

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

SAM WIETSCHNER and
TOVA WIETSCHNER TRS FBO SAM
WIETSCHNER UA411990, Derivatively On Behalf
of GENERAL MOTORS COMPANY,

Case No. 14 - - CZ
Hon.

Plaintiffs,

vs.

MARY T. BARRA, THEODORE M. SOLSO,
STEPHEN J. GIRSKY, PATRICIA F. RUSSO,
THOMAS M. SCHOEWE, ERROLL B. DAVIS, JR.,
KATHRYN V. MARINELLO, ROBERT D. KREBS, DR.,
CYNTHIA A. TELLES, JAMES J. MULVA,
MICAH EL G. MULLEN, DAVID BONDERMAN,
E. NEVILLE ISDELL, CAROL M. STEPHENSON,
DANIEL F. AKERSON, EDWARD E. WHITACRE, JR.,
and PHILIP A. LASKAWY,

Defendants,

-and-

GENERAL MOTORS COMPANY,
a Delaware Corporation,

Nominal Defendant.

**SHAREHOLDER DERIVATIVE
COMPLAINT FOR BREACH
OF FIDUCIARY DUTY
AND JURY DEMAND**
FILED IN MY OFFICE
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There is no other civil action pending or was previously filed and dismissed, transferred, or otherwise disposed of arising out of the transaction or occurrence alleged in the Complaint.

/s/ Andrew Kochanowski

Plaintiff Sam Wietschner & Tova Wietschner TRS FBO Sam Wietschner UA411990, by and through its undersigned attorneys, brings this derivative complaint for the benefit of nominal defendant, General Motors Company (“GM” or “the Company”), against certain members of its Board of Directors (the “Board”) seeking to remedy defendants' breaches of fiduciary duties and abuse of control.

BACKGROUND AND SUMMARY OF THE ACTION

1. This shareholder derivative action is brought against GM’s directors for consciously engaging in a sustained and systematic failure to exercise oversight on vehicle safety at GM and utterly failing to attempt to assure a reasonable vehicle safety information reporting system existed. So complete was the lack of an information reporting system that even automobile mechanical defects identified by GM engineers which had caused customer deaths but not been recalled and were still ‘on the road,’ were not reported to the Board. Their abdication of duty resulted in death and injury to GM customers, product liability lawsuits, a securities fraud class action, and government investigations which collectively are all but certain to cost the Company billions of dollars, along with serious and lasting reputational damage.

2. On April 1, 2014, Defendant GM CEO Barra testified to the U.S. Senate Commerce Committee Subcommittee on Consumer Protection, Product Safety and Insurance concerning a defective ignition switch in certain model GM cars. The ignition switch has a tendency to slip from the ‘on’ position to ‘off’ if a driver uses a heavy key chain or if the car bounced. The resultant engine shutdown,

disabling power steering, power brakes and airbags left drivers moving at high speeds unable to control the car and has, according to GM engineers, been responsible for at least thirteen deaths and 31 collisions.

3. Defendant Barra testified that the fatality causing defect was identified by GM engineers in 2004 and repeatedly confirmed thereafter as deaths, injuries and associated lawsuits mounted. As to why it took General Motors until 2014 to recall 2.3 million vehicles which GM engineers knew for a decade had a fatality causing mechanical defect, defendant Barra testified that she and GM leadership had just been recently informed of the defect in December, 2013 and stated - in a video posted on the GM webpage - “something went wrong with our process.”

[<http://www.nytimes.com/2014/03/18/business/gm-chief-barra-releases-video-on-recalls.html>].

4. The Company’s failure to act to cure the mechanical defect was a reflection of a fundamental structural defect in the internal controls of the giant auto manufacturing company. GM has no oversight of vehicle safety risks by the Company’s senior leadership including both its senior executives and board of directors (the “Board”):

GM built a system to deliberately keep senior executives out of the recall process. Instead, two small groups of employees in the vast GM bureaucracy were tasked with making recall decisions.

[<http://ca.reuters.com/article/businessNews/idCABREA2S0IJ20140329?pageNumber=5&virtualBrandChannel=0&sp=true>] (See full article below).

5. Lacking oversight by senior leadership, operational level employees made the Company’s most critical vehicle defect safety decisions subject to short term considerations of cost cutting and image preservation. The GM Board, consciously chose not to oversee vehicle safety at GM and received no information on automobile mechanical defects identified by GM engineers, even those which had caused customer deaths but not been recalled and were still ‘on the road.’ By doing so the

Individual Defendants completely shirked their basic and critically important responsibility to oversee the greatest risk of operating an automobile manufacturing company.

LAW, JURISDICTION AND VENUE

6. This action is governed by Delaware law as Nominal Defendant GM is registered and organized under the laws of Delaware. This Court has jurisdiction over each of the Defendants pursuant to Mich. Comp. Laws Ann. § 600.1621 because they conduct business in, reside in, and/or are citizens of Michigan. Nominal Defendant GM is a citizen of Michigan as it has its principal place of business located at 300 Renaissance Center, Detroit, Michigan 48265.

7. Venue is proper in this County pursuant to Mich. Comp. Laws Ann. §600.1621 because the nominal corporate Defendant conducts business in this County, and the Individual Defendants have a place of business within this County. The acts, practices, and transactions pleaded herein occurred and were affected to a major extent within this County.

PARTIES

Plaintiff

8. Plaintiff Sam Wietschner & Tova Wietschner TRS FBO Sam Wietschner UA411990 was a shareholder of GM at the time of the wrongdoing complained of, has continuously been a shareholder since that time, and is a current GM shareholder. Plaintiff can fairly and adequately represent the interests of the corporation in this derivative action.

Nominal Defendant

9. Nominal Defendant GM is a Delaware corporation with principal executive offices located at 300 Renaissance Center, Detroit, Michigan. GM designs, builds, and sells cars, trucks, and automobile parts worldwide. GM was incorporated in Delaware in 2009 after acquiring substantially all

of the assets and assuming certain liabilities of General Motors Corporation, its predecessor company, from a Section 363 sale under Chapter 11 of the U.S. Bankruptcy Code. A restated certificate of incorporation was filed in Delaware on December 9, 2010. Upon completion of the 363 Sale, Old GM was renamed Motors Liquidation Company, which was dissolved on December 15, 2011. As of January 30, 2014, the Company has 1,589,788,282 shares of common stock outstanding.

Individual Defendants

10. Defendant Mary T. Barra is and has been GM's CEO and director since January 2014. Defendant Barra was also GM's Executive Vice President, Global Product Development, Purchasing & Supply Chain from August 2013 to January 2014; Senior Vice President, Global Product Development from February 2011 to August 2013; Vice President, Global Human Resources from July 2009 to February 2011; Vice President, Global Manufacturing Engineering from February 2008 to July 2009; and Executive Director, Vehicle Manufacturing from January 2005 to February 2008. In 2012, Defendant Barra received from the Company a base salary of \$750,000 and stock awards, option awards, incentive plan compensation and other compensation totaling \$ 4,935,700.

11. Defendant Theodore M. Solso ("Solso") is GM's Chairman of the Board and has been since January 2014 and a director and has been since June 2012. Defendant Solso is also a member of GM's Audit Committee and has been since at least April 2013. In 2012, Defendant Solso received from the Company director fees and other compensation totaling \$135,298.

12. Defendant Stephen J. Girsky ("Girsky") is a GM director and has been since July 2009. Defendant Girsky was also GM's Vice Chairman of Corporate Strategy, Business Development, Global Product Planning, and Global Purchasing and Supply Chain from February 2011 to January 2014; Vice Chairman of Corporate Strategy and Business Development from March 2010 to February 2010; and Interim President of GM Europe from July 2012 to February 2013. Defendant Girsky is a senior advisor

of GM and will be in that position until April 2014. Defendant Girsky is also a member of GM's Public Policy Committee and has been since at least August 2010. In 2012-2010, Defendant Girsky received from the Company compensation totaling \$ 5,446,921, \$5,307,214 and \$3,712,058, respectively.

