understand how its cars were built. Let me repeat that. GM failed to understand how its cars were built. Incredibly, the official findings pin the blame for the delay to recall this car on the fact that GM didn't understand how its own car was built.

Second, the same engineer who approved the original ignition switch changed the part in 2006 and did not inform any person at GM and did not change the part number. People died and millions

more were put at risk because GM didn't understand its own car, and one engineer cut corners and then changed the torque on the part without telling anybody or, again, changing the model number.

Fifty-four frontal impact crashes and more than a dozen fatalities later, we find ourselves here this morning for our second hearing on this issue. It is truly a dark chapter in the history of General Motors. What we need to do today is to make sure that the Valukas Report is the full story. Is the Valukas Report accurate? Is it the definitive account of this matter, or are there missing pieces?

The CEO of Delphi is with us today, and it's my hope that he will help this subcommittee understand if there's additional information that provides us with more of a complete picture. I hope his testimony today will be forthcoming and not circle the wagons.

We need to know what happened here, and Delphi has a responsibility to the families and the survivors to provide a complete picture. If Delphi knows more than the Valukas Report identified or believes there are inaccuracies, now is the time to make those known.

The Valukas Report offers a strong timeline of the issues, but I have concerns that it may not paint the entire picture. I'd like to explore whether Delphi was fully cooperative. In the Valukas Report it states that Delphi had numerous documents and other relevant material that they did not supply.

Madam Chairman, I appreciate that we're holding this hearing. Nevadans and all Americans deserve to know that for over a decade General Motors and Delphi failed to demonstrate a basic level of corporate competence. There will be a discussion regarding whether changes of laws are necessary. However, if GM understood how their own cars worked and followed current legal obligations to report defects to NHTSA in a timely manner, lives would have been saved and we would not be here today.

Thank you, Chairman McCaskill.

Senator McCASKILL. Thank you, Senator Heller.

Our first witness today is, in fact, and our first panel consists entirely of Kenneth Feinberg and Ms. Barra, who are in charge of the fund that will compensate many of the people who have suffered tragically as a result of GM's failures, and we look forward to your testimony, and thank you very much for being here, Mr. Feinberg.

**STATEMENT OF KENNETH R. FEINBERG, FOUNDER AND
MANAGING PARTNER, FEINBERG ROZEN LLP**

Mr. FEINBERG. Thank you. I want to thank the Chair for her vigorous leadership in this matter. I want to thank all the members of this subcommittee. I particularly want to thank Senator Blumenthal and his staff. They provided some valuable, constructive suggestions as to what this protocol should look like. And indirectly, I must thank Senator Blunt, indirectly, because Senator Blunt was critically important and very instrumental in the design and administration of the 9/11 Victims Compensation Fund, which proved to be a precedent for much of what is in this protocol, and I want to publicly thank Senator Blunt for his work many years ago in the drafting of the 9/11 Victim Compensation Fund.

I am accompanied by Ms. Camille Biros who over the last 35 years has worked at my side in the drafting, design, and administration of the 9/11 Fund, the BP Oil Spill Fund, OneFund Boston Marathon, the Virginia Tech Hokie Spirit Memorial Fund, et cetera. She is also here to answer any questions that the Committee might have about the administration of this program.

It's a bit premature to be talking about this program because we do not begin receiving claims until August 1, a few weeks from now. We are right on track. This protocol will form the basis for the submission of claims. I thank lawyers around the country for their input as to what this fund might look like. I thank various non-profit foundations interested in automotive safety for their input. And I also must say, in line with what the Chair said, I thank General Motors. From the top down, they have been very helpful and constructive in drafting this protocol.

This compensation protocol, however, is entirely my responsibility. I don't think there is anybody who provided us input who is entirely satisfied with all aspects of the protocol. The perfect is the enemy of the good, and we will see, but I am optimistic that, as the Chair pointed out in her introductory comments, we will compensate the innocent victims of this tragedy. That's the purpose of the protocol, and I am confident that it will succeed.

Now, we begin August 1. Claims can be submitted for the next 5 months, through December 31. We will stay in active work into 2015 processing claims that may come in late in the year. We're not going to disappear on December 31. So we'll stick around.

But there are some very interesting features of this protocol, of this compensation program that I can highlight in 1 minute.

It is uncapped. We are authorized to pay as much money as is required through the processing of eligible claims.

The bankruptcy of GM is no barrier to compensation. If there were accidents that occurred before the bankruptcy, they are as eligible as accidents that occurred after the bankruptcy.

There are some people who already settled their claim years ago with General Motors and signed a release that they won't sue. They can come into this program. And if, under our compensation rules, they are entitled to additional compensation, they will be paid.

The contributory negligence of the driver—speeding, cell phone texting while driving, intoxication—irrelevant. We are not looking at the driver or the circumstances of the driver's negligence. We are looking at the automobile and only at the automobile to determine whether or not the defective ignition switch was the proximate cause of the accident.

So you never know on these programs. We have our fingers crossed. We are very cautiously optimistic. We build on the success of past similar programs. I believe that beginning August 1 we will be ready, as the Chair and others have insisted, to begin receiving claims. We are finalizing the documentation which we will deliver to the Subcommittee. But we will be ready to receive claims. We will pay those claims within 90 to 180 days after the claims are deemed substantially complete.

And finally, we have a very pervasive notice program to reach out to all eligible claimants, all those who think they might be eli-

gible. We are determined to reach every driver or injured victim to make sure they know of this program, and we are confident that the program will work as intended.

Thank you.

[The prepared statement of Mr. Feinberg follows:]

PREPARED STATEMENT OF KENNETH R. FEINBERG, FOUNDER AND MANAGING
PARTNER, FEINBERG ROZEN LLP

Distinguished Members of the Subcommittee:

We thank you for this opportunity to testify and explain the important features and benefits of the “GM Ignition Compensation Claims Resolution Facility, FINAL PROTOCOL” (a copy of which is attached to my formal written remarks and which I respectfully request be included in the final record of this hearing). I am accompanied at the witness table by my colleague, Ms. Camille Biros, who has worked with me in the administration of this Compensation Program, and all other compensation programs going back to the 9/11 Victim Compensation Fund, the BP Gulf Coast Claims Facility and other similar programs.

This Final Protocol, and our remarks here today, are designed to explain the Program about to be put in place for the “Compensation of Certain Death and Physical Injury Claims Pertaining to the GM Ignition Switch Recall.” I will summarize my formal written testimony and we will then be prepared to answer any questions posed by Members of the Subcommittee.

We thank a number of individuals and entities for their assistance and valuable input in our preparation of the Final Protocol. Although I doubt that any of them are completely satisfied with the Protocol in all particulars, they have contributed in very important ways in guiding our thinking when it comes to the design of the Compensation Program. Individual plaintiff lawyers, non-profit entities devoted to automobile safety and GM officials themselves, have all made constructive and valuable suggestions and recommendations concerning the Program.

But we emphasize here today that the Final Protocol and resulting Compensation Program are entirely and solely our responsibility. We, and we alone, defend the terms and conditions of the Program discussed here today. We stand behind the Program ready to defend it.

The most important features of this Compensation Program can be summarized as follows:

- *The Program we have designed and will administer is totally independent from GM.* As the Protocol expressly spells out, any final determinations concerning individual claims for compensation, and the amount of such compensation, cannot be challenged or appealed by GM. The decision we reach—exercising our “sole discretion”—is final and binding on GM.
- The scope of the Compensation Program is limited to individual deaths and physical injuries. Claims for economic damage to the automobile itself, *e.g.*, property damage or diminished resale value of the automobile, are not included within the scope of this Final Protocol.
- The Compensation Program is purely voluntary; no individual is required to participate in the Program.
- There is no aggregate cap on the amount of compensation GM will make available to eligible claimants pursuant to this Compensation Program. Whatever the total amount of compensation, GM has agreed to pay it.
- The previous GM bankruptcy will not pose a legal barrier to any claimant submitting a claim for death or physical injury pursuant to this Program. Whether the unfortunate accident occurred before or after the GM bankruptcy is irrelevant. The claim will be considered on its own merits without regard to any GM bankruptcy date.
- Individual claimants who previously settled their claims with GM before learning of the defective ignition switch problem will be permitted to reopen their claims, and seek additional compensation from this new Program if the calculated amount under the Program exceeds the earlier settlement amount.
- The contributory negligence of the driver, *e.g.*, intoxication, speeding, cell phone use while driving, *etc.*, is completely irrelevant in the processing of individual claims pursuant to this Protocol. We are focusing on the causal connection between the defective ignition switch and the accident; the conduct of the driver will not enter into our deliberations in any way.

- Nor is the Compensation Program limited to the driver of the vehicle; passengers, pedestrians and occupants of other vehicles involved in the accident are also eligible to file individual claims.
- An individual claimant must agree not to litigate against GM only after such claimant learns whether the filed claim is eligible and, if so, the amount of compensation. In effect, the claimant receives a “free preview” of the claim before deciding whether to forego the right to litigate in favor of immediate compensation.

The Compensation Program will begin receiving individual claims in just a few weeks, beginning August 1, 2014. Individual claimants will have until the end of the year, December 31, 2014, to submit claims. (We will continue our work into 2015 to complete the review and determination of all claims which are timely filed by the deadline.)

Our goal is swift and certain compensation with minimal cost and delay to the claimant. Once we deem the individual claim and accompanying required documentation “substantially complete,” payments will be made within 90 days for the straightforward claim or 180 days for the more complex claim. (Compare this timeline with the cost, delays and uncertainties of the courtroom.)

The earlier a claim is submitted beginning August 1, the quicker we can process the claim and determine both eligibility and the amount of compensation. And, as the Final Protocol makes clear, we will work closely with the claimant to cure any deficiencies found in the submitted claim. Our objective is to pay all eligible claimants as soon as possible; we will work with the claimant to try and do so.

When it comes to *eligibility* to file a claim, there are three important prerequisites:

- The accident must involve an “eligible vehicle,” as defined and listed on page 3 of the attached Final Protocol. This constitutes *the exclusive list of vehicles* involved in this Compensation Program. According to GM, these are the *only* vehicles involved in the recall of 2.6 million automobiles in which the circumstances surrounding the defective ignition switch justify the creation of this unique Compensation Program. Neither Ms. Biros nor I have any authority to expand this list to other vehicles or other recalls. As with the 9/11 Victim Compensation Fund and the BP Gulf Coast Claims Facility Program, our jurisdiction has been defined by others.
- Individual claims are ineligible for compensation if the facts and circumstances of the accident demonstrate the deployment of any airbag and/or the deployment of seatbelt pretensioners during the accident. This is because in such situations automobile power continues to function and the airbags and seatbelts work as designed; the ignition switch remains in the “on” position and cannot be the cause of the accident.
- The ignition switch defect in an eligible vehicle must be the “proximate cause” of the death or physical injury. This is a standard of proof well known to all lawyers. Evidence of this “proximate cause” link between ignition switch failure and the accident might include, by way of example: an examination of the automobile itself; a review of the “black box” data providing contemporary evidence of such failure; photographs of the accident scene; a contemporary police accident report; contemporary witness statements; contemporary insurance investigative reports and medical records; warranty and maintenance records confirming mechanical problems with the vehicle prior to the accident; and prior litigation depositions, written interrogatories and other similar information. We will work with individual claimants and their lawyers in an effort to satisfy this familiar legal standard of causation.

Once eligibility is determined, the Final Protocol recognizes three categories of individual claims for compensation:

- Individual Death Claims.
- Catastrophic Physical Injury Claims involving quadriplegic and paraplegic injury, double amputation, permanent brain damage or pervasive burns.
- Other Physical Injury Claims requiring overnight hospitalization or outpatient medical treatment within 48 hours of the automobile accident.

The calculation of compensation for the first two claim categories listed above—death or catastrophic physical injury—will be made either based upon standard national Federal agency valuation statistics or the individual “extraordinary circumstances” of the claimant. *The choice is up to the claimant.* These are the same

two options which guided us in the successful design and administration of the 9/11 Victim Compensation Fund.

When it comes to hospitalization of the less seriously physically injured, the Final Protocol simply provides a flat amount of compensation tied to the number of overnight stays in the hospital, ranging from \$20,000 (one night in the hospital) to \$500,000 (at least 32 overnight stays). Hospitalization is an accurate reflection of seriousness of physical injury. Alternatively, outpatient medical treatment is also compensated up to \$20,000. This flat amount “rough justice” approach relies on such previous precedents as the One Fund Boston marathon bombings compensation program and the Virginia Tech Hokie Spirit Memorial Fund.

In either case, the Final Protocol requires hospitalization and/or outpatient medical treatment within 48 hours of the accident.

The goal here is simple and straightforward—we want to concentrate our immediate efforts in determining both eligibility and compensation on behalf of those who have suffered the most grievous loss as a result of the accident. There is no substitute for distributing compensation as quickly and efficiently as possible. We have learned this from our previous work in designing and administering compensation funds.

In order to avoid delay and inefficiency, it is important to emphasize speed and similar compensation for similar physical injuries which do not rise to the level of death or catastrophic injury. The bulk of our time should be spent determining eligibility and calculating individual damages tailored to those families who have lost loved ones, or those victims who now confront life-altering catastrophic physical injury. We must not be diverted in this task by focusing on less serious physical injuries in which we would be asked to evaluate extensive medical records and hospital reports.

As already indicated, both Ms. Biros and I will begin receiving individual claim submissions on August 1, 2014. We have initiated a comprehensive, pervasive notice campaign designed to notify all 2.6 million individuals subject to the relevant GM recall program. In addition, we are reaching out and notifying all former owners of eligible vehicles included in this Compensation Program in an effort to determine whether they, too, may have been involved in an accident involving such vehicles. Our goal is to encourage all eligible claimants to file a claim pursuant to this Compensation Program as soon as possible.

We cannot compensate eligible claimants unless they file a claim. More information can be found about the Compensation Program by telephoning Toll-Free 1-855-382-6463 (in the U.S. and Canada), and 01 800-111-2140 (in Mexico) or by accessing the Compensation Program website at: <http://www.gmignitioncompensation.com/index>.

This completes my formal testimony and we welcome questions from the distinguished Members of this Subcommittee.

June 30, 2014

GM IGNITION COMPENSATION CLAIMS RESOLUTION FACILITY FINAL PROTOCOL FOR
COMPENSATION OF CERTAIN DEATH AND PHYSICAL INJURY CLAIMS PERTAINING TO
THE GM IGNITION SWITCH RECALL

I. Purpose

General Motors LLC (“GM”) issued safety recalls identifying a defect in the ignition switch of certain vehicles in which the ignition switch may unintentionally move from the “run” position to the “accessory” or “off” position (“the Ignition Switch Defect”). This Protocol outlines the eligibility and process requirements for individual claimants to submit and settle claims alleging that the Ignition Switch Defect caused a death or physical injury in an automobile accident.

The effective date of the Final Protocol is August 1, 2014.

A. Role

GM asked Kenneth R. Feinberg to develop and design a Protocol for the submission, evaluation, and settlement of death or physical injury claims allegedly resulting from the Ignition Switch Defect. The resulting Protocol creates a Claims Resolution Facility (“the Facility”) under which the independent Administrator, Mr. Feinberg, will process and evaluate claims to determine: a) whether the submitted claim meets the eligibility requirements, and b) the compensation to be paid for eligible claims as defined below.

GM has authorized the Facility to process *only* eligible claims involving death or physical injury. No other claims for economic injury or other allegations of damage are subject to this Protocol.

Participation in the Facility is completely voluntary and does not affect any rights the claimant may have until and unless the claimant accepts the compensation amount and signs a release.

B. Approach

The following non-exclusive principles apply to the operation of this Protocol:

- The Facility will evaluate claims submitted with the required documentation in a prompt and fair manner.
- Any documentation already submitted by individuals to GM in support of death or physical injury claims allegedly resulting from the Ignition Switch Defect will be transferred to the Facility consistent with this Protocol.
- GM has agreed that a substantially complete submission of an individual claim pursuant to this Protocol will toll the statute of limitations on any potential death or personal injury claim that the claimant has related to the Ignition Switch Defect (1) until the Facility renders a decision rejecting the submitted claim or (2) until the claimant rejects the Facility's offer to settle the claim or the settlement offer becomes null and void.
- Acceptance of payment from the Facility will require the execution of a full release of liability, as discussed below.
- The Facility is administered by Mr. Feinberg, a neutral fund Administrator responsible for all decisions relating to the administration, processing, and evaluation of claims submitted to the Facility.

II. Eligibility Requirements

The only claimants that can submit claims to the Facility are: a) the individual physically injured in the accident, or b) the Legal Representative (as defined below) of the decedent or the individual physically injured in the accident.

Claims submitted by insurance companies seeking reimbursement for payments made to individual claimants are ineligible pursuant to this Protocol.

The "Legal Representative" of the decedent or the individual physically injured in the accident shall mean: (1) in the case of a minor, a parent or legal guardian authorized under law to serve as a minor's legal representative; (2) in the case of a decedent, the spouse, descendant, relative or other person who is authorized by law to serve as the decedent's legal representative; and (3) in the case of an incompetent or legally incapacitated individual, a person who has submitted proof to the Facility that such person has been duly appointed in accordance with applicable law.

For a claimant to be eligible for compensation under the Protocol ("Eligible Claimants"), the following eligibility requirements must be met:

- A. The individual on whose behalf the claim is filed must have been the driver, a passenger, a pedestrian, or the occupant of another vehicle, in an accident involving one of the following categories of vehicles ("Eligible Vehicle"):

Production Part Vehicles (Ignition Switch Recall Repair was not Performed Prior to the Accident)

- Chevrolet Cobalt (Model Years 2005–2007)
- Chevrolet HHR (Model Years 2006–2007)
- Daewoo G2X (Model Year 2007)
- Opel/Vauxhall GT (Model Year 2007)
- Pontiac G4 (Model Years 2005–2006)
- Pontiac G5 (Model Year 2007)
- Pontiac Pursuit (Model Years 2005–2006)
- Pontiac Solstice (Model Years 2006–2007)
- Saturn Ion (Model Years 2003–2007)
- Saturn Sky (Model Year 2007)

Service Part Vehicles (Ignition Switch was Replaced by a Dealer or Independent Service Center with an Ignition Switch bearing Part Number 10392423)

- Chevrolet Cobalt (Model Years 2008–2010)
- Chevrolet HHR (Model Years 2008–2011)
- Daewoo G2X (Model Years 2008–2009)

- Opel/Vauxhall GT (Model Years 2008–2010)
 - Pontiac G5 (Model Years 2008–2010)
 - Pontiac Solstice (Model Years 2008–2010)
 - Saturn Sky (Model Years 2008–2010)
- B. The accident must have occurred prior to December 31, 2014. In addition:
1. If the accident involved an Eligible Production Part Vehicle, the Ignition Switch Recall Repair¹ was not performed prior to the accident; or
 2. If the accident involved an Eligible Service Part Vehicle, (a) the vehicle's ignition switch was replaced by a dealer or independent service center with an ignition switch bearing Part Number 10392423 and (b) the accident occurred after such replacement of the ignition switch and prior to the Ignition Switch Recall Repair.
- C. Any individual claim submitted to the Facility shall be deemed *ineligible* if the facts and circumstances of the accident demonstrate the deployment of any airbag during the accident and/or the deployment of seatbelt pretensioners during the accident.
- D. There are three categories of individual claims for physical injury/death which may be submitted pursuant to this Protocol. *Claims for physical injury must provide contemporaneous documentation of either overnight hospitalization or outpatient medical treatment within 48 hours of the accident.* The following are the three categories:
1. *Individual Death Claims*
 2. *Category One Physical Injury Claims*: claims involving quadriplegic injury, paraplegic injury, double amputation, permanent brain damage requiring continuous home medical assistance, or pervasive burns encompassing a substantial part of the body.
 3. *Category Two Physical Injury Claims*: claims, other than Category One Physical Injury Claims, that, within 48 hours of the accident, require either overnight hospitalization of one or more nights or, in extraordinary circumstances as determined on a case by case basis by the Administrator, outpatient medical treatment.
- E. No claim shall be eligible unless, after reviewing all of the information submitted as required herein, the Facility determines, *in its sole discretion*, that the Ignition Switch Defect in an Eligible Vehicle was the proximate cause of the death or physical injury. The Facility will not take into account any contributory negligence of the claimant in making this determination.

III. Methodologies For Calculating Compensation

To determine the amount of compensation to be paid to Eligible Claimants the Facility will use the following calculation methodologies:

A. Individual Death Claims

Eligible Claimants submitting a death claim shall voluntarily elect to receive compensation based on one of the following two tracks:

1. Track A—Presumptive Compensation

The Track A presumed methodology relies upon a combination of the decedent's historical earnings and personal details with assumptions of likely future events based upon multiple sources of publicly available national data including the Bureau of Labor Statistics and the Internal Revenue Service. Eligible Claimants need not present detailed computations or analyses. Instead, they only need to supply the Facility with the following data:

- decedent's historical earnings
- decedent's employment benefits
- decedent's age
- age and status of members of the decedent's household who are dependents of the decedent

¹Ignition Switch Recall Repair is defined as a repair performed by a dealer or independent service center to address the recall condition set forth in National Highway Traffic and Safety Administration Recalls 14V-047 and 14V-171.

This Track A presumed methodology ensures consistent economic loss calculations for similarly situated victims (*i.e.*, same age, number of dependents and income level). Eligible Claimants voluntarily choosing Track A will receive compensation within 90 days from the date that the Facility deems the submission of the pertinent Claim Form and required supporting documentation as “substantially complete.” In cases where a victim had little or no earnings history, or in the case of calculating the amount of compensation for minor children, the Facility will calculate the economic loss by using the average income of all wage earners in the U.S. for the year 2013.

2. Track B—Complete Economic Analysis

Track B entails a complete, comprehensive economic loss analysis of the decedent’s past, present and assumed future income. The Facility will consider the financial history of the decedent through incorporation of submitted individual income data, including past, present and future earnings, wage growth, work life expectancy, etc., as well as other case-specific information and circumstances of the decedent that the claimant believes the Facility should consider in determining the total value of the claim. In determining the final Track B award, the Facility will also consider information submitted by the claimant regarding any extraordinary circumstances associated with the claimant. In this manner, the Track B methodology incorporates the individual circumstances of the decedent and will require the submission of substantially more information than for Track A. Eligible Claimants voluntarily choosing Track B will receive compensation within 180 days from the date that the Facility deems the submission of the pertinent Claim Form and required supporting documentation “substantially complete.”

In addition to the economic loss compensation calculated pursuant to Track A or Track B, each Eligible Claimant submitting a death claim will receive the following uniform amounts for non-economic loss (*e.g.*, pain and suffering, emotional distress, loss of consortium, etc.):

- \$1,000,000 for the death of the decedent, *and*
- \$ 300,000 for the surviving spouse, *and*
- \$ 300,000 for each surviving dependent of the decedent.

B. Individual Claims Involving a Category One Physical Injury

Economic loss compensation for individual claims involving a Category One Physical Injury, as defined above, will be calculated in the same way as Individual Death Claims under Track A or Track B, as voluntarily selected by the Eligible Claimant.

Claims submitted pursuant to this Section will, in some cases, also require the calculation of a long term life-care plan along with the calculation of non-economic loss.

1. If the claimant chooses Track A (Presumptive Compensation), the value of such a long term life-care plan will be presumed to be the present value of the national average of such long term life-care plans, which includes consideration of costs associated with home assistance, therapy and transportation, medical care, medications, equipment and supplies, home modifications, etc. The amount of non-economic loss compensation will be determined as an average fixed calculation tied to the total cost of a proposed long term life-care plan for an individual claimant.
2. If the claimant chooses Track B (Complete Economic Analysis), the value of such a long term life-care plan will require the submission of case-specific information corroborating the individual circumstances of the claimant and the need for the facility to take into account such circumstances, *e.g.*, home assistance, therapy and transportation, medical care, medications, equipment and supplies, home modifications, etc. The amount of non-economic loss compensation will be determined by considering such case-specific factors as the nature and extent of the injury, the lifestyle of the claimant and the total cost of a proposed long term life-care plan for the individual claimant.

The Facility will also provide non-economic loss compensation for Eligible Claimants submitting a Category One Physical Injury Claim where no long term life-care plan is required. Because the physical injuries are so vastly different, and have significantly different long term effects, the Facility will evaluate each individual Category One Physical Injury Claim to determine the extent and nature of the injury in order to establish non-economic loss.

C. Category Two Physical Injury Claims—Hospitalization of One or More Nights or Outpatient Medical Treatment

Eligible Claimants who were physically injured *and* hospitalized within 48 hours of the accident for one or more nights as a result of the accident will receive the following compensation (*encompassing both economic loss and non-economic loss*):

• Hospitalization of no less than 32 overnights:	\$500,000.00
• Hospitalization of 24 to 31 overnights:	\$385,000.00
• Hospitalization of 16 to 23 overnights:	\$260,000.00
• Hospitalization of 8 to 15 overnights:	\$170,000.00
• Hospitalization of 2 to 7 overnights:	\$70,000.00
• Hospitalization of 1 overnight:	\$ 20,000.00

Such hospitalization need not be on consecutive days and may be cumulative if such subsequent hospitalization is documented to be the result of the accident.

Eligible Claimants who were physically injured, but were not hospitalized overnight because of extraordinary circumstances, will receive up to a maximum of \$20,000 for medical treatment resulting from the accident, if such treatment commenced within 48 hours of the accident. (This compensation encompasses both economic loss and non-economic loss.) Any subsequent overnight hospitalization of such Eligible Claimant for physical injuries as a result of the accident will be compensated according to the number of nights of hospitalization as outlined above for a Category Two Hospitalization claim. However, the total compensation will not exceed the maximum allocated amount of each hospitalization category shown above.

IV. Documentation Requirements

All individuals submitting a claim pursuant to this Protocol must submit a completed Claim Form as provided by the Facility. Each claimant must submit the documentation requested on the Claim Form, or other similar information sufficient both to substantiate and determine Protocol requirements, including eligibility requirements, and to allow the Facility to review, process, and evaluate the submitted claim.

If the claim is being presented by an attorney or a Legal Representative, then the attorney or Legal Representative will be responsible for submitting the necessary documentation relating to the represented decedent, minor, or incompetent or legally incapacitated individual. Legal Representatives must supply proof of representative capacity—such as a power of attorney, guardianship, appointment as guardian or attorney ad litem, custodial parent, or the equivalent—as is required to establish authority to act in a representative capacity under the law of the resident state of the decedent, minor, or incompetent or legally incapacitated individual.

The proof requirements for Eligible Claimants as defined above are as follows:

A. All Claims

- An official police report contemporaneous with the accident date, if available, including any attachments, photos, or supplemental reports.
- Vehicle computer data captured by the vehicle's Event Data Recorder and the Sensing and Diagnostic Module ("EDR"/"SDM"), if available.
- Information (preferably a Vehicle Identification Number (VIN), if available) confirming that the vehicle involved in the accident is an Eligible Vehicle.
- Any other corroborating documentation deemed relevant by the Facility.

B. Individual Death Claims

- An official death certificate.
- Documentation and proof requirements for past and future loss of income and earnings pursuant to Track A or B as appropriate, as well as any other non-economic loss documentation evidencing extraordinary circumstances pursuant to Track B.
- Other pertinent financial information, and information and documentation regarding the decedent's Legal Representative, will be required with the filing of the Claim Form.
- Any other corroborating documentation deemed relevant by the Facility.

C. Category One Physical Injury Claims

- Contemporaneous pertinent medical records describing the nature of the serious physical injury and documenting hospitalization within 48 hours of the accident, including information concerning any total or partial disability of the claimant.

- Documentation and proof requirements for past and future loss of income and earnings pursuant to Track A or B as appropriate, as well as any other non-economic loss documentation evidencing extraordinary circumstances pursuant to Track B.
- Other pertinent financial information may be required with the filing of the Claim Form.
- A proposed long term life-care plan, if appropriate.
- Any other corroborating documentation deemed relevant by the Facility.

D. Category Two Physical Injury Claims

- Hospitalization: A contemporaneous hospital record that confirms the following:
 - The date of hospitalization within 48 hours of the accident.
 - The date of discharge from the hospital.
 - The nature of the injury; and
 - That the injury was sustained as a result of the automobile accident.
- Other Outpatient Medical Treatment: A contemporaneous medical record that confirms the following:
 - The date of the outpatient medical treatment within 48 hours of the accident.
 - The nature of the injury and medical treatment; and
 - That the injury was sustained as a result of the automobile accident.
- In addition, claimants submitting documentation of outpatient medical treatment shall also provide a description of the extraordinary circumstances resulting in such outpatient medical treatment rather than hospitalization.
- Any other corroborating documentation deemed relevant by the Facility.

Specific documentation and proof requirements will be defined on the Claim Form. Additional documentation may be required, e.g., pertinent hospital and insurance records, etc.

V. Filing for Compensation

A. Equal Access and Fair Adjudications in the Claims Process

All claimants will be treated with respect, dignity, and fairness, without regard to race, color, sexual orientation, national origin, religion, gender, or disability. The Facility will manage the process so that all claimants can equally access the Facility's claim submission process so that claims will be adjudicated fairly. Individuals with disabilities will be given the opportunity to effectively communicate their claims and to request special process accommodations to the Facility. Accommodations will be made for individuals with language barriers to ensure that they will have meaningful access to the process and to the Facility.

B. Process and Procedures

Eligible Claimants should file a pertinent Claim Form for: (1) individual death claims, (2) individual claims involving a Category One Physical Injury, or (3) individual claims involving a Category Two Physical Injury. *A single Claim Form should be submitted for each Eligible Claimant.*

This Protocol and pertinent Claim Forms will be available to all interested parties beginning on August 1, 2014, the effective date of this Protocol. The Claim Form should be completed and submitted to the Facility (along with all required supporting documentation) *postmarked no later than December 31, 2014.* Questions regarding the completion of the Claim Form should be sent via e-mail to the Facility. (Contact information will be provided on the Claim Form and on the Facility's website.) The Facility will maintain and make available to claimants a list of Frequently Asked Questions and responses. Claim Forms may be obtained and submitted in any one of the following ways:

1. Via the Internet: Claimants may submit a claim online by visiting the Facility website at *www.GMIgnitionCompensation.com*. Claimants will be instructed to follow simple steps for completing a claim.
2. Via U.S. Mail: Claimants may visit the Facility website and download a copy of the Claim Form or call the Facility's toll-free line to request a copy. Claimants will mail the completed Claim Forms via U.S. Mail to:

GM Ignition Compensation Claims Resolution Facility
PO Box 10091
Dublin, OH 43017-6691

In order for the claim to be eligible for payment, all claimants must consent to participate in the Facility and agree to be bound by its terms, but shall not release any legal rights until an award is determined, the claimant is notified, and the claimant accepts the award and executes a binding Release. The Facility will work directly with all claimants as reasonably requested to make sure that all claims are submitted by the December 31, 2014 deadline.

