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GM Continues to Seek Shield From Ignition-Switch Suits

Auto maker challenging July appeals court ruling that denied its efforts to use its 2009 bankruptcy to block lawsuits over the defective ignition switches



An ignition assembly is shown with a faulty 2005 ignition switch (black piece at left). The auto maker is seeking a rehearing of a ruling that exposes it to hundreds of potential lawsuits and some \$10 billion in liabilities from faulty ignition switches. *PHOTO: REUTERS*

By **TOM CORRIGAN**

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General Motors Co. sought a rehearing of an appeals court ruling that exposes it to hundreds of potential lawsuits and some \$10 billion in liabilities from faulty ignition switches.

Lawyers for the nation's largest auto maker on Wednesday said the court made two "fundamental errors" when it last month ruled against the company's efforts to use its 2009 bankruptcy to shield itself from the litigation over the ignition switches.

The decision "makes no sense and is flatly contrary to the bankruptcy code and decisions from other courts," the Detroit auto maker said. GM said the court's decision, if not reversed, would permanently damage the bankruptcy process that saved it from collapse in 2009.

The Second U.S. Circuit Court of Appeals in Manhattan denied GM's attempt to use its bankruptcy to block lawsuits seeking potential claims over the defective ignition switches, which have been linked to 124 deaths. The ruling overturned a bankruptcy judge's earlier decision to bar claims that arose before its chapter 11 filing.

Steve Berman, a plaintiffs' lawyer involved in the GM litigation, said the Second Circuit rarely grants requests for a rehearing, and noted the court's decision was unanimous. "I'm not too worried," he said.

The appeals court said that during its 2009 bankruptcy, the auto maker had evidence that the ignition switches were faulty and, in some cases, disabled safety features including air bags. GM didn't disclose the defect until early 2014 despite employees knowing of problems with the switch more than a decade earlier. The company later faced criminal charges for covering up the defect, which it settled.

By not disclosing what it knew about the ignition switches, the appeals court ruled that GM had violated some consumers' constitutional due process rights. Had customers been properly informed, the court determined they would likely have had a greater voice in GM's restructuring.

"Due process applies even in a company's moment of crisis," the appeals court wrote in its July 13 ruling.

GM did allow ignition-switch victims to sue for compensation, setting up an about \$600 million fund run by an outside attorney. And the company also reached settlements with the U.S. Justice Department, shareholders and thousands of consumers totaling more than \$2 billion.

GM wants the matter tried again before a panel of appeals court judges, claiming the court's most recent decision was "invented out of whole cloth and conflicts with decades of precedent."

The company said in court papers that bankruptcy law didn't require it to notify consumers of the ignition-switch defect during its bankruptcy seven years ago and that the bankruptcy sale of its core operations left the company with a clean slate free from the specter of litigation tied to its past actions—including the flawed ignition switches.

General Motors Corp., known as Old GM, is the corporate shell left behind by the company's bankruptcy. New GM, General Motors LLC, bought the company's assets out of bankruptcy and is now fighting to keep them "free and clear" of any litigation tied to Old GM.

Should the appeals court's decision stand, GM says it would "destroy" protections for purchasers of troubled assets in bankruptcy sales, threatening the future viability for troubled companies.

GM also said allowing new lawsuits to go forward now would be unfair to litigants who were forced to navigate the company's complex chapter 11 process and whose claims were paid only after other creditors received their share.

"The opinion allows certain plaintiffs alone to sidestep that process, jump to the front of the line, and seek payment in full from the good-faith purchaser," GM lawyers wrote.

Trade group the National Association of Manufacturers supports GM's request for a rehearing, warning that the current ruling "eviscerates the finality" of bankruptcy sales and would have "widespread negative repercussions."

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