
CENTER FOR AUTO SAFETY

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June 17, 2014

Anton R. Valukas
Jenner & Block
353 N. Clark Street
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Dear Mr. Valukas:

Your report to GM's Board of Directors on Ignition Switch Recalls [hereinafter "Valukas Report"] avoided and missed crucial facts and issues in constructing what amounts to a corporate defense against criminal charges. The report repeatedly omitted materials that show GM at its highest levels of management considered stalling to be a safety defect. The report does not consider the handling of Early Warning Reporting (EWR) death and injury reports at GM which revealed the ignition switch deaths and injuries as early as 2004. The report contains selected materials from GM's Product Investigations employees that omit key document related to stalling alone as a safety defect. The report also selectively cites and misstates materials on stalling within the auto industry.

Early Warning Reporting (EWR): The Report failed to investigate the biggest body of evidence available on Ignition Switch stating on p. 279: "We do not understand that GM is alleged to have violated its obligation to submit these EWRs, and such routine reporting is not the focus of this investigation." Yet the 2,039 Death and Injury Reports filed under EWR by GM with NHTSA on the recalled vehicles are the single biggest repository of information on real world ignition switch related, deaths, injuries and crashes at GM. Yet the Report doesn't address these files, who receives them at GM, how they are analyzed and sent to NHTSA.

From 2004 to 2007, GM sent NHTSA 19 summary EWR death reports on components likely to be associated with ignition switch failure. NHTSA sent a Death Inquiry to GM for 17 out of 19 of these summary reports. GM responded by sending the underlying records behind the EWR death report. What was the process for retrieving these documents and sending them to NHTSA? We know from NHTSA files that NHTSA sent the Death Inquiries to Gay Kent who sent the responsive documents back to NHTSA. As the head of Product Investigations, Gay Kent was a key player in Ignition Switch. The Valukas report cited 8 different documents and communications to or from Gay Kent plus referenced her actions numerous times through the report. We could not find any reference to her role in EWR and what insights she would have gotten from the EWR reports. In addition, the Report does not reference her role in the recall discussed above even though she submitted the Part 573 report.

Trooper Young's report in the Rademaker-Weigel fatal crash in Wisconsin was the subject of a [summary EWR report](#) sent to NHTSA for the fourth quarter of 2006 in January 2007. On May 4, 2007, NHTSA sent Gay Kent a Death Inquiry for this crash to which she responded on June 11, 2007. Yet there is no record in the Valukas Report showing any interview of Gay Kent on whether she reviewed this or any of the 16 other EWR death reports sent to NHTSA in response to a Death Inquiry on a recalled Ignition Switch vehicle. The Report states Dwayne Davidson submitted the accident

report “to NHTSA in connection with GM’s quarterly death and injury report in 2007.” This is clearly wrong because only summary information is submitted in the quarterly reports and actual documents and only submitted whenever NHTSA sends a Death Inquiry.

The Stalling is not a Safety Defect Strawman Argument: The constant theme throughout your report is that stalling is not a safety defect.¹ “In 2004, however, GM engineers, faced with a multitude of reports of moving stalls caused by the ignition switch, concluded that moving stalls were not safety issues because drivers could still maneuver the cars²

The Report makes a subtle but futile distinction that stalling is not a *per se* safety defect. 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.³ Thus it doesn’t matter if stalling is a *per se* safety defect or not, it’s a safety defect. The Report cites Ford failure to recall its TFI module for stalling to support its position that “moving stalls did not pose an unreasonable threat to motor vehicle safety”⁴ This is a terrible example because Ford withheld documents from NHTSA that would have resulted in a recall had NHTSA known of the documents. Plus a California Court cited Ford’s deception in ordering a statewide recall of Ford vehicles with the TFI module.⁵

GM Senior Management & Field Action Decision Committees Approved Stalling Recall on May 26, 2004: The Valukas Report fails to cover the action by GM’s top committees for safety recalls which decided stalling alone was the basis for a recall after a protracted battle with NHTSA over doing the recall. [GM’s Part 573 Recall Report in 04V-289](#) states:

General Motors has decided that a defect, which relates to motor vehicle safety, exists in certain 2002 model year Oldsmobile Bravada and GMC Envoy vehicles [T]he ECAS may produce a brief electrical spike while the vehicle is operating. This electrical spike can disrupt the powertrain control module (PCM) causing the vehicle to stall. If the spike damages the PCM, the vehicle may not restart. If this happens while the vehicle is moving, a crash could occur without prior warning. NHTSA opened a preliminary investigation regarding this condition on January 3, 2003 and upgraded the investigation (EA03-007) on May 6, 2003. On April 27, 2004, NHTSA indicated it intended to review this issue at an Internal panel to confirm there is sufficient evidence of a safety defect to request GM to recall subject vehicles. NHTSA convened an Internal panel meeting on May 20, 2004.

¹ “The opening of this original Cobalt PRTS report and its designation of the problem as a non-safety issue highlights a broader issue that affected the entirety of GM’s investigation of the Ignition Switch. Individuals at GM generally did not regard moving stalls as an inherent safety problem.”²⁵² Their view - at the time and repeated in investigative interviews - was that moving stalls were not safety issues because a driver would be able to control the car and steer it to the side of the road.” Valukas Report at 64.

² Valukas Report at 2.

³ In *U.S. v. General Motors Corp.*, 413 F.Supp. 933 (D.D.C. 1976), 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.”

⁴ Valukas Report at fn 280.

⁵ [NHTSA Chief Counsel Frank Seales to Ford Motor Co.](#), June 26, 1998. *Howard v. Ford Motor Co.*, (Case No. 763785-2, Alameda County Sup. Ct. Aug. 29, 2000.)

The GMNA Senior Management Committee reviewed the issue and on May 26, 2004 the Field Action Decision Committee decided to conduct a safety recall.

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The Report's failure to cite this recall and action by top GM management to approve it is all the more inexplicable given that the report cites some of the events in NHTSA's defect investigation leading up to the recall as if they established a basis for not doing stalling recalls. The Valukas Report states "[Gay] Kent, Bill Kemp, Keith Schultz, and others engaged with NHTSA in the late spring of 2004 regarding engine stalling more broadly." Some of the key events cited in the Valukas Report in this section such as the [May 17, 2004 Milford Proving Grounds Stalling Demonstration](#) are in NHTSA Defect Investigations PE03-001 and EA03-007 and appear to be nothing more than an effort to ward off recall 04V-289 by GM. The Valukas Report doesn't cite the May 4, 2004 meeting at which [NHTSA provided a survey](#) showing 76 of 76 consumers with the subject vehicles said stalling was a safety hazard. On May 20, NHTSA convened a panel to review EA03-007 for a recall request, at which point GM convened its Field Action Decision Committee and decided to conduct a safety recall.

Conclusion: The Valukas Report is clearly flawed in accepting GM's explanation that its engineers and senior managers did not know stalling was safety related. GM lost the first litigated stalling case in 1977 brought by the National Highway Traffic Safety Administration. GM senior management reviewed and approved the Envoy-Bravada stalling recall 04V-289 demanded by NHTSA in May 2004 before the Ignition Switch defect became full blown. The Report fails to probe GM's EWR reporting designed to detect defects like the Ignition Switch. Furthermore, the Report ignores [300 stalling recalls conducted by other manufacturers](#). Based on these omissions, one must conclude the Report was designed to avoid criminal prosecution by the Justice Department.

Sincerely,



Clarence Ditlow
Executive Director,

cc: Anthony Foxx, US Secretary of Transportation
David Friedman, NHTSA Acting Administrator
Senator Jay Rockefeller
Senator John Thune
Senator Claire McCaskill
Senator Dean Heller
Senator Richard Blumenthal
Senator Edward Markey
Rep. Fred Upton
Rep. Henry Waxman
Rep. Tim Murphy
Rep. Diana DeGette
Preet Bharara, US Attorney, SDNY