

Statement of Joan Claybrook
On Firestone Tire Defect and Ford Explorer Rollovers
United States Senate Committee on Commerce, Science and Transportation
Washington, D.C.
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Mr. Chairman and Members of the Committee:

I am pleased to accept your invitation to testify today on the Firestone tire defect that has killed at least 88 and injured 250 people, most of them in Ford Explorers. I am President of Public Citizen, a national public interest organization founded by Ralph Nader in 1971 with 150,000 members nationwide. I served as Administrator of the National Highway Traffic Safety Administration in the U.S. Department of Transportation from 1977 to 1981. This agency is responsible for administering the recall of the Firestone tires. The Firestone 500 recall occurred in 1978 when I was Administrator.

Much has been written and broadcast in the past month about the lethal combination of Ford Explorers and Firestone tires. This is a design defect exacerbated by the fact that Ford required a low inflation pressure of 26 psi to mitigate rollover problems with these vehicles. Firestone ATX, ATX II and Wilderness tires on Ford Explorers are overheating with highway use, causing the tread to separate and the SUVs to experience catastrophic crashes, not infrequently rolling over and causing fatal injuries. At least 135 people world-wide have died. This tragedy is teaching the public as well as policy makers a number of lessons. I would like to comment on five issues and make recommendations for more effective enforcement of the nation's motor vehicle safety defect laws.

1. Ford and Firestone covered up safety problems with the tire/SUV combination for a decade. Coverups will continue without corrective action by NHTSA.

The Ford Explorer was first offered for sale in March 1990. Numerous Ford internal documents show the company engineers recommended changes to the vehicle design after it rolled over in company tests prior to introduction, but other than a few minor changes, the suspension and track width were not changed because this would have delayed the introduction date by as much as ten months. Instead, Ford, which sets the specifications for the manufacture of its tires, decided to remove air from the tires, lowering the recommended psi to 26. It appears Ford never fully tested the tires at this level. The Firestone-recommended psi molded into the tire for maximum load is 35 psi.

Within a year of introduction, lawsuits against Ford and Firestone were filed for tire failures that resulted in crashes and rollovers. At least five cases were filed by 1993, and many others followed in the early 1990s. Almost all were settled, and settled with gag orders prohibiting the attorneys and the families from disclosing information about the cases or their documentation to the public or DOT. When lawsuits are filed against a company about a safety defect, the company organizes an internal

investigation to assemble information and analysis about the allegations. Top company officials are kept informed about all lawsuits against the company, particularly when they accumulate concerning one problem. There is no question the companies knew they had a problem. But they kept it secret.

During the early 1990s, Ford was concerned with improving the rolling resistance of the tires to be used on the 1995 model Explorer, apparently because of the reduced fuel economy with the low 26 psi inflation level. Changes were made to the 1995 model's suspension system, but these did not lower the center of gravity, an essential element in rollover susceptibility.

In 1996, several state agencies in Arizona began having major problems with tread separations on Firestone tires on Explorers. According to news reports, various agencies demanded new tires, and Firestone sent six engineers to Arizona to conduct an investigation of the complaints, tested the tires and asserted that the tires had been abused or under-inflated.

By the end of 1996, at least 15 lawsuits had been filed.

The Ford Explorer and its sister vehicles with Firestone tires were sold across the globe. In 1998, Ford and Firestone exchanged correspondence and had discussions about tire failures in Middle Eastern, Asian and South American countries. Tires were tested and analyzed. Dealers complained bitterly to Ford and Firestone from 1997 to 2000 about deaths and injuries in Ford Explorers, the adverse effect these were having on sales and delays in getting any relief.

In January 1998, Glenn Drake, Ford's regional marketing manager in the United Arab Emirates e-mails other Ford officials: "If this was a single case, I would accept Firestone's response as they are the experts in the tire business, case closed. However, we now have three cases and it is possible that Firestone is not telling us the whole story to protect them from a recall or a lawsuit."

In 1996, Ford instructed Firestone to upgrade the tires in Venezuela by adding a nylon ply to the tires it manufactured there for additional strength, and Ford made suspension changes to the Explorer, adding a stiffer shock absorber and reinforcement of the suspension. But Ford did not specify adding the nylon ply for U.S.-made Firestone tires nor did it change the U.S. made Explorer suspension at this time.

