Ethics - Case Studies in Fraudulent Safety Claims

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Introduction

Fraud has been defined as "the intentional use of deceit, a trick or some dishonest means to deprive another of his/her/its money, property or a legal right" (Dictionary at Law.com). When, for example, the seller of a product deceives a buyer into believing that the product meets certain standards—and the seller knows that it does not—then the seller of the product has committed fraud. In this course, the particular standards considered are safety standards, and the fraud consists of claiming that the product met safety standards, when in fact it did not, and the sellers of the product knew that it did not .

The purpose of this course is to widen the professional engineer's understanding of engineering ethics through consideration of three case studies of fraudulent safety claims made by engineers working in large corporations. The studies describe actual cases that have been successfully prosecuted by agencies of the U.S. federal government, and that involved terrible consequences in injury and loss of life. The ethical—rather than legal— aspects of the cases are developed by identifying specific passages in published Standards of Conduct for professional engineers that were violated by the engineers who were found guilty of fraud.

Case No. 1

Manhattan U.S. Attorney Announces Criminal Charges Against General Motors and Deferred Prosecution Agreement with $900 Million Forfeiture

September 17, 2015
U.S. Attorney's Office, Southern District of New York

Loretta E. Lynch, the Attorney General of the United States, Anthony Foxx, the United States Secretary of Transportation, Preet Bharara, the United States Attorney for the Southern District of New York, Mark R. Rosekind, Administrator of the National Highway Traffic Safety Administration ("NHTSA"), Calvin L. Scovel, III, Inspector General of the United States Department of Transportation ("DOT-OIG"), Christy Goldsmith Romero, Special Inspector General of the Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP"), and Diego Rodriguez, the Assistant Director-in-Charge of the New York Field Office of the Federal Bureau of Investigation ("FBI"), announced the filing of criminal charges against General Motors Company ("GM" or the "Company"), an automotive company headquartered in Detroit, Michigan, that has designed, manufactured, assembled, and sold Chevrolet, Pontiac, and Saturn brand vehicles, among others. GM is charged with concealing a potentially deadly safety defect from its U.S. regulator, the National Highway Traffic Safety Administration ("NHTSA"), from the spring of 2012 through February 2014, and, in the process, misleading consumers concerning the safety of certain of GM's cars. The defect consisted of an ignition switch that had been designed and manufactured with too-low torque resistance and could therefore move easily out of the "Run" position into "Accessory" or "Off" (the "Defective Switch"). When the switch moved out of Run, it could disable the affected car's frontal airbags – increasing the risk of death and serious injury in certain types of crashes in which airbags were otherwise designed to deploy. The models equipped with the Defective Switch were the 2005, 2006, and 2007 Chevrolet Cobalt; the 2005, 2006, and 2007 Pontiac G5; the 2003, 2004, 2005, 2006, and 2007 Saturn Ion; the 2006 and 2007 Chevrolet HHR; the 2007 Saturn Sky; and the 2006 and 2007 Pontiac Solstice. To date, GM has acknowledged a total of 15 deaths, as well as a number of serious injuries, caused by the Defective Switch.

Mr. Bharara also announced a deferred prosecution agreement with GM (the "Agreement") under which the Company admits that it failed to disclose a safety defect to NHTSA and misled U.S. consumers about that same defect. The admissions are contained in a detailed Statement of Facts attached to the Agreement. The Agreement imposes on GM an independent monitor to review and assess policies, practices, and procedures relating to GM's safety-related public

statements, sharing of engineering data, and recall processes. The Agreement also requires GM to transfer $900 million to the United States by no later than September 24, 2015, and agree to the forfeiture of those funds pursuant to a parallel civil action also filed today in the Southern District of New York.

The criminal charges are contained in an Information (the "Information") alleging one count of engaging in a scheme to conceal material facts from NHTSA and one count of wire fraud. If GM abides by all of the terms of the Agreement, the Government will defer prosecution on the Information for three years and then seek to dismiss the charges.

Attorney General Loretta E. Lynch said: "Every consumer has the right to expect that car manufacturers are taking their safety seriously. The Department of Justice is committed to ensuring that the products Americans buy are safe; that consumers are protected from harm; and that auto companies follow the law."

Transportation Secretary Anthony Foxx said: "General Motors not only failed to disclose this deadly defect, but as the Department of Justice investigation shows, it actively concealed the truth from NHTSA and the public. Today's announcement sends a message to manufacturers: Deception and delay are unacceptable, and the price for engaging in such behavior is high."

Manhattan U.S. Attorney Preet Bharara said: "For nearly two years, GM failed to disclose a deadly safety defect to the public and its regulator. By doing so, GM put its customers and the driving public at serious risk. Justice requires the filing of criminal charges, detailed admissions, a significant financial penalty, and the appointment of a federal monitor. These measures are designed to make sure that this never happens again."

