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BUSINESS

Chrysler joins forces with Dingell in attempt to avoid minivan recall Firm, congressman argue U.S. can't request a recall without first proving that vehicles pose unreasonable' safety risk.

Bryan Gruley

02/01/95

The Detroit News

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Detroit News Washington Bureau

Chrysler Corp., with the help of two key congressmen, is trying to throw an unusual legal obstacle in front of federal safety regulators who would like the automaker to recall four million minivans.

In a Jan. 20 letter to the National Highway Traffic Safety Administration, **Chrysler** lawyer Lewis Goldfarb argued that the administration cannot request a recall without first proving that the minivans pose an "unreasonable" safety risk.

Reps. John Dingell, D-Dearborn, and Michael Oxley, R-Ohio, made similar arguments in a Jan. 17 letter to NHTSA chief Ricardo Martinez.

Oxley is chairman and Dingell is the ranking minority member of a House panel that soon will be reviewing the agency's budget.

The letters, obtained by The Detroit News, question NHTSA's long-used tactic of sending a written request to a manufacturer for a recall before reaching a final determination that a vehicle is unsafe.

The request is designed to give an automaker a chance to show why a recall is unwarranted.

The manufacturer can decline the request _ as General Motors Corp. did in 1993 when NHTSA asked for a recall of its 1973-87 pickup trucks _ or agree to a voluntary recall.

Dingell's letter said a recall request unfairly and publicly casts the manufacturer in a negative light before NHTSA has completed its work.

"Several auto companies raised this concern" in the wake of the controversial GM truck case which was settled last December, a congressional aide said.

The pleas by the congressmen and **Chrysler** suggest the automaker is leaning toward resisting a recall of its 1984-94 minivans, which are alleged to have defective rear-door latches that allow passengers to be ejected in crashes.

Last month the automaker sharply criticized NHTSA in two letters alleging that: NHTSA conducted crash tests that, in **Chrysler**'s view, were designed specifically to make the rear latches fail. "We know that any minivan can be opened with a similar test," said Steve Harris, a **Chrysler** spokesman. NHTSA's statistical analyses are flawed because they do not include all vehicles with rear hatches, such as station wagons and sport utility vehicles.

Sources close to the investigation say NHTSA officials don't consider the crash test to be their most important evidence and that a recall may be in order, although a final decision has not been made.

Some **Chrysler** officials have privately urged that the automaker take steps to remedy the latches.

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Date
January 18, 1995

To - Name & Department

Civil Number

Rob Eaton, Tom Denomme, Ron Boltz, François Castaing, Rob Liberatore, Bud Liebler

Name & Department

Civil Number

Al Slechter

938-00-00

Subject: MINIVAN LATCH CASE

Attached is the letter to Rick Martinez which we have been working on with Hill staff. The final is signed by Mike Oxley and John Dingell. Several things should be noted:

Tom Bliley was briefed on this subject by staff and, for whatever reasons, he decided to defer the signature to Mike Oxley. This can be read as the first example of the "Bliley process" and signals less attention by Bliley to our industry problems. A second reading, however, is that the relationship between Bliley and Oxley has been somewhat strained and that Bliley is deferring to Oxley's subcommittee jurisdiction.

As you will see, the letter was substantially toughened by staff and we are aware that Dingell's staff was instrumental in further fleshing out the questions raised in the letter.

As you may be aware, GM delayed their approval of this letter in the final stages of drafting.

It would not be surprising if, when GM sees the final product, they are exercised that we did not give full weight to their input. We have only so much influence on the specific content of this type of letter once it is put in the hands of the staff for final work.

From my vantage point, it is a much improved and tougher product and will hopefully have a positive effect on our situation.

1-20-95
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We are concerned with this voluntary recall process for several reasons. The request for voluntary recall, because it is made public, can have an adverse impact on the safety reputation of the product as well as the manufacturer. It can create anxiety among all vehicle owners regarding the safety of their vehicles. It forces the manufacturer to choose between conducting a costly recall prior to any finding of defect OR risking a public perception that the vehicles are unsafe, with the attendant bad press. The exploitation of this process by trial lawyers and others is also troublesome. Given the frequency of ODI's subsequent closing of the case after the manufacturer declines a recall request, the process can be seen in many cases as a coercive device used to impose requirements beyond the law.

General Motors' experience with the C/K truck suggests that there may be a category of investigations where the use of the voluntary recall letter is contrary to the statutory purposes of the Safety Act. In the GM case the IG found that the recall request was made prematurely because in February 1993 Department officials wanted to speed up an investigation began only two months earlier, thereby misleading the public regarding the safety of the GM truck and causing great hardship to GM. To placate those officials, NHTSA, not the ODI, recommended in April 1993 that the Secretary authorize ODI to send a voluntary recall letter to GM and to require GM to provide a detached justification if they refused to do so. ODI anticipated GM's response would be negative and that the explanation would provide additional information relevant to the investigation. That was a misuse of the process based on interference in the investigation by the Department. The harm was compounded when the Secretary announced an initial decision based, in part, on his apparent belief that the voluntary recall request by ODI was tantamount to a staff finding of defect.

While the GM case may be unique in certain respects, it clearly illustrates how a well-intentioned, informal procedure can be grossly misconstrued by the public and senior policy makers, with extremely harmful consequences to a manufacturer and its products. The misuse of such a procedure, it seems to us, does a disservice to the agency and its mission to ensure the safety of our highways.

