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PERSPECTIVE

GM recall is an opportunity for action

By Jonathan Michaels

Sometimes, good can only rise from depths of pure evil. We are safer today with air travel because of the atrocity of September 11. We were casual with our security screening, and innocent lives were stolen from their families because of it. Nothing can be done to unwind these horrific events, but the families can take a small degree of solace knowing that the event served as a catalyst for substantial change.

As much as our security systems failed us on September 11, our vehicle recall system fails us today. GM's recall scandal of 2014 – while certainly not on the level of an act of terrorism – arises from a similar maligned intent to deceive those it was charged with protecting. Publicly, GM boasted its “safety first” campaign. Yet secretly the company knew its products were gravely defective, and that scores of innocent people would either die or be seriously injured because of it. The company succeeded in achieving both.

To understand just how bad the situation was, appreciate that GM engineers knew in 2001 that the ignition switch for the Saturn Ion was prone to failure, and that this would lead to mass fatalities. Yet because the fix would have set the company back an extra \$0.57 per unit – an amount it considered to be an “unacceptable business case” – GM knowingly built the Ion with the defective part. It then built another five vehicles with the same ignition switch (the Chevrolet Cobalt and HHR, the Pontiac G5 and Solstice, and the Saturn Sky), and then engaged in a company-wide cover-up to conceal it all.

The vehicles that GM was making were so defective that in 2008 it held a learning seminar to educate its employees on which words they needed to avoid when referring to GM cars in written reports. The list of the 69 banned words included “catastrophic,” “decapitating,” “inferno” and “mutilating,” as well as such mocking phrases as “Kevorkianesque,” “rolling sarcophagus” and “you're toast.” GM marked the presentation as “Confidential,” thinking it would never leave hallowed grounds of the Detroit Renaissance Center, yet the presentation was subpoenaed by the National



THE NEW YORK TIMES

Parts removed from a Chevrolet Cobalt as part of General Motors' safety recall at a dealership in Utah, April 23.

Highway Traffic Safety Administration (NHTSA) earlier this year.

Of course, GM told none of this to its consumers who called the company to report vehicle defects. It didn't tell them that it had known of the defects since 2001, and it didn't tell them that it held a seminar on how to avoid creating damning reports. Instead, it disavowed any responsibility for its defective cars, telling family members of the dead and injured that their claims had no merit. The New York Times reports that in certain instances, GM even threatened to go after families for attorneys' fees if they pursued their claims.

Initially it was thought that GM had only concealed from the public the fact that it had known of the defect for years. Now, however, it has also come to light that GM failed to inform a family who reported a fatality in 2010 that the car contained an Event Data Recorder – a black box of sorts – that would have captured evidence of the ignition switch position at the point of impact. In a federal lawsuit filed in Central District of California last month, the family of 20-year-old Ben Hair, who was killed in his 2007 Pontiac G5, alleges that GM intentionally withheld this information from them, so that they would be unaware of the vehicle's ignition switch defect.

All of this has resulted in a cataclysmic year for the automaker. In the first five months of 2014, GM issued 29 recalls covering some 13.8 million cars. To put this into perspective, this is more cars than the company sold in the last five years combined, and nearly as many cars as were sold in the U.S. by every car manufacturer in 2013.

GM's blatant disregard of the federal recall laws shows just how badly the recall system has failed us. Federal regulations require automakers like GM to notify NHTSA within five days of learning of a safety defect in its vehicles. This would have required GM to provide notice of the

defect to NHTSA during the first year of George W. Bush's first presidential administration.

The failure of the recall system lies in its inability to penalize companies like GM for their failure to comply. The maximum fine for disobedience is \$35 million. Last month GM was fined this maximum amount, but for a company like GM that had \$155.4 billion in sales in 2013, this represents about 0.02% of its annual revenue. GM was aware of this and took full advantage of the system, tossing aside all regard for human life. Its management had no integrity in how they dealt with consumers, and NHTSA wasn't there to provide it for them.

A \$35 million fine will never command the type of compliance needed. As an interesting comparison on fines, consider that in 2007 the Federation Internationale de l'Automobile (FIA), the governing body for Formula One racing, caught the McLaren Mercedes race team spying on its competitor Ferrari. The FIA fined McLaren Mercedes \$100 million for the act of malfeasance – and this was just for gaining an advantage in a race.

NHTSA's recall system is seriously broken, and Congress needs to take this opportunity to dismantle it. It doesn't need to be fixed, it needs to be smashed with an anvil and then rebuilt with purpose. How a company like GM could conceal a defect for 13 years, knowing that people were dying, is beyond all comprehension, and it is unacceptable.

Many a Congressman have trumpeted their plans to introduce legislation to raise the fines that NHTSA can levy. Yet we don't need theatrical grandstanding; we need a visceral response to this abominable situation that is designed to stomp out this type of fraudulent conduct forever.

If an individual takes the premeditated act of recklessly endangering the lives of others, and people are killed, the individual would be tried for murder. GM's reckless disregard for human life should be treated no differently. The penalties for fraudulent conduct like this need to threaten the very existence of the infringing company, and subject its top management to criminal prosecution.

The tragedy of September 11 resulted in a reconstituted screening process that, while invasive, helps protect us all. The Enron and WorldCom calamities of the early 2000s resulted in the creation of the Sarbanes-Oxley Act, a federal law that provides severe civil and criminal penalties for accounting mischief. Congress needs to take this opportunity to enact the GM Fraudulent Recall Act of 2014, to ensure that an automaker is never again allowed to engage in this type of fraud and deceit. Anything short of this will deprive the families who have lost it all of any sense of justice.



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