

CORPORATE COUNSEL

GM's GC and Some Theories of Culpability

By: Ben W. Heineman, Jr.
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The role of General Motors Co. general counsel Michael Millikin in the deadly ignition-switch events should be a subject of intense interest and close scrutiny for lawyers working in, or for, complex corporations. But the recent—and I think overly simplistic—[comments of prominent attorney John Quinn](#) detract and do not add to a practical discussion about the responsibilities of general counsel.

Anton Valukas' report on the controversy blamed lawyers, including senior ones, in the GM legal department for the company's manifest failings to investigate properly and resolve quickly the ignition-switch problems that caused death and injury. Although some in-house lawyers at GM were fired, the report concluded that GC Millikin did not learn of the problem until early this year.

But that hardly ends the discussion about the possible culpability of the company's top lawyer—and whether that culpability should lead to his separation from the company, a matter of paramount importance for those with legal leadership responsibility.

Possible theories of GC culpability—and separation—include:

- Even if Millikin didn't know about the matter, he should have.
- He should have accountability for the failings of senior lawyers working directly underneath him, such as the senior lawyer overseeing engineering and safety issues, and the head of product litigation.
- Millikin, along with past CEOs, senior business leaders and past GCs, failed to create a safety culture and institute appropriate systems and processes that would have made sure the company dealt with the ignition issues long ago. He also failed to make the law 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.

I recently made this argument in a Corporate Counsel piece, pointing to the detailed recommendations in the Valukas Report and noting that they were an indirect indictment of GM leadership—and GM general counsel—past and present. Why weren't the recommendations (fairly basic safety culture measures) taken long ago?

In light of the importance and complexity of the issues of accountability, it is odd therefore, to read Quinn's defense of the GM GC in his interview with Sue Reisinger. Quinn relies on the "he didn't know until this year" finding of Valukas. "It's incomprehensible to me why some people are so quick to judge or to blame Mike Millikin," Quinn told CorpCounsel.com Monday. "Nobody can point to a single fact that he must have known of," he added.

But, as noted above, Millikin's ignorance of the matter only begins the inquiry into possible culpability. It hardly ends it.

Quinn's comments are also odd because General Motors recently hired his law firm, Quinn Emanuel Urquhart & Sullivan, to review the way it handles litigation. Prejudging that review with a full-throated, if palpably incomplete, defense of the general counsel who heads the department obviously creates the appearance (at the least) of compromising the review's credibility.

The ignition-switch failures are a tremendous learning moment for GM and its legal department, and for corporations and their lawyers everywhere. The “ignorance defense” retards, and does not advance, the quest for lessons learned—including culpability of leaders—from this tragic series of events.

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