

**Testimony Before the Subcommittee on Consumer Protection,
Product Safety, and Insurance of the
United States Senate Committee on Commerce,
Science, and Transportation**

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Distinguished Members of the Subcommittee:

We thank you for this opportunity to testify and explain the important features and benefits of the “GM Ignition Compensation Claims Resolution Facility, FINAL PROTOCOL” (a copy of which is attached to my formal written remarks and which I respectfully request be included in the final record of this hearing). I am accompanied at the witness table by my colleague, Ms. Camille Biros, who has worked with me in the administration of this Compensation Program, and all other compensation programs going back to the 9/11 Victim Compensation Fund, the BP Gulf Coast Claims Facility and other similar programs.

This Final Protocol, and our remarks here today, are designed to explain the Program about to be put in place for the “Compensation of Certain Death and Physical Injury Claims Pertaining to the GM Ignition Switch Recall.” I will summarize my formal written testimony and we will then be prepared to answer any questions posed by Members of the Subcommittee.

We thank a number of individuals and entities for their assistance and valuable input in our preparation of the Final Protocol. Although I doubt that any of them are completely satisfied with the Protocol in all particulars, they have contributed in very important ways in guiding our thinking when it comes to the design of the Compensation Program. Individual plaintiff lawyers, non-profit entities devoted to automobile safety and GM officials themselves, have all made constructive and valuable suggestions and recommendations concerning the Program.

But we emphasize here today that the Final Protocol and resulting Compensation Program are entirely and solely our responsibility. We, and we alone, defend the terms and conditions of the Program discussed here today. We stand behind the Program ready to defend it.

The most important features of this Compensation Program can be summarized as follows:

- The Program we have designed and will administer is totally independent from GM. As the Protocol expressly spells out, any final determinations concerning individual claims for compensation, and the amount of such compensation, cannot be challenged or appealed by GM. The decision we reach—exercising our “sole discretion”—is final and binding on GM.
- The scope of the Compensation Program is limited to individual deaths and physical injuries. Claims for economic damage to the automobile itself, e.g., property damage or diminished resale value of the automobile, are not included within the scope of this Final Protocol.
- The Compensation Program is purely voluntary; no individual is required to participate in the Program.
- There is no aggregate cap on the amount of compensation GM will make available to eligible claimants pursuant to this Compensation Program. Whatever the total amount of compensation, GM has agreed to pay it.
- The previous GM bankruptcy will not pose a legal barrier to any claimant submitting a claim for death or physical injury pursuant to this Program. Whether the unfortunate accident occurred before or after the GM bankruptcy is irrelevant. The claim will be considered on its own merits without regard to any GM bankruptcy date.
- Individual claimants who previously settled their claims with GM before learning of the defective ignition switch problem will be permitted to reopen their claims, and seek additional compensation from this new Program if the calculated amount under the Program exceeds the earlier settlement amount.
- The contributory negligence of the driver, e.g., intoxication, speeding, cell phone use while driving, etc., is completely irrelevant in the processing of individual claims pursuant to this Protocol. We are focusing on the causal connection between the defective ignition switch and the accident; the conduct of the driver will not enter into our deliberations in any way.
- Nor is the Compensation Program limited to the driver of the vehicle; passengers, pedestrians and occupants of other vehicles involved in the accident are also eligible to file individual claims.
- An individual claimant must agree not to litigate against GM only after such claimant learns whether the filed claim is eligible and, if so, the amount of compensation. In

effect, the claimant receives a “free preview” of the claim before deciding whether to forego the right to litigate in favor of immediate compensation.

The Compensation Program will begin receiving individual claims in just a few weeks, beginning August 1, 2014. Individual claimants will have until the end of the year, December 31, 2014, to submit claims. (We will continue our work into 2015 to complete the review and determination of all claims which are timely filed by the deadline.)

Our goal is swift and certain compensation with minimal cost and delay to the claimant. Once we deem the individual claim and accompanying required documentation “substantially complete,” payments will be made within 90 days for the straightforward claim or 180 days for the more complex claim. (Compare this timeline with the cost, delays and uncertainties of the courtroom.)

The earlier a claim is submitted beginning August 1, the quicker we can process the claim and determine both eligibility and the amount of compensation. And, as the Final Protocol makes clear, we will work closely with the claimant to cure any deficiencies found in the submitted claim. Our objective is to pay all eligible claimants as soon as possible; we will work with the claimant to try and do so.

