

750 Third Avenue
New York, NY 10017-2703
(212) 687-8181
Fax: (212) 972-9432
www.kreindler.com

February 23, 2012

U. S. Department of Transportation
National Highway Traffic Safety Administration
Docket Management Facility, M-30
West Building – Ground Floor, Rm W12-140
1200 New Jersey Avenue SE,
Washington, DC 20590

Re: Notice of Proposed Rulemaking Federal Motor Vehicle Safety Standards;
Theft Protection and Rollaway Protection
Docket No. NHTSA-2011-0174

Sirs:

Please accept these comments regarding the proposed changes to Federal Motor Vehicle Safety Standard 114, which attempt to standardize certain aspects of keyless ignition starting systems and address certain safety issues that are directly attributed to the current design of many keyless ignition systems.

My comments will focus on the risk of carbon monoxide poisoning resulting from an operator's inadvertent failure to shut down a vehicle's engine before exiting.

On the evening of February 27, 2009, Mary Rivera, Ph.D., a Professor of Education Administration at Fordham University in New York, pulled her 2008 Lexus ES350 (which had keyless ignition) into the garage attached to her home in Whitestone (Queens), New York. She shared the house with her long-time partner Ernie Codelia, a successful attorney and senior partner in the firm Codelia and Socorro. The next day, family members concerned about not being able to contact the couple went to the Rivera/Codelia home and found Ernie dead in bed and Mary unconscious on the floor, both as a result of carbon monoxide poisoning. The Lexus had accidentally been left running in the garage. The key fob was inside the house on the kitchen table. Mary Rivera suffered a significant brain injury and requires 24 hour care for the rest of her life. This case has been well publicized, yet was not mentioned in the Notice of Proposed Rulemaking.

On February 12, 2010, Manish Patel of Sterling Heights, Michigan purchased a used 2007 Lexus ES350 with keyless ignition. Four days later, Mr. Patel was called to the garage when his wife was unable to start the car. When he entered the garage, his wife was unsteady

California Office

707 Wilshire Boulevard, Los Angeles, CA 90017-3613
Tel: (213) 622-6469 Fax: (213) 622-6019

Massachusetts Office

277 Dartmouth Street, Boston, MA 02116-2805
Tel: (617) 424-9100 Fax: (617) 424-9120

and collapsed. Mrs. Patel and one of the couple's young children had suffered from carbon monoxide poisoning and required hyperbaric oxygen treatment. The car's battery was dead and it had burned through half a tank of gas after having accidentally been left running over night. The Patels' experience is not included in the Notice of Proposed Rulemaking.

On December 13, 2010, Mike Yaffe returned home from dinner and parked his keyless 2009 Lexus ES350 in the garage of his home. When he failed to show up for a social engagement the next afternoon, a friend went to check on him and found him unconscious on the floor of his bedroom. His Lexus was found running in the garage, almost out of fuel. The car's key fob was in the house on the kitchen counter. Yaffe and three medics who responded to the scene were rushed to the hospital with carbon monoxide poisoning. Mike Yaffe died 17 days later. This incident was reported to the National Highway Traffic Safety Administration but was omitted from the incidents described in the Notice of Proposed Rulemaking.

I represent Mary Rivera, the Patel family and the families of Ernie Codelia and Mike Yaffe. I have investigated those accidents and describe them from personal knowledge acquired during my investigation.

These incidents are more widespread than those three cases described above, however. For example, on September 11, 2009, Dr. Sanford Pariser returned home from dinner and pulled his 2007 Lexus LS460 sedan into his garage in Westchester County, New York. The Lexus had a SmartKey keyless start system. At 2:15 a.m. a carbon monoxide detector in Dr. Pariser's home woke him as the house filled with deadly carbon monoxide gas. He found his car still running in the garage.

In reporting the incident to the National Highway Traffic Safety Administration, Dr. Pariser wrote:

"As I see it, the failure here was two-fold: (1) when I opened my door to exit the car, no alarm or other sound alerted me that the engine was still running, as is the case with ignitions requiring keys. This is particularly problematic because the car's engine runs in virtual silence; and (2) even after the car was unwittingly left idling while in park, the engine did not cut off after some predetermined period of time."

On August 25, 2010, 29-year-old Chastity Glisson of Boca Raton, Florida was home cooking her boyfriend dinner. She had parked her keyless 2006 Lexus IS250 in the driveway, but moved it into her garage to make room for her boyfriend's pick-up truck in the driveway. The next day, her boyfriend missed meetings and failed to pick his daughter up from school. After his truck was found in Chastity's driveway, police entered the home and found Chastity dead on the bathroom floor and her boyfriend on the bedroom floor barely conscious. Both had been overcome by carbon monoxide gas. The Lexus in the garage had a dead battery and was out of fuel.

