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Weak Oversight, Deadly Cars

By CLARENCE DITLOW and RALPH NADER OCT. 28, 2014

WHEN regulators sleep and auto companies place profits over safety, safety defects pile up. A record number of vehicles — more than 50 million — have been recalled this year, a result of congressional hearings and Justice Department prosecutions, which exposed a mass of deadly defects that the auto industry had concealed.

From the Ford Explorer rollovers in the 1990s and Toyotas' issue with unintended acceleration in the 2000s to the recent fatal consequences of defective General Motors ignition switches and Takata airbags, the auto companies hid defects to avoid recalls and save money. These and other major defects were first exposed by safety advocates who petitioned the government and by reporters in the tradition of Bob Irvin of The Detroit News, who wrote over 35 articles on Chevrolet engine mounts until General Motors agreed to recall 6.7 million vehicles in 1971.

These campaigners did the job the regulator should have done. Congress gave the Department of Transportation authority to regulate the auto industry through the National Highway Traffic Safety Administration — including subpoena authority to find defects. But it used this authority so infrequently after the '70s that its acting administrator, David J. Friedman, told Congress this year that he didn't even know it had the power. The N.H.T.S.A. also failed to require companies to disclose death-claim records in civil lawsuits over the Toyota accelerations, G.M. ignition switches and Takata airbags.

In order to prevent the risk of death or serious injury, Congress empowered the agency to oblige auto companies to use alternate suppliers and independent repair shops to manufacture parts and make repairs to expedite a recall fix. Yet the N.H.T.S.A. has never used this authority — even though it took General Motors from February to October to get enough parts to dealers to repair all the recalled ignition switches.

Only after a lengthy delay was the agency prodded, in 2009, into opening an investigation into whether the first two Honda recalls of Takata airbags were adequate. Although the agency asked tough questions, it quickly closed the investigation after Takata hired a former senior N.H.T.S.A. official to represent the company. The agency's attitude, in short, was: Don't bother us with the facts.

More facts did come out when BMW, Honda, Nissan and Toyota recalled millions of Takata airbags from 2010 to 2013. Still, the N.H.T.S.A. opened no investigations and ordered no recalls on the airbags. Honda also failed to disclose death and injury claims on Takata airbags, as required by law. Even now — after reports of a third death in the United States associated with the airbags — the N.H.T.S.A. refuses to order a national recall, as Senators Richard Blumenthal of Connecticut and Edward Markey of Massachusetts have urged.

What explains this neglect? Over time, the N.H.T.S.A. has been captured by the industry it regulates. Through the '70s, it aggressively litigated cases to force recalls, and it caught most defects early in the life of a vehicle. Beginning in the '80s, however, numerous officials — including Diane K. Steed, Jerry Ralph Curry, Sue Bailey and David L. Strickland, who all served as head of the agency, and Erika Z. Jones, Jacqueline S. Glassman and Paul Jackson Rice, who all served as chief counsel to the agency — have gone on to become consultants, lawyers or expert witnesses for auto companies.

What's more, the agency is heavily populated by former industry employees. Ms. Glassman, for example, had been a lawyer for Chrysler before working at the agency (and is now at a law firm that represents auto companies). The agency's last non-acting administrator, Mr. Strickland, went to work in January of 2014 for a firm representing Chrysler — the same month the agency approved an inadequate recall of Chrysler Jeeps with fuel tanks liable to explode as a result of rear impacts.

Although Congress has given the N.H.T.S.A. regulatory tools that the agency failed to use, Congress has not given it the two things it needs most: sufficient funding, and the power to bring criminal penalties against auto companies. The agency's annual vehicle safety budget is a puny $134 million. Unlike other federal regulators, the N.H.T.S.A. does not have its own research and test facility.

Since the National Traffic and Motor Vehicle Safety Act was enacted in 1966, the industry has blocked any meaningful provision for criminal penalties that would make company executives who concealed defects or decided not to recall dangerous vehicles subject to prison sentences. No single reform would change corporate behavior as much as this.

Only a complete overhaul of the agency's culture will prevent future recalls, since automakers will always place sales and profits over safety and innovation. This should start with closing the revolving door, adopting criminal penalties and increasing funding. All auto companies should have an independent, government-certified safety ombudsman to investigate complaints from whistle-blowers and to report defects directly to the chief executive and the agency.

Above all, the agency's leaders must have proven transportation safety expertise. They must demonstrate that they see auto companies as an industry to be regulated, rather than partners whose profits and sales must be protected at the public's expense.

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