CHRYSLER

June 18, 2013

Mr. Frank S. Borris II
Director, Office of Defects Investigation
Office of Enforcement
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

RE: NVS-212pco; EA12-005

Dear Mr. Borris:

Chrysler Group LLC ("Chrysler Group") has received your letter of June 3 requesting a safety recall of certain Jeep Grand Cherokee (ZJ and WJ) and Jeep Liberty (KJ) vehicles (the "Subject Vehicles") to address the risk of post-collision fires. Chrysler Group has carefully considered the information you provided in your letter, as well as other available information that has been collected over the past three and one-half years since this investigation has been pending, and has concluded that the Subject Vehicles at issue are safe and do not contain a defect related to motor vehicle safety in either design or performance.

By separate letter filed with your office today, Chrysler Group has committed to undertaking a safety campaign to offer owners of certain Jeep Grand Cherokees and Liberty vehicles with a trailer hitch, in order to provide incremental improvement in the crash energy management in low-to-moderate speed rear collisions. The trailer hitch cannot, and will not, mitigate the risk of the high energy rear collisions identified in your recall request letter. The purpose of this letter is to explain why Chrysler Group is declining your request that Chrysler Group determine a safety-related defect in these vehicles, and conduct a safety recall to address high energy rear collisions.

In this response, Chrysler Group will show:

- Most of the crashes identified by NHTSA's Office of Defects Investigation (ODI) as relevant to its investigation were extremely severe crashes involving energy levels far in excess of any reasonable expectation for fuel tank performance. Indeed, the rear impacts in most of these crashes were so severe that any of the peer vehicles would also have experienced fuel leakage. No vehicle or fuel system design can completely erase the possibility of fuel leakage in severe collisions.
- The vast majority of the relevant crashes involving the Subject Vehicles occurred at energy levels far in excess of those prescribed by the current version of FMVSS 301 – a version that is more than twice as severe as the standard that was applicable to the Subject Vehicles.

- The performance of the Subject Vehicles cannot be distinguished from the ODI-selected peer vehicle set in any statistically meaningful way.
- Fire-related fatalities and injuries have occurred in all of the ODI-selected peer vehicles, often at rates exceeding those exhibited by the Subject Vehicles. Under applicable law, these data mean that ODI cannot establish that the Subject Vehicles contain a performance defect that these other vehicles do not possess.
- The Subject Vehicles' fuel tank location and mounting height is common to many other vehicle models. ODI cannot single out the Subject Vehicles as having a design defect because these design features are not unusual. The Subject Vehicles complied with the applicable FMVSS 301 requirement, and ODI does not dispute this fact. Under NHTSA's administrative precedents, the performance of vehicles in rear crashes at energy levels higher than the applicable standard cannot by itself establish a defect.
- The current FMVSS 301 did not require full compliance until September 2008; the last of the Subject Vehicles was produced in 2007 – 15 months earlier than the agency deemed compliance necessary.
- The Subject Vehicles are safe and do not contain a safety-related defect.

Chrysler Group respects the work that your staff has done so far but also respectfully disagrees with their conclusions. The Grand Cherokee and the Liberty are safe vehicles that perform well in all types of collisions, including rear impacts.

I. The Performance of the Grand Cherokee and Liberty Vehicles In Severe Rear Collisions Is Not Evidence of a Safety Defect

Chrysler Group disputes that the allegations in the recall request letter constitute evidence of a safety-related defect, as that term has been construed by the federal courts.

The case law under NHTSA's governing statute has emphasized that "commonsense limitations" are relevant to determining both the meaning of the term "defect" and the term "unreasonable risk to safety." *U.S. v. General Motors (Wheels)*, 518 F. 2d 420, 435 (D. C. Cir. 1975). See also, *Center for Auto Safety v. National Highway Traffic Safety Administration*, 342 F.Supp. 2d 1, 14 (D.D.C. 2004), aff'd 452 F.3d 798 (D.C. Cir. 2006). "Manufacturers are not required to design vehicles or components that never fail." *Wheels*, 518 F. 2d at 436. *Center for Auto Safety* , 341 F. Supp. 2d at 15. And, even when the government attempts to demonstrate a "defect" by reference to vehicle performance, the ***cause*** of the alleged failures is still relevant to determining whether the performance constitutes a "defect." *Wheels*, 518 F. 2d at 436. *Center for Auto Safety*, 341 F. Supp. 2d at 15.

In its recall request letter, ODI does not, and cannot, maintain that ***any*** fuel tank leakage in a collision, regardless of severity, is evidence of a defect in the struck vehicle. Indeed, the relevant federal safety standard, FMVSS 301, which establishes the acceptable level of post-collision fuel tank performance, ***allows*** 142 grams [5 ounces] of fuel leakage in the first five minutes following a crash test, and allows as much as 700 grams [25 ounces] over the next 25 minutes following the test. The internal standard for Jeep and other Chrysler vehicles requires ***zero*** fuel leakage following the crash test.

Moreover, NHTSA itself relied in large part on the high crash energy levels associated with the post-collision fuel tank failures in deciding to close an investigation in 2002 involving certain Ford Crown Victoria/Mercury Marquis/Lincoln Town Car vehicles, SQ01-014, without requesting or obtaining a recall or determining a safety defect. In fact, in this investigation, ODI has cited to the performance of numerous peer vehicles[1] that also experienced post-collision fuel leakage. Thus, ***some*** level of post-collision fuel leakage is expected and does not, by itself, suggest the presence of a defect in the Subject Vehicles. Unlike cases involving classic "broken parts," such as broken wheels or failed pitman arms, this case presents a defect theory premised, like the X-Car case, on "circumstantial evidence of performance failure." *U.S. v. General Motors (X-Cars)*, 841 F.2d 400, 415 (D.C. Cir. 1988). And, unlike X-Cars, ODI did not articulate what the "evidence of performance failure" is here – except for post-collision conditions that are common with the peer vehicles.

Most of the crashes identified in this investigation were extremely severe crashes involving energy levels far in excess of any reasonable expectation for fuel tank performance. Indeed, the rear impacts in most of these crashes were so severe that it is likely that any of the peer vehicles would also have experienced fuel leakage.

In Appendix A – Kinetic Energy Calculations, Chrysler Group has compiled the relative impact speeds from the information available about the Subject Vehicle crashes, including those reported to ODI and those that ODI has identified as relevant. Some crashes did not have sufficient information to calculate an impact speed. Chrysler Group has calculated the kinetic impact energy experienced by the Subject Vehicle during the rear impact based on the relative impact speed and the mass of the striking vehicle, and then compared the calculated kinetic energy of the crash to the energy levels seen in FMVSS 301 testing. When a range of impact speeds was given, a range of kinetic impact energies was calculated. In the charts, the columns represent the mid-range kinetic impact energy. The range is depicted with error bars.

The kinetic energy experienced by the test vehicle in a 30 MPH FMVSS 301 rear impact is 120,303 ft-lb. This was the standard that was applicable to the Subject Vehicles. The kinetic energy experienced by the test vehicle in the current FMVSS 301 50 MPH rear impact is 251,885 ft-lb, or 2.09 times more energy than required by the standard in effect for the Subject Vehicles. The current standard became fully effective in September 2008, fifteen months after the Subject Vehicles were no longer being produced. Chrysler Group compared the energy level of the Subject Vehicle crashes to both energy levels.

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[1] According to the recall request letter, the peer vehicles are the Toyota 4Runner, Ford Explorer, Jeep Wrangler, Nissan Pathfinder, Chevrolet Blazer, Mitsubishi Montero, Isuzu Rodeo, Isuzu Trooper, Suzuki Sidekick and Suzuki XL-7, along with other models built on these platforms. Chrysler Group disagrees that this constitutes an appropriate peer group, because it includes vehicles with midship tank locations, but for purposes of this response, Chrysler Group will refer to the NHTSA-selected vehicles as the peer vehicles.

Figure 1 – ZJ Kinetic Energy Comparison, below, charts the calculated energy levels experienced in the Grand Cherokee ZJ crashes as compared to the FMVSS 301 requirements, both the requirements that applied to the Subject Vehicles and the current requirements.

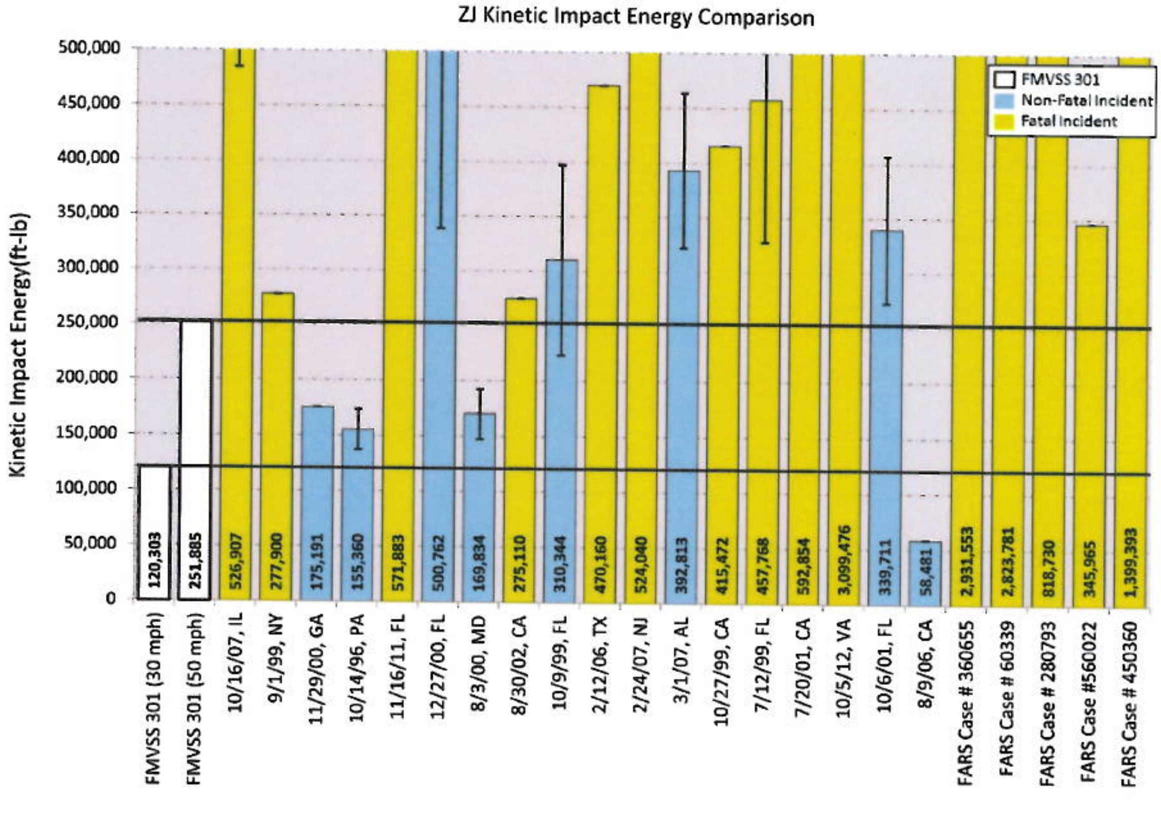

Figure 1 – ZJ Kinetic Energy Comparison

22 of 23 Grand Cherokee (ZJ) crashes analyzed for kinetic energy levels exceeded the applicable FMVSS 301 energy levels. 19 of the 23 Grand Cherokee (ZJ) crashes analyzed for kinetic energy levels exceeded the current FMVSS 301 energy levels. Only the incident noted as "8/9/06, CA" did not exceed any FMVSS 301 energy levels.[2]

[2] This incident involved a motorcycle that was reportedly travelling at 50-55 mph as it approached the rear of the 1994 Grand Cherokee (ZJ). To avoid a direct collision, the motorcycle laid on its side and slid under the rear of the Grand Cherokee (ZJ) and a fire ensued. An inspection revealed that the impact was a focused load on the aftermarket trailer hitch causing the hitch to fail and pushing it approximately 10 inches into the fuel tank, puncturing it and resulting in the fire. The receiver of the aftermarket trailer hitch had sharp edges.

