

OK-10661247-3H6

[REDACTED]
Vienna, Virginia [REDACTED]
[REDACTED]

March 6, 2015

INFORMATION Redacted PURSUANT TO THE FREEDOM OF
INFORMATION ACT (FOIA), 5 U.S.C. 552(B)(6)

Mark R. Rosekind, Ph.D., Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590-0001

MAR 17 2015

[REDACTED] DECEASED
ODI NUMBER: 10661247

Dear Dr. Rosekind:

With the proliferation of electronic controls on vehicles, DC-Metro area drivers are at a distinct disadvantage when a defective computer chip or electronic control causes an accident, injury or death. The reason is the contributory negligence laws, which have the effect of "pardoning" the manufacturer/defendant if they can find any reason which shows the plaintiff/injured party contributed to the negligence of the defendant in causing the injury or damage, even if it's only 1%.

On November 19, 2014 our son [REDACTED] left the house for his 20-minute commute to work in his 2010 Subaru Legacy 3.6 Limited Sedan. It was clear, cool and dry that morning. Less than 5 minutes later, a neighbor was pounding on the door to say that [REDACTED] was in a car accident. According to an eyewitness, the car roared down the street sounding like a garbage truck, at a speed of some 50 mph. In less than 400 feet and about six seconds, the Legacy veered over a neighbor's curb onto the banked front yard, where it pivoted and hit a tree at 45 mph (per Fairfax County Police), apparently in an attempt to slow and stop the runaway vehicle without killing or injuring anyone. [REDACTED] was in critical condition and taken by the EMS to Fairfax Hospital, where he died the following Wednesday, November 26th as a result of the accident.

This unintended acceleration incident was quickly reported to Subaru of America Customer Service, with a promise that once the details were reviewed, a decision would be made within 24 hours as to sending out Subaru engineers to investigate. (Reported incidents of this type have been attributable to defective computer chips which have the 'authority' to control the throttle). Rather than following through, Subaru of America personnel dragged their feet, subsequently sending the matter to their insurance company, which forwarded the case over to an outsourced litigation attorney. (Does this sound customer friendly?)

Following this delay, it took a full month to conduct a perfunctory vehicle examination and provide results; the outsourced examiner performed a 1970's style investigation, totally disregarding the advanced computer controls and diagnostics of a 2010 Subaru. The excuse was that the battery and electrical system had been damaged. (What would a Subaru or NHSTA engineer say?)

ET
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SMD

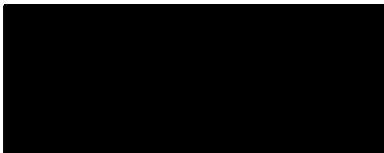
Needless to say, this was totally unsatisfactory, and very shameful for the Subaru organization. Rather than a lawsuit, all we wanted was to understand the root cause of this incident, and to protect future drivers from the same fate, but their attitude was to trivialize the whole thing – so we have no closure.

Clearly, their focus was on minimizing liability at the risk of damaging their reputation. However, there was no need to worry because losing a product defect/wrongful death lawsuit is highly unlikely for Virginia residents (as well as Maryland, Alabama, North Carolina, and Washington D.C.) where contributory negligence laws effectively absolve the manufacturer unless they are found to be 100% responsible. Anything less, even 99%, and they are off the hook (sometimes called the 'one-percent' rule. This means that litigators representing corporate clients need only focus on issues unrelated to the product defect, (i.e., driver distraction, health issues, age, driving experience, disability, etc.), in order to win the case for their client/defendant, and make the product defect disappear.

We are hoping that an NHSTA engineer will be assigned to investigate this fatality-related unintended acceleration case, or at the very least, to review the attached report to determine if a review of the appropriate computer chips might have identified the defect.

Thank you so much for your assistance.

Sincerely,





Subaru of America, Inc.
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PO Box 6000
Cherry Hill, NJ 08034-6000
1-800-SUBARU3 (1-800-782-2783)
www.subaru.com

January 30, 2015

[REDACTED]
Vienna, VA [REDACTED]

Reference: SR # [REDACTED] VIN: 4S3BMEJ62A2 [REDACTED]

Dear [REDACTED]

Thank you for your recent contact to Subaru of America, Inc. Mr. Nakamura has received your letter and asked me to respond on his behalf. I want to begin by expressing our sincere condolences to you and your family during this difficult time.