13. Defendant Patricia F. Russo ("Russo") is a GM director and has been since July 2009. Defendant Russo was also GM's Lead Director form March 2010 to January 2014. Defendant Russo received from the Company director fees and other compensation totaling \$251,957 in 2012, \$248,876 in 2011, and \$226,478 in 2010, respectively.

14. Defendant Thomas M. Schoewe ("Schoewe") is a GM director and has been since November 2011. Defendant Schoewe is also Chairman of GM's Audit Committee and has been since February 2013. In 2012, Defendant Schoewe received director fees and other compensation totaling \$223,624.

15. Defendant Erroll B. Davis, Jr. ("Davis") is a GM director and has been since July 2009. Defendant Davis was also a director of Old GM from 2007 to 2009. Defendant Davis is a member of GM's Audit Committee and has been since at least August 2010 and Chairman of the Public Policy Committee and has been since at least April 2011. Defendant Davis received from the Company director fees and other compensation totaling \$243,074 in 2012, \$240,101 in 2011, and \$229,312 in 2010, respectively.

16. Defendant Kathryn V. Marinello ("Marinello") is a GM director and has been since July 2009. Defendant Marinello was also a director of Old GM from 2007 to 2009. Defendant Marinello is a member of GM's Audit Committee and Public Policy Committee has been since at least August 2010. Defendant Marinello received from the Company director fees and other compensation totaling \$231,957 in 2012, \$228,876 in 2011, and \$214,812 in 2010, respectively.

17. Defendant Robert D. Krebs ("Krebs") was a GM director since July 2009 and retired on February 4, 2014, effective immediately, without explanation. Defendant Krebs was also a member of GM's Audit Committee since at least August 2010. Defendant Krebs received from the Company director fees and other compensation totaling \$241,957 in 2012, \$238,876 in 2011, and \$216,478 in 2010, respectively.

18. Defendant Cynthia A. Telles ("Telles") is a GM director and has been since April 2010. Defendant Telles is also a member of GM's Public Policy Committee and has been since at least August 2010. On March 13, 2014, the Company announced that defendant Telles does not intend to stand for reelection at the 2014 Annual Meeting. Defendant Telles received from the Company director fees and other compensation totaling \$211,957 in 2012, \$208,876 in 2011, and \$154,761 in 2010, respectively.

19. Defendant James J. Mulva ("Mulva") is a GM director and has been since June 2012. Defendant Mulva is also a member of GM's Public Policy Committee and has been since at least April 2013. In 2012, Defendant Mulva received from the Company director fees and other compensation totaling \$116,727.

20. Defendant Michael G. Mullen ("Mullen") is a GM director and has been since February 2013. Defendant Mullen is also a member of GM's Audit Committee and Public Policy Committee and has been since at least March 2014.

21. Defendant David Bonderman ("Bonderman") is a GM director and has been since July 2009. Defendant Bonderman was a member of GM's Public Policy Committee in at least August 2010. Without explanation, the Company announced that defendant Bonderman will not stand for reelection at the 2014 Annual Meeting. Defendant Bonderman received from the Company director fees and other compensation totaling \$211,957 in 2012, \$208,876 in 2011, and \$91,478 in 2010, respectively.

22. Defendant E. Neville Isdell ("Isdell") is a GM director and has been since July 2009. Defendant Isdell was also a director of Old GM from 2008 to 2009. Defendant Isdell was a member of GM's Public Policy Committee from at least August 2010 to at least April 2013 and was Chairman of that Committee in at least August 2010. Defendant Isdell received from the Company director fees and other compensation totaling \$221,957 in 2012, \$218,876 in 2011, and \$218,145 in 2010, respectively.

23. Defendant Carol M. Stephenson ("Stephenson") is a GM director and has been since July 2009. Defendant Stephenson received from the Company director fees and other compensation totaling \$211,957 in 2012, \$208,876 in 2011, and \$208,145 in 2010, respectively.

24. Defendant Daniel F. Akerson ("Akerson") was GM's CEO from September 2010 to January 2014; Chairman of the Board from January 2011 to January 2014; and a director from July 2009 to January 2014. Defendant Akerson was a member of GM's Audit Committee from at least August 2010 to September 2010. In 2012-2010, Defendant Akerson received compensation from the Company totaling \$9,402,808, \$6,002,743 and \$1,960,752, respectively.

25. Defendant Edward E. Whitacre, Jr. ("Whitacre") was GM's CEO from December 2009 to September 2010 and Chairman of the Board from July 2009 to December 2010. In 2010, Defendant Whitacre received a base salary of \$1,133,333 and bonus, stock awards, option awards, incentive plan compensation and other compensation totaling \$3,869,747.

26. Defendant Philip A. Laskawy ("Laskawy") was a GM director from July 2009 to June 2013 and a director of Old GM from 2003 to 2009. Defendant Laskawy was also Chairman of GM's Audit Committee from at least August 2010 to at least April 2012. Defendant Laskawy received from the Company director fees and other compensation totaling \$242,912 in 2012, and \$238,145 in both 2011 and 2010, respectively.

27. The defendants identified in paragraphs 10-26 are referred to herein as the "Individual Defendants."

DUTIES OF THE BOARD OF DIRECTORS

28. The primary function of a board of directors is to provide independent oversight of risk (with the setting of executive compensation being the other core function of a board of directors) in part by maintaining reasonable information reporting systems, as recognized by the Individual Defendants who describe their function as the GM Board of Directors as follows:

One of the essential functions of our Board is oversight of management, directly and through its various Committees. Identifying and managing the risks we face is an important component of management's responsibilities. Risks are considered in virtually every business decision and as part of the Company's business strategy....

Our Board has overall responsibility for risk oversight, with a focus on the most significant risks facing the Company. Our Board implements its risk oversight function both as a whole and through delegation to Board Committees. The Board receives regular reports from our management on particular risks within the Company, through review of the Company's strategic plan, and through regular communication with its Committees. The Board Committees, which meet regularly and report back to the full Board, play a significant role in overseeing the Company's management of risks within their areas of responsibility.

GM SEC Form 14-A, filed April 25, 2013, pg. 16.

29. Because a mechanical defect can convert an automobile into a deadly weapon against its drivers and others on the road, vehicle safety and the danger of mechanical defects is the greatest single risk of operating an automobile manufacturing company. The cost of product liability lawsuits and government penalties for dangerous mechanical defects is one of the most significant financial risks facing an automobile manufacturing company.

30. The Individual Defendants, directors of one of the largest automobile manufacturers in the world, had a vitally important duty to provide the Company with oversight of vehicle safety risks to

both human life and corporate liability and costs which required a reasonable vehicle safety information and reporting system to keep the Board informed of major vehicle safety risks to both human life and the Company.

31. The Board's duty to provide oversight of vehicle safety risks at the very least required the Board to maintain internal controls to ensure the Board received reports of all automobile mechanical defect identified by GM engineers which had caused customer deaths but not been recalled and were still 'on the road.'

32. The GM Audit Committee Charter requires that committee to oversee, "GM's compliance with legal and regulatory requirements."

33. In addition to the common sense duty of the Board to oversee the biggest single risk of an automobile manufacturer - the risk of death and injury to customers - the Audit Committee Charter also requires that committee to oversee significant financial risks, which would obviously include litigation risks, including the risk of product liability litigation and government penalties which dangerous mechanical defects can result in.

34. The GM Board's Audit Committee (Individual Defendants Schoewe (Chair), Davis, Krebs, Marinello, Mullen, and Solso) bore a heightened duty ensure that an appropriate reporting system was in place to enable the Board to oversee Company compliance with vehicle safety laws and regulations, and to oversee the financial risk posed to the Company by potential products liability litigation based on dangerous mechanical defects.

35. The Governance Committee Charter requires that committee to nominate members to the Board with "appropriate skills," which would obviously include nominating individuals with the background necessary to engage in meaningful vehicle safety responsibility.

