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Jordan Ziprin, Esq.

February 23, 2006

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Daniel C. Smith
Associate Administrator for Enforcement
National Highway Traffic Safety Administration
400 Seventh St., S.W.
Washington, D.C. 20590

Re: DPO5-002

Dear Mr. Smith:

I received your undated letter in the above-captioned matter advising me that my petition for defect investigation was denied. Appended to your letter was an undated and unsigned summary report explaining the alleged reasons for the denial.

There are serious flaws in the report. It is beyond dispute that your agency failed to conduct an appropriate investigation given the issues involved. As a direct consequence of that failure, most of the statistics cited in the report are inaccurate and, more importantly, misleading. The statistics cited are contrary to the findings and conclusions of leading authoritative sources. In addition, some of the facts set forth are plainly inaccurate.

I had originally intended to provide you with a detailed response to the summary report. Last week, I phoned Scott Yon, the principal investigator, advising him that the investigation was so inadequate that I was considering filing a writ of mandamus in federal district court requesting the court to order NHTSA to conduct a proper investigation. I provided Mr. Yon with the reasons for my assertions. Mr. Yon stated that he would speak to his supervisor, Mr. Quandt I believe, on Tuesday, February 21, 2006, indicating he would get back to me after he spoke to his supervisor.

Today, Thursday, February 23, 2006, I received a telephone call from Otto Matheke, Senior Attorney, Office of the Chief Counsel, NHTSA. We briefly discussed some of the issues I had raised with both Mr. Yon and officials of NHTSA and also agreed that further discussions regarding the issues would be appropriate...

I believe that it is also appropriate for me to make a brief response to your letter to establish, as a matter of record, my position that your decision to dismiss my petition was fatally flawed because NHTSA failed to utilize the expertise of electronic

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engineers in conjunction with software computer engineers, but instead relied upon a mechanical engineer who did not have the education, skills, or expertise to conduct the investigation.

During my conversation with Mr. Matheke, I advised him that when Mr. Yon appeared in Phoenix to conduct his investigation, while he was testing the car in my garage, I specifically asked Mr. Yon why an electronic engineer had not been assigned to the investigation. He advised me that electronic engineers would not work for NHTSA because of the low salary structure available at NHTSA. Even before he arrived in Phoenix, I advised him that it was useless for him to conduct the investigation given his lack of the required expertise.

I found it unfathomable that NHTSA would not employ electronic engineers given the vast increase in the number of electronic components being continuously added to vehicles manufactured by the automobile industry. I must have repeated Mr. Yon's statement to numerous friends and attorneys at a minimum of at least 25 occasions because I could not believe that an agency dedicated to protecting the public, including drivers, pedestrians, as well as others, would disregard its statutory obligations by failing to utilize whatever expertise was necessary in order to eliminate serious and dangerous defects from vehicles. For example, in one of the complaints filed with NHTSA, which I referenced to Mr. Yon, a driver was lucky to have stopped the vehicle by hitting a fence where, on Mother's day, there were parents and children in a playground just on the other side of the fence. There were many, many, many more serious incidents involving deaths, injuries and substantial property damage which I brought to Mr. Yon's attention. I have some real doubt whether the ODI complaints I which I brought to his attention, particularly during October through December 2005, were read carefully.

To my shock and surprise, Mr. Matheke told me that NHTSA did employ electronic engineers after I advised him of my conversation with Mr. Yon. I was further shocked and surprised that given the fact that my defect petition specifically referred to defects in the electronic throttle that there was no discussion or even a mention of the issue in the summary report provided me despite the fact that I had provided Mr. Yon sufficient documentary corroboration relating to the electronic defect issue. I further find it difficult to comprehend why no one in the supervisory chain of review paid any attention to this issue since it was plainly included in my defect petition.

At this time, I have decided that I will not provide you with the documentary and scientific literature compiled during my research, with one exception, pending the outcome of my dealings with Mr. Matheke. The one exception is a document which I previously provided Mr. Yon.

The attachment, consisting of the first two pages of a much longer article, appeared in Assembly Magazine on September 1, 2005. The article, entitled PUT YOUR FINGER ON DEFECTS WITH (capitals in original), was written by Austin Weber, Senior Editor, subtitled *Electronic Road Trip*, quotes a statement made by Franz Fehrenbach, Chairman of the Board of Management at Robert Bosch GmbH

(Stuttgart, Germany), that there is a direct correlation between the number of electronic functions and the number of defects per vehicle. Robert Bosch is one of the five world leading suppliers of automotive supplies and components. Bosch also has a subsidiary, Bosch Rexroth, which makes electronic, hydraulic, and pneumatic machinery ranging from automotives to mining. Your summary report reaches a totally different statistical conclusion than did Mr. Fehrenbach who, I assume, actually knows what he is talking about.