Ford eventually decided to conduct its own recall without Firestone and replace the tires in the various foreign countries in 1999 and 2000 (called a "customer notification enhancement action"). Ford did this without Firestone because the tire company was fearful a recall would require notification of NHTSA. A March 1999 Ford memo reveals "Firestone legal has some major reservations about the plan to notify customers and offer them an option...They feel that the U.S. D.O.T. will have to be notified of the program, since the product is sold in the U.S."

In May 2000, a top Ford official in Venezuela was quoted in the press as saying the company

was replacing the tires there because in Venezuela the highways allow drivers to travel at high speeds for a sustained period of time, leading to the loosening of the rolling surface of the tire, its consequent blowout and the accident.

On August 30, 2000, the Venezuelan safety regulatory agency, Indecu, concluded after an investigation that Firestone and Ford met to plan ways out of a situation that was affecting their commercial interests, at the price of causing damage, destruction and death, and announced it is recommending possible criminal enforcement for involuntary manslaughter. Neither Ford nor Firestone informed the National Highway Traffic Safety Administration of this recall, euphemistically labeled a No Charge Service Program Award Notification.

Recently numerous Firestone documents have become available revealing the company had reason to know since 1997 from property damage and injury claims and tire performance data such as warranty adjustments and financial analysis of such claims that its tires were failing. Several documents show a large jump in claims involving tread separations in 1997 and 1998. During all these years the company disclaimed any problem -- to consumers, to state government officials and to Ford. One company chart reveals that tread separations for the Wilderness tire increased 194 percent in 1999 from 1998. Test data on the tires by Ford and Firestone are still not available.

By the end of 1999, four months before NHTSA opened its investigation, at least 59 lawsuits had been filed. A total of at least 35 deaths and 130 injuries were involved in the lawsuits or notice of lawsuits to the companies by May, 2000.

Incidentally, there are a number of parallels between this recall in 2000 and the 1978 recall of the Firestone 500. Most particularly, there was a documented coverup by Firestone of the 500 defect, spurred by the lack of a Firestone replacement tire. When the coverup was disclosed, the top management of the company was replaced. Firestone was severely damaged financially and in reputation. But a key difference is that the Firestone 500 was used on passenger cars, which rarely rolled over with tire failure. NHTSA documented 41 deaths with the Firestone 500 case, which involved about seven million tires recalled.

Once again, when confronted with accusations about the performance of the tire, Firestone has misleadingly claimed owner abuse (i.e. under-inflation, rough use or improper fix). Neither Ford nor Firestone designed a margin of safety into its vehicles and tires.

2. The National Highway Traffic Safety Administration needs additional legislative authority to assure that manufacturers obey the law, report safety defects and recall unsafe products.

To prevent coverups of safety defects in the future, the National Traffic and Motor Vehicle Safety Act should be amended. In March 2000 the agency sent legislation to the Congress which

would make some improvements, but additional authority is needed. The Congress should:

a. Increase civil penalties for failure to recall a defective vehicle or part or withholding information from the agency. Now the maximum penalty is \$925,000, hardly a deterrent for multinational corporations. The penalty for each violation should be increased from \$1,000 to \$10,000 (as at the Environmental Protection Agency); the violation for withholding documents should be per day rather than per document as it is now (no matter how long it is withheld). There should be no maximum penalty.

b. As in the Food and Drug Administration and the Environmental Protection Agency laws, there should be criminal penalties for reckless endangerment and knowing and willful refusal to recall a defective vehicle or part or for withholding information that results in deaths and injuries. Chairman John Moss, after reviewing the Firestone 500 debacle in 1978, recommended criminal penalties be added to the NHTSA statute.

c. As recommended by NHTSA's proposed bill, a company should be required by law to test its products before self-certifying for compliance with the agency's standards. Such testing is not now required by law.

d. The statute of limitations for NHTSA to mandate a recall is now eight years for vehicles and three years for tires from the date of manufacture. It should be extended, as the agency recommends, to 10 years for vehicles and five years for tires. The statute should be tolled, however, when companies conceal defects. The agency should have authority to require a company to purchase replacement parts from a competitor if necessary where there is an imminent hazard and be able to require reimbursement to consumers who made repairs or bought replacements prior to the recall.

