

**BS-AP—No. 3349**

*Applicant:* Consolidated Rail Corporation, Mr. J. F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101-1410.

The Consolidated Rail Corporation seeks approval of the proposed modification of the automatic block signal system, on the two main tracks, between Scioto Interlocking, milepost 132.1 and Bannon Interlocking, milepost 137.6, near Columbus, Ohio, Western Branch, Indianapolis Division; consisting of the discontinuance and removal of automatic signals 1321, 1332, 1351, 1352, 1361, and 1362, and the relocation of automatic signals 1341 and 1342, 350 feet north of milepost 135.

The reason given for the proposed changes is to retire facilities no longer required for present operation and improve braking distance.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on March 8, 1995.

**Phil Olekszyk,**

*Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.*

[FR Doc. 95-6223 Filed 3-13-95; 8:45 am]

BILLING CODE 4910-06-P

**National Highway Traffic Safety Administration**

[Docket No. EA92-041; Notice 4]

**General Motors Pickup Truck Defect Investigation**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT

**ACTION:** Notice of closing of investigation.

**SUMMARY:** The purpose of this Notice is to announce that Engineering Analysis (EA) 92-041 has been closed in accordance with the settlement agreement between the United States Department of Transportation and General Motors Corporation, dated March 7, 1995 (Attachment A). Secretary of Transportation Federico Peña announced the parties' initial agreement to settle the matter and explained the basis for this Departmental decision in a statement issued December 2, 1994, which is available as an attachment to the March 9, 1995 memorandum to the public file for EA92-041 announcing the closing of that investigation. For procedural reasons, the October 17, 1994 initial decision that the C/K pickup trucks subject to EA92-041 contain a defect related to motor vehicle safety is vacated.

**FOR FURTHER INFORMATION CONTACT:**

Ellen Berlin, Director, Office of Public and Consumer Affairs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-9550.

**Authority:** 49 U.S.C. 30118; delegations of authority at 49 CFR 1.50(a) and 501.8(g).

Issued on: March 9, 1995.

**William A. Boehly,**

*Associate Administrator for Safety Assurance.*

**Attachment A—Settlement Agreement Between the United States Department of Transportation and General Motors Corporation**

March 7, 1995.

**Settlement Agreement**

Whereas, the National Highway Traffic Safety Administration (NHTSA), an agency of the United States Department of Transportation (DOT), conducted an investigation (EA92-041) into an alleged defect related to motor vehicle safety of model year 1970-1991 full-sized General Motors Corporation (GM) pickup trucks and cab-chassis equipped with fuel tanks mounted outboard of the frame rails (C/K pickup trucks); and

Whereas, on October 17, 1994, Secretary of Transportation Federico Peña announced his initial decision that the C/K pickup trucks contain a defect related to motor vehicle safety; and

Whereas, no final decision had been made by the Secretary of Transportation as to whether the C/K pickup trucks contain a defect related to motor vehicle safety; and

Whereas, DOT and GM each determined that the settlement of the above-referenced investigation, as memorialized in a letter agreement

dated December 2, 1994, is in the public interest and best furthers their mutual interest in motor vehicle safety; and

Whereas, DOT and GM agree that this settlement will avoid time-consuming, costly litigation of a complex matter that raises difficult factual and legal issues; and instead offers an opportunity for meaningful cooperation between government and industry to significantly enhance the safety of the driving public;

Now therefore, the Department of Transportation and General Motors Corporation hereby agree to the following settlement of this matter:

**I. Terms and Conditions****A. Enhance Federal Motor Vehicle Safety Standard (FMVSS) No. 301**

1. GM and DOT will support enhancement of the current standard regarding fuel system integrity, FMVSS 301, through a public rulemaking process.

a. GM will support the development by DOT, on an expedited basis, of a revised standard that best simulates the real-world crash conditions that result in post-crash fires.

b. GM agrees that the current FMVSS 301 standard should be enhanced to meet today's high pressure fuel system designs and in today's traffic environment to provide higher levels of occupant protection from post-crash fires.

c. It is envisioned that the revised standard would employ a more representative impacting device than the current standard, would involve higher test speeds (approximately 40 m.p.h.) than the current standard, and would include separate tests of the integrity of fuel system components in addition to full vehicle tests at different impact locations.