36. The members of the Governance Committee (Individual Defendants Russo (chair), Isdell, Krebs, Solso and Stephenson) bore a heightened duty to ensure that individuals were nominated to the Board with the experience, background and education necessary to oversee Company compliance with laws and regulations including vehicle safety laws and regulations, and to oversee vehicle safety risk and the financial risk associated with litigation including products liability litigation.

37. By reason of their positions as officers, directors, and/or fiduciaries of GM and because of their ability to control the business and corporate affairs of GM, the Individual Defendants owed GM and its shareholders fiduciary obligations of good faith, loyalty, and candor, and were and are required to use their utmost ability to control and manage GM in a fair, just, honest, and equitable manner. Each director and officer of the Company owes to GM and its shareholders the fiduciary duty to exercise good faith and loyalty and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

38. The Individual Defendants, because of their positions of control and authority as directors and/or officers of GM, were able to, directly and/or indirectly, exercise control over the wrongful acts complained of herein. Further, because of their advisory, executive, managerial, and directorial positions with GM, each of the Individual Defendants had knowledge of and a duty to disclose material non-public information regarding the Company. To wit, the Individual Defendants knew they were leading a company with no vehicle safety information reporting system which is the fundamental prerequisite for any exercise of Board oversight.

39. To discharge their duties, the officers and directors of GM were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of GM were required to, among other things:

- a. Exercise good faith and loyalty to ensure that the areas of significant risk in the Company's operations were overseen by the Board and that information reporting systems were in place to provide the Board on an on-going basis with the information needed for the Board to effectively monitor and oversee the various risks;
- b. Exercise good faith and loyalty to ensure that the Company was operated in a prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements;
- c. Exercise good faith and loyalty to ensure that the Company's communications with the public and with shareholders are made with due candor in a timely and complete fashion; and
- d. Exercise good faith and loyalty in taking appropriate action to correct defects in the Company's reporting systems in the event any area of significant risk is not presently being reported to senior management and the Board.

SUBSTANTIVE ALLEGATIONS

GM's Time Line of 'Significant' Events and Internal Communications and Events Relating to the Ignition Switch Defect Shows No Vehicle Safety Oversight by GM Senior Leadership Including the Board

40. Engineers at GM knew in 2005 that certain GM model automobiles had a faulty ignition switch and GM issued a service bulletin to dealers informing them that the ignition switch in six models could inadvertently shut off if the driver had a heavy or large key chain. At the same time the service bulletin was issued GM issued a statement quoted by the New York Times informing consumers that even when the ignition turns off "the Cobalt is still controllable" since while the vehicle was still moving "the engine can be restarted after shifting to neutral." Specifically, the article stated the following:

June 19, 2005

Making a Case for Ignitions That Don't Need Keys

By JEFF SABATINI

CHEVROLET dealers are telling Cobalt owners to lighten their key rings to prevent intermittent stalling and the loss of electrical power in their

cars. General Motors issued a service bulletin to dealers suggesting this fix.

'In rare cases when a combination of factors is present, a Chevrolet Cobalt driver can cut power to the engine by inadvertently bumping the ignition key to the accessory or off position while the car is running," Alan Adler, a manager for safety communications, said. "Service advisers are telling customers they can virtually eliminate this possibility by taking several steps, including removing nonessential material from their key rings.'

During my time with the Cobalt, I encountered the problem once, or rather, my wife did. She was driving on a freeway when the car 'just went dead,' in her words. She recalled bumping her knee against the steering column just before the car shut off. She was able to coast to the shoulder of the road, where, once parked, the car started and behaved normally.

The only things on the ring, other than the key, were the fob for the remote locking system and a tag identifying the car as G.M.'s - just as the key ring was given to me.

Though my wife was able to continue to her destination, I wanted a dealer service department to look at the car. Young Chevrolet Oldsmobile Cadillac, in Owosso, Mich., found nothing wrong, but did share the service bulletin.

Curious whether this experience was indeed rare, I searched the Internet for others who had encountered the same problem. I found a newspaper review describing the writer's experience with a Cobalt that unintentionally shut off.

'Unplanned engine shutdowns happened four times during a hard-driving test week,' Gary Heller wrote in The Daily Item of Sunbury, Pa., on May 26. 'I never encountered anything like this in 37 years of driving. I hope I never do again.'

Mr. Adler said that G.M. did not currently consider this situation a safety issue. 'When this happens, the Cobalt is still controllable,' he said. 'The engine can be restarted after shifting to neutral. Ignition systems are designed to have on and off positions, and practically any vehicle can have power to a running engine cut off by inadvertently bumping the ignition from the run to accessory or off position.'

41. According to a timeline prepared by GM detailing the chronology of GM's awareness of the ignition switch defect, which the Company submitted to the National Highway Traffic Safety

Administration on February 24, 2014 (“GM’s ignition switch timeline”), the following pertinent facts emerge:

- “**2004.** Around the time of the launch of the 2005 Chevrolet Cobalt, GM learned of at least one incident in which a Cobalt lost engine power because the key moved out of the run position when the driver inadvertently contacted the key or steering column. GM employees were able to replicate this phenomenon during test drives.”
- In 2004 GM engineers consider but reject a number of possible solutions to the ignition switch defect but rejected them due in part to “cost.”
- “**2005.** GM employees receive new field reports of Cobalts losing engine power, including instances in which the key moved out of the run position when a driver inadvertently contacts the key or steering column.”
- In 2005 “a GM engineer proposed that GM redesign the key head from a slotted to a hole configuration” which would have securely secured the key position. The proposed ignition switch defect fix was approved by GM (“the approved ignition switch defect correction”).
- In 2005 after the approved ignition switch defect correction, numerous additional reports of sudden loss of power while driving the affected GM model vehicles are publically reported. GM responds in articles published in the New York Times, Cleveland Plain Dealer and The Daily Item (Sunbury, PA).
- In 2005 GM cancels the approved ignition switch defect correction: “That proposal was initially approved, but later cancelled.” No explanation is given in GM’s time line for the cancelation.
- December, 2005 GM issues Information Service Bulletin 05-02-35-007 in December, 2005 (referenced above).
- In 2006 GM engineers determine that the ignition switch defect is present in additional models and model years including the 2007 Chevrolet Cobalt, the 2007 Chevrolet HHR, the 2007 Pontiac G5, the 2007 Pontiac Solstice, the 2007 Saturn Ion, and the 2007 Saturn Sky.
- “On April 26, 2006 the GM design engineer responsible for the Cobalt's ignition switch signed a document approving changes to the ignition switch.... This change to the ignition switch was not reflected in a corresponding change in the part number for the ignition switch.”

- “On March 29, 2007,.... a NHTSA representative informed the GM employees of a fatal crash that occurred on July 29, 2005, in which a 2005 Cobalt was involved in a frontal collision, the airbags did not deploy, and data retrieved from the car's sensing and diagnostic module ("SDM") indicated that the car's power mode status was "accessory."
- Although “GM Legal Staff opened a file relating to this crash in September 2005, the GM employees meeting with NHTSA on this occasion were not aware of the crash at the time of the (March 29, 2007) meeting.”
- “By the end of 2007, GM had notice of ten such incidents. SDM data was available for nine of the ten crashes, and that data showed that the ignition was in the "accessory" position in four of the crashes.”
- May 15, 2009, “several GM engineers met with representatives of Continental, the supplier of the SDMs used in the Cobalt. In the fourteen frontal-impact crashes for which SDM data was then available, the ignition was recorded in "run" for seven of the crashes and in the "accessory" position for the other seven.”
- “In late July 2011, a meeting was held at GM involving Legal Staff, Field Performance Assessment ("FPA") and Product Investigations personnel who would be involved in the Field Performance Evaluation ("FPE") process. Soon thereafter, in August 2011, a Field Performance Assessment Engineer ("FPAE") was assigned to move forward with an FPE investigation of a group of crashes in which airbags in 2005-2007 model year Chevrolet Cobalts and a 2007 Pontiac G5 had not deployed during frontal impacts. Then as now, GM's FPE process consisted of several steps, beginning with investigation of the issue, then presentation of potential solutions to decision makers, and culminating in a decision and implementation of that decision. At the outset of the process, investigating engineers work to develop technical understanding of the issue. They then present their findings and proposed solutions to the Field Product Evaluation Recommendation Committee ("FPERC"). The FPERC's recommendations are then presented to the Executive Field Action Decision Committee ("EFADC"), which decides on a course of action. The FPERC and EFADC may request further analysis before making recommendations or decisions as to what, if any, field action is warranted.”