e. There is disagreement about whether the current law requiring manufacturers to send NHTSA copies of all notices sent to dealers and owners about a defect is applicable in this case. Ford sent notices to foreign dealers about a defect in a product made and sold in the U.S. and also sold abroad. Does the fact that the notice was sent to foreign dealers negate Ford's responsibility to notify NHTSA? I don't think so, but certainly the law should be clarified that this is a company's responsibility in this age of globalization. Companies should also have a duty to give NHTSA early warnings based on fatality, injury, warranty or other data it gathers, and the agency should be able to get relevant information from insurers.

f. NHTSA's budget needs to be larger, much larger, particularly for enforcement. Ninety-four percent of transportation deaths occur on the highway, yet NHTSA has only a tiny percentage of the transportation budget. Although it has been increased in recent years, and I thank the Appropriations Committees for that, it is still 30 percent below, in real dollars, what it was when I left the agency at the beginning of 1981. Its enforcement budget is about one-half of the 1980 budget. It has fewer than 20 engineer/investigators working on vehicle safety defects for the entire country. The Congress should

add at least \$20 million to the agency's 2001 budget for additional staff and capacity. Look at it this way: We spend hundreds of billions of dollars for defense, but more members of the military are killed and injured in motor vehicle crashes than in military duty. The members of the 106th Congress should not be able to go home for election and tell the voters they have acted to prevent another future catastrophe without sending legislation to the President for signature.

3. The Firestone/Ford recall should be expanded to cover all ATX, ATX II and Wilderness tires to protect the public from this catastrophic defect, and all data and information should be made public to restore public trust.

Much of the data on which Ford based its analysis of Firestone claims data is still not public or subject to outside scrutiny (such as how many tires were made at each plant and when -- an important factor since the defect appears to emerge after two to four years of use), and it is based on information only through April 2000. None of the recent information that has been pouring into the companies and NHTSA as the public is getting informed about the problem is included. It also covers only claims data -- claims for compensation for injury or property damage. It does not cover warranty claims or adjustment data for tire failures. It does not cover any information known to Ford (although there will be duplication between Ford and Firestone data) such as tire test data, including at 26 psi. It also does not cover new information now known by NHTSA about claims.

On September 1, after analyzing recent data (complaints, lawsuits, injuries, including information submitted to date from Ford and Firestone), NHTSA determined that the recall should be enlarged to cover another 1.4 million tires. NHTSA said it is still investigating to determine if the recall should be enlarged further. It issued a consumer advisory because Firestone refused to enlarge the recall, an indication of Firestone's attitude toward a safety defect that gives the consumer no warning and can result in death and severe injury when the vehicle is operated normally. This same attitude was evident in Firestone's offer made on August 16 in public newspaper ads that it would reimburse owners who bought other tires, but the offer also ended on August 16! Had it not been for a temporary restraining order issued by a federal judge in Louisville preventing the company from discontinuing the one-day offer, Firestone might have faced a massive consumer revolt, picket lines, more consumer lawsuits and more disputes with its largest customer, Ford Motor Company, which is pressing to get the tires replaced quickly with tires from other manufacturers as well as Firestone.

There is every indication that this problem is a design defect that affects all the tires produced. In the Firestone 500 case, the company at first asserted that only 400,000 tires were defective, those produced in the Decatur plant. But during NHTSA's investigation, as more data were available and company documents were secured and analyzed, we found that the tread separation on the 500 was a design performance defect. The company knew about it for at least three years and never informed NHTSA, and it was at the same time making running changes on the production line to correct the problem in new tires.

There are other indications that the companies should expand the recall. An analysis released September 1 of about 90 filed lawsuits or claims about to be filed showed that 37 percent covered non-recalled tires. In several of the foreign recalls, 16-inch tires were included (but are not recalled in the U.S.).

There are a number of documents and data that are still secret. This undermines public scrutiny of the scope of the August recall, and many of the documents are missing information or poorly formatted and so hard to read they look like first drafts. Secrecy is found in submissions by the companies to NHTSA, in documents not yet submitted, or gag orders in lawsuits that should be made public. The agency rarely uses its subpoena power authority but could do so to secure these protected documents. This may be painful for the companies, but it is essential given the broad public debate about this safety defect and the need for the companies to regain public trust. This information will probably leak out over time anyway, so it makes sense to release it now.

