



THE SAFETY RECORD

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Chrysler, GM Bankruptcies Concluded, Defect Victims Cheated

WASHINGTON, D.C. – The Obama administration’s drive-by bankruptcies have left the victims of defect-related crashes to eat their dust, but consumer advocates are turning to other strategies to force Chrysler and General Motors to do the right thing. Consumers for Auto Reliability and Safety, along with Consumer Action, Center for Auto Safety, Center for Justice & Democracy, and National Consumers League, have petitioned the Federal Trade Commission to require labels informing buyers of a used Chrysler’s unique liabilities. The label they’ve suggested goes like this:

“WARNING This vehicle was produced prior to the date when the Chrysler bankruptcy was approved. If you buy this vehicle and are injured or killed, even if your injuries were caused by the manufacturer, you or your survivors will not be able to recover your losses by taking action against the manufacturer. If your passengers are injured or killed, even if their injuries were caused by the manufacturer, they and their survivors will not be able to recover their losses by taking action against the manufacturer.”

The California-based advocacy group CARS is asking for the

designation under the FTC’s 1985 Used Car Rule, which was promulgated to prevent used car dealers from misrepresenting or failing to mention to buyers important facts about warranty coverage, via a Buyer’s Guide sticker displayed on the vehicle.

The bankruptcy and sale of the once-innovative American car-maker Chrysler to Fiat SPA concluded on June 10th, with \$6.6 billion in federal financing. In just 42 days, the government pushed the major players over the finish line and successfully fended off attempts from investors and victims of Chrysler defects to re-jigger the deal. The owners of the “new” Chrysler are a union retirees’ trust, with 55 percent, Fiat, with a 20-percent share that could grow to 35 percent, and the U.S. and Canadian governments, which hold minority stakes.

In a June 11 *New York Times* story, an anonymous Treasury official said: “This morning’s closing represents a proud moment in Chrysler’s storied history. The Chrysler-Fiat alliance has now exited the bankruptcy process and is poised to emerge as a competitive, viable automaker.”

“If shirking your due care responsibilities to customers who trusted

you is a source of pride, then Chrysler’s chest must be puffed out so far that the buttons are popping off its pinstriped jacket. The bankruptcy has wiped away all current, pending and future claims against vehicles manufactured by the ‘old Chrysler,’ said Safety Research & Strategies president Sean Kane.

General Motors, which completed its bankruptcy nearly a month later, had sought the same freedoms from product liability. But the company was taken aback by the highly publicized efforts of consumer advocates and attorneys representing defects victims to retain their rights to seek compensation via the state tort system. There were news reports about the victims GM was leaving behind and television advertisements opposing GM’s move to shed all liability. Twelve state attorneys general from Connecticut, Kentucky, Maryland, Minnesota, Missouri, Nebraska, North Dakota, Vermont, Illinois, California, Kansas and Ohio objected to the sales, arguing that the bankruptcy court overstepped its legal authority in granting the elimination of successor liability.

GM and the White House’s Auto Task Force, headed by Steven Ratner, who has since stepped down, came to an eleventh-hour agreement. (Cont. on p. 8)

Sudden Unintended Acceleration Redux: The Unresolved Issue

SAN LUIS OBISPO, CA – On February 5, 2007, Bulent and Anne Ezal were headed to lunch at the Pelican Point Restaurant in Pismo Beach, California. The restaurant is nestled on the edge of a cliff, affording dramatic views of the Pacific Ocean below. The parking lot was downhill of the restaurant, so Ezal rode the brakes of his 2005 Camry as he approached a parking space. He was at a complete stop, when the Camry suddenly accelerated, jumping a small curb, crashing through a fence and over the bluff. The vehicle fell 70 feet to the rocks below, and turned over

once, coming to rest in the surf. Anne Ezal died of her injuries in the crash. Bulent Ezal later recovered.

Seven months later, Jean Bookout and her friend Barbara Schwarz were exiting Interstate Highway 69 in Oklahoma – also in a 2005 Camry. As she sped down the ramp, Bookout, the driver, realized that she could not stop her car. She pulled the parking brake, leaving a 100-foot skid mark from right rear tire, and a 50-foot skid mark from the left. The Camry,

however, continued speeding down the ramp, across the road at the bottom, and finally came to rest with its nose in an embankment. Schwarz died of her injuries; Bookout spent two months recovering from head and back injuries.