2. GM agrees that its support will take the following form:

a. GM will, to the extent legally permissible, take an active part in the rulemaking process.

b. GM will undertake and/or finance research, including research described in the other provisions of this agreement, which will further the development of an enhanced standard.

c. GM will submit to NHTSA's rulemaking docket all research undertaken or financed in accordance with the other provisions of this agreement that support the development of an enhanced standard.

3. GM and DOT will work together to improve other Federal motor vehicle safety standards.

4. None of the provisions in this section A. shall operate to give GM

rights it does not otherwise have under the Administrative Procedure Act or under any other provision of law, nor deny or abridge such rights to any other person.

#### *B. Fire Safety Research*

1. GM will finance motor vehicle fire safety research, or otherwise contract to conduct such research. GM agrees to expend at least \$5,000,000 within the two-year period following the effective date of this agreement for this activity. GM will expend at least an additional \$5,000,000 during the subsequent three years for this activity unless both NHTSA and GM agree that this activity should no longer be funded. Research to be conducted shall include, among other possible projects: (i) Detailed accident analysis and development of new vehicle crash and component level testing procedures; (ii) testing of materials that would reduce the risk of fire; and (iii) development of techniques for preventing, containing and extinguishing vehicle fires. The research projects shall be undertaken in accordance with paragraph B.2., below.

2. Within 30 days of the effective date of this agreement, GM and NHTSA representatives will meet, at which time GM will provide NHTSA with a proposal identifying the facilities to be used and the research projects to be undertaken during the initial two-year period of activity. The NHTSA representatives will promptly review GM's proposal and provide recommendations and comments on it. The NHTSA and GM representatives will continue to meet and confer as is necessary to reach agreement on the research projects. Thereafter, the NHTSA and GM representatives will meet periodically to review the status and progress of the projects and to consider any proposed modifications to those projects.

3. Six months prior to the end of the initial two-year period of activity, GM will submit to NHTSA a description of the projects proposed to be funded during the subsequent three-year period. The parties shall then follow the procedures set forth in paragraph B. 2, above, in reaching agreement as to the projects for the subsequent period and in monitoring such projects.

4. GM will provide NHTSA with such reports as may reasonably be required by NHTSA to inform NHTSA of the status, progress, and results of fire safety research projects conducted under this agreement.

5. All research undertaken pursuant to this provision shall be submitted to NHTSA and shall be made publicly available. Neither GM nor any of its

contractors or grantees shall be entitled to receive or retain any proprietary interest in such research.

6. DOT will provide, in its discretion and consistent with applicable law, available resources to support this project. Such resources may include, but are not limited to, project reviews, research on post-crash fire prevention, research related to the FMVSS No. 301 rulemaking, public information, and other similar activities.

#### *C. Public Education*

1. GM agrees to expend at least \$11,855,000 within the five-year period following the effective date of this agreement in the areas of public education, as generally described herein. GM will expend approximately one-fifth of this amount each year over the five-year period. GM, with NHTSA's concurrence, may alter the rate of spending if doing so would further the goals of this section.

2. Funds shall be spent in the following areas: (i) Support for enactment, upgrading and/or retention of state legislation for the enhancement of driver and vehicle safety including, for example, administrative license revocation laws and blood alcohol content laws (e.g., .08 BAC laws, zero tolerance laws for youth), and for the primary enforcement of seat belt laws; (ii) public information and education materials (including public service announcements) on driver and vehicle safety (e.g., anti-drinking and driving messages, encouragement of seat belt usage), particularly in support of legislative and/or enforcement campaigns and/or to publicize new or existing laws, and development and distribution of special safety awareness materials for targeted hard-to-reach populations; and (iii) support of the Network of Employers for Traffic Safety (NETS) program and the Techniques for Effective Alcohol Management (TEAM) program.

3. All public information and education materials prepared by, or under contract to, GM shall be submitted to NHTSA for its comments and recommendations prior to their issuance. GM will provide NHTSA with a copy of all such finalized materials.

4. Within 30 days of the effective date of this agreement, GM and NHTSA representatives will meet, at which time GM will provide NHTSA with a proposal for the projects and activities to be undertaken by GM during the first year for purposes of satisfying the requirements of this section. The NHTSA representatives will promptly review GM's proposal and provide recommendations and comments on it.

