

CENTER FOR AUTO SAFETY

1825 CONNECTICUT AVENUE NW SUITE 330 WASHINGTON DC 20009-5708
202-328-7700  www.autosafety.org

May 21, 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:

NHTSA has defended its failure to investigate defective General Motors ignition switches in Chevrolet Cobalts, Saturn Ions and related models (hereinafter “Recalled Models”) by pointing to GM’s failure to tell NHTSA that the ignition switch moving from run to accessory would deactivate the airbag. However, NHTSA failed to investigate a far simpler defect in the GM ignition switch that could and should have resulted in a recall and that would have prevented the airbag deaths - **stalling due to ignition switch failure**. There have been well over 300 safety recalls conducted for vehicle stalling.¹ Two of these recalls are virtually identical to the GM ignition switch failure - [Chrysler recall 11V-139](#) and [VW recall 11V-141](#). In 11V-139, Chrysler described the defect as: “Some vehicles may experience inadvertent ignition key displacement from the run to accessory position while driving causing the engine to shut off.”²

In the 1970’s, NHTSA litigated a series of defect cases in the federal courts that established loss of vehicle power on the road as a safety defect. In *U.S. v. General Motors Corp.*, 413 F.Supp. 933 (D.D.C. 1976), (hereinafter “Carburetors”) Judge June Green ruled:

Even if this “defect” were not *per se* related to “motor vehicle safety”, the uncontested facts of this case establish that fuel inlet plug failure results in several obvious and undeniable safety hazards. First, once the plug fails, the car “will stop running”. The driver must then either abandon his vehicle in the midst of oncoming traffic or, if he can, pull over to the side of the road. Both situations are dangerous.

In *U.S. v. Ford Motor Co.* 453 F. Supp. 1240 (D.D.C 1978)(hereinafter “Wipers”), Judge John L. Smith, Jr. reached a similar conclusion in finding:

Even if drivers pull to the side of the road and bring their vehicles to a stop on the shoulder they are still exposed to the risk of being struck from behind by a moving vehicle. Some drivers, unable to proceed because of loss of forward visibility, have even

¹ [Attachment A](#) is a compendium of 329 safety recalls from 1966 through 2013 for safety defects ranging from ignition switches to ignition modules to fuel pumps and other components that cause vehicle stalling. Excluded from this list are recalls due to catastrophic engine failure.

² The recall covered 248,437 2010 Dodge Journey and Grand Caravan, and Chrysler Town & Country. Chrysler pointed out rough roads or driver interaction with the key fob can cause ignition to go to the accessory position just like GM. And like GM, the supplier changed the design and complaints. Unlike GM, Chrysler cited the design change as one of the reasons for the recall. [Attachment B](#) is Chrysler’s Part 573 recall report. VW recalled 12,744 2010 Routan vehicles for the same defect since Chrysler made the Routan. [Attachment C](#) is VW’s Part 573 for Recall 11V-141.

brought their vehicles to a stop in the middle of lanes intended for moving traffic. Having brought their vehicles to a stop, drivers imperiled by the windshield wiper failure have exited their vehicles in order to extricate themselves from the unsafe circumstances into which they have involuntarily been thrust. This too exposes them to the further risk of being struck by a moving vehicle.

In a memo summarizing the successful defects litigation cases in the 1970's, including the above two cases, former NHTSA Chief Counsel Frank Berndt wrote:

“If a defect causes failure of a critical vehicle component or of a major vehicle control system, it is safety related. . . . [A]ny defect which disables a vehicle causing it to park along the roadside presents an unreasonable risk to safety because of the hazards attendant to such parked vehicles.” ([Attachment D](#))

In the case of ignition switch failure stalling, the consumer is lucky to get to the side of the road and is more likely to be stranded in the middle of the road as Judge Green found to be a safety defect in “Carburetors” above.

In addition to hundreds of consumer complaints, there were Technical Service Bulletins, Early Warning Reports and Special Crash Investigations on the “Recalled Models”, all of which describe an established and litigated safety defect, “Stalling.” NHTSA did not have to wait to establish a connection between ignition switch failure and airbags not deploying to open a defect investigation and obtain a recall. Recalls had already been obtained on Chrysler and VW ignition switches that moved from On to Accessory, as well as for least 327 other recalls due to stalling. A GM ignition switch recall for stalling would have had the additional benefit of saving victims of airbags that failed to deploy in crashes after engine power loss due to the ignition switch movement.

At best it seems as if NHTSA has been under a misperception that there must be a body count or crashes and injuries at a minimum, before the agency can open an investigation and obtain a recall. “Carburetors” and the decisions in other cases won by former NHTSA Chief Counsel Berndt firmly dispatched that notion over thirty years ago. Judge Green wrote in “Carburetors:”

It is not necessary that a collision or death has occurred or will occur as a result of the defect. The purpose of the Act is to provide owners with an adequate margin of safety to protect against vehicle failures, which are in and of themselves an accident under the Act, and which result in an unreasonable risk of personal or property damage.

“Carburetors” also addresses another weakness in NHTSA’s failure to open an investigation into ignition switches - that the failure rate or trend was declining. In affirming Judge Green, the U.S. Court of Appeals for the DC Circuit addressed GM’s argument that there was no defect trend because the number of failures was declining, and held:

To now hold that General Motors, having managed to avoid issuance of an order in 1970, was not required to notify those operators who remain subject to risk since most of the failures have already occurred would be to leave this purpose permanently unfulfilled and to establish a system which encourages manufacturers to delay proceedings whenever possible at the expense of those endangered by defective vehicles. [U.S. v. General Motors, 565 F.2d 754 (D.C. Cir. 1977).]

“Carburetors” is right on the money in terms of what happened in Ignition Switch – GM persuaded NHTSA not to open an investigation and obtain a recall in 2007, when the Ignition Switch failure rate was the highest. When NHTSA addressed the Ignition Switch problem again in 2010 after

more deaths, GM pleaded a declining failure rate to ward off an investigation and recall. Instead of buying this argument, NHTSA should have thrown the book containing the "Carburetors" decision at GM and opened a recall which would have avoided the needless deaths and injuries that occurred.

In moving forward on safety defect recalls, NHTSA needs to go back to the past in order to get to the future and recognize once and for all that stalling is a safety defect.

Sincerely,

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

Clarence Ditlow
Executive Director

Enclosures: 4

cc: Secretary Anthony Foxx
Inspector General Calvin Scovell
Senator Jay Rockefeller
Senator John Thune
Senator Claire McCaskill
Senator Richard Blumenthal
Senator Edward Markey
Rep. Fred Upton
Rep. Henry Waxman
Rep. Tim Murphy
Rep. Diana DeGette