A Claim Form filed for a decedent will require the spouse's signature if the decedent was married at the time of death, if the Legal Representative is a person other than the spouse, and if the spouse is still alive and competent. In cases where the decedent was not married, or where the spouse is no longer alive or competent, and where the Legal Representative is a person other than the personal representative legally responsible for administering the decedent's estate, the personal representative of the decedent's estate must sign the Claim Form. The decedent's Legal Representative will be responsible for submitting a Proposed Distribution Plan to the Facility along with the Claim Form, showing how any compensation from the Facility would be allocated among the decedent's heirs, beneficiaries, and legatees consistent with the law of the decedent's State of domicile, or with any applicable ruling made by a court of competent jurisdiction. The Legal Representative is responsible for ensuring that the decedent's heirs, beneficiaries, and legatees are notified of the filing of the claim and receive a copy of the Proposed Distribution Plan. All of the decedent's heirs, beneficiaries and legatees must consent to participate in the Facility and agree to be bound by its terms. Before receiving any compensation from the Facility, the Legal Representative of the decedent, as well as all of the decedent's heirs, beneficiaries, and legatees, must sign a full release of all past and future claims against any potentially liable parties relating to the Ignition Switch Defect.

A Legal Representative filing a Claim Form for a minor child will be required to obtain the signatures of all living parents, or of the minor's legal guardian(s) if neither parent is living. A Legal Representative filing a claim on behalf of an incompetent or legally incapacitated individual will be required, along with proof of the Legal Representative's authority, to obtain the signature(s) of all other legally appointed representative(s) of the individual as may exist.

The Facility cannot provide tax advice to those receiving payments pursuant to this Protocol. The Facility recommends consultation with a tax advisor concerning any questions regarding tax liability for payments pursuant to this Protocol.

C. Due Process Procedures and the Right to be Heard

Individual claimants or GM may request a face-to-face personal meeting (or telephone meeting) with the Administrator prior to his making a determination pertaining to *only* an Individual Death Claim or Category One Physical Injury Claim. Both the individual claimant and GM reserve the right to submit to the Facility any information deemed relevant to the Administrator's evaluation and determination of any such Individual Death Claim or Category One Physical Injury Claim before the final processing and determination of the claim. Meetings will be scheduled at mutually convenient times and locations. *Such a requested meeting will not serve to alter the eligibility, process, or documentation requirements or any allocation amounts set forth in this Protocol.* Requests to meet with the Administrator should be sent by e-mail to the Facility. (Contact information to be provided on the Claim Form and on the Facility website.)

D. Incomplete or Deficient Claims

If a claimant submits an incomplete or deficient claim, *e.g.*, the claimant failed to include required documentation or failed to sign the Claim Form, a deficiency notification will be sent to the claimant and a representative of the Facility will informally work with the claimant in an effort to cure any such deficiencies.

E. Notification of Facility Decision

The Facility will send the claimant the following in writing:

1. The Facility's decision regarding the claim, including the reason for any denial of the claim.
2. The settlement amount offered pursuant to this Protocol to settle the claim; and
3. A Release to be signed by the claimant if the claimant accepts the offered settlement.

Settlement offers pursuant to this Protocol shall be valid for 90 days, after which they are null and void.

F. Payment

Payments will be issued by the Facility following the final processing of an Eligible Claimant's Claim Form and any requested due process hearing. The Facility will authorize the payment, by check or electronic bank wire, to each Eligible Claimant. Checks will be sent to claimants by the Facility via courier service.

VI. Privacy

Information submitted by a claimant to the Facility will be used and disclosed only for the following purposes:

1. Processing the claimant's claim for compensation.
2. Legitimate business use associated with administering the Facility, including the prevention of fraud; and/or
3. Law, regulation or judicial process.

VII. Quality Control and Procedures to Prevent and Detect Fraud

A. Verification Procedures

For the purpose of detecting and preventing the payment of fraudulent claims, and for the purpose of accurate and appropriate payments to claimants, the Facility will implement procedures to:

1. Verify and authenticate claims.
2. Analyze claim submissions to detect inconsistencies, irregularities, and duplication.
3. Ensure the quality control of claims review procedures.

B. Quality Control

The Facility shall institute all necessary measures designed to evaluate the accuracy of submissions and the accuracy of payments.

C. False or Fraudulent Claims

Each claimant will sign the Claim Form at the time of submission, stating that he or she certifies that the information provided in the Claim Form is true and accurate to the best of his or her knowledge, and that he or she understands that false statements or claims made in connection with such submission may result in fines, imprisonment, and/or any other remedy available by law. Suspicious claims will be forwarded to federal, state, and local law enforcement agencies for possible investigation and prosecution. Claims filed via the Internet will require an electronic signature which shall be equally as binding upon the claimant as a physical signature.

VIII. Release, Offsets and Liens

A. Release

In order for the claim to be eligible for payment, all claimants must consent to participate in the Facility and agree to be bound by its terms. No such Agreement will be enforceable until the claimant is made aware of the settlement amount. Until a Final Release is executed, each individual claimant retains all rights under the law, including proceeding with, or continuing with, litigation during the processing of the claim. Such litigation shall be immediately dismissed by agreement of the parties if the claimant elects to accept the award and execute the appropriate Release.

By submitting a claim under this Protocol, a claimant is seeking to resolve all claims against all responsible parties relating to the Ignition Switch Defect in an Eligible Vehicle. *If a claimant chooses to accept a final payment pursuant to this Protocol, the claimant will be required to sign a full release of all past and future claims against any party relating to the Ignition Switch Defect in the Eligible Vehicle.* The release will waive any rights the claimant or his/her heirs, descendants, legatees and beneficiaries may have against General Motors or any potentially responsible party to assert any claims relating to the Ignition Switch Defect, to file an individual legal action relating to the Ignition Switch Defect, or to participate in any legal action associated with the Ignition Switch Defect.

B. Offsets

In determining all payments pursuant to this Protocol, the Facility will take into account and offset any prior payments made by GM or General Motors Corporation to individual claimants in connection with claims encompassed by this Protocol.

C. Medical Liens

In determining all payments pursuant to this Protocol, the Facility will take into account any outstanding medical liens, if any, currently owed by the claimant. The Facility will retain the services of a Lien Resolution Administrator to serve as an agent for the benefit of the settling claimants and to identify, resolve and satisfy, in accordance with Federal law, all settling claimant repayment obligations related to payments associated with this Facility including, but not limited to, Medicare parts A and B, Medicaid and commercial or private health care liens.

Senator MCCASKILL. Thank you so much, Mr. Feinberg.

A couple of questions.

When they hired you to administer this compensation program, did General Motors lay out any limitations on the program's scope? And if so, what were the limitations they laid out?

Mr. FEINBERG. The only limitation they really laid out was the limitation that only certain eligible vehicles are subject to this program. As the Chair knows, in BP there were limitations to my jurisdiction. In 9/11, as then-Congressman Blunt and others drafted that legislation, there were limitations. The only limitation in this program that GM insisted on were that only the eligible vehicles listed in page 3 of the compensation protocol are eligible for consideration.

Senator MCCASKILL. Did you suggest any classes or coverage that should be included that General Motors rejected?

Mr. FEINBERG. No.

Senator MCCASKILL. OK.

Mr. FEINBERG. I'm not an automotive engineer. I asked General Motors what are the vehicles, what is the definition of an eligible vehicle that could give rise to a valid claim, and this was their response, which is reflected expressly in the protocol.

Senator MCCASKILL. So if the airbags didn't deploy but should have, if there's any evidence that the seat belt pretensioners worked as designed, under your protocol the victim is not eligible?

Mr. FEINBERG. That's right. The victim is not eligible if the power was on and the airbag did deploy. If the airbag deployed and the seat belts were working, then *a fortiori* the likelihood that the ignition switch could have been in the off position causing the accident is not possible. So we concluded, and I concluded, that airbag deployment renders the claim ineligible. Airbag non-deployment or a claim in which the victim or his family or her family say we don't know whether the airbag deployed or not, eligible. File the claim and we'll work with the claimant in that regard.

Senator MCCASKILL. So, let me make sure I understand. If the airbag did not deploy, you are eligible if you are in one of the cars on the list.

Mr. FEINBERG. Exactly.

Senator MCCASKILL. Regardless of the seat belt.

Mr. FEINBERG. Exactly.

Senator MCCASKILL. OK. So the total decision here is what car it is and whether or not the airbags deployed.

Mr. FEINBERG. And/or whether the seat belts deployed. It's the same issue. If the seat belts deployed, the power is on. It couldn't have been the ignition switch.

Senator MCCASKILL. I'm confused what you mean by "seat belt deployed." I mean, are you talking about whether a seat belt is on? Would you explain that for the record, Ms. Barra?

Mr. FEINBERG. Ms. Barra?

Ms. BIROS. It's not the seat belts, per se. It's the pretensioners, which are electrically controlled, our understanding is. So if they were operational, then it's unlikely that the cause of the accident was the ignition switch.

Senator MCCASKILL. Oh. So what you're saying is if the pretensioners are working, that is an indication that there was not a shutdown of the electrical system or the power system that would have prevented the airbags from deploying.

Ms. BIROS. That's correct.

Senator MCCASKILL. What if you have a situation where the airbag, there is a frontal crash and the airbag doesn't deploy, and then seconds later there is a rear crash and the airbag does deploy?

Mr. FEINBERG. File the claim. If there's a frontal crash and the airbag didn't deploy, we want to look into that claim.

Senator MCCASKILL. OK. All right. So you are open to looking at each situation. So that would be a situation where the airbag did deploy but not until the second crash. So I want to make sure that everyone's clear that even if your airbag did deploy, it could depend on the facts of your case.

Mr. FEINBERG. That's an interesting hypothetical for law school. But, I mean, I'd like to take a look at that claim.

Senator MCCASKILL. I think there is one.

Mr. FEINBERG. Well, I'd like to take a look at it.

Senator MCCASKILL. Because this is the issue. This switch goes off and on easily, right? It slides to off easily. It slides back, because there's not appropriate torque in it. So things that bump it move it. So just as easily as a riding off the road could bump it and it could go off, a frontal crash could move it from off to on; correct?

Mr. FEINBERG. We looked at that problem. I think theoretically you are correct. I have two answers to your hypothetical. First, it is highly unlikely that that circumstance that you just posited occurs. I guess it could. It's highly unlikely.

Second, what I want to avoid with this program is being inundated by thousands of claims where the airbag deployed, making it extremely unlikely that it was the ignition switch causing delay in getting money out the door to the vast number of claimants which clearly can demonstrate airbag non-deployment through police reports, photographs, et cetera.

The whole key to this program, as you and others have pointed out, is getting money out the door as fast as possible to eligible claimants. That's why the airbag deployment provision in the protocol is designed, frankly, to discourage thousands of people from filing a claim when in the overwhelming number of cases, I mean overwhelming number of cases, airbag non-deployment is a certain step in the direction of finding eligibility.

Senator MCCASKILL. Right. Well, I have questions about the amount of money that you have to spend, and also about punitive damages, but I have a feeling my colleagues will handle those questions before we finish all the questions on this panel. So I will leave those questions to my colleagues and turn it over to Senator Heller.

Senator HELLER. Thank you, Madam Chairman.

And again, thanks for being here.

I don't know that it's premature to have this discussion because I think this is the perfect time to have this discussion before this program moves forward. I want to go back to what the Chairman was asking you.

So you're saying that there's no scenario where the key could have gone from Run to Accessory, have an accident occur, and still have the airbag deploy?

Mr. FEINBERG. That's right.

Senator HELLER. No scenario?

Mr. FEINBERG. There may be—Senator McCaskill raises a hypothetical situation, but it's not the type of situation that is at all likely that would justify drafting a compensation program that would invite anybody where the airbag deployed to file a claim.

Senator HELLER. So it took 10 years to figure out what the problem was, and you're telling me that that scenario can't happen.

Mr. FEINBERG. It's so rare that you don't want to discourage claims from being filed by the overwhelming cases where airbag non-deployment is a major step in the direction of finding eligibility.

Senator HELLER. You said that you're going to compensate all innocent victims. Let me give you a scenario, since this is preliminary.

Suppose I'm driving a Cobalt and the airbag doesn't deploy and the key goes from Run to Accessory, and I walk away unscathed but I destroy the car. Am I compensated?

Mr. FEINBERG. That's a litigation matter. You're not compensated under a protocol that's limited to death and physical injury. You may very well be compensated, and I think there are thousands of lawsuits pending on economic damage to the car, diminished value of the car, but that's not the scope of this death and physical injury program.

Senator HELLER. Well, why would you stop there? Isn't a loss a loss?

Mr. FEINBERG. A loss is a loss. From the very beginning, in my conversations with both lawyers representing injured and deceased victims, it was always understood that this program, like 9/11 and like OneFund Boston, is limited to death and physical injury. I'm not saying those folks don't have a valid claim. They just don't come to this program.

Senator HELLER. Is there a way to appeal that decision?

Mr. FEINBERG. Which decision is that?

Senator HELLER. That a loss isn't a loss in this case.

Mr. FEINBERG. In the courts I assume there is.

Senator HELLER. But can they appeal to GM?

Mr. FEINBERG. I guess they can appeal it to GM as well.

Senator HELLER. I want to ask about your compensation. I don't know if you have performance indicators on moving forward on what you and your staff will be based on your pay. I think it's important that there is transparency of your compensation, and I think knowing here that you're being compensated by GM, I think transparency is important.

Will you or your staff be paid based on number of claims made or the number of claims processed or anything of that nature?

Mr. FEINBERG. Absolutely not.

Senator HELLER. Let me talk to you a little bit about BP, because I know that previous administrations of the BP Oil Spill Victim Compensation Fund did receive some criticism from some of the stakeholders, that you were working for the oil company's interest instead of being independent.

Mr. FEINBERG. I'll say.

[Laughter.]

Senator HELLER. How do we know that you'll be independent in this case and be accountable to the victims?

Mr. FEINBERG. First of all, as with BP, you'll recall, Senator, when that criticism came my way I asked for Attorney General Michael Mukasey of the Bush Administration to review my whole compensation, the whole way that we went about being paid, my independence, and he wrote an opinion letter which I made available making it very clear that I was independent and doing the type of work that I was asked to do.

Second, the only real way that you blunt criticism that is sure to come about my compensation, the only way, is how fast you get money out the door to eligible claimants in a generous way so that they can see that the conduct of this program and the professed independence is backed up by the way these claims are being processed.

I will say again, until these claims begin to come in and people see how they're being processed and how they're being found eligible, I'll always confront that criticism, and that's the way you have to address it.

Senator HELLER. OK.

All right, I'm fine. Thank you, Madam Chairman.

Senator MCCASKILL. Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Chairman McCaskill. Thank you for holding this hearing.

Thank you, both of you, for being here.

The investigation into the General Motors ignition switch defect issue paints a picture of a company that for years showed indifference in the face of mounting evidence of risk and of danger, and I believe there are still questions to be answered.

A key point for victims, Mr. Feinberg, and one of the reasons we're having the hearing today are questions about how the fund will work and how the claims will work.

I also greatly appreciate the fact that Ms. Barra, the new GM CEO, has stepped up and taken this on, head on, not only with the recalls but also with setting up this fund and working with the victims.

Something very bad happened here, and we all know that. And as you know, Mr. Feinberg, only the results and history will judge whether there is true justice for these victims, and I'm glad that the Chairman held this hearing so quickly after our last one so we can continue to be informed and ask questions.

In my case, I've got a victim, a very young woman named Natasha Weigel, and she is from Albert Lea, Minnesota. She was

only 19 years old. She died when her car went barreling at 71 miles per hour into a grove of trees. She was a hockey goalie. She had a lovely little note she wrote to her dad right before she died about how she always knew he had her back and he was there. And I know all they want now is to make sure that GM has their back.

So my first question really is about these young victims. Since many of these cars involve younger drivers—they like the Saturn. I'm a Saturn driver. I still have a 15-year-old Saturn, so I can relate to this. And the Chevy Cobalt, that was the kind of car that she was killed in, the Chevy Cobalt.

Could you ensure, Mr. Feinberg, that there will be fair compensation for these younger victims when it's often harder to assess what their earnings potential will be?

Mr. FEINBERG. Absolutely. Like 9/11, where many young people died on the planes, at the World Trade Center, at the Pentagon, here even younger people, we will make sure that compensation is generous and it is adequate and it is appropriate, and the protocol lays out in some detail how we will go about estimating compensation for younger non-wage earners who were in school or had not yet begun a professional or an employment career.

We also lay out rules that allow any younger victim or anybody who has died in the crash or who was terribly physically injured to come in and see us, and we will develop a tailored compensation program, what I call "Track B," that reflects the unique circumstances of those younger people, and we'll be glad to do that under the rules of the protocol.

Senator KLOBUCHAR. And do you anticipate a lower participation rate for younger people just because of the fact you hadn't seen this in the past?

Mr. FEINBERG. No.

Senator KLOBUCHAR. OK. Concerns have been raised by some safety groups about the documentation required, that it may be too burdensome. Some say it may be very difficult to prove that years ago an ignition switch failure caused a crash. How do you respond to those concerns?

Mr. FEINBERG. First of all, it's a lot less burdensome and a lot quicker than if they go to court and have to prove their claim, I'll tell you that. Second, there is a provision in this protocol that makes absolutely clear that if anybody files a deficient claim, they can't find the documentation, we will work—this was a point Senator Blumenthal asked about—we will work with that claimant to try and cure that deficiency.

There are various ways, a menu of options as to documentation—a contemporary police report, the car, the black box in the car, insurance reports, warranty and maintenance reports. We'll work with the claimant. Photographs. Perhaps one of the best examples of corroboration, citing Senator McCaskill's example, is a photograph showing a front-end collision and no airbag deployment. Now, that case, I must say, is well along the way to eligibility.

So we'll work with the claimant to make sure that even though some of these claims are very old, the accidents occurred over a decade ago, we'll try to reconstruct that documentation.

Senator KLOBUCHAR. Along that point, one last question. Under the terms of the 2009 bankruptcy, GM is technically free from liability for injuries and deaths that occurred pre-bankruptcy. Can you assure the plaintiffs that they will have equal opportunity to compensation regardless of whether and when GM went through bankruptcy?

Mr. FEINBERG. Yes, that is absolutely assured, and GM has acquiesced in that recommendation.

Senator KLOBUCHAR. Thank you very much.

Senator MCCASKILL. Senator Ayotte?

Oh, she's not here.

Senator Blunt?

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

Senator BLUNT. Thank you, Chairman.

The Chairman and I, obviously she mentioned in her first comments, we have a number of GM employees in our state. We are grateful for those employees and the work that they do and are concerned about anything that reflects on their products, their future opportunities, their ability to make the good living that they make with the hard work that they do. So looking at this is important to us. It's important to the country.

Mr. Feinberg, I appreciate your comments. Certainly, when we set up the model after 9/11, the idea is the one you continue to pursue, which is victims are not subject to which judge they're assigned to, that you don't have cases handled one way somewhere and one way somewhere else. They still have the legal option if they want to take it. But if they want the assurance that these cases are going to be handled in a way that has a structure, they have that from you.

Now, in that structure, as I understand it, when it comes time to do a settlement, you have the ultimate authority on what that settlement would be. Am I right on that?

Mr. FEINBERG. That is correct. The program is, as you just pointed out, entirely voluntary. No one has to come into this program. And if they do come into the program, we will determine their eligibility, and, if they're eligible the amount of compensation. And only, as with 9/11, as you know, only after they know what it is they will receive, how generous it is, only then do they agree to waive going to court in order to receive this money. And there is no appeal from my determination, and GM cannot reject our final determination. They have agreed in advance to abide by any final decision that is made.

Senator BLUNT. And am I right in believing that GM, then, has no input on what your final determination on an individual case would be?

Mr. FEINBERG. They can, just like the claimant, they can provide whatever information they want in advance of my determination to complete the record. But once I have that record—I've heard from the claimant, I've heard if GM has anything they want to add—once we make that determination, they have no say, they have no right to appeal, they have no right to second guess. They are bound by that determination that we make.

Senator BLUNT. And at what point do you think you'll begin to deal with some of these individual cases?

Mr. FEINBERG. August 1 the claims start to come in, and under the protocol, once the claim is deemed substantially complete, once we have the documentation, then within 90 days we will begin to process the claims, authorize payments, and invite the claimant to accept that compensation.

Senator BLUNT. And you said earlier you were grateful to GM in helping draft the protocol in addition to determining eligible vehicles. Was there anything that they added to that protocol or helped with in that protocol?

Mr. FEINBERG. Yes. I asked GM and plaintiff lawyers and non-profit foundations about the entire protocol. What do you think about the dollar levels? What do you think about the process, the procedures? And I must say that General Motors, from the CEO to Mr. Millikin and down the line, extremely cooperative, constructive, wanting to do the right thing. I have only appreciation for General Motors in assisting Ms. Biros and myself in the actual drafting of the protocol. I doubt anybody likes all of it except Ms. Barra and myself. But they provided us some very valuable input, and I'm very grateful to them.

Senator BLUNT. Well, thank you for your leadership on this and so many other funds like this, and I wish you well and certainly everybody involved well as you move forward with trying to deal with these claims in the best possible way. In terms of the company, better late than never. But for those people who were dramatically impacted and who have losses that they'll never recover from, as Senator Klobuchar was talking about, that note from a daughter to her father is a sad last and only thing to have of those last moments of that young girl's life.

So we're going to be very interested as you work your way through this, and I think the company made a good choice, and I look forward to watching as this progresses.

Mr. FEINBERG. Thank you, sir.

Senator McCASKILL. Senator Blumenthal?

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

Senator BLUMENTHAL. Thank you, Madam Chairman. I want to thank you for having this hearing, which I think is very important.

I thank Mr. Feinberg for your work, very challenging work in this area. I have only 5 minutes here, but you've spent many more than 5 minutes, in fact more than 5 hours talking to me and my staff, and I appreciate your openness and hope that we can continue to work on many of these very profoundly important details. But the devil here is in the details and in the discretion that you will have.

I want to ask you about one area of what I hope is within your discretion. On June 30 of this year, when you announced the details of your compensation protocol, GM announced the recall of more than 8 million cars that had ignition defects, defective ignition switches. The company acknowledged those defective ignition switches beyond the models involved in your compensation fund so far caused at least three deaths and numerous injuries.

Added to the list of the Chevrolet Cobalt and the Saturn Ion, among others, we now have multiple other models of Chevrolet, Oldsmobile, Pontiac cars. GM has now recalled more than 14 million cars in 2014. Many of the reasons for these recalls are defects in the same part, the ignition switch, that killed people and injured many in the matter that you are providing your compensation fund.

I happen to believe that the compensation fund has to be expanded. I believe strongly that your fund must be extended to include those victims of deaths, injuries and damage in those other recalls. Would you agree with me?

Mr. FEINBERG. I can't agree or disagree. I have no jurisdiction, Senator, and I can be very clear on this. Just as with these other compensation programs, where policymakers tell me "in drafting your protocol this is what is eligible," I have no authority to go beyond the list of automobiles listed in this compensation protocol.

Senator BLUMENTHAL. Would you recommend to GM that it expand or extend the fund?

Mr. FEINBERG. That is entirely up to GM. I'm not an automotive engineer. All I can say, Senator, is that when GM asked me to create a fund and for Ms. Biros and myself to administer that fund, they made it very clear that the only models where this problem and the context of the problem gave rise to this special compensation are these models. As with 9/11 and with BP, I must abide by that delegation of authority.

Senator BLUMENTHAL. Let me move, then, to another topic. I can tell you about instances where the airbags deployed and the crashes resulted from this defective ignition switch. The hypothetical scenario that we've been discussing here is a real fact. I've talked to people who drove those cars. They stalled, and they were able to turn them on, and I can present to you specific instances of crashes. Will you consider them and make refunds?

Mr. FEINBERG. I want to see those claims. I've talked in the last three or 4 months to automotive engineers, to lawyers, to GM officials. I think it is such an unlikely possibility—

Senator BLUMENTHAL. If GM—

Mr. FEINBERG. But if it is—

Senator BLUMENTHAL. You're willing to see that claim.

Mr. FEINBERG. I would.

Senator BLUMENTHAL. Let me just close with this thought, and I'm inspired to raise it by the observation made by Chairman McCaskill about the lawyering here. You know, lawyers typically are supposed to be the corporate conscience. They're supposed to be the ones who make sure that corporations comply with the law in spirit and letter.

Here, the lawyers for GM actually enabled cover-up, concealment, deceit, and even fraud. And I believe, although we use the word "alleged" as lawyers all the time, that the criminal investigation now under way by the Department of Justice will find culpability on the part of those lawyers.

Would you agree with me, as someone who has been a member of this profession and done it with great distinction for a long time, that the lawyers here failed the public and failed GM?

Mr. FEINBERG. I agree that the lawyers work in the public interest, or should. I don't know enough about the underlying circumstances that give rise to this to make an official, on-the-record decision about the lawyers in this case. I just don't know the answer to that question.

Senator BLUMENTHAL. Thank you, Madam Chairman.

Thank you, Mr. Feinberg.

Senator McCASKILL. Senator Baldwin, welcome.

Senator Baldwin is here as a special guest of this committee today, and we welcome you and welcome your questions.

**STATEMENT OF HON. TAMMY BALDWIN,
U.S. SENATOR FROM WISCONSIN**

Senator BALDWIN. Thank you, Chairman McCaskill and Ranking Member Heller, for allowing me to join you today. I am not a member of the Commerce Committee, but I have had discussions with family members, and let me just share by way of an opening statement that on the night of October 24, 2006, three girlfriends—Natasha Weigel, who you heard about earlier from Senator Klobuchar, Amy Rademaker and Megan Kerns—were returning from a trip to a Walmart in St. Croix County, Wisconsin. St. Croix County is one of the border counties between Wisconsin and Minnesota.

They were heading east on Highway N in a 2005 Chevy Cobalt that suddenly lost power. The steering wheel locked and the car careened into a telephone pole. The airbags never deployed.

The accident killed Natasha and Amy and left Megan seriously injured.

As you heard from Senator Klobuchar, Natasha was a goalie on her hockey team. Her parents could count on one hand the number of times they'd seen her in a dress. The tomboy also had an artistic side that impressed her art teachers with her drawing and her parents with her poetry.

The first thing that comes to mind when Amy Rademaker's parents, teachers and friends remember her is her laugh. It was infectious, and once she got going, her whole class couldn't help but join in. She loved playing with her nieces and nephews and dreamed of one day opening a day care to work with kids professionally.

Officer Keith Young, a member of Wisconsin's State Patrol Technical Reconstruction Unit, was one of the first officers to arrive on the scene that night. A 20-year accident construction veteran, Officer Young was able to correctly identify the cause of the crash, that the ignition had been turned from the Run to the Accessory position, shutting off the car's engine and disabling the airbags.

Officer Young sent his report to the National Highway Traffic Safety Administration, NHTSA, and subsequently to GM. Despite the careful analysis, neither NHTSA nor GM took action.

For the parents of these Wisconsin girls, this hearing, of course, is of little solace. Nothing we do here today can repair the damage that has been done. The best we can do is work to ensure that no other family has to endure what they have. So I again thank the Chair and Ranking Member for allowing me to join this.

Mr. Feinberg, for you I have only one very simple question, I hope. One of the victims in the October 2006 accident was sitting

in the back seat of the Cobalt. Her family expressed concerns to my staff in preparation for this hearing that GM did not consider this victim one of the official 13 victims because there is no back seat airbag that could have then failed to deploy.

Mr. Feinberg, can you shed some light on if the back seat passengers will be included in this compensation program?

Mr. FEINBERG. The answer is absolutely yes, not only the back seat passenger. Pedestrians are included, occupants of a second vehicle that collide with the defective vehicle, all included. All can file a claim. Based on your summary, it sounds like a very eligible claim. Whether you're the driver, a passenger, a pedestrian, or the occupant of another vehicle, all eligible to file under this program.

Senator BALDWIN. Thank you.

Senator MCCASKILL. Thank you, Senator Baldwin.

I just have one question, and then we need to move on to the other panel because we have a series of votes coming up at midday.

Mr. Feinberg, there are no punitive damages in this, and this is a very difficult and gut-wrenching decision for lawyers. So I want to make sure I understand this procedurally.

If, for example, a victim from Missouri is 81 years old, obviously her damages in terms of compensatory are going to be smaller because she was near the end of her life. Her case is such that I think factually there would be a strong case for punitive damages. If she files a claim and gets an award from you, is she then obligated to take that award, or can she leave it on the table and allow her attorneys the opportunity to litigate the issue as to whether or not her claim can still be heard because of misrepresentations that were made in bankruptcy around the GM bankruptcy filing?

Mr. FEINBERG. If I understand your question, the compensation will remain on the table for 90 days, during which time the claimant can decide whether to accept that compensation, release her right to litigate for punitive damages, or decide, nope, I think I'm going to go the litigation route and try and get not only compensatory damages but punitive damages as well. That is entirely the option of the claimant.

Senator MCCASKILL. It's really a difficult, gut-wrenching choice for a lawyer, though, which I know you appreciate based on your background, because typically the bar to overcome a bankruptcy decision as to what claims are discharged is difficult to overcome because you have to show that there was fraud, and that's a high bar in the law. On the other hand, it seems hollow, I think, to many of these victims' families that just because their loved one was at a certain age or at a certain income level, General Motors will really never feel the brunt of what punitive damages are designed to do, and that is to penalize a corporation for exactly the kind of conduct that was present at General Motors. I'm sure you acknowledge this is a very difficult decision for these families.

Mr. FEINBERG. I do acknowledge that. Now, of course, you and I can agree that if a claimant decides that 100 percent compensation leaves open the question of a punitive damage verdict against GM, there will certainly be some lawyers and some claimants who will opt to seek punitive damages. So it's not as if a claimant who comes into this fund and decides to accept full compensation, it's not as if there is no option for somebody else to go and seek those

punitive damages. I think one way or the other, your hypothetical is true, Senator. Somebody is certainly going to go after GM for punitive damages. It just under the hypothetical wouldn't be this claimant—

Senator McCASKILL. I understand.

Mr. FEINBERG.—who decides I want 100 percent of this money right now.

Senator McCASKILL. I understand, and I just wish that we could leave this open longer so there would be time for that issue to be litigated so that lawyers are making their advice based on what decisions the court had made in regard to this fact pattern.

Mr. FEINBERG. You know how long that would be. If there is going to be litigation over punitive damages, you're talking about years and years of uncertainty in that regard.

Senator McCASKILL. I do understand that.