<http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM450663/RCDNN-14V047-3409.pdf>

42. GM did not include in its ignition switch timeline any details of the various lawsuits through which the Company had also received detailed information about the ignition switch defect and the minimum of thirteen fatalities it had caused. Instead, the Company simply summarized:

‘Between 2005 and the date of this submission, GM is currently aware of 23 frontal-impact crashes....GM is currently aware of six that resulted in eight fatalities of frontal occupants. GM employees became aware of many of these crashes within a month of the dates on which they occurred.....With respect to 22 of the 23 frontal-impact crashes referenced above, the data retrieved from the vehicles' SDMs indicated that the ignition switches were....in the "accessory" position in twelve of the crashes, and in the "off" position in one of the crashes. Throughout this period, GM was involved in claims and lawsuits in which allegations were made regarding the ignition switch issue that is the subject of the recall.’

<http://www-odi.nhtsa.dot.gov/acms/es/jaxrs/download/doc/UCM450663/RCDNN-14V047-3409.pdf>

43. There is no mention in GM’s timeline of the ignition switch defect detailing the decision makers and discussions conducted at GM concerning the defect, of any involvement, reporting or oversight by GM senior leadership including the Board.

GM’s Senate and Congressional Testimony and Other Widely Quoted Public Statements Show That There Was No Vehicle Safety Oversight by GM Senior Leadership Including The Board

44. According to the April 1, 2014 testimony of Defendant Barra to the Senate Commerce Committee Subcommittee on Consumer Protection, Product Safety And Insurance, defendant Barra and GM senior leadership did not learn of the ignition switch problem until December 2013. <http://www.c-span.org/video/?318610-1/gm-ignition-switch-recall>; and, <http://ca.reuters.com/article/businessNews/idCABREA2S0IJ20140329?pageNumber=5&virtualBrandChannel=0&sp=true>.

45. As evidenced by the Board in GM's time line of the ignition switch defect, "GM has said Barra and other top executives did not learn of the defective switches until January 31, explaining that smaller groups of lower-level company executives are responsible for leading a recall."

[<http://ca.reuters.com/article/businessNews/idCABREA2S0IJ20140329?pageNumber=5&virtualBrandChannel=0&sp=true>]

46. On or about March 29, 2014, Reuters reported a statement from GM's head of global product development Mark Reuss that GM deliberately kept senior leadership out of the product defect and recall process, leaving it entirely to two small groups of employees with no oversight. Specifically, the article stated the following:

Sat Mar 29, 2014 5:58pm EDT
By Ben Klayman and Richard Cowan

DETROIT/WASHINGTON (Reuters) - When General Motors Co Chief Executive Mary Barra faces Congress next week she will have to explain how the top brass at the biggest U.S. automaker can say they knew nothing for more than a decade about a faulty ignition switch linked to crashes and at least 12 deaths.

For lawmakers trying to find who to blame for the lack of responsiveness by GM and its regulator to the tragedies, and in particular the multi-year delay in recalling potentially dangerous vehicles off the roads, it may turn out to be a frustrating couple of days.

GM built a system to deliberately keep senior executives out of the recall process. Instead, two small groups of employees in the vast GM bureaucracy were tasked with making recall decisions, a system GM says was meant to bring objective decisions.

It means that lawmakers may also focus on asking who is responsible for a system that failed so badly that there weren't red flags raised for those higher up the food chain.

'In this day and age, to think that stuff like this can be kept quiet or forgotten is ridiculous,' independent auto analyst and author Maryann Keller said. "The right question to ask is who knew, when did they know and why was this not brought forth to be dealt with. Did they hope that it was just going to go away?"

The company has recalled 1.6 million cars for a problem first noted in 2001, spurring the congressional enquiries as well as investigations by federal safety regulators, who will also testify, the Justice Department, and GM itself.

GM has said Barra and other top executives did not learn of the defective switches until January 31, explaining that smaller groups of lower-level company executives are responsible for leading a recall. Some executives who might use this argument include former CEO Rick Wagoner and his immediate successor Fritz Henderson, who have not discussed the matter publicly.

"The process here is supposed to be drilling deep into the data and objectively looking at this and having peer groups question it, and senior management and leadership's influence on that is not a healthy thing," global product development chief Mark Reuss said last week.

GM spokesman Jim Cain said the company was not yet commenting on why the decision to recall took as long as it did. GM is still investigating, he added.

...For more than a decade the company carried out engineering and field evaluation inquiries to track the problem, according to a timeline that GM filed with regulators. That document and others also suggest a failure to share information within the company.

GM first learned of the issue in 2001 during pre-production of the Ion, and it issued so-called service bulletins to dealers with suggested remedies in 2005. A February 2005 bulletin suggested dealers look for short drivers, who would be more likely to bump the steering wheel column, according to GM documents filed in a California lawsuit.

Meanwhile, in a GM document introduced last year in a Georgia lawsuit, 6-foot-3-inch GM engineer Onassis Matthews said he inadvertently turned the ignition key off with his knee while test driving a Saturn Ion in February 2004. Matthews suggested moving the ignition key to a different location.

As fatal accidents were reported, they were not always discussed broadly.

In March 2007, NHTSA officials told a group of GM employees of a fatal Cobalt crash in July 2005. GM's legal team had opened a file in 2005, two months after the crash, but the automaker's employees at the 2007 meeting with NHTSA were not aware of it.

In August 2011, an engineer was assigned to track a group of Cobalt and Pontiac G5 crashes in which the airbags did not deploy, but the process failed to include crashes involving Ion cars that resulted in deaths.

The issue was elevated to the two committees responsible for calling for recalls in 2013. GM declined to say if the committees had looked at the issue previously.

"Product recalls was a closely held activity," said a former executive in the global product development organization.

The system served two purposes. First, it put a group of experts in charge of the decision. Second, it kept news of potential recalls from leaking, the person said.

One small group would vet incoming data and decide if a recall was warranted, then make a recommendation to an even smaller group in charge of approving the recall. If the second group approved a recall, the recommendation would then go to senior management....

[<http://ca.reuters.com/article/businessNews/idCABREA2S0IJ20140329?pageNumber=5&virtualBrandChannel=0&sp=true>] (emphasis added).

The above Reuters wire article has been published (with quotes and attribution to GM global product development chief Reuss) in dozens of newspapers worldwide; no retraction, correction or denial has been issued from GM or Mr. Reuss.

Thus, according to GM, it is GM policy not to inform Company senior leadership of defects, even defects which GM engineers have concluded caused deaths.

[<http://www.freep.com/article/20140318/BUSINESS0101/303180079/general-motors-recall-ignition-switches-mary-barra>].

47. As evidenced by the Board of Directors in GM's time line of the ignition switch defect, Defendant Barra testified to the Senate subcommittee that there was no reporting from the GM legal department to GM senior leadership about dramatic developments in litigation over five years ago in which it was revealed that a criminal cover-up of the ignition switch defect (including altering part

numbers to conceal the existence of part change and the commission of outright perjury by GM engineers questioned about the defect) had taken place at GM:

- GM engineers had covered up the existence of the defect by - in an incredibly unusual total departure from industry standards and legal requirements - changing the ignition switch part in order to replace the defective ignition switch without changing the part number. Ms. Barra was unable to give any reason for not issuing a new product number for the new part; and,
- GM engineer Ray DeGiorgio who had signed the change order for the replacement part for the defective ignition switch, lied in deposition and denied that there had been a replacement of a defective ignition switch at all. GM lawyers knew DeGiorgio lied because they were in possession of the change order documentation which DeGiorgio signed.

