

JUSTICE NEWS

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U.S. Attorney of the Southern District of New York Announces Criminal Charges Against General Motors and Deferred Prosecution Agreement with \$900 Million Forfeiture

General Motors Admits to Failing to Disclose Deadly Safety Defect in Its Cars to Consumers and U.S. Regulator

Independent Monitor to Be Appointed to Oversee General Motors' Reporting of Safety Issues and Public Statements

Attorney General Loretta E. Lynch, Secretary Anthony Foxx of the Department of Transportation, U.S. Attorney Preet Bharara of the Southern District of New York, Administrator Mark R. Rosekind of the National Highway Traffic Safety Administration (NHTSA), Inspector General Calvin L. Scovel III of the U.S. Department of Transportation (DOT-OIG), Special Inspector General Christy Goldsmith Romero of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), and Assistant Director in charge Diego Rodriguez of the FBI's New York Field Office, announced the filing of criminal charges against General Motors Company (GM or the company), an automotive company headquartered in Detroit, that has designed, manufactured, assembled and sold Chevrolet, Pontiac and Saturn brand vehicles, among others. GM is charged with concealing a potentially deadly safety defect from its U.S. regulator, the National Highway Traffic Safety Administration (NHTSA), from the spring of 2012 through February 2014, and, in the process, misleading consumers concerning the safety of certain of GM's cars. The defect consisted of an ignition switch that had been designed and manufactured with too-low torque resistance and could therefore move easily out of the "Run" position into "Accessory" or "Off" (the defective switch). When the switch moved out of Run, it could disable the affected car's frontal airbags – increasing the risk of death and serious injury in certain types of crashes in which airbags were otherwise designed to deploy. The models equipped with the defective switch were the 2005, 2006 and 2007 Chevrolet Cobalt; the 2005, 2006 and 2007 Pontiac G5; the 2003, 2004, 2005, 2006 and 2007 Saturn Ion; the 2006 and 2007 Chevrolet HHR; the 2007 Saturn Sky; and the 2006 and 2007 Pontiac Solstice. To date, GM has acknowledged a total of 15 deaths, as well as a number of serious injuries, caused by the defective switch.

U.S. Attorney Bharara also announced a deferred prosecution agreement with GM (the agreement) under which the company admits that it failed to disclose a safety defect to NHTSA and misled U.S. consumers about that same defect. The admissions are contained in a detailed statement of facts attached to the agreement. The agreement imposes on GM an independent monitor to review and assess policies, practices and procedures relating to GM's safety-related public statements, sharing of engineering data and recall processes. The agreement also requires GM to transfer \$900 million to the United States by no later than Sept. 24, 2015, and agree to the forfeiture of those funds pursuant to a parallel civil action also filed today in the Southern District of New York.

The criminal charges are contained in an information (the information) alleging one count of engaging in a scheme to conceal material facts from NHTSA and one count of wire fraud. If GM abides by all of the terms of the agreement, the government will defer prosecution on the information for three years and then seek to dismiss the charges.

"Every consumer has the right to expect that car manufacturers are taking their safety seriously," said Attorney General Lynch. "The Department of Justice is committed to ensuring that the products Americans buy are safe; that

consumers are protected from harm; and that auto companies follow the law.”

“General Motors not only failed to disclose this deadly defect, but as the Department of Justice investigation shows, it actively concealed the truth from NHTSA and the public,” said Transportation Secretary Foxx. “Today’s announcement sends a message to manufacturers: deception and delay are unacceptable, and the price for engaging in such behavior is high.”

“For nearly two years, GM failed to disclose a deadly safety defect to the public and its regulator,” said U.S. Attorney Bharara. “By doing so, GM put its customers and the driving public at serious risk. Justice requires the filing of criminal charges, detailed admissions, a significant financial penalty, and the appointment of a federal monitor. These measures are designed to make sure that this never happens again.”

“Today’s action strengthens NHTSA’s efforts to protect the driving public,” said Administrator Rosekind. “It sends a message not only to GM, but to the entire auto industry, that when it comes to safety, telling the full truth is the only option.”

“To the families and friends of those who died and to those who were injured as a result of crashes related to GM’s defective ignition switches, I offer my deepest sympathies for your loss and my highest admiration for the strength you demonstrate every day,” said Inspector General Scovel III. “As is true for Secretary Foxx and the Department of Transportation, safety is and will remain the highest priority of my office, and we will continue to work relentlessly to ensure accountability throughout the Department and transportation sector. The OIG is committed to working with our law enforcement and prosecutorial partners in pursuing those who commit criminal violations. The efforts of this dedicated multi-agency team and the agreement reached with General Motors, and that with Toyota in March 2014, must continue to serve as a clarion call to all auto manufacturers and their suppliers of the need to be vigilant and forthcoming to keep the public safe.”

“General Motors’ criminal conduct found by SIGTARP and our law enforcement partners defies comprehension,” said Special Inspector General Goldsmith Romero. “Our investigation uncovered that GM learned about a life-threatening ignition switch defect that would cause air bags not to inflate, but concealed the deadly safety defect from its regulator, and from people buying used cars from GM dealers. The worst part about this tragedy is that it was entirely avoidable. GM could have significantly reduced the risk of this deadly defect by improving the key design for less than one dollar per vehicle but GM chose not to because of the cost. Americans stepped up and bailed out General Motors with \$50 billion; and General Motors must step up and make substantial corporate changes to prevent anything like this from happening again. SIGTARP commends U.S. Attorney Bharara for bringing these charges and standing united in the fight against TARP-related crime.”

