

March 7, 2014

The Honorable David J. Friedman  
Acting Administrator  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue SE, West Building  
Washington, D.C. 20590

Dear Administrator Friedman:

General Motors' 9 year delayed recall of 2005-07 Chevrolet Cobalts, 2003-07 Saturn Ions and 5 other models [hereinafter the Cobalt recall] reveals a complete failure of the recall system that cost at least 13 people their lives. While GM bears complete responsibility for failing to recall these vehicles by 2005, when it knew what the defect was and how to fix it, NHTSA has responsibility for failing to order a recall by early 2007, when it knew what the defect was and how to fix it.

NHTSA learned about the ignition key defect turning off the airbag [hereinafter ignition airbag defect] through its Special Crash Investigation (SCI) program looking into performance of advanced airbags in the Cobalt vehicles in 2007. NHTSA also learned about the defect through its secret Death Inquiries (DI) into Early Warning Reports (EWR) of death claims filed by GM. Although NHTSA knew of and had documents on lawsuits filed against GM on the ignition airbag defect, NHTSA kept them secret and effectively helped GM cover up this defect.

**NHTSA Special Crash Investigations:**

On August 15, 2005, NHTSA began its first SCI investigation into airbag non-deployment in a July 29, 2005 crash of a 2005 Chevrolet Cobalt that killed 16-year-old Amber Marie Rose in Maryland. On February 7, 2006, NHTSA issued its [SCI report](#) on the July 2005 Maryland Crash, finding that the airbags did not deploy and vehicle was in "Accessory" power mode at the time of the crash. On March 29, 2007, NHTSA representatives met with GM employees and discussed the Maryland crash. NHTSA told GM but not the public that the car's sensing and diagnostic module (SDM) reported the ignition was in "Accessory" mode and the airbag did not deploy.

On November 26, 2006, NHTSA began its second Cobalt SCI investigation into the October 2006 crash of a 2005 Chevrolet Cobalt that killed 15-year-old Amy Beskau of Wisconsin. On April 25, 2007, NHTSA issued its [second Cobalt SCI](#) report on airbag non-deployment in the October 2006 Wisconsin crash. The report finds that the vehicle was in "Accessory" power mode at the time of the crash. The report notes that General Motors had issued a service bulletin in October of 2006 indicating the potential for drivers to inadvertently turn off the ignition during operation. A copy of the service bulletin is attached to the investigation report. SCI investigators located six complaints in the NHTSA complaint database matching the described defect. The report also notes that an analysis of airbag non-deployment as related to the key position in "On" or "Accessory" is beyond the scope of the SCI investigation.

On March 15, 2004, NHTSA began an SCI investigation of a 2004 Saturn Ion crash that occurred in Pennsylvania in January of 2004. While no significant injuries or death occurred in the crash, neither the driver nor passenger airbags deployed. [The SCI Report](#) said: "Given the severity of the impact damage, the computer WINSMASH delta V [21.7 mph] and the non-belted status of the occupants, the frontal air bag system probably should have deployed in this crash." The SCI Report noted the EDR readings were unreliable because most of the readings were zero. However, the SCI Report pointed out "the Saturn may have experienced an intermittent power failure resulting in a write failure." This is fully consistent with the ignition airbag defect.

### **NHTSA Early Warning Reporting & Death Inquiries:**

From 2004 through 2012, NHTSA received from GM [at least 51 EWR reports](#) of death claims in the US involving an airbag, steering, electrical or unknown component in the 2005-07 Chevrolet Cobalt or 2003-07 Saturn Ion, that could indicate the ignition airbag defect. See [Attachment A](#). NHTSA sent DI request letters to GM for 29 of these 51 EWR reports. For the crucial period of 2004-07 when GM was investigating the ignition airbag defect, NHTSA sent GM 17 Death Inquiries on 19 EWR death claims that could have been due to the ignition airbag defect. None of the underlying documents received by NHTSA on these 17 death claims in Cobalts and Saturns have been made public by the agency.

