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September 18, 2017

The Honorable Elaine Chao
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Chao:

In the past weeks, Hurricanes Harvey and Irma have devastated swaths of the Gulf Coast and East Coast, inundating whole cities and communities with water from the skies and seas. Recovering from the destruction wrought by these hurricanes will be long and challenging. As we embark on this road to recovery, we must work together to contain the scope and scale of the damages incurred. With that in mind, and as ranking member of the Senate Commerce Subcommittee on Consumer Protection, Product Safety, Data Security, and Insurance, I write to draw to your attention a pernicious problem that arises in the aftermath of hurricanes and spreads the suffering caused by these hurricanes beyond their paths of devastation – the fraudulent sale to unsuspecting of flood-damaged cars.

Experts estimate about one million vehicles have been damaged by the deluge caused by Hurricane Harvey alone, and most of these will be declared total losses by insurance companies. Indeed, aerial footage of the historic flooding show cars stranded on streets, highways, and parking lots – almost wholly submerged in the salty water from the Gulf of Mexico.

In the aftermath of Hurricane Katrina and Superstorm Sandy, we saw thousands of flooded cars and trucks sold to unsuspecting customers.[1] These vehicles have been described as ticking time bombs. They can be superficially cleaned up to look just like new, but there is no way to halt the salt and rust from slowly corroding wires, sensors, and other vital components, or prevent the inevitable total failure of the vehicle. Even worse, buyers of flood-damaged vehicles often have no clue about their car's history until their vehicle stalls in the middle of the road or breaks down on the freeway. There is no question that flooded vehicles are unsafe – endangering the lives and safety of drivers, passengers, and everyone with whom they share the road.

There is already evidence that vehicles originating from Houston's flooded areas are appearing on auto auction websites and I am worried that vehicles with undisclosed flood

[1] Oldenburg, D. (2006 March 26). Katrina Cars and Rita Rip-Offs. *The Washington Post.* Retrieved from http://www.washingtonpost.com/wp-dyn/content/article/2006/03/25/AR2006032500098.html
Willis, D.P. (2014 August 26) N.J. dealer sold cars flood by superstorm Sandy. *USA Today.* Retrieved from: https://www.usatoday.com/story/news/nation/2014/08/26/dealer-sold-superstorm-sandy-flooded-cars/14621177/

damage will soon end up in the hands of unsuspecting consumers far from the Gulf Coast if appropriate action is not immediately taken. One way to address this issue is to bring strong enforcement actions against insurance companies that fail to properly record the transfer of titles to themselves after they declare a vehicle a total loss, as well as auto auction companies that fail to accurately document a vehicle's ownership history.

NHTSA has long stated that an insurance company is considered a "transferee" if it pays the insured's claim for total loss of a flood-damaged vehicle.[2] However, to expedite claims or avoid fees, insurance companies will often fail to properly transfer the title of a vehicle to themselves in a practice known as "title skipping." As a result, the insurance company's name is essentially omitted from the chain of title, making it appear that the vehicle was sold by the original owner. This means that when these vehicles are sold at auctions – as they often are – prospective buyers have no way of knowing that the insurance company was "skipped" in the ownership chain and that the vehicles in question were declared a total loss. So, these buyers will end up overpaying for a vehicle that is certain to experience mechanical and electrical failure down the road.

Fortunately, "title skipping" is already considered unlawful under the current federal law. In the wake of Superstorm Sandy in 2012 and flooding in Texas in May 2015, the National Highway Traffic Safety Administration (NHTSA) took proactive steps to protect consumers by sending letters to insurance companies and reminding them of their obligations under federal odometer disclosure laws (49 U.S.C. §32705). Samples of those letters are enclosed. While I have reached out to the Insurance Association of Connecticut for assurances that titles will be properly handled to denote that a vehicle was transferred to an insurer and marked in some way as a flooded vehicle, I strongly recommend NHTSA also write to insurance companies to help protect consumers. Furthermore, per 49 U.S.C. §32709, NHTSA may impose up to $10,000 in civil penalties for each violation of the federal odometer law. I urge NHTSA to fully utilize this civil penalty authority to stop unlawful behavior if initial warning letters are not heeded.

