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PERSPECTIVE

Our auto recall system is seriously broken

By Jonathan Michaels

Last week, Nissan added its name to a long list of automotive manufacturers who have been ensnared in public controversy over corporate malfeasance and the cars it sells to the consuming public. In an unprecedented move, Nissan announced that it was recalling *every car* it sold in Japan between October 2014 and September 2017.

At issue is an allegation that Nissan falsified inspection documents to make it appear as though its vehicles had been inspected by authorized technicians, when in fact they were not. Nissan will now have each recalled vehicle inspected by certified technicians, who will confirm that the vehicles are fit for public consumption.

The recall is the second incident of misconduct for a Japanese car company in as many years. Last year, Mitsubishi admitted that it published falsified fuel economy standards for 620,000 of its Japanese market vehicles.

Nissan's news comes as consumers are all but numb to automakers' admissions of non-truths. The levy first broke in February 2014, when GM admitted that it had been concealing a deadly ignition switch defect in its vehicles for 13 years. Public outrage reached a high-pitch tenor when it was revealed that GM elected to not correct the defect during the manufacturing process because it would have cost an additional \$0.57 per unit. Dozens of consumers lost their lives because of the defect.

Since then, an onslaught of automakers have been caught concealing great acts of malfeasance. In 2015, the National Highway Traffic Safety Administration investigated 23 recalls conducted by Chrysler, 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 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. NHTSA issued a \$105 million fine against Chrysler.

That same year, Volkswagen was caught outfitting its diesel cars with a complex software code that enabled the vehicles to detect when they were being subjected to emissions testing. Taking inputs from steering position and pedal movements, this "defeat device" detected when the car underwent emissions tests and manipulated the amount of nitrous oxide the vehicle emitted. In test mode, the vehicles were shown to be compliant; in real world driving conditions, however, the cars emitted as much as 40 times more pollutants. The malfeasance resulted in a \$15 billion class action settlement.



New York Times News Service
Cars that were traded in because of the Takata airbag recall, in West Palm Beach, Florida, Jan. 25.

2015 also laid witness to the Takata airbag scandal, where Japanese airbag manufacturer Takata admitted that it had known for 11 years that its airbags were prone to shooting shrapnel into occupants' faces upon deployment, but failed to issue a recall. When the recall was finally issued, 70 million airbags had to be replaced, creating "the largest and most complex safety recall in U.S. history." NHTSA responded to the concealment by imposing a \$200 million fine against the airbag manufacturer — the largest in the governmental agency's 46-year history.

There are also a host of other less notable, but nonetheless extremely serious, acts of concealment, such as Honda's 2016 admission that it failed to report 1,729 death and injury claims to federal regulators between 2003 and 2014; or the admissions by Ford, Mercedes and Hyundai that they too misrepresented fuel economy standards for their vehicles.

Our recall system is organically simple. Once a manufacturer learns of a safety defect, it is required to initiate a recall and notify 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 prescribed period, it is required to buy back the vehicle at the original purchase price, less depreciation.

The problem is that the system does not have a penalty for those who violate it. It is telling that in each of the situations referenced above, automaker officials felt comfortable enough to cheat in the first place. While our system does not necessarily encourage cheating, it does little to prevent it.

Until personal culpability becomes a part of the equation, we will never have a system free of deceit. The temptation to win at all costs is just too great, and the system gives the decision-makers all but complete immunity from severe forms of punishment — even though the harm they bring to others is life altering.

The Enron WorldCom financial scandals of the early 2000s resulted in the creation of the Sarbanes-Oxley Act of 2002. Under the act, senior executives take individual responsibility for the accuracy and completeness of corporate financial reports: Misstate a publicly reported financial statement, cause people to lose money, and you go to jail. Under the current automotive format, however, misstate the nature of your vehicle systems, cause people great harm including death, and face no personal responsibility.

In 2015, Congress passed the Motor Vehicle Safety Whistleblower Act, bill introduced by Republican Sen. John Thune of South Dakota and Democratic Sen. Bill Nelson of Florida. The act allows employees or contractors of automakers, parts suppliers, or dealerships who report violations of federal vehicle safety laws to get up to 30 percent of any monetary fine over \$1 million. Whistleblowers can expose any violation that originated anywhere in the world, as long as the vehicles or their components are sold in the U.S. The act also offers the whistleblowers the ability to act anonymously.

The Motor Vehicle Safety Whistleblower Act is a good start in shattering the glass culture of secrecy that has manifested in the automotive society for decades. But, it needs to be coupled with individual accountability by high ranking company officials, charged with overseeing the design, manufacture and recall of their vehicles.

NHTSA's recall system is seriously broken, and Congress needs to take this opportunity to overhaul it. 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. This 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. Anything short of that will be injustice delivered.



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