NHTSA Administrator Mark R. Rosekind said: "Today's action strengthens NHTSA's efforts to protect the driving public. It sends a message not only to GM, but to the entire auto industry, that when it comes to safety, telling the full truth is the only option."

DOT Inspector General Calvin L. Scovel, III, said: "To the families and friends of those who died and to those who were injured as a result of crashes related to GM's defective ignition switches, I offer my deepest sympathies for your loss and my highest admiration for the strength you demonstrate every day. As is true for Secretary Foxx and the Department of Transportation, safety is and will remain the highest priority of my office, and we will continue to work relentlessly to ensure accountability throughout the Department and transportation

sector. The OIG is committed to working with our law enforcement and prosecutorial partners in pursuing those who commit criminal violations. The efforts of this dedicated multi-agency team and the agreement reached with General Motors, and that with Toyota in March 2014, must continue to serve as a clarion call to all auto manufacturers and their suppliers of the need to be vigilant and forthcoming to keep the public safe."

SIGTARP Special Inspector General Christy Goldsmith Romero said: "General Motors' criminal conduct found by SIGTARP and our law enforcement partners defies comprehension. Our investigation uncovered that GM learned about a life-threatening ignition switch defect that would cause air bags not to inflate, but concealed the deadly safety defect from its regulator, and from people buying used cars from GM dealers. The worst part about this tragedy is that it was entirely avoidable. GM could have significantly reduced the risk of this deadly defect by improving the key design for less than one dollar per vehicle but GM chose not to because of the cost. Americans stepped up and bailed out General Motors with $50 billion; and General Motors must step up and make substantial corporate changes to prevent anything like this from happening again. SIGTARP commends U.S. Attorney Bharara for bringing these charges and standing united in the fight against TARP-related crime."

FBI Assistant Director-in-Charge Diego Rodriguez said: "GM concealed a safety defect from consumers and regulators, which put drivers at risk. The resolution of this case shows that safety should never take a backseat to expediency."

According to the allegations in the Information, as well as other documents filed today in Manhattan federal court, including the Statement of Facts:

From the spring of 2012 through February 2014, GM deceived consumers and failed to make a required disclosure to NHTSA, its U.S. regulator, by regarding the connection that certain of its personnel had identified between the Defective Switch and airbag non-deployment. GM also falsely represented to consumers that vehicles equipped with the Defective Switch posed no safety concern.

Early Knowledge of the Defective Switch

GM engineers knew before the Defective Switch even went into production in 2002 that it was prone to easy movement out of the Run position. Testing of a prototype showed that the torque return between the Run and Accessory positions fell below GM's own internal specifications. But the engineer in charge of the Defective Switch approved its production anyway.

In 2004 and 2005, as GM employees, media representatives, and GM customers began to experience sudden stalls and engine shutoffs caused by the Defective Switch, GM considered fixing the problem. However, having decided that the switch did not pose a safety concern, and citing cost and other factors, engineers responsible for decision-making on the issue opted to leave the Defective Switch as it was and simply promulgate an advisory to dealerships with tips on how to minimize the risk of unexpected movement out of the Run position. GM even rejected a simple improvement to the head of the key that would have significantly reduced unexpected shutoffs at a price of less than a dollar a car. At the same time, in June 2005, GM made public statements that, while acknowledging the existence of the Defective Switch, gave assurance that the defect did not pose a safety concern.

GM's Knowledge that the Defective Switch Causes Airbag Non-Deployment

By the spring of 2012, GM knew that the Defective Switch presented a safety defect because it could cause airbag non-deployment in certain GM cars. Specifically, GM personnel investigating the cause of a series of airbag non-deployment incidents learned that the Defective Switch could cause frontal airbag non-deployment in at least some model years of the Cobalt, and were aware of several fatal incidents and serious injuries that occurred as a result of accidents in which the Defective Switch may have caused or contributed to airbag non-deployment. This knowledge extended well above the ranks of investigating engineers to certain supervisors and attorneys at the Company.

GM's Failure to Disclose the Defect and Recall Affected Cars

Yet not until approximately 20 months later, in February 2014, did GM first notify NHTSA and the public of the connection it had identified between the Defective Switch and airbag non-deployment incidents. The Company thus egregiously disregarded NHTSA's five-day regulatory reporting requirement for safety defects. Moreover, for much of the period during which GM failed to disclose this safety defect, it not only failed to correct its June 2005 assurance that the Defective Switch posed no safety concern but also actively touted the reliability and safety of cars equipped with the Defective Switch, with a view to promoting sales of used GM cars. Although GM sold no new cars equipped with the Defective Switch during this period, GM dealers were still, from in or about the spring of 2012 through in or about the spring of 2013, selling pre-owned Chevrolet, Pontiac, and Saturn brand cars that would later become subject to the February 2014 recalls. These sales were accompanied by

certifications from GM, assuring the unwitting consumers that the vehicles' components, including their ignition systems and keys, met all safety standards.

