

Emerging *from the* GM Ignition Switch Recall

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It has been nearly two years since initial reports of the General Motors Company (GM) ignition switch recall made it into the public eye. What followed was a difficult trek through congressional hearings, federal investigations, and civil court cases surrounded by high publicity – not to mention a growing number of attributed fatalities. The question of responsibility was at the pinnacle of all major liability cases against GM. Was New GM, the company formed following the 2009 bankruptcy filing, liable for the actions of Old GM (General Motors Corporation)? The company, of course, argued it was not. However, beyond the scope of the company itself, the GM recall significantly influenced the automobile industry as a whole, serving as a lesson on the importance of immediate action and transparency by automakers and their regulators when consumer safety is on the line.

Ignition Switch Recall in Review

On February 14, 2014, newly appointed CEO of General Motors Company Mary Barra enacted a recall of GM's ignition switch. However, news traveled quickly that GM had been aware of the faulty ignition switch for a decade yet did nothing to stem the use of the part. Reports highlighting the ignition switch's sensitivity to heavy key chains and jostling, causing the ignition to switch to the off position, circulated within the company as early as 2003. Harm resulting from sudden ignition shut-off was originally calculated to be minimal, but later reports showed that if cars were to suddenly switch off, causing a collision, air bags could also be deactivated and would not deploy without power. It was precisely this danger that resulted in numerous fatalities.

Originally only owning to 13 deaths, the number of fatalities GM claimed responsibility for has risen to 124 since the recall. GM has also acknowledged its role in 17 serious injuries (i.e. amputation, paraplegia, quadriplegia, brain damage, and severe burns), and 258 hospitalizations and outpatient treatments. However, GM has declined to recognize more than 4,000 other claims of death, injury, or other loss as a result of the faulty ignition and currently has no legal

requirement to do so for claims related to incidents occurring prior to the 2009 restructuring.

Since the 2014 recall announcement, GM has undergone investigation by multiple federal agencies and Barra has been called to testify in front of Congress on four occasions. In a settlement announced in September, GM agreed to pay \$900 million to the U.S. Department of Justice (DOJ) for its failure to disclose the ignition switch safety defect, an amount that outweighed GM's set-aside fund for victims and their families by \$300 million.

The recall tragedy began well before the February 2014 announcement, and the consequences will likely continue to play out for some time to come. Though the Congressional hearings on the ignition recall have come to an end and the DOJ settled and has ruled out criminal charges, legal battles in civil courts are ongoing. In the spring, a federal court ruling shielded GM from over 100 civil cases of injury or loss occurring prior to the 2009 restructuring; however, instances where people were injured post-2009 due to the faulty ignition switch may still be able claim damages against New GM. As it stands, the recall includes 2.6 million vehicles worldwide.

The lawsuits against GM follow the company's settlement with the family of a Georgia woman killed in an accident resulting from the faulty ignition switch. The settlement led to the creation of GM's compensation fund for the victims and the families of victims who agree not to file charges against the company. GM has confirmed that the ignition malfunction has resulted in hundreds of deaths, serious injuries, and hospitalizations since 2009 and has given 295 offers of compensation from the established fund. Initially GM said it expected to spend \$400 million on claims, but that amount rose to over \$600 million during the summer. However, by fall, those who qualify for the fund have only received \$93 million in compensation – just under ten percent of what the DOJ settled for.

Numerous individual GM owners, as well as the State of Arizona, launched cases against the company claiming

that GM misled customers concerning the resale value of their vehicles. Essentially, owners of the effected GM vehicles claim the resale price, and therefore value, of their cars has been negatively impacted by the GM ignition recall. Defendants of GM argued the company's 2009 bankruptcy absolves the current permutation of the company from damages inflicted by the earlier pre-bankruptcy company. Judge Robert Gerber, who presides over the U.S. Bankruptcy Court for the Southern District of New York, ruled that the New GM is not liable for the mishandling of the Old GM.

Claimants may still be able to secure a victory, however, if they are able to show that New GM continued the poor handling of the malfunctioning ignition switch. In other words, if New GM knew about the problem and continued to cover it up instead of issuing an immediate recall, Judge Gerber's ruling may not apply to cases brought on these grounds. This would have been the basis for potential criminal charges against GM and possibly the attorneys who advised GM in this matter as well, but the DOJ did not seem to think it could build a strong enough case for criminal charges.

Failure of the NHTSA

The GM ignition recall resulted in an initial congressional hearing in April 2014 and an investigation follow-up in June of 2014. The congressional hearing, entitled "GM Ignition Switch Recall: Why Did It Take So Long?" was under the authority of the Subcommittee on Oversight and Investigations. Committee members put questions to Barra and implicated both General Motors and the National Highway Transport Safety Administration (NHTSA) in failure to recognize or report the issue in a timely manner. The Oversight Subcommittee did a review of the NHTSA's handling of the situation and in a majority memorandum from September of 2014 stated that the NHTSA had "ample information" in 2007 about the ignition defect and coinciding air bag deployment failure. The Committee decided that the NHTSA failed to properly regulate GM's handling of the situation.

The Committee's decision has increased pressure on and from regulatory bodies, which has pushed carmakers to issue recalls more readily – for now. In January, NHTSA administrator Mark R. Rosekind said that 2015 would likely see higher rates of recall than even the record highs of 2014; however, that does not appear to be the case, given that by September, 2015

recall numbers were at half the level of recalls for the whole of 2014.

To many, the failure of the NHTSA to catch and report the deadly defect suggests a failure of the agency itself, inducing Congress to consider an overhaul of the Administration. In early November, the House voted to slash the Senate-proposed budget increases for the NHTSA by roughly \$15 million per year, while keeping in place the expectation of a 40 percent increase in vehicle safety by 2021. However, the same week the House voted to cut the proposed budget increase, the NHTSA levied a \$70 million fine against Takata for its handling of airbag defects.

GM Rebound & Recovery

To date, the ignition switch recall has cost GM approximately \$4.1 billion, but has done little to tarnish the name of the auto-giant. GM sales continue to grow. The company's recovery was likely supported by the record-low oil prices experienced by consumers for the 2014 – 2015 winter. However, despite little effect to sales, company stocks were not unaffected by the recall. GM stocks dipped from July through October 2014, hitting lows that the company had not seen since April 2013. Though GM's stock price has picked up since last October, it has not yet rebounded to its post-crisis peak in December 2013. However, analysts expect there will be no long-term effect on the value of the company.

In August, GM recalled over 70,000 2010 Chevrolet Cobalts in the U.S. and Canada due to improper wiring that may prevent driver's side air bags from deploying upon impact. This news comes on the heels of GM's overseas recall of new Chevrolet Malibus due to airbag defects in May. GM was also involved in the massive Takata airbag recall earlier this year, resulting from defects responsible for the death of six passengers in the United States. These recalls on newer model vehicles demonstrate GM's faster call to action than what came to light in last year's faulty ignition switch fiasco. However, with sales left largely unaffected, civil legal responsibility partly deflected on a technicality, and criminal charges off the table, have auto manufacturers truly learned their lesson on prioritizing vehicle safety over corporate gains? ◀