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Docket Management, Room PL-401
National Highway Traffic
Safety Administration (NHTSA)
400 Seventh Street, SW
Washington, DC 20590

RE: NHTSA-99-6407; Notice 1 - 82

To Whom it May Concern:

Enclosed is a supplement to the electronically filed comments submitted by the Center for Auto Safety on December 30, 1999. The Center's comments made reference to the attached article in footnote 22. As we explained in our earlier submission, we were unable to submit this item electronically when we filed our comments. Please enter this submission into the above-referenced public docket.

If you have any questions or concerns, please do not hesitate to contact me at (202) 328-7700, Ext. 112. Thank you very much for your assistance.

Sincerely,



Michael Kido
Staff Attorney

Attachment(s): 1

Senate Hearing Criticizes DOT on GM Pickup Settlement

On December 5, 1994, Senator Howard Metzenbaum (D-OH), outraged by Transportation Secretary Federico Pena's decision to cancel the hearings on the GM C/K pickup truck defect, called a hearing before the Senate Labor & Human Resources Committee which he chaired to critique Secretary Pena's decision and allow the public to hear of the dangers of the side-saddle gas tanks. Senator Metzenbaum, the longtime voice of the consumer in the U.S. Senate, struck one last blow as an elected official against corporate irresponsibility and the government's willingness to tolerate such misconduct.

The senator invited GM, the government, crash victims, safety advocates, and automotive experts to testify at the hearing to answer questions regarding the trucks and the very highly suspect eleventh hour settlement. Only GM refused the invitation. The witnesses included: C/K crash victim Doug Worden; crash victim family members B.J. Kincade (Jimmy Hamby), Eugene Tompkins (Jeffrey Tompkins), Annette Hausinger (Anne Kirkwood), and Bob Bishop (Shown Bishop); safety advocates Clarence Ditlow of the Center for Auto Safety (CAS) and

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GM PICKUPS: DOT'S DEADLY SETTLEMENT

DOT Trades **100** GM Fire Deaths For **10** Lives

On December 2, 1994, Transportation Secretary Federico Pena signed an unprecedented agreement negotiated by high level Justice Department officials with General Motors (GM) to close the investigation of 5 million 1973-87 C/K pickups (GM Pickups) with exploding side saddle gas tanks in exchange for an illusory commitment of \$51 million by GM to safety programs. Just 6 weeks earlier, Secretary Pena made an initial determination on October 17 that the GM Pickups had a safety defect which had resulted in at least 150 fire deaths and that at least 32 more people would die from burns due to this defect. Secretary Pena found that GM had known about the defect since the early 1970's and had not remedied the defect or warned the public. Secretary Pena's capitulation was all the more strange because on November 15, he had issued a Federal Register notice that the hearing would be expanded to include all fire crashes of C/K pickups which increased the past burn death toll to 650 compared to 150 in direct side impacts only; the future burn death toll increases to over 100.

Just what happened in those six weeks that caused Secretary Pena to sell out the public for at best 5¢ on the dollar? Political pressure, plain and simple, aided by a Justice Department

lawyer with a conflict of interest. On November 3, Rep. Bob Carr from Michigan ordered an investigation by the Inspector General of Pena's decision. On November 10, the Chief Executive Officers of Chrysler, Ford and General Motors wrote President Clinton seeking his intervention to "address the intolerable state of regulatory uncertainty that will otherwise result from Secretary Pena's decision." The Big Three CEO's stressed that Secretary Pena's decision would have an adverse financial impact on each of their companies. On November 17, GM filed a lawsuit in Federal District Court in Detroit, whose primary purpose was to open the backdoor to the Justice Department for negotiations to scuttle the investigation. The Justice Department attorney assigned to the case not only was a former associate from O'Melveny & Myers whose flagship client was Ford Motor Company but who also owned \$4,000 of GM stock. More important than owning the GM stock was the fact that the Justice attorney had worked on defending Ford defects while in private practice and who knew that the position taken by GM would benefit Ford, his former client, in defense of future cases.

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THE DEFECT= The side saddle fuel tank design installed in nearly 10 million 1973-87 GM full-size pickups and cabchassis trucks is the worst auto defect in the history of the U.S. Department of Transportation. According to the Fatal Accident Reporting System, over 1,300 people were killed in fire crashes involving these trucks from 1973 through 1993. At least 600 of these deaths were due to fire, not trauma - i.e., the vehicle occupants survived the crash only to be burned alive by the resulting fire. This is more than twenty times as many fatalities as the infamous Ford Pinto which had claimed 27 lives according to the National Highway Traffic Safety Administration (NHTSA) when recalled in 1978. GM pickup occupants are 6 times more likely to die of burn injuries in a side impact crash than the occupants of a Dodge pickup.