GM's delay in disclosing the defect at issue was the product of actions by certain personnel responsible for shepherding safety defects through GM's internal recall process, who delayed the recall until GM could fully package, present, explain, and handle the deadly problem. Rather than move swiftly and efficiently toward recall of at least the population of cars known to be affected by the safety defect and thus certainly destined for recall, GM personnel took affirmative steps to keep the Company's internal investigation into airbag non-deployment caused by the Defective Switch "offline" – outside of GM's regular recall process.

Moreover, on at least two occasions while the Defective Switch condition was well known by some within GM but not disclosed to the public or NHTSA, GM personnel made incomplete and therefore misleading presentations to NHTSA assuring the regulator that GM would and did act promptly, effectively, and in accordance with its formal recall policy to respond to safety problems – including airbag-related safety defects.

GM's Acceptance of Responsibility and Cooperation in the Government Investigation

In February 2014, GM finally conducted a recall of approximately 700,000 vehicles affected by the Defective switch. By March 2014, the recall population had grown to more than 2 million vehicles.

Since February 2014 and the inception of this federal criminal investigation, GM has taken exemplary actions to demonstrate acceptance and acknowledgement of responsibility for its conduct. GM, among other things, conducted a swift and robust internal investigation, furnished the Government with a continuous flow of unvarnished facts gathered during the course of that internal investigation, voluntarily provided, without prompting, certain documents and information otherwise protected by the attorney-client privilege, provided timely and meaningful cooperation more generally in the federal criminal investigation, terminated wrongdoers, and established a full and independent victim compensation program that has to date paid out hundreds of millions of dollars in awards.

Mr. Bharara praised the outstanding investigative work of SIGTARP, DOT-OIG, NHTSA, and the FBI.

This case is being handled by the Office's Securities and Commodities Fraud Task Force and Complex Frauds and Cybercrime Unit. Assistant U.S. Attorney Bonnie Jonas, Deputy Chief of the Criminal Division, and Assistant U.S. Attorneys Sarah Eddy McCallum and Edward A. Imperatore are in charge of the prosecution, and Assistant U.S. Attorney Jason H. Cowley, Chief of the Money Laundering and Asset Forfeiture Unit, is responsible for the forfeiture aspects of the case.

Case No. 2

Boeing Charged with 737 Max Fraud Conspiracy and Agrees to Pay over $2.5 Billion

January 7, 2021
U.S. Department of Justice, Office of Public Affairs

The Boeing Company (Boeing) has entered into an agreement with the Department of Justice to resolve a criminal charge related to a conspiracy to defraud the Federal Aviation Administration's Aircraft Evaluation Group (FAA AEG) in connection with the FAA AEG's evaluation of Boeing's 737 MAX airplane.

Boeing, a U.S.-based multinational corporation that designs, manufactures, and sells commercial airplanes to airlines worldwide, entered into a deferred prosecution agreement (DPA) in connection with a criminal information filed today in the Northern District of Texas. The criminal information charges the company with one count of conspiracy to defraud the United States. Under the terms of the DPA, Boeing will pay a total criminal monetary amount of over $2.5 billion, composed of a criminal monetary penalty of $243.6 million, compensation payments to Boeing's 737 MAX airline customers of $1.77 billion, and the establishment of a $500 million crash-victim beneficiaries fund to compensate the heirs, relatives, and legal beneficiaries of the 346 passengers who died in the Boeing 737 MAX crashes of Lion Air Flight 610 and Ethiopian Airlines Flight 302.

"The tragic crashes of Lion Air Flight 610 and Ethiopian Airlines Flight 302 exposed fraudulent and deceptive conduct by employees of one of the world's leading commercial airplane manufacturers," said Acting Assistant Attorney General David P. Burns of the Justice Department's Criminal Division. "Boeing's employees chose the path of profit over candor by concealing material information from the FAA concerning the operation of its 737 Max airplane and engaging in an effort to cover up their deception. This resolution holds Boeing accountable for its employees' criminal misconduct, addresses the financial impact to Boeing's airline customers, and hopefully provides some measure of compensation to the crash-victims' families and beneficiaries."

"The misleading statements, half-truths, and omissions communicated by Boeing employees to the FAA impeded the government's ability to ensure the safety of the flying public," said U.S. Attorney Erin Nealy Cox for the Northern District of Texas. "This case sends a clear message: The Department of Justice will hold manufacturers like Boeing accountable for defrauding regulators – especially in industries where the stakes are this high."