Figure 2 – WJ Kinetic Energy Comparison, below, charts the calculated energy levels experienced in the Grand Cherokee (WJ) crashes, as compared to the FMVSS 301 requirements, both the requirements that applied to the Subject Vehicles and the current requirements.

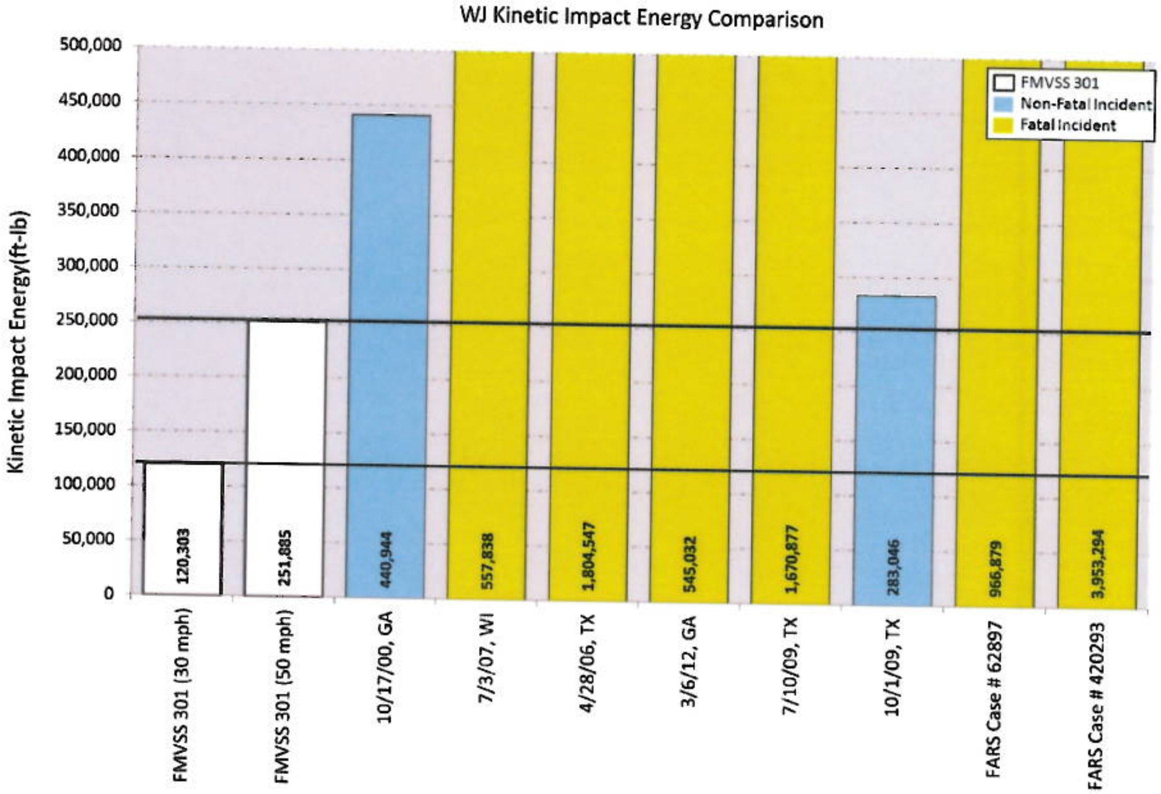

Figure 2 – WJ Kinetic Energy Comparison

All of the eight Grand Cherokee (WJ) crashes analyzed for kinetic energy levels exceeded both the applicable FMVSS 301 energy levels and the current FMVSS 301 energy levels.

Figure 3 – KJ Kinetic Energy Comparison, below, charts the calculated energy levels experienced in the Liberty (KJ) crashes, as compared to the FMVSS 301 requirements, both the requirements that applied to the Subject Vehicles and the current requirements.

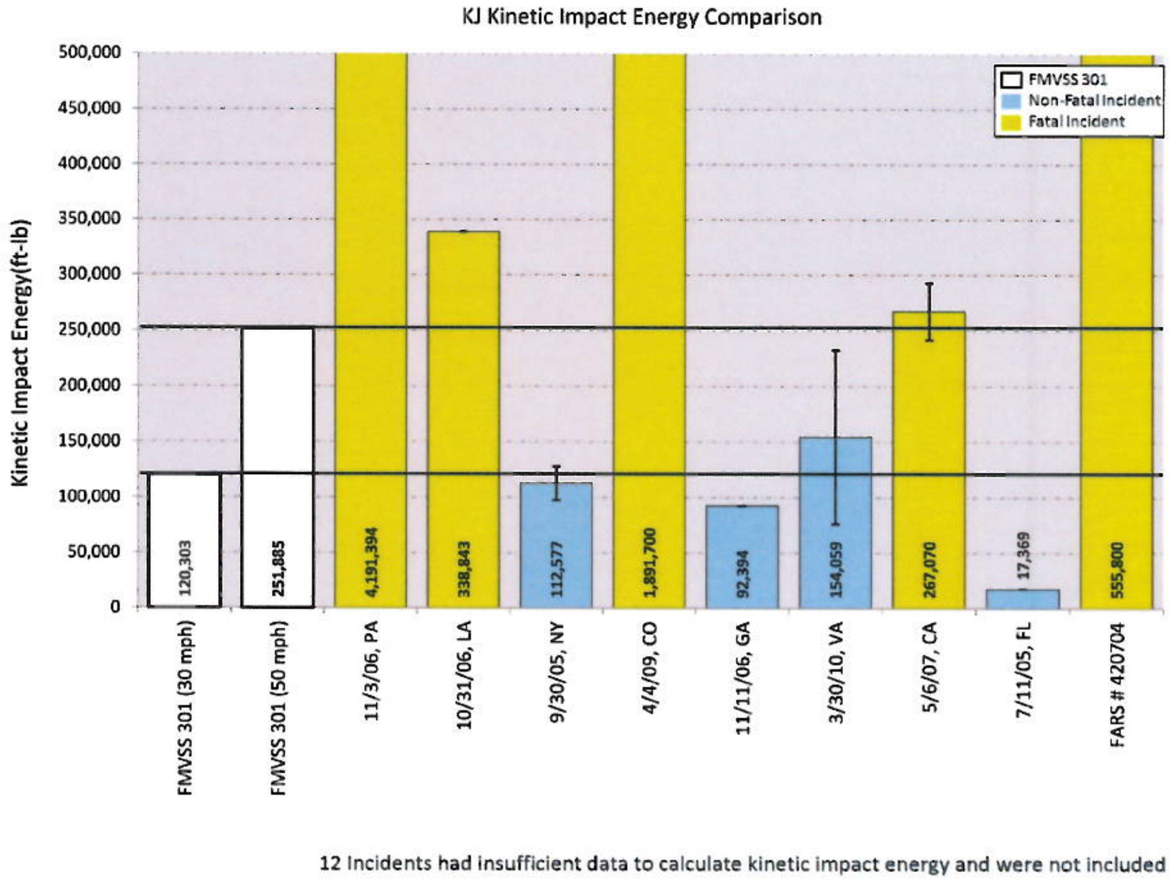

Figure 3 – KJ Kinetic Energy Comparison

6 of 9 Liberty (KJ) crashes analyzed for kinetic energy levels exceeded the applicable FMVSS 301 energy levels. 5 of the 9 Liberty (KJ) crashes analyzed for kinetic energy levels exceeded the current FMVSS 301 energy levels.

The kinetic energy levels in all of the fatal crashes for which data is available exceed any reasonable expectation for fuel tank performance. Indeed, the rear impacts in most of the crashes were so severe that any of the peer vehicles would also have experienced fuel leakage. There were no fatal incidents cited by ODI that occurred at energy levels below the energy generated by a crash conducted under the current fuel system integrity standards, much less the standard that applied to the Subject Vehicles. The performance of the Subject Vehicles in these severe crashes does not demonstrate the existence of a safety-related defect.

II. The Performance of the Grand Cherokee and Liberty Vehicles In Severe Rear Collisions Is Comparable To Its Peers and Is Reasonable

Under the Vehicle Safety Act, it is NHTSA's burden to prove that the Subject Vehicles contain a "defect." It is not sufficient to show only that they experienced post-collision fuel leakage, because post-collision fuel leakage can occur in any vehicle, given "the 'right' concatenation of circumstances." *X-Cars*, 841 F.2d at 415. In such a case, "NHTSA must show that the vehicle itself is defective. ... That is to say, NHTSA [is] obliged to demonstrate that the incidents occurred under circumstances in which, absent a defect, they would not have occurred." *X-Cars*, 841 F.2d at 412.

ODI has not offered any evidence that would support such a conclusion in this case. ODI's allegation of a performance defect is that "the fuel tanks installed on these vehicles are subject to failure when the vehicles are struck from the rear." But, as ODI's own evidence shows, all but one of the peer vehicles also experienced fuel leakage and fires following some rear collisions. Without more, this statement does not support a finding of a defect in the Subject Vehicles.