4. NHTSA failed to discover this defect because it lacks a proactive program to discover safety defects.

a. NHTSA was caught flatfooted in this case because it rarely pushes companies to obey the law. The Department allowed GM to resist recalling its five million defectively designed 1973-1987 pickup trucks with side-saddle gas tanks that explode in side-impact crashes (approximately 800 people have died because of fire in crashes with these vehicles, according to NHTSA's Fatal Accident Reporting System). It allowed Ford to resist recalling its vehicles equipped with ignition modules that frequently failed, causing vehicles to stall. It allowed Chrysler to label its correction of its minivans with defective rear-door latches that pop open in rear crashes, (throwing occupants outside), a "service campaign" and not a safety recall. I don't think its subpoena power has been exercised in 20 years, and it rarely imposes penalties when it learns companies have slithered around its request to produce documents, which unfortunately happens with some frequency.

Auto manufacturers roll the dice in attempts to avoid mandatory recalls and usually win. This time their coverup was revealed by an enterprising investigative reporter at KHOU in Houston on February 7 and 10. This time they are the losers as the media spotlight forces the story of the sorry state of safety defect enforcement and manufacturer compliance with the law into the public consciousness.

b. NHTSA also has no early warning system in place and has not been proactive in requiring manufacturer warnings or in using sources of information that are on the pulse-beat of current real world information about vehicle performance. They can and should routinely get information from: auto repair facilities; fleet owners, including national, state and local fleets; lawyers representing deceased and injured family members who find out about defects through discovery and cross examination of manufacturers; insurance company data; and also from the companies themselves, as they are the first to

receive consumer complaints and dealer concerns. The auto companies also know, as in this case, the design decisions they have made that could compromise safety.

In this case, State Farm Insurance Co., the nation's largest insurer, sent an e-mail and called NHTSA in 1998 about 21 cases of Firestone tire tread separations, but the agency ignored it. The press reports that another 30 cases were discussed with the agency in 1999, and the agency ignored them as well. Finally, on April 25, 2000, in response to a NHTSA request, 70 reports covering 1996 through April 2000 were sent. How could this happen? How often does the agency check complaints dutifully filed by consumers through its hotline and in letters to spot trends? They are all on a computer list by make, model and alleged defect. Even if this happens routinely, it's not enough -- because, as this case illustrates, most consumers don't bother contacting government agencies.

The agency should require, as does EPA, that a company notify the agency if it gets 25 complaints about the same alleged defect, and require, as does the Consumer Product Safety Commission, that the company notify the agency if three or more lawsuits alleging the same safety defect are filed.

The agency has also used a highly inappropriate system for evaluating whether a safety defect exists -- looking at statistical data which are rarely adequate. If it cannot establish a statistical basis, the agency does not find a defect. Crash statistics are totally inadequate to justify such an approach. Yet, the Administrator admitted in testimony last week that NHTSA did something similar in this case -- comparing 46 complaint problems to 40 million tires manufactured and didn't act. But with a catastrophic, deadly failure, this is completely inappropriate. And the agency never did the simple analysis published on Friday, September 8, in the *New York Times* showing that fatal crashes in 1995-1998 Ford Explorers are nearly three times as likely to be tire related as fatalities involving other sport utilities or cars.® The courts have held in a number of cases that if a safety element of the vehicle fails and can result in death or injury, there is a failure of safety performance sufficient to find a defect, and there is no need to look for dead bodies on the highway first.

The 1994 Michelin tire case reported in the *Akron Beacon Journal* is a different example. It was opened by NHTSA on the basis of five complaints with no injuries. The agency said it launched the investigation as a courtesy to the Kentucky Attorney General but says the complaints alone did not warrant it. But in testimony last week, NHTSA Administrator Sue Bailey said one seat belt complaint would be enough to open an investigation. Clearly the various elements of a case, not just the numbers, must be evaluated.

In short, NHTSA has not been the tough cop on the regulatory beat. When it is, the companies are more safety-conscious, the public is protected, and in the end it is less work for all parties. The Firestone/Ford case shows what happens when safety is not Job 1 in the companies or in the government.

5. Essential safety standards are severely out of date, were scrapped or delayed in the Reagan years, or are prohibited by law because of industry lobbying.

a. The tire safety standard is 32 years old and is not fully effective for testing radial tires. Both Ford and GM have recently stated that they favor an improved standard. The current standard tests for strength, endurance and how well the tire remains on the rim. Radial tires last much longer than bias ply tires and should be subjected to a tougher standard.