Thank you, Mr. Feinberg.

Mr. FEINBERG. Thank you very much.

Senator McCASKILL. I think the name tags are in the wrong place. We will move the name tags. If you all want to sit where you would like to sit, we'll make sure the name tags get in the right spot.

Thank you. If you could take your seats as quickly as possible. We are under a time constraint here, which I know you hate to hear.

We will begin the second panel of this hearing.

I want to make sure that the members of the Committee know and the public knows we will have another follow-up hearing dealing with NHTSA. The reason NHTSA is not on this panel today is because we are planning a hearing. We have to look at the reauthorization of the National Highway Traffic Safety Administration, and we want to look at the highway proposals in the coming weeks. So we will cover NHTSA at that time.

Thank you all for being here very much, and we'll begin with your testimony, Mr. Millikin.

STATEMENT OF MICHAEL P. MILLIKIN, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, GENERAL MOTORS COMPANY

Mr. MILLIKIN. Chairman McCaskill, Ranking Member Heller, and members of the Committee, before I begin, I want to say to those who lost loved ones and to those who were injured, I am deeply sorry. I know we as a company and I personally have a responsibility to make sure this never happens again.

I am the General Counsel of General Motors Company. I have worked for GM for 37 years. Prior to that, I was an Assistant U.S. Attorney, and before that I clerked for the Honorable Vincent J. Brennan of the Michigan Court of Appeals.

As you are aware, the investigation conducted by Anton Valukas revealed the failures behind the ignition switch recall, including failures on the legal staff. When Ms. Barra testified before this committee on April 2, a number of you, including you, Chairman McCaskill, raised serious and important questions about the performance of the legal staff and our responsibility in this tragedy.

As General Counsel, I am ultimately responsible for the legal affairs of the company, and I'm here today to answer your questions.

I first learned about the Cobalt ignition switch defect during the first week of February of this year. I immediately took action. I wish I had known about it earlier because I know I would have taken action earlier if I did. We had lawyers at General Motors who did not do their jobs, didn't do what was expected of them, and those lawyers are no longer with the company. I have taken and will continue to take steps to make sure something like this never happens again.

The Valukas Report contains detailed recommendations for how the legal staff can improve and serve an even greater role in meeting GM's commitment to safety. I am assuring the implementation of each and every recommendation, and I have made and will continue to make other changes to help improve.

I have, for example, directed that before any settlement or trial of a case involving a fatality or serious bodily injury, that the case be brought to me for my personal review with a focus on open engineering issues. I have reorganized the legal staff to foster sharing of information and the identification of emerging trends, including elevating a senior attorney to be the Chief Legal Advisor to Jeff Boyer, Vice President of Global Safety, with a direct reporting line to me and an indirect reporting line to Mark Reuss, Executive Vice President of Global Product Development.

I have supplemented existing legal resources with attorneys from two outside law firms to make sure that we have the proper level of engagement. I've also appointed a well-respected outside law firm to conduct a zero-based review of our litigation practices. Finally, I've met with the entire U.S. legal staff to discuss the Valukas Report's findings and to set high expectations for the staff going forward.

These changes and others will result in greater transparency and information flow on issues of safety within the legal staff, as well as between the legal staff and the company generally, and I'm committed to make sure that I and GM's senior management team have a full line of sight into all safety-related matters.

GM's legal staff is comprised of hard-working, dedicated professionals of the highest integrity. They strive daily to help Global GM achieve its business objectives in a lawful and ethical manner. They have expressed sincere and deep disappointment and regret because of the actions and inactions of some individuals within the company, including some on the legal staff, who failed the company and our customers.

The GM legal staff is dedicated to helping GM become the leader in automotive safety. We now have to correct our mistakes, and we are. But this is only the beginning. All of us at GM are committed to setting a new industry standard for safety, quality, and excellence.

We must do better. We will do better. I am personally committed to this.

Thank you.

[The prepared statement of Mr. Millikin follows:]

PREPARED STATEMENT OF MICHAEL P. MILLIKIN, EXECUTIVE VICE PRESIDENT AND
GENERAL COUNSEL, GENERAL MOTORS COMPANY

Chairman McCaskill and Ranking Member Heller, members of the Committee. . .

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I have, for example:

1. Directed that before any settlement or trial of a case involving a fatality or serious bodily injury, the case be brought to me for review, with a focus on any open engineering issues;
2. Reorganized the Legal Staff to foster sharing of information and the identification of emerging trends, including elevating a senior attorney to be the Chief Legal Advisor to Jeff Boyer, Vice President of Global Vehicle Safety, with a direct reporting line to me, and a dotted reporting line to Mark Reuss, Executive Vice President of Global Product Development;
3. Supplemented existing legal resources with attorneys from two outside law firms to assure the proper level of engagement;
4. Appointed a well-respected outside law firm to conduct a zero-based review of GM's litigation practices; and
5. Met with the entire U.S. Legal Staff to discuss the Valukas Report's findings and to set high expectations going forward.

These changes and others will result in greater transparency and information flow on issues of safety within the Legal Staff, as well as between the Legal Staff and the company generally. And, I am committed to making sure I, and GM's senior management team, have full line of sight into all safety related matters.

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We now have to correct our mistakes. And, we are. But this is only the beginning. All of us at GM are committed to setting a new industry standard for safety, quality, and excellence. We must do better. We will do better. I am personally committed to this.

Thank you.

Senator McCaskill. Thank you.
Ms. Barra?

**STATEMENT OF MARY T. BARRA, CHIEF EXECUTIVE OFFICER,
GENERAL MOTORS COMPANY**

Ms. BARRA. Chairman McCaskill, Ranking Member Heller, and members of the Committee, when I first appeared before you, we were in the earliest stages of the ignition switch recall. I promised you we would get answers and be fully transparent in what we've learned. I also said I would not wait to make changes. Today, our work to fully understand and fix the mistakes that led to the ignition switch recall are well under way. As a result, we are building a stronger company that places customers and their safety at the center of every aspect of our business.

In a town hall meeting before thousands of General Motors employees and several thousand more around the world via satellite, we accepted responsibility for what went wrong. I told the men and women of GM that our actions would be guided by two clear principles. First, we would do everything in our power to make sure this never happens again, and we will do right for those who were harmed. It is on this very important point that I want to begin.

I want to recognize the families who lost loved ones and those who have suffered physical injury because of these mistakes. To each of them, I extend my and our GM employees' sympathy. We will not forget them nor the special responsibility we have to them. We are committed to treating each of them with compassion, decency, and fairness. That is why Ken Feinberg will independently administer a compensation program.

Mr. Feinberg has talked about his compensation program. It is, however, worth noting that he has complete and sole discretion over all compensation awards to eligible victims. And this is very important—there is no cap on this program.

As I stated earlier, we want to do all that we can to make sure this does not happen again. We created this compensation program as an exceptional response to a unique set of mistakes that were made over an extended period of time. The Valukas Report was only a start, and many changes were in motion even before we received the findings of the report. I will use the report's findings and recommendations to attack and remove the information silos wherever we find them, and to create an organization that is accountable and focused on customers. I am committed to acting on all of the recommendations contained in the report.

Actions we have already taken include elevating safety decision-making to the highest levels of the company. I have created a new position, Vice President of Global Safety. He has full access to me. We removed 15 employees from the company, some for misconduct and incompetence, others because they didn't take responsibility or act with a sense of urgency. We've instituted a "Speak Up For Safety" program to encourage and recognize employees that bring potential safety issues forward quickly. And we've added over 35 investigators to identify and address issues much more quickly when they relate to safety.

We've aligned the legal staff to help assure greater transparency and information sharing among the staff and across all business units around the globe.

And most importantly, we created the Product Integrity Organization, which brings a complete systems engineering approach to the safety of our vehicles.

Overall, we are dramatically enhancing our approach to safety. You can see it in the aggressive stance we are taking on recalls with the redoubling of our efforts. We are bringing greater rigor, discipline and urgency to our analysis and decisionmaking. We are mining every source of data available to us, from the factory floor, warranty information, customer calls, legal claims, and social media. We are not waiting to see if a trend develops or updating spreadsheets. We want our customers to know when we identify an issue that could possibly affect their safety, we will act quickly.

Yes, we've recalled a large volume of past models, a result of our exhaustive review coming out of the ignition switch recall. But we've also conducted 12 recalls of less than 1,000 vehicles and four of less than 100 this year. This demonstrates how quickly we are reacting when we see a potential issue.

I also know that the recent efforts and the current frequency of recalls have garnered considerable attention, but placing the highest value on our customers' safety is what our employees want to be known for. We want to stand as the company that is setting the new industry standard for safety.

Our employees will not forget what led to the ignition switch recall, but they also don't want to be defined by it. After my town hall, I could hear it in their voices, I could read it in their messages—they are all in to make this a better company. I believe in them, and together we have been working hard over the last few months to address the underlying issues that caused this problem in the first place. Since that town hall, I have been inundated with calls and e-mails from employees telling me they are more motivated than ever to make GM the best possible company for our customers.

This is our mission, and it won't happen overnight, but I can tell you we are holding each other accountable to do exactly that. We are 100 percent committed.

I appreciate the opportunity to be here today, and I welcome your questions.

[The prepared statement of Ms. Barra follows:]

PREPARED STATEMENT OF MARY T. BARRA, CHIEF EXECUTIVE OFFICER,
GENERAL MOTORS COMPANY

Chairman McCaskill and Ranking Member Heller, members of the Committee. . .

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Today, our work to fully understand and fix the mistakes that led to the ignition switch recall is well underway. As a result, we are building a stronger company that places customers and their safety at the center of every aspect of our business.

In a town hall meeting before thousands of GM employees—and several thousand more around the world via satellite—we accepted responsibility for what went wrong. I told the men and women of GM that our actions will be guided by two clear principles: We will do everything within our power to make sure this never happens again. And, we will do the right thing for those who were harmed.

It is on this very important point that I want to begin.

I want to recognize the families who lost loved ones and those who have suffered physical injury because of these mistakes. To each of them, I extend our deepest sympathies. We will not forget them, nor the special responsibility we have to them.

We are committed to treating each of them with compassion, decency and fairness. That is why Ken Feinberg will independently administer a compensation plan.

Mr. Feinberg will talk more about his compensation program. It is, however, worth noting that he has complete and sole discretion over all compensation awards to eligible victims. And this is important—there is no cap on that fund.

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The Valukas Report was only a start, and many changes were in motion even before we received the findings of the report. I will use the report's findings and recommendations to attack and remove information silos wherever we find them and to create an organization that is accountable and focused on the customer. I am committed to acting on all of the recommendations contained in the report.

Actions that we have already taken and about which you have no doubt heard already include:

- We elevated safety decision-making to the highest levels of the company. I created a new position, Vice President of Global Safety. He has full access to me.
- We removed fifteen employees from the company . . . some for misconduct or incompetence, others because they didn't take responsibility or act with a sense of urgency.
- We instituted the Speak Up for Safety program to encourage and recognize employees to report potential safety issues quickly.
- We added 35 safety investigators to identify and address issues much more quickly.
- We aligned the legal staff to help assure greater transparency and information sharing among that staff and other business units across GM.

Overall, we are dramatically enhancing our approach to safety. You can see it in the aggressive stance we are taking on recalls with the redoubling of our efforts.

We are bringing greater rigor, discipline and urgency to our analysis and decision making. We are mining every source of data available to us from the factory floor to warranty claims to customer calls and social media. We're not waiting to see if trends develop or updating spreadsheets. We want our customers to know that if we identify an issue that could possibly affect their safety, we will act quickly.

Yes, we've recalled large volumes of past models—a result of our exhaustive review coming out of the ignition switch recall. But, we also conducted 12 recalls of less than 1,000 vehicles and 4 recalls of less than 100 this year. In this way, we are keeping the vehicle populations small and limiting the risk and inconvenience to fewer customers. This demonstrates how quickly we are reacting when we become aware of an issue.

I also know these recent efforts and the current frequency of recalls have garnered considerable attention. But placing the highest value on our customers' safety is what our employees want to be known for. We want to stand as the company that is setting the new industry standard for safety.

Our employees will not forget what led to the ignition switch recall—but they do not want to be defined by it. After my town hall, I could hear it in their voices and read it in their messages—they are “all in” to make this a better company.

I believe in them, and together, we have been working hard over the last few months to address the underlying issues that caused this problem in the first place. Since that town hall meeting, I have been inundated with calls and e-mails from employees telling me that they are more motivated than ever to make GM the best possible company for customers.

This is our mission. It won't happen overnight but we are holding each other accountable to do exactly that.

Thank you again for having me here today. I welcome your questions.

Senator McCASKILL. Thank you, Ms. Barra.

Mr. O'Neal, thank you for being here.

**STATEMENT OF RODNEY O'NEAL, CHIEF EXECUTIVE OFFICER
AND PRESIDENT, DELPHI AUTOMOTIVE PLC**

Mr. O'NEAL. Thank you. Chairman McCaskill, Ranking Member Heller, and members of the Subcommittee, thank you for inviting

me here today to testify. My name is Rodney O'Neal, and I am the Chief Executive Officer and President of Delphi Automotive.

First and foremost, on behalf of Delphi, I want to express our profound sympathies to the victims and their families. People were hurt and lives were lost. We must work together to avoid tragedies of this nature going forward, and this subcommittee's work is an important part of that effort.

So, members of the Subcommittee, I appreciate this opportunity to address the important issues that you are considering. We fully support your efforts.

I would like to discuss today three main points: first, Delphi's efforts to provide replacement parts and support General Motors in connection with the recall; second, our cooperation with the Subcommittee and other governmental bodies, as well as GM; and third, the review and reinforcement of Delphi's key product engineering safety policies and procedures.

With regard to my first point, I'd like to provide some information pertaining to Delphi's production of replacement parts for General Motors. The vehicles that were recalled went out of production several years ago. As a result, it has been a monumental task to build over 2 million switches in a matter of months. We've ordered new tooling, we've installed three new production lines, and we've trained additional workers. At this time, we've shipped over 1 million new switches, and we're on track to deliver more than 2 million switches by the end of August. We've done all of this so that consumers can have their vehicles repaired by General Motors as quickly as possible.

My second point is that Delphi fully supports this Subcommittee's efforts, as well as those of the House Energy and Commerce Committee and other governmental bodies. Our support has included conducting an exhaustive review and providing relevant documents and meeting multiple times with staffs of this subcommittee and Federal agencies. In addition, we have cooperated with General Motors in the recall and its investigation, and our cooperation includes entering into a reciprocal document sharing agreement, and we have provided relevant documents in accordance with that agreement.

Lastly, we have conducted a thorough review of our current policies and procedures related to product safety which we believe are robust and which we are continuously working to improve. For example and at my direction, we have reinforced to our global engineering team the importance of raising safety concerns so that they can be handled properly. We have strengthened our procedures to ensure that safety concerns are communicated across all relevant functions within our company, and that includes reports to our senior management and to our customers. We are committed to acting upon all such concerns in a timely manner.

The industry has created a new standard to focus on how these complex safety systems work together instead of looking at safety on a part-by-part basis. We support this new standard, and given what we've learned from these tragedies, this new standard should be very helpful going forward.

My written statement provides additional details, and I will be pleased to address any questions you may have. Again, thank you for this opportunity to testify today.

[The prepared statement of Mr. O'Neal follows:]

PREPARED STATEMENT OF RODNEY O'NEAL, CHIEF EXECUTIVE OFFICER AND
PRESIDENT, DELPHI AUTOMOTIVE

Chairman McCaskill, Ranking Member Heller and Members of the Subcommittee:

Thank you for inviting me to testify today.

My name is Rodney O'Neal. I am the Chief Executive Officer and President of Delphi Automotive, a global auto parts manufacturer, which was formed in 2009 and acquired some of the businesses of the former Delphi Corporation. For convenience, throughout my statement and oral testimony I may not distinguish between the company I now head and the companies that made the ignition switch at issue. Although these distinctions have important legal significance, I do not believe they are germane to the primary focus of this Subcommittee's inquiries.

First and foremost, on behalf of Delphi, I want to express our profound sympathies for the victims of the accidents that led to this Subcommittee's investigation. People were hurt, and lives were lost. We must work together to ensure that tragedies like this do not happen again, and this Subcommittee's work is an important part of that effort.

Members of the Subcommittee:

I appreciate this opportunity to address the important issues that you are considering. Delphi fully supports your efforts.

I would like to discuss three main points:

- First, Delphi's efforts to provide replacement parts and support General Motors in connection with the recall.
- Second, our cooperation with this Subcommittee and other governmental bodies.
- Third, the review and reinforcement of Delphi's key product engineering safety policies and procedures.

With regard to my first point, I would like to provide some information regarding Delphi's production of replacement parts for GM. The vehicles that were recalled went out of production several years ago. As a result, it is a monumental task to build over two million ignition switches in a matter of months.

- We ordered new tooling;
- We installed three new production lines (for a total of four lines); and
- We trained additional workers.

At this time, we have shipped over one million new switches, and we are on track to deliver more than two million switches by the end of August.

We have done all of this so that GM can repair its customers' vehicles as quickly as possible.

In addition, we have cooperated with GM in all aspects of the recall and its investigation. Our cooperation includes entering into a reciprocal document sharing agreement, and we have provided relevant documentation in accordance with that agreement.

My second point is that Delphi fully supports this Subcommittee's efforts, as well as those of the House Energy and Commerce Committee, and other governmental bodies. Our support has included:

- Conducting an exhaustive review and providing relevant documents.
- Meeting multiple times with this Subcommittee's staff and other governmental bodies.

My third point relates to our product safety policies and procedures. We have conducted a thorough review of our current policies and procedures. We believe they are robust, but we are always working to continuously improve them. For example:

- Delphi's Chief Technology Officer has personally reinforced with our global engineering team the importance of promptly raising concerns so that they can be handled.
- We have strengthened our procedures to ensure that safety concerns we discover during the development or manufacture of our products are immediately communicated across all relevant functions within our company, including to

our senior management team, and to our customers, and that all such concerns are acted upon in a timely manner.

- We are also embracing a new industry standard that relates to vehicle system safety.

We have also confirmed that we have strong document retention policies in place, and our critical engineering documents are now stored digitally.

In addition to the main points I have covered, I would like to describe our involvement with the cars that have been recalled, and more broadly, our role in the automotive industry.

Today's automobiles are extremely complex, technologically advanced machines. They typically consist of more than 30,000 different parts that are produced and assembled by many different suppliers and the vehicle maker.

Sometimes Delphi supplies individual parts. At other times, we provide sub-assemblies or complete systems. For the vehicles that are the focus of this hearing, GM relied upon several suppliers for an ignition system. Our only contribution was the switch. Delphi did not supply the key or the lock cylinder (the part that actually holds the key). Delphi did not supply the steering column or determine where the lock cylinder would be located.

As vehicles and their systems are put together, each of us has a distinct role to play, with our own clear responsibilities. It is highly important that the Subcommittee understand that there is always a company, be it the system integrator or the vehicle manufacturer that has responsibility for ensuring that complete systems work together properly. In this case, that was not Delphi.

There has been a lot of discussion regarding the specifications for the switch. Allow me to provide some information about that issue. GM's initial parameters called for a switch that turned smoothly. This was very important to GM. Requirements for the effort required to turn the switch, or torque, were also included. These requirements were originally described as a "target" and contemplated that the feel of the switch, which relates to the effort required to turn it, would be subject to GM's approval.

As GM acknowledges, before production started, GM knowingly approved a final design that included less torque than the original target. In our view, that approval established the final specification. Delphi then began producing the switch that GM approved and wanted.

At GM's direction, in approximately January 2006, Delphi submitted a revised ignition switch with several changes that we understood were intended to address warranty concerns. These changes included a different spring that produced higher resistive torque—the same spring as was included in Delphi's original drawings for the part. In April 2006, this change was approved by GM engineer Ray DeGiorgio.

Thank you for this opportunity to testify today. I will be pleased to address any questions you may have.

Senator McCASKILL. Thank you, Mr. O'Neal.
Mr. Valukas?

**STATEMENT OF ANTON R. VALUKAS, CHAIRMAN OF THE FIRM,
JENNER & BLOCK LLP**

Mr. VALUKAS. Thank you. Chairman McCaskill, Ranking Member Heller, and members of the Committee, thank you for asking me here today to testify about the Cobalt ignition issues.

In March of this year, General Motors Board asked me to determine why it took so long to recall the Cobalt and other vehicles that contained the faulty ignition switch. My explicit mandate from the Board was to provide an unvarnished report as to how and why this occurred, pursue the facts wherever they took us, and to put those facts into a report. That's the report which we submitted to the Board.

General Motors Board also directed me to make recommendations drawn from the facts to help ensure that this did not occur again.

Jenner & Block, my law firm, was given unfettered access to General Motors witnesses and to their documents. We interviewed

more than 230 witnesses. We, in fact, conducted over 350 total interviews. Some of those interviews lasted over 2 days. We collected more than 41 million documents, all in an effort to find out why the Cobalt recall was delayed for so many years.

In that research in terms of the investigation, we looked at every CEO, we looked at all of the engineers. We used search terms of the sort which would produce documents of any kind which might relate to this issue. So no one was exempt from that review.

I will not summarize the report; you have it. I will, however, note that among the issues we specifically examined are the issues that are the topic of this hearing, accountability and corporate culture. We asked questions of dozens of witnesses, from top executives to line engineers, about these topics. We examined the decision-making processes that related to the ignition switch issues and whether there were broad cultural issues which may have contributed to the delayed recall.

The story of the Cobalt is one of a series of individual and organizational failures that led to devastating consequences. Throughout the decade it took General Motors to recall the Cobalt, there was a lack of accountability, a lack of urgency, and a failure of the company personnel charged with ensuring the safety of the company's vehicles to understand how General Motors vehicles were manufactured.

In our report we reviewed these failures, including cultural issues that may have contributed to this problem. At General Motors Board's request, we provided recommendations to help ensure that this problem would never occur again.

I'm happy to take your questions. Thank you.

[The prepared statement of Mr. Valukas follows:]

PREPARED STATEMENT OF ANTON R. VALUKAS, CHAIRMAN OF THE FIRM,
JENNER & BLOCK LLP

Chairman McCaskill, Ranking Member Heller, and Members of the Committee:

Thank you for having me here to testify about my report on the Cobalt ignition switch.

In March of this year GM asked me to determine why it took so long to recall the Cobalt and other vehicles that contained the faulty ignition switch. I approached this task in much the same way that I did in conducting my review of the Lehman Brothers matter, albeit on a much more expedited timetable. My job was to find the facts as to how and why this occurred and set forth those facts in a report to the GM Board. I have conducted similar internal investigations for many other companies, boards, and board committees.

Jenner & Block was given unfettered access to GM witnesses and documents and was asked for an unvarnished account. We interviewed more than 230 witnesses and collected more than 41 million documents. We obtained and reviewed forensically imaged hard drives, including those belonging to top executives. We searched server-based e-mails and shared drives, electronic databases, and hundreds of boxes of hard-copy documents, all in an effort to identify any documents that would bear on our assignment to find out why the Cobalt recall was delayed for so many years. If we discover any new information that materially affects our report, we will supplement our findings to the Board.

In our report, we did not simply repeat what any individual GM employee told us. We tested those assertions against the extensive documentary record we gathered and against the statements of other witnesses.

I will not summarize the report in any detail—it speaks for itself. I will, however, highlight a few broad conclusions that tie directly to our recommendations.

- GM personnel approved the use of an ignition switch in the Cobalt and other cars that was far below GM's own specification. This was done by a single engi-

neer and was not known by those who were investigating the Cobalt from the time of the approval until 2013.

- From the time it first went into production, the Cobalt (and the Ion before it) had problems because the ignition switch could too easily be turned to Accessory, resulting in a moving stall including the loss of power steering and power brakes. GM engineers were fully aware of this problem but did not consider it a safety issue. That conclusion was the wrong one—amazingly, the engineers investigating the Cobalt in 2004 and 2005 did not understand that, when the key turned to Accessory, the airbags would fail to deploy.
 - Because GM personnel failed to understand the potential hazard caused by the ignition switch, GM engineers debated through various committees whether any of the potential fixes were cost-effective. This focus on cost was driven by the failure to understand that a safety defect was at issue and the consequences of that defect.
- In 2006, the engineer who authorized the below-specification switch in the first place increased the torque in the ignition switch by authorizing a change to the switch. He approved a change to the switch, but did not change the part number, thereby concealing the change and leading to years of confusion among investigators about why, if the ignition switch was mechanically the same in all model years, accident data was so markedly different before and after Model Year 2008.
- GM personnel began recognizing the problem of non-deployment of airbags in the Cobalt as far back as 2007, but failed to take advantage of all the resources at their disposal—including information in GM’s own databases—to understand that the non-deployment was related to the known problem of the ignition switch. Others—outside GM—made this connection as early as 2007. But, as fatalities and injuries mounted in cases in which airbags did not deploy in Cobalts, GM personnel displayed no sense of urgency in determining the cause.
- By 2011, GM personnel knew that there was a pattern of non-deployments in Cobalts and that the ignition switch might be to blame. GM’s outside counsel warned GM that it might be liable for punitive damages for failing to deal with the problem for so many years.
 - But, once again, GM personnel failed to display any sense of urgency. The non-deployment investigation languished, even as it became more and more clear that the ignition switch was the problem.
 - And the investigation was further delayed when the engineer who originally approved the faulty switch told GM safety engineers that he had never changed the switch, when, in truth, he had.
- By 2013, the investigation had not progressed, and it was only when an outside expert hired by a plaintiff’s lawyer took the switches apart and compared them that GM personnel finally understood that the switch had been changed. Even then, however, GM took another 10 months to recall the Cobalt.

The story of the Cobalt is one of a series of individual and organizational failures that led to devastating consequences. Throughout the decade that it took GM to recall the Cobalt, there was a lack of accountability, a lack of urgency, and a failure of company personnel charged with ensuring the safety of the company’s vehicles to understand how GM’s own cars were designed. We found failures throughout the company—including individual errors, poor management, byzantine committee structures, lack of training, and inadequate policies.

In our report, we review these failures, including cultural issues that may have contributed to this problem, and we provide recommendations to ensure that it never occurs again.

I understand that while this report answers many questions, it leaves open others:

- Government officials (and perhaps judges and juries) will assess the credibility of witnesses and whether there was civil or criminal culpability;
- GM will have to make decisions about how to ensure that this never happens again;
- Others, whether courts or Mr. Feinberg, will make decisions about which specific accidents were caused by the Cobalt’s faulty ignition switch.

Our role was to find the facts as to why this recall took far too long. I believe we have done so.

Senator MCCASKILL. Thank you very much, Mr. Valukas.

I want to say for the Committee that many members of this committee have worked very hard in preparation for this hearing, and it would be terrific if we could get two rounds of questions in. So I'm going to ask everyone to try, beginning with me, to be very respectful of the 5-minute time period—if I say it out loud, then maybe I will be better—so that we can try to get two rounds of questions in before we have to leave for votes. OK?

Mr. Millikin, I want to spend my time on my first round with you. I want to make sure everybody understands what punitive damages are.

Mr. MILLIKIN. Pardon?

Senator MCCASKILL. What punitive damages are. For lawyers, that is a blinking red light. I'm sure Mr. Valukas and you, Mr. Millikin, will confirm that punitive damages in our system are designed to punish corporations or people for conduct that is outrageous and egregious. It is a method by which justice can be done, by punishing bad behavior.

A pattern was emerging at General Motors for almost a decade about these cars. There was some confusion because of deceit on the part of at least one engineer. But in October 2010, your lawyers—this wasn't a plaintiff's lawyer that was out there making a frivolous lawsuit. Your lawyers that you hired said you are possibly subject to punitive damages over the way you have handled this problem in this automobile. That was in October 2010, and I believe you were General Counsel then; correct?

Mr. MILLIKIN. That is correct.

Senator MCCASKILL. Again, in July 2011, your lawyers told you that there is a potential for punitive damages because of this factual scenario. You were also General Counsel then; correct?

Mr. MILLIKIN. That is correct.

Senator MCCASKILL. And at that point in time, Lucy Clark Dougherty, in July 2011, she was General Counsel for North America; correct? I believe she began in that position in March 2011.

Mr. MILLIKIN. I'm thinking it was in 2012, but I could be wrong.

Senator MCCASKILL. Well, my document says it was March of 2011.

Mr. MILLIKIN. I'll take your word for that.

Senator MCCASKILL. Then in April 2012, another one of your outside lawyers warns your department that you were subject to punitive damages, which could be millions of dollars with a corporation the size of General Motors. At that point in time, you were General Counsel?

Mr. MILLIKIN. That is correct.

Senator MCCASKILL. And Lucy Clark Dougherty was, in fact, Counsel for North America.

Mr. MILLIKIN. That is correct.

Senator MCCASKILL. And again, in April 2013, almost the same time that you had the bombshell dropped on you in the deposition where DeGiorgio was confronted with a basic engineering task that had been done showing the switches had been switched out, had been changed, the part had been changed, once again you were warned about punitive damages.

Mr. MILLIKIN. As a company, that is correct.

Senator MCCASKILL. OK. So you have a legal obligation as General Counsel to report material events and liabilities to the Securities and Exchange Commission. Did you ever do that about this issue?

Mr. MILLIKIN. On the issue of punitive damages?

Senator MCCASKILL. On the issue of this product defect and the problems surrounding it, have you ever reported it to the SEC?

Mr. MILLIKIN. Not up until the time that this became known had we made any disclosures to the SEC.

Senator MCCASKILL. The time that you knew it, not your legal department.

Mr. MILLIKIN. Yes.

Senator MCCASKILL. Your legal department knew it.

Mr. MILLIKIN. No, no. I'm talking about from the time I knew forward, I'm excluding that. Before that, no, we had not.

Senator MCCASKILL. OK. So at the time you recalled, you told the SEC.

Mr. MILLIKIN. Subsequent to that we may have made a filing with the SEC about the ignition switch recall. That is correct.

Senator MCCASKILL. OK. And what about the legal obligation to inform the Board of Directors? Were they aware that your lawyers were telling you this car was going to cause you punitive damages?

Mr. MILLIKIN. They were not.

Senator MCCASKILL. And what about financial reserves? Were you entering into the books the financial reserves necessary to cover this liability, which is your obligation as the General Counsel?

Mr. MILLIKIN. We were not entering any reserves to cover punitive damages. No, we were not.

Senator MCCASKILL. OK. So I don't get how you and Lucy Clark Dougherty still have your jobs.

Can you explain that to me, Ms. Barra? I think you've done a lot of good work since you took over. I think you've handled this, as I said in my opening statement, with courage and conviction, have stepped forward. I cannot for the life of me—this is either gross negligence or gross incompetence on the part of a lawyer, the notion that he can say "I didn't know."