By comparing information on crashes in Special Crash Investigations to the information on death claim crashes in Early Warning Reporting, at least 2 of the 9 2005-07 Cobalt death claims for which NHTSA sent GM Death Inquiries were on the ignition airbag defect:

- On March 1, 2006, NHTSA's Early Warning Division sent a request to GM for the underlying information on the Maryland crash from July 2005, [DI04-142](#). No record of when or if a response was made is available.
- On May 4, 2007, NHTSA's Early Warning Division sent a request to GM for the underlying information on the Wisconsin crash from October 2006, [DI07-044](#). GM responded on June 11, 2007.

After the crucial period of 2004-07 when both GM and NHTSA identified the ignition airbag defect, NHTSA Death Inquiries into EWR death claim reports on the Cobalt and Saturn dropped sharply. From 2008 thru 2012, GM submitted 32 reports of death claims on defects that could be linked to the ignition airbag defect, but NHTSA sent GM only 12 Death Inquiries, a rate of 37.5%. By comparison, NHTSA sent out Death Inquiries on 89.5% of the EWR death claims reports submitted from 2004-07.

The intense interest by NHTSA from 2004-07 in obtaining the underlying records on Cobalt and Ion death claims that could be linked to the ignition airbag defect is sharply contrasted by NHTSA's failure to send out Death Inquiries for EWR death claims on other well known defects. For example, out of 301 EWR summary reports that could be linked to Toyota SUA through 2009, NHTSA sent out inquiries for underlying records on only 16 of the 301 EWR reports. In 1993-04 Jeep Grand Cherokee fuel tank fires, NHTSA did not send out inquiries for any of the 30 EWR death and injury claims reported by Chrysler, as of the first quarter of 2010 when CAS filed its defect petition to investigate Grand Cherokee crash fires.

**Conclusion:**

NHTSA has rightly asked GM probing questions about why it did not do the Cobalt recall at least as early as 2004-05 when the company identified the ignition airbag defect and a remedy therefore. The Center for Auto Safety has probing questions for NHTSA about why it failed to order a recall.

- 1) Why did NHTSA fail to order the Cobalt recall, or even open an investigation into the ignition airbag defect, when the agency identified the defect in 2006-07 through its Special Crash Investigations and obtained information on the two fatal SCI crashes through its secret Death Inquiries to GM on EWR death claim reports?
- 2) Why did NHTSA send Death Inquiries on 90% (17 of 19) of the Saturn and Ion death claims reported by GM on defects linked to the ignition airbag defect in 2004-07 and what did it do with the death claim information provided by GM?
- 3) Were the MD and WI SCI investigators ever provided the underlying Death Inquiry information obtained by the agency for these crashes from GM?
- 4) Did any of the SCI investigators for the two Cobalt and one Saturn SCI investigations meet with or provide their information to the Office of Defects Investigation?
- 5) What NHTSA officials met with GM representatives on the MD SCI crash on March 29, 2007 and where are the records from that meeting?
- 6) Why did NHTSA sharply cut its Death Inquiries to GM on Saturn and Ion death claims on defects linked to the ignition airbag defect from 90% in 2004-07 to 38% (after 2007)?
- 7) Why did NHTSA not open an investigation and obtain a recall for the ignition airbag defect at least 7 years ago? People died and the agency shares responsibility for their deaths with GM.
- 8) As a beginning, we request you to order the release of all the EWR records obtained through Death Inquiries for vehicles involved in the Cobalt recall. Will you do that?
- 9) Will NHTSA ask the Inspector General do an independent investigation of the agency failure to investigate and obtain a recall in 2006-07 when the agency had sufficient information to do so? Just as GM President Mary Barra has commissioned an independent investigation to explore why GM did not do the recall and remedy the ignition airbag defect at least 9 years earlier, there should be a similar independent investigation of NHTSA's failure to act. People died and the agency shares responsibility for their deaths with GM.

While CAS has already filed FOIA requests for these records, it is a monumental waste of the Agency's resources to force the public to file FOIA request for what are admittedly documents releasable under FOIA. (See [Attachment B](#), correspondence with Attorney General William Holder on EWR records.)

To prevent another defect from being covered up by the agency's secrecy on EWR records, we request that NHTSA publish a list of all Death Inquiries on the agency website as is done for defect investigations. We also ask that NHTSA publish the records obtained through Death Inquiries just as it does for records obtained through Defect Investigations. Will you do that?