GM pickup fire crashes are unique in that they are so severe. The trucks carry up to 40 gallons of gasoline outside the frame where the energy of the striking vehicle crushes the GM pickup's gas tank up against the frame and forcibly expels the gasoline. In the worst cases, the tanks rupture with a violent spray of gasoline that envelops both vehicles in the crash. Any source of ignition causes a giant fire that consumes anything in its path. No one has time to escape before suffering horrible, if not fatal, burns. Multiple fatalities are common.

Development of the C/K Pickup With Unsafe Side Saddle Tanks: Like Ford and Chrysler, GM made pickups with gas tanks inside the cab in the 1960's. Because of concerns about the safety of placing the gas tank inside the passenger cab, the Big Three auto makers all decided to relocate the tank outside the passenger compartment. Chrysler engineers specifically rejected plac-

ing the tank outside the frame because of safety concerns saying, "A frame mounted fuel tank mounted anywhere outside the frame rails would be in a **very** questionable area . . . Any side impact would automatically encroach on this area and the **probability** of tank leakage would be extremely high."

GM engineers reached a similar conclusion with Chevrolet engineer Alex Mair recommending in 1964 that the fuel tank of the next generation pickup "must be mounted outside the cab and as near the center of the vehicle as practical." The very first design layouts for the new pickups in 1970 showed the fuel tank inside the frame rails. **But the safety concerns** of GM engineers were overridden by management's sales concerns who wanted 40 gallon fuel capacity to get a greater driving range to use as a selling point. The easiest way to do this was to install two 20 gallon fuel tanks outside the frame rail where they were more vulnerable to rupture and puncture from sharp objects in crashes.

Even after GM executives required the fuel tanks to be placed outside the frame for sales reasons, GM engineers kept working to come up with safe designs. GM engineers developed and tested shields to protect the tank. In 1972, GM crash-tested four pickups with side saddle tanks. The two standard production vehicles both failed badly in 30-mph side impacts. One with a partial shield had a marginal failure but the fourth with a full side impact shield passed with flying colors. Yet it was never put into production.

GM's Knowledge of Defect: In 1974 GM conducted an accident study of 1973 compared to pre-1973 pickups which showed "the 1973 trucks had more fuel leaks from the fuel tank than did the pre-1973 pickups." A 1978 GM study concluded that both rear-located and inside-the-frame fuel tanks were superior to outside-the-frame tanks. Using GM's own accident data, George Garvil found "Approximately 40 of 212 or 19%, of the side impacts were judged to have had high fuel tank leakage potential for outboard side-located

tanks. Moving these side tanks inboard might eliminate most of these potential leakers."

GM considered installing a plastic safety liner or bladder but discarded this idea in 1978. Crash tests of 22 GM pickups in 1981-83 revealed the tanks "split like melons." GM developed a protective steel fuel tank cage which it installed on its 1978-83 cab chassis models (pickups without the bed). In 1982 GM rejected a \$23 shield which GM Vice President Alex Mair called "a probable easy fix." GM was able to hide all this evidence until the early 1990's when leaks began to spring in GM's secrecy dam.

NHTSA's Investigation: The battle over the recall of the pickup trucks began on August 14, 1992 when the Center for Auto Safety (CAS) and Public Citizen filed a recall petition with NHTSA. GM responded with a 55-page letter and 80 boxes of documents that they argued proved that the fuel tank was no danger. On December 8, 1992, NHTSA announced it would officially investigate the 1973-87 GM pickups.

On April 9, 1993, NHTSA asked GM to voluntarily recall all its 1973-87 C/K pickups with side saddle fuel tanks. GM refused to comply and instead submitted a 50-page study supporting the safety of its trucks. In March to June 1993, NHTSA conducted a series of its own crash tests comparing Ford pickups to GM pickups. The NHTSA tests showed that in crashes as low as 20-mph into a pole, GM's gas tanks ruptured while Ford's did not. In vehicle to vehicle crash tests at speeds of 50-mph in which the occupants of the trucks would have survived the trauma of the crash according to NHTSA instrumented crash dummies, the Ford tanks retained their integrity while the GM tanks again split like melons.

