

Daily Journal

www.dailyjournal.com

TUESDAY, MARCH 4, 2014

PERSPECTIVE

GM's delayed recall a moral failure

By Jonathan Michaels

Sometimes people engage in acts so vile, they begin to erode our belief in all that is right and just. Acts of corporate irresponsibility are nothing new; wayward executives have long put profitability and success ahead of moral correctness. But some decisions are just so reckless, it is impossible to understand how they ever met with boardroom approval.

On Feb. 13, General Motors issued a recall of 778,000 Chevrolet Cobalt and Pontiac G5 vehicles for "ignition key failure" — a situation where the vehicle unexpectedly turns off while driving, disabling the car's power steering and power brakes, shutting off the vehicle's airbag system, and cutting off acceleration.

The defect is about as serious as they come. Imagine driving on a windy mountain road, or through a busy city intersection, and having your vehicle suddenly shut off — cutting off the power steering, power braking and acceleration. Or worse, imagine it happening to your teenage daughter, as was the case in 2006 when 18-year-old Natasha Weigel and her 15-year-old friend, Amy Rade-maker, suddenly lost control of their Chevy Cobalt and slammed into a tree, killing them both.

In making the unprecedented recall, GM issued a statement that it was "deeply sorry" for the catastrophic events, and that it was "working to address the issue as quickly as [it] can." GM North America President Alan Batey stated, "Ensuring our customers' safety is our first order of business."

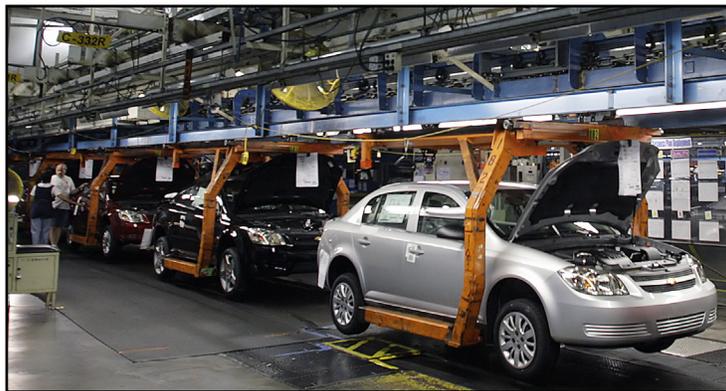
On its surface, GM's public statement suggests that the company is acting with full corporate responsibility: As soon as it learned of the problem, it acted swiftly to correct it. In truth, however, the Detroit automaker had known of the defect for a decade, only issuing the recall when it got caught actively concealing it.

The genesis for the recall was a recent



lawsuit brought by the estate of Brooke Melton, a

Jonathan Michaels is the founding member of Michaels Law Group, which specializes in representing clients in the automotive industry. He can be reached at (949) 581-6900 or jmichaels@michaelslawgroup.com.



Associated Press

Chevy Cobalts on an assembly line at a plant in Lordstown, Ohio, in 2008.

pediatric nurse killed on her 29th birthday in 2010 when her Chevy Cobalt lost power while driving on the highway. Depositions in the case revealed that GM engineers had experienced the defect in 2004, while testing the Cobalt at the time of the vehicle's launch. In further testing, the engineers were able to replicate the problem, leading to the opening of an internal investigation on the issue. However, as GM stated in a letter to the National Highway Traffic Safety Administration (NHTSA), "After consideration of the lead time required, cost, and effectiveness of each of these solutions, the [investigation] was closed with no action."

In 2005, after the Cobalt was launched, GM received new field reports of vehicles suddenly losing engine power, leading to yet another internal investigation. A GM engineer redesigned the ignition key to solve the issue, but after an initial approval, the redesign was cancelled. Instead, the company elected to issue a "service bulletin" to dealers to install a snap-on key cover for customers who complained of the problem. However, as GM engineer Gary Altman testified in his deposition, the cover was an "improvement, it was not a fix to the issue."

In September 2005, the GM legal department began opening files on fatalities caused by the ignition key failure, and by 2007 GM had tracked 10

crashes related to the defect. In October 2006, the service bulletin was updated to include the four other GM vehicles that used the same ignition system: the Chevrolet HH, the Pontiac Solstice, the Saturn Ion and the Saturn Sky.

In 2009, GM opened yet another investigation into the ignition problem, and concluded that the ignition system needed to be redesigned — the same conclusion it reached years before. However, this time GM did not cancel the redesign, and the change was made for the 2010 model year cars. However, nothing was done to recall the 2005 to 2009 defective vehicles that were in the hands of consumers.

After the lawyers in the Brooke Melton lawsuit discovered that GM had been concealing the ignition key defect since 2004, GM had no choice but to act. In mid-February, the company recalled 778,000 Chevrolet Cobalt and Pontiac G5 vehicles. On Feb. 24, it sent a formal letter to NHTSA, explaining that the defect had caused 22 front-impact crashes and six deaths, and admitting that it had known of the defect since 2004, but had failed to act. GM did not explain, however, why it had not issued a recall for the four other vehicles that used the same defective part.

Under mounting pressure, on Feb. 27 — just three days after GM had supposedly come clean to NHTSA — GM increased its recall to include another 842,000 vehicles that also use the defective part, and now stated that it knew of 31 crashes and 13 deaths. The veracity of this statement, however, is also suspect, as GM is only counting fatali-

ties from "front-impact" crashes, when it knows that the defect caused deaths in other types of accidents. Case-in-point: The crash involving Brooke Melton — the one who started it all — was a side impact crash, meaning that GM does not include her in its fatality count.

GM's conduct in concealing the ignition key defect is going to lead to legal problems that are vast and deep. NHTSA requires that automakers report all known safety defects to the agency within five days of learning of the defect, and has the authority to issue fines of up to \$35 million. As former NHTSA head Joan Claybrook stated, "This is an immoral act by General Motors to cover up this defect, not tell people and then the result was inevitable, that people were going to die and be injured and that to me is unconscionable."

But its troubles with NHTSA will pale in comparison to the problems it will face with congressional hearings that will undoubtedly follow, and the civil liability that it will face, as juries around the country impose what will likely be hundreds of millions of dollars in punitive damages. Students of history will recall that in the 1970s, Ford similarly concealed a gas tank defect in its Ford Pintos, going so far as to conduct a mathematical analysis that it would be more cost effective to not fix the problem. As Ford reasoned, it would cost \$137 million to fix the vehicles (\$11 per car), compared to paying an estimated \$49.5 million to the families of the 180 people it expected to be killed by the defect. When the jury learned of this, it imposed \$125 million in punitive damages — and that was 35 years ago.

Tragedy is certainly nothing new. From the dawn of the Roman Empire to the 16th century Julius Caesar, people have been enduring the evil the men do. Last month, GM stated that "[t]oday's GM is committed to doing business differently and better." In truth, this statement only applies when today's GM has been caught, for just a few months ago it was perfectly content to continue the cover up. For a bludgeoned automaker that was on the rebound, having been caught with this act of dishonesty was the worst possible thing that could have happened. For today's GM, the ideo of March have come.