Your response to each of the above questions is requested.

Sincerely,

A handwritten signature in black ink, appearing to read "Clarence Ditlow". The signature is written in a cursive, flowing style.

Clarence Ditlow  
Executive Director

Enclosures: 2

cc: Senator Edward Markey  
Senator Jay Rockefeller  
Senator John Thune  
Rep. Darrell Issa  
Rep. Elijah Cummings  
Rep. Fred Upton  
Rep. Henry Waxman

## Chevrolet Cobalt MY 2005-2007

EWR Death Reports Received from 2005 through 2007 = 10 With 9 Death Inquiries for Underlying Documents

QUARTER	SEQ_ID	DI ID #	MAKE	MODEL	MY	VIN	INCIDENT	DEATHS	INJURIES	STATE_OR	COMPONENT_A	COMPONENT_B	COMPONENT_C	COMPONENT_E
2005 Q3	137	DI05-142	CHEVROLET	COBALT	2005	1G1AL12F857...	7/29/2005	1	0	MD	Air Bags			
2006 Q2	113	DI06-038	CHEVROLET	COBALT	2006	1G1AK55F367...	1/24/2006	1	0	NJ	Air Bags			
2006 Q3	125	DI07-015	CHEVROLET	COBALT	2006	1G1AK55F367...	7/6/2006	1	0	TX	Air Bags			
2006 Q3	129	DI07-015	CHEVROLET	COBALT	2006	1G1AK55F767...	2/18/2006	1	0	FL	Unknown			
2006 Q4	88	DI07-044	CHEVROLET	COBALT	2005	1G1AK52F657...	10/24/2006	2	1	WI	Unknown			
2006 Q4	91	DI07-044	CHEVROLET	COBALT	2005	1G1AK52F957...	10/13/2005	1	1	CA	Unknown			
2007 Q2	87	DI07-087	CHEVROLET	COBALT	2006	1G1AK55F467...	4/7/2007	1	1	MD	Steering	Air Bags	Fire Related	
2007 Q2	80	DI07-087	CHEVROLET	COBALT	2005	1G1AK12F457...	4/30/2007	1	1	PA	Air Bags	Rollover		
2007 Q2	79	DI07-087	CHEVROLET	COBALT	2005	1G1AK52F857...	1/6/2007	1	0	WI	Air Bags	Rollover		
2007 Q4	111	No DI Sent	CHEVROLET	COBALT	2005	1G1AK52F157...	10/16/2007	1	0	OH	Steering	Air Bags		

EWR Death Reports Received After 4th Quarter 2007 = 29 With 11 Death Inquiries for Underlying Documents

