



General Motors Corporation
Legal Staff

Facsimile
(248) 267-4365

INITSA
20590
Telephone
(313) 665-4874
2004 JUL 25 A 6:43

OFFICE OF CHIEF
COUNSEL

July 22, 2004

VIA FEDERAL EXPRESS

Jacqueline Glassman, Esq.
Chief Counsel
U.S. Department of Transportation
National Highway Traffic Safety Administration
400 Seventh Street, S.W., Room 5219
Washington, D.C. 20590

Re: EA04-002/GMT 360/370 Wipers

Dear Ms. Glassman:

Enclosed please find an original of the Settlement Agreement executed by GM on the referenced matter. GM will follow the instructions you provided for the electronic transfer contemplated by this agreement. Meantime, if you have any other questions, please let me know.

Sincerely,

Michael J. Robinson
Attorney

Enclosure

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
400 Seventh Street, SW
Washington, DC 20590

In re: General Motors Corporation)
Windshield Wipers in Model Year 2002 and 2003)
Chevrolet Trailblazer & Trailblazer EXT,)
GMC Envoy & Envoy XL, Oldsmobile Bravada)
and Isuzu Ascender)

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the National Highway Traffic Safety Administration ("NHTSA") and General Motors Corporation ("GM"), through their respective undersigned counsel, for the purpose of resolving claims for civil penalties for alleged violations of various provisions of a law commonly known as the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. Chapter 301 ("Safety Act"), arising out of GM's alleged failure to provide timely notification of the existence of a safety-related defect in the windshield wiper assembly of certain GM GMT 360/370 platform vehicles manufactured by GM between about October 2000 and November 2002.

Whereas, on February 2, 2004, GM submitted a Defect Information Report (Part 573 report) to the NHTSA indicating that the windshield wiper motor assembly in certain MY 2002 and 2003 Chevrolet Trailblazer & Trailblazer EXT, GMC Envoy & Envoy XL, Oldsmobile Bravada and Isuzu Ascender vehicles ("subject vehicles") could fail as a result of corrosion in internal components caused by water intrusion into the wiper motor housing.

Whereas, GM has been conducting a recall of the subject vehicles to correct the safety-

related defects.

Whereas, NHTSA alleges that GM did not provide timely notification of and remedy for the safety-related defects in the windshield wiper assemblies in the subject vehicles, as required by 49 U.S.C. §§ 30118-30120 and 49 C.F.R. § 573.6.

Whereas, GM denies that it has violated the Safety Act in any respect.

Whereas, it is the mutual desire of NHTSA and GM to resolve these issues by agreement in order to avoid a protracted dispute and possible litigation.

Now, therefore, the parties, by their respective undersigned counsel, agree as follows:

1. The Secretary of Transportation has the authority to compromise the amount of civil penalties under the Safety Act, 49 U.S.C. § 30165. The Secretary's authority has been delegated to the Administrator of NHTSA (49 CFR § 1.50).
2. GM is, and at all times relevant to this action has been, a manufacturer of motor vehicles and motor vehicle equipment within the meaning of the Safety Act, 49 U.S.C. § 30102(a)(5).
3. Without any admissions being made by GM, with GM denying any violations and without any findings being made by NHTSA with respect to the above-referenced allegations, GM shall pay to the United States a civil penalty in the sum of \$1,000,000.00 pursuant to the Safety Act, 49 U.S.C. § 30165. GM shall pay this penalty to the U.S. Treasury no later than 30 days after the execution of this Agreement. Payment shall be made by wire transfer of funds to the U.S. Treasury.
4. Upon receipt of the aforementioned payment, the Secretary of Transportation, by and through the Administrator of NHTSA, releases GM and all of its officers, employees, agents and attorneys, from liability for civil penalties arising out of, or

related to, GM's alleged noncompliance in its notification with respect to the existence of a safety-related defect in and its remedy of the subject vehicles; provided that nothing in this agreement shall release anyone from any liability for any future actions relating to implementation of the recall herein described.

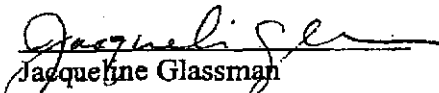
5. This Settlement Agreement represents the entire understanding and agreement of the parties. There are no oral or other understandings between the parties with respect to any matter or claim that is the subject of the Settlement Agreement.
6. The parties to this Settlement Agreement have the legal authority to enter into this Settlement Agreement, and each party has authorized its undersigned counsel to execute this Settlement Agreement on its behalf.

