

Advocates for Highway and Auto Safety * Center for Auto Safety *

Consumer Federation of America * Consumers Union *

Public Citizen * U.S. Public Interest Research Group

November 10, 2015

Dear Conferees for the DRIVE Act:

We are writing to urge you to include in the highway and infrastructure legislation strong criminal penalties for companies that recklessly endanger people by selling defective vehicles or parts and/or hide information from the public and regulators about product safety defects. This should be done by incorporating the Hide No Harm Act, S.2140, and/or S. 1743, into the highway bill.

Such measures are desperately needed and directly relate to the transportation subject matter of the highway bill.

An epidemic of corporate crime and wrongdoing in the auto industry

The last few years have witnessed revelation after revelation of extraordinary wrongdoing in the auto industry. Product defects and product defect cover-ups have resulted in the preventable deaths of many hundreds of people and devastating lifetime injuries to hundreds more. Thanks to the cover-ups and industry obfuscation, we'll probably never know exactly how many.

- For a decade, GM concealed information about a deadly ignition switch defect; it settled cases with victims' families on the condition that settlement terms be kept secret; and it failed for years to take any action to fix the defect. GM acknowledges that at least 174 people have died due to the defect, through their litigation settlements and its own victims' compensation program, though the actual total is likely far higher.
- Toyota misled and deceived consumers about unintended acceleration problems with its vehicles. Unintended acceleration crashes resulted in at least 89 deaths and additional injuries, according to National Highway Traffic Safety Administration figures.
- Chrysler Jeep SUVs from a nearly two-decade period have fuel tank defects that make them vulnerable to fire in case of rear-end crashes. More than 85 people have died in crashes related to this defect. Chrysler has agreed to recall and repair the defect, but has moved shamefully slowly to do so – permitting still more to die in avoidable fire-related crashes.
- Defective Takata airbags have shot shrapnel into cars, killing at least 8 people and injuring close to 100 with face and chest injuries particularly to drivers and front seat passengers.
- Volkswagen intentionally designed its cars to evade emission standards, with the result that they are releasing pollutants at 30-40 times permissible levels; the resulting dirtier air is likely responsible for dozens of deaths.

Failure to punish, failure to deter

This epidemic of wrongdoing establishes a strong prima facie case that regulatory and monetary criminal penalties are failing to deter reckless, recidivistic activity in the auto industry. That each of these cases involves not just a defect but a follow-on cover-up underscores how widespread is a culture of lawlessness in the industry. At least ten separate Congressional hearings have investigated these issues, collectively revealing corporate wrongdoing that is both pervasive and longstanding. “Long before Volkswagen admitted to cheating on emissions tests for millions of cars worldwide, the automobile industry, Volkswagen included, had a well-known record of sidestepping regulation and even duping regulators,” explains a recent New York Times article.¹

Some of these cases have been subject to criminal prosecution, but the criminal prosecutions share a number of glaring limitations and failures:

- Executives have not been held criminally liable, or even criminally charged.
- Companies have escaped criminal pleas by entering into deferred prosecution agreements, typically accompanied by penalties inadequate to deter these or other companies in the future.
- Prosecutors have structured their criminal charges around wire fraud violations rather than directly charging companies and executives with endangering people and concealing hazards.

These problems are interconnected. Although there is no excuse for prosecutors’ failure to prosecute aggressively responsible individuals and the companies, it is the case that it is more difficult to successfully charge them for the core wrongdoing. That is because there is neither a provision in auto safety laws holding companies and executives criminally liable for knowingly manufacturing or selling a safety defective vehicle or equipment that endangers the public or for concealing such hazards, nor a more general provision in the criminal code making it a crime to conceal information about serious hazards from the public and regulators.

Explains Preet Bharara, U.S. Attorney for the Southern District of New York, “Part of the reason there aren’t more prosecutions in the auto industry is because of the available laws².”

Making sure crime doesn’t pay

Morality, justice and public health all demand this problem be fixed. Society punishes severely individuals whose reckless acts kill innocents. But when companies conceal evidence of their recklessness – directly resulting in more preventable death and injury – they typically escape pleading guilty to crimes (or being found guilty by a jury or judge). Prosecutions of company executives, especially in the auto industry, are even rarer. The criminal justice system thereby dishonors and denies a basic modicum of justice to the victims and their families. It also fails to achieve deterrence. Far more than street criminals, companies and executives behave rationally. If the risks of being caught and resultant penalties are substantial enough, they will follow the law. Conversely, as we have seen, if they believe they can escape meaningful prosecution, in too

¹ Danny Hakim and Hiroko Tabuchi, “Volkswagen Test Rigging Follows a Long Auto Industry Pattern,” New York Times, September 23, 2015, available at: <<http://www.nytimes.com/2015/09/24/business/international/volkswagen-test-rigging-follows-a-long-auto-industry-pattern.html>>.

² David Shepardson, “Prosecutor: U.S. Safer Because of Automaker Probes,” Detroit News, October 29, 2015, available at: <<http://www.detroitnews.com/story/business/autos/2015/10/29/prosecutor-us-safety-automaker-probes/74835108>>.

many cases companies will endanger the public and lie about it. Cost-of-business penalties and fines, particularly when they are in substantial part tax deductible, fail to deter. The human costs are horrific and intolerable.

That's why new criminal provisions must be added to the highway bill. We urge you to incorporate the Hide No Harm Act, S.2140, into the legislation. This would make it a crime for companies and executives to hide from the public and regulators information about serious dangers in their products. Alternatively, language could be adopted tailoring the obligation specifically for the auto industry, as proposed in S. 1743. Any criminal violation provision should also make it a crime for a company or executive to recklessly manufacture or sell a defective vehicle or equipment that will kill or injure the public.

Across the country, hundreds of families are mourning the deaths of mothers and daughters, fathers and sons from completely preventable crashes, fires and explosions. Many are mourning deaths that occurred not just due to defects, but defects that were known to the auto or parts maker and concealed. The least we owe these families is a commitment to prevent such tragedy from befalling others.

For additional information or to follow up in any way on this letter, please contact Robert Weissman, President, Public Citizen at 202-588-1000 or rweissman@citizen.org.

Sincerely,

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