QUARTER	SEQ_ID	DI ID #	MAKE	MODEL	MY	VIN	INCIDENT	DEATHS	INJURIES	STATE_OR	COMPONENT_A	COMPONENT_B	COMPONENT_C	COMPONENT_E
2008 Q2	92	DI08-110	CHEVROLET	COBALT	2006	1G1AK15F267...	5/17/2008	1	0	MN	Air Bags			
2008 Q3	86	No DI Sent	CHEVROLET	COBALT	2006	1G1AM15B067...	9/13/2008	2	0	MI	Unknown			
2008 Q3	103	DI09-003	CHEVROLET	COBALT	2007	1G1AL15F677...	3/6/2008	1	1	MO	Air Bags			
2008 Q3	101	DI09-003	CHEVROLET	COBALT	2007	1G1AL15F077...	4/5/2007	1	0	CA	Electrical	Fire Related		
2008 Q3	96	No DI Sent	CHEVROLET	COBALT	2007	1G1AK55F177...	1/1/1968	1	0	LA	Other			
2008 Q4	79	No DI Sent	CHEVROLET	COBALT	2005	1G1AL12F757...	8/5/2008	1	0	WV	Rollover			
2009 Q2	95	DI09-096	CHEVROLET	COBALT	2007	1G1AK55F577...	12/4/2007	1	0	PA	Steering			
2009 Q3	129	DI10-006	CHEVROLET	COBALT	2007	1G1AK55F677...	8/9/2009	1	0	GA	Air Bags	Rollover		
2010 Q1	118	No DI Sent	CHEVROLET	COBALT	2006	1G1AK55F067...	3/2/2010	2	1	PA	Steering			
2010 Q1	137	No DI Sent	CHEVROLET	COBALT	2007	1G1AK15F977...	12/18/2009	1	0	PA	Steering			
2010 Q1	139	No DI Sent	CHEVROLET	COBALT	2007	1G1AK55F977...	6/12/2009	1	0	TX	Steering			
2010 Q1	113	DI10-062	CHEVROLET	COBALT	2006	1G1AM58B367...	12/31/2009	1	0	TN	Air Bags			
2010 Q1	120	No DI Sent	CHEVROLET	COBALT	2006	1G1AK55F267...	10/31/2009	1	2	CA	Steering	Air Bags		
2010 Q1	115	No DI Sent	CHEVROLET	COBALT	2006	1G1AK55F767...	10/10/2007	1	0	NC	Steering	Fire Related	Rollover	
2010 Q2	129	No DI Sent	CHEVROLET	COBALT	2005	1G1AL12F257...	4/20/2010	1	0	IL	Steering			
2010 Q2	143	No DI Sent	CHEVROLET	COBALT	2005	1G1AL52F657...	1/10/2010	1	0	PA	Steering	Fire Related	Rollover	
2010 Q2	138	No DI Sent	CHEVROLET	COBALT	2005	1G1AK52F257...	3/5/2008	1	0	GA	Steering			
2010 Q3	112	No DI Sent	CHEVROLET	COBALT	2006	1G1AP11P067...	5/29/2010	3	0	PA	Steering	Rollover		
2010 Q3	149	No DI Sent	CHEVROLET	COBALT	2007	1G1AK15F577...	7/4/2010	1	0	NY	Steering			
2010 Q4	132	DI11-045	CHEVROLET	COBALT	2007	1G1AP18P577...	3/21/2010	1	0	NY	Steering	Air Bags	Rollover	
2011 Q1	115	DI11-072	CHEVROLET	COBALT	2007	1G1AL55F077...	10/22/2010	1	1	WI	Steering	Rollover		
2011 Q1	98	No DI Sent	CHEVROLET	COBALT	2005	1G1AL12F557...	3/10/2010	1	0	GA	Unknown			
2011 Q3	153	No Data	CHEVROLET	COBALT	2007	1G1AK15F177...	2/21/2008	1	0	PA	Steering			
2012 Q1	114	DI12-047	CHEVROLET	COBALT	2006	1G1AK55F767...	2/21/2010	1	2	NC	Steering	Rollover		
2012 Q1	109	No DI Sent	CHEVROLET	COBALT	2005	1G1AP14PX57...	2/11/2006	1	0		Steering			
2012 Q2	116	DI12-064	CHEVROLET	COBALT	2006	1G1AK15F767...	9/26/2010	1	0	AZ	Air Bags			
2012 Q2	104	No DI Sent	CHEVROLET	COBALT	2005	1G1AK12F457...	4/15/2012	1	1	TX	Air Bags	Seat Belts	Rollover	
2012 Q3	106	DI12-108	CHEVROLET	COBALT	2006	1G1AK55F467...	7/3/2009	1	0	SC	Steering	Rollover		
2012 Q4	113	No Data	CHEVROLET	COBALT	2006	1G1AL15F467...	4/7/2012	1	1	TX	Air Bags			

Saturn Ion MY 2003-2007

EWR Reports Received from 2004 through 2007 = 9 with 8 Death Inquiries for Underlying Documents

