

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR AUTO SAFETY,)	
1825 Connecticut Ave. NW, Suite 330)	
Washington, DC 20009)	
(202) 328-7700,)	
)	
CONSUMER WATCHDOG,)	
2701 Ocean Park Blvd., Suite 112)	
Santa Monica, CA 90405)	
(301) 392-0522, and)	
)	
JOAN CLAYBROOK,)	
3307 Woodley Rd. NW)	
Washington, DC 20008)	
(202) 364-8755,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 16-2325
)	
NATIONAL HIGHWAY TRAFFIC SAFETY)	
ADMINISTRATION,)	
1200 New Jersey Ave. SE)	
Washington, DC 20590)	
(888) 327-4236, and)	
)	
MARK R. ROSEKIND,)	
Administrator, National Highway Traffic)	
Safety Administration,)	
1200 New Jersey Ave. SE)	
Washington, DC 20590)	
(888) 327-4236,)	
)	
Defendants.)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Center for Auto Safety, Consumer Watchdog, and Joan Claybrook bring this action pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §§ 702 and 706, to compel the National Highway Traffic Safety Administration (NHTSA) and its

Administrator to act on their January 13, 2016, petition seeking initiation of a rulemaking to promulgate a regulation requiring use of three established and proven automatic emergency braking (AEB) technologies in passenger motor vehicles. NHTSA has estimated that the three technologies could avoid or mitigate 910,000 rear-end crashes per year, preventing tens of thousands of injuries and saving numerous lives. Defendants were required by 49 U.S.C. § 30162(d) to grant or deny the petition within 120 days. More than twice as much time as allotted by statute has passed, yet defendants have not acted on the petition. Accordingly, plaintiffs seek a declaration that defendants have acted unlawfully in failing to respond to the petition and an order requiring defendants to act thereon.

PARTIES

2. Plaintiff Center for Auto Safety is a non-profit consumer advocacy organization headquartered in Washington, DC with more than 15,000 members nationwide. The Center is dedicated to promoting automobile and highway safety, advancing vehicle safety in all vehicles through mandatory safety standards, recalling defective and unsafe automobiles and automobile equipment, and helping make roads safer for motor vehicles through safer designs and traffic controls. The Center advocates for auto safety before the United States Department of Transportation, in testimony before Congress, and in the courts. The Center was one of the three petitioners on the petition seeking a rulemaking on AEB.

3. Plaintiff Consumer Watchdog is a non-profit consumer education, litigation, and advocacy organization with more than 350,000 supporters nationwide. Established in 1985, Consumer Watchdog advocates on behalf of consumers before regulatory agencies,

the legislature, and the courts. Consumer Watchdog was one of the three petitioners on the petition seeking a rulemaking on AEB.

4. Plaintiff Joan Claybrook is an advocate for auto safety who served as the administrator of NHTSA from 1977 through 1981 and as President of the non-profit consumer-advocacy organization Public Citizen from 1982 to 2009. Ms. Claybrook was one of the three petitioners on the petition seeking a rulemaking on AEB.

5. Defendant NHTSA is an administration within the United States Department of Transportation, the agency of the federal government responsible for ensuring the safety of transportation systems in the United States.

6. Defendant Mark R. Rosekind is the Administrator of NHTSA. The Administrator of NHTSA has authority to exercise the authority vested in the Secretary of Transportation under chapter 49 U.S.C. chapter 301, which concerns motor vehicle safety. 49 C.F.R. § 1.95.

JURISDICTION

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

FACTS

8. Approximately 1.7 million rear-end passenger auto crashes occur each year. NHTSA, *New Car Assessment Program (NCAP)*, 80 Fed. Reg. 68604, 68605 (Nov. 5, 2015). “These crashes result in approximately 1,000 deaths and 700,000 injuries annually.” *Id.*

9. NHTSA has estimated that three AEB technologies—Forward Collision Warning (FCW), Crash Imminent Braking (CIB), and Dynamic Brake Support (DBS)—could avoid or mitigate 910,000 crashes, prevent 94,000-145,000 minor injuries and

2,000-3,000 serious injuries, and save 78-108 lives each year. NHTSA, *New Car Assessment Program*, 80 Fed. Reg. 78522, 78553-54 (Dec. 16, 2015).