It has also come to my attention that "title skipping" often occurs when the insured chooses to *keep* a vehicle declared as a total loss by the insurance company. Some insurers actively promote this process and even advertise it on their websites. In these cases, the insurance company will pay the insured for the total loss, deducting what they claim is a fair salvage amount. I urge NHTSA to clarify to insurance companies that "title skipping" under this scenario is also clearly in violation of federal odometer disclosure laws. Regardless of whether a total loss vehicle is returned to the owner or not, any declaration of a total loss triggers obligations on the insurance company to act in compliance with federal odometer disclosure laws. Clearly warning insurance companies that such practices will not be tolerated, followed by strict enforcement of the laws, will go a long way toward protecting consumers. If you are unable to do this, please explain why and what, if any, new legislation is necessary for you to do so.

I also urge you to also increase enforcement actions against auto auctions that act in violation of federal odometer disclosure laws. Under the Federal Odometer Act, auction companies are required to maintain records regarding the name of the most recent owner of the motor vehicle. However, even the major auto auction companies have been known to accept

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[2] See Enclosure.

vehicles from entities who were clearly not the original owner. This significantly interferes with buyers' ability to discern a vehicle's ownership history – a highly relevant factor in determining the value of the vehicle. Civil penalties should be imposed on any auction company that accepts vehicles with improper titling.

Rigorous enforcement of the federal odometer disclosure laws is critical because it may provide the only red flag to prospective used car buyers that a vehicle is a total loss due to flood damage. Due to different state laws and requirements regarding when a vehicle needs to be branded as salvage or flooded, consumers cannot necessarily depend on a vehicle's branding to ascertain if it is a total loss. However, if NHTSA does its job enforcing federal odometer disclosure laws, consumers can look out for vehicles that were once titled to insurance companies. Furthermore, as we remain in the midst of the massive Takata airbag recall, taking action to protect consumers from total loss vehicles damaged by flooding is even more important because we know the defective airbag inflators can be even more prone to violently exploding when exposed to moisture.

In closing, I welcome suggestions for specific actions Congress can do to protect consumers from becoming unknowing owners of flood-damaged vehicles. I appreciate your prompt attention to this matter and look forward to working with you to address this troubling issue. I respectfully request a response by October 6, 2017.

Sincerely,

Richard Blumenthal
United States Senate

Enclosure

U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue SE.
Washington, DC 20590

BY U.S. MAIL
Mr. Christopher C. Mansfield
General Counsel
Liberty Mutual Group
175 Berkeley Street
Boston, MA 02117

Re: Insurer Obligations Under Federal Odometer Disclosure Laws

Dear Mr. Mansfield:

We are writing to you and to the general counsels of other major U.S. insurance companies as part of the National Highway Traffic Safety Administration's (NHTSA) outreach to the industry concerning your company's legal obligations with respect to federal odometer disclosure laws for flood damaged vehicles. As a result of certain recent events, NHTSA is targeting its outreach to insurance companies that do business in the State of Texas.

As you may be aware, in December 2012 following Hurricane Sandy, NHTSA sent correspondence to the industry advising that we had received allegations of some insurance companies failing to properly transfer the title of a vehicle that had been declared a total loss due to flood damage. Based on the information at that time, it appeared that some insurance companies were engaging in a practice known as "title skipping," whereby the insurance company was not listed as a "transferee" so that when the flood damaged vehicle was ultimately sold at auction, the insurer was omitted from the chain of title.

We are again writing to remind you that under federal odometer disclosure law, when an insurance company pays its insured's claim for total loss of a flood-damaged vehicle, it is considered a "transferee" and is required to include a written disclosure of the odometer reading to the purchaser on the title or on the document being used to reassign the title. Additionally, the written disclosure must contain the transferee insurance company's name and address. The written disclosure must also be signed by the transferee insurance company and a copy must be provided to its insured. 49 U.S.C. § 32705, 49 C.F.R. § 580.5.