The NHTSA and GM representatives will continue to meet and confer as is necessary to reach agreement on the projects or activities to be undertaken or financed. Thereafter, the NHTSA and GM representatives will meet periodically to review the status and progress of such projects or activities and to consider any proposed modifications to them.

5. Sixty days prior to the end of the first year period of activity, and thereafter on an annual basis or on such other basis as GM and NHTSA mutually shall determine, GM shall submit to NHTSA a description of the projects and activities to be undertaken during the following year or other agreed-upon time period. The parties shall then follow the procedures set forth in paragraph C.4 above in reaching agreement as to the projects and activities for the subsequent period and in monitoring such projects and activities.

6. GM will provide NHTSA with such reports as may reasonably be required by NHTSA to inform NHTSA of the status, progress, and results of the projects or activities conducted pursuant to this section.

7. GM's commitment to expend these funds is dependent upon DOT's direct or indirect support, through expenditures, grants to states and/or other third parties, or otherwise, for public education programs and activities at approximately equivalent levels. If DOT does not provide such support, GM and DOT will use their best efforts to discuss, in good faith, whether and how to redirect GM's commitment of expenditures to other alternative programs furthering motor vehicle safety to which DOT is committing funds at equivalent levels.

#### *D. Crash Test Dummy Research and Development*

1. GM agrees to expend at least \$6,500,000 within the five-year period following the effective date of this agreement in the area of research into and development of crash test dummies. GM will expend approximately one-fifth of this amount each year of the five-year period. GM, with NHTSA's concurrence, may alter the rate of spending if doing so would further the goals of this section.

2. Within 30 days of the effective date of this agreement, GM and NHTSA representatives will meet, at which time GM will provide NHTSA with a proposal describing the projects and activities to be undertaken by GM during the first year for purposes of satisfying the requirements of this section. The NHTSA representatives

will promptly review GM's proposal and provide recommendations and comments on it. The NHTSA and GM representatives will continue to meet and confer as is necessary to reach agreement on the projects or activities to be undertaken. Thereafter, the NHTSA and GM representatives will meet periodically to review the status and progress of the projects or activities and to consider any proposed modifications to those projects.

3. Sixty days prior to the end of the first year period of activity, and thereafter on an annual basis or on such other basis as GM and NHTSA mutually shall determine, GM shall submit to NHTSA a description of the projects and activities to be undertaken during the following year or other agreed-upon time period. The parties shall then follow the procedures set forth in paragraph D.2 above in reaching agreement as to the projects and activities for the subsequent period and in monitoring such projects and activities.

4. GM will provide NHTSA with such reports as may reasonably be required by NHTSA to inform NHTSA of the status, progress, and results of crash dummy research and development projects conducted pursuant to this agreement.

5. All research undertaken pursuant to this provision shall be submitted to NHTSA and shall be made publicly available. Neither GM nor any of its contractors or grantees shall be entitled to receive or retain any proprietary interest in such research.

6. GM's commitment to expend these funds is dependent upon DOT supporting crash dummy research at approximately equivalent levels. Such support may include, but is not limited to grants and contracts, as well as direct and indirect expenditures, for biomechanical testing, analytical modeling, dummy component development, and accident data analyses. If DOT does not provide such support, GM and DOT will use their best efforts to discuss, in good faith, whether and how to redirect GM's commitment to other alternative programs furthering motor vehicle safety to which DOT is committing funds at equivalent levels.

#### *E. Burn & Trauma Research*

1. GM agrees to expend at least \$5,000,000 within the five-year period following the effective date of this agreement to further research relating to the causes and treatment of burns and trauma. GM shall accomplish this task by means of donations and/or grants to one or more institutions with

experience in burn and/or trauma research. Institutions selected as recipients of these funds shall use the funds for specific research projects designed to advance medical science's understanding and treatment of burn or trauma injuries, particularly those arising out of motor vehicle accidents. GM will donate approximately \$1,000,000 each year over the five-year period to agreed-upon projects. GM, with NHTSA's concurrence, may alter the rate of spending if doing so would further the goals of this section.

