

# CORPORATE COUNSEL

## GC and CEO Responsibility for GM's Dysfunctional Culture

By: Ben W. Heineman Jr.  
June 6, 2014



[The report by Anton Valukas](#) on the unconscionable multiyear delay by General Motors Co. in addressing safety issues caused by a malfunctioning ignition switch, focuses on the culpability of individuals in the past, including engineers, investigators and lawyers in the vast GM bureaucracy. It shows that the board of directors, the current CEO and the current general counsel, Michael Miliken, did not know about this problem until 2014. It then makes a raft of recommendations about fixing a badly broken safety culture—its systems and processes—in the future.

What is missing, strikingly missing, is the failure of GM leaders—past CEOs and senior GM officers, including the current general counsel—to create a safety culture that would have immediately surfaced and addressed the particular switch issue and, more importantly, their failure to long ago and on their own initiative take the myriad safety culture, system and process steps which Valukas recommends today. This failure to affix accountability on the systemic issues—which caused all the other failures—is a serious omission in the report. It does not bode well for those past leaders, like the general counsel, who are still with the company.

### **Individuals**

In her remarks to employees on Valukas Report findings, GM CEO Mary Barra says that the report is “brutally tough and deeply troubling,” that the delay in the recall “represents a fundamental failure to meet the basic needs of ...customers,” and demonstrates a “a pattern of incompetence and neglect.”

This pattern, she says, has two key components. First, “[r]epeatedly, individuals failed to disclose the critical pieces of information that would have fundamentally changed the lives of those impacted by a faulty ignition switch.” Second, “numerous individuals did not accept responsibility to drive our organization to understand what was truly happening.” There was a consistent “history of failures” to address ignition switch issues; “nobody took responsibility”; “there was no demonstrated sense of urgency, right to the end.” As a result of the report, 15 people down in the organization were fired, including the chief GM lawyer for safety, [according to Corporate Counsel](#).

## **Culture**

The Valukas Report comments on a broken culture, which had a number of deleterious elements. The GM safety culture had resistance to raising issues; was adept at shifting accountability to others (the “GM Nod” and the “GM Salute”—pointing to others); operated in silos that failed to gather and then share salient information in a focused way to identify and solve the problem; and, with lives at stake, pursued elaborate studies and failed to act with necessary dispatch.

Fine. But, remarkably (incredibly), the Valukas Report never traces these fundamental culture defects (and there are many more) back to top GM leadership during the 10-plus-year period when the ignition-switch issue festered and people were dying.

## **Accountability**

If we step back for a moment, leaders of GM are ultimately accountable for the safety of their product. Cars have to be designed and manufactured properly. With millions of vehicles on the road and thousands of annual accidents, leaders need a powerful set of processes for gathering and analyzing technical reports of issues and for looking at issues arising in product liability lawsuits.

People are dying. There have to be powerful processes, sorely missing here, of determining promptly when there is a systemic issue caused by GM—not by drivers or other circumstances external to GM products—that requires suits to be settled or defects to be repaired or both.

This is about the lives of people, and top GM leaders must make these changes happen. And the legal function is right at the heart of those processes, both for making legal judgments (i.e., when will liability attach at what cost?) and for making ethical judgments about when the company should act to protect people even though liability questions may not yet be certain. It also must push the organization to understand open technical issues and to resolve them with all deliberate speed.

## **System Reform**

The precepts immediately above would seem obvious. But they weren’t obvious at GM—and to GM senior leadership. That is why the Valukas report, at the end, shifts

gears and in [its 315 pages \[PDF\]](#), dedicates approximately 20 pages across eight subjects to a wide variety of recommendations that, in order to be realized, require leadership from the top of the company. CEO Barra, while focusing on individuals in the past, recognizes that the case represents significant “failures in our system.” And she recognizes, now, that in the future she has to drive the Valukas Report’s “series of recommendations in eight major areas.” These reforms include a product safety leader in the company to integrate all processes quickly, new safety investigators, an employee hotline and a process for elevating safety issues to senior management decision-making. To anyone who has been involved in large corporations and safety issues, this is pretty basic stuff. Why weren’t these steps taken long ago?

The observation applies to the 10 Valukas recommendations relating to the “role of lawyers.” These include such changes as: improving identification of safety issues arising from technical reports and product liability suits; more regular meetings to determine if trends should be elevated for more systematic evaluation; better early assessment in litigation (especially repeating litigation types) of possible GM caused safety issues; and explicit processes for elevating unresolved technical issues promptly, and for defining and elevating categories of safety issues that should go to the general counsel and top management. Finally, there are a series of recommendations about educating lawyers about their obligations to report problems up the line so that they are handled promptly and not ignored.

Again, these are pretty fundamental steps aimed at making the legal department an affirmative, proactive player in identifying, elevating and helping to resolve promptly, at the right level, problems that pose safety threats to the public. It is remarkable—and unfortunate—that these steps had to be recommended in 2014 by counsel retained by the board of directors to a legal organization headed by a general counsel who has held his position since 2009 (during some of the most significant failures in the ignition issue). Per Valukas, the general counsel may not have known about the ignition issue until late in the day, but sadly he does not appear to have been involved in—or addressed—some of the most fundamental questions involving legal’s key role in safety culture and safety processes. Certainly the Valukas Report makes no such claim for him.

One can use the Valukas report in corporations (and business and law schools) as a classic study of the dangers of bureaucracy: divided responsibility, lack of initiative, failure to seize problems and solve them, failure to see the larger issues for the company, perhaps fear of surfacing bad news (especially at a time of economic distress, when costly recalls add to commercial fragility). And, in its recommendations, it advances some of the fundamentals of safety culture, systems and processes. But, as a teaching tool it needs a strong coda about how the leadership failed the bureaucracy—by failing to lead on safety. And sadly, this appears to include the general counsel.

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