

Daily Journal

www.dailyjournal.com

TUESDAY, JULY 8, 2014

PERSPECTIVE

The Company Without a Soul

By Jonathan Michaels

Last week, General Motors announced the establishment of its “victim compensation fund” — a pool of money that it will offer to the scores of people it killed and maimed over the past 10 years with its defective products. The underpinnings of the plan rest on GM’s company-wide cover up of an ignition switch defect that exists in millions of its vehicles. When the ignition switch is jarred, it cuts off all power to vehicle, disabling the engine, power brakes, power steering and airbags.

The defect had been known by GM engineers as far back as 2001, when the vehicles that contained the switch were designed. GM engineers experienced the shutoff firsthand during testing, but shrugged it off as a “customer convenience” issue — as if having a 4,000 pound car suddenly shut off while driving was a matter of mere convenience. Since GM had no concern about having satisfied customers, it chose to leave the switch in place.

What started out as incompetence changed to pure malice as GM began to receive reports from consumers about the death and injury the ignition switch defect was causing. Federal law requires GM to notify the National Highway Traffic Safety Administration (NHTSA) within five days of learning of the defect. Yet, GM chose to conceal the issue, and actually held company seminars on how to write reports so that the defect not be discovered. GM then shamelessly told injured consumers that it had no responsibility for the damage it had caused.

All of this became public because GM refused to resolve a 2013 lawsuit brought by the family of Brooke Melton, a pediatric nurse who was killed in a Cobalt on her 29th birthday. Although Melton’s family would likely have been satisfied with a quick and inexpensive settlement, GM would have none of it. As a result, Melton’s lawyers pressed on, and discovered that GM had been

concealing the defect for years. Melton’s family went public, and now GM is faced with a crisis of epic proportions.

After the concealed ignition switch defect became public in February, GM had to come clean on all of the defects in its vehicle line up. As a result, GM has recalled 28 million cars so far this year — as many cars as it has made in the last seven years — revealing that the company had been concealing defects in its vehicles for years. All told, the refusal to resolve Melton’s lawsuit will likely cost the company over \$10 billion. The price of arrogance is astonishing.

GM responded to the crisis by first hiring Anton Valukas, a former U.S. attorney for the Northern District of Illinois, to conduct an internal investigation, and then hiring Kenneth Feinberg, best known for his work on the BP oil spill and 9/11 victim’s compensation fund, to set up a fund for this case.

Valukas completed his investigation last month, and placed virtually all the blame for the ignition switch cover-up on a low-level engineer, Ray DiGorgio. In what has been called the “the best report money can buy,” Valukas scapegoats DiGorgio, and clears GM management of involvement. GM then railroaded DiGorgio out of town, and claimed that it had been cleansed of its evil.

Valukas accomplished what GM paid him to do: He cleared its top management of any wrongdoing. Yet in doing so, Valukas irresponsibly marred DiGorgio as a rogue employee who acted alone in concealing the defect. This was a known fallacy.

In documents subpoenaed by the Department of Justice two weeks ago, it was revealed that Doug Parks, a high ranking GM officer, knew about the defect in 2005 and participated in discussions on whether the company should fix it. Parks is now one of the top lieutenants in CEO Mary Barra’s new regime, belying Barra’s public statements that she is leading a changed company.

GM’s second plan of attack was to roll out the Feinberg-backed victim compensation fund. GM’s media blitz touts the plan as having no monetary cap, implying that the company will give away as much money as necessary to compensate those it spend the last decade injuring. In truth, however, the plan will do little to provide compensation to those who deserve it.

To receive payment, applicants will be required to prove that the ignition switch defect “was the

proximate cause of the accident causing death or physical injury.” For applicants who will be unrepresented by counsel and who will not benefit from the rights of discovery, this will prove to be an impossible feat.

Because GM concealed the ignition switch defect for so many years, none of the accident victims knew to look for evidence of ignition switch failure, and therein lies the problem. Many of the wrecked vehicles have been long ago crushed, taking along with them evidence that links the crash to ignition switch failure. For many people, all that is known is that their vehicle shut off and they lost the ability to control it. The problem becomes more serious for drivers that were killed, as the person who witnessed the defect is now dead. While experienced counsel could reconstruct the accident scene, requiring laypersons to do so will prove to be an impossibility.

To make matters worse, because there are millions of vehicles that are effected by the ignition switch recall, and the submission process is quick and easy (all that is required is that a form be mailed to the administrator), it is likely that just about anyone who has ever been involved in an accident in a qualifying vehicle will submit a claim. With the system flooded with tens of thousands of claims, it will be difficult, if not impossible, to determine who should properly receive compensation.

Had GM seriously wanted to compensate ignition switch victims, there were many ways it could have done so. As just one example, it could have set up an expedited arbitration process, where it pays for the claimant’s attorney fees if they are successful, and provides the claimants with a rebuttable presumption that the accident was caused by the ignition switch defect if there were no skid marks present (one of the hallmarks of the defect).

Yet, GM has no interest in compensating victims with the Feinberg plan, or in exposing the truth with the Valukas investigation. These are nothing more than media-backed exhibitions, designed to save the company from much-deserved extinction. If GM was sincere about answering for its sins, it would stop trying to have claims barred by the bankruptcy court, and enter a plea of guilty in the court of public opinion. But it would never do so, because such an act would be embossed in honesty and character, traits that have been absent from the company for all too long.



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.