

GM presses judge to shut down lawsuits stemming from ignition defect

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General Motors is continuing aggressively with its efforts to shut down lawsuits stemming from a defective ignition switch on several GM models linked to deadly car crashes.

The ignition switches on the 2003-2007 Chevrolet Cobalt, Saturn Ion and several other low-cost models can be easily jarred out of the “run” position, cutting power to the engine and disabling power steering, power brakes and airbags. The defect has been tied to fatal crashes where airbags failed to deploy. GM has recalled 2.6 million vehicles to replace the faulty switches.

GM is attempting to make the case that it is shielded from product liability lawsuits for accidents that occurred before July 2009, when the company filed for bankruptcy protection. As part of the restructuring agreement the Obama administration inserted a clause holding the reorganized company harmless from lawsuits relating to events before the bankruptcy.

Arguing before a US bankruptcy court in Manhattan last week, GM sought to dismiss 60 class-action lawsuits brought against the company seeking compensation for economic damages. However the judge, Robert Gerber, refused to make an immediate ruling or interfere with a scheduled May 29 conference before a panel of federal judges in Chicago seeking the consolidation of the class action lawsuits. Gerber is the same federal bankruptcy judge who oversaw GM’s 2009 bankruptcy case.

Lawyers for the plaintiffs maintain that GM negotiated the bankruptcy fraudulently because it concealed evidence of safety defects and the potential liability this posed. Documents released by GM demonstrate that the company indeed was aware as early as 2001 of problems with the ignition of the Ion, but did nothing to address the issue. After receiving

numerous complaints, engineers proposed a fix in 2005, but management rejected it. Later, GM quietly ordered that a redesigned switch be installed, but did not assign it a new part number, an indication of a conscious cover-up.

Other documents show that in 2007 the National Highway Traffic Safety Administration (NHTSA) informed GM of an accident in 2005 involving a Cobalt in which the airbags did not deploy and the ignition was in the “accessory” position. However, neither NHTSA nor GM ordered a recall even as complaints mounted.

NHTSA continues to fine GM a miniscule \$7,000 a day for missing an April 3 deadline for turning over documents and answering 107 questions related to the ignition switch recall. NHTSA has warned GM that it must “fully respond” to the unanswered questions or face a possible investigation by the US Justice Department.

In addition to fraud, plaintiffs are also alleging a constitutional infringement on the part of GM, saying any concealment of the defect would violate their due process rights. They maintain that the bankruptcy shield against liability would have bound people who could not have been aware that they had claims at the time the shield was imposed.

GM has so far acknowledged 13 fatalities tied to the defect. However, the real number may be much higher. A survey commissioned by the consumer group The Center for Auto Safety found 303 deaths between 2002 and 2012 in crashes involving the Cobalt and Ion where airbags did not deploy. One Texas attorney represents the families of 53 people killed and 273 injured in crashes they say were related to the ignition defect.

Meanwhile, GM has initiated talks with the families of accident victims in an attempt to pressure them into

accepting out-of-court settlements of damage claims. For this purpose the company has hired Kenneth Feinberg, the attorney who handled compensation for victims of the BP oil spill as well as the 9/11 terrorist attacks and the Boston Marathon bombing. Feinberg is something of a damage control expert for the ruling class. For example, in the case of BP, Feinberg pressured victims to accept settlements much less than their actual damages in order to avoid costly litigation.

Last month GM scored a legal victory when a Texas judge denied a lawsuit seeking to force the company to ground recalled vehicles until repairs are made. The recall is not expected to be completed until October because of a shortage of replacement ignition switches. GM opposed the lawsuit, claiming the cars were safe to drive once extra items were taken off the key ring. However, since the recall announcement there have been at least two fatal accidents involving the recalled models where airbags did not deploy.

In a letter to US Transportation Secretary Anthony Foxx, two Democratic Senators, Edward Markey of Massachusetts and Richard Blumenthal of Connecticut, called on the NHTSA to force GM to warn owners of the recalled vehicles to stop driving them until they are repaired. The move follows exposure of the complicity of the NHTSA and the Obama administration in covering up the ignition defect. However, Foxx, in previous remarks published in the *Detroit News*, indicated he was not supportive of such an order. The Department of Transportation, meanwhile, merely advised owners of the recalled vehicles to wear seatbelts.

In another development, GM is recalling 51,640 SUVs because of a faulty gas gauge. The company said a software problem could lead to an inaccurate reading at the low end and high end by as much as a quarter of a tank. The recall is the latest in a string of recalls since GM revealed the ignition switch problem in February.

In March, GM recalled 1.3 million SUVs for issues related to airbags. According to a report in the *Detroit News*, the company initially sought to deal with the problem through a customer service campaign rather than a recall.

In documents recently turned over to the NHTSA GM said in 2008 it became aware of a significant increase in warranty claims for 2008 SUVs for problems related to faulty airbag warning lights. While the company

launched several investigations over the next five years, it never ordered a recall, instead issuing technical service bulletins.

GM said that ignoring the warning lights could eventually lead to the disabling of the airbags and seatbelt pre-tensioners. If the resistance went above a certain level it could lead to non-deployment in the event of a side-impact crash.



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