2. Within 60 days of the effective date of this agreement, GM and NHTSA representatives will meet, at which time GM will provide NHTSA with a proposal identifying the institutions to be selected and the projects to be undertaken during the first year for purposes of satisfying the requirements of this section. The NHTSA representatives will promptly review GM's proposal and provide recommendations and comments on it. The NHTSA and GM representatives will continue to meet and confer as is necessary to reach agreement on the institutions to be selected and the projects to be undertaken. Thereafter, the NHTSA and GM representatives will meet periodically to review the status and progress of the projects and to consider any proposed modifications to those projects.

3. Sixty days prior to the end of the first year period of activity, and thereafter on an annual basis or on such other basis as GM and NHTSA mutually shall determine, GM shall submit to NHTSA a description of the projects and activities to be undertaken during the following year or other agreed-upon time period. The parties shall then follow the procedures set forth in paragraph E.2 above in reaching agreement as to the projects for the subsequent period and in monitoring such projects.

4. The terms of any donation or grant shall require appropriate recordkeeping and reporting obligations, including progress reports, by the recipient institutions sufficient to assure NHTSA and GM that the funds are being prudently spent for their intended purposes, and that the objectives of the research program are being realized.

5. GM shall notify NHTSA of each donation or grant made by it and shall provide NHTSA with an annual summary of its donations under this provision of the agreement.

6. All research undertaken pursuant to this provision shall be submitted to NHTSA and shall be made publicly available. Neither GM nor any of its grantees shall be entitled to receive or

retain any proprietary interest in such research.

#### *F. Computer Modeling*

1. GM agrees to expend \$2,000,000 within the first year following the effective date of this agreement in the area of computer-based design modeling of accident-related injuries arising from fire, trauma, and exposure to toxic substances. GM agrees to expend an additional \$3,000,000 for these purposes over the subsequent three-year period. The parties expect that this activity will assist in the development of more effective crash test dummies.

2. Within 30 days of the effective date of this agreement, GM and NHTSA representatives will meet, at which time GM will provide NHTSA with a proposal describing the projects and activities to be undertaken by GM during the initial one-year period of activity for purposes of satisfying the requirements of this section. The NHTSA representatives will promptly review GM's proposal and provide recommendations and comments on it. The NHTSA and GM representatives will continue to meet and confer as is necessary to reach agreement on the projects or activities to be undertaken. Thereafter, the NHTSA and GM representatives will meet periodically to review the status and progress of the projects or activities and to consider any proposed modifications to those projects or activities.

3. Three months prior to the end of the initial one-year period of activity, GM will submit to NHTSA a description of the projects and activities proposed to be funded during the subsequent three-year period. The parties shall then follow the procedures set forth in paragraph F.2, above, in reaching agreement as to the projects or activities for the subsequent period and in monitoring such projects or activities.

4. GM will provide NHTSA with such progress reports as may reasonably be required by NHTSA to inform NHTSA of the status, progress, and results of such computer-based design modeling projects conducted under this agreement.

5. All research undertaken pursuant to this provision shall be submitted to NHTSA and shall be made publicly available. Neither GM nor any of its contractors or grantees shall be entitled to receive or retain any proprietary interest in such research.

6. GM's commitment to expend the \$3,000,000 for the latter three-year period is dependent on DOT, in good faith, supporting these or similar activities during the latter three-year period. DOT support may take the form

of, but is not limited to, grants and contracts, as well as direct and indirect expenditures, for computer modeling for side impact and frontal impact dummies. If DOT does not provide such support, GM and DOT will use their best efforts to discuss, in good faith, whether and how to redirect GM's commitment to other alternative programs furthering motor vehicle safety to which DOT is committing funds at equivalent levels.

#### G. Impairment Research

1. GM agrees to expend at least \$5,000,000 within the five-year period following the effective date of this agreement for research into the areas of driver impairment, including but not limited to (i) the effects of aging, (ii) the effects of alcohol, and (iii) the effects of the use of prescription and other lawful drugs. GM will expend approximately one-fifth of this amount each year of the five-year period. GM, with NHTSA's concurrence, may alter the rate of spending if doing so would further the goals of this section.