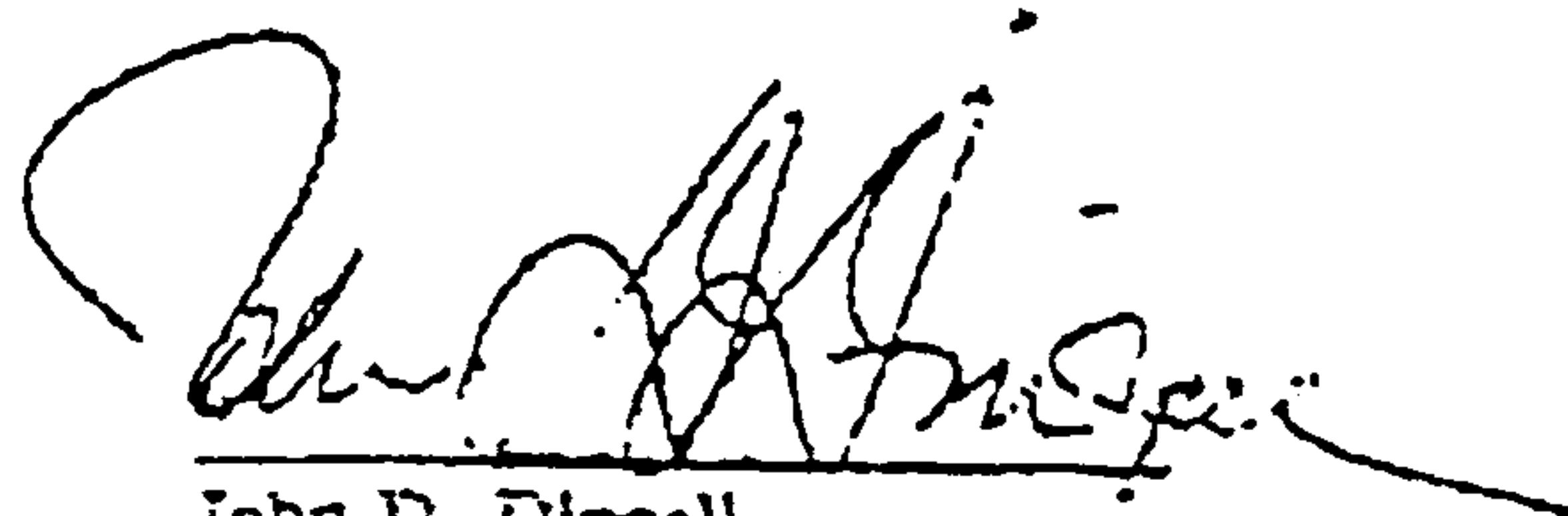
In addition to your general review of the voluntary recall request we ask that you respond to the following questions:

- (1) What is NHTSA's authority under the Motor Vehicle Safety Act for using this process?
- (2) What procedures are in place to ensure uniform application of this process?
 - (a) Is a threshold level of evidence required before a letter may be sent?
 - (b) Are staff decisions to request voluntary recall reviewed at a higher level?
- (3) In light of the GM case, is it reasonable for us to assume that these procedures are not binding on the ODI or NHTSA and that they can be ignored at the whim of Departmental officials? Clearly, the ODI Control Plan is only a guideline document.
- (4) What is the frequency of case closings after a voluntary recall request is sent?
- (5) At the time a request for voluntary recall is made, how close is the agency to an initial decision of defect or closure?

- (6) Has NHTSA considered any alternatives to this process that would accomplish the same purpose but avoid unfairly disparaging a product and alarming its owners?
- (7) Can this process be revised to avoid the kinds of problems documented in the GM case?
- (8) In light of the IG's finding in the GM case that NHTSA felt pressured to issue a recall request letter prematurely, what safeguards do you plan to put in place to assure that recall request letters are not issued until an appropriate investigation has preceded the decision to send such a letter?
- (9) The IG's report confirmed that the "recall request letter" is a misunderstood device, and that even the Secretary of Transportation misconstrued the importance of the letter, erroneously believing it to reflect a definitive agency position. Given this confusion about the meaning and import of a "recall request letter," is it now appropriate to revisit the process by which it is decided to send a letter? In particular, what are the advantages and disadvantages of delaying the issuance of any such recall request until after the evidence in the investigation has been thoroughly reviewed by the Associate Administrator for Enforcement and the Defect Review Panel?
- (10) It seems that a recall request letter resembles a settlement proposal, in which the agency staff suggests that its concerns about a matter could be resolved if the targeted company agrees to take a particular action, in this case a voluntary recall. Other law enforcement agencies under the jurisdiction of this Committee, such as the Consumer Product Safety Commission and the Federal Trade Commission, consider their comparable procedures to be confidential settlement discussions, and do not place records pertaining to such discussions on the public record. What is the rationale behind NHTSA's practice of preparing written "recall request letters" and placing them in the public record, rather than treating such staff requests as confidential settlement proposals? Why shouldn't NHTSA consider a "recall request" to be a confidential settlement proposal between the agency and the regulated party?
- (11) At what stages of an investigation is information made public by NHTSA or ODI prior to any determination of defect? What is the origin of this policy? Is this a sound practice when an investigation may not be sufficiently complete to determine a defect?
- (12) Does NHTSA have the legal authority to revise its defect investigation procedures in order to treat "recall requests" as confidential settlement proposals?
- (13) In light of the GM experience, what actions are you taking or planning to take to improve the integrity of the investigative process as contemplated by the regulations and the precedents so that ODI experts can conduct investigations in a timely and fair manner without unnecessary interference from Departmental officials?

We appreciate your attention to this matter, and respectfully request your response within 10 business days. We presume that now that the GM case is closed, your recusal will no longer preclude you from responding to these matters. If that is not the case, please explain why and have the Deputy Administrator respond.

Sincerely,



John D. Dingell
Ranking Democratic Member
Committee on Commerce

Michael G. Oxley
Chairman
Subcommittee on Commerce, Trade and
Hazardous Materials
Committee on Commerce