When it comes to eligibility to file a claim, there are three important prerequisites:

- The accident must involve an “eligible vehicle,” as defined and listed on page 3 of the attached Final Protocol. This constitutes the exclusive list of vehicles involved in this Compensation Program. According to GM, these are the only vehicles involved in the recall of 2.6 million automobiles in which the circumstances surrounding the defective ignition switch justify the creation of this unique Compensation Program. Neither Ms. Biros nor I have any authority to expand this list to other vehicles or other recalls. As with the 9/11 Victim Compensation Fund and the BP Gulf Coast Claims Facility Program, our jurisdiction has been defined by others.
- Individual claims are ineligible for compensation if the facts and circumstances of the accident demonstrate the deployment of any airbag and/or the deployment of seatbelt pretensioners during the accident. This is because in such situations automobile power continues to function and the airbags and seatbelts work as designed; the ignition switch remains in the “on” position and cannot be the cause of the accident.
- The ignition switch defect in an eligible vehicle must be the “proximate cause” of the death or physical injury. This is a standard of proof well known to all lawyers. Evidence of this “proximate cause” link between ignition switch failure and the accident might

include, by way of example: an examination of the automobile itself; a review of the “black box” data providing contemporary evidence of such failure; photographs of the accident scene; a contemporary police accident report; contemporary witness statements; contemporary insurance investigative reports and medical records; warranty and maintenance records confirming mechanical problems with the vehicle prior to the accident; and prior litigation depositions, written interrogatories and other similar information. We will work with individual claimants and their lawyers in an effort to satisfy this familiar legal standard of causation.

Once eligibility is determined, the Final Protocol recognizes three categories of individual claims for compensation:

- Individual Death Claims.
- Catastrophic Physical Injury Claims involving quadriplegic and paraplegic injury, double amputation, permanent brain damage or pervasive burns.
- Other Physical Injury Claims requiring overnight hospitalization or outpatient medical treatment within 48 hours of the automobile accident.

The calculation of compensation for the first two claim categories listed above – death or catastrophic physical injury – will be made either based upon standard national federal agency valuation statistics or the individual “extraordinary circumstances” of the claimant. The choice is up to the claimant. These are the same two options which guided us in the successful design and administration of the 9/11 Victim Compensation Fund.

When it comes to hospitalization of the less seriously physically injured, the Final Protocol simply provides a flat amount of compensation tied to the number of overnight stays in the hospital, ranging from \$20,000 (one night in the hospital) to \$500,000 (at least 32 overnight stays). Hospitalization is an accurate reflection of seriousness of physical injury. Alternatively, outpatient medical treatment is also compensated up to \$20,000. This flat amount “rough justice” approach relies on such previous precedents as the One Fund Boston marathon bombings compensation program and the Virginia Tech Hokie Spirit Memorial Fund.

In either case, the Final Protocol requires hospitalization and/or outpatient medical treatment within 48 hours of the accident.

The goal here is simple and straightforward – we want to concentrate our immediate efforts in determining both eligibility and compensation on behalf of those who have suffered the most grievous loss as a result of the accident. There is no substitute for distributing compensation as

quickly and efficiently as possible. We have learned this from our previous work in designing and administering compensation funds.

In order to avoid delay and inefficiency, it is important to emphasize speed and similar compensation for similar physical injuries which do not rise to the level of death or catastrophic injury. The bulk of our time should be spent determining eligibility and calculating individual damages tailored to those families who have lost loved ones, or those victims who now confront life-altering catastrophic physical injury. We must not be diverted in this task by focusing on less serious physical injuries in which we would be asked to evaluate extensive medical records and hospital reports.

As already indicated, both Ms. Biros and I will begin receiving individual claim submissions on August 1, 2014. We have initiated a comprehensive, pervasive notice campaign designed to notify all 2.6 million individuals subject to the relevant GM recall program. In addition, we are reaching out and notifying all former owners of eligible vehicles included in this Compensation Program in an effort to determine whether they, too, may have been involved in an accident involving such vehicles. Our goal is to encourage all eligible claimants to file a claim pursuant to this Compensation Program as soon as possible.

We cannot compensate eligible claimants unless they file a claim. More information can be found about the Compensation Program by telephoning Toll-Free 1-855-382-6463 (in the U.S. and Canada), and 01 800-111-2140 (in Mexico) or by accessing the Compensation Program website at: <http://www.gmignitioncompensation.com/index>.

This completes my formal testimony and we welcome questions from the distinguished Members of this Subcommittee.