Same make; same model; same problem. Two severe crashes; two deaths; two cases of serious injury. According to the National Highway Traffic Safety Administration, however, the Toyota Camry doesn’t have a problem with (Cont. on p. 2)

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sudden unintended acceleration (SUA). In between these horrific crashes, the agency denied a petition requesting a defect investigation from the owner of a 2006 Camry, who complained that the engine of his current car and the 2005 Camry that he previously owned repeatedly surged. NHTSA's Office of Defects Investigation briefly looked into the complaint, but came up empty.

"ODI has not identified a vehicle-based defect that would have produced the alleged engine surge in the petitioner's vehicle, nor was it able to witness such an event when road testing the petitioner's vehicle. Evaluation of a suspect throttle actuator removed from the petitioner's vehicle did not reveal a component problem, warranty and parts sales of the actuator are unremarkable. These data do not support the existence of a wide-spread defect or ongoing concern," the agency said in its April 2007 decision.

Another SUA inquiry closed with a whimper, and without a satisfactory explanation for a phenomenon that has plagued various makes and models for nearly 30 years. Since 1999, the agency has received seven defect petitions to investigate sudden unintended acceleration and launched eight SUA investigations into GMs, Fords, Toyotas and Volkswagen models. In the last decade, manufacturers have launched 31 recalls. More typically, manufacturers deny a mechanical problem and blame the problem on driver error. If the complaint numbers are high, they blame that on a media-induced frenzy. NHTSA, for the most part, has thrown up its hands, opening – and then closing – multiple investigations without finding a defect. This has led some to conclude that SUA is solely the province of pedal misapplication and stuck floor mats.

Attorney Graham Esdale of the Beasley Allen law firm in Montgomery, Alabama, represents the victims of the Oklahoma crash. He says it's frustrating that the agency

cannot or will not tease out the causes of SUA.

"We know this is happening out there," he says. "Unfortunately, if the person is elderly they are going to certainly going to blame them for causing the accident, when we know that's not the case. Instead of trying to fix the problem, they blame the driver."

Indeed, the history of sudden unintended acceleration is studded with poor research, regulatory omissions and industry success in holding off any serious outside examination of malfunctions within a vehicle's electronic systems.

Sudden unintended acceleration is a complex problem. There are multiple causes when a vehicle shoots forward or back in apparent contradiction to the driver's commands: design defects which induce driver error – such as poor pedal placement, the lack of a shift interlock, floor mat interference, mechanical or electromechanical defects and electronic defects. The latter – which is the most difficult to pinpoint – is nonetheless a more likely possibility as vehicle systems rely more heavily on sophisticated computer-driven electronics. And yet, automakers and NHTSA behave as though it is perfectly rational to assume that electronics housed in the hostile automotive environment – including the fault detection system – will always function as intended, and that malfunctions will be easily reproduced in a laboratory setting.

Elsewhere, however, the case has been persuasively made that NHTSA and automakers have ignored the real possibility of intermittent and other faults in the electronic systems of today's automobiles. The 2003 reference book, *Sudden Acceleration*, by Carl E. Nash, of the National Crash Analysis Center at George Washington University, Clarence Ditlow, of the Center for Auto Safety, James Castelli and Michael Pecht, Professor and Director CALCE Electronic Products and Systems Center at the University of Maryland, argue that the auto manufacturers lag behind those in other industries whose

products rely on electronic systems in understanding the myriad ways their microprocessors and electronics components can fail. NHTSA, the authors conclude, has also failed miserably in its attempts to find a cause other than a floor mat or driver error, because the agency employs an arbitrarily narrow definition of SUA – that it must occur from a standstill – and has conducted its investigations on incorrect assumptions and illogical reasoning.

Drivers have been complaining about sudden unintended acceleration events for a quarter of a century and continue to lodge these complaints with manufacturers and NHTSA. Yet, NHTSA has made virtually no substantive progress toward understanding how electronic systems housed in an environment subject to heat, vibration, sudden shocks, various levels of electromagnetic interference, moisture, and other corrosive conditions could fail; or how they could be detected; or what appropriate countermeasures must be instituted other than expecting drivers to somehow overcome an open throttle on a runaway vehicle. They slumber, while vehicles grow ever more stuffed with electronics that control the vehicle's braking, stability and speed.