Dated as of July 9, 2004

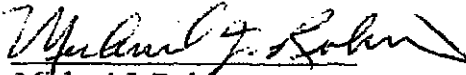
Dated as of July 12, 2004

National Highway Traffic Safety Administration
By:

General Motors Corporation
By:


Jacqueline Glassman
Chief Counsel

National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, DC 20590


Michael J. Robinson
Legal Staff-Environmental
and Vehicle Regulation
General Motors Corporation
300 Renaissance Center
Detroit, MI 48265-3000



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

MAR 16 2004

400 Seventh Street, S.W.
Washington, D.C. 20590

Mr. Robert Lange
General Motors Corporation
30200 Mound Road
480-111-N65
Warren, Michigan 48090

Re: GMT360/370 Windshield Wiper Recall

Dear Mr. Lange:

On February 2, 2004, General Motors Corporation (GM) submitted a Defect Information Report, pursuant to 49 CFR Part 573 (Part 573 Report), notifying the National Highway Traffic Safety Administration (NHTSA) that GM had decided a safety-related defect exists in certain model year (MY) 2002 and 2003 GM vehicles. According to the Part 573 Report, the windshield wiper motor assembly in these vehicles could fail as a result of corrosion in internal components caused by water intrusion into the wiper motor housing. Vehicles encompassed by this report include the Chevrolet Trailblazer & Trailblazer EXT, GMC Envoy & Envoy XL, Oldsmobile Bravada and Isuzu Ascender. GM submitted the Part 573 Report shortly after NHTSA upgraded a Preliminary Evaluation (PE) regarding this defect to an Engineering Analysis (EA).

As explained below, GM did not fulfill its obligation to provide timely notice of the defect to NHTSA. 49 U.S.C. § 30118(c) provides that "[a] manufacturer of a motor vehicle . . . shall notify the Secretary . . . and the owners, purchasers, and dealers of the vehicle . . . if the manufacturer- (1) learns the vehicle . . . contains a defect and decides in good faith that the defect is related to motor vehicle safety . . ." Section 30119(c) provides that "[n]otification required under section 30118 . . . shall be given within a reasonable time- (2) after the manufacturer first decides that a safety-related defect . . . exists . . ." NHTSA's regulations provide that a manufacturer shall submit a Defect Information Report to NHTSA "not more than 5 working days after a defect in a vehicle . . . has been determined to be safety related . . ." 49 CFR 573.6(b)

Our review of this matter indicates the following.



DOT AUTO SAFETY HOTLINE
888-DASH-2-DOT
888-327-4236

The vehicles involved are based on the GMT360 and GMT370 (GMT 360/370) platforms. A new design, this platform combined several attributes that, in conjunction with severe weather conditions or the effects of a quality control test used to assess watertight integrity of the vehicle, exposed wiper motor assemblies to submersion and water intrusion. The GMT360/370 features an air intake plenum at its base. The windshield wiper motor assembly is mounted to the firewall inside the intake plenum. Water flowing down the windshield enters the cowl vents and then the plenum. Although the plenum has drains, under some conditions the drains do not keep water from rising within the plenum. This rising water fills the plenum to the point where the wiper motor assembly is partially or completely submerged.

Production of the GMT360/370 vehicles began at GM's Moraine, Ohio assembly plant in October 2001. Quality control checks during the initial production run for these models revealed the wiper motor assembly was subject to water intrusion. GM instituted several design changes shortly after production began. One design change (EWO #LG533), executed in November 2001, modified the plastic cover to improve sealing of a mating electrical connector and added a vent hole. A second change order (EWO #MK191), executed in March 2002, changed the design of the internal circuit board terminals to reduce the possibility that the terminals could interfere with proper sealing of the housing cover during assembly.

By February 25, 2002, concern about wiper motor failure warranty costs led to a GM "Red-X" team study of wiper motor failures. During the time the "Red-X" analysis was performed, GM was receiving an increasing number of warranty claims -- approximately 250 to 500 per month -- for wiper motor failures in GMT360/370 vehicles.

The "Red-X" team concluded its study in mid-April 2002. Most significantly, it concluded that a new windshield wiper motor design was the correct solution for the wiper motor failures. Based on the "Red-X" study, GM instituted a number of corrective actions to vehicles being produced. Beginning in August 2002, the supplier of the cowl assembly covered some of the cowl vents with tape to help divert water away from the plenum during the quality control test that followed vehicle assembly. This removable tape helped to slow or prevent pooling of water in the plenum.