After July 1993, NHTSA continued to gather data with the biggest single revelation being that GM had

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withheld hundreds of accident reports on C/K gas tank fires until forced to finally disclose them in February 1994. Secretary Pena required NHTSA staff to give him two option papers, one for, and **one against a recall**. NHTSA staff were split with the engineers conducting the investigation in favor of a recall and the higher level policy staff recommending against a recall. Because the NHTSA Administrator had **recused** himself for working as a consultant for GM, the **decision** fell to Secretary Pena who stood up for the American consumer by making the initial determination of a defect and then was forced to bow to the political pressure of the \$140 billion General Motors Corporation.

THE DEAL: The settlement deal negotiated by the Justice Department is full of flaws and conditions that make it a deadly deal for the American public. The following are a few examples.

(1) The deal prevented DOT from going forward with a public hearing at which new material would have been presented, including extensive new technical information on crash severity and defect failure modes, new accident data and **analyzes** showing a much **higher death toll**, a **comprehensive** analysis of all GM recalls to show unreasonable risk, new internal GM documents on prior knowledge and inexpensive fixes foregone, and new demonstrative physical evidence and computer simulations. Such new information would have made an enforcement proceeding far easier. At a public hearing, DOT could have asked GM for the first time about its \$23 "probable easy fix" from 1982; what happened to the 1973 safety shield that was used in the only successful 30-mph crash test for the new C/K pickup; and the ability of bladder liners to stop fuel tank ruptures.

Crucial new evidence would have been presented at the public hearing that GM desperately wanted to block. Dr. **Vassilis Morfopoulos** would testify about his expert examination of the first known fire crash in 1974 and how he had warned GM at that time that the side saddle tank design was defective. GM knew that 50 new engineering documents from the files of former GM engineer Ron **Elwell** would be introduced including the document indexing form used by groups of young lawyers retained by GM and known as the "Fire Babies" in their five year long search for damaging fuel system documents in the files of GM engineers.

(2) The deal purports to commit GM to spending \$51 million on various alternative safety programs to save hundreds of lives. Using the Freedom of Information Act, CAS later obtained the internal estimates of lives saved and found that the total number of lives saved would be 3 per year for about 3-4 years due to the purchase of 200,000 child seats. All the other estimates of lives saved were based on getting states that are in the process of rolling back motorcycle helmet laws, 55-mph speed limits and generally opposing unfunded federal mandates to adopt stricter state safety laws. DOT will be lucky to halt the rollback juggernaut, let alone get more state laws enacted.

Moreover, \$30 million of the GM funding is dependent on DOT coming up with matching funds. Given the declared intention of the new Congress to slash federal spending, the prospect for DOT coming up with \$30 million is between slim to none. The most GM is likely to have to spend is \$21 million. GM does not even have to put up cash but can put up equivalent facilities, staff and salaries. Moreover GM is free to spend the money where it wants. If it wants to give public education money to the American Coalition for Traffic Safety which lobbied to stop the C/K recall it can do so.

(3) The deal, is the very first defect settlement in which no remedy is offered to owners of the defective vehicle - at best, it can be said that

some are asked to die so that others might live but no one consulted the potential victims about whether they want to die. This deal encourages more bad deals from other manufacturers facing expensive recalls in the future. Of the 68 recalls of more than 200,000 vehicles each conducted by GM from 1966 to the present, GM only reported two **that had** any deaths whatsoever. In comparison, the C/K defect has killed over 600 people. In the future, every manufacturer facing a **major** recall will claim that they can save more lives by doing public education campaigns than they can by doing a recall.

(4) The deal flies in the face of 25 years of recall law and administrative action at DOT where the precedent has long been **established** that manufacturers must recall for defects even if the vehicle or equipment met applicable safety standards. Two of the most famous recalls in history- 1.5 million 1971-76 Ford Pintos for exploding gas tanks and 1.5 million Firestone 500 tires - occurred despite their meeting applicable Safety Standards. GM itself recalled over 400,000 1990-91 cars for passive belts that met the 30-mph front crash standard but failed at 35-mph, a 36% more severe crash than the one required by the standard. Safety standards cover new vehicles when they are sold while defect recalls cover vehicles in use discovered to be unsafe.

(5) The deal gives no notice of the hazard of GM's exploding pickups to consumers who buy them and use them without any knowledge of the risk. Indeed, the self-serving publicity from GM has diffused the public's knowledge of the defect. Even if the government had to sue to obtain a recall and the litigation had taken several years, DOT could have required a provisional notice to go out immediately to owners which would have done more to save lives than all that is in the agreement. ♦