Ms. BARRA. Senator McCaskill, I respectfully disagree. As you know, I have made the promise to fix what happened in the company to make sure that we are dedicated to safety, that we're dedicated to excellence. We are well on our way. We've made significant change. To do that, I need the right team, and Mike Millikin is a man of incredibly high integrity. He has tremendous global experience as it relates to the legal profession. He's the person I need on this team.

He had a system in place. Unfortunately in this instance, it wasn't brought to his attention frankly by people who brought many other issues forward.

He is a man of high integrity and he is the right person—

Senator MCCASKILL. So there wasn't a system in place that your lawyer is telling you you're subject to punitive damages didn't get to your desk? How is that not incompetent? How can you not have a system in place that you are at least—Lucy Clark Dougherty has a way of telling you we now have our lawyers telling us four dif-

ferent times within a couple of years on something you hadn't even talked about recalling punitive damages. How do you have a system in place that doesn't account for that?

Ms. BARRA. We had very senior lawyers who had this information and didn't bring it forward who are no longer with this company.

Senator MCCASKILL. Well, Deborah Nowak-Vanderhoef is still with the company, and she had the knowledge.

Ms. BARRA. As we went through the details of the Valukas Report very carefully, and I would say when in doubt we reached further to take action, there are many lawyers that are no longer with the company.

Senator MCCASKILL. I think there has been a blind spot here, I really do. My time is up. I think the failure of his legal department is stunning, and the notion—I mean, you look around government. When something like this happens, you know what? Secretary Shinseki didn't know about those problems with scheduling. Nobody told him. He's gone.

Senator Heller?

Senator HELLER. Madam Chair, thank you.

I want to thank our witnesses for being here today and for taking the tough questions.

Mr. O'Neal, thank you for being here also. You weren't here at the last hearing, so you kind of complete the circle here. If you don't mind, I'd like to ask you just a couple of questions regarding your products and I don't have a lot of time. So the shorter the answers, the better.

The complaints, as they started piling up in the mid-2000s on your product, did Delphi conduct any internal investigation to determine whether your part was at fault?

Mr. O'NEAL. We were not aware of this situation in terms of deaths until February of this year, 2014.

Senator HELLER. So you're saying obviously not—

Mr. O'NEAL. Obviously not.

Senator HELLER.—if you didn't know until February of this year. Was there any reason to believe that anyone in your company may have known?

Mr. O'NEAL. No. In the exhaustive review that we've done of our documents and in talking with individuals, it was clear the Delphi team, in working with the General Motors team in this particular situation, was very concerned about customer satisfaction, warranty costs and quality issues, no safety issues.

Senator HELLER. OK. Is there a possibility that any individual in your company just simply didn't take it to the top?

Mr. O'NEAL. We looked deep—

Senator HELLER. Similar situations in GM—

Mr. O'NEAL. We looked very, very hard, and there's no evidence of that because it's quite clear the mindset was based on information that they were given. They were working on quality issues, not safety issues.

Senator HELLER. Did anyone ever raise concerns about keeping the number the same with this part, or was that a decision just to unanimously follow GM?

Mr. O'NEAL. Standard protocol in our industry is that the original equipment manufacturer, the car manufacturer, in this case General Motors, they determine the part number, and they control that part number. So if that part number is ever to change, the car manufacturer would dictate that change and we would automatically upgrade it.

Senator HELLER. Do you feel that Delphi shoulders any responsibility here?

Mr. O'NEAL. Well, let me explain, I think, some very important information, and I think it would lead to a discussion of an answer for you.

We had a product that we worked with General Motors to develop, and that was the switch, and that switch started with a certain set of requirements, and often in development, working with the customer and General Motors in this case, those requirements can become more stringent, they can become less, or they can stay the same. In this particular case, they were made less stringent in order to meet I think what Mr. Valukas said in his report, a switch feel, a tactile feel of a very European style switch in terms of when you turned it, and hence the lower torque. That was ultimately approved by General Motors, and that part met the requirements that were dictated.

So that part then met with other parts and became part of a sub-system called the ignition assembly.

Senator HELLER. I hate to interrupt you, but I don't have a lot of time. Do you feel Delphi acted responsibly?

Mr. O'NEAL. Yes. Our product met the requirements of the customer.

Senator HELLER. So, no responsibility.

Mr. O'NEAL. No.

Senator HELLER. None.

Mr. Valukas, I understand there was a sharing agreement with Delphi that wasn't as forthcoming as you would have liked it to have been. Do you think the limited information that you received from Delphi and their employees prevented you from providing a complete report?

Mr. VALUKAS. No. I believe at this point, having had the chance, with the extra 6 weeks or the month that's involved here in looking at what we have in the way of materials so far, I think our report is complete. I'm comfortable that in this aspect, the Delphi aspect of it, that we have that information.

Senator HELLER. Is there anything that we don't know that's relevant?

Mr. VALUKAS. No. I promised and committed to an earlier committee that if we found something different, I told the Board of Directors, and they directed me if there was anything factually that we learned that would in any way alter the report or add to it in any significant way, that we would supplement the report, and I would make that commitment to this committee. But right now, I believe that everything that we could know about this issue we put forth in that report or in a supplemental letter.

Senator HELLER. Do you feel that Delphi shoulders any responsibility?

Mr. VALUKAS. I'm sorry. Say that again?

Senator HELLER. Do you feel that Delphi shoulders any responsibility for the 13 deaths?

Mr. VALUKAS. That's a legal—I can tell you this. I can tell you that GM, General Motors approved the switch knowing that it was below torque values, and that was an approval that Mr. DeGiorgio gave to Delphi, and Delphi manufactured the switch in accordance with that approval.

Senator HELLER. Ms. Barra, do you believe that Delphi shoulders any responsibility for the 13 deaths?

Ms. BARRA. We're the OEM. We're the company that's responsible to integrate the parts into the vehicle, so integration of parts is our responsibility.

Senator HELLER. Thank you.

Senator MCCASKILL. Thank you very much. Thank you, Senator Heller.

Senator Klobuchar?

Senator KLOBUCHAR. Thank you very much, Madam Chairwoman.

Thank you, all of you.

I spoke earlier about Natasha Weigel, who grew up in Albert Lea, Minnesota. The car goes barreling—the car she's a passenger in—at 70 miles per hour in Wisconsin into a grove of trees, and this story isn't just tragic because Senator Baldwin and I have constituents and because the facts are tragic. It also turns out to be an important part of Mr. Valukas' report in terms of what happened here.

In this case, a Wisconsin State Trooper named Keith Young conducted an investigation himself after the crash and clearly made the link between the defective ignition switch and the failure of the airbag to deploy. Trooper Young's report cracked the code that seemed to have evaded GM's engineers and lawyers for years. He wrote in this report—and this report was in GM's legal department, filed as of February 2007—he wrote, “The two front seat airbags did not deploy. It appears the ignition switch had somehow been turned from the Run position to Accessory prior to the collision with the trees.”

Mr. Valukas, did you interview people about this report, and did you figure out why no engineers had read it in GM?

Mr. VALUKAS. What happened with this report was that the report—and I believe correctly analyzed the situation back as far as 2007—was collected by GM as part of ESIS, which is their claims administrator, put into what is called a rumor file, and then at some point it was accessed by a paralegal. Dwayne Davidson then sent it to NHTSA as part of the TREAD responses.

At no point—and we had this forensically reviewed by outside experts. At no point was that report accessed by anyone in GM Legal between then and March or so of 2014 when this investigation was undertaken. So during that period of time it was in those files, that rumor file, and no one at GM looked at it, other than back in 2007 when they sent a copy to—

Senator KLOBUCHAR. So this is like an official State Trooper report. I know it's in a rumor file, but it seems to me it's somewhat official. And then I think there was also an Indiana University

study. They were commissioned by NHTSA to look at this crash as well. Was that also in the rumor file?

Mr. VALUKAS. No. That was actually—they actually did not even have that. Even though that was publicly available in 2012, GM did not gather that public information. That wasn't something they had until 2012 when an outside expert for a plaintiff's lawyer made it available as part of their report.

Senator KLOBUCHAR. And, Mr. Millikin, back to Trooper Young's report, how could it be that you guys had this for seven years, you're trying to figure out why, you're starting to see all these air-bag non-deployment cases, that no one saw this report and looked at it?

Mr. MILLIKIN. I think what you're seeing is an example of exactly what Mr. Valukas' report identified, and that is absolutely poor information flow. The file that this document was in was one that was not one that was searchable by the normal terms that people would use when looking for documents, it's my understanding from the Valukas Report, and we're doing what we can to make sure that we don't have this on a going-forward basis. This is a tragedy that cannot happen again, and I'm dedicated to making sure that we make the changes we need to make to assure that.

Senator KLOBUCHAR. Ms. Barra, I said earlier with the first panel here that I do appreciate that you have come forward and out front and set up this compensation fund. As I said, we're not going to know if justice is done until we see what the outcomes are. And I also appreciate the work that's been done on the recalls as an owner of a GM car.

And one of the things that Mr. Valukas wrote in his report, he said that although everyone had responsibility to fix the problem, nobody took responsibility. He said a top executive described it as the "GM nod, when everyone nods in agreement to a proposed plan of action"—I've been in meetings when this happens—"but then leaves the room and does nothing."

What concrete steps have you taken to implement, to get rid of what we call the "GM nod," and how do you ensure that you move from this culture of sort of diffused responsibility to defined responsibility?

Ms. BARRA. Well, first I'd like to say in my career at General Motors I've never accepted the GM nod, and frankly I've called people out on it because it's not appropriate. I mean, we make a very complex product, and it's important that all voices are heard.

The way that you change culture is by demonstrating the behavior, making sure people understand what your expectations are, and calling them out when they don't. I've been demonstrating that. I will tell you our leadership team, my direct leadership team is 100 percent committed to that, and I've talked openly about it. When I talk to all employees globally, on June 5, after I read the Valukas Report, which I found deeply troubling, I told them that, and I told them that behavior was unacceptable, we weren't going to tolerate it.

But the true change will be by behaviors, and I'm intent on making sure the right behaviors continue going forward.

Senator KLOBUCHAR. Thank you.

Senator MCCASKILL. We have a custom in this committee that when the Chairman or the Ranking Member show up, they get to cut in line. So I'm going to abide by that, what I think is an absolutely appropriate custom, and recognize Senator Thune for his questioning.

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. That makes you really popular here, Madam Chairman.

[Laughter.]

Senator THUNE. I do appreciate it, and I thank you, and I thank both you and Senator Heller for holding this hearing and staying on these issues. It's really important that we examine the developments following this recall issue, and I know you've been working very hard on this issue, and I know we all share the desire to get the answers and ensure that this doesn't happen again.

GM has admitted via a consent order that it failed to report this safety-related defect to NHTSA in a timely manner, and the internal report prepared by Mr. Valukas called GM's delay in addressing the ignition switch defect a failure of accountability, of oversight, of urgency, and of engineering. As we all know, these delays cost lives, and I know I express my deepest sympathies to those who were injured or lost loved ones in car accidents involving the GM vehicles that have now been recalled.

I'd like to direct this question to Ms. Barra. I welcome the very public steps that you've taken thus far to address the needed changes within GM, some of which you've discussed in your written testimony. But I'm also reminded of statements that your immediate predecessor, Mr. Akerson, also discussed in his efforts to create a culture of accountability at GM following the company's bankruptcy and Federal bailout.

Mr. Valukas uncovered many troubling findings regarding a lack of accountability and urgency among GM employees and senior managers. My question is, in your view, are these vestiges of the past or a sign that a cultural change is yet to take hold at GM?

Ms. BARRA. I think when you look at culture change, it happens over a long period of time, and it's by leadership actions. I would say Mr. Akerson did extensive work to make sure he drove accountability and drove the right behavior, but I think we're on a continuum of making that cultural change. I would frankly say we're accelerating that now with the work and the very open and transparent way that we're dealing with this issue and the way we're sharing it with employees, and they want to change. They want to make sure we have the right systems and processes in place.

But I would say Mr. Akerson started on that journey, and we're continuing and accelerating it.

Senator THUNE. How do you plan to measure that change?

Ms. BARRA. I think on a couple of fronts. One, on the very real part, from a safety perspective, we've already broken down the silos and we are mining data. We're using some of the latest data analytic techniques to make sure information comes from across the

company. We've engaged employees, and they are participating in our Speak Up for Safety program.

But I would also say we do a Workplace of Choice survey every 18 months, and we've seen improvements in that. That will be another key, very objective way that we'll look to make sure we're driving the right openness.

But I can tell you, I get hundreds of e-mails from our employees on a weekly/monthly basis, and they're engaged, and that to me is the best sign because it's actions, not words, that are going to change the behaviors.

Senator THUNE. What role do you think the Board of Directors has in changing the culture?

Ms. BARRA. I think the role of the Board is to very clearly state their expectations of how the company should operate; and me as the CEO, it is my job to make sure we're living up to their expectations across the company with my leadership team.

Senator THUNE. I'd like to direct a question to Mr. O'Neal, and this is based on the Valukas Report. The ignition switch that your company developed appears to have been plagued with both electrical and mechanical problems, problems that weren't limited to the switch having a lower torque specification. In addition, a GM document from 2001 released by the House Energy and Commerce Committee mentions quite a bit of frustration on the part of GM in dealing with these Delphi switches due to electrical failures and Delphi's inability to deliver parts on time for testing purposes.

Taken together, this evidence would seem to indicate the problems with the Delphi switch were greater than we were initially led to believe. Now that these ignition switch issues have come to light, have you gone back and reviewed these concerns and determined what Delphi will do differently in the future?

Mr. O'NEAL. We did go back and look extensively at all of the documentation, and we found nothing that was abnormal in terms of the product development and ultimately how the problems were addressed that you sometimes run into as you move from development to production, et cetera. As I said, our product met the requirements. It entered an ignition assembly system that had other products. Our part met its requirement. I'm assuming the other products met their requirements. But when they come together, they form a system, and as Ms. Barra said earlier, it's someone else's job to make sure—in this case it was the OE to make sure that those products worked in total harmony when they come together.

So we've gone back and understood our role in that. I think the new industry standard of how safety systems interact from a safety perspective versus by part we have totally embraced, and we will work diligently with General Motors over this issue.

Senator THUNE. In 2006, GM authorized a change to the ignition switch but didn't change the part number. As a supplier, is it a common practice for Delphi to allow a manufacturer to change a part but not change the part number?

Mr. O'NEAL. In 2013 we had about 120,000 changes, engineering changes, and only about 40 percent of those actually had a part number change. So it's quite normal not to change the part number.

Senator THUNE. Do other manufacturers do the same thing?

Mr. O'NEAL. Yes.

Senator THUNE. Madam Chair, my time has expired.

Senator MCCASKILL. Thank you.

Senator THUNE. Thank you.

Senator MCCASKILL. Thank you very much.

Senator Blunt?

Senator BLUNT. Thank you, Madam Chairman.

Mr. Valukas, in your report, when did the legal team know about this problem?

Mr. VALUKAS. When did they first learn of the fact that they had airbag deployment issues?

Senator BLUNT. Yes.

Mr. VALUKAS. I think you could go back—if you go back to their investigators, it would have been probably in the range of 2007 that it was called to their attention in a NHTSA meeting, one of the individuals involved there, and there became an inquiry about that by the investigator who was assigned to the GM legal team.

Senator BLUNT. And when did they know about the ignition switch problem?

Mr. VALUKAS. The ignition switch problem developed over a period of time, and I would say that the first time that I can recall that this matter was being called to their attention in some way, which is not to say they related the two, may have been as early as 2009/2010.

Senator BLUNT. And, Mr. Millikin, how long have you been the Chief Counsel?

Mr. MILLIKIN. Since the middle of 2009.

Senator BLUNT. And when did you first find out? Were you at the company before that?

Mr. MILLIKIN. I've been with the company, sir, for 37 years.

Senator BLUNT. So you ran the legal side of the company before that?

Mr. MILLIKIN. Yes, sir, before I knew about the ignition defect.

Senator BLUNT. And when did you first find out about these two problems?

Mr. MILLIKIN. I first found out about the ignition switch recall situation involving non-deployment of airbags first week of February of this year.

Senator BLUNT. How is that possible that nobody would have told you before the first week of February of this year?

Mr. MILLIKIN. My information on that is based largely on the Valukas Report and then talking to other lawyers who had had some involvement in it. But, frankly, there was a long time, as the Valukas Report indicates, where there wasn't a connection made between the ignition switch problem and the non-deployment of airbags. In terms of my taking a look at the results of the Valukas Report, I think it all came together for the lawyers at the time of the Melton deposition in 2013, and from that point on there was enough information inside the legal staff for people to have taken action and to have caused the engineering organization to take action.

They didn't. That was tragic. If they had brought it to my attention at that time, I certainly would have made sure that they would have done something. But they——

Senator BLUNT. OK. Give me those dates again? From the time you think they had enough information to take action until the time you found out was from when to when?

Mr. MILLIKIN. I'm basing it on the date of the DeGiorgio deposition. I believe that was in April 2013.

Senator BLUNT. And you didn't know until——

Mr. MILLIKIN. February 2014.

Senator BLUNT. I'm going to ask Mr. Valukas this as well, but would this kind of problem be allowed to happen again? What have you done to prevent that same exact set of circumstances from occurring again?

Mr. MILLIKIN. I've done a number of things. The one I think is most designed to make sure it doesn't happen again is before any case can be settled or taken to trial, if it involves a fatality or a serious bodily injury, that has to come to me regardless of the amount of the settlement proposal, and I want it brought to me with a full explanation of the case, with a focus on any open engineering issues so that I have an opportunity to cause open engineering issues to be addressed if they're not being properly addressed.

Senator BLUNT. And is there any way to trigger this before you have a serious bodily injury or fatality or a lawsuit that results from those two things?

Mr. MILLIKIN. There are other things that I've done to make sure that there's a flow of information upwards inside the organization that would also be bringing to my attention cases on a more regular basis than they were brought to my attention before.

Senator BLUNT. Mr. Valukas, is it your view that the changes that have been made would prevent what happened from ever happening again?

Mr. VALUKAS. I believe, based on what I know is taking place, I think the answer is yes. I think that one of the things that's happened here is with the flow of information, what you are able to identify, which they didn't, were the trends quickly enough so that the engineering department, to the extent the engineering department wasn't acting on it and going back to a comment that had been made earlier, the legal department would be in a position to push that and force that to take place.

Senator BLUNT. And have employees been let go because of this?

Mr. VALUKAS. That you'll have to address to——

Senator BLUNT. Mr. Millikin, have employees been let go because of this?

Mr. MILLIKIN. Yes, they have.

Senator BLUNT. And are any of them challenging their dismissal?

Mr. MILLIKIN. They are not.

Senator BLUNT. One last question, Ms. Barra. You all are selling lots of cars, also recalling lots of cars. I think 25 million is the number in the last 12 months. Why would there still be so many recalls? And I'm not suggesting that's necessarily a bad thing, but this is a high number. Why is that number so high?

Ms. BARRA. Well, when we learned what happened with the ignition switch recall, we immediately went back, redoubled our efforts. We went and looked at a number of places, were there any open NHTSA investigations. We tackled all of those. We went back extensively and looked at information that we had to see if we could more quickly put together any trends. We also, then, as it relates to every safety item that Mr. DeGiorgio had responsibility for, we looked and assessed every single one of those. In some cases there's not even any field information to suggest there is an issue. But as we did our systems engineering analysis, if we saw simply by, for instance, adding an insert into a key we could make the system more robust, we did that.

So we are intent on being a company known for our safety, and this was an important step, and we'll continue to look for those items to make sure we have a company that is dedicated to the safety of our vehicles.

Senator BLUNT. Mr. Millikin, I thought of one final question in the line I was asking you. Were those employees who were dismissed, were any of those employees given retirement benefits or salary that they had not previously earned? It's called "packaging out."

Mr. MILLIKIN. Yes, they were.

Senator BLUNT. That might explain why they're not challenging their dismissal.

That's all I have, Chairman.

Senator McCASKILL. Thank you, Senator Blunt.

Senator Ayotte?

**STATEMENT OF HON. KELLY AYOTTE,
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator AYOTTE. Thank you, Madam Chairman.

I want to ask Mr. Millikin, you've been General Counsel, as I understand it, since July of 2009. Is that right?

Mr. MILLIKIN. July 20 of 2009, that's correct.

Senator AYOTTE. And before that, though, you had a long legal career at GM.

Mr. MILLIKIN. That's correct.

Senator AYOTTE. So how is it that—one thing that deeply troubles me is the important regulator for GM is NHTSA; correct?

Mr. MILLIKIN. That is correct.

Senator AYOTTE. And as I understand it, GM's response in a number of complaints regarding this matter—but this is a pattern that extends beyond this matter—was in terms of inquiries made by NHTSA about problems with the Chevy Cobalt and this specific issue. Really, the answers were attorney-client privilege. The answers to NHTSA were things like "we had not assessed the case," "GM opts not to respond." And I guess I have a question for you as general counsel. Are NHTSA complaints brought to your attention and the response of the company to NHTSA complaints?

Mr. MILLIKIN. Since I've been General Counsel, on multiple occasions the lawyers that report to me, and some that don't report to me on a consistent basis, have brought safety concerns to my attention. If you go back and take a look—if I go back and take a look at some of my e-mails over the last couple of years, it has been on

frequent occasions they've brought it to my attention, including some of the lawyers we had to let go. So there was a clear understanding in terms of my expectation of the kinds of issues that needed to be brought to my attention. For some reason, that did not happen here, and that's very troubling to me, and that's why I'm doing the things that I'm doing to make sure that on a going-forward basis those kinds of information lapses do not reoccur.

Senator AYOTTE. So let me understand it. Not only were you not notified according to your testimony about the potential for punitive damages as the legal officer for GM, and that that potential for punitive damages you didn't notify to authorities, but also in terms of what I understand were complaints that were brought forward to NHTSA about this matter, you were not informed about those either?

Mr. MILLIKIN. Well, the reports that you're referring to I think are the reports that were mentioned in a newspaper yesterday. I went back and took a look at when those reports were given to NHTSA. Most of them were given to NHTSA at a time when I was not general counsel. One of them was, but——

Senator AYOTTE. Wasn't there one in 2009 that was, in fact, post-2009 involving a December 2009 crash?

Mr. MILLIKIN. I'm saying there was one that was when I was General Counsel. That was, I believe, something that occurred in 2010. That did not come to my attention. That is correct.

Senator AYOTTE. So that was not brought to your attention.

Mr. MILLIKIN. That is correct.

Senator AYOTTE. And what was the company's response to that complaint to NHTSA?

Mr. MILLIKIN. Well, I don't remember what the company's response to that specific complaint was. I do know that, if I'm remembering this one correctly, the initial thought based on the investigation that was done by the engineering organization was that it was a power——

Senator AYOTTE. Well, let me be clear about what I understand the company's response to be.

Mr. MILLIKIN. OK.

Senator AYOTTE. Which was a response that it was attorney-client privilege, that there was a refusal to answer the regulatory agency in that regard. And I've got to tell you, it's actually shocking to me that you would be general counsel in this regard and not be the recipient of NHTSA complaints and what the company would respond with regard to NHTSA. That is obviously an important regulatory agency for you in terms of public safety, and that you wouldn't have known. But also I see a consistent pattern of GM answering, refusing to answer NHTSA.

Let me just say that I'm looking forward also to hearing from NHTSA because I think there were some serious lapses of responsibility by the regulatory agency because, as a regulatory agency, they should have refused to accept your answers, meaning GM's answers of not answering, of asserting attorney-client privilege, of I think refusing under circumstances where as a regulatory agency I don't know how you could accept that and be able to say to the public that you're going to protect people's safety.

But I don't understand how you, given not only the pattern we see with the punitive damage issue, how the NHTSA complaints wouldn't have come to your attention either in this one based on a 2009 crash where, as I understand it, a young woman was killed, was quite shocking that you wouldn't have understood that. It's interesting that you would hold this position and you wouldn't get this critical information from a regulator.

Senator McCASKILL. Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Madam Chairman.

Thank you, Ms. Barra, for being here again. I am sure that you're familiar with this ad which has appeared in many newspapers around the country. It says, "The key to safety," and then it essentially tells the reader that the key to safety is removing weight from the keychain until the car is repaired. There have been egregious delays in deliveries of those parts to dealers who want to repair these cars.

The key to safety, in my view, is taking these cars off the road, not taking keys off the chain. So I hope that you will work with Mr. O'Neal, who is right next to you, in accelerating delivery of these parts so dealers and drivers can be sure that these cars are repaired and made safe.

And I also hope that you will expand the compensation fund to vehicles that were in crashes as a result of defective ignition switches beyond the 2.6 million that have been recalled already, including the millions more that GM acknowledges caused at least three deaths and many injuries. There is no way, in my view, to distinguish the injuries, deaths and harm resulting from those crashes as opposed to the ones that are the subject of this hearing.

So I hope you will consider extending the fund. I'm glad there is no cap to it, but both fairness, equity, and accountability argue powerfully for covering all of those crashes, all the victims who were involved in cars defective because of exactly the same part.

And I want to make a suggestion, with all due respect. If GM is really serious about changing its culture and imposing a new era of truth-telling and accountability, the place to start is with your legal department. You well know, lawyers are responsible for being the conscience of the company, for ensuring compliance with the law in spirit as well as letter. In this instance, the lawyers enabled purposeful concealment and cover-up, possible criminal action that is the subject right now of an investigation.

I know that you have a responsibility to choose your own team, but my view is the team has to change. Right now, the buck stops at an empty desk.

I know, Mr. Millikin, you say you wish you had done differently. Will you agree to recommend to Ms. Barra that GM unseal all of those settlements involving presumably millions of dollars, unseal the secret settlements that could have saved lives if they hadn't been kept secret from the beginning? Will you make that recommendation?

Mr. MILLIKIN. No, I will not, but those settlement documents are with responsible government agencies who can look at them.

Senator BLUMENTHAL. Will you agree—well, they haven't been unsealed. They haven't been made public. Will you agree to waive the immunity shield, the absolute barrier to people suing GM in

court because of the shield that was granted during a bankruptcy proceeding that, in fact, involved potentially fraud by GM on the courts and the United States taxpayers that bailed it out?

Mr. MILLIKIN. We have done that already, Senator.

Senator BLUMENTHAL. You would allow lawsuits against the company or pre-2009—

Mr. MILLIKIN. We've done that in connection with the Feinberg protocol, Senator.

Senator BLUMENTHAL. Yes, but that's only for settlements. What if somebody goes to court to sue GM?

Mr. MILLIKIN. Other than the Feinberg protocol, we are going to—

Senator BLUMENTHAL. Would you agree to waive that shield?

Mr. MILLIKIN. We will not.

Senator BLUMENTHAL. You know, I have a couple of other questions. For example, will you agree to make public all of the documents made available to Mr. Valukas?

Mr. MILLIKIN. We will not.

Senator BLUMENTHAL. Would you agree to enable all those 15 people who have been discharged and who are under confidentiality agreements not to talk about what they did at the company, enable them to overcome those gag orders?

Mr. MILLIKIN. Senator, the people who were let go, the agreements that they have enable them to go talk to any regulatory agency that they feel they need to, or to answer any questions that come from any governmental body with respect—

Senator BLUMENTHAL. What about the public? What about reporters? What about your drivers and customers? If they go to those 15 people, will they be free to answer those questions?

Mr. MILLIKIN. I'd have to take a look at the agreements to make sure I know the answer to that.

Senator BLUMENTHAL. Will you waive any confidentiality requirements under those agreements that they have been rewarded by those additional payments to agree to?

Mr. MILLIKIN. I'd have to take a look at the agreements themselves before I would be able to answer that question honestly, Senator.

Senator BLUMENTHAL. I hope that you will come back to this panel with different answers. If not, I would respectfully suggest that this company is not well served by your continuing.

Thank you, Madam Chairman.

Senator MCCASKILL. Senator Markey?

**STATEMENT OF HON. EDWARD MARKEY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. Thank you, Madam Chair.

According to Mr. Valukas' report, in 2004 GM and the Transportation Department had a meeting in which the attendees inexplicably agreed that cars stalled by themselves and that this was not necessarily a safety problem. Do any of you disagree that many members of the public would probably have rejected this conclusion if they had known about it?

Let the record show that no one disagreed.

Mr. Valukas' report describes warnings of accidents that GM was aware of involving their vehicles, but some of these warnings and reports were not publicly disclosed or acted on. Do any of you disagree that if the public knew about these reports of cars stalling on their own at the time, it is possible that some of the deaths and injuries caused by this defect could have been avoided? Does anyone disagree with that?

Mr. MILLIKIN. No.

Senator MARKEY. Let the record reflect that.

In 2007, NHTSA asked for and received a document from GM related to the death of two Wisconsin teenagers. That document was first made public by me at our May 7 hearing, and it is referenced repeatedly in Mr. Valukas' report and included a report by the Wisconsin State Patrol Academy that said that the ignition switch defect prevented the airbags from deploying. It also found other examples of the same problem happening in other cars and identified a 2005 GM warning to dealers about the issue. In short, it correctly identified the safety defect at that time. Do any of you disagree that if the public had been told about this document and warned about its conclusions at that time, it is possible that some of the deaths and injuries caused by this defect could have been avoided?

Let the record show that none of the witnesses disagreed.

In 2006 and 2007, NHTSA, the National Highway Traffic Safety Administration, received investigative reports from its contractors related to two fatal crashes involving GM Cobalts. Both of these reports described airbags that did not deploy in cars because ignition switches had turned off. Do any of you disagree that if NHTSA had reviewed these reports and informed the public about the safety defect, it is possible that some of the deaths and injuries caused by the defect could have been avoided?

Again, let the record make it clear that none of the witnesses disagree.

So, Ms. Barra, I have introduced legislation, along with Senator Blumenthal, that calls for important steps to provide more information to the public sooner. The best way of ensuring that this does not happen again is to ensure that there is transparency in the future. I know that you are working hard to change GM's safety culture, but you can't change other companies and you can't give me the confidence that NHTSA will take more aggressive action in the future.

That is why the bill that we have introduced requiring the public availability of documents automakers receive that first alert them to fatalities that could be attributable to safety defects is so important. We need more information to be publicly disclosed by automakers in the early warning reporting system. I want the public to be able to access this kind of information in time for it to provide real early warnings.

Does GM support the legislation?

Ms. BARRA. Senator Markey, first of all, you and I agree completely on the need to make sure we are doing everything we can from a safety perspective. And as I've met with you, and I know my staff has worked closely with your representatives, we support efforts to make the NHTSA website more accessible and useful. We also have suggested that a national VIN database be added and

added to the bill. We think that would be very useful to make sure we can quickly get to people when we know that there's a safety defect.