These warranty claims continued to increase after the "Red X" study. By November 2002, the date the new wiper motor design began to be installed in new production, GM had received nearly 9,000 warranty claims for wiper motor failure. The warranty rate for vehicles produced in Oklahoma City exceeded 3 percent. By December 2002, the warranty rate for GMT360/370 vehicles assembled in Moraine had grown to over 2 percent. When NHTSA opened the Preliminary Evaluation in September of 2003, the overall warranty rate for the wipers in the GMT 360/370 vehicles built prior to November 2002 had increased to over 7 percent. The new windshield wiper motor design that was used in production starting in

November 2002 apparently remedied the motor water intrusion problem. Vehicles produced after November 2, 2002 and equipped with the new motor design generated few warranty claims.

In connection with the opening of the PE regarding these wiper motor failures (PE03-042), NHTSA transmitted a formal information request (IR) regarding the wiper failures to GM on September 29, 2003. GM responded to the IR on November 12, 2003. In addition to reporting the activities of the "Red-X" team and the redesign of the wiper motor, the response revealed that the warranty trend for vehicles with the pre-November 2002 wiper motor had continued throughout 2003, peaking at more than 5,000 filed in June of 2003. By October 2003, GM had received almost 45,000 wiper motor warranty claims in all. The October 2003 data also revealed that almost 1 in 4 (23,831 of 91,248) of the GMT360/370 vehicles built at the Oklahoma City plant before November 2002 had generated warranty claims involving wipers. GM data further showed that GM had received 1,194 consumer complaints and two reports of crashes allegedly caused by wiper failures: a December 2001 wiper related crash reported in March of 2002 and an April 22, 2003 crash reported to GM the next day. GM's IR response concluded with the assertion that it was continuing its investigation of the issue.

As explained in GM's February 2, 2004 Part 573 report, GM assigned a Products Investigation Investigator to examine the wiper motor failures shortly after PE03-042 was opened in September 2003. The investigator provided a report to the Field Performance Evaluation (FPE) director on January 15, 2004. The FPE director then reviewed the issue with the General Motors North America (GMNA) Senior Management Committee and the decision to initiate a recall was apparently made at or after this meeting on January 26, 2004.

GM's response to the September 29, 2003 PE IR and its Part 573 Report both contain the assertion that the GMT360/370 windshield wiper motor failures do not present an unreasonable risk to safety. This contention is contrary to established law and NHTSA's March 14, 2003 recall request letter to GM in an earlier defect investigation involving windshield wiper failures. In that investigation of wiper failures on multiple GM platforms (EA 02-006), the agency sent a recall request letter to GM on March 14, 2003, seeking the recall of vehicles with a warranty rate of over 2 per cent. Shortly thereafter, GM conducted a recall.

That windshield wiper failure is safety related is beyond dispute. In *U.S. v. Ford Motor Co.*, 453 F. Supp. 1240 (D. D.C. 1978), the court examined a case where failures in windshield wiper pivot arms caused the windshield wipers on Ford Capri vehicles to stop functioning. In regard to the effect of such failures on safety, the court found as follows:

Visibility is of paramount importance to the safety of the driver of a motor vehicle. The risk of windshield wiper defect as to these drivers is an unreasonable risk under the Safety Act. [*Id.* at 1248]

Section 30118(c) requires a manufacturer to provide notification to NHTSA if it learns that its vehicles contains a defect and decides in good faith that the defect is related to motor vehicle safety. A manufacturer cannot evade its statutory obligations "by the expedient of declining . . . to reach its own conclusion as to the relationship between a defect in its vehicles and . . . safety." *United States v. General Motors Corp.*, 574 F. Supp. 1047, 1050 (D. D.C. 1983). Thus, a manufacturer incurs its duties to notify and remedy whether it actually determined, or it should have determined, that its vehicles are defective and the defect is safety-related.

The record here indicates that GM had abundant information from which it should have made a determination that the GMT360/370 vehicles contained a safety-related defect by December 2002. Early wiper motor failures had spurred partial redesigns of the original wiper motor design. As these failures continued, GM's own internal problem solving group recommended that the original wiper motor design be replaced with a new design that was installed in production vehicles by November 2002. More than a year before it notified NHTSA of any defect, GM had experienced high and growing warranty claims, had recognized that significant numbers of wiper motors were failing in service, had completed both a partial and total redesign of the wiper motor, and had expended significant resources in bringing this redesigned part into production.