Attorney (and engineer) Don Slavik, who represents Ezal, is hoping that NHTSA will take a second look at the problems of the 2005 Camry – although he isn't sanguine about the outcome.

"It's clear the NHTSA lacks the resources to fully investigate this. NHTSA does not have special staff with experience in electronic control systems – and their small staff is tasked with a wide range of responsibilities," says Slavik of the Milwaukee firm, Habush, Habush & Rottier. "That's where the tort system comes in to assist more fully in investigating this problem, which affects millions of vehicles." Sean Kane, president of SRS agrees. "SUA presents unique and resource intensive investigation that can quickly overwhelm the NHTSA defects office. Further, the agency has a history of dismiss-

ing SUA unless there are mechanical or driver error issues, which only complicates matters."

Short People Can't Drive Audis

In the 1980s, Audi became the poster child for Sudden Unintended Acceleration. And in many ways, this vehicle's SUA problem became the model of how these problems would be investigated by NHTSA, defended by the industry and used as the *sine qua non* of SUA myth-busting.

More than 1,000 consumers alleged that their Audi 5000 vehicles had accelerated without driver input; 175 had been injured, and four died in SUA crashes. The company denied that there was anything wrong with the vehicle and blamed the problem on shorter than average drivers who did not have much experience driving an Audi. These small, confused drivers had mistakenly depressed the gas pedal when they meant to step on the brake, Audi said. The response was a public relations and marketing nightmare. Audi sales plunged, and the complaints continued.

The Audi 5000 was the subject of an infamous *60 Minutes* story, in which the news program attempted to simulate SUA. The broadcast drove Audi sales down further, and the network was heavily criticized for its one-sided story. As the history is often recounted today, NHTSA vindicated Audi and CBS never apologized for maligning the automaker.

However, between 1982 and 1987, Audi launched five recalls to address the problem. The first three attempted to fix what Audi had characterized as the driver-error problem by tweaking the pedal positions. The fifth and final recall for 250,000 1978 to 1987 vehicles added a brake-shift interlock – which requires drivers to depress the brake pedal before shifting out of the Park position.

The fourth recall was probably the most telling about the Audi 5000's SUA problem. In 1987, Audi recalled 81,000 Audi 5000s from the

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1986 and 1987 model years, for worn idle stabilizer units. As Audi explained to its customers: "The idle stabilizer has the purpose of maintaining uniform engine idle speed by regulating air flow under different operating conditions, such as variations in engine temperature, and on/off cycling of the air conditioner or power assist pump. Excessive idle stabilizer wear causes engine idle fluctuations which increase with the usage of the car. If a worn unit is not replaced in a timely fashion, the engine idle could ultimately see-saw so severely that it may surprise a driver who is not acquainted with the vehicle's condition and fails to apply the brake. Under these circumstances, there is a risk of a collision in a confined space with the possibility of injury." (In other words, dear driver, it's still your fault.)

Audi received much of the attention, due in part to victims, who organized and advocated very effectively for themselves. NHTSA also received a significant number of complaints in the 1980s alleging SUA in Nissan 280/300ZX and Maxima, Acura Legend, Honda Accord, and various Ford, GM and Mercedes models. NHTSA opened a number of defect investigations into SUA, and closed many of them without finding a defect trend.

But some NHTSA investigations did prod manufacturers into initiating recalls. For example, Nissan recalled 1979-1987 280/300ZXs to retrofit brake-shift interlocks. Other recalls have involved the replacement or modification of mechanical and electronic components that cause the throttle to stick or open unintentionally. Some of these components are related to the vehicles' cruise control.

In 1989 NHTSA published "An Examination of Sudden Acceleration." This report was intended to end all debates on SUA. Its primary conclusion was that only the driver's foot or the cruise control could move the throttle to the wide-open position. The study also noted that SUA could be caused by

simple mechanical failures of the throttle cable or floor mat interference. Under these conditions, a significant increase in the driver's ability to stop the vehicle was also noted. However, the general spin was that NHTSA could not find any vehicle defects causing SUA. The condition, the agency concluded was the result of driver error, although the agency noted that it could be induced by poor vehicle design (i.e., brake, accelerator pedal placement and offset). The study recommended the installation of automatic shift-locks (ASL), which require the driver to depress the brake pedal before the vehicle can be shifted out of Park to prevent the driver from depressing the accelerator instead of the brake.