I appreciate you providing us with ample time to fully review the situation. I apologize if the review process took longer than you expected. Subaru is deeply committed to the safety of our customers. Although we work very hard to design and build excellent products that perform well on the road, unfortunately, accidents do occur. Our primary focus when accidents do occur is to take reasonable and appropriate steps to determine what happened and whether there was an inherent problem with the vehicle.

I want you to be aware that the decision to select Jennifer Yaek to inspect your son's Subaru was one that Subaru of America made jointly with its insurance company, Tokio Marine. Ms. Yaek was chosen for her experience and to provide an independent analysis of your son's accident.

In your letter, you questioned the fact that Ms. Yaek's inspection did not involve any downloads of stored computer information. I am not sure if you are aware of it, but this car is not equipped with an EDR (event data recorder, commonly referred to as a "black box"). The vehicle is capable of electronically storing DTCs (diagnostic trouble codes, which are sometimes referred to as "fault codes"). Those codes are used by automotive technicians to diagnose vehicle problems. But in this case, the impact of the collision demolished the battery and badly damaged the fuse box. The electric power needed to download fault codes was not available. Ms. Yaek quickly abandoned her attempt to introduce electric current when smoke resulted. She simply could not risk starting a fire. In any event, there is no fault code that would indicate unintended acceleration.

While we understand that you may be unsatisfied with her findings, we have confidence in her experience and professional judgment. Again, we appreciate the opportunity to provide you with further information regarding the vehicle inspection.

Sincerely,

Gerilyn Carr
Senior Representative Team Leader

SPENCER^{LLP}

VIA EMAIL

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January 5, 2015

[REDACTED]
Vienna, VA [REDACTED]
[REDACTED]

Re: 2010 Subaru Legacy

Dear [REDACTED]

As you know, Subaru of America, Inc. asked our firm to coordinate an investigation of your son's vehicle and the crash that preceded his death. I write to explain what that investigation involved and the conclusions that have been reached.

As you know, Jennifer Yaek, an expert in crash investigation and vehicle dynamics, inspected your son's vehicle on December 9, 2014. Ms. Yaek followed an exhaustive step-by-step process.

First, she attempted to interrogate the vehicle's computer to determine whether there were any fault codes, which are electronic records of some anomaly in the vehicle. This interrogation is normally performed using a commercially available tool used in the service departments at most dealerships. She was unable to complete this because both the fuse box and the battery were displaced in the crash.

Next, she looked for evidence of a malfunction that would or could have caused the throttle valve to open or get stuck in the open position. She found none.

The gas pedal was operating properly. It moved smoothly throughout its stroke and sprung back to idle when released. The driver's side floor mat was secured properly and was not preventing the gas pedal from springing back.

The throttle body also appeared to function properly. She verified that the valve was in the "idle" position, as it should be. She found no evidence of any condition or foreign matter that could cause the throttle to bind in any position.

The brake system was also in good working order. As you may know, this vehicle is designed so that the brakes will stop the vehicle if forcefully applied, even if the throttle is wide open. There was no evidence of any pre-crash problem with the brakes, although the brake fluid

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reservoir was displaced and emptied during the crash with the tree, so the brakes are not functional now.

There also appeared to be no impediment to taking the vehicle out of gear and putting it in neutral.

In short, Ms. Yaek could find no evidence of any pre-crash defect in the vehicle.

If you would like to have the vehicle checked for trouble codes, it will be necessary to restore the electrical system enough to get power to the relevant modules. That will require modifications that we cannot make without the authorization of the current owner.

Subaru of America, Inc. has done all that it can do at this time. If there is anything further that you believe it can do, please let us know. Please be advised that if you or any representative of your son's estate wishes to pursue this matter further, it remains essential that the vehicle be maintained in its current condition and that neither the vehicle nor any of its parts be salvaged or otherwise lost.

We are very, very sorry for your loss. From the accounts that we have read, your son was a fine and courageous young man. Subaru of America, Inc. is making a \$500 donation in his honor to the Greater Washington Region of the American Heart Association.

We wish you the best in this difficult hour.

Sincerely,



Elizabeth K. Shoenfeld

EKS/sfw

Vienna, Virginia



**Mark R. Rosekind, Ph.D., Administrator
National Highway Traffic Safety
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