“GM concealed a safety defect from consumers and regulators, which put drivers at risk,” said Assistant Director in Charge Rodriguez. “The resolution of this case shows that safety should never take a backseat to expediency.”

According to the allegations in the information, as well as other documents filed today in the Southern District of New York, including the statement of facts:

From the spring of 2012 through February 2014, GM deceived consumers and failed to make a required disclosure to NHTSA, its U.S. regulator, by regarding the connection that certain of its personnel had identified between the defective switch and airbag non-deployment. GM also falsely represented to consumers that vehicles equipped with the defective switch posed no safety concern.

Early Knowledge of the Defective Switch

GM engineers knew before the defective switch even went into production in 2002 that it was prone to easy movement out of the Run position. Testing of a prototype showed that the torque return between the Run and Accessory positions fell below GM’s own internal specifications. But the engineer in charge of the defective switch approved its production anyway.

In 2004 and 2005, as GM employees, media representatives and GM customers began to experience sudden stalls and engine shutoffs caused by the defective switch, GM considered fixing the problem. However, having decided that the switch did not pose a safety concern, and citing cost and other factors, engineers responsible for decision-making on the issue opted to leave the defective switch as it was and simply promulgate an advisory to dealerships with tips on how to minimize the risk of unexpected movement out of the Run position. GM even rejected a simple improvement to the head of the key that would have significantly reduced unexpected shutoffs at a price of less than a dollar a car.

At the same time, in June 2005, GM made public statements that, while acknowledging the existence of the defective switch, gave assurance that the defect did not pose a safety concern.

GM's Knowledge that the Defective Switch Causes Airbag Non-Deployment

By the spring of 2012, GM knew that the defective switch presented a safety defect because it could cause airbag non-deployment in certain GM cars. Specifically, GM personnel investigating the cause of a series of airbag non-deployment incidents learned that the defective switch could cause frontal airbag non-deployment in at least some model years of the Cobalt, and were aware of several fatal incidents and serious injuries that occurred as a result of accidents in which the defective switch may have caused or contributed to airbag non-deployment. This knowledge extended well above the ranks of investigating engineers to certain supervisors and attorneys at the company.

GM's Failure to Disclose the Defect and Recall Affected Cars

Yet not until approximately 20 months later, in February 2014, did GM first notify NHTSA and the public of the connection it had identified between the defective switch and airbag non-deployment incidents. The company thus egregiously disregarded NHTSA's five-day regulatory reporting requirement for safety defects.

Moreover, for much of the period during which GM failed to disclose this safety defect, it not only failed to correct its June 2005 assurance that the defective switch posed no safety concern but also actively touted the reliability and safety of cars equipped with the defective switch, with a view to promoting sales of used GM cars. Although GM sold no new cars equipped with the defective switch during this period, GM dealers were still, from in or about the spring of 2012 through in or about the spring of 2013, selling pre-owned Chevrolet, Pontiac and Saturn brand cars that would later become subject to the February 2014 recalls. These sales were accompanied by certifications from GM, assuring the unwitting consumers that the vehicles' components, including their ignition systems and keys, met all safety standards.

GM's delay in disclosing the defect at issue was the product of actions by certain personnel responsible for shepherding safety defects through GM's internal recall process, who delayed the recall until GM could fully package, present, explain and handle the deadly problem. Rather than move swiftly and efficiently toward recall of at least the population of cars known to be affected by the safety defect and thus certainly destined for recall, GM personnel took affirmative steps to keep the company's internal investigation into airbag non-deployment caused by the defective switch "offline" – outside of GM's regular recall process.

Moreover, on at least two occasions while the defective switch condition was well known by some within GM but not disclosed to the public or NHTSA, GM personnel made incomplete and therefore misleading presentations to NHTSA assuring the regulator that GM would and did act promptly, effectively and in accordance with its formal recall policy to respond to safety problems – including airbag-related safety defects.

GM's Acceptance of Responsibility and Cooperation in the Government Investigation

In February 2014, GM finally conducted a recall of approximately 700,000 vehicles affected by the defective switch. By March 2014, the recall population had grown to more than 2 million vehicles.

Since February 2014 and the inception of this federal criminal investigation, GM has taken exemplary actions to

demonstrate acceptance and acknowledgement of responsibility for its conduct. GM, among other things, conducted a swift and robust internal investigation, furnished the government with a continuous flow of unvarnished facts gathered during the course of that internal investigation, voluntarily provided, without prompting, certain documents and information otherwise protected by the attorney-client privilege, provided timely and meaningful cooperation more generally in the federal criminal investigation, terminated wrongdoers and established a full and independent victim compensation program that has to date paid out hundreds of millions of dollars in awards.

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U.S. Attorney Bharara praised the outstanding investigative work of SIGTARP, DOT-OIG, NHTSA and the FBI.

This case is being handled by the Office's Securities and Commodities Fraud Task Force and Complex Frauds and Cybercrime Unit. Assistant U.S. Attorney Bonnie Jonas, Deputy Chief of the Criminal Division, and Assistant U.S. Attorneys Sarah Eddy McCallum and Edward A. Imperatore are in charge of the prosecution, and Assistant U.S. Attorney Jason H. Cowley, Chief of the Money Laundering and Asset Forfeiture Unit, is responsible for the forfeiture aspects of the case.

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