

Testimony of

# Mr. Brian Panish

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## STATEMENT OF BRIAN J. PANISH

Senate Judiciary Committee Hearing: "Defective Products: Will Criminal Penalties Ensure Corporate Accountability?"  
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I thank the Chairman and Members of the Committee for inviting me to speak today. This issue is extremely important to the health and safety of all Americans and I am pleased that the Senate Judiciary Committee is taking the time to examine it in detail. I am also extremely encouraged by your willingness, Chairman Specter, to consider additional legislative steps that would compliment the civil justice system in helping to deter corporations from selling products they know are dangerous. I look forward to working with the committee on this issue.

I have seen first-hand the devastating impacts that corporate deceit can have on a family. I represented Patricia Anderson and her four children in a case against General Motors (GM) in 1999. Ms. Anderson and her children suffered horrendous and debilitating burns because General Motors put a car on the market, the Malibu, it knew contained dangerous defects related to the placement and design of the fuel tank. If the fuel tank system had been designed differently, Ms. Anderson's car would not have exploded and the Andersons would have suffered only minor injuries. But because GM placed profits over safety when designing and marketing the Malibu, my client and her children sustained life-altering injuries.

### The Anderson Case

On Christmas Eve, 1993, Patricia Anderson and her four children left their home in Los Angeles, California, in their 1979 Malibu to attend holiday services at their community church. After the services were over, Ms. Anderson and her children got in their car and headed towards home. On the way, Ms. Anderson saw a neighbor, 40 year-old Jo Tigner, and offered her a ride home. They stopped briefly at the neighborhood store to get some candy. As Ms. Anderson was pulling up to a red light, going 10 miles per hour, she was rear-ended by another car driven by a man named Daniel Moreno. Mr. Moreno's car hit Ms. Anderson's car in such a way that the front of his car went partially underneath her rear bumper and punctured her fuel tank in several places. Fuel leaked out, and the car exploded into flames with the force of 108 sticks of dynamite.

Ms. Anderson saw smoke and flames, and heard her children "asking Jesus to help them." In the back seat, eight year-old Kiontra tried to cover up her little brother and sister with her own body to keep the flames off of them. In doing so she suffered horrific burns to her back.

Ms. Tigner, burning in the front passenger seat, grabbed at the door handle to get the car door open, but could not hold on because it was unbearably hot. Several people who had witnessed the accident immediately rushed over to help get Ms. Anderson, Ms. Tigner, and the children get out of the car. Because the door handles were too hot to touch, they used a shopping cart to smash the car's windows. The rescuers pulled the children out of the car and doused them and the inside of the car with buckets of water. Kiontra ran from the car crying because her back and legs were burning. She then ran back to the car to help get her sister out of the car. In doing so, she suffered severe burns to her hands.

As a result of the explosion, Ms. Anderson and all of her children suffered third-degree burns over large portions of their bodies. They all had to undergo numerous skin grafting surgeries which involved taking healthy skin from other parts of the body to put over the burned areas. The burns also resulted in severe scarring which caused significant

deformation. The scarring will especially affect the children because as they grow, the scars can be painful and require future surgeries. The scarring also resulted in the loss of range of motion and major psychological problems.

What makes this horribly tragic story even more outrageous is that the injuries suffered by these four children and their mother were preventable. This is because GM knew years prior to Ms. Anderson's accident that there were major defects in the car. Before GM sold the Malibu to families like the Andersons, it knew that the placement of the fuel tank in the Malibu made the car unreasonably dangerous and at risk of exploding in the event of a rear collision. The case against GM revealed the following:

1. GM knew there was a much safer design for the fuel tank placement before it ever put the cars on the market;
2. GM performed a cost-benefit analysis, comparing the cost of human life, in a dollar amount, to the cost of redesigning the fuel tank system;
3. GM testing of the car was woefully inadequate; and
4. GM made a conscious decision to market a product it knew would kill people.

### The Evidence against General Motors

GM knew for several decades that there was a safer design for the fuel tank system. It knew that instead of placing the fuel system underneath the car, close to the rear bumper, it could put the fuel tank over the rear axle. It knew the so-called "over axle" fuel tank design was a far safer design than the less-safe "under floor" fuel tank design. It also knew that there were ways to build the fuel tank so it was less likely to be punctured during a rear bumper collision. This would decrease the chance of a fuel leak and a resulting explosion. For all the wrong reasons, GM made all the wrong choices for the Andersons and families like them.

As far back as 1961, GM employee Edward Cole, who later became its President, acquired a patent for the Corvair fuel tank system which had its fuel tank inboard and over the rear axle. Then, in 1964, GM designed a prototype vehicle, for manufacture in the 1970's, with a tank over the axle.

