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U.S. SENATE CLIMATE CHANGE CLEARING HOUSE

United States Senate

February 26, 2014

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The Honorable David J. Friedman
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE, West Building
Washington, DC 20590

Dear Administrator Friedman:

I write to urge the National Highway Traffic Safety Administration (NHTSA) to issue a rule¹ to require automobile and automobile equipment manufacturers to submit to NHTSA's publicly available Early Warning Reporting (EWR) system copies of source documents through which the manufacturers first become aware of incidents involving fatalities. Making this information available could assist NHTSA, independent automobile safety experts and the public in the earlier identification of defects that could cause fatalities. Specifically, such a requirement could have enabled the earlier identification of the General Motors Chevrolet Cobalt ignition switch defect that has reportedly caused thirteen deaths and at least seventeen injuries, some of which involved the failure of airbags to deploy because the engine had switched off at the time of the impact. A search on the EWR database also reveals seven reports of Massachusetts-based incidents that caused nine injuries involving Chevrolet Cobalt vehicles that experienced problems with the vehicles' airbags.

The EWR system² currently requires automobile and automobile equipment manufacturers to submit information that includes reports of incidents in which the manufacturer learns of potential defects that could have caused fatalities or serious injuries. Death and Injury Reports in the EWR are publicly searchable, but those reports do not include the more detailed underlying documents that first alerted the manufacturer to the potential problem. Moreover, NHTSA rarely requests copies of these underlying documents from the manufacturers, and when it does do so, they are generally not made publicly available.

Recently, press accounts³ have reported that General Motors was aware in 2005 or earlier that the ignition switches in the 1,367,146 vehicles it recalled earlier this month could

¹ Such a rule could be crafted to exempt medical documents and bills, property damage invoices or estimates, and documents related to damages in order to minimize the volume of materials that would need to be provided.

² <http://www-odi.nhtsa.dot.gov/ewr/>

³ See for example <http://www.nytimes.com/2014/02/22/automobiles/7-years-before-recall-crash-investigator-raised-concern-over-switched-off-gm-air-bags.html?ref=automobiles> and <http://www.usatoday.com/story/money/cars/2014/02/18/gm-cobalt-g5-faulty-ignition-switches-recall-deaths-airbags/5582241/>

inadvertently turn off and disable the airbags. The company issued a 2005 warning (and a 2006 update thereto) to dealers that such a problem could exist. In 2007, General Motors and NHTSA representatives discussed a 2005 Maryland crash in which airbags did not deploy resulting in the death of a 16-year-old driver. This crash was reported by General Motors under EWR and was the subject of a detailed investigation by NHTSA's Special Crash Investigations division, which submitted its report on the crash in February 2006.

Also in 2007, following a 2006 Wisconsin crash in which two teenagers were killed when airbags failed to deploy after losing control of a car whose engine was later shown to have been off at the time of the crash, a NHTSA investigator requested additional information. Although General Motors provided NHTSA with additional documents, no formal investigation or recall was ever initiated even though NHTSA's crash report⁴ did raise the possibility that "the movement of the ignition switch just prior to the impact" turned off the engine. Earlier public availability of the source documents as part of the original EWR submission could have led to an earlier recall, which in turn would have prevented subsequent accidents, injuries and deaths.

This is not the only example of a major safety recall that could have benefited from more extensive EWR reporting requirements and transparency. Toyota reported 301 incidents of death and injury due to potential unintended acceleration issues between 2003-2009, but NHTSA requested additional documentation for only 15. And when 26 reports of fire-related deaths and injuries were reported between 2003-2010 for the Jeep Grand Cherokee, NHTSA requested no additional documentation from the manufacturer.

EWR reporting can also serve as a mechanism for the public and independent safety experts to assess the adequacy of remedies associated with a recall. For example, on December 7, 2004 Ford initiated a recall of 2002-04 Ford Escapes due to an accelerator cable malfunction. From 2004-2011, the EWR database shows 35 crashes, four deaths, and 36 injuries due to speed control malfunctions in 2001-2004 Ford Escapes, raising the possibility that the remedy associated with the recall was ineffective. Yet NHTSA did not open an investigation into the matter until July 17, 2012, after the January 2012 death of 17-year-old Saige Bloom in Arizona who was driving home from the dealership after purchasing her 2002 Ford Escape⁵. Eight days after NHTSA opened its investigation, Ford initiated a new recall of Ford Escapes, and ultimately was fined by NHTSA for failing to initiate the recall quickly enough.⁶

NHTSA's former Administrator David Strickland said⁷ that "The role of the consumer in influencing auto recalls cannot be under-estimated. Consumers are the lifeblood of the recall process and recalls are often the direct result of a government investigation into consumer complaints." I could not agree more. I urge you to immediately announce your intent to require the automatic submittal of all initial claim or notice documents related to incidents that involve

⁴ <http://www.scribd.com/doc/208395985/On-Site-Air-Bag-Non-Deployment-Investigation>

⁵ <http://www.abc15.com/news/local-news/investigations/fatal-accident>

⁶ <http://www.abc15.com/news/national/ford-to-pay-174-million-fine-for-delaying-recall>

⁷ <http://ohsonline.com/articles/2013/01/22/2012-nhtsa-recalls.aspx?admgarea=ht.TransportationSafety>

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fatalities to the EWR system in order to increase the role independent automobile safety experts and consumers can have in identifying potential defects.

So that I may better understand NHTSA's actions, I also request that you provide me with a copies of 1) all documents related to the EWR reports of Massachusetts incidents involving the Chevrolet Cobalt or any other vehicle recalled due to this potential defect, 2) General Motor's June 11, 2007 submission to NHTSA related to the Cobalt ignition switch issue, 3) NHTSA's March 1, 2006 DI05-142 request for further records related to General Motors' EWR submissions, and any response to this request and 4) copies of any additional documents (including emails, memos, correspondence, meeting or teleconference meeting notes, or other materials) created or obtained by NHTSA since April 25, 2007 that are related to this defect.

Thank you for your consideration of this important matter. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 202-224-2742. Please provide your response no later than close of business on March 21, 2014.

Sincerely,


Edward J. Markey
United States Senator