

TUESDAY, DECEMBER 2, 2014

PERSPECTIVE

## We must hold automakers accountable

By Jonathan Michaels

To be sure, 2014 will be remembered as a year the world changed — the year that honest disclosure gave way to raw deception; the year that automakers challenged our belief in all that is right and just.

The crisis began with General Motors' admission on Feb. 7 that it had been concealing an ignition switch defect in its vehicles for 13 years. GM has now admitted that it killed 33 citizens; but for years, it callously sat back and denied any knowledge of a defect with its vehicles. The truth, of course, is that GM had been receiving notices from the families of the dead that its vehicles contained a fatal defect, but it continued to build the cars anyway.

What makes the matter so much worse is the unabridged cover-up — the willingness to lie about it all without a scintilla of remorse. When GM “came clean” about the 13-year concealment, it stated that it made a decision to issue a recall on Jan. 31, a week before the public announcement. However, this has also been proven to be untrue.

In a series of emails discovered by lawyers in the class action against GM, it is revealed that GM placed an “urgent” order for 500,000 replacement ignition switches on Dec. 18, six weeks before the date testified to by GM chief executive Mary Barra in the congressional hearings.

The emails demonstrate that GM sought to carefully plan its public relation spin, putting reputation ahead of public safety. The delay was not without consequence. One lawyer who has filed a wrongful death claim against the company indicated that that the death of his client occurred between the Dec. 18 purchase order date and the Feb. 7 recall.

It is also of interest that the independent report, commissioned and paid for by GM, found none of these implicating emails. The 315-page report prepared by former U.S. Attorney Anton Valukas — heralded by Barra as “extremely thorough” —



The New York Times

Candice Anderson, who was the driver in a 2004 crash that killed her boyfriend, Gene Mikale Erickson, in Canton, Texas, May 14.

cleared GM's top brass of any wrongdoing.

To understand the magnitude of the human destruction caused by GM, consider the case of Candice Anderson, the 25-year-old Texas woman who in 2004 lost control of her Saturn Ion and hit a tree, killing her fiancé. Anderson, who was also seriously injured, was indicted by a grand jury for vehicular manslaughter, and plead guilty to the lesser charge of negligent homicide, receiving a five-year sentence. Last month, Anderson was acquitted of the charge, after the court was shown evidence that the accident was caused by GM's ignition switch defect.

If it were only GM that had engaged in the deception, some level of understanding could be applied. But we soon learned that still waters run deep, as other manufacturers began to confess atrocities of their own.

Earlier this year, 10 manufacturers issued recalls for vehicles that contain airbags manufactured by Japanese parts supplier Takata. The recall, which covers some 7.8 million vehicles, claims that the airbags are prone to shoot shrapnel into the driver's face upon deployment. The company, which is now subject to a Department of Justice criminal probe, has reportedly known about the defect since 2004, but did not initiate a recall. The New York Times reports that beginning in 2004 Takata began pulling airbags out of vehicles at junk yards and tested them after work, on weekends and during holidays, to keep it a secret.

So serious is the situation that the National Highway Traffic Safety Administration (NHTSA) has taken the unusual step of issuing a consumer advisory, urging vehicle owners with defective airbags to take immediate action. As the

agency stated, “NHTSA urges owners of certain Toyota, Honda, Mazda, BMW, Nissan, Mitsubishi, Subaru, Chrysler, Ford and General Motors vehicles to act immediately on recall notices to replace defective Takata airbags.”

And the problem continues to grow. Last week, Honda filed a report with NHTSA indicating that it had failed to report 1,729 death and injury claims to federal regulators between 2003 and 2014. The underreporting is a serious violation of federal law, which requires that manufacturers report safety defects to NHTSA within five days of learning of the claim. Honda, who will likely receive the maximum \$35 million fine, blames the failure to report on a computer error and a misreading of the federal law.

Manufacturer malfeasance is also not limited to issues of safety. This year, Ford and Mercedes admitted that they misrepresented fuel economy standards for their vehicles. The admissions follow a finding that Hyundai engaged in the same type of fraudulent conduct, leading to a \$395 million federal fine.

This, in itself, demonstrates just how broken the system is. Lie about your vehicles' fuel economy, receive a \$395 million fine. Conceal a safety defect for over a decade, killing people along the way, pay \$35 million.

Changes are underway, but they cannot come soon enough. Arizona is the first state to sue GM for the concealment of the ignition switch defect, but it will not be the last. The lawsuit subjects the automaker to \$3 billion in civil penalties for violating Arizona consumer protection statutes. Other states will surely look to their own statutes for similar financial penalties.

Sen. John Thune, R-S.D., has said that “this year should be a wake-up call,” saying that “we can do a better job of addressing safety issues as they arise and holding automakers, their suppliers, and NHTSA accountable.” Thune's proclamation is about a pound short of scornful indignation.

We don't need to do a better job of holding manufacturers accountable, we need a completely revamped statutory scheme that governs them. We need fines that significantly impact the multi-billion dollar corporations they are assessed against, and criminal penalties imposed against the executives who lead them. If the automakers are untethered to a sense of ethics, we need stiff monetary fines and jail time that will help them find it.



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