Review of the applicable warranty data underscores GM's failure to meet its statutory responsibilities. By December 2002, the cumulative warranty rate for Oklahoma City produced vehicles, which would eventually exceed 25 percent, reached 5 percent. By mid-June of 2003, the Oklahoma City vehicle warranty rate exceeded 15 percent and the cumulative warranty rate for Moraine and Oklahoma City vehicles also reached 5 percent. When NHTSA opened its PE on September 17, 2003, the cumulative warranty rate for vehicles from both plants had reached 7 percent. By April 2003, when GM issued a recall in response to EA02-006, GM and NHTSA had agreed that GM would recall C/K trucks and other vehicles with a warranty rate above 2 percent. This recall involved vehicles that had been in service for a much longer period of time than the GMT 360/370 vehicles involved here. In fact, the warranty periods for the vehicles in the April 2003 wipers recall had largely expired, while the GMT360/370 vehicles were in the early stage of their service lives and were continuing to generate warranty claims.

Nor is this an isolated incident. GM's recent history with regard to the timing of defect determinations has, and continues to be, a matter of significant concern to the agency. To discuss these concerns, including an instance where GM failed to take appropriate action to address improperly installed bolts that threatened fuel tank crashworthiness, the agency met with GM in the spring of 2003 (May 15, 2003). GM noted that its Products Investigations Office had communicated with its North American Operations Group and emphasized the importance of initiating prompt investigations and submitting timely defect reports.

Yet, issues relating to timeliness continue. In addition to the late Part 573 report on GMT360/370 wipers, GM recently transmitted a defect report with respect to fuel rail failures in Oldsmobile Auroras. While we have not yet completed our investigation of that matter, again we are concerned about the timing of the company's Part 573 defect report.

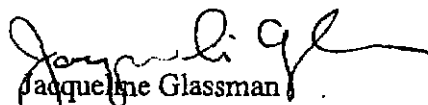
The agency has decided to pursue a civil penalty specifically for the untimely reporting of the defective windshield wiper motors in 587,127 GMT 360/370 vehicles. As noted above, the agency is concerned that this is not an isolated incident, but rather appears to reflect institutional shortcomings leading to repeated failures to report safety-related defects in a timely manner. In the several years that preceded the TREAD Act, civil penalties associated with significant failures timely to report safety related defects approximated 50 percent of the maximum civil penalty then allowed by law. Since that time, Congress increased the potential civil penalty liability to \$5,000 for each violation and the maximum penalty to \$15,000,000 for a related series of violations. Amendments to the TREAD Act became effective on November 1, 2000.

The agency believes that Congress intended that companies failing to report safety related defects in accordance with law should be subject to substantially higher civil penalties than were assessed prior to the passage of the TREAD Act. GM's failure to timely determine that a defect exists in 578,157 GMT 360/370 vehicles equipped with pre-November 2002 wiper motor assembly and to provide notice of that defect in a reasonable time violates both sections 30118(c)(1) and 30119(c)(2). Thus, GM's potential liability in this case far exceeds the existing \$15,000,000 statutory maximum.

Considering the clear evidence of delay and the fact that this is not an isolated incident, the TREAD Act's enhancement of civil penalty obligations and the fact that the conduct at issue here post-dates the TREAD Act, we believe this matter warrants a civil penalty substantially higher than those paid in the past. The agency is willing to resolve this matter with General Motors by assessing a civil penalty in the amount of \$ 3,000,000.

The agency looks forward to resolving this civil penalty assessment and working with the company to ensure that, in the future, all safety related defects are reported in a timely manner.

Sincerely,


Jacqueline Glassman
Chief Counsel



NHTSA
WASHINGTON, DC 20590

Thomas A. Gottschalk
Executive Vice President -
Law and Public Policy
and General Counsel

2004 APR 14 P 4: 05

April 8, 2004

OFFICE OF CHIEF
COUNSEL

**CONFIDENTIAL
FOR SETTLEMENT PURPOSES**

Ms. Jacqueline Glassman
Chief Counsel
National Highway Traffic
Safety Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Ms. Glassman:

Re: GMT 360/370 Windshield Wiper Recall

This responds to your March 16, 2004 letter to Robert Lange in which NHTSA proposed payment of a three million dollar civil penalty consequent to GM's voluntary decision to conduct the subject safety recall of 581,344 U.S. vehicles. For reasons set forth in this letter, we respectfully disagree that any penalty is appropriate in the circumstances presented here, much less one of the magnitude suggested by the Agency.¹

