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February 19, 2014

**VIA CERTIFIED & FIRST CLASS MAIL**
**& EMAIL**
David J. Friedman
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
West Building
Washington D.C., 20590

Re: *Request for Timeliness Query of General Motors Safety Recall 13454*

Dear Acting Administrator Friedman:

We are writing to request that you open a Timeliness Query investigation into General Motors Recall 13454 for defective ignition switches in Chevrolet Cobalt and Pontiac G5 vehicles. Our request is based on evidence obtained during litigation that General Motors failed to meet its Part 573 regulatory obligation to notify the agency of a motor vehicle defect within five days of determining a defect or noncompliance, and to recall *all* affected vehicles.

On February 7, 2014, General Motors filed a Part 573 Defect Notice to recall 2005-2007 Model Year Chevrolet Cobalt and 2007 Pontiac G5 vehicles. GM's defect notice states:

> The ignition switch torque performance may not meet General Motors' specification. If the torque performance is not to specification, and the key ring is carrying added weight or the vehicle goes off the road or experiences some other jarring event, the ignition switch may inadvertently be moved out of the "run" position. The timing of the key movement out of the "run" position, relative to the activation of the sensing algorithm of the crash event, may result in the airbags not deploying, increasing the potential for occupant injury in certain kinds of crashes.[1]

[1] Part 573 Notice of Defect and Noncompliance; M. Carmen Benavides; General Motors; February 7, 2014

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First, GM failed to acknowledge that the defective ignition switch in these vehicles also causes the key to turn from the run to accessory or off positions under normal driving conditions, when the key ring is not carrying added weight.

More seriously, GM suggests in its brief chronology that its knowledge of the defect is recent. Part 573.6 (c) 6 requires that the manufacturer relate "all events that were the basis for the determination that the defect related to motor vehicle safety, including a summary of all warranty claims, field or service reports and other information, with their dates of receipt."[2] In its Part 573 notice, GM merely states that "the issue was presented to the Field Performance Evaluation Review Committee and on January 31, 2014, the Executive Field Action Decision Committee decided to conduct a safety recall. [3]

However, testimony of GM engineers and documents produced in *Melton v. General Motors, et. al.* show that the automaker actually knew about the defective ignition switch in these vehicles in 2004 *before* it began selling the 2005 MY Cobalt. Brooke Melton died in 2010, when the ignition switch in her 2005 Cobalt failed. Ms. Melton was belted, and driving 58 mph on Route 92 in Paulding County, Ga. when the ignition slipped out of the run position, sending her vehicle skidding into the path of another vehicle.

In 2004, GM's programming engineering manager for the 2005-2007 Cobalt, Gary Altman, experienced the key migrating from the run to the accessory position and the engine stalling when he test drove the vehicle. Other GM engineers experienced the same problem during the development of the Cobalt. The engineers determined that the low torque in the ignition switch caused the key to move from the run to accessory/off positions under ordinary driving conditions with normal key chains. Specifically, in 2005 the engineers concluded, "detent efforts on ignition switch are too low, allowing key to be cycled to off position inadvertently." [4] In February 2005, the engineers also concluded, "there are two main reasons that we believe can cause a lower effort in turning the key: a lower torque detent in the ignition switch. A low position of the lock module and the column."[5] Thus, it is evident that in early 2005 GM knew that the ignition switches they planned to use in the 2005-2007 Cobalts were defective.

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[2] Part 573 – Defect and Noncompliance Responsibility and Reports; 573.6 Defect and Noncompliance Information Report; (c) 6

[3] Part 573 Notice of Defect and Noncompliance; M. Carmen Benavides; General Motors; February 7, 2014

[4] Mark Hood Deposition, pp. 135-140, taken in *Melton v. GM.* Excerpts of this deposition are included with this letter. The complete transcript is available upon request.

[5] Id.

Immediately after the vehicle went to market, GM began receiving numerous complaints of engines shutting off while driving. Discovery obtained during the Melton litigation shows that GM knew of dozens of incidents where drivers of Cobalts experienced engine stalling as a result of the key moving from the run to accessory/off positions during ordinary driving conditions.[6] Some of these incidents resulted in accidents and injuries.

Based on information provided by GM, the company received more than 50 reported incidents of engines stalling after 2005.[7] Neither these reported incidents, nor the six deaths associated with the ignition switch failure, which GM acknowledged in its recall press release, nor the Melton fatality are referenced in the chronology of events leading to the decision to recall the Cobalt and G5 vehicles. These significant milestones are absent from the mandatory timeline in contradiction to the express requirements of Part 573.6 (c) 6.

In October 2005, instead of replacing the defective ignition switches, GM issued Technical Safety Bulletin (TSB) 05-02-35-007A.[8] In the TSB, GM recognized that there was the potential for the driver to inadvertently turn off the ignition due to low ignition key cylinder torque/effort. GM developed an insert for the key ring that changed it from a slot design to a hole design, to prevent the key ring from easily jogging the ignition switch out of the run position. But, these inserts did not fix the problem.

In addition to the 2005-2007 Chevrolet Cobalt and 2007 Pontiac G5, the TSB included the 2006-2007 Chevrolet HHR; 2005-2006 Pontiac Pursuit (Canada only); 2006-2007 Pontiac Solstice; 2003-2007 Saturn Ion; and 2007 Saturn Sky) also had the same defective ignition switches. Part 573.6 (c) (2) further requires manufacturers to identify "vehicles or items of motor vehicle equipment potentially containing the defect or noncompliance, including a description of the manufacturer's basis for its determination of the recall population and a description of how the vehicles or items of equipment to be recalled differ from similar vehicles or items of equipment that the manufacturer has not included in the recall."[9] Again, GM has not complied with the regulatory mandate to

[6] Victor Hakim Deposition taken in *Melton v. GM.* A copy of Mr. Hakim's deposition transcript is available upon request.
[7] Id.
[8] Technical Service Bulletin 05-02-35-007A; Ignition – Inadvertent Turning of Ignition Lock Cylinder; General Motors; October 6, 2005
[9] Part 573 – Defect and Noncompliance Responsibility and Reports; 573.6 Defect and Noncompliance Information Report; (c) 2.

include all models affected by this defect, or explain why the five other models in the TSB were not also eligible for this recall.

In sum, GM has failed to fulfill its legal obligation to report this defect to NHTSA within five days of discovering a defect. Nor has GM met its duty to include *all* defective vehicles in the recall. This recall is nine years overdue, and incomplete. The exclusion of five other models exposes their owners to a safety hazard GM has identified. We urge the agency to open a Timeliness Query to determine when GM learned of this problem and whether the recall has been too narrowly construed.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

**THE COOPER FIRM**

Lance A. Cooper