In addition, I have additional statistical and scientific data which strongly support my position.

Sincerely,

Jordan Zimmerman

cc. Otto Matheke, Senior Attorney, NHTSA

1 Attachment

Issue Date: 08/01/2005

Electronic Road Trip

By Austin Weber / Senior Editor

"I went to a boxing match and a hockey game broke out" is a famous line from comedian George Carlin. In a similar vein, many people could easily say, "I opened the hood of my car and an iPod and a Palm Pilot popped out."

Today's vehicles contain an unprecedented amount of electronics, which creates numerous engineering challenges. A medium-sized car has approximately 5,000 passive electronic components on board. Luxury vehicles contain more than twice as many components, and the statistics keep multiplying. In fact, by the end of this decade, electronic systems will represent 35 percent of a vehicle's average value.

Electronic components are used for everything from engine management to infotainment to safety. New applications continually pop up, creating additional headaches for engineers. Hybrid powertrains, active safety systems, advanced navigation systems and x-by-wire controls are expected to put additional drain and strain on automotive electrical systems and electronic architectures in the future.

That's not good news for warranty costs, which keep skyrocketing. In 2004, the U.S. auto industry spent $11.5 billion on warranty claims. Unfortunately, many defects can be directly or indirectly traced to electronic components. As vehicles rely more heavily on computers and electronics, they become increasingly complex.

"There is a direct correlation between the number of electronic functions and the number of defects per vehicle," claims Franz Fehrenbach, chairman of the board of management at Robert Bosch GmbH (Stuttgart, Germany). "If the value of electronics content per vehicle doubles in the next five to 10 years as predicted, it isn't hard to imagine what that means

for the number of defects if this trend line holds true."

"Approximately 30 percent of all warranty issues today are software and silicon-related," adds Robert LaGuerre, senior automotive industry analyst at ABI Research (Oyster Bay, NY). "Processors are proliferating in vehicles."

That simply wasn't the case a decade ago. For instance, in 1993, there were 221 recalls involving 6,406,950 vehicles in the United States. By 2003, the National Highway Traffic Safety Administration (Washington, DC) claims that those statistics rose to 628 recalls involving 19,099,101 vehicles.

"The levels of complexity have skyrocketed today vs. 10 years ago, as have software requirements, due to the dominant strategy of 'add a feature, add a box' under which each new system uses its own electronic control unit (ECU) with its own software, instead of integrating these into a few dominant systems," says Lance Esley, automotive industry analyst at the Freedonia Group Inc. (Cleveland).

Over the last decade, "processor power has more than doubled and software complexity has increased 5 to 10 fold due to emission requirements and combustion improvements for powertrain controllers," notes Mike Gauthier, head of corporate technology at Siemens VDO Automotive Corp. (Auburn Hills, MI). He also points to "increased use of in-vehicle entertainment systems, such as DVD players and satellite radios, and replacement or enhancement of mechanical systems by electrical ones in chassis and safety systems."

In 1995, the average North American-built light vehicle contained $410 worth of ECUs. Today, that value has climbed to $680, according to Strategy Analytics (Boston), a market research firm. "We expect it to keep on rising, with the potential to reach $850 by 2015," claims Ian Riches, director of the company's automotive electronics service.

Vehicles today incorporate smarter electronics, sophisticated power management, intelligent sensors and advanced human-machine interfaces. Electronics-intensive features that were considered groundbreaking not long ago, such as anti-lock brakes, air bags and remote keyless entry, are now offered as standard equipment.

"High performance 32-bit microcomputers with built-in memory, vehicle network communication capabilities, liquid crystal displays and a wide range of peripheral functions are now very affordable," says Fawaz Bahiaji, product manager at Yazaki North America (Canton, MI). "These integrated, advanced devices are enabling a new level of functionality that was cost- and size-prohibitive 10 years ago."

Smart power electronics are replacing electromechanical devices and enabling further device integration. Recent advancements in optoelectronics and in-vehicle network architectures are connecting devices at an ever-increasing speed. "As a result, vehicles today routinely integrate more than twice the number of electronic components of their predecessors a decade ago, and their software content has been significantly increased," explains Bahiaji.

"Ongoing future advancements in microelectronics and semiconductors, as well as packaging and nanotechnology, will continue to lower the cost