"Today's deferred prosecution agreement holds Boeing and its employees accountable for their lack of candor with the FAA regarding MCAS," said Special Agent in Charge Emmerson Buie Jr. of the FBI's Chicago Field Office. "The substantial penalties and compensation Boeing will pay, demonstrate the consequences of failing to be fully transparent with government regulators. The public should be confident that government regulators are effectively doing their job, and those they regulate are being truthful and transparent."

"We continue to mourn alongside the families, loved ones, and friends of the 346 individuals who perished on Lion Air Flight 610 and Ethiopian Airlines Flight 302. The deferred prosecution agreement reached today with The Boeing Company is the result of the Office of Inspector General's dedicated work with our law enforcement and prosecutorial partners," said Special Agent in Charge Andrea M. Kropf, Department of Transportation Office of Inspector General (DOT-OIG) Midwestern Region. "This landmark deferred prosecution agreement will forever serve as a stark reminder of the paramount importance of safety in the commercial aviation industry, and that integrity and transparency may never be sacrificed for efficiency or profit."

As Boeing admitted in court documents, Boeing—through two of its 737 MAX Flight Technical Pilots—deceived the FAA AEG about an important aircraft part called the Maneuvering Characteristics Augmentation System (MCAS) that impacted the flight control system of the Boeing 737 MAX. Because of their deception, a key document published by the FAA AEG lacked information about MCAS, and in turn, airplane manuals and pilot-training materials for U.S.-based airlines lacked information about MCAS.

Boeing began developing and marketing the 737 MAX in or around June 2011. Before any U.S.-based airline could operate the new 737 MAX, U.S. regulations required the FAA to evaluate and approve the airplane for commercial use.

In connection with this process, the FAA AEG was principally responsible for determining the minimum level of pilot training required for a pilot to fly the 737 MAX for a U.S.-based airline, based on the nature and extent of the differences between the 737 MAX and the prior version of Boeing's 737 airplane, the 737 Next Generation (NG). At the conclusion of this evaluation, the FAA AEG published the 737 MAX Flight Standardization Board Report (FSB Report), which contained relevant information about certain aircraft parts and systems that Boeing was required to incorporate into airplane manuals and pilot-training materials for all U.S.-based airlines. The 737 MAX FSB Report also contained the FAA AEG's differences-training determination. After the 737 MAX FSB Report was published, Boeing's airline customers were permitted to fly the 737 MAX.

Within Boeing, the 737 MAX Flight Technical Team (composed of 737 MAX Flight Technical Pilots) was principally responsible for identifying and providing to the FAA AEG all

information that was relevant to the FAA AEG in connection with the FAA AEG's publication of the 737 MAX FSB Report. Because flight controls were vital to flying modern commercial airplanes, differences between the flight controls of the 737 NG and the 737 MAX were especially important to the FAA AEG for purposes of its publication of the 737 MAX FSB Report and the FAA AEG's differences-training determination.

In and around November 2016, two of Boeing's 737 MAX Flight Technical Pilots, one who was then the 737 MAX Chief Technical Pilot and another who would later become the 737 MAX Chief Technical Pilot, discovered information about an important change to MCAS. Rather than sharing information about this change with the FAA AEG, Boeing, through these two 737 MAX Flight Technical Pilots, concealed this information and deceived the FAA AEG about MCAS. Because of this deceit, the FAA AEG deleted all information about MCAS from the final version of the 737 MAX FSB Report published in July 2017. In turn, airplane manuals and pilot training materials for U.S.-based airlines lacked information about MCAS, and pilots flying the 737 MAX for Boeing's airline customers were not provided any information about MCAS in their manuals and training materials.

On Oct. 29, 2018, Lion Air Flight 610, a Boeing 737 MAX, crashed shortly after takeoff into the Java Sea near Indonesia. All 189 passengers and crew on board died. Following the Lion Air crash, the FAA AEG learned that MCAS activated during the flight and may have played a role in the crash. The FAA AEG also learned for the first time about the change to MCAS, including the information about MCAS that Boeing concealed from the FAA AEG. Meanwhile, while investigations into the Lion Air crash continued, the two 737 MAX Flight Technical Pilots continued misleading others—including at Boeing and the FAA—about their prior knowledge of the change to MCAS.

On March 10, 2019, Ethiopian Airlines Flight 302, a Boeing 737 MAX, crashed shortly after takeoff near Ejere, Ethiopia. All 157 passengers and crew on board died. Following the Ethiopian Airlines crash, the FAA AEG learned that MCAS activated during the flight and may have played a role in the crash. On March 13, 2019, the 737 MAX was officially grounded in the U.S., indefinitely halting further flights of this airplane by any U.S.-based airline.