We also support efforts to make reports on fatality and early warning data more available to the public as long as the right provisions are there to protect privacy and to protect confidential information from an overall perspective, and we are more than willing to continue to work with you and your office on any legislation that advances the safety agenda.

Senator MARKEY. I thank you, Ms. Barra, and I think that's going to go a long way if that legislation becomes law, and it should because that's the surest way of ensuring this will not happen again.

And I thank you, Madam Chair, and I thank you for your focus on NHTSA as well, because I don't think we can conclude this entire process until NHTSA is——

Senator MCCASKILL. That's absolutely correct.

Senator MARKEY. I thank you for——

Senator MCCASKILL. Thank you, Senator Markey.

Senator Boxer?

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

Senator BOXER. Thank you.

Ms. Barra, after months of negotiations, Senators Schumer, McCaskill and I thank you for your support of the Raechel and Jacqueline Houck Rental Car Safety Act.

I ask unanimous consent to put GM's letter into the record, and I will work with you to convince the other automakers to follow that lead. Is it all right that we put that into the record?

Senator MCCASKILL. Without objection, it will go in the record.

[The information referred to follows:]

GENERAL MOTORS COMPANY
Washington, DC, July 8, 2014

Hon. CHUCK SCHUMER,
322 Hart Senate Office Building,
Washington, DC.

Dear Senator Schumer:

On behalf of General Motors, I would like to thank you, as well as the cosponsors, for reviewing our proposed changes to S. 921 as described in my June 26, 2014, letter to you (herewith again attached).

With these changes made to the Committee—reported text of S. 921, “The Raechel and Jacqueline Houck Safe Rental Car Act of 2013,” such a revised bill will have the support of General Motors.

Let me offer our appreciation to you, as well as to your staff for their professionalism, as we worked through this process.

Sincerely,

LEE R. GODOWN,
Vice President,
Global Government Relations.

Attachment

GENERAL MOTORS COMPANY
 Washington, DC, June 26, 2014

Hon. CHUCK SCHUMER,
 322 Hart Senate Office Building,
 Washington, DC.

Dear Senator Schumer:

Thank you for meeting with me, our CEO Ms. Mary Barra, and for the continuing cooperation of your staff in an effort to find common ground on the provisions of S. 921, The Rachel and Jacqueline Houck Safe Rental Car Act of 2013.

As you know, under existing law auto manufacturers have the ability to defend against loss of use claims by rental car companies, because rental car companies have the ability to manage the way they repair their fleets subject to safety recalls or other safety related notices. While we think that the rental companies will continue to have that ability as a practical matter (because of the size and diversification of their fleets) if S. 921 passes as currently drafted, our defense as a manufacturer might be degraded, since the rental companies would be able to point to the absolute statutory grounding of vehicles as the basis for claims of loss of use—even in the absence of a showing of actual “damages.”

Our primary concern with the current language of S. 921 is that the new requirements for rental companies to repair recalled vehicles could increase manufacturers’ liability under state laws for the losses suffered by the rental car companies as a result of having to ground recalled cars before they can be repaired. In discussion with your staff, it became apparent that you never intended to change the status quo with regard to loss of use, and believe that the issue would be best addressed in the contracts between the manufacturers and the rental companies.

As part of discussions I have had with your staff, and the staffs of the cosponsors of S. 921, I would like to suggest the below language as an amendment to the current provisions of the legislation.

After section 8 (of S.921), insert the following:

SEC. 9. RULE OF CONSTRUCTION.

Nothing in this Act or the amendments made by this Act shall—

(1) be construed to create or increase any liability, including for loss of use, for a manufacturer as result of having manufactured or imported a motor vehicle subject to a notification of defect or noncompliance under subsection (b) or (c) of section 30118 of title 49, United States Code; or

(2) supersede or otherwise affect the contractual obligations, if any, between such a manufacturer and a rental company (as defined in section 30102(a) of title 49, United States Code, as amended by section 2).

If this change in S. 921 can be accomplished and addressed, General Motors stands ready to support such a revised bill.

I would like to add that, in discussions with your staff, I have raised the possibility of mandating that rental car companies be obliged to report their repair completion rates monthly or quarterly to the National Highway Transportation Administration (NHTSA)—the goal being to prompt the companies to repair their vehicles in a timely fashion, and to make this completion rate more transparent and public. We support this requirement.

Lastly, our auto dealer partners (NADA) have expressed a concern that the NHTSA rulemaking authority in section 9 of the legislation is too broad. Section 9 states: *The Secretary of Transportation may promulgate rules, as appropriate, to implement this Act and the amendments made by this Act.* I understand through your staff that you are willing to delete this section of the legislation, and we support this deletion.

Sincerely,

LEE R. GODOWN,
 Vice President,
 Global Government Relations.

Senator BOXER. Thank you.

A month ago, *Bloomberg Businessweek* published an article entitled “GM Recalls: How GM Silenced a Whistleblower.” Have you seen that article?

Ms. BARRA. Yes, I have.

Senator BOXER. OK. I ask unanimous consent to place it in the record.

Senator MCCASKILL. Without objection.

[The information referred to follows:]

Bloomberg Businessweek—June 18, 2014

GM RECALLS: HOW GENERAL MOTORS SILENCED A WHISTLE-BLOWER

By Tim Higgins and Nick Summers



Photograph by St. Croix County Sheriffs Office/AP Photo
In 2006 the wreck of a 2005 Cobalt killed two and injured one

It was close to 3 a.m. on June 6 when Courtland Kelley burst into his bedroom, startling his wife awake. General Motors (GM), Kelley’s employer for more than 30 years, had just released the results of an investigation into how a flawed ignition switch in the Chevrolet Cobalt could easily slip into the “off” position—cutting power, stalling the engine, and disabling airbags just when they’re needed most. The part has been linked to at least 13 deaths and 54 crashes. GM Chief Executive Officer Mary Barra, summoned before Congress in April to answer for the crisis, repeatedly declined to answer lawmakers’ questions before she had the company’s inquest in hand. Now it was out, and Kelley had stayed up to read all 325 pages on a laptop on the back porch of his rural home about 90 miles northwest of Detroit.

The “Valukas Report,” named for former U.S. Attorney Anton Valukas, who assembled it at GM’s request from interviews with 230 witnesses and 41 million documents, blamed a culture of complacency for the more than decade-long delay before the company recalled millions of faulty vehicles. It described employees passing the buck and committees falling back on the “GM nod”—when everyone in a meeting agrees that something should happen, and no one actually does it. On page 93, a GM safety inspector named Steven Oakley is quoted telling investigators that he was too afraid to insist on safety concerns with the Cobalt after seeing his predecessor “pushed out of the job for doing just that.” Reading the passage, Kelley felt like he’d been punched in the gut. The predecessor Oakley was talking about was Kelley.



Kelley had sued GM in 2003, alleging that the company had dragged its feet addressing dangers in its cars and trucks. Even though he lost, Kelley thought that by blowing the whistle he'd done the right thing and paved the way for other GMers to speak up. Now he saw that he'd had the opposite impact: His loss, and the way his career had stalled afterward, taught others at the company to stay quiet.

"He stood in the doorway of our bedroom with a stunned look on his face," Beth Kelley, his wife of 23 years, says. "Maybe we're just extremely naive, but we really thought that since this all happened, that something good would come out of it." Kelley declined to comment for this article, but his allegations are laid out in court records and depositions. A number of friends and family did speak for the record.

Kelley had been the head of a nationwide GM inspection program and then the quality manager for the Cobalt's predecessor, the Cavalier. He found flaws and reported them, over and over, and repeatedly found his colleagues' and supervisors' responses wanting. He thought they were more concerned with maintaining their bureaucracies and avoiding expensive recalls than with stopping the sale of dangerous cars. Eventually, Kelley threatened to take his concerns to the National Highway Traffic Safety Administration. Frustrated with the limited scope of a recall of sport-utility vehicles in 2002, he sued GM under a Michigan whistle-blower law. GM denied wrongdoing, and the case was dismissed on procedural grounds. Kelley's career went into hibernation; he was sent to work in another part of the company, and GM kept producing its cars.

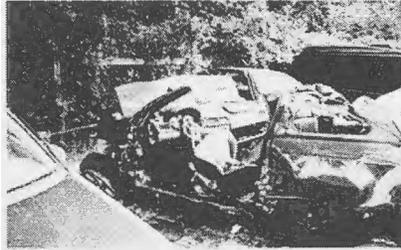


Selling for around \$16,000, Cobalts were popular with teenagers. The first death linked to its switch came in July 2005, when a Maryland 16-year-old, Amber Marie Rose, crashed her red '05 into a tree. The airbag did not deploy. Although reports streamed into GM about moving stalls and disabled airbags for years, the company waited until Feb. 13, 2014, to issue a recall.

Now GM professes contrition, promises change, and has ousted 15 individuals for misconduct or incompetence. Announcing the Valukas findings to an audience of employees on June 5, Barra called the report “extremely thorough, brutally tough, and deeply troubling.” It describes a corporate bureaucracy fatally indifferent to mounting evidence its cars were killing people. “Group after group and committee after committee within GM that reviewed the issue failed to take action or acted too slowly,” Valukas writes. “Although everyone had responsibility to fix the problem, no-body took responsibility.”

THE MALFUNCTIONS

A 2005 Cobalt that crashed in Dentsville, Md.



Rescue personnel at the site of a Cobalt crash that killed two teenagers



Photographs by National Highway Traffic Safety Administration/The New York Times/Redux; St Croix Sheriff/Reuters

As bad as that sounds, Kelley’s story shows that the situation was worse—that GM’s problems went beyond diffuse inaction. Management wasn’t just distracted or confused; speaking up was actively discouraged, and workers saw that pointing out

safety flaws could derail their careers. When a GM employee did blow the whistle, the Nation's largest automaker shut him down.

Kelley is mild-mannered and 52, with a full head of white hair that makes him look older. His friends, who know him as Court, joke that they should make bracelets reading "WWCD?"—or "What would Court do?"—à la the popular Christian accessory. "He's just one of those people that you can trust what he says," his wife says. "I don't have any doubt in his decisions."

Kelley is third-generation GM. His father and grandfather worked for the company. A prized possession is a ring his grandfather was given commemorating his participation in the famed Sit-Down Strike of 1936–37. In his driveway is a black Pontiac Fiero sports car that Kelley and his teenage son, Ryan, fixed up.

In 1983, Kelley started at GM as a technician fresh out of community college. By 1988 he was working on what would become the company's Global Delivery Survey, an audit of GM cars at rail yards across the country—a spot check of vehicles on the last leg of their journey to dealerships. Originally meant to find minor noises and rattles, the program had begun to turn up more serious safety concerns. The creator of the effort, Bill McAleer, considered Kelley his protégé and someone who shared his alarm at the problems they found over the next decade—such as tie rods in danger of falling off.

"I've done all I can. I wanted more vehicles recalled. They shot me down."

"Bill and I looked at each other in amazement," Kelley later recalled in a deposition, "that that kind of thing was happening, where the bolts on the front suspension fell out as we drove over the track. I thought that GM alarm bells would go off."

They didn't. McAleer, who thought no one at GM was taking his criticisms seriously, was taken off the audit; he sued the company seeking whistle-blower protection. GM denied the allegations, and a judge dismissed the case. With McAleer gone, Kelley grew even more concerned about the problems he was seeing, he said in a June 2000 deposition from McAleer's lawsuit. He indicated that the audit was picking up an average of two to three "significant safety defects" each month. In May of that year, Kelley told lawyers, the audit found three problems, including a vehicle in Flint, Mich., with its antilock brakes improperly attached and a vehicle in Lansing with a fuel leak. McAleer's lawsuit claimed that as much as 1 percent of all vehicles manufactured by GM during the 1999 model year could be defective, or more than 30,000 North American cars and trucks.

Kelley said he approached his direct supervisor, George Kingston, who in 2000 was director of quality for North American operations, about his growing concerns. "I would go to George and tell him this, but it didn't seem to surprise him or provoke him to take new action," Kelley said in his deposition. "He seemed to take it more seriously when I told him that I could no longer sit by and I may have to personally go to the Federal Government." The response? "He cringed," Kelley said, "and said that he would prefer that I don't do that." Kelley gave Kingston 60 days to act but in the end didn't alert regulators. Kingston did not respond to a request for comment.

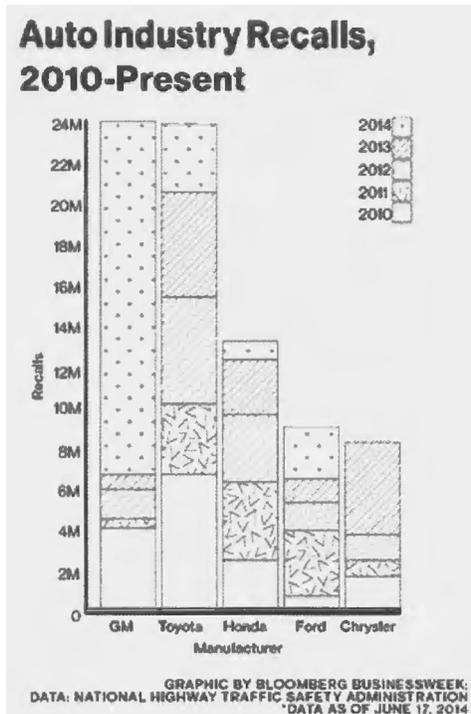
In September 2000, Kelley would later allege in court filings, Kingston instructed Kelley not to give McAleer, still a GM employee at the time, any data on serious defects that the audit program turned up. "Kingston indicated that he just returned from a meeting in which depositions taken in the McAleer litigation and questions being posed to GM by the media about litigation had been discussed," Kelley's lawsuit said. Kingston told Kelley "that high-level GM staff and the company's general counsel were involved in the teleconference and that these individuals were irate." Kingston allegedly told Kelley that he was concerned that "higher-ranking executives might want to make things difficult" for Kelley—perhaps banishing him to the "second shift at Hamtramck," a plant on the outskirts of Detroit.

While his troubles at work intensified, Kelley's home life blossomed. He and his wife were raising two children, and they purchased a white two-story home on a tree-lined street in sleepy Owosso, Mich. Kelley remained loyal to his employer. As he saw it, he was agitating not to harm the company or enrich himself but to save it—and because it was the right thing to do. Neighbor Fred Van Alstine, a doctor whose father worked in a GM factory, remembers talking with Kelley around this time and inadvertently slighting the automaker. He recalls Kelley taking offense and saying, "I'm proud to be at GM."

One day in November 2001, Kelley came across a problem that would forever change him. Making inspections at a rail yard in Tampa, he found a Chevrolet TrailBlazer SUV leaking fuel. Kelley discovered that the fuel line had disconnected at the filter. "They told me as they were driving it off the train, the vehicle quit," Kelley recalled in a September 2003 deposition. "Fuel began spraying." The next

day, he began getting similar reports from around the country. He began pushing not only his supervisor but product investigators and GM's legal department to act.

Kelley thought it was just a matter of time before someone was injured or killed. "I became aware of police reports, police stating that they thought the person would have been severely injured had a spark occurred and ignited the fuel," Kelley said in a deposition. "I became aware of fire departments being involved because of the severity of the fuel leaks." Despite his concerns, he said, colleagues resisted contacting the government. During a Nov. 27, 2001, conference call with GM engineers, Kelley wrote in his notes, "No NHTSA contact yet."



"At this point, I knew it was big enough that—where we could not, in my opinion, not report it," Kelley said in a deposition. "I heard them have many discussions about not wanting to notify the government, not putting voice mails out to dealers, because the government could get them."

By December, Kelley thought he knew what was causing the problem: The Trail-Blazer's fuel-line quick-connect fasteners weren't the proper size. He had photos of nine vehicles with leaking fuel. That month, he clashed with a product investigator named C.J. Martin who had turned up fewer "serious quality incidents" in her own probe, according to Kelley's deposition testimony.

Kelley pushed Martin on the issue, he testified. "She became concerned that I was overly aggressive on how to fix the problem," Kelley said. "Her response to me was, 'Well, what do you want us to do, recall all the cars?' 'If that's what needs to be done,' I said, 'yes, that's what we should do.' She said that would be way too expensive."

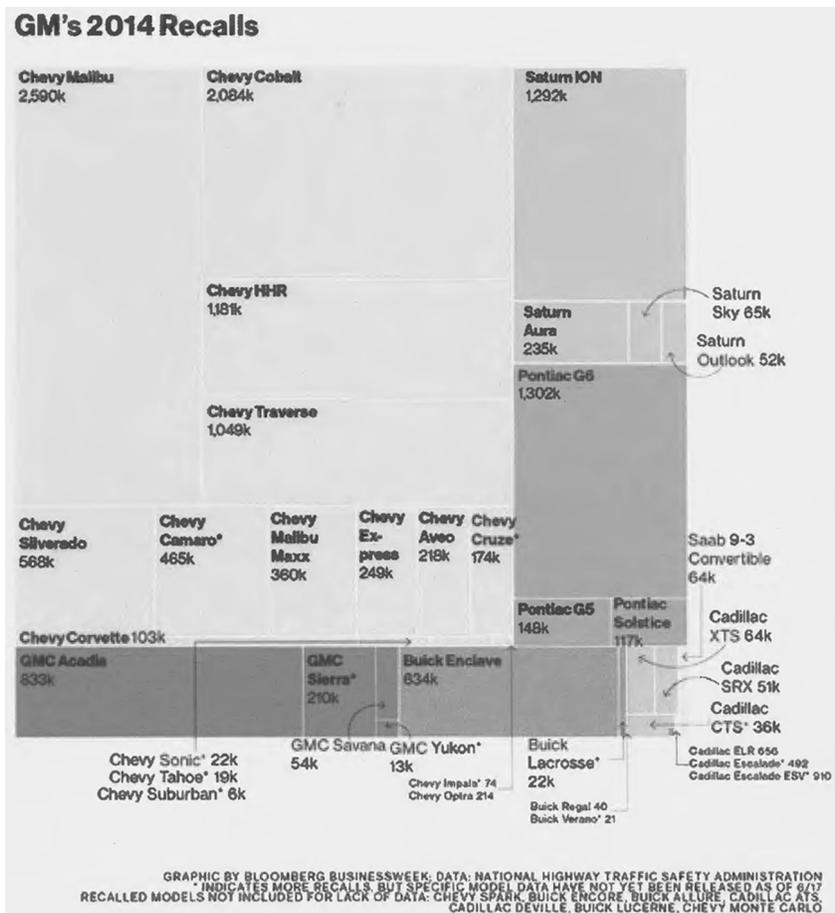
Martin, who retired from GM in early 2002, says she vaguely remembers Kelley but disputes his claim that she resisted a recall. “I didn’t have that power nor that ability,” she says. She also disputes the notion that safety recalls were influenced by costs. “We were never allowed to show cost of an item in regard to making a decision for a safety recall—ever,” she says. That a recall was conducted in April after being flagged in November suggests to Martin that GM acted quickly, she says. “That’s extremely fast. If there was something that told us that there was anything related to safety, I can tell you that team in that period of time was extremely aggressive,” she says.



Photographs by James Fassinger/Corbis; J. Scott Applewhite/AP Photo

As 2002 began, Kelley’s crusade “gained significant momentum as a result of a vehicle line executive having experienced a ruptured fuel line on his own company vehicle while driving on the interstate,” according to his lawsuit. On April 30, 2002, GM sent the NHTSA a letter saying it was recalling 60,044 Chevrolet TrailBlazers, GMC Envoys, and Oldsmobile Bravadas, according to government records. Kelley felt vindicated—a moment of satisfaction that would prove fleeting.

Like his predecessor McAleer, Kelley was taken off the quality audit in 2002. He was transferred to a role as brand quality manager for the Chevrolet Cavalier and Pontiac Sunfire, compact cars that preceded the Cobalt. He was given an employee named Steven Oakley, who’d worked for GM since 1990, to handle the Sunfire. They were the middlemen between dealers, who wanted to talk about problems with cars, and engineers, who would work with factories to address those issues—and it was in this role that Kelley began hearing that the TrailBlazer recall had not gone far enough. Dealers complained that SUVs not covered by the recall were still leaking fuel. Kelley contacted one of GM’s field product investigators, employees who look into possible recall issues, and weeks later contacted him again. He got a listless response. “I’ve done all I can,” Kelley testified that the investigator told him. “I wanted more vehicles recalled. They shot me down.”



Kelley decided to escalate his campaign. In a June 17, 2002, memo addressed to his boss's boss, Keith McKenzie, director of car brand quality, Kelley was direct. "It is my belief that General Motors is violating the law by not properly dealing with safety issues that are persistent and ongoing," Kelley wrote. "I have spent several years trying to work through the system at General Motors to address these concerns with a goal of protecting our customers and stockholders." McKenzie could not be reached for comment.

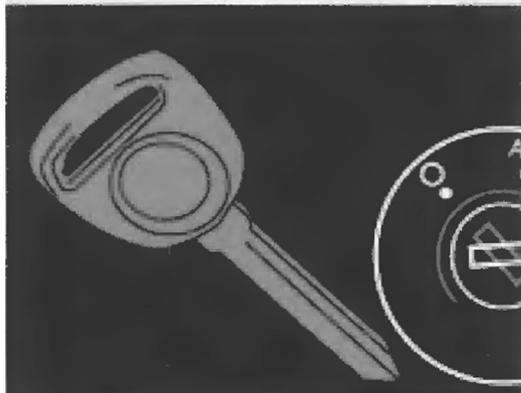
McKenzie stonewalled, according to Kelley. Instead of dealing with the complaint, he said, McKenzie warned him about another GM employee who had raised safety-related complaints and how it had derailed his career, the court filings show. Kelley agreed to tone down his memo, resubmitting a version that said GM was "not properly dealing with certain safety issues." He again gave the company 60 days to address them or he'd go to "the proper law enforcement agencies."

GM, in a court filing, said McKenzie reacted immediately to the memo, alerting his supervisor, who was "relieved but also extremely upset at [Kelley's] method of communication." Sixty-three days later, GM expanded the TrailBlazer recall by 76,000 vehicles. Four days after that, Kelley said he was called into a meeting with McKenzie and Ron Porter, a GM lawyer, "in response to his letter of June 21." Kelley was told he shouldn't concern himself with defects on models other than the Cavalier. McKenzie told him vehicles had already been recalled and that more would be included in "direct response" to his concerns.

It was a mixed victory: Kelley got unsafe trucks off the road, but he was transferred that fall to another role, described in his testimony as "special assignment."

It was a GM version of purgatory. He had no job responsibilities, he claimed. In his new role, Kelley testified, he was instructed not to get involved with fuel-line connectors and instead was told to “come up with charts, predict warranty for the vehicle, but not find every problem that GM might have.”

At home in Owosso, Kelley wrestled with taking his concerns public. After putting their kids to bed, Kelley and his wife would sit at their kitchen table and talk late into the night. Beth Kelley says she didn’t know then that GM retirees were telling her husband he might as well leave the company—that nobody goes against GM and survives. “He would say, ‘What do you think I should do?’ and, ‘Do you want to do this?’” she says now. “If he felt strongly enough that people could potentially die from the safety issue, then I didn’t have any doubt in my mind that we needed to do it.” On Jan. 9, 2003, he filed suit against GM.



Kelley’s allegations—which predated the ignition switch problems—made a small splash; Beth remembers the news crawling across CNN’s ticker. What little momentum there was faded as the challenges of fighting the Nation’s largest automaker became apparent. GM argued for a judge to dismiss the case because Kelley did not have standing as a whistle-blower—the law required such a person to prove he had suffered for his actions, and Kelley still had a job with the company and was getting the same pay and benefits.

During a deposition, GM’s outside lawyer, Peter Kellett, pressed Kelley to admit that raising concerns about trucks wasn’t part of his job description, as an inspector of cars.

“My job assignment as a GM employee is to make sure that our customers are safe in any way I can. That’s my understanding,” Kelley said.

GM: “But was it your specific understanding that you were charged with responsibility for monitoring information relating to vehicles other than the [small cars]?”

Kelley: “I felt morally responsible—”

GM: “That’s not what I asked you.”

Kelley: “—to fix a problem that I found in a vehicle.”

GM: “Was it part of your job description?”

Kelley: “No.”

Kelley’s lawsuit didn’t get far. Court records show that his attorney didn’t appear at a hearing in April 2004, and the case was closed without a response from his lawyer. A later motion to reconsider was denied. Kelley’s lawyer, Rose Goff, became sick around this time, eventually dying of cancer. The Kelleys, who had spent more than \$20,000 on legal fees, received a payment covering most of the cost from their lawyer’s insurance company because of the handling of the case, Beth says.



Courtesy Beth Kelley/Courtland Kelley

Courtland Kelley sank into depression. His dark brown hair turned snow-white in the span of a year. Van Alstine, the neighbor, who is also Kelley's doctor, looked at his friend one day with astonishment. "I clearly saw him age drastically," Van Alstine says. "You just knew he was under a tremendous amount of stress. . . . It shook him to the core." Kelley couldn't sleep at night, waking in cold sweats and experiencing chest pains and panic attacks, friends and records say.

His wife encouraged him to leave GM. He stayed for his family, she says. "He would always say, 'You know, if I stay this amount of time, I'll get my retirement,'" she says.

"Where else in that job market over the last 10 or 15 years is a person going to go?" says Van Alstine.

At GM, Kelley has been floating from position to position, says McAleer, who was laid off from GM in 2004 and keeps in close contact. "He still has a job—he doesn't have a career," he says. "He has no possibility of a promotion."

As Kelley's lawsuit petered out in 2004, GM was replacing the Cavalier with the Cobalt. Models produced from 2005 to 2007 contained the ignition switch that could easily slip out of the "on" position at the touch of a driver's knee or simply from bumps in the road. Airbags failed to deploy in dozens of accidents. Amy Breen, 42, an Ohio preschool teacher, was killed in a 2007 crash, even though she was wearing her seat belt. Marie Sachse, 81, died when her Saturn Ion, which used the Cobalt's ignition switch, left the road and struck a tree in Missouri in 2009. In June 2013, Dany Dubuc-Marquis, 23, of Quebec, lost control of his Cobalt and was pronounced dead at the scene. At GM, the mounting evidence caused little alarm. "Throughout the entire 11-year odyssey, there was no demonstrated sense of urgency, right to the very end," Valukas, the former U.S. attorney, wrote in his report.

It is impossible to know what might have happened differently if Kelley had remained an inspector of GM's small cars as it moved from Cavalier to Cobalt. He was replaced by his employee, Oakley, who in March 2005 reviewed a memo from a GM engineer on the Cobalt ignition. Interviewed three times by Valukas's team, Oakley told investigators that he felt pressure to describe something as a convenience issue rather than a safety problem, and cited Kelley's ordeal. GM declined to make Oakley available for comment.

Yet in one indirect way, Oakley tried to rouse concern. In a draft of a service bulletin to dealers, he included the term "stall," a "hot" word known to attract attention. Had it actually gone out to car sellers, Federal regulators would have most likely seen it. But as they had with Kelley three years before, GM's product investigators tamped down the response, striking the language. It was one of the many occasions in which GM engineers failed to link the ignition switch position and disabled airbags, Valukas concluded. "From beginning to end, the story of the Cobalt is one of numerous failures leading to tragic results for many," he wrote.



Photograph by Patsy Lynch/Rex Features/AP Photo

With the report out, CEO Barra was set to return to the House for more questions on June 18. While she has described the Valukas inquiry as thorough, she has also attempted to limit its implications. “In this case with these vehicles, we didn’t do our job,” Barra said in the June 5 employee town hall. “What the Valukas investigation uncovered—in this situation—is a pattern of incompetence and neglect.” Lawmakers may want to ask her whether the account of Courtland Kelley suggests the company’s problems go deeper.

On June 16, GM recalled an additional 3.16 million U.S. vehicles, across seven models, bringing the total recalled this year in North America to 20 million. “This latest recall raises even more questions about just how pervasive safety problems are at GM,” said Fred Upton (R-Mich.), chairman of the House Energy and Commerce Committee, in a statement. “This is not just a Cobalt problem.”

In response to questions from *Bloomberg Businessweek*, GM issued a statement on June 17: “We are going to reexamine Mr. Kelley’s employment claims as well as the safety concerns that he has, and that’s part of our redoubled effort to ensure customer safety.”

A week after her appalled husband woke her up in the middle of the night, Beth Kelley is sitting in her tidy kitchen, as her son, who’s changed his mind about becoming an engineer after watching his father’s tribulations, hovers nearby. Is she surprised that more whistle-blowers didn’t emerge at GM?

She laughs. “I’m surprised there aren’t more people who stand up for what they believe,” she says. “But am I surprised that they wouldn’t go against General Motors? I suppose not.”

Senator BOXER. Courtland Kelley, a third-generation loyal GM employee and inspector since 1983, sought to protect both GM and the public by bringing safety concerns to light. Instead of praise and gratitude, his concerns were met with retribution and inaction by GM. Mr. Kelley approached his supervisor and then his supervisor’s supervisor because he couldn’t get any help. He approached them about safety defects he noticed that weren’t even part of his line. He even sued GM just to get them to notice. His warnings

were ignored; his case was dismissed. To silence him, he was transferred to a job with no job responsibilities. He calls it a GM version of purgatory.

On page 93 of the Valukas Report, Court Kelley's successor is quoted telling investigators he was too afraid to raise safety concerns with the Cobalt after seeing Court "pushed out of the job for doing just that." Even last year, just last year, a 2013 survey of GM employees showed that the employees are reluctant to report misconduct they observe, some fearing retaliation.

Now, this is terrible. People died because of this. So I'm asking you, Ms. Barra, have you met with all the employees? Have you been in a room with all the employees? Have you told them that you value honesty, integrity and whistleblowing and how they will be protected by the company?

Ms. BARRA. Senator Boxer, I absolutely have. On June 5 I had an employee meeting. Thousands were live in the room as I talked to them and shared the results of the Valukas Report, which I personally found very disturbing and troubling, and that also was broadcast globally. All employees had the opportunity.

Senator BOXER. Good.

Ms. BARRA. We have since—I have communicated through many other forms, written and our webpage.

Senator BOXER. Good. I'll stop you here and say congratulations. And could you send this committee, please, your speech, and also part of the policy of the company? I'm sure you have all these rules and policies. We have them in our offices. Would you send that to us?

Ms. BARRA. Absolutely.

Senator BOXER. Because I think that's really important.

Ms. BARRA. Sure.

Senator BOXER. Now, I'm going to pick up on where Senator Ayotte was going with this article in *The New York Times*.

I ask unanimous consent to place it in the record.

Senator MCCASKILL. Without objection.