b. The Uniform Tire Quality Grading standard applies only to car tires, not truck/SUV tires. It is a consumer information requirement rating tread wear, traction and heat resistance with the rating molded into the tire. It should be expanded to cover truck/SUV tires. As it happens, the Explorer/Firestone tire is rated because it is used on a large Buick station wagon. For heat resistance, it gets the lowest grade. But Ford official Jon Harmon dismissed the poor rating, indicating that if the tire meets Ford's performance standards the C rating is of no concern. But Ford's tests have not been produced to date.

c. The roof crush standard is 30 years old. It is a static standard requiring weight to be placed on the roof of the vehicle (applied to SUVs beginning in model year 1994) equal to 1.5 times the maximum unloaded weight of the vehicle. In many of the Ford Explorer/Firestone rollover cases, the roof crushes into the vehicle, severely enhancing the likelihood of injury and death. A dynamic rollover crash worthiness standard should be issued addressing roof crush, door lock and hinges, side glazing materials, side air bags, and head protection. Crash protection in rollovers must include effective safety belts with pretensioners.

d. The first petition to NHTSA for a rollover prevention standard was filed by Representative Timothy Wirth 15 years ago. Others followed. In 1991 the Congress required NHTSA to conduct a rollover prevention rulemaking. The agency made an initial effort at developing a safety standard but then dropped it and instead proposed a consumer information requirement. The auto industry then got the Appropriations Committee to prohibit issuance of a consumer information rule until after a study by the National Academy of Sciences about the usefulness and presentation of consumer information. Finally in May 2000 the agency proposed to conduct New Car Assessment tests for rollover based on a static measurement of track width and center of gravity height, but once again the manufacturers objected and the Appropriations Committee bill requires yet another study by the NAS before it could be issued. This bill is now in conference.

Our coalition of consumer and health groups and insurers favors dropping the study and letting NHTSA proceed with its rulemaking on the consumer information test, even though we prefer a more comprehensive test. A 1998 Harris poll conducted for Advocates For Highway and Auto Safety shows 62 percent of the public wants such information. But we also want a rollover prevention standard. It is long overdue. About 9,500 highway deaths annually occur in rollover crashes -- almost 25 percent of all highway deaths. This problem must be addressed, particularly with the large numbers

of SUVs being used as family vehicles that are susceptible to rollover.

e. The agency should issue a rule for a tire inflation indicator on the dashboard, as I proposed 22 years ago. It was eliminated by the Reagan administration. The companies complain that tires are not properly inflated but then lobby to undercut consumers' ability to properly maintain their tires with accurate information.

f. The tire manufacturing information now molded into the black wall of the tire should be placed on the whitewall or outside of the tire so a consumer doesn't have to crawl under the car to find it to determine if their tire is subject to a recall. This was part of my rulemaking plan more than 20 years ago, but it was never issued after I left.

g. The tire reserve load consumer information requirement eliminated in the Reagan years should be reestablished to inform consumers of the maximum rated load capacity of the vehicle, so they know when they should inflate their tires for maximum load carrying.

h. The agency should be alert in this case to whether its requirement for record retention of only five years should be extended, since the critical evidence in this case extends over a decade.

i. Three elements of legislation are needed that are relevant to this case:

First, the 1982 legislation eliminating the responsibility of independent tire dealers to report the names and addresses of tire purchasers to the manufacturer for notification in the event of a recall should be changed back to requiring such record keeping as during the period from 1970 until 1982. Independent dealers with computers today can readily supply such names to the manufacturer. The current law only requires the independent dealer to give the consumer a card to mail themselves. A 1986 NHTSA report showed only 11 percent responded. Thus, in this case, most buyers from independent dealers will not be notified by mail.

Second, the current law requires tire owners to return the tire within 60 days of a recall notification (which, I presume, means if a manufacturer has no contact information, a consumer would have to rely on news reports) or 60 days after tire replacement. Car owners in recalls don't have this limitation. It is confusing enough to get tires replaced without this added complexity. It should be eliminated.

Third, the current prohibition in the law on a NHTSA rule requiring a continuous buzzer to alert occupants to buckle up should be eliminated. Among car companies, only Ford, I believe, now has a continuous buzzer. The current law only permits NHTSA to require a 4 - 8 second buzzer. Belt use is essential in rollovers. It should be encouraged in every way, including when the vehicle is in use.

Mr. Chairman, we urge the Committee to immediately mark-up and pass new legislative

authority for NHTSA so it can do its job. It must be a priority for this Congress. And such legislation should instruct the agency to upgrade and issue the safety standards referenced above that are long overdue.

Thank you Mr. Chairman for the opportunity to testify on this important subject today.