As part of the DPA, Boeing has agreed, among other things, to continue to cooperate with the Fraud Section in any ongoing or future investigations and prosecutions. As part of its cooperation, Boeing is required to report any evidence or allegation of a violation of U.S. fraud laws committed by Boeing's employees or agents upon any domestic or foreign government agency (including the FAA), regulator, or any of Boeing's airline customers. In addition, Boeing has agreed to strengthen its compliance program and to enhanced compliance program reporting requirements, which require Boeing to meet with the Fraud Section at least quarterly and to submit yearly reports to the Fraud Section regarding the status of its remediation efforts,

the results of its testing of its compliance program, and its proposals to ensure that its compliance program is reasonably designed, implemented, and enforced so that it is effective at deterring and detecting violations of U.S. fraud laws in connection with interactions with any domestic or foreign government agency (including the FAA), regulator, or any of its airline customers.

The department reached this resolution with Boeing based on a number of factors, including the nature and seriousness of the offense conduct; Boeing's failure to timely and voluntarily self-disclose the offense conduct to the department; and Boeing's prior history, including a civil FAA settlement agreement from 2015 related to safety and quality issues concerning the Boeing's Commercial Airplanes (BCA) business unit. In addition, while Boeing's cooperation ultimately included voluntarily and proactively identifying to the Fraud Section potentially significant documents and Boeing witnesses, and voluntarily organizing voluminous evidence that Boeing was obligated to produce, such cooperation, however, was delayed and only began after the first six months of the Fraud Section's investigation, during which time Boeing's response frustrated the Fraud Section's investigation.

The department also considered that Boeing engaged in remedial measures after the offense conduct, including: (i) creating a permanent aerospace safety committee of the Board of Directors to oversee Boeing's policies and procedures governing safety and its interactions with the FAA and other government agencies and regulators; (ii) creating a Product and Services Safety organization to strengthen and centralize the safety-related functions that were previously located across Boeing; (iii) reorganizing Boeing's engineering function to have all Boeing engineers, as well as Boeing's Flight Technical Team, report through Boeing's chief engineer rather than to the business units; and (iv) making structural changes to Boeing's Flight Technical Team to increase the supervision, effectiveness, and professionalism of Boeing's Flight Technical Pilots, including moving Boeing's Flight Technical Team under the same organizational umbrella as Boeing's Flight Test Team, and adopting new policies and procedures and conducting training to clarify expectations and requirements governing communications between Boeing's Flight Technical Pilots and regulatory authorities, including specifically the FAA AEG. Boeing also made significant changes to its top leadership since the offense occurred.

The department ultimately determined that an independent compliance monitor was unnecessary based on the following factors, among others: (i) the misconduct was neither pervasive across the organization, nor undertaken by a large number of employees, nor facilitated by senior management; (ii) although two of Boeing's 737 MAX Flight Technical Pilots deceived the FAA AEG about MCAS by way of misleading statements, half-truths, and omissions, others in Boeing disclosed MCAS's expanded operational scope to different FAA

personnel who were responsible for determining whether the 737 MAX met U.S. federal airworthiness standards; (iii) the state of Boeing's remedial improvements to its compliance program and internal controls; and (iv) Boeing's agreement to enhanced compliance program reporting requirements, as described above.

The Chicago field offices of the FBI and the DOT-OIG investigated the case, with the assistance of other FBI and DOT-OIG field offices.

Trial Attorneys Cory E. Jacobs and Scott Armstrong and Assistant Chief Michael T. O'Neill of the Fraud Section and Assistant U.S. Attorney Chad E. Meacham of the Northern District of Texas are prosecuting this case.

Updated January 7, 2021

Case No. 3

Takata Corporation Pleads Guilty, Sentenced to Pay $1 Billion in Criminal Penalties for Airbag Scheme

February 27, 2017
U.S. Dept. of Justice, Office of Public Affairs

Tokyo-based Takata Corporation, one of the world's largest suppliers of automotive safety-related equipment, pleaded guilty to one count of wire fraud and was sentenced to pay a total of $1 billion in criminal penalties stemming from the company's conduct in relation to sales of defective airbag inflators.

Acting Assistant Attorney General Kenneth A. Blanco of the Justice Department's Criminal Division, U.S. Attorney Barbara McQuade of the Eastern District of Michigan, Special Agent in Charge David Gelios of the FBI's Detroit Field Office and Regional Special Agent in Charge Thomas J. Ullom of the U.S. Department of Transportation Office of Inspector General's (OIG) Chicago Field Office made the announcement.

"For over a decade, Takata lied to its customers about the safety and reliability of its ammonium nitrate-based airbag inflators," said Acting Assistant Attorney General Blanco. "Takata abused the trust of both its customers and the public by allowing airbag inflators to be put in vehicles knowing that the inflators did not meet the required specifications. Today's sentence shows that the department will work tirelessly to hold responsible those who engage in this type of criminal conduct."

"We hope that today's guilty plea and sentence will send a message to suppliers of consumer safety products that they must put safety ahead of profits," said U.S. Attorney McQuade.