The one peer vehicle that does not have an associated report of post-collision fuel leakage or fire in rear collisions is the Isuzu Trooper; however, the Trooper has the lowest number of registered vehicle years of any peer vehicle (2.0 MRVY[3], almost half the number of registered vehicle years of the next closest vehicle on the peer list, and less than one-third of the Liberty), likely explaining why it hasn't experienced one of these very rare crashes. Moreover, Chrysler Group's analysis identified two such collisions in side impacts involving the Trooper, for a fatal incident rate in side collisions of 1.0/MRVY – exactly the same as NHTSA's calculation for the fatal incident rate in rear collisions for the combined Grand Cherokee vehicles.

Moreover, when all crash configurations are considered, not just rear crashes, the fuel system integrity performance of the Grand Cherokee and the Liberty vehicles is ***superior*** to many vehicles in the market, including some in the ODI peer vehicle set. As the *X-Car* case teaches, when NHTSA's theory is "built on circumstantial evidence of performance failure," it is relevant to consider the fact that the Subject Vehicles are "no more likely than other vehicles to be involved in such incidents" [here, post-crash fires] in determining whether the vehicles contain a defect. *X-Cars*, 841 F.2d at 415.

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[3] ODI's recall request letter uses the metric of Million Registered Vehicle Years (MRVY) through 2011 to adjust the field data to take into account the large vehicle populations involved and the multiple years that these vehicles have been in operation. Chrysler Group accepts ODI's metric as an appropriate way to evaluate the data.

NHTSA's administrative precedents support this principle as well. In a relatively early decision (1977) that remains good law today, the Administrator of NHTSA declined to make a final decision of defect in certain GM vehicles related to the performance of the power brake vacuum check valve, finding that the check valve failure experience of the investigated GM vehicles could not reasonably be distinguished from the failure experiences of the same component in peer vehicles. "[I]t must be concluded that the check valve failure trends discovered for each manufacturer are such that none, including GM, can be set apart as exceptional to the state-of-the-art technology which existed in the automotive industry during the period examined. Therefore, to single out any segment of this vast vehicle population for an enforcement recall appears to me to be unfair and to recall the entire population appears to be an effort not contemplated by the statute." *Check Valve Decision*, ODI Case 161, January 27, 1977. Also see 42 Fed.Reg. 13379 (March 3, 1977).

The recall request letter alleged a performance defect in the Grand Cherokee and Liberty vehicles, which was described as follows: "The performance defect is that the fuel tanks installed on these vehicles are subject to failure when the vehicles are struck from the rear."

ODI supported this tentative assessment with the statement that "the MY 2002-2007 Jeep Liberty and the MY 1993-2004 Grand Cherokee performed poorly when compared to all but one of the MY 1993-2007 peer vehicles, particularly in terms of fatalities, fires without fatalities, and fuel leaks in rear end impacts and crashes."

Chrysler Group disagrees with this assessment. In fact, the Subject Vehicles' performance in rear collisions is not statistically different from the peer vehicles selected by ODI. And, far from performing "poorly" in post-crash fires, the Grand Cherokee and the Liberty perform ***better*** than many of the peer vehicles in all types of impacts that result in post-crash fires.

Initially, it is necessary to correct a mathematical error in the recall request letter and to conform the selection of incidents involving the Subject Vehicles to the method used to select incidents involving the peer vehicles.

With respect to the Liberty, the fatal incident rate calculation in the recall request letter is incorrect. The letter states that ODI has identified five fatal rear impact crashes involving the Liberty. The Liberty models have been operated for 6.3 million registered vehicle years through the 2011 calendar year, producing a fatal incident rate of 0.79/MRVY (5/6.3 MRVY), not 0.90/MRVY as the recall request letter states.

As to the Grand Cherokees, it is not appropriate to combine the data for the two different platforms, ZJ (Model Years 1993 - 1998) and WJ (Model Years 1999 - 2004), because these two platforms have different designs. The ZJ and WJ are different vehicles from the ground up. In particular, they share no rear body components or rear fuel system components. Although the vehicles share the same marketing name (Jeep Grand Cherokee) and incorporate design and styling features common to Jeep vehicles, there are significant differences in the rear components of the fuel systems and the vehicle structure surrounding them. For more details about the differences between the ZJ and WJ platforms, see Enclosure 7a of the November 12, 2010 PE IR Response.

Using the incident counts in the recall request letter, the ZJ would have a fatal incident rate of 1.2/MRVY (22/18.4 MRVY) and the WJ would have a fatal incident rate of 0.79/MRVY (10/12.6 MRVY). However, these counts include incidents that would not be included if the same selection criteria used to choose peer incidents were applied to the Subject Vehicles.

In fact, ODI has been inconsistent in its selection of peer vehicle incidents for comparison to the Subject Vehicle incidents. Given that ODI's performance defect theory depends entirely on a comparison of calculated incident rates, it is essential that these rates be calculated accurately, and that the criteria to select incidents to be included in each data set be consistently applied both to the Subject Vehicles and the peer vehicles.

Specifically, ODI did not include peer vehicle cases from 2012 (although two Subject Vehicle cases from that year were included in ODI's letter). All 2012 cases should have been excluded from both the peer vehicle set and the Subject Vehicles, because ODI used vehicle registration data through 2011 to calculate the incident rates. ODI also did not look for peer vehicle incidents in the U.S. territories (such as Guam or Puerto Rico) although a Subject Vehicle case from Puerto Rico was included. Moreover, ODI did not include peer incidents that did not involve rear impacts to the peer vehicle, although one such case involving a Subject Vehicle was included.

For the peer vehicles, ODI ***excluded*** at least one incident that Chrysler Group believes should have been included: a June 2000 incident involving an Isuzu Rodeo that was struck in the rear by a bus and caught fire. Chrysler Group has added this incident to the Rodeo count, which yields a total of seven incidents, and a resulting incident rate of 0.83/MRVY (7/8.4 MRVY).

When the Subject Vehicle incident rate is recalculated to conform to the selection criteria for the peer vehicles (removal of the 2012 incident for the ZJ, and the 2012 incident, the Puerto Rico incident and the non-rear impact for the WJ), the incident rates become 1.1/MRVY (21/18.4 MRVY) for the ZJ and 0.56/MRVY (7/12.6 MRVY) for the WJ.

The rear impact fatal fire incident rates of the Subject Vehicles compare favorably with those of the ODI peer vehicles:

- The Grand Cherokee (WJ) incident rate is comparable to the average of the peers cited in the recall request letter (0.5/MRVY), and is ***better*** than five of the peers.

- The Liberty incident rate of 0.79/MRVY is ***better*** than four of the peers.

- The Grand Cherokee (ZJ) fatal incident rate of 1.1/MRVY is identical to the incident rate of the Cherokee, which ODI did not include in the recall request, and is more than three times better than the Tracker/Sidekick.

Applying the appropriate criteria for inclusion of relevant incidents, here is how the Subject Vehicles compare with the peer vehicle set selected by ODI[4] and the Cherokee (which ODI investigated but did not include in the recall request letter):

Model	**Incident Rate**
Geo Tracker/Suzuki Sidekick	3.78/MRVY
Chevy Tracker/Suzuki Vitara	1.25/MRVY
Cherokee	1.1/MRVY
Grand Cherokee (ZJ)	1.1/MRVY
Isuzu Rodeo	0.83 MRVY
Liberty	0.79/MRVY
Chevy Blazer	0.59/MRVY
Grand Cherokee (WJ)	0.56/MRVY
Wrangler	0.55/MRVY
Mitsubishi Montero	0.48/MRVY
Nissan Pathfinder	0.46/MRVY
Ford Explorer	0.35/MRVY
Toyota 4Runner	0.22/MRVY

The recall request letter asserted that the Subject Vehicles performed "poorly" because their fatal incident rate was approximately twice as high as the average incident rate of the peer vehicles. However, it becomes obvious from these data that a safety defect cannot be established merely by comparing a model's incident rate to an "average" rate of selected peer vehicles. Suppose, for example, the Isuzu Rodeo fatal incident rate is compared to the fatal incident rate of the six vehicles on the second half of the chart above: the Grand Cherokee (WJ), the Wrangler, the Montero, the Pathfinder, the Explorer and the 4Runner. The weighted average fatal incident rate of these peers is 0.40/MRVY, half of the Isuzu Rodeo rate of 0.83/MRVY – about the same disparity noted by ODI as purported evidence of a performance defect in the Subject Vehicles. The point is that any vehicle can be made to appear "defective" if the definition of a performance defect is simply that the incident rate of the subject vehicle is higher than the average incident rate of a small number of peer vehicles.

Additionally, ODI criticized the performance of the Subject Vehicles in non-fatal fires and non-fire fuel leakage, observing that there were only five such incidents involving the peer vehicles; however, ODI relied solely on the peer vehicle manufacturers' responses to NHTSA's peer inquiry and the ODI Vehicle Owner Questionnaire database to obtain the information it cites in the recall request letter. Chrysler Group consulted other NHTSA databases, and in a preliminary search in the National Automotive Sampling System (NASS) database and other public sources, Chrysler Group found about 20 such incidents involving the peer vehicles. The following summaries of NASS are posted on NHTSA's website:[5]

[4] NHTSA's recall request letter states that these model names also represent other models built on the same platform. For example, the Chevrolet Blazer group included the GMC Jimmy and the Oldsmobile Bravada.
[5] *See* http://www.nhtsa.gov/NASS

> "NASS is composed of two systems - the Crashworthiness Data System (CDS) and the General Estimates System (GES). These are based on cases selected from a sample of police crash reports. CDS data focus on passenger vehicle crashes, and are used to investigate injury mechanisms to identify potential improvements in vehicle design. GES data focus on the bigger overall crash picture, and are used for problem size assessments and tracking trends."
>
> "NASS provides NHTSA an efficient and reusable resource with which to conduct data collection representing a broad spectrum of American society. Using a core set of crash data components, NASS has proven a reliable resource for a variety of agency sponsored electronic data collection efforts over the past 10 years."

As discussed in more detail below, NASS GES and CDS data demonstrate that the Subject Vehicles experience fires in rear impacts no more often than the peer vehicles, and indeed, perform better than many other vehicles in post-collision fires.