QUARTER	SEQUENCE_ID	DI ID #	MAKE	MODEL	MY	VIN	INCIDENT_DATE	DEATHS	INJURIES	STATE	COMPONENT_A	COMPONENT_B
2004 Q1	578	No DI Sent	SATURN	ION	2004	1G8AJ52F54Z...	12/23/2003	1	0	CT	Air Bags	
2004 Q4	655	DI05-063	SATURN	ION	2004	1G8AJ52F14Z...	11/15/2004	1	1	TX	Air Bags	
2005 Q2	640	DI05-082	SATURN	ION	2004	1G8AG52F24Z...	3/24/2005	2	2	TX	Steering	Service Brake
2006 Q2	522	DI06-038	SATURN	ION	2004	1G8AF52F94Z...	7/4/2004	1	2	CA	Air Bags	
2006 Q3	518	DI07-015	SATURN	ION	2007	1G8AJ55F07Z...	9/9/2006	1	0	WV	Service Brake	Air Bags
2006 Q3	515	DI07-015	SATURN	ION	2005	1G8AJ52F85Z...	8/3/2006	1	0	VA	Air Bags	Seat Belts
2006 Q4	439	DI07-044	SATURN	ION	2006	1G8AJ55F96Z...	12/18/2005	1	0	NM	Air Bags	
2006 Q4	436	DI07-044	SATURN	ION	2004	1G8AJ52F14Z...	11/15/2004	1	0	TX	Air Bags	
2007 Q1	463	DI07-064	SATURN	ION	2006	1G8AJ55F06Z...	3/1/2007	1	0	MS	Electrical	

EWR Reports Received After 2007 = 3 with 1 Death Inquiry for Underlying Documents

QUARTER	SEQUENCE_ID	DI ID #	MAKE	MODEL	MY	VIN	INCIDENT_DATE	DEATHS	INJURIES	STATE	COMPONENT_A	COMPONENT_B
2009 Q1	495	No DI Sent	SATURN	ION	2007	1G8AJ55F77Z...	1/29/2009	1	0	TX	Air Bags	Fire Related
2009 Q1	489	No DI Sent	SATURN	ION	2004	1G8AJ52F94Z...	2/4/2009	1	0	MO	Air Bags	
2009 Q4	499	DI10-036	SATURN	ION	2007	1G8AJ55F27Z...	9/4/2009	1	1	VA	Air Bags	



March 31, 2011

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Holder:

This calls your attention to a violation of the openness policies for federal agencies expressed by your Department and President Barack Obama. As detailed below, the National Highway Traffic Safety Administration (NHTSA) will not release information on Death and Injury Inquiries to vehicle, tire and equipment manufacturers unless a Freedom of Information Act (FOIA) request is made. Even when confronted with a FOIA, NHTSA uses fee requests and delays to frustrate compliance with FOIA.

In the aftermath of the Ford Explorer/Firestone tire safety crisis that resulted in over 300 deaths on the nation's highways, a bipartisan Congress passed the TREAD Act in November 2000 which established an Early Warning Reporting (EWR) System within NHTSA to detect vehicle safety defects before they erupted into national issues.<sup>1</sup> One of the most important features of EWR is a requirement that manufacturers submitted quarterly reports on death and injuries claimed to be caused by defects.<sup>2</sup> These reports are summaries only submitted in electronic formats with little more than date, make/model/year, location & component associated with the claim. Where NHTSA needs more information on the death or injury claim, it sends a Death/Injury Inquiry (DI) information request to the manufacturer for more information.<sup>3</sup>

Unlike other information requests sent in defect investigations which are readily available and reported online in NHTSA website, there is no information readily available on DI's. As a result the public cannot tell whether NHTSA is using this most valuable tool given it by Congress to detect and prevent widespread defects in motor vehicles. The fact that there is any information available on EWR submissions by vehicle, tire and component manufacturers is due to a lawsuit filed by Public Citizen, in which the Court of Appeals for the District of Columbia effectively required NHTSA to release some EWR data.<sup>4</sup> Even though summary Death and Injury claims were released, the agency stubbornly kept DIs secret. When CAS first learned of DIs in the fall of 2009, and asked that they be made public like other information requests, NHTSA told us to file a Freedom of Information Act (FOIA) request.

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<sup>1</sup> 49 U.S.C. §§ 30101-30170.

<sup>2</sup> Id at 30166(m).

<sup>3</sup> See p. 4 of <http://www.autosafety.org/sites/default/files/DI%20FOIA%20Request%2011-2-2009.pdf> for an example of a DI information request.

<sup>4</sup> Public Citizen, Inc. v. Rubber Manufacturers Ass'n, 533 F.3d 810 (D.C. Cir. 2008).



