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PERSPECTIVE

Record fine only scratches surface

By Jonathan Michaels

On July 2, after years of abuse and defiance, Chrysler finally answered for its actions at a public hearing before the National Highway Traffic Safety Administration in Washington D.C. At issue was whether Chrysler had met its obligation of protecting consumer safety in recalling millions of defective vehicles.

The result of the hearing was the imposition of a \$105 million fine — the largest ever in the history of the automotive industry — as well as the requirement that Chrysler buy back 600,000 vehicles from consumers and give another 1.5 million consumers compensation in the form of gift cards and trade-in allowances.

However, the fine only tells part of the story; it glosses over the cascade of recall abuses the manufacturer engaged in for years leading up to it.

Congress engineered the U.S. recall system, codified in the National Traffic and Motor Vehicle Safety Act, to be remarkably simple. Once a manufacturer learns of a safety defect, it is required to initiate a recall and notify the NHTSA within five days. It is then required to notify consumers of the recall within 60 days, and repair the vehicle within 60 days of a customer's request for a fix. If the manufacturer fails to make the repair within this proscribed period, it is required to buy back the vehicle at the original purchase price, less depreciation.

Then there are obligations to supply the NHTSA with copies of the notices sent to consumers and dealers about the recall, and to work with the NHTSA throughout the recall process in a manner designed to promote consumer safety.

At the hearing last month, the NHTSA investigated 23 recent Chrysler recalls, covering some 11 million vehicles, and found that Chrysler violated the Safety Act in "every one of the 23 recalls." The agency found that Chrysler repeatedly failed to notify owners about



The New York Times

An undated photo of a 1993 Jeep Grand Cherokee in which a 4-year-old girl was fatally injured.

recalls in a timely manner, provided the agency with false and misleading information, failed to timely repair defective vehicles, and obstructed the agency's statutory oversight.

The recalls at issue are as serious as they come. They include ignition switch failure (1.6 million vehicles), rear axle lock-up (550,000 vehicles), loss of power brakes (650,000 vehicles), fuel tank rupturing (1.6 million vehicles), loss of steering control (1 million vehicles), vehicle stalling (300,000 vehicles), and airbag deployment problems (3.9 million vehicles).

To show just how egregious this situation has become, Chrysler's fuel tank recall is particularly enlightening. Students of history will recall the exploding Ford Pinto case from the early 1970s, where Ford had determined that it was more cost effective to payout the anticipated 180 wrongful death claims than repair the defective vehicle. The defect with the Pinto was that the gas tank was located behind the rear axle, which could become impaled and explode in a rear collision.

Following the Pinto scandal, virtually every manufacturer moved the fuel tank to a safety zone ahead of the rear axle, with one notable exception — Chrysler, which manufactured the 1993 to 1998 Jeep Grand Cherokee and the 2002 to 2007 Jeep Liberty vehicles with the fuel tank behind the rear axle.

In 2009, the NHTSA began investigating the Chrysler fuel tank issue. Noting that the fuel tank had been responsible for 51 deaths, the NHTSA took the unusual step of requesting that Chrysler recall the subject vehicles. Chrysler initially refused, but ultimately issued a recall in June 2013.

Here is where things get interesting.

Under the Safety Act, Chrysler was required to notify consumers of the recall by August 2013 (within 60 days of initiating the recall), and fix the vehicles within 60 days of being requested by consumers. The NHTSA discovered, however, that Chrysler did not even place a purchase order with its supplier for the replacement part until January 2014 — seven months after the start of the recall. The result? Consumers' vehicles were at risk of catching fire in a rear end collision, but no parts were available to fix them. Even today, two years after the recall, Chrysler has fixed only 6 percent of the Jeep Grand Cherokee and 30 percent of the Jeep Liberty vehicles.

If it is any sign that the public has had enough, earlier this year a Georgia jury issued a \$150 million verdict against Chrysler for the death of a 4-year-old boy who was riding in a Jeep Grand Cherokee that was hit from behind, causing it to burst into flames.

Consumers who own Grand Cherokee and Liberty vehicles are far from alone in having to wait months and years for automakers to fix their defective cars. Chrysler dealers frequently tell owners that they have no idea when or if the parts will arrive, and that they cannot fix the recalled vehicles without the parts. This puts consumers in the position of having a Hobson's choice: either sideline the car that may be their only means of transportation, or continue to drive it and risk possible death or serious injury.

What makes Chrysler's conduct so egregious is that it has all the resources to address the defects; it just chooses not to do so. If this were 2009, when manufacturers were fighting for daily survival, some level of understanding for the malfeasance might be possible. This is a company that reported \$1.4 billion in pretax profit for the second quarter of 2015 alone, and is predicting a pretax profit for the year of \$4.9 billion.

And what's worse is that the \$105 million fine — a mere 2 percent of Chrysler's 2015 profit — will do little to correct the conduct of Chrysler or other automakers. The truth is, our regulatory system is far from where it needs to be to control these international conglomerates. So long as the NHTSA is doling out justice one teaspoon at a time, our cars will only be as safe as manufacturers want them to be.



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