2. Within 30 days of the effective date of this agreement, GM and NHTSA representatives will meet, at which time GM will provide NHTSA with a proposal describing the projects and activities to be undertaken by GM during the first year for purposes of satisfying the requirements of this section. The NHTSA representatives will promptly review GM's proposal and provide recommendations and comments on it. The NHTSA and GM representatives will continue to meet and confer as is necessary to reach agreement on the projects or activities to be undertaken. Thereafter, the NHTSA and GM representatives will meet periodically to review the status and progress of the projects or activities and to consider any proposed modifications to those projects or activities.

3. Sixty days prior to the end of the first year period of activity, and thereafter on an annual basis or on such other basis as GM and NHTSA mutually shall determine, GM shall submit to NHTSA a description of the projects and activities to be undertaken during the following year or other agreed-upon time period. The parties shall then follow the procedures set forth in paragraph G.2 above in reaching agreement as to the projects or activities for the subsequent period and in monitoring such projects or activities.

4. GM will provide NHTSA with such reports as may reasonably be required by NHTSA to inform NHTSA of the status, progress, and results of driver impairment research projects conducted under this agreement.

5. All research undertaken pursuant to this provision shall be submitted to NHTSA and shall be made publicly available. Neither GM nor any of its contractors or grantees shall be entitled to receive or retain any proprietary interest in such research.

6. GM's commitment to expend these funds is dependent upon DOT supporting driver impairment research at approximately equivalent levels. Such support may include, but is not limited to, grants and contracts, as well as direct and indirect expenditures, for research, and other activities which further the development of facilities, tools or other means to support such research. If DOT does not provide such support, GM and DOT will use their best efforts to discuss, in good faith, whether and how to redirect GM's commitment to other alternative programs furthering motor vehicle safety to which DOT is committing funds at equivalent levels.

#### H. Child Safety Seats

1. GM agrees to donate to one or more qualified organizations at least \$4,000,000 for the purchase and distribution of child safety seats during the first year following the effective date of this settlement agreement. GM shall donate such funds in the approximate amount of \$1,000,000 during each quarter of that year. GM also agrees to donate at least \$4,000,000 within the subsequent four years to one or more qualified organizations for the purchase and distribution of additional child safety seats.

2. DOT shall identify, on an ongoing basis so as to facilitate timely GM donations, qualified organizations which DOT in its sole discretion deems appropriate to receive donations from GM for the purchase and distribution of child safety seats. GM, in its sole discretion, shall select from the list of qualified organizations provided by DOT, the organization(s) to which it will donate funds, and shall decide the exact amount of funds that each such organization will receive.

3. In order to be identified by DOT as a qualified organization, an organization shall certify to DOT in writing that it shall: (i) Work, through its state or local affiliates, with agencies such as children's hospitals and health agencies to identify families who could not otherwise afford seats or who have special needs; (ii) have an existing loaner or give-away child safety seat program or have staff trained in child passenger safety issues; (iii) distribute the seats to low-income families and/or families with special needs across a broad geographical area throughout the

United States; (iv) comply with NHTSA guidelines with respect to the approximate mix of child safety seats (e.g., infant, toddler, booster, special needs); (v) distribute all of the seats purchased with the funds provided by GM to the local agencies within 120 days of the receipt of the funds; (vi) educate recipients of the seats as to methods of proper installation and use; (vii) not use more than 10 percent of the funds provided by GM for administrative expenses related to distribution of the seats; (viii) add the GM-provided funds to the total of its existing funds spent on the distribution of child safety seats to low-income families and not divert any funds currently budgeted to such activities to other activities; (ix) allow the activities conducted pursuant to this provision to be audited by such third party as selected by DOT; (x) acknowledge and agree that such commitments and promises shall be enforceable; and (xi) acknowledge and agree that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use.

4. GM's commitment to donate the second \$4,000,000 of funds during the subsequent four-year period is dependent upon DOT's expenditure of funds for the development and support of child safety seat loaner and give-away programs during that period. If DOT makes such expenditures, GM shall donate funds in accordance with this section at equivalent levels as DOT until such time as GM's total \$8,000,000 commitment is fulfilled. If DOT does not make such expenditures, DOT and GM will use their best efforts to discuss, in good faith, whether and how to redirect GM's commitment to other alternative programs furthering motor vehicle safety to which DOT is committing funds at equivalent levels. Costs and expenses attributable to DOT's efforts in identifying qualified organizations shall not count as part of DOT's expenditure of funds for purposes of this section.