Dr. Antony Anderson, an electrical engineering consultant in the UK who has examined numerous SUA crashes, says that NHTSA's definitive research report is neither definitive nor research. The agency based its report on nine underlying assumptions, but did not provide the basis for those assumptions. The agency defined sudden unintended acceleration as only instances where the vehicle lurches suddenly forward or in reverse from a standstill. This automatically discounted many other situations in which a vehicle's throttle is wide open in direct contradiction to the driver's demands, be it at full speed, a slow speed or in a cruise control mode. Further, he says, the systems that NHTSA examined in the late 1980s bear no resemblance to fully electronic throttle systems of today.

"It's a travesty," Anderson said. "That report has no relevance whatsoever, but manufacturers have sheltered themselves behind it for years."

Nonetheless, the 1989 report and the significant numbers of reported SUA incidents did prompt manufacturers to adopt shift-interlocks in their vehicles in the late 1980s.

The 1990: Cruise Control and Throttles

In the 1990s, SUA problems related to cruise control and other throttle malfunctions began to surface. Ford Motor Company has been a standout among its peers in SUA problems

related to cruise control. Two juries have held Ford responsible for a deadly design flaw in the cruise control systems of millions of Ford vehicles, but the automaker has only recalled a fraction of the affected vehicles, leaving motorists vulnerable to episodes of sudden acceleration.

In March 1999, Ford announced that it had found a manufacturing defect with the cruise control cable and recalled 898,739 Explorers, Rangers, Mustangs, Mountaineers and some F-series trucks in model years ranging from 1997 to 1999, with certain build dates. But internal documents indicated that as far back as the design process, speed control engineers knew cable contamination could result in the throttle being held open by the stuck actuator cable, and characterized that possibility as a severe failure. Engineers also predicted that the condition was unlikely to occur. But thousands of complaints from consumers about stuck throttles and sudden accelerations, and even the experiences of one of its own executives have proven otherwise.

The defect was the actuator cable design of Ford's Next Generation Speed Control, which first appeared in 1991 models and, by 1995, was installed in all of the automaker's passenger vehicles, SUVs and light trucks with cruise control. As Ford engineers noted in their Failure Mode and Effects Analysis, over time, the speed control actuator cable can become contaminated with dirt, grease or water where it enters the sheath, or "adjuster body" and bind in the open position, prohibiting the driver from closing the throttle and decreasing speed.

Since 1999, Ford has recalled numerous makes and models as far back as the 1991 model year for sticky throttle problems attributed to a variety of causes, including: 2000 Focus; 1998 Contour; 1999-2000 F-Series Super Duty; 1998 Mercury Mystique; 2002 Focus SVT Hatchbacks; 1991-1995 Taurus

and Sables; 1997 Aerostars; 2001 Ford Escapes, 2000 and 2001 Explorers; 2001 Explorer Sports, 2001 Mazda Tributes, 2001 and 2002 Mazda MVPs.

In July 2005, NHTSA's Office of Defects Investigations opened a preliminary probe into stuck throttle complaints on 2002 Explorers and Mountaineers. Ford said that it had identified a faulty wire in the accelerator cable, but had remedied the problem by changing the wire design. ODI closed the investigation without further action in November 2005.

The Jeep Cherokee was another SUA stand-out in the 1990s. In 1990, Chrysler recalled 1989 and 1990 model 6-cylinder Cherokees to replace a throttle position sensor that was causing "intermittent high idle" after the engine was started. In 1992, it issued several technical service bulletins to repair various parts in Cherokees and Grand Cherokees. The primary symptom was termed vehicle "bucking" or "surging." Nonetheless, sudden acceleration complaints involving the Jeep Cherokee and Grand Cherokee were far above their closest peer vehicle. The problem was so widespread that the International Carwash Association issued an alert to its employees about the vehicle's tendency to lurch forward while exiting the car wash (electromagnetic interference was thought by some experts to play a role). In 1996, brake-to-shift interlocks became standard on the Jeep Cherokee. In 1997, as Primetime Live was preparing to air a story about SUA, and as the Center for Auto Safety was petitioning NHTSA to investigate, Chrysler announced that it would retrofit pre-1996 vehicles with a brake-to-shift interlock.

