General Motors CEO says company will use bankruptcy to shield itself from lawsuits

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Last Thursday, General Motors (GM) CEO Mary Barra told a Senate hearing that GM would use its 2009 bankruptcy reorganization to shield itself from potential lawsuits. Barra and other GM officials testified before the Senate Commerce, Science and Transportation Committee's subcommittee on Consumer Protection, Product Safety and Insurance.

It was Barra's fourth appearance on Capitol Hill since the eruption earlier this year of a scandal surrounding GM's decade-long cover-up of a deadly ignition key defect. In a number of smaller, low-cost GM models, the key could be jarred loose in the course of normal driving, disabling the power steering and power breaks and causing the air bags to fail to deploy.

The company admits to 54 crashes and 13 deaths, but independent investigators say many more crashes and perhaps hundreds of deaths resulted from the defect and the company's failure to report it to government regulators.

Barra, who took over as CEO in January, has maintained that she knew nothing of the defect or its concealment until the company ordered the first in a series of massive recalls last February, even though before becoming chief executive she served as executive vice president of global product development, purchasing and supply chain.

In her testimony last week, Barra for the first time publicly stated that the company would take advantage of provisions of the 2009 bankruptcy, overseen by the Obama administration's Auto Task Force as part of the bailout of GM and Chrysler, to exempt itself from liability for all crashes that preceded the bankruptcy. By denying victims and their families access to the courts, the company stands to avoid billions of dollars in damages, while increasing pressure on claimants to accept the company's compensation package being administered by Washington DC lawyer Kenneth Feinberg.

Despite the fact that released documents show that at least one top GM executive knew of the defect as far back as 2005, the company has tried to place the blame for its failure to report it or to order a recall on mid-level employees and bureaucracy.

Barra and GM's chief lawyer, Michael Millikin, were questioned by multiple senators in the course of Thursday's three-hour hearing. Asked whether they would waive the right to use bankruptcy to stave off lawsuits, both Barra and Millikin told the committee that they would not.

The Senate committee also heard from Feinberg. A long-time corporate lawyer and figure in Democratic Party politics, he headed up the government's compensation program for first responders and others injured or killed in the 9/11 attacks. In 2009 he was appointed by the Obama administration to oversee the largely cosmetic oversight of executive pay at bailed out banks and corporations. The following year he was selected to run British Petroleum's payout fund to the victims of the Gulf of Mexico oil spill. Feinberg fought to limit claims by threatening victims with lengthy and costly litigation if they refused his offered damage awards.

Feinberg described the details of the compensation program he is putting together for the victims of GM's fatal auto defect. Its provisions will disqualify many genuine claimants. For instance, Feinberg's protocol discards cases in which the airbag was not expected to deploy. In the case of Brooke Melton, whose 2010 death led to the lawsuit that exposed the GM cover-up, her death was the result of a side collision in which the airbag was not expected to deploy.

Feinberg had previously said it would be the

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responsibility of the claimants to prove that the faulty ignition switch caused their accident. Such proof would have to include black box data showing that a car's ignition had gone from the "run" position to the "accessory" position. However, because many of the car crashes happened in the early 2000s, it will be difficult to establish such a high level of proof. In many cases the evidence is gone and the witnesses are dead.

GM has essentially set up a bureaucratic screening process. If a claimant wants to file a lawsuit, not only will it be incredibly costly, it will most likely be dismissed because of the bankruptcy.

The *World Socialist Web Site* spoke to Jonathan Michaels, a California attorney who represents the parents of Benjamin Hair, who died in a crash when airbags failed to deploy after his car hit a tree. Michaels explained that Feinberg's proposal was "hollow," but good for GM from a public relations perspective. "Few people are going to be able to take advantage of it," he said. "I fear people will be tied up in endless bureaucracy."

Should a claim make it past these barriers, the families of the deceased will be compensated based on the income of the victims. The families of rich victims with high incomes will be paid many times more than the families of the poor.

GM lawyer Millikin said they would not ask the governor of Texas to pardon Candice Anderson, who pleaded guilty to criminally negligent homicide in the death of her friend. In 2004, Anderson's GM car suddenly lost power and struck a tree. The airbags did not deploy. Later it was revealed that this was caused by the ignition defect. However, GM blamed the crash on Anderson, who they said was "intoxicated on illegal drugs." Anderson had a trace amount of Xanax in her system.

Barra also told the Senate hearing that GM would not extend the compensation program to a larger pool of potential victims. This larger pool would include other models of cars that were recalled for ignition defects. Right now the pool focuses on smaller-sized sedans. Millikin also told the Senate that the company would not release any further internal documents.

None of the senators of either party, including the supposed critics of GM, proposed any serious action either to hold the company and its top executives accountable for the deaths and injuries or to provide adequate compensation for the victims and their families.

The Senate hearing came only days after the *New York Times* published an investigative report on how GM withheld information about crashes tied to the defective ignition switch from the National Highway Traffic Safety Administration (NHTSA). GM's engineers had determined that the most likely cause of several accidents was a loss of power, something that could have been caused by the faulty ignition switch. Instead of revealing this information, GM told the NHTSA on multiple occasions that it could not assess the causes of the crashes.

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