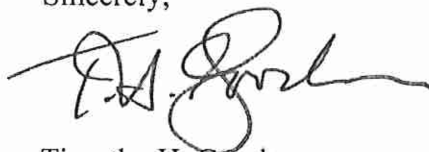
While your company is required to meet its obligations under Federal law, your compliance is especially significant in the wake of two recent events – the May 2015 flooding in the Houston, Texas area and the recall of nearly 34 million defective Takata air bag inflators. As determined by Takata, a defect related to motor vehicle safety may arise in some certain models of frontal air bag inflators which may cause the air bag inflator to rupture. In the event of a

rupture, metal fragments could pass through the air bag cushion material, which may result in injury or death to vehicle occupants. The recent flooding in Texas is of particular importance in light of the Takata recalls because the potential for ruptures to occur appears to be influenced by persistent long-term exposure to heat and high absolute humidity.

In the agency's letter of December 2012 and by way of this letter and in light of the severity of the potential risk of injury or death in the event of a Takata air bag inflator rupture, we are reiterating our request that you reach out to your company's employees and independent agents both in the State of Texas and more broadly, to remind and reeducate them about their obligations under federal odometer disclosure laws. We are also aware that the Texas Department of Insurance recently sent a bulletin to property and casualty insurance companies on the topic of issuing a salvage title in compliance with Texas law.

As a reminder, the failure to comply with federal odometer disclosure laws and regulations is a violation of Federal law which may subject you or your company to fines and/or imprisonment.

Sincerely,



Timothy H. Goodman
Assistant Chief Counsel
Litigation and Enforcement

(Note: Posted on the NHTSA Facebook page as of 2-8-2013. Letter sent on 12/20/2012)

Via Federal Express
Mr. Dana Proulx
General Counsel
GEICO Corporation
One Geico Plaza
Washington, DC 20076

Dear Mr. Proulx:

We have received reports that certain insurance companies may be engaging in transactions that violate Federal odometer disclosure law with respect to vehicles damaged in Hurricane Sandy. Although we are not asserting that your company is engaging in such practices, we are writing to a number of auto insurance companies to remind them of the Federal odometer disclosure law requirements and ask them to review their practices regarding odometer disclosures. These letters do not accuse your company, or any other company, of violating the law.

We understand that when a flood-damaged vehicle is declared a total loss, the insurance company pays the insured the value of the vehicle, becomes the owner, and acquires control over the vehicle from the insured. However the reports we have received indicate that instead of completing the required odometer disclosure, some companies ask the insured to complete the odometer disclosure statement without listing the insurance company as the transferee. According to these reports, the insurance company will not sign the title, make an odometer disclosure, or transfer title. The insurance company then sells the vehicle at auction, keeps the proceeds from the auction, and provides the title with the odometer disclosure statement as signed by the insured to the auction buyer. The next person in the chain of title of the vehicle will be the buyer at auction. The insurance company will essentially be omitted from the chain of title.

In the circumstance described above, an insurance company is considered a "transferee" when it pays the insured's claim (in return it obtains ownership of the vehicle), and a "transferor" when it sells the vehicle at auction. See 49 C.F.R. § 580.3. As a transferor, the insurance company is required to make certain disclosures.

Under federal odometer disclosure law, 49 U.S.C. §32705, a person transferring ownership of a motor vehicle shall give the transferee written disclosure of the cumulative mileage registered on the odometer. More specifically, under 49 C.F.R. §580.5, "each transferor shall disclose the mileage to the transferee in writing on the title or ... on the document being used to reassign the title... [t]his written disclosure must be signed by the transferor, including the printed name." The transferee must sign the disclosure statement, print his name, and return a copy to his transferor. If you have any questions, please do not hesitate to contact Marie Choi of my staff at (202) 366-1738 or via email at marie.choi@dot.gov.

Sincerely,
O. Kevin Vincent
Chief Counsel

d: 12/20/12
Identical letters sent to:

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