Our strong objection to the proposed assessment of any penalty in this matter is based on the law and the facts. We have no disagreement with the Agency on three important principles which are invoked by your letter. First, General Motors fully understands and supports the purpose of the Safety Act in requiring manufacturers to be responsible for the safety of the vehicles they sell. Second, we fully understand and respect the important role NHTSA has in insuring that manufacturers responsibly meet this obligation to the consumer. And, third, we agree that a manufacturer cannot deliberately evade its obligation to make a good faith determination of whether a safety-related defect is present in its vehicles by refusing to address the issue or being purposely dilatory in avoiding the issue. In short, the manufacturer must act in good faith, not bad faith.²

¹ To our knowledge, this would be the highest civil penalty amount ever assessed on any manufacturer with respect to any safety-related defect.

² It is settled law that the gravity of the alleged violation and the reasonableness and good faith of the manufacturer can be considered in mitigation. See Ford Motor Co. v. Coleman, 402 F. Supp. 475 (D.D.C. 1975). And mitigation is appropriate absent "blatant disregard" for the law. See United States v. General Motors Corp., 305 F. Supp. 598 (D.D.C. 1974).

The Agency cites the X-Car case with which GM is obviously familiar. The language relied upon addresses the hypothetical situation of a manufacturer defeating the purpose of the Act by deliberately refusing not to make any determination at all, and not the situation here where a manufacturer earnestly engages in active review of a problem and ultimately elects to recall its vehicles.

General Motors acted in good faith in this matter. The Agency suggests that a timely decision to recall would have been made in December 2002.³ Even with the benefit of hindsight, it is clear that GM was acting in good faith under the Safety Act at that time in continuing its active evaluation of the situation. The wiper motor under review was in a U.S. population of 581,344 vehicles built from October 2000-November 2002. Their average exposure today is about 2.29 years. That yields a total of 1.3 million vehicle years on the road and an estimated 25.1 billion vehicle miles driven. As of December 2002 there had been a total of one -- only one -- reported collision attributed to the failure of this particular motor, and it was a minor crash in which no injuries had been reported.⁴ And, despite these large exposures, there has not been a reported incident of a failure leading to any injury -- none. We disagree that GM had "abundant evidence" in December 2002 which should have compelled it to make a determination that the wiper motor posed an unreasonable risk to safety.

There was legitimate doubt, to say the least, that in this particular situation the elevated warranty problems being experienced with this motor rose to the level of an unreasonable risk of accidents or injuries under the Safety Act. In addition to the fact that there does not seem to be a causal link to any increased accident rate, the motor failures could result in four different conditions, all of which were displeasing to customers, but only one of which potentially could contribute to a loss of visibility. Those four conditions were: wipers do not operate when requested; washers run continuously and cannot be turned off; wipers operate intermittently, without being requested; and, wiper blades come to rest out of position when turned off.

The Agency cites GM's awareness of an increase in warranty rate and a "Red-X" engineering effort which led to a replacement of the wiper motor as the basis for contending that a recall decision was required in December 2002. It is certainly true that a new wiper motor was put into production for these model vehicles in November 2002. However, that process was the culmination of a customer satisfaction/product improvement effort which had begun long before GM began to see an increase in warranty rate and concluded that it wanted to have a more reliable motor to address that issue.

In fact, the new motor was intended for start of production, but validation testing did not permit its introduction until November of 2002. In going to the new motor, GM hoped to have a solution to the wiper warranty issue, as well as a less costly motor. Its motivation for going to

³ NHTSA offers no explanation of the basis for its assertion that sometime in "December 2002" is the moment in time GM "should have" made the determination that it ultimately made at a later date.

⁴ As of March 26 of this year, there have been two additional minor crashes, bringing the total in all this exposure to just three.

Ms. Jacqueline Glassman
April 8, 2004
Page 3

this new motor was not indicative of a recognition of a perceived safety problem, but rather was a normal response to a source of customer dissatisfaction yielding a product improvement at a lower cost. If GM had honestly believed in 2002 that the old motor presented an unreasonable risk of accidents or injuries, it would have voluntarily undertaken a safety recall at that time.

We respectfully suggest that it would be perverse and counterproductive for the Agency to use a manufacturer's awareness of an increase in warranty claims and initiation of a resultant product improvement program to constitute "abundant evidence" of an unreasonable safety risk, especially in the absence of anything other than a de minimis number of minor crashes -- or, in this case, one.