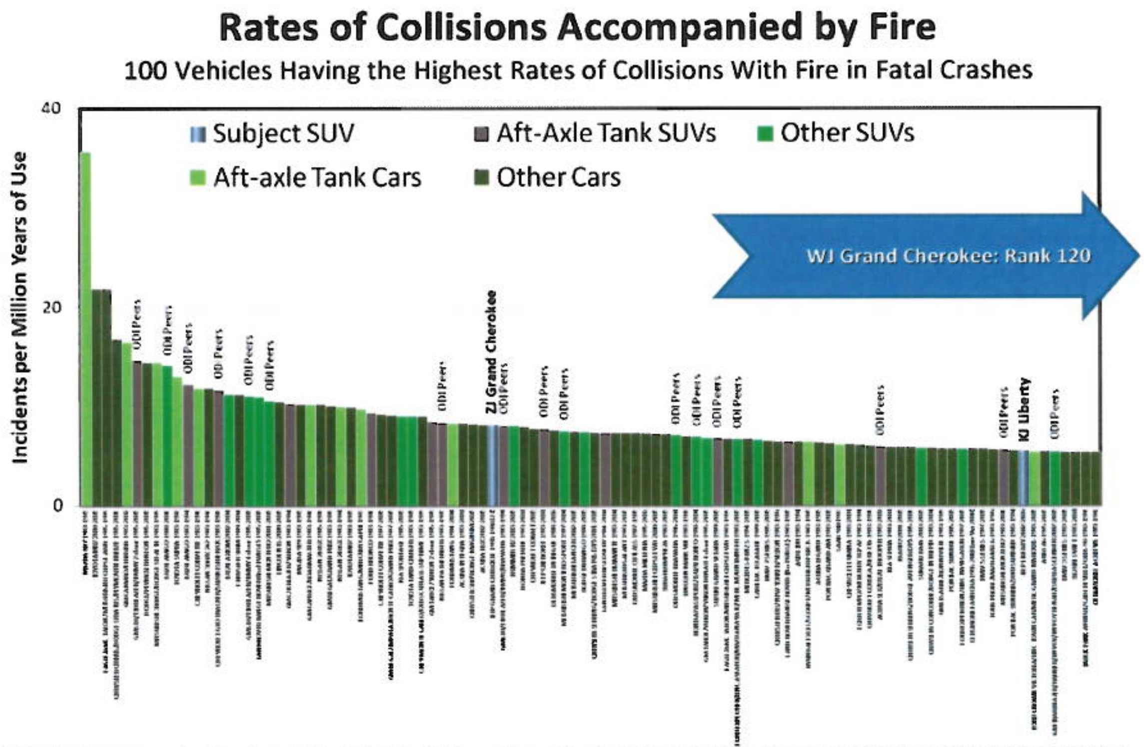
Additional FARS and NASS Data Analysis and Findings

As noted in its December 13, 2012 EA Information Request response, Chrysler Group studied the field data for fuel system integrity performance in a rear impact on a wide range of vehicle models and model years. From this study it was apparent that fuel system integrity performance can most appropriately be measured by comparing the Subject Vehicles to those vehicles with similar objective characteristics, which include: 1) model year range; 2) vehicle type; and 3) fuel tank location. This study has been updated to relocate the Cherokee from the Subject Vehicle group and into a peer vehicle group. (*See* Appendix B -- Collisions by Vehicle Groups and Tank Location) This study divides the data among four groups: SUVs with aft axle tanks, SUVs with midship tanks, passenger cars with aft axle tanks and passenger cars with midship tanks. The study shows that the individual vehicle models have rates that vary *within* and *between* the four groups, but the Subject Vehicles have rates that are neither the highest nor the lowest within their own group of "SUVs with Aft Axle Tanks" in the most severe (fatal) collisions. And, a new analysis shows that the rear-mounted tank in the Subject Vehicles actually performs more favorably in certain, more frequent crash modes than many of the vehicles chosen by ODI as peers.

When considering whether the performance of the Subject Vehicles presents an unreasonable risk to safety, it is appropriate to evaluate whether the Subject Vehicles are more likely to experience a fatal fire during any type of collision when compared with peer vehicles. Chrysler Group does not agree that the evaluation should be limited only to rear impacts, because post-collision fires occur more often in other crash modes. Chrysler Group has conducted studies of NHTSA's crash databases to evaluate this risk. These studies include an analysis of FARS and NASS General Estimates System (GES) and Crashworthiness Data System (CDS) data (through 2011) for the Grand Cherokee (ZJ and WJ) and the Liberty (KJ).

Chrysler Group's complete FARS and NASS data analysis studies are included in Appendix C – FARS and NASS Analyses Updates. Key excerpts of the studies and are discussed below.

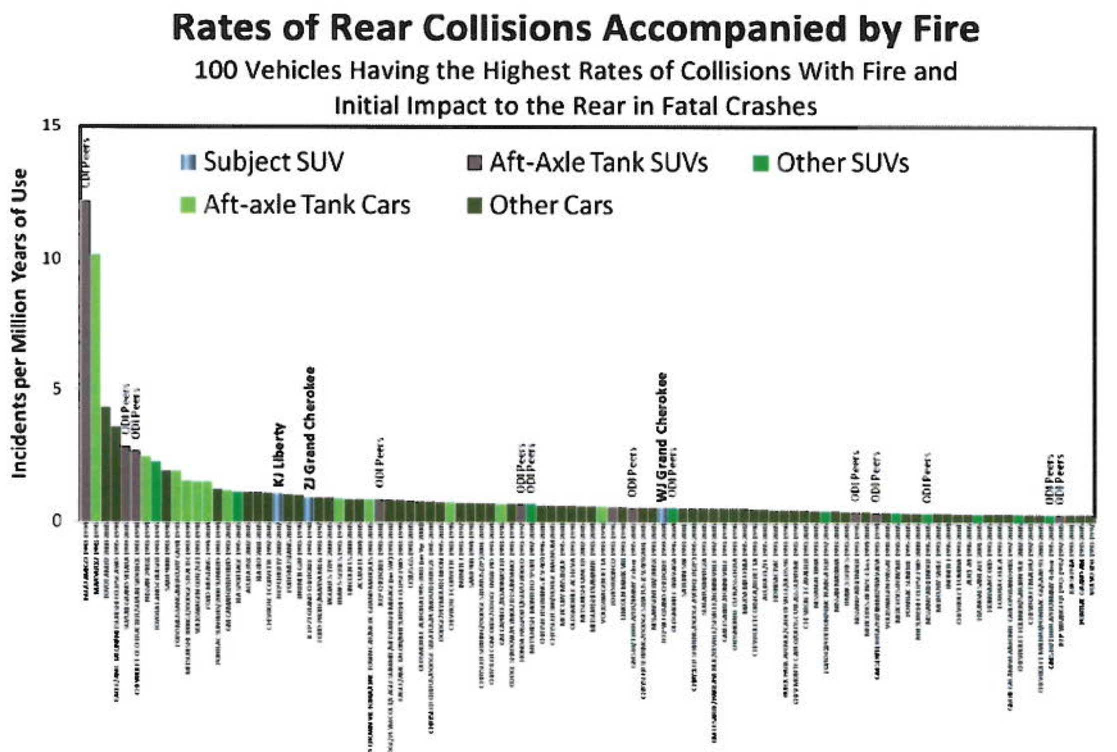
Figure 4, below, identifies the 100 vehicles having the highest rates of collisions with fire in fatal crashes, and the ranking of the Subject Vehicles noted if not in the top 100 list. This chart shows that the Subject Vehicles are in the midst of other vehicles in their performance in fire-related fatal crashes – and that the performance of the Subject Vehicles is not unusual.



Notes: Each bar represents a different model of vehicle. Subject SUVs are: ZJ Grand Cherokee 1993-1998, WJ Grand Cherokee 1999-2004 and KJ Liberty 2002-2007. Other vehicles are model years 1993-2005. FARS data 1992-2011. Registration data from RL Polk. Included in the chart are the 100 passenger cars and SUVs having the highest rates of crashes with fire, where a fatality occurred in the crash but not necessarily in the vehicle analyzed. ODI list indicates vehicles identified by the NHTSA as peer vehicles. 4

Figure 4 – FARS Fatal Collisions with Fire

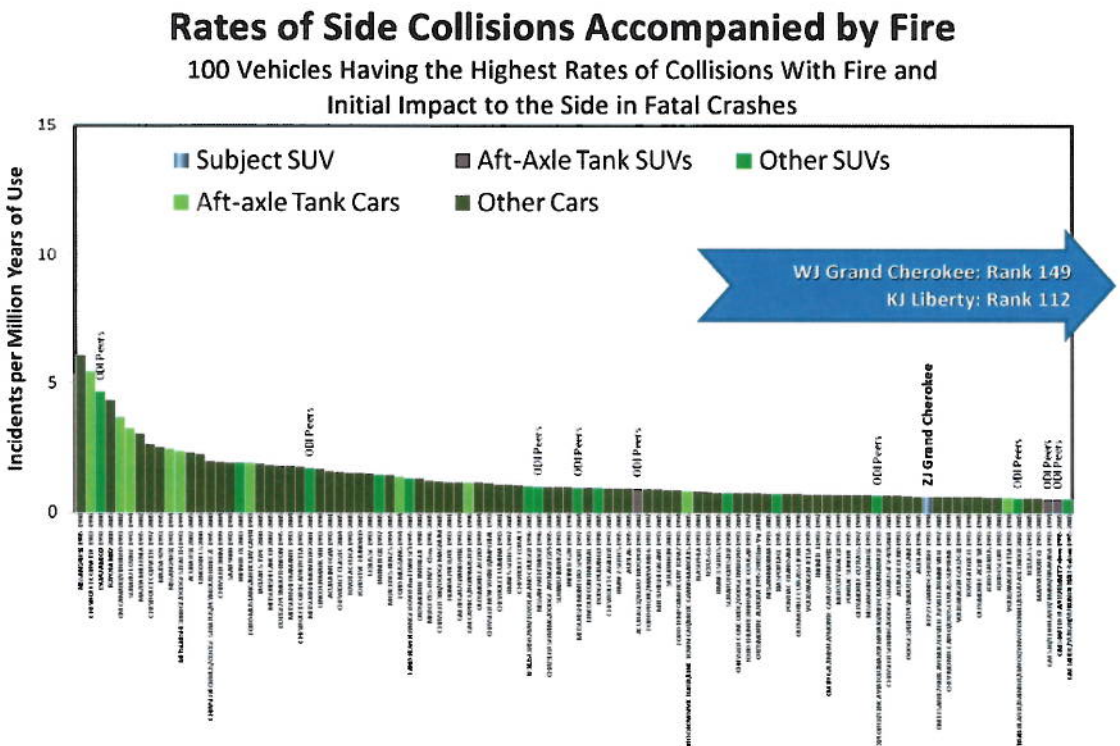
Figure 5, below, identifies the 100 vehicles having the highest crash rates of collisions with fire in fatal crashes with the initial impact to the rear. This chart shows that the Subject Vehicles are in the midst of other vehicles in their performance in fire-related fatal crashes – and that the performance of the Subject Vehicles is not unusual.