#### I. Dismissal of Lawsuit

Within five days after the execution of this final settlement agreement, GM will dismiss *General Motors Corporation v. Peña*, C.A. No. 94-75668 E.D. Mich. (filed Nov. 17, 1994) by filing a notice of dismissal in the form attached as Exhibit A.

#### J. Pending Investigation

1. Within five days after the execution of this final settlement agreement, DOT

will close its investigation into whether the GM C/K pickup trucks contain a defect related to motor vehicle safety (EA 92-041). DOT will not, in connection with that investigation, seek to have GM, either voluntarily or involuntarily, recall or take other field action with respect to the C/K pickup trucks.

2. The initial decision of October 17, 1994, was not a final decision or final finding of a defect and was subject to further review by DOT. DOT will not reach a final decision in this matter as to whether the GM C/K pickup trucks contain a defect related to motor vehicle safety. For procedural reasons, the initial decision will be vacated within five days after the execution of this final settlement agreement. Within five days after the execution of this agreement, DOT will publish in the **Federal Register** and place in the public file for EA92-041 a closing memo indicating DOT's reasons for entering into this agreement and containing notice of vacation of DOT's initial decision in the matter.

## II. Reporting and Recordkeeping

A. GM will certify its compliance with the terms and conditions of this settlement agreement (including without limitation the requirement that all expenditures shall be "new" as defined in section III.E below), shall maintain such records as are necessary to demonstrate its compliance, and shall make such records available as may be reasonably required by DOT.

B. In addition to the requirements contained in the above provisions, GM will provide annual reports to NHTSA within 30 days following the end of each one-year period after the effective date of this agreement, until the terms of the agreement are satisfied, describing how GM is meeting its commitments and obligations under this agreement. Each annual report shall contain information relating to the nature and levels of expenditures for all projects undertaken pursuant to this settlement agreement, including the methodology for computing the value of GM's contributions.

C. Upon request, DOT will make available to GM information to confirm that DOT has provided support to certain projects as specified in Part I of this settlement agreement.

## III. General Provisions

A. This agreement contains the entire agreement between the parties regarding the subject matter. There are no promises, agreements, conditions, undertakings, warranties or representations oral or written, express

or implied, between them relating to this subject matter, other than as herein set forth. This agreement is intended by the parties to be an integration of all prior or contemporaneous promises, agreements, conditions, negotiations and undertakings between them.

B. This agreement may not be modified or amended except by an agreement in writing, signed by the parties.

C. This settlement agreement, and any amendments or modifications thereto, shall conform to and be carried out in accordance with all applicable laws and regulations. GM and DOT shall work in good faith to ensure that any amendments or modifications reflect consistency with these principles. If any portion of this agreement or any amendment or modification is not consistent with applicable laws and regulations, that portion shall be severable and the parties shall work in good faith to restructure that portion of the agreement consistent with the parties' original intent. The remainder of this agreement and any amendment or modification shall continue to be binding on the parties.

D. The headings in the agreement are for convenience only, and shall not limit or otherwise affect or describe the scope or intent of any of the terms hereof or of any particular section thereof. Any references to "NHTSA" in this agreement shall mean the National Highway Traffic Safety Administration or its successor(s).

E. GM's financial obligations hereunder shall represent, in all instances, new expenditures not heretofore provided for in any approved GM budget or otherwise planned (prior to the execution of the parties' December 2, 1994 letter agreement) to be undertaken by GM during the period of this settlement agreement. Annually repeated expenditures, e.g., annual contributions to charities or lobbying organizations, made or committed to by GM prior to the execution of the parties' December 2, 1994, letter agreement, shall not count as new expenditures except those portions, if any, of such expenditures that are over and above such annually repeated expenditure amounts.

F. Research reports submitted to NHTSA by or on behalf of GM and made publicly available pursuant to this agreement may, consistent with applicable law, identify GM as a source or sponsor of the report by stating that the report was financed, produced, or prepared, as applicable, "by GM pursuant to an agreement between GM and the U.S. Department of Transportation." Public education

materials produced or distributed by a third party (e.g., lobbying organization, AD Council, state or local government agency) pursuant to this agreement shall, absent legal prohibition to the contrary, contain a source identification which identifies such third party as the source of the materials in question. Public education materials produced and distributed directly by GM pursuant to this agreement may contain a source identification, assuming no other appropriate third party source exists, which states discretely, "Brought to you, produced, or sponsored by the U.S. Department of Transportation and General Motors Corporation pursuant to an agreement between the parties."