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CAS first filed a FOIA request for information regarding DI's and other EWR-related investigations on November 2, 2009.<sup>5</sup> NHTSA responded that the search time for this information would be 135 days, and that we would be expected to pay fees of \$55,000 before receiving a response.<sup>6</sup> After narrowing our request to ask simply for a list of DI inquiries made by NHTSA to vehicle manufacturers, we were provided with a spreadsheet file listing all of the DI inquiries of summary death and injury summary reports which NHTSA has chosen to pursue. The substantive response was not provided until April 15, 2010.<sup>7</sup>

In May 2010, CAS asked NHTSA's Office of Defects Investigation for an updated list of DIs on the mistaken assumption we would not have to file another FOIA for a category of information that had been ruled was not exempt under FOIA. CAS was told it had to file another FOIA. Accordingly, on June 9, 2010, CAS filed another FOIA request seeking any new DI inquiries that had been initiated after our previous request. We were provided with a printed and improperly redacted copy of the files<sup>8</sup>, and were forced to appeal the agency's decision<sup>9</sup> before receiving the actual unredacted spreadsheet files on September 22.

On February 23, 2011, CAS sent NHTSA's EWR division an email request for an updated version of the DI spreadsheet file. We were again told that all requests for DI information from the agency must be filed as a FOIA and submitted to NHTSA's chief counsel. CAS filed the FOIA request on March 1, and to date have not received a response.<sup>10</sup> CAS has brought this matter to the attention of Office of Chief Counsel of NHTSA and has received no response.

Public access to DI's is the only way that the public can determine whether NHTSA is using this most valuable tool to detect defects given to the agency by Congress in the TREAD Act. We have already seen two DOT Inspector General Reports criticizing the agency's implementation of EWR under the TREAD Act.<sup>11</sup>

The limited access CAS has had to DI's under EWR through FOIA shows NHTSA does not use the EWR death and injury database. Out of 301 EWR summary reports that could be linked to Toyota SUA through 2009, NHTSA requested records on only 16 cases. In just the first three quarters of 2010, Toyota submitted an additional 1,904 reports of deaths and injuries claims due to Vehicle Speed Control, the category under which SUA complaints should be filed.<sup>12</sup> This is the best available information but NHTSA has not requested it or analyzed it.

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<sup>5</sup> <http://www.autosafety.org/sites/default/files/DI%20FOIA%20Request%2011-2-2009.pdf>

<sup>6</sup> <http://www.autosafety.org/sites/default/files/NHTSA%20DI%20Response.pdf>

<sup>7</sup> <http://www.autosafety.org/sites/default/files/EWR%20Response.pdf>

<sup>8</sup> <http://www.autosafety.org/sites/default/files/DI%20List%20FOIA.pdf>

<sup>9</sup> <http://www.autosafety.org/sites/default/files/2010%20DI%20Tracking%20Appeal.pdf>

<sup>10</sup> <http://www.autosafety.org/sites/default/files/DI%20Tracking%203-1-11%20REQUEST.pdf>

<sup>11</sup> See <http://www.autosafety.org/sites/default/files/ODI%20Review.pdf> and <http://www.autosafety.org/sites/default/files/DOT%20IG%20Audit.pdf>

<sup>12</sup> See <http://www.autosafety.org/sites/default/files/EWR%202010%20Q1%20Toyota.pdf> 2010 Q1, <http://www.autosafety.org/sites/default/files/EWR%202010%20Q2%20Toyota.pdf> 2010 Q2, and <http://www.autosafety.org/sites/default/files/EWR%202010%20Q3%20Toyota.pdf> 2010 Q3



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Even if NHTSA requested this information, you may not get the full picture because Toyota has miscoded some SUA claims and has not put them in the Vehicle Speed Control Category. One of the more prominent SUA cases is that of Bulent Ezal who was about to park his 2005 Toyota Camry for lunch when it was suddenly accelerated over a curb, plowed through two decorative fences and plunged over a 70-foot cliff beside the Pacific Ocean, killing his wife. The picture below is that of the Camry at the bottom of the cliff. Here's how Toyota reported this claim under EWR:

**Make:** TOYOTA  
**Deaths:** 1  
**Model:** CAMRY  
**Injuries:** 0  
**Model Year:** 2005  
**VIN:** 4T1BF32K75U...  
**State/Foreign Country:** CA  
**Incident Date:** 02/25/2007  
**Sequence ID:** 26  
**Reported Components:** Service Brake, Air Bags, Seat Belts