[The information referred to follows:]

The article can be found at: http://www.nytimes.com/2014/07/16/business/documents-show-general-motors-kept-silent-on-fatal-crashes.html?_r=0

7/17/2014

Documents Show General Motors Kept Silent on Fatal Crashes - NYTimes.com

The New York Times <http://nyti.ms/1numJvY>

BUSINESS DAY | NYT NOW

Documents Show General Motors Kept Silent on Fatal Crashes

By REBECCA R. RUIZ and DANIELLE IVORY JULY 15, 2014

The car crash that killed Gene Erickson caught the attention of federal regulators. Why did the Saturn Ion he was traveling in, along a rural Texas road, suddenly swerve into a tree? Why did the air bags fail? General Motors told federal authorities that it could not provide answers.

But only a month earlier, a G.M. engineer had concluded in an internal evaluation that the Ion had most likely lost power, disabling its air bags, according to a subsequent internal investigation commissioned by G.M.

Now, G.M.'s response, as well as its replies to queries in other crashes obtained by The New York Times from the National Highway Traffic Safety Administration, casts doubt on how forthright the automaker was with regulators over a defective ignition switch that G.M. has linked to at least 13 deaths over the last decade.

They provide details for the first time on the issue at the heart of a criminal investigation by the Justice Department: whether G.M., in its interaction with safety regulators, obscured a deadly defect that would also injure perhaps hundreds of people.

The company repeatedly found a way not to answer the simple question from regulators of what led to a crash. In at least three cases of fatal crashes, including the accident that killed Mr. Erickson, G.M. said that it had not assessed the cause. In another fatal crash, G.M. said that

attorney-client privilege may have prevented it from answering. And in other cases, the automaker was more blunt, writing, "G.M. opts not to respond." The responses came even though G.M. had for years been aware of sudden power loss in the models involved in the accidents.

The responses are found in documents known as "death inquiries," which The Times obtained through the Freedom of Information Act. In those inquiries, regulators ask automakers to explain the circumstances surrounding a crash to help identify potential defects in cars.

On Thursday, the head of G.M.'s legal department, Michael P. Millikin, is expected to face intense scrutiny before lawmakers at a Senate hearing. He is scheduled to testify along with, among others, Mary T. Barra, the chief executive, who faced a harsh grilling before the same panel in April.

The Times asked the safety agency for death inquiries related to fatal crashes in older Chevrolet Cobalts and Saturn Ions, which are among the 2.6 million cars with defective ignition switches that G.M. has recalled since February. Of the 13 deaths linked to the defect, all of which involved Cobalts and Ions, The Times received inquiries for four of them.

Mr. Erickson was riding in the front seat of a Saturn Ion driven by Candice Anderson in 2004. They were an hour from Dallas when the car suddenly drove into a tree, killing Mr. Erickson but sparing Ms. Anderson. Only recently did Ms. Anderson, who pleaded guilty to criminally negligent homicide after the accident because she had a trace of Xanax in her system, learn that she was not to blame.

Despite the earlier determination by the engineer, Manuel Peace, that the engine's shutting off had most likely been the reason for the crash, G.M., in its response to regulators, said there may not have been "sufficient reliable information to accurately assess the cause" of the incident.

G.M., which also faced a lawsuit from Mr. Erickson's family at the time, further stated that attorney-client privilege may have been a reason it could not make disclosures.

Ultimately, G.M. said it had not assessed the cause of the accident.

"It seems inconsistent," said Carl Tobias, a law professor at the University of Richmond, who specializes in product liability. "It seems like the company knew that the accident was attributable to power loss. It does sound like they didn't give N.H.T.S.A. everything they should have. That could make them vulnerable to the Justice Department's investigation."

When asked about G.M.'s responses to the government's death inquiries, James Cain, a spokesman, said on Tuesday: "We are confronting our problems openly and directly. We are taking responsibility for what has happened and making significant changes across our company to make sure that it never happens again."

In a later death inquiry, G.M. chose not to say whether it had looked into the circumstances of the December 2009 crash in Tennessee that killed Seyde Chansuthus, who is also counted among the 13 victims. G.M. added in its response that any privileged material related to the case would not be shared. The company had not been sued by Ms. Chansuthus's family at the time.

But there had already been a thorough review of Ms. Chansuthus's accident within G.M.

Six days before that letter to regulators, lawyers representing G.M. had presented an evaluation of the crash to the automaker, according to the internal investigation conducted by G.M. this year. The lawyers warned that G.M. could be liable for punitive damages because air bags in Cobalts were known not to deploy in some cases.

In a third fatal crash, involving the deaths of Amy Rademaker and Natasha Weigel, teenage friends killed in Wisconsin in 2006, G.M. again responded that it could not provide an answer to what caused the accident, using the same language as in its reply to questions about Mr. Erickson's crash.

In this case, G.M. had received outside evidence that there was a problem with the switch, including a state trooper's collision report from February 2007 that made the critical link between the faulty ignition switch and the air bags failing to deploy. G.M.'s internal investigation said

that only one person inside G.M. had even opened the report, though it was included in the reply to regulators, who also failed to follow through. One of the requirements on the death inquiry is to provide a copy of the police report.

When asked for comment, David Friedman, the safety agency's acting administrator, said, "G.M.'s decision-making, structure, process and corporate culture stood in the way of safety."

G.M.'s reluctance to respond to the government with evaluations of suspicious crashes extended beyond just the accidents that the automaker has publicly linked to its ignition defect.

Several fatal crashes — including those of Benjamin Hair, 20, in Virginia, and Amy Kosilla, 23, in New York — also had death inquiries. In both those cases, when asked to explain why the vehicles had driven straight off the road — with front impacts and no air bag deployment — the automaker took advantage of the optional nature of the question and did not reply. Death inquiries date back to the late 1990s, when the safety agency was criticized for failing to spot highway rollovers in Ford Explorers with Firestone tires, a problem eventually tied to 271 deaths.

In response, Congress passed a law in 2000 requiring automakers to report to regulators any claims they received blaming defects for injuries or deaths, so the government would not have to rely only on consumer reports. The agency also has the ability to dig deeper into any of those claims by then doing a death inquiry — asking the automaker for documentation of each car accident and an assessment of the circumstances leading to each crash.

In the end, both G.M. and those charged with overseeing the company fell short in protecting the public, Mr. Tobias, the law professor, said. "It's discouraging to see that both the company was not being as straightforward as it might have been," he said, "and that N.H.T.S.A. was not being as rigorous about these inquiries that it should have been."

A version of this article appears in print on July 16, 2014, on page A1 of the New York edition with the headline: Documents Show G.M. Kept Silent on Fatal Crashes.

Senator BOXER. "Documents Showed GM Kept Silent on Fatal Crashes." I think this is extremely disturbing because, as Senator Ayotte pointed out, these inquiries were called "Death Inquiries," and what you're saying, Mr. Millikin, even the one that was issued under your watch, you never saw it. Is that correct?

Mr. MILLIKIN. That is correct, Senator.

Senator BOXER. You never saw the death inquiry from NHTSA, who regulates the auto industry and safety. You never saw it.

Mr. MILLIKIN. That is correct.

Senator BOXER. So who is the top person who saw that?

Mr. MILLIKIN. Pardon me?

Senator BOXER. Who is the top person in your department who saw that inquiry?

Mr. MILLIKIN. I do not know who the top person was who saw that, Senator.

Senator BOXER. Mr. Valukas, did you ask about this issue in your report?

Mr. VALUKAS. No, we did not ask about that. No, we did not ask about that issue.

Senator BOXER. Thank you. You should have.

I consider it a cover-up when a manufacturer does not respond fully and accurately to NHTSA about what it knows about deaths in its vehicles. This wasn't some casual memo. And I agree, we should ask NHTSA back, of course. But NHTSA did its job in sending an initial inquiry, and I am shocked and stunned that at least on one occasion—did it even go to your shop, this inquiry? Where did these inquiries go to, the NHTSA inquiries, death inquiries? Where do they go?

Mr. MILLIKIN. Senator, when I saw the article yesterday, it was all news to me. We have caused a review to be done so that the information can be learned and brought forward.

Senator BOXER. OK. So you don't know where the inquiry went. You don't even know who answered it.

Mr. MILLIKIN. Well, it goes to that department in engineering—

Senator BOXER. What department?

Mr. MILLIKIN. I think it's called—I don't know the name of it. It is in the organization—Product Investigations.

Thank you, Mary.

Senator BOXER. And that is not—you don't supervise them.

Mr. MILLIKIN. I do not.

Senator BOXER. So, Ms. Barra, who answered—who wrote all those answers there?

Ms. BARRA. My understanding is that those would have been done by an organization that's part of the engineering function, and that's called Product Investigations. But, Senator Boxer, what I can tell you is now that would not happen. We—

Senator BOXER. Wait. Before you tell me that, I'm not done yet looking at this. You just can't say now is now and forget the past, because people died. So you want to move on to the new GM, and God bless you, you're doing a good job, but we are not going to stop. We have to find out what happened.

So then it went to this office of—give me the name of the office.

Ms. BARRA. Product Investigations.

Senator BOXER. OK. And what we know from *The New York Times*, unless there's reason to doubt their investigative reporting, is that the answers, one answer was "GM opts not to respond." Swell answer. Boy, I wish I could talk that way to my constituents when they want to know how I'm going to vote.

Then you had other answers. Well, we can't answer it because it's attorney-client privilege. In another case, a similar kind of answer, we haven't assessed the cause.

So because I believe it is a cover-up, and because in the new GM you are firing people, who have you looked at in this issue, and who signed off on these non-answers, and have you fired them?

Ms. BARRA. I believe I have.

Senator BOXER. OK. Can you give us the names of the people and how many people, just to me?

Ms. BARRA. I would provide that later, please?

Senator BOXER. Yes, that's absolutely fine.

So now, when an inquiry comes from NHTSA, which department is responsible for reviewing those NHTSA inquiries?

Ms. BARRA. It would go to Jeff Boyer, who is our Vice President of Global Vehicle Safety, along with his team. I will tell you that there will be no answers as you've stated.

Senator BOXER. Good.

Ms. BARRA. We are working very productively. We want to understand any time there is a fatality or a serious injury, or an injury, or even an issue that happened that didn't necessarily cause an injury because that's even better that we can stop it. That's how we're approaching it now.

Senator BOXER. So you've given it to a Vice President now. Is that what you said?

Ms. BARRA. Yes, we did, a Vice President.

Senator BOXER. And he will also inform you of these NHTSA inquiries, I trust?

Ms. BARRA. I believe he will because I will make sure of it, because he and I meet on a regular basis. He calls me 24/7.

Senator BOXER. When you say "I believe he will," I would love to hear you say it is his responsibility to take NHTSA death inquiries to me. Can you make that statement?

Ms. BARRA. Senator Boxer, I will assure you the moment I leave this I will call Jeff Boyer and it will be his responsibility to bring those to me.

Senator BOXER. Thank you. I'm grateful for that. Thank you.

Senator MCCASKILL. Senator Baldwin?

Let me give everyone—several members have asked me about the opportunity to ask more questions. So here's what I'm planning on doing right now, just so everyone knows. I'm going to allow Senator Baldwin to do her questioning, then everyone will have finished their first round. There may be a senator that shows up that hadn't questioned in the first round. Then we will adjourn at about 12:15 to 12:20 for around 20 to 25 minutes to allow all of us to go down and vote. We have three things we have to vote on. We will come back, but you don't need to panic because there's another hearing in this room at 2 o'clock, so there is an end in sight. We will not be here all day.

We will come back and use the time that we have after our votes to allow members to ask a second round of questions. So you all know and so all the members know and so that the staffs that are here can tell members that we will come back immediately after the third vote and probably do another half-hour to 45 minutes.

Senator Baldwin?

Senator BALDWIN. Thank you.

For those on the panel of witnesses, thank you, and I'll explain quickly. I'm not a member of the Commerce Committee, but I am here as a guest because one of the tragedies related to the Cobalt ignition switch occurred in Wisconsin, taking the lives of two young women and seriously injuring a third young woman in October 2006.

I wanted, Ms. Barra, to call your attention to an article on June 19, 2005 in *The New York Times*. An auto reviewer who was doing a companion article on the Cobalt, Jeff Sabatini, described encountering the now-familiar phenomenon of the Cobalt's ignition moving to Accessory and cutting off the engine. That article, which is entitled "Making a Case for Ignitions That Don't Need Keys," includes a statement from GM's spokesman, Alan Adler, about the engine shutoff problem.

In reading it, Mr. Adler downplayed the issue, saying "the Cobalt is still controllable" when the power to the engine is cut, and "the engine can be restarted after shifting to Neutral." He went on to say that GM did not consider the situation a safety issue.

Aside from the fact that his answer was completely unsatisfactory, Mr. Adler's statement demonstrates that someone at GM knew about the defect back in 2005, before the tragedy that occurred in the State of Wisconsin in 2006.

Who at GM directed Mr. Adler to make the statement about the Cobalt engine cutoff? Because I'm assuming—and this is an assumption on my part—that in his role as spokesman, that it wouldn't include an expertise on the engineering. So he had to have information. He had to be directed either by an engineer or an executive to make this statement that this was not a safety issue. So I'm wondering who at GM made that determination that this was not a safety issue.

Ms. BARRA. Senator Baldwin, as was uncovered in Anton Valukas' report, early on with this issue they didn't understand the connection of the stalling and of the switch, that it meant that the airbag didn't deploy. So this was misclassified at the very beginning as more of a customer annoyance, clearly the wrong thing. They didn't understand that connection.

At that time across the industry, stalling on its own—remember, you can stall if you pop the clutch, you can stall if you run out of gas. So the overall stalling aspect wasn't considered safety. I will tell you it is now, and any time there's a stalling issue where we identify that there's a defect in the vehicle that causes the stalling—in this case it would have been the ignition switch—we are treating it as a safety issue. In fact, we treat stalls as a safety issue until we understand what has happened.

So that was a broader view at that time. I can't tell you who told Mr. Adler that. I can't tell you who did that, but I can tell you it

was a broad understanding across the industry beyond GM at that time.

Senator BALDWIN. Who can tell me who counseled Mr. Adler before he made these statements on behalf of GM?

Ms. BARRA. I can look to see if I can find out.

Mr. VALUKAS. There was a discussion, including a discussion within lawyers of GM's legal staff, around the time of the *Cleveland Plain Dealer* article, and there had previously been discussion within some of the engineering committees, as to whether the stalling did or did not exist and whether this issue with regard to the stall did or did not constitute a safety issue, and the conclusion was reached that it did not. When the first PRTS report of a Cobalt stall was opened, there was an individual engineer who made that initial decision to categorize the problem as a customer convenience issue, the committees accepted that assessment, and that decision then became the way that they approached it.

So there was an engineer involved in the first instance who said this did not appear to be a safety issue, this appears to be an issue involving customer convenience, and it went on through and committees accepted it as it went forward.

Senator MCCASKILL. I'm curious. Was the lawyer that was involved in that, was that Mr. Kemp?

Mr. VALUKAS. Yes, and Elizabeth Zatina was also involved in that issue.

Senator MCCASKILL. OK.

Mr. VALUKAS. May I correct something I said before? I don't want to leave something—

Senator MCCASKILL. Absolutely.

Mr. VALUKAS. I'm sorry. I was asked whether or not we had looked at those death reports. We did look at those death reports, as Senator Boxer had asked. We reviewed those, but we reviewed those for purposes of seeing whether it was information in there which would reflect on why and how this took so long. We did not review them for some other purpose.

Senator MCCASKILL. OK.

I'm going to now ask a question for Senator Rockefeller, and then we will adjourn until the votes are over, and we'll come back.

Senator Rockefeller could not be here today, and so I am going to try to paraphrase his question for him, and I'm going to change it a little bit because there has been some testimony that would have impacted it that he hadn't heard. So I'm putting that on the record so the Chairman knows why I am changing slightly his question.

Ms. Barra, Senator Rockefeller has two West Virginia constituents, Mr. Sam Spencer and Mrs. Belinda Spencer, who tragically lost their son Leslie in a crash along U.S. 460 in a 2007 Chevy Cobalt, one of the models subject to your recall because of the defective engine switch.

According to Mr. and Mrs. Spencer, the facts point to Leslie's Cobalt losing power because of the defective ignition switch and the airbag not deploying upon impact. However, for reasons still unknown, the airbag eventually deployed after the initial deadly impact. Consequently, as we heard earlier—this is where I'm changing it slightly—it's my understanding according to Mr. Feinberg's

testimony that under those circumstances a claim can, in fact, be made. But it is not clear, I think, to victims out there this scenario, that there may not have been an initial deployment upon impact but maybe a deployment after the fact. Mr. Feinberg did testify that somebody should file a claim in those situations, but Senator Rockefeller's question is that you have consistently stated in public that GM will do all it can. You have repeatedly told Congress that the new GM will do the right thing.

If they are correct, if their son did in fact tragically lose his life because it lost power because of a defective ignition switch, will you pledge to do everything you can to allow the Spencers and victims under similar circumstances to seek financial redress from your compensation fund? Will you amend the terms of the compensation fund if that's what it takes? That's his question.

Ms. BARRA. So, first of all, I've been very clear that I would like the compensation program that Mr. Feinberg is administering to reach every person who might have been impacted in this case by these ignition switches. So as Mr. Feinberg said, I would encourage the Spencer family to submit a claim.

There has been extensive rigor that has gone on in the protocol for months that was worked. So I'm very confident in the protocol the way it stands today, so I do not plan to amend it. But I still believe within that protocol there are technical issues that need to be understood in the Spencer case, and I encourage them to submit a claim.

Senator MCCASKILL. OK.

We will now adjourn and go vote, and we should be back here in about, hopefully, 20 to 25 minutes. As soon as the third vote opens, because your folks will understand this who are with you, when the third vote opens I will vote immediately and come directly back here. So within five minutes after they call the third vote, I'll be here.

[Recess.]

Senator MCCASKILL. Thank you all very much. I appreciate your understanding. As much as I was tapping my foot over there, I couldn't get them to roll the votes as quickly as I would have liked, so I appreciate it very much.

Ms. Barra, when you were here before, you were very forthcoming about the facts were going to be the facts. In fact, I think the direct quote was "the facts will be the facts."

My question to you today, have you accepted the Valukas Report as factual?

Ms. BARRA. Yes.

Senator MCCASKILL. Is there anything in it that you think is erroneous or misstates the facts in any way?

Ms. BARRA. I think overall the Valukas Report characterizes and captures what happened, and that's what we've dealt with, and that's why we're going to implement all of the recommendations that were made.

Senator MCCASKILL. So my question to you, Mr. Millikin, if the CEO has just said on the record that this report is factual, why has General Motors refused to stipulate to the Valukas Report as factual in bankruptcy court?

Mr. MILLIKIN. Senator Boxer—excuse me. Senator McCaskill, I'm not aware of our position on that in bankruptcy court, but I can tell you that that issue is associated probably with the attorney-client privilege issues that are present in that proceeding, and on that basis they are probably taking that position. But I'm not familiar with the position that you're talking about in bankruptcy court on that issue.

Senator MCCASKILL. Who would be? That is obviously an important legal decision that has been made by your company, and you're the lawyer in charge. This is obviously—I don't know that you could have any more high-profile litigation than the bankruptcy proceedings right now as to what did and didn't happen when bankruptcy occurred as it relates to representations that were made.

So if you don't know, who does know?

Mr. MILLIKIN. Senator, I'm familiar with that particular piece of litigation and I've been working with the lawyers on it in terms of making sure that we're making the arguments that need to be made to deal with the economic loss claims that are part of that litigation. Just on that particular point, I don't know the answer that you're asking for.

Senator MCCASKILL. Do you understand it's a big one?

Mr. MILLIKIN. I'll be happy to get that answer and come back with it.

Senator MCCASKILL. That would be terrific, because this is a big question.

Mr. MILLIKIN. Yes, it is.

Senator MCCASKILL. If we are, in fact—and I will tell you I believe, Ms. Barra—I keep saying Beara instead of Barra. I'm sorry. You're probably used to it, aren't you?

I believe her, but there's a disconnect here again, because if, in fact, your company has decided this report is factual, that Mr. Valukas did a good job of ferreting out all the facts, then why in the world wouldn't you save time in the bankruptcy court by acknowledging that?

Mr. MILLIKIN. Senator, if my understanding is correct, then it's related to the attorney-client privilege.

Senator MCCASKILL. I don't understand what you mean.

Mr. MILLIKIN. I don't know the issue. I'm telling you I'm assuming that that position may be associated with that.

Senator MCCASKILL. I can't imagine how, evidentiary-wise. When somebody asks for a stipulation, the issue is your company has decided through its lawyer to say they will not stipulate to the Valukas Report being factual.

Mr. MILLIKIN. Senator—

Senator MCCASKILL. That's not attorney-client. Attorney-client would be the discussions between you and your lawyer. The position you've taken in the proceeding would not be subject to attorney-client, unless you're saying that the advice you've been given is something you don't want to share because it would violate the privilege?

Mr. MILLIKIN. No. What I'm saying, Senator, and I committed to you to find out exactly what the answer is and to come back to you.

Senator MCCASKILL. OK. And who in your company is monitoring this? When Mr. Holliday took the deposition when the bombshell dropped, he called a lawyer on your staff that day. As I said in a previous hearing, the first thing he did was call somebody that worked for you, Mr. Millikin, and that lawyer was over at his hotel room that night picking up those pictures.

Mr. MILLIKIN. That's correct.

Senator MCCASKILL. OK. So who is that person in the bankruptcy? Who is the person that is—if something happens in bankruptcy court, I assume you have outside counsel for the bankruptcy proceedings.

Mr. MILLIKIN. Yes, we do.

Senator MCCASKILL. And who is that outside counsel reporting to directly?

Mr. MILLIKIN. He's reporting in to Mr. Michael Gruskin.

Senator MCCASKILL. OK. And where is Michael Gruskin on this chart? Is he below Lucy Clark Dougherty?

Mr. MILLIKIN. Mr. Gruskin is a direct report to me.

Senator MCCASKILL. OK. And what is his title?

Mr. MILLIKIN. He handles general—I've split the litigation function since this occurred into two parts.

Senator MCCASKILL. I see.

Mr. MILLIKIN. One is product litigation, one is general litigation.

Senator MCCASKILL. OK.

Mr. MILLIKIN. Michael Gruskin has general litigation.

Senator MCCASKILL. OK. So Mr. Gruskin has never discussed with you whether or not to stipulate that the Valukas Report is factual in bankruptcy? You've never had that discussion?

Mr. MILLIKIN. That is not an issue that I remember having a conversation with Mr. Gruskin on.

Senator MCCASKILL. Wow. Not good. OK. It will be important for us to find out why you are hesitating to stipulate that the report is factual.

The NHTSA answers on the death inquiries, who signs off on those in the legal department? The answers where they said GM refused—I'm sure there is no way they are sending information—your company is not sending information to NHTSA about somebody in legal signing off on it; correct?

Mr. MILLIKIN. Senator, again, I'll have to get the answer to that and get back to you because that's handled by Product Investigations, as Ms. Barra indicated.

Senator MCCASKILL. OK. But isn't there a lawyer that would look at it? Product Investigations doesn't get to make that final call on language.

Mr. MILLIKIN. There could well be. I don't know that for a fact.

Senator MCCASKILL. OK. I would like to know what part of the legal department signs off on the responses to NHTSA inquiries, particularly the death inquiries.

Mr. MILLIKIN. I will get back to you.

Senator MCCASKILL. Who was it that gave Product Investigations the authority and sign-off to say we won't answer this question?

Mr. MILLIKIN. I understand.

Senator MCCASKILL. OK. Second, the technical service bulletins, there was certainly in the Valukas Report a lot of information

about not using the word “stall,” that there was some fear that “stall” would bring in regulators and it would catch the attention of NHTSA. I’m assuming technical service bulletins, the language of those are also run by the legal department.

Mr. MILLIKIN. I would assume so.

Senator MCCASKILL. Do you know who in your legal department does that?

Mr. MILLIKIN. I know who does it today. It’s done under the supervision of Lucy Clark Dougherty working with Jeff Boyer and his organization.

Senator MCCASKILL. OK. I would like to know who did it when the word went out that they couldn’t use the word “stall” in a technical service bulletin.

Mr. MILLIKIN. OK. I will get that information and get back to you.

Senator MCCASKILL. OK.

Mr. Valukas, one of the things that was interesting to me is the DeGiorgio situation. This is how old I am. When I tried to explain to my staff that Mr. DeGiorgio reminded me of the character in *Hogan’s Heroes*, “I know nothing,” nobody on my staff even got it because none of them had ever heard of *Hogan’s Heroes*.

Mr. VALUKAS. I get it.

Senator MCCASKILL. Hopefully you’ve heard of *Hogan’s Heroes*.

Mr. VALUKAS. I have.

Senator MCCASKILL. It is astounding to me that Mr. DeGiorgio has refused to acknowledge all of the involvement he had in changing this switch. But it was interesting to me you said there was no evidence that Mr. DeGiorgio ever told anyone else about switching out the part and not changing the number. But then you went on to say there were e-mails that were copied to other engineers.

Mr. VALUKAS. Correct.

Senator MCCASKILL. But your report didn’t go any further about the other engineers that were copied. Could you briefly, because I’m over my time—my colleagues are here now—could you briefly explain if you can remember? And if not, I would like to get it for the record, who were the engineers that were copied on e-mails that showed that this part had been changed?

Mr. VALUKAS. Yes. Let me give it to you briefly, and then I’ll give it much more detailed since there is a time issue here, and I’m happy to submit that.

In the report, page 102, there is a footnote 417 which focuses on this issue. Very briefly, what took place is there was an e-mail of June 2, 2006 which comes from Delphi. There are 30 people on that e-mail. Six of them were associated with General Motors.

The e-mail related to changes that were taking place. Most of the changes they’re talking about were in the circuit board.

Senator MCCASKILL. Right.

Mr. VALUKAS. We sought out the individuals who were on there. They were, as best we can tell—we don’t know that all of them were, but we think they were all involved with electrical issues for the switch on the Ion. None of them had any knowledge—strike that. The individual we talked to said this meant nothing to him about the change in the detent in the switch. He was focused on the issue of the electrical issues that were involved here for the

Ion. We were not able to reach the other four GM individuals on the e-mail. They were long retired and we couldn't find them, but best we can tell from our information, they were not at all involved in the process of investigating the stalls or airbag non-deployment, stalls in particular, that issue at all.

Senator MCCASKILL. So this was just an issue that the people that were copied had no understanding of the significance of that information in the e-mail.

Mr. VALUKAS. Short and sweet, that is what we understand to be the case. But I'll get you the detail.

Senator MCCASKILL. Thank you.

Mr. VALUKAS. It's relatively complicated, but that's the answer.

Senator MCCASKILL. Thank you very much.

Senator KLOBUCHAR?

Senator KLOBUCHAR. Thank you very much, Madam Chairman. Thank you, everyone.

Mr. Valukas, your report demonstrated very clearly that the ignition switch issue was viewed internally at GM as a customer convenience issue, and as a result it just didn't have that kind of urgency to fix it. From your report—this is a quote—“not one of the Committees considering a fix for the switch, which were filled with engineers and business people whose job was to understand how GM's cars were built and how different systems of the cars interact, ever reclassified the problem from one of customer convenience to one of safety or demonstrated any sense of urgency in their efforts to fix the switch.”

Do you want to elaborate on that?

Mr. VALUKAS. What took place back then, we're talking 2004, 2005, 2006 period of time where they knew, in fact, that they knew the switches weren't—that the cars were, in fact, stalling. They knew at the time of one of the press events that that was taking place, and they had *The New York Times* article and other articles which were calling that to their attention. But what happened in connection with this, an engineer looked at this when the first PRTS was opened and did not categorize the stall as a safety issue. Having made that decision, that's where they went in connection with that.

But when we went back and asked the individuals in that committee, those committees, did you know that the airbag wouldn't deploy if it went into the Accessory, and the answer was no, we didn't know that. And the question then became, well, had you known this, would you have responded differently, and the answer was yes.

So what we found was that people who were in this silo looking at the switch were not covering the issue of the deployment, which was in another silo, if you will. So those who were making the decision did not focus on that issue and claimed not to know about that issue.

Senator KLOBUCHAR. And somehow that state trooper saw the issues together.

Mr. VALUKAS. Yes.

Senator KLOBUCHAR. I just found that interesting.

So, Ms. Barra, going forward now, what is going to be the process when these things are considered, or are there still going to be

these silos when something is viewed as a customer convenience issue versus a safety issue?

Ms. BARRA. Absolutely not. First of all, we've put in much more rigor on how issues are analyzed. The heart of it, though, is with the Product Integrity organization and the fact that in addition to the group of people that are responsible to do parts and design individual parts, they then will be—the parts coming together will be integrated into the Product Integrity organization, and they will look at it from a systems perspective, and they were specifically designed around all the safety systems in the vehicle, and we're actually bringing in outside groups, for instance from aerospace, to look at the way we designed the Product Integrity organization to assure that we have state-of-the-art or the most modern possible to make sure that these types of issues won't happen again, and we'll really be looking at how the system operates, especially as it relates to safety.

Senator KLOBUCHAR. And then is there going to be some kind of a metric used to decide what is customer convenience or where it goes? How is that going to work?

Ms. BARRA. I would say there is going to be much more rigor in all of the safety systems in the vehicle, and those individuals will have I'll say the ability to change someone else's opinion. If someone on the parts side says no, I think this is customer convenience, those who truly understand from a systems perspective will be the ones who make the call and they will override if someone else has a different opinion. So I think it's going to be the very knowledgeable people that we're putting in on the systems engineering to know that.

We're also, though, looking at the systems, and that responsibility won't cut across a couple of different folks. It will be more in one group so they understand the whole way the system operates.

Senator KLOBUCHAR. Very good.

Mr. Valukas, another thing from your report. It points to an instance in September 2005 when a team of engineers considered replacing the switch after reports of "moving stalls" but was rejected because, as the engineer whom you interviewed told you, it was rejected as being too expensive and not resulting in offsetting changes in savings on warranty costs.

Do you find that throughout that period, 11 years, when confronted with replacing the ignition switch, the employees used the acceptable business case as the most important metric?

Mr. VALUKAS. Yes, for the period of time that the problem was considered a "customer convenience" issue. What happens in that context is that once you've characterized it as non-safety or customer convenience, then cost becomes an issue, and the issue becomes will this solution solve the problem completely, and how much will it cost. And during this point, that was the consideration, will it solve the problem completely—they didn't know that would be the case—and how much was it going to cost. Had they elevated it to a safety issue, those considerations would not have been in play.

Senator KLOBUCHAR. And I assume, Ms. Barra, the answer would be similar to what we talked about earlier?

Ms. BARRA. Yes, definitely. Once it's in safety, we just look at what it takes to fix the issue. Cost doesn't come into the equation.