Reading your letter carefully, we are led to the conclusion that the Agency feels that a recall was compelled in this case under the Ford Wiper decision some 25 years ago. At times, it seems that the Agency feels that any malfunction of windshield wipers automatically and without further analysis establishes the presence of a safety-related defect. While we are fully appreciative of the potential a loss of visibility may pose for an increased risk of accidents, the fact is the mode and consequence of wiper failures can vary considerably, as this matter illustrates. And, of the sixteen wiper failure investigations analyzed over a year ago, six did not result in recalls. (See Lyndon Lie's letter of March 27, 2003 to Kathleen DeMeter.)

The law is clear that in deciding whether a safety-related defect exists, the unreasonableness of the risk is to be evaluated against the severity of the consequences and the relative frequency of those consequences.⁵ In this matter, it appeared to General Motors certainly in December 2002 and even thereafter that the consequences of these motor failures did not appear to be severe and the frequency of a severe consequence -- i.e., a visibility-reduced collision -- was low.

Candor requires an acknowledgment that General Motors engaged in good faith dialogue with the Agency about its different assessment of the safety-related consequences of this and other wiper motor failures and ultimately yielded to NHTSA's position and undertook a voluntary recall. And the overall record is replete with instances where GM has stepped up immediately to a product issue which it felt had obvious negative safety ramifications and undertaken a prompt

⁵ From the earliest days, courts construing the statutory term "unreasonable" have observed that "[it] was placed in the bill deliberately, to signify a 'common sense' balancing ..." United States v. General Motors Corp., 518 F.2d 420, 435 (D.C. Cir. 1975) ("Wheels"). Subsequently, the U.S. Supreme Court adopted specific criteria for evaluating "unreasonable risk" in a variety of contexts, which the District of Columbia Circuit has since followed. Under these later decisions, the "unreasonableness" of a risk must be evaluated according to at least three criteria:

- 1) the severity of the consequences;
- 2) the relative frequency of those consequences;
- 3) the other safety, social, and economic consequences or tradeoffs associated with the remedy.

See generally Industrial Union Dep't. AFL CIO v. American Petroleum Inst., 448 U.S. 607 (1980) ("Benzene"); American Textile Mfrs. Inst. Inc. v. Donovan, 452 U.S. 490 (1981) ("Cotton Dust"); Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto Ins., 463 U.S. 29 (1983) ("State Farm"); Center for Auto Safety v. Peck, 751 F.2d 1336 (D.C. Cir. 1985) ("Bumpers"); United States v. General Motors Corp., 656 F.Supp. 1555 (D.D.C. 1987), aff'd on other grounds, 841 F.2d 400 (D.C. Cir. 1988).

Ms. Jacqueline Glassman

April 8, 2004

Page 4

voluntary recall without any encouragement (or even awareness of GM's diligent investigation and use of its FPE process) from NHTSA. On the other end of the continuum, it is not unusual for a manufacturer to have an honestly held view that a safety-related defect is not present or is at least unclear, but after thorough review, assent to the view of the Agency and undertake a safety campaign. We submit that is what occurred here. It is not indicative of bad faith, but rather good faith engagement with the Agency, objective engineering assessment driven by data and analysis, and ultimately a resolution of a legitimate difference of opinion in favor of the consumer and the Agency's wishes. This is not the stuff of bad faith. It is good faith.

Notwithstanding our view of this matter, we are more than prepared to sit down with NHTSA and discuss our plans and NHTSA's suggestions for further improvements which might be made to our FPE process to minimize the risk the Agency sees of undue delay in decision making under the Act. GM has responded well in the past and without the threat of civil penalties. Several years ago, one of the Agency's leading concerns was that our record for timely response to IRs was seriously deficient. In that situation, NHTSA's arguments had merit. Today, GM has answered 76 IRs spanning 2.5 years 100 percent on time or early. Still, NHTSA's negative perception based on the earlier history lingered well beyond the time when GM had actually responded to the concern. When the facts were brought to bear on the dated perception, NHTSA acknowledged the turnaround. This points to the danger here of allowing a generalized perception formed on the basis of a few instances in which our responsiveness was not up to NHTSA's exacting standards to influence careful review of the facts and law governing a specific case.

For all of these reasons, we strongly urge that there is no factual or legal basis to conclude that GM was not acting in good faith when it continued to evaluate the wiper motor problem in December 2002 and later decided at the Agency's urging to conduct the recall in question.

Very truly yours,



Thomas A. Gottschalk
General Counsel