Notes: Each bar represents a different model of vehicle. Subject SUVs are: ZJ Grand Cherokee 1993-1998, WJ Grand Cherokee 1999-2004 and KJ Liberty 2002-2007. Other vehicles are model years 1993-2005. FARS data 1992-2011. Registration data from RL Polk. Included in the chart are the 100 passenger cars and SUVs having the highest rates of non-rollover crashes with fire and initial impact to the rear (clock points 5-7), where a fatality occurred in the crash but not necessarily in the vehicle analyzed. ODI list indicates vehicles identified by the NHTSA as peer vehicles.

Figure 5 – FARS Fatal With Fire Initial Impact Rear Collisions

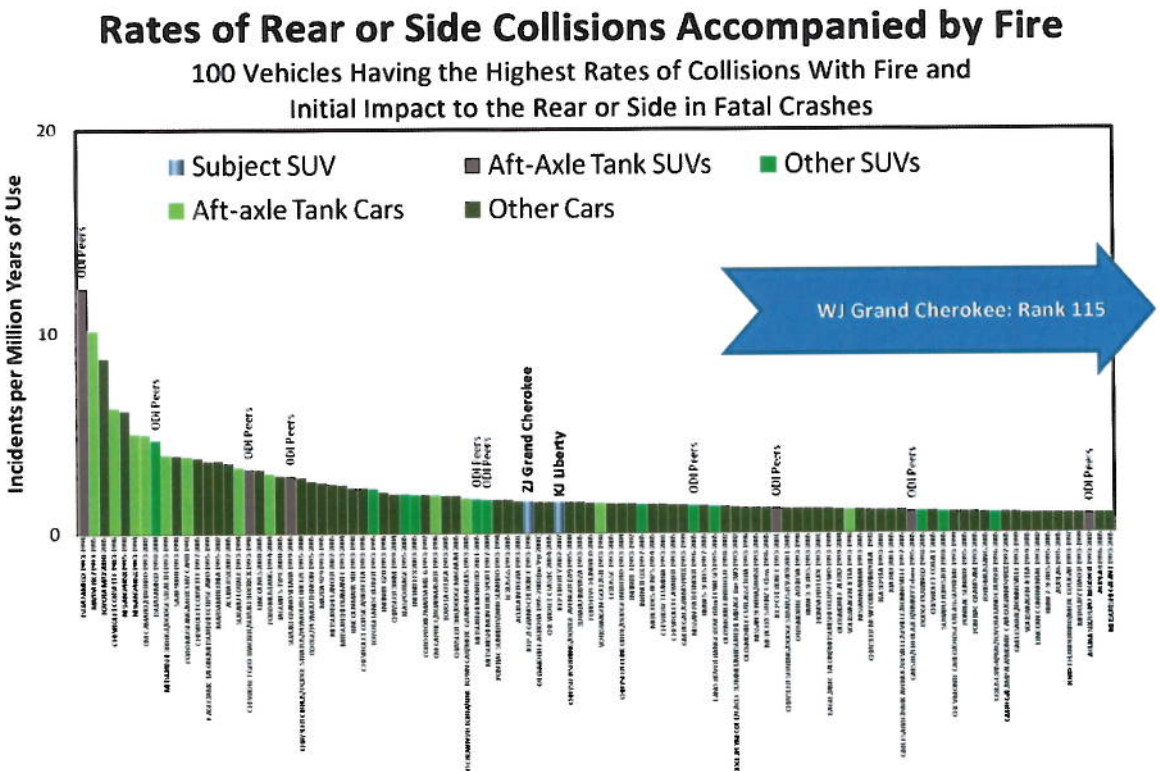
Figure 6, below, identifies the 100 vehicles having the highest crash rates of collisions with fire and an initial impact to the side in fatal crashes. This chart shows that the Subject Vehicles are in the midst of other vehicles in their performance in fire-related fatal crashes – and that the performance of the Subject Vehicles is not unusual.



Notes: Each bar represents a different model of vehicle. Subject SUVs are: ZJ Grand Cherokee 1993-1998, WJ Grand Cherokee 1999-2008 and KJ Liberty 2002-2007. Other vehicles are model years 1993-2005. FARS data 1992-2011. Registration data from RL Polk. Included in the chart are the 100 passenger cars and SUVs having the highest rates of non-rollover crashes with fire and initial impact to the side (clock points 2-4, 8-10), where a fatality occurred in the crash but not necessarily in the vehicle analyzed. ODI list indicates vehicles identified by the NHTSA as peer vehicles.

Figure 6 – FARS Fatal With Fire Initial Impact Side Collisions

Figure 7, below, identifies the 100 vehicles having the highest crash rates of collisions with fire and an initial impact to the rear or side in fatal crashes. This chart shows that the Subject Vehicles are in the midst of other vehicles in their performance in fire-related fatal crashes – and that the performance of the Subject Vehicles is not unusual.



Notes: Each bar represents a different model of vehicle. Subject SUVs are: ZJ Grand Cherokee 1993-1998, WJ Grand Cherokee 1999-2004 and KJ Liberty 2002-2007. Other vehicles are model years 1993-2005. FARS data 1992-2011. Registration data from RL Polk. Included in the chart are the 100 passenger cars and SUVs having the highest rates of non-rollover crashes with fire and initial impact to the rear or side (clock points 2-10), where a fatality occurred in the crash but not necessarily in the vehicle analyzed. ODI list indicates vehicles identified by the NHTSA as peer vehicles.

Figure 7 – FARS Fatal With Fire Initial Impact Rear or Side

Figure 8, below, identifies the 100 vehicles having the highest fatal crash rates, and the ranking of the Subject Vehicles is noted – because they are not in the top 100 list. This chart shows that the Subject Vehicles are very good at protecting their occupants in crashes in general.

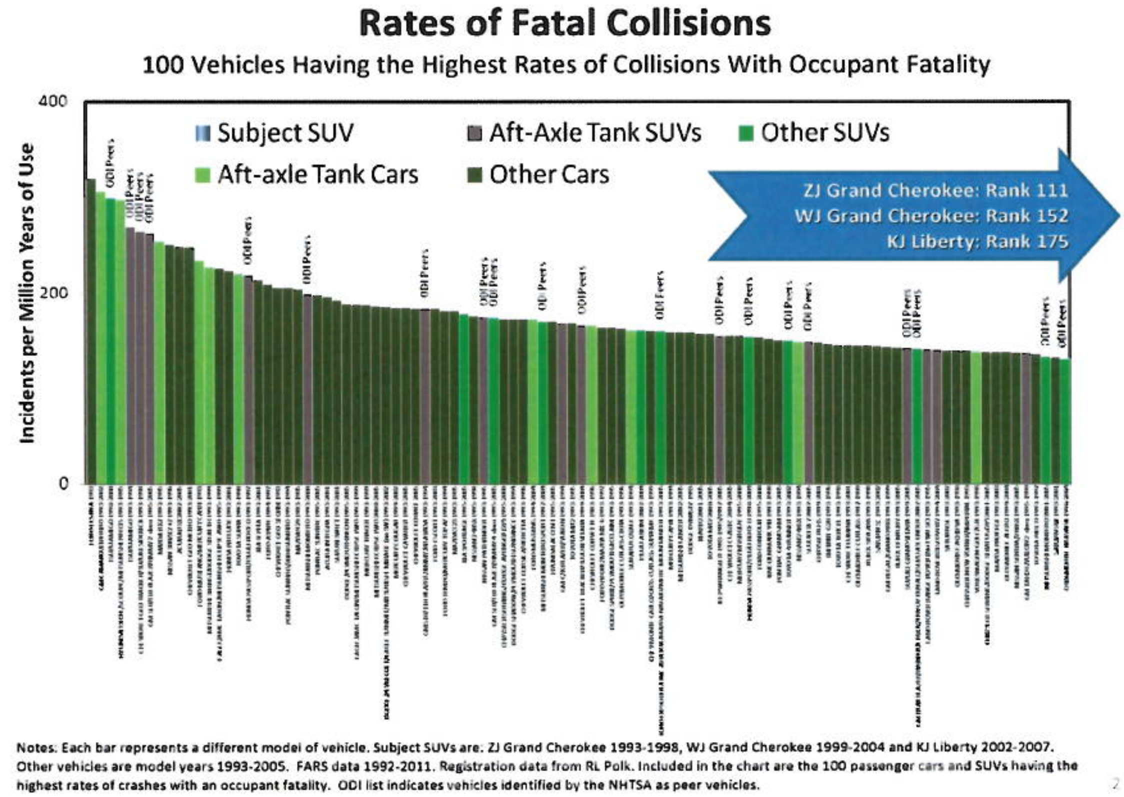
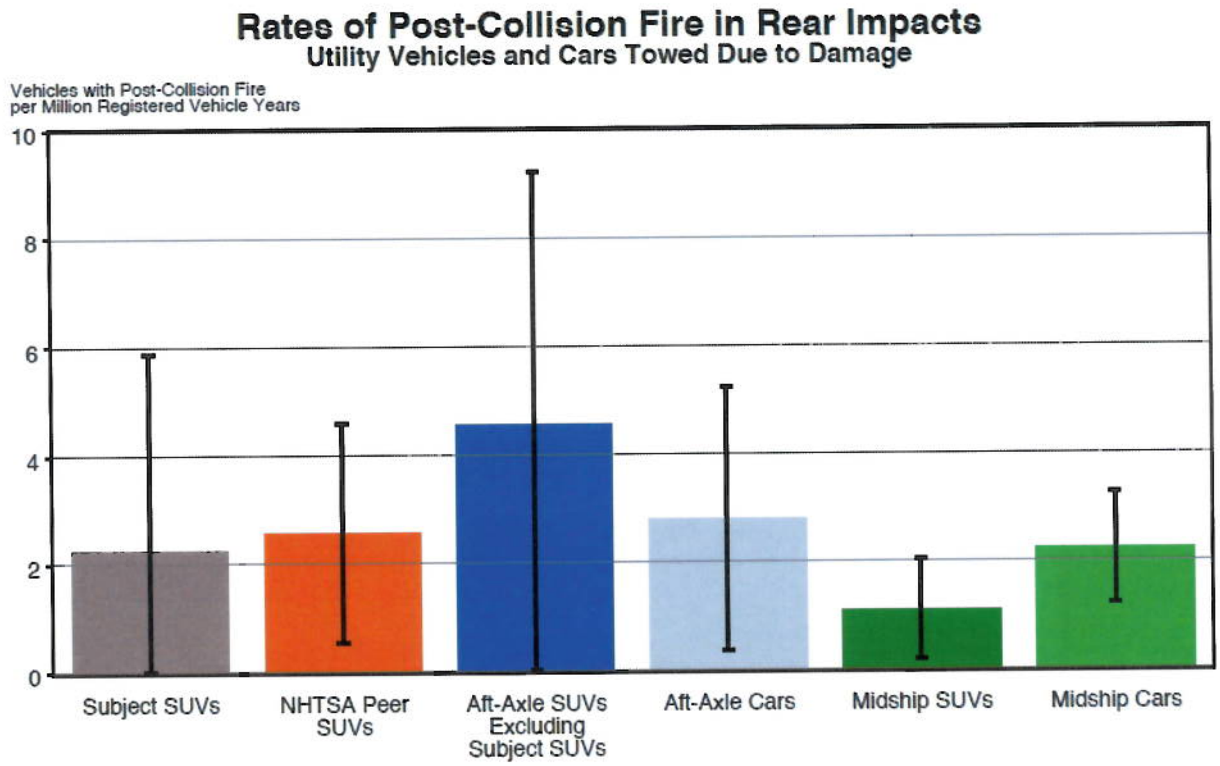