48. Further evidencing the total lack of vehicle safety reporting from not only the engineering department but the legal department to senior leadership including the Board, Ms. Barra displayed near total ignorance concerning ignition switch defect litigation against GM when questioned by the Senate subcommittee on April 1, 2014. Defendant Barra was still ignorant of the many lawsuits that had been litigated over deaths caused by the ignition switch defect, including the July 29, 2005 death of Amber Marie Rose, age 16, when her engine suddenly turned off causing her to crash her 2005 Chevrolet Cobalt (which GM engineers concluded was due to the defective ignition switch); the June 2007 death of Hasaya Chansuthus, a 25 year old, who was crushed to death when her engine turned off, she lost control of the car and the air bags failed to deploy in the resultant crash (confirmed by the cars' 'black box' to have been the result of the ignition slipping into the off position); and, the March 2010 death of Brooke Melton in a crash on a Georgia highway in her 2005 Chevrolet Cobalt due to the defective ignition switch causing her engine to shut off disabling her power steering, power brakes and airbags, to name but a few death lawsuits resulting from the ignition switch defect.

49. Such astounding ignorance of a decade’s worth of repeated litigation over deaths GM engineers confirmed were caused by a deadly mechanical defect that had not been recalled, cannot be attributed to an aberration or “something (going) wrong with the process,” but is a reflection of a shocking ‘don’t ask – don’t tell’ process in which the Board did not ask and those who knew (engineering and legal departments) did not tell senior leadership the critical information necessary to perform even the most basic oversight of vehicle safety risk.

The GM Board’s Written Descriptions of Board and Board Committee Functions Shows that the Board Did Not Perform Vehicle Safety Oversight or Delegate that Responsibility to any of its Committees

50. The Board’s abdication of vehicle safety oversight is also reflected in the glaring absence of any acceptance or delegation of responsibility for vehicle safety oversight in all the various descriptions of the GM Board and/or its committees’ functions.

51. GM’s proxy statements which were issued by the Individual Defendants contain a list of the various risks which were overseen by each of the Board’s committees. The list does not mention oversight of vehicle safety risks which indicates that the GM Board did not delegate that responsibility to any of its committees:

- The Audit Committee oversees risks associated with financial and accounting matters and the Company’s financial reporting and disclosure process. It also reviews the Company’s policies for risk assessment and risk management, including our major financial and accounting risk exposures and actions taken to mitigate these risks as well as reviewing management’s assessment of legal and regulatory risks identified in the Company’s compliance programs;
- The Executive Compensation Committee (the “Compensation Committee”) ensures that GM’s executive compensation programs are designed to provide incentives that are consistent with the interests of GM’s stockholders but do not encourage senior executives to take excessive risks that threaten the value of the Company. It also considers risks related to executive recruitment, development, retention, and succession planning;

- The Governance Committee oversees risks that may arise in connection with the Company’s governance structure and processes, including Board structure and composition, director independence, and related party transactions;
- The Finance Committee oversees risks associated with general economic conditions, financial instruments, financial policies and strategies, capital structure, and pension funding;
- The Public Policy Committee oversees risks that may arise in connection with global political, social, and public policy issues that may affect the Company’s business operations, profitability, or reputation;
- Our General Auditor and Chief Risk Officer is responsible for coordinating the Company’s risk management activities, including reporting to both the Board’s Audit Committee and to senior management on the risk assessment and mitigation strategies for the top risks the Company has identified. Oversight of these top Company risks has been assigned to the functional or regional leaders who are in the best position to develop risk management strategies and to report progress to the Board and senior management. Our General Auditor and Chief Risk Officer¹ also supports the process of identifying emerging risks to the Company and stress testing key risk scenarios.

General Motors SEC Form 14-A, filed April 25, 2013, pgs. 16-17 (See also pgs. 23-24: none of the descriptions of board and board committee functions include oversight of vehicle safety).

52. As detailed below, and as evidenced by Reuss’ interview, and the charters of the Board’s various committees, there are no subcommittees of the Board conducting a vehicle safety oversight function.

53. It is evident from the Public Policy Committee Charter that the committee did not perform vehicle safety oversight or have any oversight function. In its five annual meetings the committee’s entire function was focused on a plethora of broad policy issues regarding which the

¹ As set forth in GM’s Amended and Restated Bylaws dated November 19, 2013, the title “Chief Risk Officer,” is merely a second title carried by the Company’s General Auditor.

committee reported back to the Company as opposed to conducting oversight of risk information reported to the committee from the Company:

“**Purpose:** to discuss, and bring to the attention of the Board and management as appropriate, current and emerging issues that may affect the Company’s business operations, profitability, or public image or reputation. Company functions to be reviewed by the PPC include Global Public Policy, diversity, corporate social responsibility, employee health and safety, and philanthropic activities.”

General Motors Company Public Policy Committee Charter, Section One – “Purpose.”

Public Policy Committee

The Public Policy Committee provides oversight and guidance to management on public policies to support the Company’s progress in growing the business globally within the framework of its core values. The Public Policy Committee discusses, and brings to the attention of the Board and management as appropriate, current and emerging global political, social, and public policy issues that may affect the business operations, profitability, or public image or reputation of the Company. The Public Policy Committee oversees global public policy matters as well as specific functions of the Company, as appropriate. Company functions reviewed by the Public Policy Committee include Global Public Policy, diversity, corporate social responsibility, employee health and safety, and philanthropic activities.

General Motors SEC Form Def 14A, filed April 25, 2013, pgs. 23-24.

54. It is evident from the Audit Committee Charter that the committee did not perform vehicle safety oversight. Although the Audit Committee was responsible for “GM’s compliance with legal and regulatory requirements,” the Audit Committee Charter limits the committee’s oversight of litigation against the company to reviewing securities law/breach of fiduciary duty litigation and does not provide for oversight of tort litigation such as product liability litigation:

As the Qualified Legal Compliance Committee (QLCC), ***review and discuss any reports received from attorneys regarding securities law violations and/or breaches of fiduciary duties*** which were reported to the General Counsel or the Chief Executive Officer and not resolved to the satisfaction of the reporting attorney.

GM Audit Committee Charter, pg. 4, “Legal, Compliance, and Risk Management” (*emphasis added*)

55. The Audit Committee Charter’s limitation of litigation oversight to securities and breach of fiduciary duty claims assured that tort litigation such as product liability lawsuits would never make it up to the Board, despite the fact that product liability litigation and related government penalties are huge financial risks.

56. That the Board’s own detailed description of its functions and the functions of its committees in both proxy statements and committee charters do not mention vehicle safety oversight evidences the Board’s abdication of responsibility for vehicle safety oversight.

Lack of Qualified Board Members or Utilization of Outside Consultants

57. Not one of the Board’s members were qualified to understand the mechanics of automobiles and effective oversight of vehicle safety. While the Audit Committee Charter requires that “all members of the Committee shall be ‘financially literate,’ and the Committee shall have at least two members qualified as ‘audit committee financial experts’ as defined by the applicable statutes,” there is no similar requirement for any director to have knowledge or experience in engineering or automobile manufacturing.