Senator KLOBUCHAR. OK. And then one last question. We talked earlier in the first round of questions just about the GM nod and the change of culture and what you've been working on. Just one last question along those same lines about transparency.

I think we all know that has been a major focus here, to respond to inquiries, to work with NHTSA. My colleagues have raised a number of instances where things weren't forwarded. And to work with Congress by being here today—that's a good thing—in an open and transparent way to ensure we improve vehicle safety.

Could you, last, just talk about the steps that you've taken so far to ensure that you're fulfilling this commitment to process more transparency? And then what other things do you think you can do in the future?

Ms. BARRA. Sure. Well, again, from a transparency perspective, a couple of categories. One, the way we do the work across the company, and that would very much be looking at the integration of the car as we do it with Product Integrity. So there will be transparency in the way the systems operate and much more rigor in the validation of those systems.

As we work with NHTSA, again with the appointment of Jeff Boyer, who is the Vice President of Safety, he will be working in a much more cooperative way, already is, to make sure when NHTSA has an inquiry we're very responsive to it.

I would also say the way that we're working with our data analytics, that as pieces of information come in, whether they come in from our plants, from warranty data, out in the field from our dealers, directly from customers, there's a tremendous amount of information now through social media, through legal claims, we are working and have data analytics tools to mine that data so there won't be information in one place that isn't known across the company.

So those are just three examples. And then probably the most powerful, because it's people, is making sure people understand our expectations, and I've already had employees call me personally to raise an issue. We've turned it around in 24 hours. In addition to the engineer responsible talking to the employee, I've called them back and said are you comfortable with your answer. That type of behavior I think demonstrates to all of our engineers and all of our employees that we want to listen to them and take their issues seriously.

Senator KLOBUCHAR. Thank you very much.

Senator MCCASKILL. Senator Blumenthal?

Senator BLUMENTHAL. Thank you very much, Senator.

I think you can fairly gather that this committee is listening with a fair amount of incredulity to the contention that the General Counsel of this company had no knowledge about this defect or about the concealment of the defect and the deceit of the Federal Government and of its customers before February of this year. And you've provided answers that I think for me are unsatisfactory on waiving the bankruptcy shield, disclosing documents, making employees available, and opening the secret settlements.

I want to ask you about a specific person whose life was changed, and she's still alive. Her name is Candice Anderson. As you know, she pled guilty to criminally negligent homicide after a car she was driving crashed and killed Jean Erickson, and she was found to have traces of a drug in her system. We now know that the crash was due to not anything she did. It was due to a defective ignition switch.

She still has that conviction on her record. She has borne the feelings of guilt and suffering for years thinking she was responsible.

I'd like to ask you, Mr. Millikin, will you recommend to Ms. Barra that GM join me and others, including the former prosecutor, in calling on the Governor of Texas to pardon Ms. Anderson?

Mr. MILLIKIN. I will recommend to Ms. Barra that General Motors cooperate with any governmental agency that is taking a look at the circumstances behind that conviction and what needs to be done with that conviction.

Senator BLUMENTHAL. Ms. Barra, will you recommend to the Governor of Texas that he pardon Ms. Anderson?

Ms. BARRA. I think we will provide information to support that decision, but I don't think it's something that is appropriate for me to do. I don't have all the facts of the case.

Senator BLUMENTHAL. You know, with all due respect—and I'm sympathetic to what you're trying to do in changing the culture at GM, and I cannot say enough good things about your workers and about the company. But I think that that answer really is unworthy of GM. I hope you'll think more about it, because this is a young woman whose life has really been changed as a result of a perversion of the justice process, as a result of GM knowing and concealing that she was innocent. GM allowed an innocent person to be convicted of a serious crime.

We've been talking here about the GM nod. I have a feeling what we're getting here is the GM salute—someone else is responsible, someone else should take the job of doing the right thing. So I hope you'll reconsider. I'm not taking this answer as necessarily final, and I hope we'll have a chance to talk some more about it.

Let me ask you about, Ms. Barra, about expanding compensation. I mentioned at the opening that there have been a number of recalls. I think the number is 8 million cars with defective ignition switches which the company acknowledged caused deaths and injuries. Will those deaths and injuries be included in the compensation fund?

Ms. BARRA. There are very distinct differences between the population that is included in the compensation program that is being administered by Kenneth Feinberg as it relates to very specific issues, a series of mistakes that were made over a long period of time in what I'll call the Cobalt family of vehicles. So a very specific set of facts.

On the other vehicles, I would say quite the contrary. We went aggressively and proactively and looked at each of the systems as it relates to how they worked and recommended in some cases, even with no field data, and did testing, by the way—first of all, we did testing to understand what people put on their key rings.

Ninety-nine percent of the population puts 0.6 pounds at the highest level.

Senator BLUMENTHAL. I apologize for interrupting. I understand that there are technical distinctions between the two ignition switches. But isn't it true that, regardless of the distinctions in the so-called population group, ignition switches failed in all of those models?

Ms. BARRA. No. I would say there are very different facts related to what happened in the Cobalt ignition switch situation versus the actions we've taken, very different.

Senator BLUMENTHAL. If you could supplement that response with more technical detail, I'd appreciate it.

Let me ask you one more question. I appreciate your response to Senator Markey on what seemed to be your support for legislation on expanding accountability and information going to NHTSA. I wonder if you would agree with me that corporate officials who conceal or hide dangerous defects that can cause deaths or injuries ought to be held criminally culpable.

Ms. BARRA. I don't support that concept. I think that there are many other avenues where those types of issues are already dealt with, so I don't support the change.

Senator BLUMENTHAL. Do you support legislation which I proposed with Senator Graham that would provide for a public interest standard before any settlements are sealed, as those involved in this defective ignition switch were done?

Ms. BARRA. I would have to understand the legislation a lot more to be able to answer that question.

Senator BLUMENTHAL. Thank you.

Thank you, Madam Chairman.

Senator MCCASKILL. Senator Markey?

Senator MARKEY. Thank you, Madam Chair.

Mr. O'Neal, documents show that in 2001 Delphi engineers drew up two designs for the GM ignition switch, two designs. The main difference between the two designs was that the one that failed dramatically, the 2006 switch, had a spring that was shorter and less stiff than the other one, and it was that spring that caused the switch to fail to meet GM's specifications and caused the key to so easily turn the engine off.

Why was the weaker spring used in the actual vehicle rather than the stronger one, which was clearly available simultaneously in 2001?

Mr. O'NEAL. Senator, our investigation into that portion of the evolution of that switch actually supports what Mr. Valukas also uncovered in that the original specifications were sort of a target, and then as the switch evolved from a developmental standpoint Mr. Ray DeGiorgio also wanted a switch that had a certain tactile feel, and by that I mean it would feel a certain way, a smoothness as you moved it from one position to another. I believe the description of that desired feel was to be more European-like. In order to achieve that feel, that is where the softer spring comes into play, and as a result of that the torque was lower.

Senator MARKEY. Did Delphi produce or review a cost estimate that compared the cost of the two switch designs?

Mr. O'NEAL. I don't recall, but I would think the cost involved to switch from one to the other would be insignificant.

Senator MARKEY. Could you provide that information to us?

Mr. O'NEAL. Sure.

Senator MARKEY. Now, in 2006, when GM was starting to acknowledge that it had a problem, it changed the ignition switch design to this version, and this switch turned out to consist of the identical stronger spring design that was not used in 2001 but available in 2001. Was Delphi involved in the design discussions with GM in this later period of time, and did you suggest the one over the other? That is, the one that was accepted over this one that was rejected in the earlier time period.

Mr. O'NEAL. Obviously, we were involved or the change could not have been made. I mean, clearly that's there. Our investigation shows that the GM team was extremely concerned about warranty, customer satisfaction and quality issues. They actually approached the Delphi side to ask if there was anything that could be done in order to raise perhaps the torque level to improve some of those issues, not safety related but quality. And then obviously what came out was a solution set that we have today.

Senator MARKEY. So do you have documentation back in that earlier period of time as to why one was chosen over the other? And if you have that, you're saying that it was the ease of use that ultimately led to the selection of the one that did not work as opposed to the one that—

Mr. O'NEAL. Well, I don't think the selection of the detent plunger and the spring that was in play from the initial was in question. It was selected, and it was approved by General Motors. So, yes, we do have that, and I think Mr. Valukas' report supports that.

Senator MARKEY. So did you recommend one of the—did you recommend the one that was selected in 2006 over the one that ultimately was used in 2010 that has been working? Back in 2001, did you at Delphi make that recommendation to GM?

Mr. O'NEAL. That development is a mutual give-and-take between the supplier and the car manufacturer.

Senator MARKEY. I appreciate that. But what did Delphi recommend at the time?

Mr. O'NEAL. Obviously, at the end of the day what we ended up with is what we all agreed to go do in order to meet the requirements that the switch was asked to meet.

Senator MARKEY. Again, I think it's important for us to have that as part of the record here, and whatever you could provide to us from that earlier decisionmaking period would be very helpful to us.

Mr. O'NEAL. Thank you.

Senator MARKEY. Madam Chair, I would just like to thank you again for also focusing on NHTSA. The NHTSA Administrator told *The New York Times* just yesterday that it was GM that stood in the way of safety; and, of course, we all agree that GM deserves much of the blame. But while Ms. Barra and Mr. Valukas have described the GM nod, which was said to occur when everyone in a meeting all nodded their heads but then did nothing to solve the safety problems, what we have at NHTSA is the NHTSA shrug. NHTSA didn't think that reports of cars stalling posed a safety

problem. NHTSA ignored its own contractors' reports linking the ignition switch defect to fatal accidents in which airbags didn't deploy. NHTSA paid no attention to documents it requested from GM that spelled out exactly what was causing these crashes. And NHTSA completely failed to notice the high numbers of consumer complaints and other reports about GM's vehicles that were submitted to its data bases. NHTSA was also repeatedly warned, and NHTSA also just shrugged in response.

So we do have a GM nod; we also have simultaneously a NHTSA shrug. I think the whole story ultimately has to get out there, and I thank you for your pursuit of the truth.

Senator MCCASKILL. Thank you. Thank you, Senator Markey.

Mr. Millikin, maybe you can explain. I'm curious about ESIS.

Mr. MILLIKIN. I'm sorry, Senator, there was some background noise, I couldn't hear you.

Senator MCCASKILL. I'm curious about ESIS, this company that administers claims for you.

Mr. MILLIKIN. Yes?

Senator MCCASKILL. It's a weird deal. They work at GM, they work only for GM, but they're not GM employees?

Mr. MILLIKIN. No, they're not.

Senator MCCASKILL. And why is that? Why is there that structure? They don't work for anybody else in the world but you. They are a captured company. Are they a subsidiary of your company?

Mr. MILLIKIN. Not to my knowledge.

Senator MCCASKILL. Are they a subsidiary?

Ms. BARRA. Not that I'm aware of.

Senator MCCASKILL. So the people that are on the front lines gathering the information and handling these claims as they come in—I'm trying to understand for what business purpose would you want them to be separate from your company if they are completely captured by your company and doing nothing but a GM function.

Mr. MILLIKIN. So they have been doing product investigations for us for quite some time. They've been doing a very good job for us for quite some time. I'm not familiar with the initial set-up for them. I do know that there are people whose names I am familiar with who I've talked with our product litigators about who say they do a very good job.

It's not unusual to see use of outside suppliers to take on functions inside General Motors. For a long time, for example, we had outsourced, as they call it, our security function, and they did it because they felt that someone else could probably—

Senator MCCASKILL. I think the security function is a little different than—

Mr. MILLIKIN. No, I'm just saying—

Senator MCCASKILL. I understand. I understand the point you're making. If you can provide any illumination for the record as to why that business model makes sense for your company. It's unusual to have the frontline claims people, in my experience—and I used to do legal work on behalf of insurance companies, and obviously they have a whole lot of claims people, and typically—I'm just curious as to why. I thought that was interesting.

Mr. Valukas, you made a couple of conclusions, one in the House hearing and one in your report, that I thought—I'm very familiar

with your report. I felt like I was back in school studying, cross-referencing, going to the acronym table. I did think it was thorough. I did think it was complete. But a couple of conclusions are interesting to me.

One is that you said that—you kind of went out of your way to conclude that GM did not put cost over safety as it related to this defect, and I think the facts in your report are inconclusive in that regard. All you had to go on to say that is what the people that you interviewed told you, and these were the same people that you have called out for indifference, incompetence, lack of urgency. Is there something I'm missing here that you base that conclusion on?

Mr. VALUKAS. Yes, and if I can be helpful in this regard.

Senator MCCASKILL. Sure.

Mr. VALUKAS. My experience as a former prosecutor, as an individual who is a litigator, is that people's recollections are what people's recollections are, and sometimes they change over time when considering where they are at a given point. So I focused and we focused initially and throughout on that 41 million documents that we were reviewing and that we were pulling out and looked at that for purposes of saying, OK, don't tell me what you're telling me now, I'd like to know what you were thinking and doing then.

And as we reviewed those documents and reviewed those documents very carefully on this issue, do we have evidence on these issues where someone was sending an e-mail or writing a memo or doing an analysis which says, well, I'd like to deal with this problem but it costs too much, and so I'm not going to deal with this problem, so where you would have cost over safety, and we looked at that issue in a number of different ways.

So the witnesses testified to what the witnesses testified to or told us, and you have that in the report, but the documents do not reflect a cost-over-safety matter.

Senator MCCASKILL. I understand.

Mr. VALUKAS. That being said—

Senator MCCASKILL. That makes sense.

Mr. VALUKAS.—we also call out the fact that there was enormous cost-cutting taking place at GM during that period of time. Engineers were being doubled up with additional information. People who were assigned to safety things were taking on two and three assignments where there had been one before. And we could not say with certainty that that wouldn't have had some impact.

Senator MCCASKILL. So macro cost-cutting could have been part of the influence, but you found no smoking gun in evidentiary documents that would indicate this was actually being discussed.

Mr. VALUKAS. Yes, and in no testimony. In fact, in the testimony, people absolutely disclaimed that. They said that was not the way they were doing business.

Senator MCCASKILL. OK. The other thing that jumped out in the report that I found astounding was the recall on power steering. In 2010, General Motors did a recall on a power steering defect, and what was interesting about that was that, of course, you did not consider a recall for stalling problems with the faulty ignition. According to the report, GM did not consider the loss of power steering a safety problem. You internally noted that power steering was normally a customer satisfaction issue. Cobalt was handled in a

different manner based on GM's desire to obtain a quick resolution and closure of the government investigation. So all NHTSA had to do was write a letter saying they were going to look into the power steering defect, and you guys recalled. You did the recall on the power steering defect.

Alan Adler, GM's manager for safety communications, remembered that GM had initially been planning to characterize electric power steering as a customer satisfaction issue, but as a result of the Congressional scrutiny of Toyota and the unintended acceleration issues, it was agreed that GM should issue the recall before the hearing so "we would not get mentioned and dragged into the Senate."

That's concerning to me, Ms. Barra, because it looks like there was a quick reaction when NHTSA threatened combined with Congressional action against another manufacturer that got the result that was so desperately needed on this ignition switch. One of the tragic ironies is that one of the young women that was seriously injured in one of these accidents, her car had been taken in for the power steering recall and it was fixed for the power steering. But, of course, there was no recall for the ignition switch. So had the same urgency been around the stalling and the engine turning off and the ignition switch issue—have you figured out why structurally there was such a quick response on something that you typically wouldn't have quickly responded to, and do you really feel that you've gotten a handle on changing that in the culture?

Ms. BARRA. I think the Valukas Report captures and you've stated largely the reasons. And also if you look, then, at the data around the power steering, it clearly led to support that. I would say I do feel that we've gotten around that very much so, and I think I have data to support that with the recalls that we've done, because when you look at the fact that in some cases, of the 29 million vehicles that we've recalled this year, with 58 recalls, in some cases we've recalled vehicles that have no field incidents because when we went back and looked from a systems engineering perspective did it meet what it needed to meet, if it didn't, even if there was no field data, we've made the recall.

Senator MCCASKILL. That's great, that's great. I appreciate that. Senator Klobuchar?

Senator KLOBUCHAR. Thanks. I just had one last question on the recalls.

If you could just go through again how you're doing those recalls. I think we're all aware there have been a large number of recalls, and I've been trying to focus in this second round of questioning just about how things are going to change in the future. I think we all know that this was a tragedy and that the justice issues and the compensation issues are going to be key for the victims, but key for those victims' families and consumers is the changes that are going to be made going forward, and I think we can learn as much from the changes that are being made as we can from the past.

I want to know just exactly, beyond even the power steering issue, just how you're doing these recalls differently and how that will continue in the future.

Ms. BARRA. Well, first off, I would say we're dedicated to creating and designing and validating vehicles that won't need recalls be-

cause they will be designed well, and that's the work and the validation work and the systems engineering focus. So, point one.

But if indeed we get data from any number of sources that I've already shared, that data is being processed much more quickly for us to look at and say is there an issue that affects a safety system that requires a recall. I would also say that Jeff Boyer, who runs this process, our head of Global Product Development, sits on that committee. I get an agenda for that before the meeting occurs so I'm completely aware, along with our General Counsel, our CFO, and our President. So this is now at the top of the company, and we're demonstrating we're focused on safety. We're mining the data. And again, as we see issues, we're going to be quick to respond, as we've demonstrated.

Senator KLOBUCHAR. I was just at one of your dealerships looking at—well, getting my 15-year-old Saturn tuned up a little bit. But there was a lot of action at those dealers, and I know a lot of people are bringing their car because this was one that had repairs. So I can see that people are bringing them in, that these cars are getting repaired. And again, just like everyone else, we hope that the next versions of these cars you won't have to do it again. So, thank you very much.

Senator MCCASKILL. Senator Blumenthal?

Senator BLUMENTHAL. Thank you.

I was interested in your response on the testimony and the documents which seemed to support GM's contention on putting profits ahead of safety, Mr. Valukas, and I was interested in it because it would seem to be in GM's interest to make public those documents. Is that so?

Mr. VALUKAS. I'm sorry, Senator. I have a little problem with the hearing on the right side. If you could just repeat the last question, I'd appreciate it.

Senator BLUMENTHAL. Sure. I'll try to restate it, and I hope my time will not be subtracted.

Mr. VALUKAS. It's my fault.

Senator MCCASKILL. You have all the time you want.

Senator KLOBUCHAR. You appear to be the last person.

Senator MCCASKILL. We have to vote again in 4 minutes.

[Laughter.]

Senator BLUMENTHAL. It would appear to be in GM's interest to make public some of those documents and testimony that underlie your report. Is that correct? You just made reference in your response to Senator McCaskill, and I thought here's an example of transparency actually working in GM's interest.

Mr. VALUKAS. Senator, I can't respond to that question. My responsibility was the Board asked me to write this report, to gather up the facts. I believe we did what we were asked to do. The issue of how it will be disclosed or what should be disclosed resides with the client. I don't have that authority.

Senator BLUMENTHAL. Thank you.

May I ask you, Ms. Barra, will GM know about applications to the fund at the time they're made? How much knowledge will GM have of what the applications are, what the awards are, in real time, so to speak?

Ms. BARRA. Mr. Feinberg is completely independent as he administers this. I don't know his procedure, if anything will be shared. But it is his sole discretion if anything is shared and when he chooses to do that.

Senator BLUMENTHAL. Will it be his discretion alone as to whether applicants are given time to postpone their decisions until after the Department of Justice concludes its investigation? In other words, will applicants be given the choice to wait until they know what the full story is out of the Department of Justice investigation?

Ms. BARRA. I think with the fund we've been very clear on the timeline associated with it, that claims will begin to be accepted on August 1, and that period for applications will end at the end of the year, and then he will evaluate and make decisions.

Senator BLUMENTHAL. But he has not, at least so far as I'm aware, definitively stated whether then applicants can postpone the decision as to whether to accept the offer from the fund or bring private litigation.

Ms. BARRA. I don't know the time-frame in his process of how long a person, once they have what his decision is, I don't know the time-frame on that.

Senator BLUMENTHAL. That would be his decision?

Ms. BARRA. That will be I think what's called out. I just don't have it in front of me.

Senator BLUMENTHAL. And if it's not part of the protocol now, it would be within his discretion?

Ms. BARRA. Again, I don't plan to change any part of the protocol. I haven't reviewed this aspect, but I think the protocol is very well defined, and it's going to stand.

Senator BLUMENTHAL. And let me ask Mr. O'Neal, if I may, can you do anything to accelerate the production of these replacement parts that go into the vehicles to repair them?

Mr. O'NEAL. We have worked extremely hard to do exactly what you said. We're up to a million complete at this stage, and it looks like the 2 million mark will be clipped right around the end of August, and there's very little more we can do because of where we started. I don't think we can do more between now and August on the 2 million—

Senator BLUMENTHAL. If GM were to pay more or invest more, you're saying there's nothing you can do?

Mr. O'NEAL. No, I don't think it's a money issue. It's just there's only so much you can get accomplished in a short period of time to ramp up from nothing, literally nothing, to a million. I think it's the fastest we can go, but we'll go back and look at it again. Mary and I have talked a few times about this and things have improved considerably from when we started talking, probably by several months, as a matter of fact. So we'll look at it again. I understand the need to get it done as soon as possible.

Senator BLUMENTHAL. Because I am hearing from dealers, who are hearing from consumers, and the dealers say they're having trouble, at least in Connecticut, and I think it's probably elsewhere, in really getting the parts they need as quickly as they would like to do. I understand you've got to make the machine tools. There

isn't a magic wand here. But if you could tell us whether, in fact, there are steps you can take, I would appreciate it.

Mr. O'NEAL. Again, we'll go back and look at it. But right now the commitment is to exceed the 2 million by the end of August.

Senator BLUMENTHAL. And I just want to make a final question to Ms. Barra. On those issues where Mr. Millikin has said he has recommendations—for example, the bankruptcy shield issue—I hope you will reconsider, as I hope you will on the Candice Anderson issue, the responses that we've heard here. I know that you are making valiant efforts to overcome these problems, and I think consumers appreciate the numbers of recalls, the frankness and candor that those recalls demonstrate, and my hope is that the new GM won't be hiding behind the old GM's bankruptcy on giving those pre-2009 customers the opportunity to go to court and have a choice between what the fund may give them and what they could obtain in court, and also others who have been damaged economically.

So I thank you very much for being here today and all of the witnesses for your testimony here. Thank you.

Senator MCCASKILL. I want to thank all the witnesses—Mr. Millikin, Ms. Barra, Mr. O'Neal, and Mr. Valukas. Thank you for your patience. This has not been short, and I know this is not your first visit, and I have a feeling you're not looking forward to another invitation anytime soon.

Ms. BARRA. That is correct.

Senator MCCASKILL. I knew I could speak for you in that regard.

But it is important, I think, and the fact that you acknowledged our role in this and that you respected it is important. We all want General Motors to succeed. There's no one in Congress that doesn't. This is an American company that all of us are very proud of, and those of us who helped save General Motors with votes during the crisis are very proud of what the American automobile industry has in fact accomplished since those days.

You've got a big problem still ahead of you, and we will continue to be asking questions and do follow-ups on this hearing. But know we appreciate the efforts you're making, and we will look forward to checking in with you after we have a further visit with NHTSA and making sure that all of those systems are working the way they should so that we have the right oversight on an ongoing basis so we're never dealing with this again.

Thank you all very much.

Ms. BARRA. Thank you.

[Whereupon, at 1:47 p.m., the hearing was adjourned.]

A P P E N D I X

DELPHI AUTOMOTIVE PLC
Troy, MI, July 29, 2014

Senator EDWARD J. MARKEY,
218 Russell Senate Office Building,
Washington, DC.

Dear Senator Markey:

This letter provides the requested follow-up to your questions to me at the July 17, 2014 Senate Subcommittee Hearing.

Question # 1: What was the cost difference between the switch using the longer Catera spring and the switch using the shorter Delta spring?

As I noted, the cost difference between the two springs was insignificant; in fact, less than a penny (in 2006 the Catera spring cost \$0.0225 each and the Delta spring cost \$0.0302 each).

Question # 2: Can Delphi provide additional documentation as to why the Delta spring was chosen for the switch in 2002 and the extent to which “ease-of-use” was the underlying reason?

There are several documents related to the ignition switch that discuss the importance of “ease-of-use” and “feel.” The Component Technical Specification dated March 22, 2001 includes specifications related to “ease-of-use” or “feel,” which it indicates are subject to GM Engineering approval. An excerpt is attached at Tab #01.¹ Section 3.2.2.3 of the Component Technical Specification states in part:

3.2.2.3 Tactile Characteristics

Refer to the Force Displacement Curve(s). Final switch tactile feel is subject to GM Engineering approval. Switch efforts shall be smooth with clearly defined detents. The switch shall not be damaged when the maximum allowable torque is applied to the actuator, clockwise or counterclockwise. All functionally detented switches must operate without noticeable friction or binding.

The supplier shall maintain GM approved master samples for comparison throughout the life of the program.

The Component Technical Specification is discussed in the Valukas Report, an excerpt of which is attached at Tab #02. According to the Valukas Report, Mr. DeGiorgio explained that after the Component Technical Specification was issued on March 22, 2001, “the switch was still subject to ‘fine-tuning’ based on input from the vehicle program team as well as GM’s ‘TALC’ engineers, who reviewed vehicle components for touch, appearance, lighting, and color.” (See Valukas Report (Tab # 02) pages 39–40).

As I stated, the design incorporating the Delta Spring was approved by General Motors. This approval came at the end of a collaborative design process during which multiple versions of the spring, along with other component parts for the ignition switch, were considered and tested. During that process, GM requested samples of the switch for review by its TALC Group. One such request is attached at Tab #03.² (See Bates Number SC–001223, Item 27). An e-mail exchange in February 2002 between GM and Delphi representatives discusses the reasons why the design incorporating the Delta spring ultimately was chosen, including that the design matched the “detent feel” of the samples reviewed by GM’s TALC group, as Mr.

¹This document was provided to the Senate Commerce Committee on June 16, 2014, Bates Number SC–007284, SC-007305.

²This document was provided to the Senate Commerce Committee on May 9, 2014, Bates Number SC–001213 and SC-001214.

DeGiorgio had previously directed. The e-mail exchange is attached at Tab #04.³ Relevant excerpts from the e-mail exchange state:

Previously you had directed us to match the Talc samples for detent feel on Delta. During the PDT 2-13-02 you directed us to 15 N-mm+/-2 N-mm. The Epsilon is currently meeting that requirement. Delta can be increased to this new requirement, but there are several things we all need to be prepared for.

1. Possible damages (cracking) during durability to rotors due to increased forces at the driver tip required to rotate through the detent positions.
2. Possible premature (less than 3x life) wear-out of the detent with an extremely heavy feel resulting.
3. Possible impact on electrical functions (PCB wearout) as the spring loads are substantially larger than those previously tested. These loads act along the same axis as the contact forces. (See Bates Number SEN-000003 (Tab # 04)).

The Talc samples were 9.6 N-cm. The new production intent version of the switch has 9.5 N-cm. We feel this is a match of the TALC switch. We can revise this again but we all need to be aware of the impacts in timing, cost, and possible other issues that might be created when we are this close to PPAP.

If we are trying to improve the “feel” of the switch through the column, please remember that we have no control over how the lock cylinder and related parts impact the “feel” of the switch. We will be happy to make any changes you need in order to improve the system as a whole given cost and timing. (See Bates Number SEN-000002 (Tab # 04)).

In this same exchange, Mr. DeGiorgio directed Delphi not to make further changes to the switch. (See Bates Number SEN-000002 (Tab # 04)).

In addition to this documentation, Mr. DeGiorgio also testified in an April 29, 2013 deposition in the *Melton* product liability case as to the importance of “ease-of-use” and “feel” in the switch design. An excerpt is attached at Tab # 05.⁴ On pages 46-47 of the transcript, Mr. DeGiorgio stated:

One of the criticisms—I shouldn’t say criticisms. One of the customer complaints we have had in the—and previous to this was we had cheap feeling switches, they were cheap feeling, they were higher effort, and the intent of this design was to provide a smooth actuation, provide a high feeling of a robust design. That was the intent.

. . . the intent was to make the transition to go from run to off with relative ease.

Please let me know if you have any further questions.

Sincerely,

RODNEY O’NEAL,
Chief Executive Officer and President,
Delphi Automotive PLC.

Attachments

³This document was provided to the Senate Commerce Committee on April 28, 2014, Bates Number SEN-000002.

⁴This document was provided to the Senate Commerce Committee on April 28, 2014, Bates Number GMHEC000138906.

TAB #1

General Motors Corporation

North American Operations

COMPONENT TECHNICAL SPECIFICATION Double click it

ORIGINATING CENTER: Electrical, Information and Controls Center

SUBSYSTEM: Power and Signal Distribution Use official subsystem nomenclature

COMPONENT: Column Mounted Discrete Logic Ignition Sensor

PART NUMBER: 12450250 Use the UPC/FNA nomenclature

FIRST USAGE: 2001 GMX 320 Program

MODELS: 2003 Delta Z Program Platform year and models of first application if applicable. List other platforms, years, and models if applicable.

ENGINEER:	Ray DeGiorgio	phone (810) 986-5868 fax (810) 986-2169	Date
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REVISION HISTORY

DATE	EWO	REV	Paragraph	DESCRIPTION	RESP.
10/2/97				Initial Publication	teu
2/17/98		001	Cover Page	Renamed component, revised resp. engineer	teu
			3.1.2.2.1	Revised mechanization drawing	teu
			3.2.1	Signal level ckts: deleted 150mV drop req.	teu
			3.2.1	Signal level ckts: revised contact resistance from 100Ω	teu
			3.2.1.4	Revised contact resistance req. from 100Ω to 100mΩ	teu
			3.2.1.7.1	Clarified short ckt. test, revised resistive values	teu
			3.2.2.15	Completed all theft deterrence TBD's.	teu
			10/19/99		002
			3.2.2.3	Revise tactile plots	rgd
			3.2.1	Include switch loads for GMX 320 Program	rgd
			3.1.2.2.1	Add Switch Mech	rgd
03/22/01		003		Finalized	rgd

Component Technical Specification	NUMBER: 12450250 <small>Assigned number</small>
Printed: June 20, 2014/Revision, not auto., date) (printed: 06/20/14 1:10 PM)	PAGE: { PAGE } of { NUMPAGES } * MERGEFORMAT }

General Motors Corporation

North American Operations

4. Record results. Measure actual current flow and time duration. Indicate if fuse blows, and any other visual results of the test.
5. Repeat steps 1 through 3 using a 1.0 ohm resistance, and a direct short circuit to ground.
6. Disassemble switches and record results of visual inspection.

General Motors shall review all test results and samples for approval.