10. FCW is a technology that senses a vehicle in front of the driver's vehicle and sends a warning signal, such as a light on the dashboard or a buzzing sound, to the driver. CIB is a technology that automatically applies the brakes if a collision with another motor vehicle is imminent. DBS is a technology that intervenes when a collision is imminent, and the driver has applied the brakes, but not enough to prevent impact.

11. On January 13, 2016, plaintiffs submitted a petition to defendant Rosekind pursuant to 49 C.F.R. § 552, seeking initiation of a proceeding to promulgate a safety regulation that would require all light vehicles to include FCW, CIB, and DBS. A copy of the petition is attached as Exhibit A.

12. The petition described the three technologies, outlined the estimated safety and financial benefits of the technologies, and explained in detail why the agency should proceed through a regulation rather than through voluntary standards.

13. The petition also noted that NHTSA had recently taken three actions confirming the critical importance of AEB technologies: In October 2015, NHTSA had granted a petition to institute a rulemaking to establish a safety standard to require AEB on trucks and other heavy vehicles; in November 2015, NHTSA had issued a decision to include CIB and DBS as Recommended Advanced Technology Features in its New Car Assessment Program (NCAP), which provides comparative safety rating information on new vehicles; and in December 2015, NHTSA had proposed to incorporate AEB into NCAP's "5-Star Safety Rating System."

14. By letter dated February 23, 2016, NHTSA acknowledged receipt of the petition.

15. Under 49 U.S.C. § 30162(d), defendants had 120 days to grant or deny the petition. The 120-day period ended on May 12, 2016. Defendants did not grant or deny the petition by that deadline.

16. On May 23, 2016, plaintiffs sent a follow-up letter to defendant Rosekind, pointing out that the 120-day statutory deadline had passed and asking NHTSA to act immediately on the petition. A copy of that letter is attached as Exhibit B.

17. The plaintiffs' May 23 letter also noted that, on March 17, 2016, NHTSA announced that it had entered into voluntary "commitments" with twenty automakers to make a limited version of automatic emergency braking a standard feature on substantially all light vehicles and trucks. The letter explained why the voluntary agreements do not obviate the need for a regulation requiring AEB technologies in light vehicles. For example, the letter noted that the measures to which the companies agreed are weak and that the terms of the agreements are unenforceable. The letter also pointed out that the voluntary agreements do not address compliance testing whereas, if NHTSA required AEB as a safety standard adopted by regulation, NHTSA would engage in compliance testing and any failure would result in a mandatory recall.

18. Defendants did not respond to the May 23, 2016, letter.

19. To date, defendants have not issued a decision on plaintiffs' petition.

20. The danger to public safety caused by defendants' failure to initiate a rulemaking to require AEB technologies to be installed in light vehicles counsels in favor of expeditious action on plaintiffs' petition. The pace of defendants' decisional process is

unreasonable in light of the statutory deadline for responding to the petition, 49 U.S.C. § 30162(d), and the nature and extent of the public interests at stake.

CLAIMS FOR RELIEF

21. Defendants' failure to act on plaintiffs' petition constitutes agency action unlawfully withheld or unreasonably delayed and violates the Administrative Procedure Act, 5 U.S.C. § 706(1).

22. Defendants' failure to act on plaintiffs' petition is not in accordance with law and violates the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

WHEREFORE, Plaintiffs request that this Court

- A. Declare unlawful defendants' failure to act on plaintiffs' petition;
- B. Order defendants to issue a decision on plaintiffs' petition within 30 days of the Court's order;
- C. Award plaintiffs their reasonable costs and attorney's fees under 28 U.S.C. § 2412; and
- D. Grant all other appropriate relief.

Respectfully submitted,

/s/ Adina H. Rosenbaum

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