58. Of the GM Board’s twelve independent members, nine have exclusively financial industry related backgrounds, three primarily educational or military backgrounds, and none have engineering, mechanical, manufacturing or automobile industry experience or education. The Board’s description of its members’ qualifications displays a myopic focus on finance related “skills” to the exclusion of even one independent director with qualifications suited for oversight of automotive quality control and safety:

David Bonderman (“a co-founding partner in a private equity firm” with expertise in “distressed and turn-around situations” and “experience in finance, business development, mergers and acquisitions, business restructuring and integration, and international business, particularly in China where GM has significant operations”);

Robert D. Krebs (“chief executive officer of a large company focused on meeting the transportation needs of industry in the U.S. and Canada” with “extensive experience in corporate strategy, business development, and finance”);

Kathryn V. Marinello (operated “a private equity firm; she is focused on using information technology to enhance customer service, areas that are key to our success”)

Patricia F. Russo (“she dealt with a wide range of issues including mergers and acquisitions and business restructuring as she led Lucent’s recovery through a severe industry downturn and later a merger with Alcatel, a French company.....extensive global experience in corporate strategy, finance, sales and marketing.”);

Carol M. Stephenson (Dean of the Richard Ivey School of Business; “marketing, operations, strategic planning, technology development, and financial management”);

Erroll B. Davis, Jr. (Superintendent of Atlanta Public Schools);

E. Neville Isdell: (Chairman and Chief Executive Officer of Coca-Cola Beverages;....”expertise in global brand management, corporate strategy, and business development”);

Admiral Michael G. Mullen, USN (ret.) (Visiting Professor at the Woodrow Wilson School of Public and International Affairs at Princeton University; Chairman of the Joint Chiefs of Staff; “Admiral Mullen’s involvement in key aspects of U.S. diplomacy, including forging vital relationships with diverse countries around the world, brings valuable insight to our Board as we work to restructure GM’s operations in Europe and expand our operations in Brazil, Russia, India, and China”);

James J. Mulva (Chairman and Chief Executive Officer of ConocoPhillips, “international senior management positions in finance; oversaw mergers and acquisitions, business restructurings, and negotiated joint ventures; Mr. Mulva’s expertise in the energy industry will provide valuable insight to our Board in developing GM’s long-term energy diversity strategy, as will his in-depth background in finance”);

Thomas M. Schoewe (Executive Vice President and Chief Financial Officer of Wal-Mart Stores, Inc.; “With extensive experience gained over more than 35 years in finance, including serving as the chief financial officer of large multi-national, consumer-facing companies, Mr. Schoewe brings financial expertise, corporate leadership, and operational experience to our Board of Directors”);

Theodore M. Solso (“In addition to his deep understanding of global markets and business operations and corporate responsibility, Mr. Solso brings to our Board his experience gained at Cummins and as a director of other companies, in finance, accounting, risk oversight, and corporate governance”);

Cynthia A. Telles (“Dr. Telles’ qualifications for serving on our Board of Directors include her extensive experience in public and governmental service, as well as public policy and governmental and community relations. In addition, her in-depth understanding of the Hispanic community, which represents the nation’s largest and fastest growing consumer market segment, provides our Board with valuable insight”).

59. The Governance Committee consisting of Defendants Patricia F. Russo (Chair), E. Neville Isdell, Carol M. Stephenson, and Cynthia A. Telles, abdicated their responsibility to nominate members to the Board who had appropriate experience, education and experience to engage in vehicle safety oversight. That the assembled independent board was ill equipped to engage in vehicle safety oversight was a reflection of the Board’s conscious abdication of that responsibility.

60. Additional evidence that the GM Board did not engage in vehicle safety oversight is its failure to utilize the services of any outside consultants to assist in conducting vehicle safety oversight. While the Board freely employed numerous outside consultants at great expense in order to provide expertise to the Board in areas of financial oversight and salary and benefit determinations, the GM Board failed to employ an outside consultant to assist in vehicle safety oversight.

61. Because the Board has no directors qualified to conduct vehicle safety oversight, on April 8, 2014 GM appointed engineer Jeffrey Boyer to oversee vehicle safety at GM and to - for the first time at GM - report to the Board regarding vehicle safety risks.

BREACH OF FIDUCIARY DUTIES

62. The Individual Defendants did not provide the Company with any oversight of vehicle safety. The senior leadership of GM which includes the Board knew nothing for ten years about a deadly product defect which according to its own engineers was causing mounting deaths and injuries across the nation; their ignorance was an ignorance of choice.

63. The above statements, writings and actions of GM demonstrate that there was no system in place at GM for oversight of vehicle safety by the Board of Directors; So complete was the lack of a vehicle safety information reporting system that even automobile mechanical defects identified by GM engineers which had caused customer deaths but not been recalled and were still ‘on the road,’ were not reported to the Board because the Board never requested that such information be reported to them at all. The Individual Defendants’ failure to exercise oversight on vehicle safety in any fashion at GM was so sustained and systematic it can fairly be described as an utter failure to attempt to assure a reasonable vehicle safety information and reporting system existed.

64. The Individual Defendants understood that as GM’s Directors they were “ultimately responsible for risk oversight” over management who was responsible for the “day-to-day risk management processes” and that “this division of responsibilities is the most effective risk management approach.” However, when it came to biggest risk of all, that of vehicle safety, the Individual Defendants consciously shirked that responsibility as if it did not exist. General Motors SEC Forms Def 14A, filed April 21, 2011, pg. 20; and, April 25, 2013, pg. 17.

65. The general duty of oversight of risk and maintenance of internal controls demanded that at the very least, the Individual Defendants ensure that there was a system in place by which known dangerous product defects which had been linked to deaths and serious injuries but had not been

recalled, were reported to the Board. As is obvious from the above statements of GM, no such system was in place.

66. That the Audit Committee performed its financial risk oversight of litigation with the caveat that it sought information only on securities and breach of fiduciary duty litigation, to the exclusion of product liability claims, is an inexcusable and inexplicable abdication of duty.

67. The Audit Committee was tasked with overseeing Company compliance with law and regulations but apparently did not take any action to oversee compliance with vehicle safety laws, including the National Traffic and Motor Vehicle Safety Act of 1966 which requires that manufacturers notify the National Highway Traffic Safety Commission ("NHTSA") within five days of discovering a defect that creates an unreasonable risk to motor vehicle safety. 15 U.S.C. §§ 1381-1431 (1970), as amended, 15 U.S.C. § 1391 et seq. Such oversight was obviously was not provided since, as is obvious from all of the above, the Board did not receive reports of dangerous defects identified by GM engineers.

68. That the Board was stacked entirely with financial people to the total exclusion of any individual with the experience, background or education that would have been helpful for the function of vehicle safety oversight, is no accident. Rather, it is a direct reflection of the Governance Committee who handpicked nominees for the directorship positions.

DAMAGES TO GENERAL MOTORS

69. As a result of the Individual Defendants' failure total abrogation of their responsibility to conduct oversight of vehicle safety, GM failed to recall the fatality causing ignition switch defect for over a decade, resulting in at least 13 deaths and thirty injury causing collisions. This in turn has and will result in tremendous financial losses. The Company's failure to disclose that the defect existed, has

resulted in a securities fraud class action which is also likely to result in tremendous financial losses to the Company.

70. The Company's head of global product development Mark Reuss (see Paragraph 57 above), has publically stated on behalf of the Company that it would be "unhealthy" for GM senior leadership to be informed of engineering department decisions not to recall deadly defects. Taking GM at its word, this major automobile manufacturer has operated in a fashion where the most important vehicle safety risks - deadly mechanical defects identified by GM engineers that are not recalled - are intentionally not brought to the attention of senior leadership including the Board. As a result, the Board failed to perform its oversight duties and is now subject to the present criminal investigation by the Department Of Justice which is likely to result in a huge financial penalty and devastating reputational damage.

71. These actions have exposed the Company to billions of dollars in liability.

72. GM has suffered immense and long lasting reputational damage as a result of the public exposure of the fact that GM engineers knew about the deadly ignition switch defect in 2005 after the death of Amber Marie Rose, but let 12 more customers die and dozens suffer serious injury before ordering a recall.

73. While automobile consumers have shown an understanding and tolerance for the recall process, such tolerance is unlikely to be forthcoming towards corporate indifference to human life.

74. As a proximate result of the Individual Defendants' actions, GM has expended, and will continue to expend, significant sums of money on defending and paying settlements of personal injury and securities class action lawsuits for injuries and other damages suffered by the Company's customers; and, DOJ penalties that are certain to amount to many hundreds of millions of dollars, if not, billions of

dollars similar to the recently announced record \$1.2 billion penalty on Toyota for misleading the public and regulators about issues involving unintended acceleration in its vehicles.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

75. Plaintiff brings this action derivatively in the right and for the benefit of GM to redress injuries suffered, and to be suffered, by GM as a direct result of breaches of fiduciary duty, waste of corporate assets, and unjust enrichment, by the Individual Defendants.