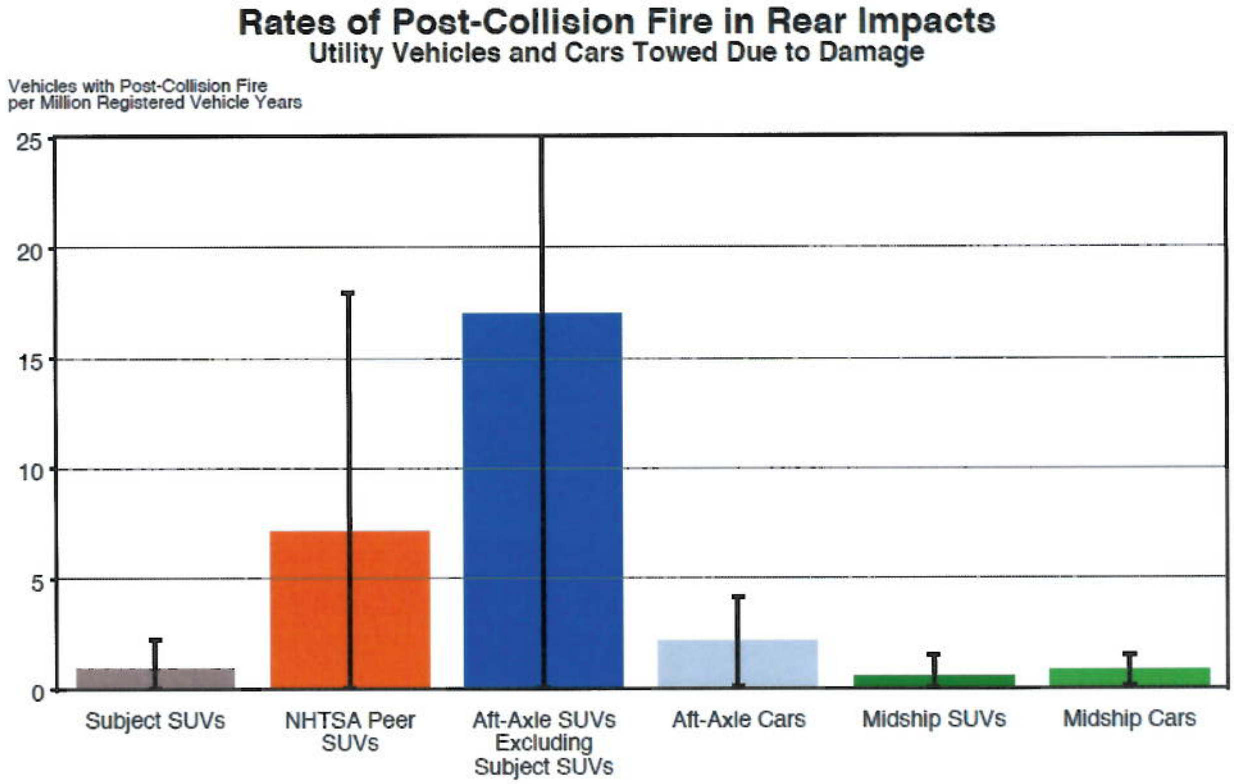
Figure 8 – FARS Fatal Collisions (Overview)

Finally, ***Figure 9*** and ***Figure 10*** are NASS GES and CDS data for the rates of post-collision fire rear impact crashes, including non-fatal crashes. These charts show that the Subject Vehicles are statistically indistinguishable from NHTSA peers and all other vehicle groupings, including vehicles with midship tanks.



Sources: NASS GES 1993-2011 and Polk NVPP 1993-2011.
Subject SUVs are the model-year 1993-2004 Jeep Grand Cherokee and 2002-2007 Jeep Liberty.
Other groups are model-year 1993-2007 cars and SUVs labeled with tank location "Mid Ship" or "Aft Axle" in "Fuel Tank Location Information NHTSA 12-10-12."
NHTSA peers are defined in Table 1.
Vehicle models identified by VIN.

Figure 9 – NASS GES Post Collision Fire Rear Impact Rate

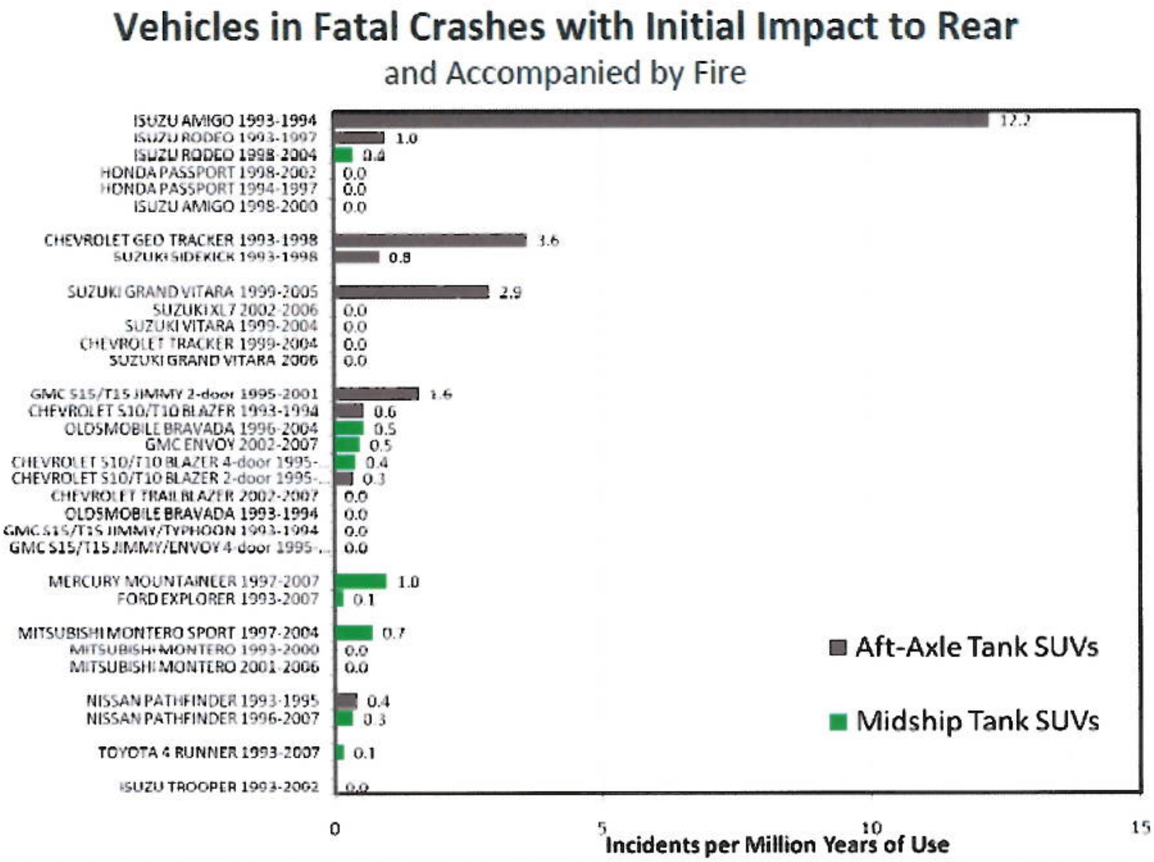


Sources: NASS CDS 1993-2011 and Polk NVPP 1993-2011.
Subject SUVs are the model-year 1993-2004 Jeep Grand Cherokee and 2002-2007 Jeep Liberty.
Other groups are model-year 1993-2007 cars and SUVs labeled with tank location "Mid Ship" or "Aft Axle" in "Fuel Tank Location Information NHTSA 12-10-12."
NHTSA peers are defined in Table 1.
Vehicle models identified by VIN. "Rear Impact" is defined as the Highest Deformation Location (variable: GAD1) equal to "Back."

Figure 10 – NASS CDS Post Collision Fire Rear Impact Rate

The data on the charts above powerfully demonstrate that the Subject Vehicles protect their occupants well in all types of collisions, including those involving fire. Moreover, these data illustrate that the Subject Vehicles perform comparably to many other vehicle models.

But, it must be noted that it is not possible to draw definitive, statistically significant conclusions from the analysis of such a small number of rear impact crashes among the Subject Vehicle and peer vehicle populations. ***Figure 11 – Select Sister Vehicle RVY Rates*** is an excerpt from Appendix E – FARS RVY Rates Within Sister SUVs of a sample set of sister vehicles and the wide variation in RVY rates for vehicles that – except for trim and a different name plate – are identical.



Notes: FARS 1992-2011 using data as coded. Registration data from R.L. Polk and Co. Includes crashes where the SUV experienced a rear collision (clock points 5-7) as the initial impact, excluding vehicles that rolled over. Fatality in the crash, not necessarily in the SUV. Vehicles identified as peer vehicles by NHTSA. Numbers adjacent bars are rates of incidents per million years of use.

Figure 11 – Select Sister Vehicle RVY Rates

The problem with ODI's performance defect theory is displayed by these data showing the performance of the peer vehicles ***within*** a peer vehicle platform. ODI noted in its recall request letter that it combined all models built on a platform into a single rate calculation. It offered the example of the Chevrolet Blazer, the GMC Jimmy and the Oldsmobile Bravada, which were all combined for ODI's calculations. But the performance of these models differs significantly. For example, the GMC Jimmy 2-door has a fatal incident rate of 1.58/MRVY whereas the S10 Blazer 2-door has a fatal incident rate of 0.55/MRVY. If NHTSA's performance defect theory was applied to these peer vehicles, the GMC Jimmy 2-door would be "defective" and the S10 Blazer 2-door would not be defective – yet they are essentially the same vehicle.

III. The Aft-Axle Tank Location in the Grand Cherokee and Liberty Vehicles Is A Reasonable Design

Chrysler Group disagrees that the Subject Vehicles contain a design defect, or that the placement of the fuel tanks aft of the rear axle is inherently defective.

