

GM risks image with attempt to avoid lawsuits, experts say

By Todd Spangler, Associated Press • Published: April 22, 2014 6:25 PM CDT • Updated: April 22, 2014 6:27 PM CDT

WASHINGTON — General Motors Co. wants to use its 2009 bankruptcy as a shield to get rid of more than four dozen lawsuits related to a defective ignition switch in 2.6 million small-model cars in what experts say could prove to be a public relations nightmare.

The lawsuits GM wants squashed are not related to 13 deaths or others injuries tied to defective ignition switches under the massive recall of Chevrolet Cobalts, Saturn Ions and simi small-model cars. The 50-plus suits are economic claims such as suing over the loss of a car's value or other economic repercussions.

While the motion may be legally sound, it evokes the image of a company unwilling to clean up its own mess and creates the impression that GM may not be as transparent and customer-friendly as CEO Mary Barra paints it to be.

“From a defense lawyer perspective, it is a no-brainer strategy, despite the hit it will cause in public relations at a sensitive time,” said Ed Higgins, a partner with the Plunkett Cooney law firm in Detroit.

GM must rely on whatever protection it can get from the bankruptcy court and use it as legal leverage to contain costs as it attempts to reach as many settlements as possible in cases involving death or injury regardless of whether they occurred before GM filed for bankruptcy in 2009, Higgins said.

Invoking the liability shield just for economic cases might be a successful strategy and save some money, but it doesn't necessarily make it prudent one and could further damage the company's reputation, said Carl Tobias, a University of Richmond law professor who specializes in product liability.

“It strikes me as a technicality — that's the way the public will view it, and certainly the plaintiffs will view it that way,” Tobias said. “There's a whole public relations issue. Even if yo win the legal technicality, have you lost the PR war? I think the members of the public are not going to take kindly to the notion that they would hide behind that shield even if is available.”

In a filing made public late Monday, GM asked Bankruptcy Judge Robert Gerber in New York to order people filing the economic claims to “cease and desist,” saying it is not the sam company that built and sold the cars before its 2009 bankruptcy.

The company in its motion stopped short of asking Gerber from protection from claims involving any “accident or incident causing personal injury, loss of life or property damage.” The motion did not say how GM intends to react to those claims.

“General Motors has taken responsibility for its actions and will keep doing so,” the company said in a statement. “GM has also acknowledged that it has civic and legal obligations relating to injuries that may relate to recalled vehicles, and it has retained (compensation expert) Kenneth Feinberg to advise the company what options may be available to deal with those obligations.”

Last week, the Detroit Free Press first reported GM's intention to ask Judge Gerber to shield it from class action claims. In July 2009, what's referred to in court documents as "New GM" emerged from a government-financed bankruptcy, which granted the company immunity from product liability and wrongful death claims left with the "Old GM."

"It was an absolute condition of New GM's purchase offer that New GM not take on all of Old GM's liabilities. That was the bargain struck by New GM and Old GM and approved by the court as being in the best interests of Old GM's bankruptcy estate and the public interest," the company's motion said.

Still, some plaintiffs make the argument that because GM knew about the ignition switch problem at least 10 years ago but decided not to issue a recall, its bankruptcy case was based on fraud and its liability shield not proper.

Gerber is expected to schedule a status conference with attorneys for both sides and then a hearing to hear the motion. Gerber has not set date for the hearing.

GM ordered a recall beginning in February. Its critics — including several members of Congress — have loudly complained that the company knew as long as a decade ago that there were ample warnings to warrant a recall and that the bankruptcy shield should not be afforded it now.

GM says the 2009 bankruptcy order left no room for doubt that product liability claims from the vehicles — which include some 2010 and 2011 model-year vehicles but were largely from the 2003-2009 model years — are "retained liabilities" that the old company remained saddled with, even if the new company accepted warranty claims.

"Anticipating the possibility that New GM might be wrongfully sued for retained liabilities," the motion said the bankruptcy order "contains an injunction permanently enjoining claimants from asserting claims of the type made in the ignition switch actions."

"What is clear," GM's lawyers added, "is that the crux of virtually all of plaintiffs' claims is a problem in the ignition switch in vehicles and parts sold by Old GM."

Several plaintiffs also filed a complaint with the bankruptcy judge claiming GM "discovered" the defect over a decade ago but that "GM made a business decision to conceal its existence."

"To make matters worse, during its 2009 Chapter 11 case, GM fraudulently concealed the ignition defect as it took billions of dollars in taxpayer money from the U.S. government and obtained the U.S. government's sponsorship of a plan of reorganization that salvaged the company's very existence," the plaintiffs' motion said.

The plaintiffs asked that the company not be allowed to use the sale order and bankruptcy to "absolve" GM of claims.

(Nathan Bomey of the Detroit Free Press contributed to this report.)

©2014 Detroit Free Press

Visit the Detroit Free Press at www.freep.com

Distributed by MCT Information Services