G. For the projects and activities encompassed by this agreement, GM's expenditures may be made, where appropriate, in the form of a combination of money, facilities, human resources, salaries, and other things directly related to the performance of such projects and activities and valued according to generally accepted accounting principles. However, GM's expenditures may not include general and administrative expenses attributable to GM corporate activities not directly related to the projects and activities conducted under this agreement; nor may GM's expenditures include indirect costs, such as depreciation of facilities and equipment, amortization of intangible rights, and insurance of all types, not directly related to the projects and activities conducted under this agreement. Furthermore, costs and expenses attributed to the development of GM's proposals pursuant to paragraphs B.2, B.3, C.4, C.5, D.2, D.3, E.2, E.3, F.2, F.3, G.2, and G.3 of Part I of this settlement agreement shall not be used by GM to fulfill its financial commitments.

H. This settlement agreement reflects the parties' desire to fully and completely settle the current investigation by DOT into an alleged defect of 1970-91 full-sized GM pickup trucks. Nonetheless, DOT reserves the right at any time, based on new information, to open a new defect investigation with respect to whether the GM C/K pickup trucks contain defect(s) related to motor vehicle safety. Nothing in this agreement shall nullify any obligation the Secretary may have under law to consider new evidence that was not part of the administrative record in this case. If a subsequent defect investigation involving the same alleged safety defect in the C/K trucks is opened, any unfulfilled commitments by GM under this agreement shall become null and void and GM shall not be deemed to have waived, by reason of

the execution of this agreement, any defense to or argument against any action by NHTSA, DOT or the Secretary.

I. The provisions regarding the redirection of funds, which appear in paragraphs C.7, D.6, F.6, G.6, and H.4 of Part I of this agreement, are intended by GM and DOT to require both parties to act in good faith to consider alternative programs of mutual interest in motor vehicle safety to which the funds may be redirected and to reflect a strong presumption that the funds in question will be redirected to such alternative programs.

J. In attempting to reach agreement on the projects or activities to be undertaken or financed by GM pursuant to sections C, D, F, and G of Part I of this agreement, the parties shall meet and confer in the utmost good faith and NHTSA shall not unreasonably withhold its agreement to a GM

proposal that falls within the applicable description of activities and otherwise reasonably furthers the goals of the section in question.

K. All questions with respect to the construction of this agreement and the rights and liabilities of the parties shall be determined in accordance with the laws of the United States.

L. GM and DOT agree that this settlement agreement shall constitute a binding and enforceable contractual agreement upon GM and DOT and any successor corporations or agencies. In the event of a breach of this agreement, either party may institute a civil action in the United States District Court for the District of Columbia to enforce the terms of this agreement or to seek other appropriate relief.

M. By entering into this settlement agreement, neither GM nor DOT concedes the validity of each other's claims or defenses, and nothing in this

settlement agreement shall constitute an admission by either party concerning its claims or defenses.

N. This settlement agreement is entered into solely for the purposes of settling the matters described herein and shall not confer any rights or benefits upon persons who are not parties to this agreement.

#### **IV. Effective Date**

The effective date of this agreement shall be March 7, 1995.

Agreed to by:

Dated: March 6, 1995.

**John F. Smith,**

*Chief Executive Officer and President,  
General Motors Corporation.*

Dated: March 7, 1995.

**Federico Peña,**

*Secretary, Department of Transportation.*

BILLING CODE 4910-59-P

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

GENERAL MOTORS CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. Action No. 94 CV 74668
	)	
FEDERICO PEÑA, Secretary	)	
of Transportation, UNITED	)	
STATES DEPARTMENT OF	)	
TRANSPORTATION and NATIONAL	)	
HIGHWAY TRAFFIC SAFETY	)	
ADMINISTRATION,	)	
	)	
Defendants.	)	
	)	

NOTICE OF DISMISSAL

Plaintiff, by its undersigned counsel, hereby dismisses this action pursuant to Fed. R. Civ. P. 41(a)(1).

Respectfully submitted,

Of Counsel:

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