ODI's allegation of a design defect is "the placement of the fuel tanks in the position behind the axle and how they were positioned, including their height above the roadway." But as shown below, that location is shared by numerous vehicle models of the same vintage, including some of the peer vehicles selected by ODI. And, as discussed below, the fuel tank height above the roadway of the Subject Vehicles is indistinguishable from the height of other comparable vehicles, including some of the peer vehicles selected by ODI. Thus, under the *Check Valve* decision, the Subject Vehicles cannot "be set apart as exceptional to the state-of-the-art technology which existed in the automotive industry during the period examined." The aft axle location and mounting height cannot, by themselves, establish that the Subject Vehicles contain a design defect.

Millions of vehicles have the same or very similar fuel tank design attributes as the Subject Vehicles. The vehicle that ODI investigated, but did not include in the recall request letter, the Cherokee, has a fuel system that is similar to the Grand Cherokee (ZJ) in actual design and "the placement of the fuel tanks … and how they were positioned."

The Subject Vehicles were light-duty vehicles manufactured with the fuel tank aft of the rear axle. When the first Grand Cherokee (ZJ) was produced in Model Year 1993, the number of passenger cars and SUVs with aft-axle fuel tanks being driven in America was in excess of 25 million. By the time the first Liberty was produced in Model Year 2002, the number of passenger cars and SUVs with aft-axle fuel tanks being driven in America had increased to nearly 27 million. And not one of these 27 million vehicles was ever recalled, either voluntarily by the manufacturer or under compulsion by NHTSA, because the fuel tank was located behind the rear axle.

By 2003, Grand Cherokee had been on the road for over ten years and Liberty for over two years when NHTSA again acknowledged that an aft-axle fuel tank could be a reasonable design choice. During the time when the third model year Liberty's were manufactured, NHTSA rejected comments filed in the FMVSS 301 rulemaking seeking to require manufacturers to place fuel tanks ahead of the rear axle:

> NHTSA did not propose to require manufacturers to place each vehicle's fuel tank forward of the rear axle, as suggested by Advocates for Highway and Auto Safety (Advocates) in its comment on the ANPRM, because the agency believed such a requirement would be unnecessary and too design restrictive. The agency noted that the fuel tank of the 1996 Ford Mustang, which passed the proposed upgraded test procedure, is located behind the rear axle. The agency stated that this test demonstrated that structural and component designs are more critical factors than fuel tank location in maintaining fuel system integrity. (68 Fed. Reg. 67068, 67070-71, December 1, 2003).

In its recall request letter, ODI stated that the Grand Cherokee had a tank that was in "close proximity to the rear bumper" and that the Liberty's fuel tank is "less than a foot forward of the aft face of the rear bumper." As noted below, Chrysler Group conducted a study containing measurement data on aft-axle tanks and reported the results to ODI over six months ago. Chrysler Group's measurement data on aft-axle tanks revealed that only three of the 25 peer SUVs Chrysler Group studied had a rear-mounted tank to aft-bumper measurement of more than 12 inches. In other words, 22 of 25 peer SUVs Chrysler Group measured had a tank "less than a foot forward of the aft face of the rear bumper." (*See* Appendix F – Peer Vehicle Measurement Study.)

In response to the EA IR and this recall request letter, Chrysler Group has studied and reported to ODI certain measurements relative to the physical placement of the rear-mounted tanks in the Subject Vehicles and other SUVs, including many of the peer SUVs selected by ODI in its investigation.[6] These results clearly demonstrate that the fuel tank positioning in the Subject Vehicles – relative to the axle, bumper and tank-to-ground height – is comparable to other SUVs with aft axle fuel tanks. (*See* Appendix F – Peer Vehicle Measurement Study.)

Moreover, ODI stated that the tank-to-ground height in the Subject Vehicles is higher than passenger vehicles, making it "more vulnerable in rear impact than passenger cars." In Appendix F – Peer Vehicle Measurement Study, Chrysler Group has recorded the results of a recent study of the measurements of the tank-to-ground clearance of the Subject Vehicles and the ODI peer SUVs.

As the study shows, the height of the fuel tank above the ground in the Grand Cherokee and the Liberty is not distinguishable from the height of the fuel tank above the ground in the ODI peer vehicle set:

- The average height of the fuel tank above the ground of all peer SUVs measured by Chrysler Group is approximately 34.7 cm.
- The average measured height of the fuel tank above the ground of the Grand Cherokee ZJ is 33.5 cm, the Grand Cherokee WJ is 26.5 and the Liberty is 31.9 cm – virtually indistinguishable from the other vehicles.

By its statement that a higher tank-to-ground clearance makes any SUV "more vulnerable in rear impact than passenger cars," ODI is implying that passenger car tank-to-ground clearances are the design benchmark for ensuring fuel tank protection in a rear impact. This assertion is not supported by the data.

ODI also stated in the recall request letter that "the driver of a car following a Jeep Liberty can readily see the gas tank sticking down," implying that this characteristic was somehow unique to the Liberty. This statement is inconsistent with the data that Chrysler Group provided. (*See* Enclosure F – Peer Vehicle Measurement Study.) In that study, Chrysler Group

[6] In response to Question No. 8 of the December 13, 2012 EA IR response, Chrysler Group studied the measurements of the tank placement in the Subject Vehicles, the results of which were contained in Enclosure 8D - Subject Vehicle Component Proximity Measurements. In December 2012, Chrysler Group also conducted a field survey of certain SUVs equipped with fuel tanks located aft of the rear axle and collected the same measurements sought in Question No. 8 for the Subject Vehicles. The results of this survey were contained in Enclosure 6I – Peer Vehicle Measurement Study, and are updated and produced again here as Appendix F – Peer Vehicle Measurement Study. Chrysler Group combined the measurement results of the Subject Vehicles and peers vehicles in a data spreadsheet and plotted the measurements in a scatter chart, which has since been updated with additional peer SUV measurements. (*See* Appendix F – Peer Vehicle Measurement Study.)

provided measurements to ODI showing that all 25 peer SUVs with rear-mounted tanks it measured had fuel tanks that hung below the rear bumper. So there was no confusion about what the measurements represented, Chrysler Group also provided rear view photographs of the peer SUVs showing what "each driver of a car following" the peer SUV could see. (*See* EA 12-13-12 Response Enclosure 6I – Peer Vehicle Measurement Study.)

If ODI believes the Subject Vehicles have a design defect due to "the [rear] placement of the fuel tanks … and how they are positioned," then millions of other manufacturers' vehicles on America's roads today have the same defect. Such a conclusion would be inconsistent with NHTSA's own administrative precedents, the case law construing the meaning of "safety-related defect," and the conclusions reached by NHTSA in its FMVSS 301 rulemaking.

In the recall request letter, ODI notes that "throughout the 1980's, an increasing number of new model vehicles appeared with fuel tanks located above or in front of the rear axle." ODI identifies in the recall request letter three body-on-frame vehicles that were launched in the 1980s and 1990s -- the Durango, Dakota and Ram trucks – all of which were equipped with a midship tank. The letter seems to assume that these vehicles are no different than the Subject Vehicles, and implies that the Subject Vehicles could have been equipped with midship tanks in the 1980s and 1990s.

The Durango, Dakota and Ram vehicles are body-on-frame trucks. The Durango was a truck/body-on-frame derivative of the Dakota trucks. They sit higher above the ground than the Subject Vehicles and their underbody architecture allowed for the fuel tank to be placed midship. Because the cargo carrying areas must be free of spare tires, the spare tires were stowed beneath the truck beds and occupy the space were an aft tank might otherwise reside.

The Baker Memo. The recall request letter referred to the Baker memo in connection with its comment that "manufacturers began to adopt designs in which fuel tanks were located in less vulnerable locations than behind the rear axle." Chrysler Group denies that locating a vehicle tank behind the rear axle renders the tank "vulnerable," and the Baker memo does not support any such conclusion that the location is "vulnerable."

The recall request letter quotes one sentence from the two-page Baker memo to the effect that locating a fuel tank beneath the rear seat protects the tank from being damaged in a collision. The fact that the Baker memo stated that this location can protect the tank says nothing about an aft-axle tank location. In fact, the Baker memo does not state that an aft-axle fuel tank location is "vulnerable," nor does it impugn that location in any way. Rather, Baker stated that if the fuel tank is located behind the rear axle, it is important that the tank be protected. This, of course, is true regardless of fuel tank location. As NHTSA itself stated in connection with the Notice of Proposed Rulemaking that resulted in the upgraded FMVSS 301, "the structural and component design is a more critical factor than fuel tank location in maintaining fuel system integrity." [65 FR 219, November 13, 2000, p. 67701] With respect to the Subject Vehicles, the structure of the vehicles, including longitudinal rails and cross-members, provided protection for the fuel system, including the tank.

The Robertson Survey. The recall request letter also referred to a survey conducted by Leon Robertson and others of vehicles in the market in the 2002-2003 Model Years. The authors of the survey concluded that four of the 74 surveyed vehicles had aft axle tanks in 2002-2003 MY: Ford Mustang, Ford Crown Victoria/Mercury Grand Marquis, Jeep Grand Cherokee and Jeep Liberty.

Chrysler Group presumes that ODI cited the Robertson survey in support of its statement that Chrysler "contravened industry trends" in deciding to place the fuel tanks in the Subject Vehicles aft of the rear axle – but, in fact, the Robertson survey supports Chrysler Group's position that the performance of the Subject Vehicles cannot be distinguished in a meaningful way from vehicles of similar construction. The Ford Mustang has a fatal incident rate in rear collisions involving fire of 1.72/MRVY -- more than three times higher than the Grand Cherokee (WJ), and more than twice the rate of the Liberty. The Ford Crown Victoria and Mercury Grand Marquis (and Lincoln Town Car) were investigated by ODI in 2001-2002 to evaluate an alleged defect described as follows: "the fuel tank can rupture following a high-energy rear collision resulting in severe fires." The investigation, SQ01-014, was closed without ODI determining a safety defect or requesting a safety recall. In closing this investigation, ODI observed: "The crash energy levels associated with post rear impact fuel tank failures in the [investigated] vehicles are significantly greater than the levels in FMVSS 301 tests."

The same observation applies to the Subject Vehicles in this case.

The Ford Pinto. The recall request letter states, "the vulnerability of tanks located behind solid rear axles in rear impacts became well known following a series of fiery crashes involving the Ford Pinto." This statement is misleading since most passenger vehicles produced during the 1970s had fuel tanks in this location. Unlike the Subject Vehicles, the MY 1971-1976 Ford Pintos were vulnerable in rear impacts because of the design of the fuel system, not because of the fuel tank location. Manufacturers continued to locate fuel tanks behind the rear axle for decades after the recall of the Ford Pintos, which occurred in June 1978.