"The commission of fraudulent activity by the Takata Corporation to generate corporate profits jeopardized the safety of American consumers," said Special Agent in Charge Gelios. "Today's guilty plea should reassure American consumers that the FBI and its federal law enforcement partners will aggressively pursue corporations and their employees when they violate federal laws."

"Today's sentencing of Takata Corporation for wire fraud related to sales of defective airbag inflators is a clear signal to all whose duty it is to protect the public: your most solemn obligation is to public safety," said Regional Special Agent in Charge Ullom. "As is true for Secretary Chao and the Department of Transportation, safety is and will remain the highest priority for OIG, and we remain committed to working with our law enforcement and

prosecutorial partners in pursuing those who commit criminal violations of transportation-related laws and regulations."

Takata pleaded guilty before U.S. District Judge George Caram Steeh of the Eastern District of Michigan to a one count criminal information charging the company with wire fraud. After accepting Takata's guilty plea, Judge Steeh, consistent with the terms of the plea agreement, sentenced Takata to pay a total criminal penalty of $1 billion, including $975 million in restitution and a $25 million fine, and three years' probation. Under a joint restitution order entered at the time of sentencing, two restitution funds will be established: a $125 million fund for those individuals who have been physically injured by Takata's airbags and who have not already reached a settlement with the company, and a $850 million fund for airbag recall and replacement costs incurred by those auto manufacturers who were victims of Takata's fraud scheme. A court-appointed special master will oversee administration of the restitution funds. Takata will also implement rigorous internal controls, retain an independent compliance monitor for a term of three years and cooperate fully with the department's ongoing investigation, including its investigation of individuals.

According to admissions made during the course of the guilty plea, from 2000 through and including 2015, Takata carried out a scheme to defraud its customers and auto manufacturers by providing false and manipulated airbag inflator test data that made the performance of the company's airbag inflators appear better than it actually was. Even after the inflators began to experience repeated problems in the field – including ruptures causing injuries and deaths – Takata executives continued to withhold the true and accurate inflator test information and data from their customers.

The FBI and the U.S. Department of Transportation's Office of Inspector General investigated the case. Trial Attorneys Brian K. Kidd, Christopher D. Jackson and Andrew R. Tyler of the Criminal Division's Fraud Section and Assistant U.S. Attorneys John K. Neal, Erin S. Shaw and Andrew J. Yahkind of the Eastern District of Michigan prosecuted the case. The Criminal Division's Office of International Affairs also provided assistance.

Updated February 27, 2017

Violations of Standards of Conduct

U.S. States and territories have laws and regulations, including standards of conduct, that cover engineering practice. These standards vary from state to state. For the purposes of the present course, the standards of two states were selected and are given in Appendices A and B. Taken together, these two standards address most of the issues present in the standards of all states and in the ethical codes of many professional societies.

In the discussion below, the Standards of Conduct shall be assumed to apply to individual engineers involved in the frauds, even though the corporations employing the engineers, rather than the engineers themselves, were charged with fraud and paid the fines. The argument for sharing responsibility for the fraud charge with individual engineers is based on noting that in each of Cases 1-3, most of the safety questions were *technical issues that must have been studied by engineers* rather than by business employees with no technical background. Thus at least some engineers had to be complicit in the frauds or they would not have deceived anybody—customers or government regulators alike—for any length of time.

An additional assumption is that the individual engineers will be considered as if they held a license as a professional engineer, even though no information is available about their actual registration status.

Particular violations of Standards of Conduct

In Cases 1-3, several of the Standards of Conduct of both State A and B were violated. First, State B Standard (3)(E), which states that "[Engineers'] primary obligation is to protect the safety, health, and welfare of the public," was violated by supporting false claims of safety.

Second, State A Standard (6)(i), which states that "Use by a professional engineer of his engineering expertise and/or his professional engineering status to commit a felony" constitutes "misconduct in the practice of engineering," and this Standard was violated by committing wire fraud.

Third, State B Standard (3)(C), which states that engineers shall "In the conduct of their practice, not knowingly violate any state or federal criminal law," was violated.

Fourth, being "deceptive" in reports is forbidden by State A Standard (6)(b), and all Cases involved deceptive reporting to hide the violations of safety standards.

Finally, all Cases involved violating State A Standard (6)(m), which says that if an engineer has knowledge or reason to believe that any person or firm is guilty of violating any of the rules of professional conduct the engineer must immediately present this information to the board of professional engineering. The engineers knew that their own actions violated rules of professional conduct, but they, for obvious reasons, did not present this information to the

board. Similarly, they violated State B Standard (4), which requires engineers having knowledge of any violation of the State Standards to cooperate with the proper authorities in furnishing information or assistance as may be required.

Appendix A. Standards of Conduct for State A

(1) Pursuant to State statute, the board hereby specifies that the following acts or omissions are grounds for disciplinary proceedings.