76. Plaintiff will adequately and fairly represent the interests of GM in enforcing and prosecuting its rights.

77. Plaintiff has not made any demand on the present Board to institute this action because such a demand would be a futile, wasteful, and useless act, as set forth below.

78. Demand is excused because the Individual Defendants face a sufficiently substantial likelihood of liability in this case to render them non-impartial to consider demand.

79. All the Individual Defendants face a sufficiently substantial likelihood of liability on the basis that: (1) the Individual Defendants had an obvious and critically important duty to provide vehicle safety for the Company and at very least to ensure they were informed of known deadly product defects that had not been recalled; and, (2) The Individual Defendants completely and totally abdicated their duty to provide oversight for vehicle safety at GM to the extent of not even noting the existence of any responsibility for oversight of vehicle safety in their extensive descriptions of the various functions of their various committees. In so doing, the Individual Defendants exposed the Company to severe damage and injury. Consequently, the Individual Defendants face a substantial risk of liability for breach of good faith and loyalty, rendering them unable to fairly and objectively evaluate a pre-suit demand. Thus, demand on the Board is futile, and therefore excused.

80. The claim for breach of loyalty by the Board by simply ignoring what is arguably the most important oversight responsibility of the Board of Directors of one of the world's largest automobile manufacturers, has on its face 'some arguable merit' and therefore poses sufficient threat of liability against the Individual Defendants so as to render them not impartial to consider demand that the claim be brought against them.

81. As of April 2014, when this action was filed, the Board of GM consisted of the following fourteen: Mary T. Barra, Theodore M. Solso, Stephen J. Girsky, Patricia F. Russo, Thomas M. Schoewe, Erroll B. Davis, Jr., Kathryn V. Marinello, Cynthia A. Telles, James J. Mulva, Michael G. Mullen, David Bonderman, E. Neville Isdell, and Carol M. Stephenson. These defendants have failed to exercise reasonably appropriate oversight over the internal controls for vehicle safety and disclosure and remain liable for the breaches of fiduciary duty set forth herein.

82. Defendant Mary T. Barra is GM's CEO and a director and has been since January 2014. Defendant Barra was also GM's Executive Vice President, Global Product Development, Purchasing & Supply Chain from August 2013 to January 2014; Senior Vice President, Global Product Development from February 2011 to August 2013; Vice President, Global Human Resources from July 2009 to February 2011; Vice President, Global Manufacturing Engineering from February 2008 to July 2009; and Executive Director, Vehicle Manufacturing from January 2005 to February 2008. In 2012, Defendant Barra received from the Company a base salary of \$750,000 and stock awards, option awards, incentive plan compensation and other compensation totaling \$4,935,700. As such, she derives significant income from her employment at the Company and her professional reputation is inextricably bound to her role at GM. As result, demand on defendant Barra is futile.

83. Defendant Stephen J. Girsky is a GM director and has been since July 2009. Defendant Girsky was also GM's Vice Chairman of Corporate Strategy, Business Development, Global Product

Planning, and Global Purchasing and Supply Chain from February 2011 to January 2014; Vice Chairman of Corporate Strategy and Business Development from March 2010 to February 2010; and Interim President of GM Europe from July 2012 to February 2013. Defendant Girsky is a senior advisor of GM and will be in that position until April 2014. Defendant Girsky is also a member of GM's Public Policy Committee and has been since at least August 2010. In 2012-2010, Defendant Girsky received from the Company compensation totaling \$5,446,921, \$5,307,214 and \$3,712,058, respectively. Due to defendant Girsky's complicity in the wrongdoing alleged herein and failure to institute functioning controls in the face of obvious risks, GM has been seriously damaged. As a result, demand on Defendant Girsky is futile.

84. Defendants Erroll B. Davis, Jr. and Kathryn V. Marinello, current GM directors were also directors of the Old GM. A criminal investigation of GM in connection with the ignition switch defect is presently underway. Because the ignition switch defect was known at the time of the bankruptcy but not disclosed in the bankruptcy, any parties representing the Old GM in the bankruptcy may be targeted in the rapidly expanding investigation into the ignition switch defect and all of its ramifications. As parties who represented the Old GM in the bankruptcy and as such are potential targets in a criminal investigation of the concealment of the existence of the product defect, Defendants Davis and Marinello cannot reasonably be expected to be impartial in considering demand to bring a civil suit against them for the same subject matter that may subject them and/or the Company to criminal prosecution. Due to defendant Davis and Marinello's membership on the Old GM Board, and complicity in the wrongdoing alleged herein and failure to institute functioning controls in the face of obvious risks, GM has been seriously damaged. As a result, demand on defendants Davis and Marinello is futile.

85. Defendants Bonderman, Krebs and Telles have announced without any adequate explanation following numerous years of service as GM directors during the relevant period that they

will not be seeking renomination at the 2014 Annual Meeting, and accordingly, their term of office will expire at the 2014 Annual Meeting. As a result demand upon Defendants Bonderman, and Telles would be futile.

86. Defendants Solso, Schoewe, Davis, Marinello, Krebs, and Mullen, were members of the Audit Committee. The Audit Committee of the Board, according to the Company's public filings, is responsible for oversight relating to the Company's controls over risks of all nature, financial risk and disclosure. Defendants Solso, Schoewe, Davis, Marinello, Krebs, and Mullen, were members of the Audit Committee during the period that there was no vehicle safety oversight. As detailed above, the Audit Committee failed to institute sufficient processes for managing the business and financial risks created by the failure to institute functioning controls over vehicle safety and related disclosures. Defendants Solso, Schoewe, Davis, Marinello, Krebs, and Mullen breached their duties by failing to sufficiently monitor the Company's vehicle safety, business and financial risks. As a result of these defendants' breach of their duties, any demand upon them is futile.

87. The Public Policy Committee was comprised of defendants Stephen J. Girsky, Erroll B. Davis, Jr., Kathryn V. Marinello, Cynthia A. Telles, James J. Mulva, Michael G. Mullen, and David Bonderman, (E. Neville Isdell was a member of GM's Public Policy Committee from at least August 2010 to at least April 2013 and was Chairman of that Committee in at least August 2010). According to its charter, among other things, the Public Policy Committee oversees risks that may arise in connection with global political, social, and public policy issues that may affect the Company's business operations, profitability, or reputation. It is evident from the Public Policy Committee Charter that the committee did not perform vehicle safety oversight or have any oversight function. As a result of these defendants' breach of their duties, any demand upon them is futile.

88. The Governance Committee was comprised of defendants Governance Committee defendants Patricia F. Russo (chair), E. Neville Isdell, Robert D. Krebs, Theodore M. Solso and Carol M. Stephenson. According to its charter, among other things, the Governance Committee bore a heightened duty to ensure that individuals were nominated to the Board with the experience, background and education necessary to oversee Company compliance with laws and regulations including vehicle safety laws and regulation, and to oversee risk, including vehicle safety risk and risk associated with litigation including products liability litigation. It is evident that the individual members of the GM Board lack the experience, background and education relating to vehicle safety, engineering/mechanics, and/or vehicle safety laws and regulations, that would allow them to oversee risk, including vehicle safety risk and risk associated with litigation including products liability litigation.

89. This Complaint properly holds the members of the Governance Committee to a heightened responsibility for the Board's failure to engage in vehicle safety oversight since the Governance Committee assembled a Board whose qualifications did not include a single person with the experience, education and background necessary to effectively oversee vehicle safety. Given these Individual Defendants even higher likelihood of liability in the present case, as members of the Governance Committee, defendants Russo (chair), Isdell, Solso and Stephenson are unable to consider a demand against their fellow directors in a disinterested and independent fashion. Thus, demand is excused as to the members of the Governance Committee.