NHTSA initiated a formal defect investigation of the MY 1971-1976 Ford Pinto on September 13, 1977 in response to allegations that the fuel tank location made it susceptible to damage in rear impact crashes at low to moderate closing speeds. In May 1978, ODI issued an Investigative Report, which is attached as Exhibit C to the Center for Auto Safety Petition initiating DP09-005. The report states that, following the initial introduction of the Pinto, Ford conducted 55 rear barrier impact crash tests on both production Ford Pintos and on Ford Pintos with experimental components and/or modified structures.

In discussing these crash tests, ODI noted a "history of consistent results," including the fact that at speeds as low as 21.5 miles per hour with a fixed barrier, "the fuel tank was punctured by contact with the differential housing and/or its bolts, or with some other underbody structure."

Thus, the issue with the Pintos was with specific hardware that was implicated in puncturing the tanks at low to moderate speeds. The issue was not merely the location of the tank. Indeed, the Ford Pinto continued to be produced with an aft-axle fuel tank until it went out of production after the 1980 model year, with no suggestion by ODI that the later, non-recalled vehicles contained a safety defect.

IV. The Grand Cherokee and Liberty Vehicles Comply With the Federal Safety Standard for Post-Crash Fuel Tank Integrity

ODI asserts that the alleged defects present an unreasonable risk to motor vehicle safety because there have been fire-related fatalities in the Subject Vehicles, as well as non-fatal fires and non-fire fuel leaks that could have resulted in fire. But this statement by itself does not establish an unreasonable risk to safety.

It is undisputed that fire-related fatalities, non-fatal fires and non-fire fuel leaks occurred in rear collisions in virtually all the peer vehicles selected by ODI, as well as in other vehicle models that Chrysler Group studied, including the Crown Victoria that ODI previously investigated without seeking a recall. And, when all crash modes are examined, post-collision fire-related fatalities occurred in all of the peer vehicles. It is simply insufficient to establish an unreasonable risk to safety merely to assert that post-collision fire fatalities occurred.

In this case, it is particularly clear that the Subject Vehicles do not present an unreasonable risk to safety, because they comply with the federal safety standard that was established precisely to address the risk of post-collision fuel fed fires – FMVSS 301.

In its 2003 rulemaking amending FMVSS 301, NHTSA observed the following about the magnitude of the post-collision fire issue:

> According to an analysis of data in the agency's Fatality Analysis Reporting System (FARS) in 2001, 3.5% percent (1,449 fatalities) of light vehicle occupant fatalities occurred in crashes involving fire. 68 Fed. Reg. 67068, 67069 (December 1, 2003).

NHTSA also observed:

> An analysis of 1993–2001 National Automotive Sampling System (NASS) data indicated that each year an average of about 15,820 occupants were exposed to a post-crash fire in passenger cars and light vehicles (vans, pickup trucks, and multipurpose passenger vehicles) with a GVWR of 4,536 kg (10,000 pounds) or less that were towed away after the fire. Of those occupants, about 736 (6 percent) received moderate or severe burns (AIS 2 and greater). 68 Fed. Reg. 67068, 67069 (December 1, 2003).

Thus, according to NHTSA's own data, on average, more than 40 individuals each day are exposed to a post-crash fire, and approximately four of these individuals will not survive. While each of these cases is tragic, they would not have all been prevented by different struck vehicle designs. NHTSA acknowledged this fact itself in the 2003 rulemaking when it noted that the revised rear impact provisions in the rulemaking were addressed at reducing the risk of post-collision fire in multivehicle crashes in which a vehicle is struck in the rear by another passenger vehicle. NHTSA called this the "target population." 2003 Final Rule, 68 Fed. Reg. at 67079. NHTSA did not even try to claim benefits for vehicles being struck by trucks and large buses. NHTSA estimated that there are an estimated 58 fatalities annually in the "target population," and estimated that the revised standard would prevent between eight and 21 of them. Thus, NHTSA has recognized and accepted that some number – between 37 and 50 -- of post-collision fatal fires will still occur each year in rear collisions involving two or more light vehicles, even under the amended, more stringent standard, and more will occur when the rear collisions involve a larger striking vehicle.

In establishing the upgraded FMVSS 301 requirements in 2003, NHTSA was required to determine that the new requirements "met the need for motor vehicle safety," as it does in each of its safety standard rulemakings. The Vehicle Safety Act defines "motor vehicle safety" as the performance of a motor vehicle in a ways that protects the public against unreasonable risks of accident, death and injury. Although ODI asserts that FMVSS 301 is merely a "minimum" standard that is irrelevant to a safety defect analysis, that comment belies the agency's legal obligation to establish its safety standards at the level that it decides protects against unreasonable risk. The *Wheels* court said that the assessment of "unreasonable risk" is the same, whether the agency is setting safety standards or deciding what measures may be required to address field conditions in the context of a defect investigation: "In view of the Senate Report's identification of the motor vehicle safety definition as critical to the scope of the entire bill, and the linkage of the terms "defect" and "motor vehicle safety" in the notification provision, we find the 'commonsense' approach of 'motor vehicle safety' is relevant to the intended meaning of 'defect.'" *Wheels*, 518 F.2d at 435.

The 2003 rulemaking concluded that the industry would need to make modifications to <u>46% of the fleet</u> in order to comply with the new requirements. 68 Fed. Reg. at 67079. In recognition of this task, NHTSA granted three years of lead time, followed by a three year phase-in of the requirements, ending in September 2008. Yet, in the recall request letter, ODI was critical of the production of the Liberty with an aft-axle tank until 2007 – 15 months before the new FMVSS 301 requirements were fully in effect. ODI's position is inconsistent with NHTSA's conclusions in the 2003 rulemaking that many vehicle models – not just the Liberty – would need to be redesigned to meet the new FMVSS 301 requirements, and that it was necessary to give the industry until 2008 to accomplish all the redesigns that would be needed.

ODI's position in the recall request letter is also inconsistent with the agency's own administrative precedents in construing the effect of an on-point safety standard on the assessment of whether performance at levels exceeding the standard's requirements could by itself be evidence of a safety defect. NHTSA has previously said it does not.

In 1996, the agency denied a defect investigation petition filed by Consumers Union (CU), seeking a defect investigation of a certain Century child restraint model that allegedly fractured in CU crash tests evaluating performance at levels slightly more stringent than a new version of FMVSS 213 (the safety standard applicable to child restraints) that was scheduled to take effect later in 1996. In denying this petition, NHTSA observed:

> "When a safety standard establishes minimum performance requirements for motor vehicles or items of motor vehicle equipment through the use of specific values for particular parameters, as is the case here, NHTSA does not consider performance failures at higher levels to, in themselves, demonstrate that a safety related defect exists. Moreover, NHTSA has consistently taken the position that the fact that a vehicle or item of equipment would not comply with a newly-issued, more stringent safety standard,

which was not in effect on the date the vehicle or equipment was manufactured, does not constitute evidence that the vehicle or equipment is defective." *Century Products* Decision, 61 Fed. Reg. 10059, 10060 (March 12, 1996).

This is a correct and fair statement of the law, and confirms Chrysler Group's view that the establishment of a safety standard marks the bright line between "reasonable" and "unreasonable" risk for *both* safety standard rulemaking *and* defect analysis purposes, consistent with the *Wheels* decision.

In light of the *Century Products* precedent and the *Check Valve* case, NHTSA is not free to ignore these cases by announcing a brand new enforcement policy that disregards both the existence of an on-point safety standard addressing the same aspect of performance as that is now deemed "defective," and the fact that many other light vehicles (SUVs and passenger cars) share the same design characteristics as the Subject Vehicles.

The Supreme Court has recently reminded regulatory agencies that "[a] fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *Federal Communications Commission v. Fox Television,* 132 S.Ct. 2307, 2317 (2012). The Court continued: "Even when speech is not at issue, the void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way." *FCC*, 132 S.Ct. at 2317.

In the context of this case, these principles mean that NHTSA may not now hold Chrysler Group's vehicles to an unpublished, unarticulated standard for fuel tank performance in rear impacts that is substantially more stringent than FMVSS 301 (and thereby violating the *Century Products* doctrine) and that is likely also more stringent than competitor products can satisfy (and thereby violating the *Check Valve* doctrine). Even after receipt and careful analysis of ODI's recall request letter, Chrysler Group still cannot articulate precisely what ODI's expectations for post-collision fuel tank performance are, and how its vehicles allegedly fail those expectations while the peer vehicles meet them. As the D.C. Circuit noted in another case, "Chrysler could have satisfied NHTSA with extraordinary intuition or the aid of a psychic, but these possibilities are more than the law requires." *U.S. v. Chrysler*, 158 F.3d 1350, 1357 (D.C. Cir. 1998).

Thus, ODI's observation that "[t]he existence of a minimum standard does not require NHTSA to ignore deadly problems" is beside the point. Of course, NHTSA does not have to ignore reports of motor vehicle crash fatalities in the field. That is one of the purposes of the Early Warning Reporting system that, for the last decade, has required manufacturers to provide ODI with information about all fatal crashes reported to the manufacturer, so that ODI can review the information and decide whether to follow up with a more detailed investigation. But most fatal crashes are not attributable to a safety defect in the vehicle. In deciding whether a given set of fatal crashes is associated with a defect, or caused by other reasons, NHTSA is bound by its statute, the judicial construction of the statute, and its own administrative precedents.

V. Grand Cherokee and Liberty Vehicles Do Not Have A Safety Related Defect

All of these considerations combine to demonstrate the following:

- It is undisputed that most of the crashes referenced in the recall request letter involving the Subject Vehicles were at energy levels far in excess of any reasonable expectations for fuel tank performance without fuel leakage.
- It is undisputed that fire-related fatalities and injuries have occurred in all of the peer vehicles, often at rates exceeding those exhibited by the Subject Vehicles. Under *X-Cars*, NHTSA cannot establish that the Subject Vehicles contain a defect that these other vehicles do not possess.
- And, since the Subject Vehicles' fuel tank location and mounting height is common to many other vehicle models, the *Check Valve* decision says that NHTSA cannot single out the Subject Vehicles as having a design defect because these design features are not unusual.
- It is undisputed that the Subject Vehicles complied with the applicable FMVSS 301 requirements. Under *Century Products*, the performance of the vehicles in rear crashes at energy levels higher than the standard cannot by itself establish a defect.

For the reasons stated in this letter, Chrysler Group has determined that the Subject Vehicles do not contain a defect, nor present an unreasonable risk to safety, as those terms have been construed under the Vehicle Safety Act by both NHTSA and the courts. Chrysler Group respectfully declines ODI's request for a safety recall.

Sincerely,

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