(2) A professional engineer shall not advertise in a false, fraudulent, deceptive or misleading manner. As used in State statutes, the term "advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content" shall include without limitation a false, fraudulent, misleading, or deceptive statement or claim which:

(a) Contains a material misrepresentation of facts;

(b) Omits to state any material fact necessary to make the statement in the light of all circumstances not misleading;

(c) Is intended or is likely to create an unjustified expectation;

(d) States or implies that an engineer is a certified specialist in any area outside of his field of expertise;

(e) Contains a representation or implication that is likely to cause an ordinary prudent person to misunderstand or be deceived or fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive;

(f) Falsifies or misrepresents the extent of his education, training or experience to any person or to the public at large, tending to establish or imply qualification for selection for engineering employment, advancement, or professional engagement. A professional engineer shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments;

(g) In any brochure or other presentation made to any person or to the public at large, incident to the solicitation of an engineering employment, misrepresents pertinent facts concerning a professional engineer's employer, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his works.

(3) A professional engineer, corporation or partnership, or other qualified business organization ("firm") shall not practice engineering under an assumed, fictitious or corporate name that is misleading as to the identity, responsibility or status of those practicing thereunder or is otherwise false, fraudulent, misleading or deceptive within the meaning of State Administrative Code. When a qualified business organization or individual is practicing engineering as a sole proprietor under a combination of his own given name, and terms such as "engineering," "and associates" or "and company," then said person or qualified business organization is practicing engineering under a fictitious name,

and must be qualified by a State professional engineer.

(4) A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in State statutes, is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles. Professional engineers shall approve and seal only those documents that conform to acceptable engineering standards and safeguard the life, health, property and welfare of the public.

Failure to comply with the procedures set forth in the Responsibility Rules as adopted by the board of Professional Engineers shall be considered as non-compliance with this section unless the deviation or departures therefrom are justified by the specific circumstances of the project in question and the sound professional judgment of the professional engineer.

(5) A professional engineer shall not be incompetent to practice engineering. Incompetence in the practice of engineering as set forth in State statutes, shall mean the physical or mental incapacity or inability of a professional engineer to perform the duties normally required of the professional engineer.

(6) A professional engineer shall not commit misconduct in the practice of engineering. Misconduct in the practice of engineering as set forth in State statutes, shall include, but not be limited to:

(a) Expressing an opinion publicly on an engineering subject without being informed as to the facts relating thereto and being competent to form a sound opinion thereupon;

(b) Being untruthful, deceptive, or misleading in any professional report, statement, or testimony whether or not under oath or omitting relevant and pertinent information from such report, statement or testimony when the result of such omission would or reasonably could lead to a fallacious conclusion on the part of the client, employer or the general public;

(c) Performing an engineering assignment when not qualified by training or experience in the practice area involved;

1. All professional engineer asbestos consultants are subject to the provisions of State statutes and administrative law, and shall be disciplined as provided therein.

2. The approval of any professional engineer as a “special inspector” under the provisions of State statute., does not constitute acceptance by the board that any such professional engineer is in fact qualified by training or experience to perform the duties of a “special inspector” by virtue of training or experience. Any such professional engineer must still be qualified by training or experience to perform such duties and failure to be so qualified could result in discipline

under this chapter;

(d) Affixing a signature or seal to any engineering plan of document in a subject matter over which a professional engineer lacks competence because of inadequate training or experience;

(e) Offering directly or indirectly any bribe or commission or tendering any gift to obtain selection or preferment for engineering employment with the exception of the payment of the usual commission for securing salaried positions through licensed employment agencies;

(f) Becoming involved in a conflict of interest with an employer or client, without the knowledge and approval of the client or employer, but if unavoidable a professional engineer shall immediately take the following actions:

1. Disclose in writing to his employer or client the full circumstances as to a possible conflict of interest; and,
2. Assure in writing that the conflict will in no manner influence the professional engineer's judgment or the quality of his services to his employer or client; and,
3. Promptly inform his client or employer in writing of any business association, interest or circumstances which may be influencing his judgment or the quality of his services to his client or employer;

(g) Soliciting or accepting financial or other valuable considerations from material or equipment suppliers for specifying their products without the written consent to the engineer's employer or client;

(h) Soliciting or accepting gratuities directly or indirectly from contractors, their agents or other parties dealing with the professional engineer's client or employer in connection with work for which the professional engineer is responsible without the written consent of the engineer's employer or client;

(i) Use by a professional engineer of his engineering expertise and/or his professional engineering status to commit a felony;

(j) Affixing his seal and/or signature to plans, specifications, drawings, or other documents required to be sealed pursuant to State statute, when such document has not been personally prepared by the engineer or prepared under his responsible supervision, direction and control;

