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GM Attys Eyed In DOJ Probe Over Pre-Recall Evidence

By **Kurt Orzeck**

Law360, Los Angeles (August 21, 2014, 10:21 PM ET) -- The U.S. Department of Justice is reportedly investigating General Motors Co. attorneys for possibly hiding evidence over a faulty ignition switch that led to massive recalls, as part of a bigger criminal probe into misleading statements GM executives may have made to regulators.

The potential concealment of evidence may have delayed recalls of vehicles with the defective switches, although the DOJ investigation might not result in charges against GM lawyers, according to The Wall Street Journal.

The DOJ is also reportedly looking into other departments at GM over what they knew about the defect, which led to at least 31 accidents and 13 deaths.

A GM spokesman told Law360 on Thursday that the company is "cooperating fully with the investigation."

DOJ spokespersons didn't immediately respond to requests for comment late Thursday.

GM's **internal investigation** showed a pattern of incompetence and neglect by GM employees, rather than any concerted effort by the company's management to hide the defect or delay fixing it because of cost concerns. In announcing the findings, GM CEO Mary Barra indicated that the company had terminated 15 employees who acted inappropriately but did not name them.

Amid Barra's concessions that the company's employees worked in silos that could have prevented information about safety defects from being communicated effectively to attorneys and management executives, the automaker's in-house attorneys also became a focus of the internal probe.

The report has spurred at least **one lawsuit** targeting GM's attorneys, in which eight plaintiffs argued that it is "inconceivable" that individuals in GM's general counsel's office didn't know about the now-infamous ignition switch defect when the company filed for bankruptcy in 2009.

The proposed class action, filed in New York bankruptcy court, alleged that the bankruptcy sale order did not absolve GM from liability for their claims and contends that more than a decade ago, GM decided to save money and "consciously concealed" the defect.

"GM's legal department, including its notoriously 'hands on' general counsel Michael Millikin, who became an associate general counsel at Old GM in 2005 and general counsel of GM in July 2009, was also aware of the body of evidence being marshaled internally regarding the ignition switch defect in GM vehicles, as well as the efforts to conceal that information from

public knowledge," the complaint said.

In mid-July, Millikin **told a hostile U.S. Senate panel** that his underlings in the legal department were to blame for the automaker's ignition switch crisis, saying they failed to report crucial developments in death and injury suits to him.

Lawmakers pointed out at least four instances from 2010 to 2013 in which GM's outside counsel had warned the automaker's in-house attorneys about GM's potential to face punitive damages arising from the defect, but Millikin remained unaware of those warnings because in-house attorneys — some of whom he said the company has now terminated — failed to report them to him, he told a panel of the Senate Committee on Commerce, Science and Transportation on Thursday.

Lawmakers were skeptical that the automaker's top lawyer could be kept in the dark about key developments in lawsuits against GM involving serious or fatal injuries, with Sen. Claire McCaskill, D-Mo., railing that his lack of knowledge reflected "either gross negligence or gross incompetence."

"The failure of this legal department is stunning," McCaskill told Millikin.

GM is invoking the bankruptcy shield against consumers claiming they suffered economic loss because of the defect. The automaker has not acknowledged the internal investigation report issued by Jenner & Block LLP Chairman Anton Valukas as a factual document in the ongoing dispute in bankruptcy court.

--Additional reporting by Sindhu Sundar and Kira Lerner. Editing by Jeremy Barker.