Floor Mats of Death

Unsecured floor mats have often been suspected of, or have taken the blame for, sudden unintended acceleration. Since 1968, the agency has launched nine separate probes of various levels of seriousness. Manufacturers have initiated

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19 floor mat recalls, a handful of which presaged the closing of an investigation.

One of the most recent emanated from an Engineering Analysis of Toyota Lexus vehicles. Drivers reported that vehicles continued travelling full throttle despite attempts to stop the vehicle. Some reacted by applying the brake pedal multiple times, depleting the braking system's vacuum-based power assist and overheating the brakes, which further diminished the brakes' effectiveness. Others attempted to turn the vehicle off by depressing the engine control button, unaware that the button had to be depressed for three seconds to stop the engine when the vehicle is in motion. Toyota and the agency concluded that unsecured all-weather floor mats could entrap the gas pedal.

In a September 26, 2007 letter to NHTSA, Toyota indicated that they would conduct a safety recall to replace the all weather mat with a redesigned mat. According to Toyota, the new mat design would reduce the potential for mat interference with the throttle pedal.

In 2008, the agency opened and closed within four months a Preliminary Evaluation into Weather Tech floor mats after four complaints of pedal interference in four different vehicles: Hyundai Azera and the Toyota Avalon, Camry and 4Runner. In closing the investigation, without a defect finding, The agency generally conceded the obvious: "various vehicle, mat and use factors can contribute to the potential for floor mat interference with accelerator pedal travel. Vehicle factors can include pedal and floor pan design. Mat factors can include thickness and geometry, particularly affecting the orientation of the leading edge in the vicinity of the accelerator pedal. Use factors that have been observed in interference incidents include failure to remove original floor mats when installing new mats (i.e., "stacked" floor mats), installing passenger side mats on the driver's side, installing mats in an improper orientation (e.g., backwards, upside

down), and failure to use retention devices."

Today's Unintended Acceleration: Can This Many Drivers be Confused?

In January 2008, the agency weighed a formal investigation into SUA in Toyota Tacomas, and it demonstrates how little has changed since 1985 and the Audi 5000. This time, the petitioner was William Kronholm, a journalist from Helena, Montana who alleged that his 2006 Toyota Tacoma suddenly accelerated twice in as many hours. According to his defect investigation request, in attempting to learn more, Kronholm went rifling through NHTSA's complaints database and found that consumers had made 32 such complaints against Tacoma pick-up trucks, while other similar vehicles had only one or no complaints in a comparable two-year period.

Toyota responded by maintaining that there was nothing wrong with the Tacoma and that the spate of complaints had been ginned up by press attention and Internet virulence—a claim right out of the Audi playbook:

"The Tacoma has been the subject of extensive media coverage related to the possibility of sudden acceleration. In addition, there has been a high level of Internet activity going as far back as early 2007, including reports by members of Tacoma user groups detailing conversations with ODI staff and providing ODI contact information. Such exposure tends to generate consumer interest and complaints. Thus, the petitioner's assertion that the Tacoma stands out from its peers based on a relatively high number of complaints in the NHTSA database is not a valid argument, since the other vehicles listed by the petitioner have simply not had the same media and Internet exposure."

Two months later, NHTSA denied the defect petition, saying – in effect – that they wouldn't be able to devote the resources to finding out why Toyota Tacomas were plagued by sudden unintended acceleration – despite 271 reported instances,

resulting in 24 crashes and four injuries.

Manufacturers may deny SUA exists, NHTSA may declare that it isn't worth its time to thoroughly investigate these incidents, but consumers continue to lodge complaints about sudden unintended acceleration – and they can't all be little old ladies in the first stages of dementia. The complaints data show clearly that some manufacturers and some vehicles are outliers, with significantly more complaints than their peers. In the last 10 years, the agency has collected some 24,000 consumer complaints (source: www.VSIRC.com). When these complaints are sorted by manufacturer and vehicle and charted, the vast majority of automakers flat-line at the bottom. The trendline of complaints for four manufacturers—Ford, GM, Chrysler, and Toyota, however, float above their peers with occasional spikes, leading one to conclude that either these manufacturers have a problem, or the most confused consumers gravitate to their vehicles.