3.2.1.8 Contact Bounce

No individual bounce shall exceed 10 msec in duration. There shall be no more than 5 contact bounces. A contact bounce shall not occur 10 msec after the initial make or break. For analysis purposes, the contact bounce duration shall be defined as the time periods when the voltage across the contacts exceeds 10% OCV (Open Circuit Voltage) for Normally Open contacts and 90% OCV for Normally Closed contacts. Contact bounce shall be measured at the rated electrical loads using an oscilloscope as specified in Section 5.12 of GM 9110P.

3.2.1.9 Electro-Magnetic Compatibility (EMC)

The switches shall meet any applicable EMC requirements set in GM 9100P series. In particular, the device shall meet the performance objectives of GM9105P, Immunity to Conducted Transients, and GM9109P, Immunity to Electrostatic Discharge, for a Class C device. (This requirement is applicable only to products with discrete electronic components.)

3.2.1.10 Reverse Polarity

The switch shall operate without damage or performance degradation when tested according to Section 7.2 of GM 9110P

3.2.1.11 24-Volt Jump Start

The switch shall operate without damage or functional degradation when tested according to Section 7.3 of GM 9110P.

3.2.1.12 1000 Hour Load Soak Test

The switch must meet performance requirements after exposure to 1000 hours continuous duty when tested according to Section 9.10 of GM9110P.

3.2.2 Physical/Mechanical Requirements

3.2.2.1 Dimensions and Capacities

Dimensional requirements shall be specified in the component part drawing.

3.2.2.2 Mass Properties

Mass of the switch shall not exceed 150 grams.

3.2.2.3 Tactile Characteristics

Refer to the Force Displacement Curve(s). Final switch tactile feel is subject to GM Engineering approval. Switch efforts shall be smooth with clearly defined detents. The switch shall not be damaged when the maximum allowable torque is applied to the actuator, clockwise or counterclockwise. All functionally detented switches must operate without noticeable friction or binding.

The supplier shall maintain GM approved master samples for comparison throughout the life of the program.

Component Technical Specification	NUMBER: 12450250 Assigned number
Printed: June 20, 2014(Revision, not auto., date) (printed: 06/20/14 1:10 PM)	PAGE: { PAGE } of { NUMPAGES } * MERGEFORMAT }

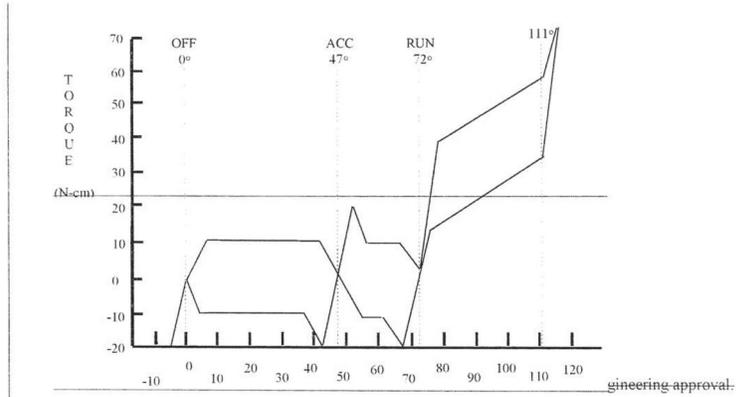
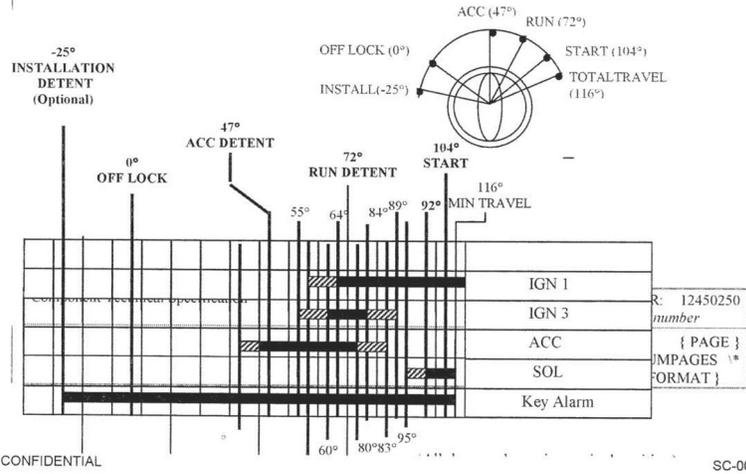
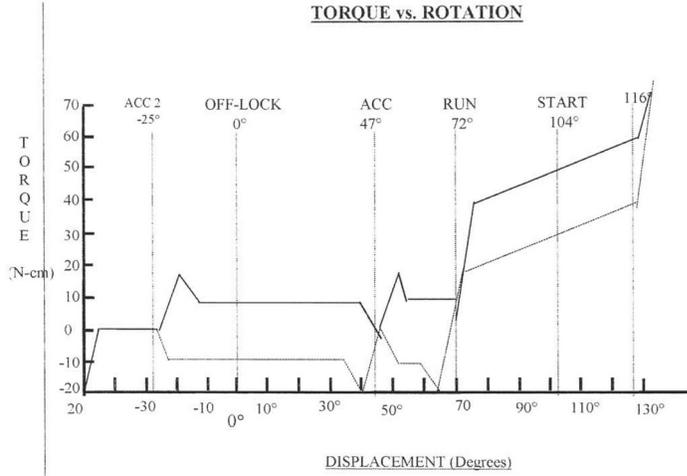


FIGURE B: SWITCH TRAVEL REQUIREMENTS





IGNITION SYSTEM TORQUE REQUIREMENTS

Actual curve to be furnished by supplier after GM Engineering approval.

Column Torque Requirement:

The maximum allowable torque of the Lock Housing/ Key Lock Cylinder interface (excluding the ignition switch) MUST not exceed 10 N-cm.

Ignition Switch Torque Requirement:

The minimum torque required by the switch, on the return side of the ignition switch from CRANK to the RUN position MUST be 15 N-cm.

NOTE:

Component Technical Specification	NUMBER: 12450250 <i>Assigned number</i>
Printed: June 20, 2014 (Revision, not auto., date) (printed: 06/20/14 1:10 PM)	PAGE: { PAGE } of { NUMPAGES } * MERGEFORMAT }

General Motors Corporation

North American Operations

Torque Curve allowable tolerance shall not exceed +/- 5 N - cm.

Component Technical Specification	NUMBER: 12450250 <i>Assigned number</i>
Printed: June 20, 2014(<i>Revision, not auto., date</i>) (<i>printed: 06/20/14 1:10 PM</i>)	PAGE: { PAGE } of { NUMPAGES } * MERGEFORMAT }

TAB #2

*Privileged and Confidential
Protected by Attorney-Client Privilege
and as Attorney Work Product*

version of the Specification maintained the original 1997 Specification's force displacement curve specifying a required rotational torque of 20 N-cm to turn the Ignition Switch from Run to Accessory.¹³²

Section 3.2.2.3 of the 2001 version of the Specification, however, reflects a number of changes from the 1999 version. First, DeGiorgio removed the notation indicating that this was a "TARGET curve only," which meant that the force displacement curve was no longer a target, but was instead the actual torque requirement for the switch.¹³³ Second, DeGiorgio specified that "Torque Curve allowable tolerance shall not exceed +/- 5 N-cm."¹³⁴ Thus, by March 2001, based on DeGiorgio's finalization of the torque requirement, the torque necessary to move the Ignition Switch from Run to Accessory was, pursuant to the Specification, required to fall somewhere between 15 N-cm and 25 N-cm. Yet, as described below, DeGiorgio ultimately approved an Ignition Switch that fell well below the lower limit of acceptable torque that he himself had "finalized" in the Specification.

The 2001 version of the Specification also stated: "[a]ctual curve to be furnished by supplier after GM Engineering approval."¹³⁵ According to DeGiorgio, while the curve depicted in Section 3.2.2.3 of the Specification was the actual curve for the Ignition Switch, the language signified that the switch was still subject to "fine-tuning" based on input from the vehicle

¹³² Component Technical Specification (March 22, 2001), at 1, 18 [DOC ID 14021301709376; GMNHTSA000441762].

¹³³ J&B Interview of Raymond DeGiorgio, May 7-8, 2014.

¹³⁴ Component Technical Specification (March 22, 2001), at 19 [DOC ID 14021301709376; GMNHTSA000441762].

¹³⁵ Component Technical Specification (March 22, 2001), at 19 [DOC ID 14021301709376; GMNHTSA000441762].

program team as well as GM's "TALC" engineers, who reviewed vehicle components for touch, appearance, lighting, and color.¹³⁶

The Specification does not include particularized requirements, such as dimensions, for the Ignition Switch's detent plunger and spring. Rather, the internal components of the Ignition Switch were a "black box design," which meant that GM personnel provided the supplier information regarding the part's packaging and requirements, including the Specification, and let the supplier design the inside details of the switch as necessary to satisfy those requirements.¹³⁷ Although two alternative detent spring and plunger dimensional specifications prepared by Eaton, one with a shorter spring and plunger cap and one with a longer spring and plunger cap, were found in Delphi's documents and provided to GM as part of this investigation, the available evidence does not clarify whether they were provided to GM personnel as the switch was being developed and finalized.¹³⁸ An internal Delphi document indicates that, in April 2006, the longer spring and plunger cap replaced the shorter spring and plunger cap in the Ignition Switch.¹³⁹ We cannot confirm whether DeGiorgio – or any other DRE who worked on the Ignition Switch, such as Wolf – was given the option to choose between the two different springs, or that he chose the shorter spring.

There is no question, however, that DeGiorgio knew he was approving an Ignition Switch that fell below GM's Specification, and there is no question that the shorter spring was used in the Ignition Switch when the Cobalt was first produced.

¹³⁶ J&B Interview of Raymond DeGiorgio, May 7-8, 2014; e-mail from Erik R. Mattson, Delphi, to Raymond DeGiorgio, GM, *et al.* (Feb. 18, 2002) [DOC ID 000077721033; GMNHTSA000337107]; e-mail from Erik R. Mattson, Delphi, to Raymond DeGiorgio, GM, *et al.* (Feb. 19, 2002) [DOC ID 14042800393158; GMNHTSA000441481]; J&B Interview of Matthew Schroeder, April 2, 2014.

¹³⁷ J&B Interview of Raymond DeGiorgio, May 7-8, 2014; J&B Interview of Doug Parks, May 1-2, 2014.

¹³⁸ J&B Interview of Raymond DeGiorgio, May 7-8, 2014; J&B Interview of Thomas Utter, April 24, 2014.

¹³⁹ Delphi CAD drawing (April 21, 2006) [GMHEC000003206].

TAB #3

Message

From: raymond.degiorgio@gm.com [raymond.degiorgio@gm.com]
Sent: 2/4/2002 4:52:15 PM
To: GM-X265 [GM-X265@gm.com]; ORTECH [ORTECH@gm.com]; Delphi - Mechatronics [Delphi_-_Mechatronics@gm.com]; Arnaud Dessirieux [Arnaud_Dessirieux%GM%EDS_HUB@gm.com]; tom.grace@gm.com
Subject: GMX 357/380/320 Ignition Switch PDT Meeting Notice/ GMX 380 Process Review !!!

All,
Our next Ignition switch PDT Meeting will held on February 13 / 14 th at Delphi's HQ facility in Troy Michigan. (Crooks Rd & Square Lake Rd)
The schedule is as follows:

February 13 th, 2002 - PDT Meeting open issues list attached.
February 14 th, 2002 - GMX 380/381/ Ignition Switch Process Review at Condura II Plant..

Any questions feel free to contact me.

Ray DeGiorgio

(See attached file: Feb_14.doc)

ITEM	ISSUE	ACTION(S) REQUIRED / STATUS	DATE OPEN	DATE DUE	DATE CLOSE D	RESPONSE.
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GMX 380/ 320/357 Corporate Ignition Switch PDT - P/N 12450257, 12450250, 12450139

Next Meeting	Date:	February 13, 2002
	Subject:	GMX 320/265/357/001/380/381 Ignition PDT Meeting Notice
	Time:	9:30 am till ????? (Eastern Time)
	Location:	Delphi HQ in Troy
	Conference Room:	TBD
		Contact : Ray Degiorgio

	Name	Organization	VME	8-line	Phone	Fax	Mail Code	Address	City	Zip Code	
☐	Ray	DeGiorgio	GMNA	8101263863	8-446	(810) 236-3863	8-446-6026	485-303-117	41005 Saginaw	Flint	48557
☐	Rick Van	Ryckeghem	GMNA	81006-31024		(810) 895-5344	8-492-9790	485-210-W08	3001 Van Dyke Ave	Warren	48090
☐	Mohamad	Abdul-Hak	GMNA		8-226	(810) 986-2422	8-226-6492	480-111-S28	30200 Mound Rd	Warren	48090
	Rodney	Davis	GMNA	8101164314	8-226	(810) 226-4314	8-226-3911	480-111-S52	30200 Mound Rd	Warren	48090
	Bill	Otto	GMNA	8101167981	8-226	(810) 986-7981	8-226-6492	480-111-S24	30200 Mound Rd	Warren	48090
	Fred	Alshomay	Delphi - Saginaw			(589) 757-5845	8-357-4155		3900 Holland Rd.	Saginaw	48601
	Arnaud	Dessineix	Koyo	8109666670	8-226	(810) 986-6670	(810)986-6402	480-111-W15	30200 Mound Rd.	Warren	48090
	Arnie	Hollenbeck	Delphi - Mecha			(630) 795-4778	(630)795-4891		3110 Woodcreek Dr.	Downers Grov IL	60515
	Ron	Wojtecki	Delphi - Mecha			(630) 795-4778					
☐	Erik	Mattson	Delphi - Mecha			(630) 795-4775	(630)795-4858		3110 Woodcreek Dr.	Downers Grov IL	60515
☐	Steve	Homer	Delphi - Mecha			(630) 795-4569	(630)795-4858		3110 Woodcreek Dr	Downers Grov IL	60515
	Larry	Allen	Delphi - Mecha			(248) 375-1670	(248) 354-6962		26101 Nitwhstrm Hwy	Southfield, MI	
☐	Misty	McDowell	Ortech			(248) 753-4111			GMNA - YPC North	Pontiac, MI	48039

* Dashed: PDT chair- secretary ☐ denotes attendance

	Name	Organization	VME	8-line	Phone	Fax	Mail Code	Address	City	Zip Code	
☐	Larry	Pitman	GMNA	810126-0831	8-446	(810) 236-0831	8-446-6026	485-303-117	41005 Saginaw	Flint	48557
	Vince	Smith	GM-WWIP	24852-87215	8-258	(248) 528-7215	8-258-5968	480-592-328	1450 Stephenson Hwy	Troy	48007
	David	Abdelhour	GM-WWIP						1450 Stephenson Hwy	Troy	48007
	Lorenzo	Jones	GM-AP	24852-85924	8-258	(248) 528-5924	8-258-5968	480-592-328	1450 Stephenson Hwy	Troy	48007

NOTE: IF ANYONE ELSE SHOULD ATTEND THIS MEETING OR BE ON DISTRIBUTION, PLEASE CONTACT Ray DeGiorgio at 8-446-3863

ITEM	ISSUE	ACTION(S) REQUIRED / STATUS	DATE OPEN	DATE DUE	DATE CLOSE D	RESPONSE.
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		where required. - Handling of contacts by hand so as not to tangle/ bend them during transport/ assembly - Transport of PCB's to assembly line would lead to bent terminals - Provide a means for rotor/ contact sub-assembly to avoid operator dependency - Eliminate contamination of PCB Rotor sub-assembly with use of "Cover" - Add vacuum system to RONE/ED air station - Cool/ Heat Heat Stake sample at station - Modify tools so "snaps" snap together - Update line to sense for detent plunger - Add a controlled measure for grease application - Eliminate fake spring EOL tester: - verify 500 V pot tester does not damage PC board or test board no switch assembly - Measure minimum torsion load Per our discussions of the last two PDT meetings, Delphi-Mechatronics confirmed that the GMX 320 KN-SW Assembly Line was updated to address all the assembly related concerns noted by GIM	Complete	Closed	05/29/01	
28	1000 I ead Soak Test	Test schedule to close out 1000 hour load soak test As of 11/17/01 test still ongoing. Test completed successfully	10/10/01	Closed	1/18/02	I. Wagner

GMX 357 PROGRAM TIMING AND SAMPLE REQUIREMENTS
(GP11 Warrant - included with each shipment)

Production (Parts Off Production Tools)
Production Validation Completion Date February '02 "MUST"
P1 Column Build - November '01 400 pieces due KUYO

ITEM	ISSUE	ACTION(S) REQUIRED /STATUS	DATE OPEN	DATE DUE	DATE CLOSE	RESPONSE.
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Pilot
Phon Build - Production Parts of Production Tooling
Switch PPAP
100% PPAP Approval date for Delphi Mecltronics is March 31, 2002. - (Koyo's PPAP date April 30, 2002)
Production
Start of System Fill 28 August '02
Start of Regular Production 28 September '02

24	Visit of September 17 th, Design Validation Tests	DESIGN INTENT PARTS MUST BE AVAILABLE FOR VALIDATION TESTING /ASAP Delphi to review test samples availability, as per production design intent. GM proposed evaluation of only on cavity build vs. the five needed for production on hand needed tooling parts Update GM reviewed the latest program timing. DVY is scheduled to begin 7/23/01 and	5/26/01	09/17/01		Mattison/ Wojtecki
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ITEM	ISSUE	ACTION(S) REQUIRED / STATUS	DATE OPEN	DATE DUE	DATE CLOSED	RESPONSE
26	PCB Board Design	<p>completion 09/18/01</p> <p>- (Revised Sept 17th, 2001) - samples failed PCB, Rotor, Spring, Contacts</p> <p>- (Revised Oct 1st, 2001) - samples failed PCB, Rotor, at 30 K</p> <p>- (Revised Oct 10th, 2001) - modified parts</p> <p>DESIGN Modifications required for DV completion.</p> <p>Rotor OD increased similar to CATERA design</p> <p>Torsion spring torque decreased to meet Catera's spec. Max torque at EOT sub 75 Ncm</p> <p>PCB board B+ trace redesign for a continuous trace increase - done</p> <p>Increase GAP between traces to 2.0-mm minimum - done</p> <p>Increase Ag plate contacts to 15 microns for durability (CDA77 Material not Ag)</p> <p>Increase contact force to meet 90-100 grams</p> <p>Increase detector / CAM contact force to meet CTS requirements</p> <p>Revise connector / PINS similar to Catera design - done</p> <p>Theft deterrence foot redesign required - theft deterrence test redone, all samples met the required breakage force of the theft resistor.</p> <p>Rotor Height increased by 1.0 mm to 3.5 mm</p> <p>Torsion spring load decreased to 75 Ncm</p> <p>Mounting "ears" on switch strengthened</p> <ul style="list-style-type: none"> • await proposal from Delphi • Koyo to review if 17 Nm torque is adequate for them <p>New switch samples with increased rotor height needed. Parts are due sometime in March '02.</p>	9/17/01	<p>Closed</p> <p>Closed</p> <p>Closed</p> <p>10/03/01</p> <p>Closed</p> <p>Closed</p> <p>Closed</p> <p>Closed</p> <p>Closed</p> <p>Closed</p> <p>Closed</p>		Matison/ Wojcicki
27	Tale Samples	<p>Parts do not meet design layout?</p> <p>Verify switch assemblies are to print. Crank CH traces to design?</p> <p>Delphi to review circuit timing for Ipsilon / Delta circuit timing</p> <p>2 samples with increased detent plunger needed for TMLC review. Samples received but awaiting force displacement curves with without Koyo's 1 week Housing. Samples returned to Delphi to perform force displacement plots</p>	01/04/02		01/03/02	<p>Delgiorgio/Mattson/ Hamer</p>

ITEM	ISSUE	ACTION(S) REQUIRED / STATUS	DATE OPEN	DATE DUE	DATE CLOSED	RESPONSE.
29	PV Test Update	using Kovo's lock housing PV Test update needed - 1X Life Durability Test Completed successfully, other performance test in progress. Theft deterrence completed. Short Circuit Test completed. 1000 Hour load test in progress. - Awaiting ADVPR Report. 2X Life Durability Test Completion	01/04/02			Mattison
30						
31						
32						
33						
34						

103

TAB #4

DELPHI CONFIDENTIAL

Frantangelo, Barbara K

From: Mattson, Erik R
Sent: Tuesday, February 19, 2002 2:33 PM
To: 'raymond.degiorgio@gm.com'
Cc: Allen, Larry; Homer, Steven N; Hollenbeck, Arnold H; Wojtecki, Ronald J
Subject: RE: Increased detent force

Follow Up Flag: Follow up
Flag Status: Flagged

Ray,
You are correct, it is N-cm; not N-mm.

Where in the CTS is there an exact requirement of these forces? All I see is a general curve that is marked "This is a TARGET curve only, actual curve to be furnished by supplier after GM Engineering approval." I'm not saying it is impossible to change the detent forces, but it does have an impact on timing and our suppliers will not do it for free. It is not expensive, but it does take some time, especially if we do not have a local source for the detent plunger.

The Talc samples were 9.6 N-cm. The new production intent version of the switch has 9.5 N-cm. We feel this is a match of the TALC switch. We can revise this again but we all need to be aware of the impacts in timing, cost, and possible other issues that might be created when we are this close to PPAP.

If we are trying to improve the "feel" of the switch through the column, please remember that we have no control over how the lock cylinder and related parts impact the "feel" of the switch. We will be happy to make any changes you need in order to improve the system as a whole given cost and timing.

Erik R. Mattson
Product Engineer
Delphi Mechatronic Systems
(630) 795-4775
(630) 795-4858 Fax

-----Original Message-----

From: raymond.degiorgio@gm.com [<mailto:raymond.degiorgio@gm.com>]
Sent: Tuesday, February 19, 2002 11:39 AM
To: Mattson, Erik R
Cc: Allen, Larry; Homer, Steven N; Hollenbeck, Arnold H; Wojtecki, Ronald J
Subject: Re: Increased detent force

Erik,
If increasing the detent ACCRY force by 5N will destroy this switch than do nothing maintain present course.
Under no circumstances do we want to compromise the electrical performance of this switch nor PPAP status.

a.) DV Epsilon ACC detent force peak is at 14.0 N-mm +/- 1N-mm (Follow GMX 380 CTS requirements; let me know if this is an issue.)Are you sure its 14 Nmm not

1

SEN-000002

DELPHI CONFIDENTIAL

14 Ncm?)

b.) PV Delta Acc detent was at 7.0 N-mm +/- 1.5N-mm. (Are you sure of the Nmm vs N cm?) Delta Talc #1 was 7.6 N-mm, #2 was 9.6 N-mm
Delta (New) Acc detent now at 9.5 N-mm (not enough data for tolerance) - (Much improved over GMX 320 but, still too soft of a detent. Does not meet CTS requirements.)

c.) Previously you had directed us to match the Talc samples for detent feel on Delta. (Where the tools cut to reflect the TACL sample feel. At our PDT you indicated that the production samples would in fact feel softer than the Talc sample.)

Note:

- 1.) Switch design will require detent modifications for the GMX 001 Program. (along with any other rotor / PCB design mods necessary to meet the CTS requirements.)
- 2.) Standardization of GMX 320/357 switch designs not probable unless above requirements are met.
- 3.) Ultimately, if the TALC Group does not buy - off on the feel of the switch than changes to the design will be required.

Ray (tired of the switch from hell) DeGiorgio

"Mattson, Erik R" <erik.r.mattson@delphiauto.com> on 02/18/2002 04:11:08 PM

To: Raymond DeGiorgio/US/GM/GMC@GM
cc: "Allen, Larry" <larry.allen@delphiauto.com>, "Homer, Steven N" <steven.n.homer@delphiauto.com>, "Hollenbeck, Arnold H" <arnold.h.hollenbeck@delphiauto.com>, "Wojtecki, Ronald J" <ronald.j.wojtecki@delphiauto.com>
Subject: Increased detent force

Ray, per our discussion at the PDT:

DV Epsilon Acc detent force peak is at 14.0 N-mm +/- 1N-mm PV Delta Acc detent was at 7.0 N-mm +/- 1.5N-mm Delta Talc Samples Acc detent was at #1 was 7.6 N-mm, #2 was 9.6 N-mm
Delta (New) Acc detent now at 9.5 N-mm (not enough data for tolerance)

SEN-000003

DELPHI CONFIDENTIAL

Previously you had directed us to match the Talc samples for detent feel on Delta. During the PDT 2-13-02 you directed us to be 15 N-mm +/- 2 N-mm. The Epsilon is currently meeting that requirement. Delta can be increased to this new requirement, but there are several things we all need to be prepared for.

1. Possible damage (cracking) during durability to rotors due to increased forces at the driver tip required to rotate through the detent positions.
2. Possible premature (less than 3x life) wear-out of the detent with an extremely heavy feel resulting.
3. Possible impact on electrical functions (PCB wearout) as the spring loads are substantially larger than those previously tested. These loads act along the same axis as the contact forces.

Timing to make a change to the detent is around 7 weeks for PPAP switches; the parts come from Germany. Cost is nominal, around \$2000 to do the engineering and get parts. If we can find a supplier that is a cost savings more locally, I believe we can improve the timing. Also, we had planned on starting the 3x life portion of the new PV plan (since Mohammed's departure) by 3-15-02. This will be delayed significantly if we follow this path.

Regards,

Erik R. Mattson
Product Engineer
Delphi Mechatronic Systems
(630) 795-4775
(630) 795-4858 Fax

TAB #5

RAY DEGIORGIO
MELTON vs. GENERAL MOTORS

April 29, 2013

<p style="text-align: center;">45</p> <p>1 What that is is we as engineers or project 2 engineers sit down and review at the initial stages 3 of the design and look for. I want to say, high 4 risks or potential failure modes. 5 And based on, I want to say, the risk 6 level, we address changes or make changes to the 7 design to assess or reduce the high risk, so it 8 makes ultimately -- you're designing out all the 9 potential failures with a particular switch. 10 Q. Did you look at, as a potential failure mode for 11 this switch, the ease of which the key could be 12 moved from run to accessory? 13 MR. HOLLADAY: Object to the form. You 14 can answer. 15 THE WITNESS: No, because in our minds, 16 moving the key from, I want to say, run to 17 accessory is not a failure mode, it is an expected 18 condition. It is important for the customer to be 19 able to rotate the key fore and aft, so as long as 20 we meet those requirements, it's not deemed as a 21 risk. 22 Q. (By Mr. Cooper): Well, it's not expected to move 23 from run to accessory when you're driving down the 24 road at 55 miles an hour, is it? 25 MR. HOLLADAY: Object to the form. You</p>	<p style="text-align: center;">47</p> <p>1 was in the run position, it wouldn't just move to 2 the accessory position, correct? 3 MR. HOLLADAY: Object to the form. You 4 can answer. 5 THE WITNESS: That is correct, but it was 6 also -- it was not intended -- the intent was to 7 make the transition to go from run to off with 8 relative ease. 9 Q. (By Mr. Cooper): Why is the run position a 10 detented position? 11 A. In the run position, primarily, it's a detented 12 position because all the major, I want to say, 13 electronic modules, okay, are fed off of that 14 detent. If you look at this electric diagram on, I 15 want to say, page 4 of the drawing -- page 4 of the 16 drawing probably. Page 4 of the drawing. 17 Q. Page 4 of the drawing is fine? 18 A. Yeah. If you look at the run position, okay, and 19 you look at these traces down below, you have all 20 the electrical systems of the vehicle running off 21 of the run detent, okay? You got -- I want to say 22 off-run crank, you've got accessory features, and 23 you also have powertrain features, so all the major 24 electrical systems of the vehicle are ran off that 25 detent, so it's important to make sure you maintain</p>
<p style="text-align: center;">46</p> <p>1 can answer. 2 THE WITNESS: It is expected for the key 3 to be easily and smoothly transitioned from one 4 state to the other without binding and without 5 harsh actuations. 6 Q. (By Mr. Cooper): And why do you have a minimum 7 torque requirement from run to accessory? 8 MR. HOLLADAY: Object to the form. 9 Misstates the testimony. You can answer. 10 THE WITNESS: It's a design feature that 11 is required. You don't want anything flopping 12 around. You want to be able to control the 13 dimensions and basically provide -- one of the 14 requirements in this document talks about having a 15 smooth transition from detent to detent. 16 One of the criticisms -- I shouldn't say 17 criticisms. One of the customer complaints we have 18 had in the -- and previous to this was we had cheap 19 feeling switches, they were cheap feeling, they 20 were higher effort, and the intent of this design 21 was to provide a smooth actuation, provide a high 22 feeling of a robust design. That was the intent. 23 Q. (By Mr. Cooper): I assume the intent was also to 24 make sure that when people were using the vehicle 25 under ordinary driving conditions, that if the key</p>	<p style="text-align: center;">48</p> <p>1 the key in that position. 2 Q. And what happens when the key moves to the 3 accessory position? What does the driver lose? 4 A. Primarily you lose the off-run -- if you look at 5 this drawing, you can see that off-run crank 6 circuit may drop off. I take that back. Should 7 not drop off. The run crank position could 8 potentially fall off. There is that gray band in 9 there that is, I want to say, a tolerance. Again, 10 you have a tolerance in there that could 11 potentially fall off. 12 Q. And then if you look at page 17 of the 13 specification, there's the "Tactile 14 Characteristic," section at the very bottom of the 15 page. 16 A. Yes. 17 Q. What is being described here? 18 A. It says, "Refer to the force displacement curve. 19 Final switch tactile feel is subject to engineering 20 approval." 21 Q. Okay. So I assume you would have been the one to 22 actually feel the switch -- 23 A. Correct. 24 Q. -- tactfully to see if it was acceptable? 25 A. To basically see if it meets -- supports</p>

ESQUIRE SOLUTIONS

800.211.DEPO (3376)
EsquireSolutions.com

DELPHI
Troy, MI, July 29, 2014

Senator RICHARD BLUMENTHAL,
724 Hart Senate Office Building,
Washington, DC.

Dear Senator Blumenthal:

This letter provides the requested follow-up to your question to me at the July 17, 2014 Senate Subcommittee Hearing.

During my testimony, I stated that Delphi has manufactured over one million replacement switches and is scheduled to manufacture two million by the end of August 2014. You asked if Delphi could increase its production with additional funding. I told you I would investigate and let you know.

Delphi has again reviewed the lead-time required for additional equipment and tools to immediately increase the manufacturing output for the replacement switches, and we have concluded that it is not feasible to increase capacity prior to August 31, 2014, the date by which we have committed to produce two millions switches.

Please let me know if you have any further questions.

Sincerely,

RODNEY O'NEAL,
CEO & President,
Delphi.

○