In 1966, GM had a corporate policy that required engineers to pay careful attention to eliminating or shielding the fuel tank from punctures. This directive constituted GM's internal standards, and, even though these standards existed, GM violated its own policy with the Malibu. Its design failed to protect the fuel tank from punctures.

GM also knew in 1966 that the space between the fuel tank and rear bumper should be at least 17 inches. GM's expert, Mr. Cichowski, acknowledged that the reason for increasing space between the bumper and the fuel tank was to increase the crashworthiness of the vehicle's fuel tank. The closer the fuel tank is to the rear bumper, the more exposed the tank is to danger.

In August of 1970, the government issued a new proposed standard for car crashworthiness. In response, on November 17, 1970, GM's Safety Review Board (composed of GM's chairman of the board, president, and chief engineers) issued a "Safety Review Board Action" directing that all future designs starting with the 1973 models would have the over axle fuel tank design instead of the under floor design, in order to comply with the new proposed federal standard. GM even cancelled its order of parts for the "under floor" design. But this decision to design cars with the safer fuel tank option would not last long.

GM soon realized that the over axle design would cost \$8.59 more per car than the under floor location. Because of that added cost, GM began a campaign against the government's proposed standard. GM filed its objections to the government's proposed new standard and began looking for ways to comply with the government standard while still keeping the fuel tank system in the under floor location.

In December of 1971, GM engineers were directed to perform cost-benefit evaluations while it awaited the government's action on the company's objections to the proposed federal standard.

On June 6, 1973, Mr. Mutty, a GM engineer, was directed to determine the cost of putting the fuel tank over the axle. Mr. Mutty began working with another GM engineer, Mr. Ivey, on the fuel tank location. Thereafter, the two had frequent meetings and discussions about fuel tank designs. As part of their analysis, they considered whether to

locate the fuel tank under floor or over the axle. The team concluded that the over axle tank offered the best protection in accidents above 30 miles-per-hour.

GM also asked Mr. Ivey to do a cost-benefit analysis of the under floor placement of the fuel tank. This cost-benefit analysis became known as "the Ivey memo." The memo reflects that Mr. Ivey found that the estimated 500 fatalities per year caused by fuel fires would cost the company on average, \$200,000 per fatality. He further concluded that, based on the number of such anticipated fatalities divided by the number of GM automobiles on the road, that "fatalities related to accidents with fuel fed fires are costing General Motors \$2.40 per automobile in current operation." This amount is much less than the \$8.59 it would cost to use the safer over axle design. This memo conclusively proves that GM knew that the under floor placement of the fuel system was likely to kill people. It also proves that GM sold these cars in a defective condition, choosing profits over American lives. GM's witnesses at trial, Mr. Mutty and Mr. Cichowski, admitted that Mr. Ivey's cost-benefit analysis, and all other such studies weighing the cost of human life against the cost of production, are "despicable."

Mr. Ivey's study was not the only cost-benefit study commissioned by GM. On March 28, 1974 another GM engineer, Mr. Fisher, performed a cost-benefit study eerily similar to Mr. Ivey's. Mr. Fisher, echoing Mr. Ivey, estimated 600 deaths would be caused by car fires each year. He also assumed the cost of each fatality would be \$200,000. Mr. Fisher calculated that fuel-fed fire-related deaths would cost GM \$2.00 per car.

Significantly, the approaches used by Mr. Ivey and Mr. Fisher were consistent with GM's general policy to use cost-benefit studies to evaluate the cost of human life compared to the cost of production. As early as July 1970, one of GM's engineers, Mr. Terry, authored a report entitled "Estimating the Benefit in Automotive Safety Cost/Benefit Analysis." The report praised the value of weighing the severity of the injury, including fatality, in order to evaluate the "payoff" of a proposed safety design.

Within one year of Mr. Ivey's cost-benefit study and shortly after the federal government's proposed new safety standard was squashed, Mr. Mutty recommended to upper GM management that the fuel tank be located under the floor. Mr. Mutty also told the Safety Review Board that he was convinced he could design a fuel tank in either the over axle location or the under floor location which could pass a 50 miles-per-hour car-to-car crash test, as required by other existing government standards.

In 1972 and 1973, the highest levels of management at GM were well aware that of the importance of designing a fuel system that would not catch fire in an impact collision in which the occupants of the car survived the crash. In fact, in a May 1972 presentation to GM, one of GM's own engineers, Ron Elwell, recommended that fuel system integrity be "premised on the concept that occupants involved in collisions which produce occupant impact forces below the threshold level of fatality should be free from the hazard of post-collision fuel fires." Mr. Elwell noted in his presentation that the improvement of fuel system safety would result in decreased cost to GM in the form of reduced lawsuits and reduced adverse publicity.