In the 2003 book *Sudden Acceleration*, the authors offer many scenarios in which an automotive electronic system or the electrical contacts may fail intermittently and defy easy detection: Physical traces on a microscopic scale due to "a poor connector contact, a dry joint, or a cracked PCB track that behaves as a good connection for 99.999 percent of the time" could be overlooked.

Anderson notes: "A control system adopting a different, anomalous and perhaps dangerous state once in a blue moon when there is an intermittent fault. The moment the fault disappears, the control system goes back to its normal state. It is hardly surprising that subsequent testing fails to reveal any fault. There are plenty of examples of physical systems having normal and faulty states and a small change may move the system from one state to the other. The manufacturers know this perfectly well. Their prescription of "wiggle tests" on connecting cables to identify poor connections and make them better is indicative of the vulner-

ability of car electrics to intermittent contacts."

And in denying that this problem even occurs, manufacturers have foregone countermeasures altogether, Anderson said.

"The problem really is: these systems are designed so if they do fail there is nothing the driver can do about it."

More on SUA:

[Sudden Unintended Acceleration Complaints: 1999 to Present, by Make](#)

[NHTSA Investigations into Sudden Unintended Acceleration 1999-Present](#)

[Recalls Involving Sudden Unintended Acceleration 1999-Present](#)

Source: www.VSIRC.com

NHTSA's Rulemaking Priorities to Include Ejection Mitigation and Seat Belts on Motorcoaches

WASHINGTON, D.C.—NHTSA's regulatory dance card is mighty full for the next five months, with a clutch of substantive rulemakings that includes developing a performance standard for full and partial ejection mitigation, restraints on motor coaches, boosters for older children and a rearward visibility standard – nearly all mandated by Congress.

The agency's official shortlist, published in the Federal Register on July 1, contains several significant areas for immediate rulemaking ranging from occupant protection to regulations that would reduce deaths and injuries to children in and around vehicles. In the future, the agency will turn its attention toward possible rulemakings for crash avoidance technology, such as lane departure warning systems and automatic braking in advance of an impending crash.

Of course, making the list, which covers this year through 2011, doesn't mean NHTSA will actually make it happen, but we've summarized the highlights below:

Rules for Children

Of the rulemakings regarding children, three were required by the Cameron Gulbransen Kids and Cars Safety Act of 2007. This measure, adopted after five years of intense lobbying, compels NHTSA to develop a rearward visibility standard, mandate a brake-to-shift-

interlock and require power windows to have an automatic reverse feature. The bill was named after 2-year-old Cameron Gulbransen, who was killed when his father, a pediatrician from Long Island, inadvertently backed over him, because the blindzone behind his SUV made the toddler impossible to see.

In March, NHTSA published an Advanced Notice of Proposed Rulemaking on establishing a rearward view standard in March. It did not outline a possible performance standard, but presented the research it had done to date and sought answers to 52 different questions in seven different areas, including the scope of the problem, technologies for improving rear visibility, effectiveness, driver behavior, options for measuring rear visibility and countermeasure performance. It expects to publish an NPRM this year, with a Final Rule in 2011.

NHTSA also expects to publish a Notice of Proposed Rulemaking to consider requiring power windows to automatically reverse direction when, upon closing, the window detects an obstruction, to prevent children and others from being trapped, injured, or killed. Under the language of the law, the agency would have 18 months to initiate the process and 30 months to establish the standard. But, the provision allows the Secretary of Transportation to decline to make a rule requiring the feature, if the secretary

determines "that no additional safety standards are reasonable, practicable, and appropriate."