These are but a handful of examples of the carbon monoxide danger presented by certain keyless ignition designs. In the three years that I have been investigating death and injury cases involving keyless ignitions, I have also heard first-hand accounts which show that the error (unintentionally exiting a keyless ignition vehicle and leaving it running) is more common than has been reported to auto manufacturers and the National Highway Traffic Safety Administration. A disturbingly high number of operators of keyless ignition vehicles have reported to me instances where they returned to their car in their driveways or parking lots and found that they had left the car running. Because these events didn't cause injury they went unreported.

This human error is predicable and will continue to occur. Many drivers of keyless ignition cars have been turning a key to shut their engines for 30, 40, 50, even 60 years. It has become an ingrained act before leaving a vehicle. Keyless ignitions change that, and any fundamental change to a second nature action done thousands of times a year for 50 or 60 years is bound to cause confusion and mistakes.

In the case of keyless ignitions, the mistake has potentially deadly consequences.

The proposal suggested by NHTSA is that manufacturers provide a one second external audible tone to alert a driver that the fob has been removed from the vehicle and the vehicle is still running. The proposed rule change is inadequate and is unlikely to be effective. Ernie Codelia's death, Mary Rivera's injury and Mike Yaffe's death would not have been prevented by the NHTSA proposal.

All of the death and injury cases referenced above involved Lexus/Toyota vehicles, and each of the vehicles was equipped with an external audible alert which would have beeped twice when the victims left the vehicle, thus satisfying the proposed safety fix. Yet innocent people who made a predicable error still died or suffered profound brain injury, despite the very "fix" that NHTSA has now proposed.

The alert wasn't enough for a variety of reasons. Some operators were elderly and the tone wasn't loud enough. The elderly are the most vulnerable users of keyless cars, because they usually have the longest history and greatest familiarity with traditional keys and are less adaptable to new technology. In other cases, the victim's homes, like many American homes today, have automatic garage doors which were closing when they exited the vehicle. In that common circumstance, the tone was useless because it is drowned out by the garage door.

As is clear from the tragic stories of the families discussed in this letter, the only safety requirement that would adequately address this considerable, and often deadly, risk is to require a timed automatic shut down mechanism which could be tied to occupant detection.

The Notice of Proposed Rulemaking (NPRM) cites some reasons why NHTSA disfavors an automatic shut down mechanism: leaving pets in a vehicle while an owner shops or goes into a restaurant; and allowing drivers to stay in their vehicles and sleep for hours with the heat or air conditioning on.

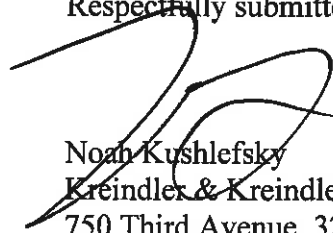
Regarding the concern that pets should be left in running vehicles, the NPRM describes an activity that constitutes a violation of law in 45 of 50 states and the District of Columbia. For example, New York State Vehicle and Traffic Law §1210 states, "No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the vehicle, and effectively setting the brake." Likewise, in the District of Columbia, Title 18 Vehicle and Traffic Regulations, Chapter 24 Section 2418.1 states that "No persons driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key, and effectively setting the brake."

Regarding the second concern -- that people should be able to sleep in idling cars -- many states have adopted broad anti-idling laws specifically prohibiting this conduct. For example Massachusetts General Law, Chapter 90, Section 16A states: "No person shall cause, suffer, allow or permit the unnecessary operation of the engine of a motor vehicle while said vehicle is stopped for a foreseeable period of time in excess of five minutes." In any event, if the fob remains in the vehicle or the driver is detected as an occupant, this shouldn't be an issue.

A timed automatic shut off would not cause the inconvenience the NPRM mentions, and it would not interfere with routine permissible activities like auto-repair work. In most scenarios it takes a considerable amount of time for deadly levels of carbon monoxide to seep into a home from an idling car. A timed shut-off after an hour will effectively eliminate the risk of accidental carbon monoxide poisoning. This allows plenty of time to warm up a vehicle, to leave the car and do simple errands and to accomplish almost every other thing that a driver would want to accomplish with an idling, unoccupied car. In the rare circumstance where a mechanic needs to run a car longer, requiring a restart once an hour is a miniscule inconvenience when weighed against the countless lives that would be saved.

A keyless start system is a convenience feature, and is not necessary for safe operation of a vehicle. It has proven to be the opposite. It creates safety risks not presented by traditional keyed vehicles. These risks must be mitigated through an effective safety standard, and an automatic shut off is the only way to effectively prevent more carbon monoxide deaths.

Respectfully submitted.



Noah Kushlefsky
Kreindler & Kreindler, LLP
750 Third Avenue, 32nd Floor
New York, New York 10017
(212) 973-3448
nkushlefsky@kreindler.com