90. The Individual Defendants have failed to take action against those who are responsible for permitting GM to function without effective internal controls, *i.e.* themselves. No action, legal or otherwise, has been taken against any current or former director or officer in connection with the vehicle safety laws and regulation that would allow them to oversee risk, including vehicle safety risk and risk associated with litigation including products liability litigation. Thus, the Individual Defendants have

demonstrated their unwillingness and/or inability to act in compliance with their fiduciary obligations and/or to sue themselves and/or their fellow directors and allies in the top ranks for the corporation for the wrongdoing complained of herein. Moreover, the Individual Defendants and management do not dispute their not being aware of the vehicle safety issues until December 2013. Thus, demand on the Board is futile and therefore excused because the Individual Defendants have admitted the allegations herein through their inaction, but also through the words of management.

91. The Individual Defendants' lack of vehicle safety oversight and deprive GM of legally sufficient internal controls to assess same has resulted in legal action. There has been no assurance made that this problem is not more extensive than initially disclosed. The wrongdoing alleged herein is not the product of a rogue employee or a group of such employees, but of the Board itself. A majority of the current Board has served together for the entire period under investigation and at least two were board members of the Old GM since prior to 2009. Thus, these directors actively participated in the wrongdoing alleged herein. Demand on the entire Board is futile and therefore excused.

92. As particularized herein, to properly prosecute this lawsuit, the Individual Defendants would have to sue themselves and the other defendants, requiring them to expose themselves and their comrades to billions of dollars in civil liability and/or sanctions. This they have refused to do thus far, and will not do in the future. A majority of the Individual Defendants are exposed to potential liability for operating GM without the internal controls that would have detected and prevented the improper vehicle safety. Having chosen to disregard oversight of vehicle safety the Individual Directors also violated their disclosure duties by not seeing to it that investors such as plaintiff were informed of the lack of internal controls in GM. Thus, demand on the Individual Defendants is futile, and therefore, excused.

93. The Individual Defendants have benefitted, and will continue to benefit, from the wrongdoing herein alleged and have engaged in such conduct to preserve their positions of control and the substantial financial benefit derived thereof, and are incapable of exercising independent objective judgment in deciding whether to bring this action. Likewise, these defendants have received, and will continue to receive, substantial remuneration predicated upon their service on GM's Board. The acts complained of herein have resulted in substantial economic benefits to the Individual Defendants without corresponding recognition of, or accounting for, the correlated liability and risk that GM was subject to as a result of its lack of internal controls. The Individual Defendants, through their course of conduct to date, have demonstrated their unwillingness to seek appropriate relief for the overpayment of this compensation. Thus, demand on the Individual Defendants is futile, and therefore, excused.

94. GM's officers and directors, including the Individual Directors, are protected against personal liability for their acts of mismanagement and breach of fiduciary duty alleged in this Complaint by directors' and officers' liability insurance which they caused the Company to purchase for their protection with corporate funds, *i.e.*, monies belonging to the stockholders of GM. However, due to certain changes in the language of directors' and officers' liability insurance policies in the past few years, the directors' and officers' liability insurance policies covering the defendants in this case contain provisions that eliminate coverage for any action brought directly by GM against these defendants, known as, *inter alia*, the "insured versus insured exclusion." As a result, if these directors were to sue themselves or certain of the officers of GM, there would be no directors' and officers' insurance protection and thus, they will not bring such a suit. On the other hand, if the suit is brought derivatively, as this action is brought, such insurance coverage exists and will provide a basis for the Company to effectuate a recovery. Thus, demand on the Individual Defendants is futile, and therefore, excused.

95. Given the fact that there is presently an active DOJ criminal investigation of GM and the ignition switch defect, with an intense focus on the culpable ignorance of GM senior leadership for a decade, all members of GM senior leadership stand in danger of becoming subjects of the developing criminal case. Because the Company Directors, as the ultimate senior leadership of the Company in the key area of oversight, are clearly potential targets in the criminal action. This being the case, it is unreasonable to expect the Individual Defendants to be disinterested and set aside their concerns about their own criminal prosecution, in order to pursue an action against themselves for the very same subject matter that is and could further expose them to criminal action.

96. That the knowledge or lack of knowledge of the ignition switch defect by various parties within GM is the subject of a criminal investigation, in and of itself an indication that the present civil claim supports a sufficient threat of liability against the Individual Defendants so as to render them unable to be impartial.

COUNT I
AGAINST THE INDIVIDUAL DEFENDANTS
FOR BREACH OF FIDUCIARY DUTY

97. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

98. The Individual Defendants owed and owe GM fiduciary obligations. By reason of their fiduciary relationships, the Individual Defendants owed and owe GM the highest obligation of good faith, fair dealing, loyalty, and due care.

99. The Individual Defendants violated and breached their fiduciary duties of candor, good faith, and loyalty. More specifically, the Individual Defendants violated their duty of good faith by consciously abdicating their duty to oversee vehicle safety in a sustained and systemic fashion including an utter failure to even attempt to assure a reasonable vehicle safety information and reporting system

existed to the extent that they did not even request or receive reports of automobile mechanical defects identified by GM engineers which had caused customer deaths but not been recalled and were still ‘on the road.’

100. The Individual Defendants violated their fiduciary duties as the ultimate leadership of one of the world’s largest automobile manufacturers by conducting their directorships in a fashion that guaranteed they would never know about deadly vehicle safety risks concerning GM vehicles that had not been recalled.

101. The Individual Defendants were reckless, grossly negligent and disloyal in disregarding their basic duty to maintain internal controls over product safety and violated their duties of loyalty and care by failing to implement adequate internal controls and procedures to ensure timely reporting of known deadly safety defects to the Board of Directors in order to enable the exercise of independent oversight.

102. As a direct and proximate result of the Individual Defendants breaches of their fiduciary obligations, GM has sustained significant damages, as alleged herein. As a result of the misconduct alleged herein, these defendants are liable to the Company.

103. Plaintiff, on behalf of GM, has no adequate remedy at law.

COUNT II
AGAINST THE INDIVIDUAL DEFENDANTS
FOR WASTE OF CORPORATE ASSETS

104. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

105. As a result of the wrongdoing detailed herein, the Individual Defendants have caused GM to waste its assets by paying improper compensation and bonuses to certain of its executive officers and directors that breached their fiduciary duty.

106. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

107. Plaintiff, on behalf of GM, has no adequate remedy at law.

COUNT III
AGAINST THE INDIVIDUAL DEFENDANTS
FOR UNJUST ENRICHMENT

108. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

109. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of GM. The Individual Defendants were unjustly enriched as a result of the compensation and director remuneration they received while breaching fiduciary duties owed to GM.

110. Plaintiff, as a shareholder and representative of GM, seeks restitution from these defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

111. Plaintiff, on behalf of GM, has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of GM, demands judgment as follows:

A. Against all of the defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the defendants' breaches of fiduciary duties, waste of corporate assets, and unjust enrichment;

B. Directing GM to amend its Board of Directors committee charters such that one of its

committees is clearly vested with the responsibility for oversight of vehicle safety;

C. Directing GM to adopt and enforce a policy requiring, at very least, that whenever GM engineers identify a mechanical defect in a GM automobile which is identified as the possible cause of a loss of life or injury, such matter be brought to the attention of the appropriate committee of the GM Board of Directors;

D. Directing GM to reform its corporate governance and internal procedures to comply with applicable laws and to protect GM, its customers, and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote, resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote of the following Corporate Governance Policies:

1. a proposal to create a Board committee with oversight over safety, inspection, and maintenance matters;
2. a proposal to appropriately test and then strengthen the Company's internal controls over safety, inspection, and maintenance matters;
3. a proposal to strengthen the Board's supervision of inspection and maintenance operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board;
4. a proposal to strengthen GM's oversight of its disclosure procedures;
5. a proposal to ensure the accuracy of the qualifications of GM's directors, executives, and other employees; and
6. a provision to permit the shareholders of GM to nominate at least four candidates for election to the Board;

E. Awarding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees and costs; and,

F. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand trial by jury in this matter.

/s/ Andrew Kochanowski
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- and -

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