The Ezal crash also shows the value the public can provide to NHTSA by correcting erroneous and misleading information provided by manufacturers under EWR. The public can supplement the record with new information establishing a defect but only if it knows what information NHTSA has already obtained from the manufacturer. This is not the only time a manufacturer has supplied erroneous EWR information. In the Toyota 4Runner steering rod relay recall, 05V-389, Toyota coded a EWR summary report on a steering rod relay fracture that led to a rollover crash with 3

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injuries as rollover and power train but not steering. Had the public known that NHTSA had not done a DI on this EWR injury report, it could have identified and corrected the miscoding earlier.

One of the seminal defect cases litigated by the Justice Department, *United States v General Motors Corp.*, 417 F.Supp 933 (D.DC 1976), aff'd 565 F2d 754 (DC Cir. 1977), established the value of citizen input. GM alleged that Rochester Quadrajert carburetors popped a plus and leaked fuel only within an early low mileage. After NHTSA closed the investigation, consumer groups surveyed owners whose carburetors had leaked fuel and found that many occurred beyond the mileage that GM said carburetors no longer failed. NHTSA reopened the investigation and obtained a recall. The DC Circuit pointed out:

*In this case it is clear, with the gift of hindsight, that this purpose would have been best served had a notification order been issued some seven years ago. At that time NHTSA, relying substantially on information provided by General Motors predicting a substantial decrease in future carburetor failures, decided not to require notification. General Motors' predictions later proved wholly inaccurate, and the order was finally issued in 1974. 556 F.2d at 759.*

Only by having full online access to information requests in DIs just as it has full online access to information requests in NHTSA Engineering Analysis and Preliminary Evaluations can the public understand and hold NHTSA accountable for the duties charged to it by Congress under the National Traffic and Motor Vehicle Safety Act of 1966 and its subsequent amendments including the TREAD Act in 2000.

NHTSA's actions are inconsistent with directives issued by the President as well as the office of the Attorney General. On January 21, 2009, President Barack Obama issued two memorandums to the heads of executive departments and agencies, calling for transparency and openness both in the operation of government and in the administration of the Freedom of Information Act. The President's memorandum on Transparency and Open Government<sup>13</sup> stated, "My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. " Additionally, the memorandum stated:

Collaboration actively engages Americans in the work of their Government.  
Executive departments and agencies should use innovative tools, methods, and systems to cooperate among themselves, across all levels of Government, and with nonprofit organizations, businesses, and individuals in the private sector.

The President's memorandum regarding the Freedom of Information Act<sup>14</sup> stated:

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

Furthermore, in a March 19, 2009 memorandum<sup>15</sup>, you state:

Accordingly, agencies should readily and systematically post information online in advance of any public request. Providing more information online reduces the need for individualized requests and may help reduce existing backlogs. When information

<sup>13</sup> [http://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment/](http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/)

<sup>14</sup> [http://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct/](http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/)

<sup>15</sup> <http://www.justice.gov/ag/foia-memo-march2009.pdf>

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not previously disclosed is requested, agencies should make it a priority to respond in a timely manner. Timely disclosure of information is an essential component of transparency. Long delays should not be viewed as an inevitable and insurmountable consequence of high demand.

Information of the type contained in the DI spreadsheets we seek is a perfect example of material that can be rapidly disclosed to the public without the burdens imposed on all parties by the FOIA process. The spreadsheets could be emailed directly upon request or placed on the agency's EWR webpage. As it stands, we are forced to file a FOIA request and wait months for information that does not fall within the scope of any FOIA exemption. This is clearly not the standard of efficiency and transparency envisioned by the Administration in its communications with executive agencies.

We ask that the Department of Justice take action to bring the National Highway Traffic Safety Administration into compliance with the directives of President Barack Obama and the Department's own guidelines for implementing that policy. Specifically, we seek that all Death and Injury information requests to manufacturers and responses thereto be placed on NHTSA's website just as are all other information requests in defect and non-compliance investigations.

Sincerely,

Clarence Ditlow  
Executive Director

cc: Senator Jay Rockefeller  
DOT Inspector General Calvin Scovel  
NHTSA Administrator David Strickland