The brake to shift interlock (BTSI) is a safer regulatory bet. In 2006, the major automakers who comprise the Association of International Automobile Manufacturers, Inc. attempted to head off legislation by announcing that its members had voluntarily committed to installing brake-to-shift interlocks by 2010. Safety advocates, however, were disturbed by the loopholes in the agreement. For one, manufacturers with new entries into the market, from China for example, would have no obligation to include a BTSI. Further, the agreement did not require the brake-to-shift interlock to work regardless of the key position, meaning that the BTSI might not work when the key is in the accessory position. Finally, advocates criticized the agreement because consumers wouldn't know which vehicles did not have a BTSI. An NPRM is slated to be published this year.

The fourth rulemaking that could improve automotive safety for children is a scheduled Supplemental Notice of Proposed Rulemaking to add requirements to FMVSS 213 Child Restraint Systems for booster seats for older children, and add a 10-year-old crash test dummy to the regulation. The agency has been working on this for four years. The most recent rulemaking was in January 2008, when NHTSA published an SNPRM that proposed seating proce-

dures for positioning the Hybrid III 10-year-old child dummy and the HIII 6-year-old child dummy in booster seats when the dummies are used in the FMVSS 213 compliance tests.

Safety for the Rest of Us

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Act required the agency to publish a final rule establishing performance standards to reduce complete and partial ejections of vehicle occupants from outboard seating positions by October 1, 2009. The first phase of the agency's effort was amending FMVSS 214 Side Impact in September 2007, to include a side-impact pole test. This rule had the effect of requiring side air curtains, at least for front seat passengers. According to an earlier plan, the second phase is to establish occupant containment performance requirements, which included the development of a test methodology to evaluate the performance of ejection mitigation systems, including side curtain airbags and improved glazing. The third phase is to establish performance requirements for rollover sensors, to ensure that the air bags will deploy in a rollover crash. The agency describes the rule thus: "This proposed standard would reduce the partial and total

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U.S., EU Have Opposing Views on Daytime Running Lights

WASHINGTON, D.C. – The National Highway Traffic Safety Administration has rebuffed a nearly eight-year-old petition by General Motors to require daytime running lights on all passenger vehicles, saying that there is no credible statistical proof that the devices significantly improve safety.

"While DRLs may be beneficial for certain scenarios, the agency has been unable to document overall safety benefits due to DRL installation which could serve as a basis for mandating them," the agency wrote in its denial.

GM had petitioned the agency in December 2001, based on two studies showing that daytime running lights significantly reduced multiple vehicle and vehicle-to-pedestrian crashes. The 2000 study showed a 5 percent decrease in the former category and a 9 percent decrease in the latter. The second study, which GM commissioned from Exponent in 2008, analyzed data regarding GM, Saab, Toyota, Subaru, Volkswagen and Volvo vehicles and 1996-2005 crash statistics from 18 states to examine the impact of DRLs on head-on, rural area, highway, rain/fog, angle, urban area, sideswipe, pedestrian,

and motorcycle crashes. This study also found a significant reduction in crashes for vehicles equipped with DLRs: passenger cars saw a 12.35 percent decrease in head-on multiple vehicle crashes and a 9 percent decrease in rural daytime multivehicle crashes.

But NHTSA criticized the statistical methods used in both studies, saying one study used inappropriate parameters to create the sample. It dismissed some of the results of the other as pure bull – such as a claim in the Exponent study that DRLs would reduce night-time fatal crashes by 11.4 percent for

passenger cars and daytime single-vehicle crashes by 9.4 percent for light trucks.

"These results cast doubt on the validity of the GM study because we do not believe these crash types are plausibly affected by DRL installation. The authors claim these numbers serve as useful control groups and benchmarks for comparison. The agency respectfully disagrees, and believes this may demonstrate the lack of control for changes that may have occurred during the study period."

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NHTSA's Rulemaking Priorities to Include Ejection Mitigation and Seat Belts on Motorcoaches

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ejection of vehicle occupants through side windows in crashes, particularly rollover crashes." There were few hints on how that would be accomplished.