In 1977, GM became aware of additional problems with the under floor fuel system safety performance. Testing revealed the fuel tank leaked on rear-end impact. Even in a 30 miles-per-hour rear-moving barrier test, their station wagons leaked fuel about 50 percent of the time. Despite this testing data, GM continued with the under floor design.

On August 17, 1977, GM certified to the National Highway Transportation Safety Administration that the Malibu met government standards and was ready for production. However, after that, the car failed or leaked during twenty-one crash tests.

GM also had to ensure that the Malibu met the government's Motor Vehicle Safety Standard (MVSS) 301 before putting the cars on the market. On August 23, 1977, GM engineers reported that test cars were barely passing the MVSS 301's 30 miles-per-hour moving barrier test. Moreover, the engineers bluntly told the fuel system coordination committee in March of 1978 that GM's "test procedures for MVSS 301 do not provide an objective measure of compliance margin." This is clear evidence that GM knew that just passing MVSS 301 test did not mean the car was safe. In Mr. Mutty's words, "it takes a lot more to develop a satisfactory fuel system than just passing MVSS 301." In fact, a car could pass 301 and still be unreasonably dangerous.

In 1978, only three months before Ms. Anderson's car was released for sale, Mr. Aldrich, a GM fuel system engineer, recommended three areas where the fuel system could be improved and the leakage problems fixed. Those areas included preventing inward buckling of the left rear frame side rail, interaction between the muffler and the right front corner of the fuel tank, and separation of the rear fuel tank strapped underbody attachment. Mr. Aldrich proposed fixes for all three problems. However, on April 6, 1979, when Ms. Anderson's Malibu was put on the market, none of Mr. Aldrich's proposed fixes were present in the Malibu.

In 1981, the Ivey memo appeared along with other GM documents. They surfaced for the first time in a brown-paper wrapper on Mr. Elwell's desk. The memo consisted of three pages, the first being a cover sheet bearing the names of persons to whom the memo was distributed. The cover page subsequently disappeared. Mr. Elwell was the first person to testify he saw the memo in 1981. Mr. Elwell took the memo and gave it to a lawyer for GM, Mr. Graves. Mr. Elwell also showed it to fellow GM employee, Mr. Cichowski.

Mr. Ivey was soon interviewed by Mr. Howard, another GM lawyer. In the interview, Mr. Ivey stated that he recalled performing his cost-benefit analysis, including an analysis of societal loss. His report was written "for Mutty specifically" and "at Mutty's request." The analysis he performed was "trying to figure out how much Olds could spend on fuel systems." He also stated somewhat reluctantly, "that he had assigned a value to human life in the study," and he obtained the "human life value" from a previous GM cost-benefit report. He also admitted that GM was "very cautious with distribution of the copies due to the nature of the subject."

In 1983, a court, in other litigation against GM (Swanic v. GM), ordered the company to produce all cost-benefit studies, including the Ivey memo. On September 20, 1983, another GM lawyer, Mr. Kemp, interviewed Mr. Ivey. Mr. Ivey confirmed to Mr. Kemp that his superiors had requested the report to determine how much per car it would cost GM to prevent fuel-fed fire-related deaths.

In August of 1984, before Mr. Ivey gave his first deposition in a case involving GM, Mr. Cichowski held the first of what would amount to approximately 100 meetings with Mr. Ivey concerning his memo. Following those meetings, Mr. Ivey was deposed and took the position that he simply did the report, stuck it in "the file," and that was the end of the matter.

At trial, GM tried desperately to distance itself from Mr. Ivey. Mr. Mutty claimed that Mr. Ivey's report was authored only days before he transferred out of the fuel tank design division. Mr. Mutty also claimed he "knew" that Mr. Ivey's last day of work with the fuel system engineering group was July 1, 1973 (two days after Mr. Ivey wrote his cost-benefit memo). However, Mr. Ivey's official personnel records showed this to be a lie. Mr. Ivey did not transfer out until August 1, 1973.

Mr. Chairman, all of these facts tell a story of a corporation that knew how to make a safer product and chose not to do so. The evidence presented at trial allowed the public to learn about the cold, calculated decisions GM made that directly caused the injuries of American families.

The Andersons' lives will never be the same. But perhaps your attention to this issue can help avoid similar outcomes for other families. This case is just one example of how a corporation put American lives at risk for the sake of their bottom line. I hope this case illustrates the vital role the civil justice plays in both revealing facts that are important to the public's health and safety and in attaining some measure of justice for those families injured or killed because of the deliberate actions of others.

Sadly, this is not the only example of corporate executives choosing to risk the lives and futures of families like the Andersons for a few extra dollars of profit--in this case, the equivalent of about two cups of Starbucks coffee.

I encourage any additional steps this Committee can take to see that only safe products are put on the market. The threat of criminal sanctions could help corporate executives, like those at GM, make better and safer choices. I thank for your time today and welcome any questions you may have.

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