

NHTSA

LACKS MONITORING & OVERSIGHT PROCESSES

By Andrew Malec, Ph.D.

In December 2015, Congress passed the Fixing America's Surface Transportation ("FAST") Act. This Act mandated that the Office of Inspector General ("OIG") audit the recall processes of the National Highway Traffic Safety Administration's ("NHTSA") Office of Defects Investigation ("ODI"). This mandate stemmed from congressional concerns over NHTSA's handling of the Takata airbag recall. ODI is responsible for investigating potential safety defects and overseeing safety recall campaigns to assess recall effectiveness and maintains two divisions. The Recall Management Division ("RMD") is responsible for monitoring safety defect and noncompliance recalls. The Vehicle Defects Division ("VDD") is comprised of engineers who investigate potential safety defects and provide technical reviews of engineering issues. The findings of this audit were released on July 18, 2018.

The OIG finds that NHTSA did not adequately manage light passenger vehicle recalls. The recall files lack documentation, do not ensure that remedies are reported in a complete and timely manner, and lack sufficient management controls to ensure staff assess risk when deciding on using oversight tools to improve recall completion rates. This finding may not be that surprising since the RMD only has eight employees (five recall specialists; one program analyst; one program assistant; and one engineer). Based on the sample of recalls analyzed, the OIG projects that manufacturers did not submit 28.1 percent of the required scope information in their initial recall reports, and submitted only 4.1 percent of the missing scope information in their final reports. However, it should be noted that NHTSA failed to notify manufacturers about 96.5 percent of the missing scope information. Further, the online portal that the agency requires manufacturers to use does not identify all the regulatory requirements, and the agency lacks written guidance to show manufacturers how to meet those requirements.

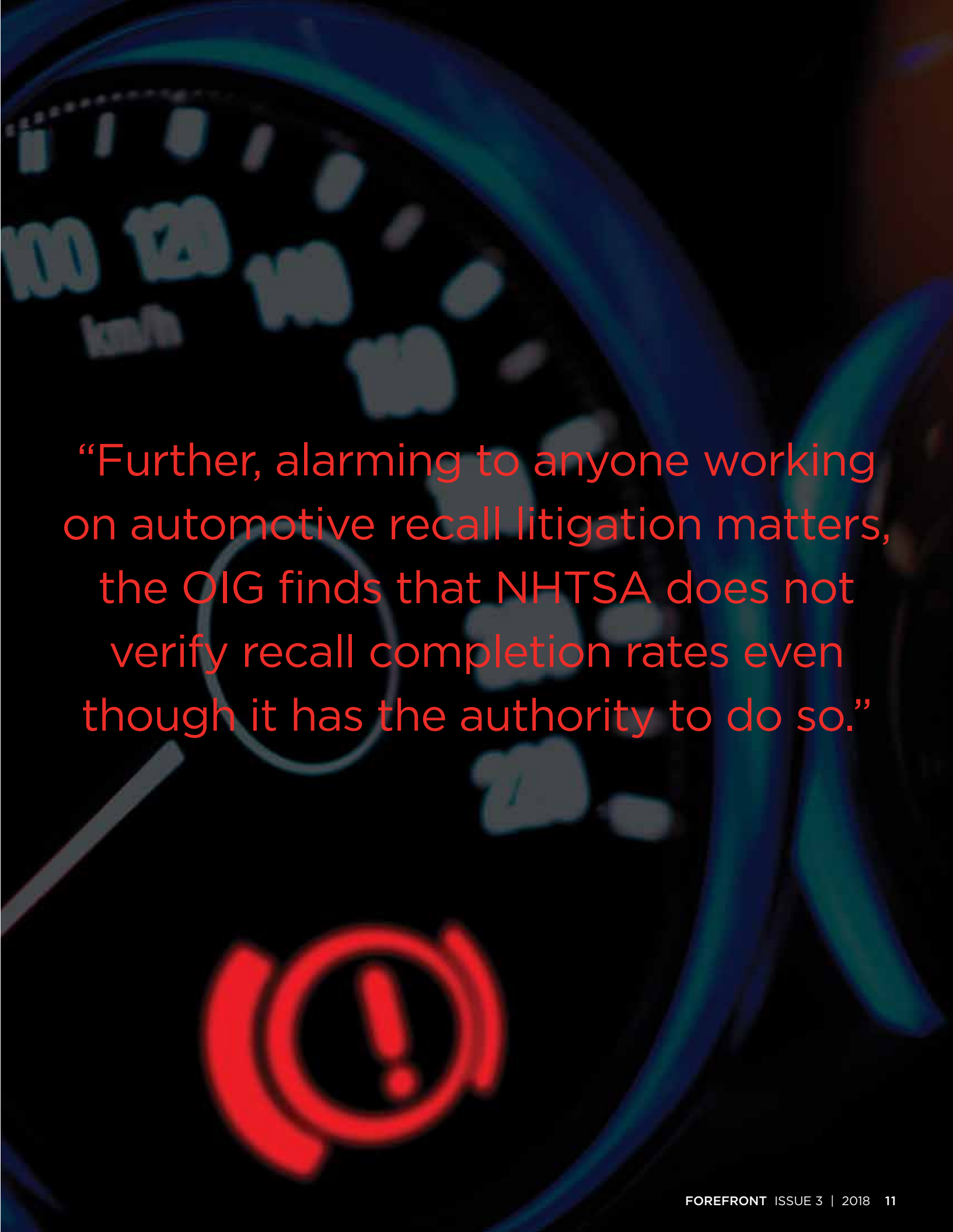
Further, alarming to anyone working on automotive recall litigation matters, the OIG finds that NHTSA does not verify recall completion rates even though it has the authority to do so. The OIG noted that they spoke to officials at several manufacturers who said they obtain completion rate data from their dealerships, then the manufacturers' employees manually input the data into the RMD's online recall reporting tool which has resulted in reporting errors. The RMD manager informed the OIG that their division is not obligated to detect incorrect reporting and that if the RMD is aware of completion rate reports that are incorrect, the division has follow-up processes and enforcement tools that it can utilize against the manufacturer. However, the RMD manager could not provide an example related to light passenger vehicle recalls.

The audit findings prompted the OIG to provide recommendations to NHTSA in order to improve their monitoring and oversight processes. NHTSA concurred with three of the six recommendations.

It is concerning that NHTSA's monitoring and oversight processes on light passenger vehicle safety recalls are lacking. In particular, NHTSA's lack of verification of recall completion rates is troubling since the estimated number of vehicles to be repaired is an important factor to consider in automotive recall litigation claims and may lead to economic damage computations that are out of line with economic reality. When facing an automotive recall litigation, the findings of the audit highlight that it is important to ensure that the completion rates proffered by automotive manufacturers be verified by a dispute resolution professional experienced in automotive recalls and not just take NHTSA's or the OEM's reported numbers as being accurate.

Andrew Malec, Ph.D.

Partner and Managing Director, is the firm's chief economist and head of O'Keefe's Intellectual Property ("IP") Practice Group. He is a recognized expert in providing economic advisory services, litigation support, and valuation opinions.



“Further, alarming to anyone working on automotive recall litigation matters, the OIG finds that NHTSA does not verify recall completion rates even though it has the authority to do so.”