(k) A professional engineer shall not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows or has reason to believe is engaging in business or professional practices of a fraudulent or dishonest nature;

(l) If his engineering judgment is overruled by an unqualified lay authority with the

results that the public health and safety is threatened, failure by a professional engineer to inform his employer, responsible supervision and the responsible public authority of the possible circumstances;

(m) If a professional engineer has knowledge or reason to believe that any person or firm is guilty of violating any of the provisions of State statute, or any of these rules of professional conduct, failure to immediately present this information to the board;

(n) Violation of any law of the State directly regulating the practice of engineering;

(o) Failure on the part of any professional engineer or qualified business organization to obey the terms of a final order imposing discipline upon said professional engineer or qualified business organization;

(p) Making any statement, criticism or argument on engineering matters which is inspired or paid for by interested parties, unless the professional engineer specifically identifies the interested parties on whose behalf he is speaking, and reveals any interest he or the interested parties have in such matters;

(q) Sealing and signing all documents for an entire engineering project, unless each design segment is signed and sealed by the professional engineer in responsible charge of the preparation of that design segment;

(r) Revealing facts, data or information obtained in a professional capacity without the prior consent of the professional engineer's client or employer except as authorized or required by law.

(s) Renewing or reactivating a license without completion of Continuing Education (CE) hours and subject areas as required by State statute and administrative code.

Appendix B. Standards of Conduct for State B

PURPOSE: This rule establishes a professional code of conduct for professional engineers.

(1) Definitions.

(A) Board—The Board for Professional Engineers.

(B) Licensee—Any person licensed as a professional engineer under the provisions of State statutes.

(2) The State Rules of Professional Conduct for Professional Engineers Preamble reads as follows: The board adopts the following rules, referred to as the rules of professional conduct. These rules of professional conduct are binding for every licensee. Each person licensed is required to be familiar with the rules of the board. The rules of professional conduct will be enforced under the powers vested in the board. Any act or practice found to be in violation of these rules of professional conduct may be grounds for a complaint to be filed with the Administrative Hearing Commission.

(3) In practicing professional engineering, a licensee shall—

(A) Act with reasonable care and competence and apply the technical knowledge and skill which are ordinarily applied by professional engineers of good standing, practicing in the State. In the performance of professional services, licensees hold their primary responsibility to the public welfare which should not be compromised by any self-interest of the client or the licensee.

(B) Undertake to perform professional engineering services only when they are qualified by education, training, and experience in the specific technical areas involved.

(C) In the conduct of their practice, not knowingly violate any state or federal criminal law.

(D) Comply with state laws and regulations governing their practice. In the performance of professional engineering services within a municipality or political subdivision that is governed by laws, codes, and ordinances relating to the protection of life, health, property, and welfare of the public, a licensee shall not knowingly violate these laws, codes, and ordinances.

(E) Recognize that their primary obligation is to protect the safety, health, property, or welfare of the public. If the professional judgment is overruled under circumstances where the safety, health, property, or welfare of the public are endangered, they are to notify their employer or client and other authority as may be appropriate.

(F) Not assist non-licensees in the unlawful practice of professional engineering.

(G) Not assist in the application for licensure of a person known by the licensee to be

unqualified in respect to education, training, experience, or other relevant factors.

(H) Truthfully and accurately represent to others the extent of their education, training, experience, and professional qualifications and not misrepresent or exaggerate the scope of their responsibility in connection with prior employment or assignments.

(I) Not accept compensation, financial or otherwise, from more than one party, for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties. The disclosure and agreement shall be in writing.

(J) Make full disclosure, suitably documented, to their employers or clients of potential conflicts of interest, or other circumstances which could influence or appear to influence their judgment on significant issues or the unbiased quality of their services.

(K) Not offer, give, solicit, or receive, either directly or indirectly, any commission, contributions, or valuable gifts, in order to secure employment, gain an unfair advantage over other licensees, or influence the judgment of others in awarding contracts for either public or private projects. This provision is not intended to restrict in any manner the rights of licensees to participate in the political process; to provide reasonable entertainment and hospitality; or to pay a commission, percentage, or brokerage fee to a bona fide employee or bona fide established commercial or marketing agency retained by the licensee.

(L) Not solicit or accept financial or other valuable consideration, either directly or indirectly, from contractors, suppliers, agents, or other parties in return for endorsing, recommending, or specifying their services or products in connection with work for employers or clients.

(M) Not attempt to, directly or indirectly, injure the professional reputation, prospects of practice or employment of other licensees in a malicious or false manner, or both.

(N) Not reveal confidential, proprietary, or privileged facts or data, or any other sensitive information obtained in a professional capacity without the prior consent of the client or employer except as authorized or required by law or rules of this board.

(4) Licensees having knowledge of any alleged violation of this Code shall cooperate with the proper authorities in furnishing information or assistance as may be required.