After decades of buying the Motor Coach industry's rap at retail, the agency is about to get serious about motor coach safety. Bus manufacturers have fended off regulations for decades, arguing that occupants were adequately protected from crash forces by compartmentalization – the space around them enclosed by the seat backs behind and in front of them and the side structure. The compartment, however, was open on three sides. The large picture windows tended to fail in a crash, leading to fatal ejections. In rollovers, occupants and their possessions are tossed right out of their compartments and sustain injuries from contact with the roof and other occupants. Performance standards for motor coaches in various crashes has been on the Na-

tional Transportation Safety Board's list for at least 11 years, but the agency has shown little interest beyond gathering the players for conferences in which industry representatives defended the status quo. At one such event, in 2002, then-Associate Administrator for Safety Standards Stephen Kratzke assured the industry that the agency wouldn't promulgate any regulations – "just to do something." Proposals would be based on "solid data," he promised.

In the Future, We Just Won't Crash

Looking ahead, NHTSA sees crash avoidance as the next frontier. It intends to focus its research on developing performance criteria and tests for systems that automatically apply the brakes when the vehicle senses an impending crash, lane departure warning systems and vehicle to vehicle communications systems. The pre-crash warning and

brake assist technology is already offered on some Honda, Mercedes-Benz, Volvo, Toyota and Ford vehicles. These systems use radar sensors to monitor the traffic in front of the vehicle, and if the distance between the vehicle and the one in front of it is too small, the driver receives a warning and the brakes may be primed for maximum power, or automatically applied. Other systems tighten the seat belts and activate the airbags, as well.

NHTSA has already developed a performance test for New Car Assessment Program that will debut for the 2011 model year. The agency expects to decide if it will require automatic crash-imminent braking.

Similarly, the agency plans to establish performance criteria and tests for lane departure warning systems, which have also debuted on Toyota, GM, Nissan, Honda and Mercedes vehicles. Again, NHTSA has already developed a performance test for the NCAP to apply to the 2011 model

year. The next agency decision, scheduled for 2011, will be whether to require them.

Further into the future, NHTSA is contemplating a technologically advanced automotive environment, in which vehicles communicate with one another to avoid collisions. Some prototype vehicle-to-vehicle communications systems send out speed, GPS location and braking information for crash avoidance, speed management, intersection collision avoidance and traffic congestion. These systems are in development among the major manufacturers. Vehicle-to-vehicle systems only work if a critical mass of the fleet is so-equipped. Last year, the European Union laid the groundwork of a widespread vehicle-to-vehicle communications landscape by reserving an EU-wide frequency band for automotive use. NHTSA forecasts that its next agency decision will be in 2013.

(Cont. from p. 5)

Depending on how the safety benefit was predicted, NHTSA's own statistical studies, undertaken in 2000, 2004 and 2008, found varying degrees of safety benefits. In its rejection of the GM petition, the agency said that it was now basing its conclusions on analyses using a method called the ratio of odds ratio. (This was the statistical tool used in the much-criticized Exponent study.) In the 2004 NHTSA study, for example, when researchers used generalized statistical odds, "a conventional statistical technique," they found that daytime running lights reduced opposite direction daytime fatal crashes by 5 percent, reduced opposite direction/angle daytime non-fatal crashes by 5 percent; reduced non-motorists, pedestrians and cyclists, daytime fatalities in single-vehicle crashes by 12 percent; and reduced daytime opposite direction fatal crashes of a passenger vehicle with a motorcycle by 23 percent.

However, at the insistence of the study's peer reviewers, the agency ran the numbers using the odds ratio technique. This produced a

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markedly different result, with the DRLs producing slight, but significantly insignificant, increases in crashes in vehicles so-equipped. The one positive, but notable exception, to this counter-intuitive result was the effect on crashes involving motorcycles. In this case, DRLs reduced daytime opposite direction fatal crashes of a passenger vehicle with a motorcycle by 26 percent.

The agency's stance is surprising considering that the European Union is poised to make DRLs mandatory on all new vehicles by 2011. The EU's rationale is also rooted in the results of studies, showing that these lights can reduce day-time crashes by up to 12 percent for passenger vehicles and 10 percent for motorcycles. Sweden was the first country to mandate daytime running lights in 1977, because of the country's low light levels. The regulation then spread to the other Scandinavian countries. According to a 2004 EU report, 11 nations, including Canada and the sunnier locales of Israel and Italy require

daytime running lights.

NHTSA's study results are also in contradiction to a wealth of other studies, conducted in the U.S. and abroad, showing a measureable and significant safety benefit for daytime running lights. Some 14 studies, beginning in 1972, have found crash reductions ranging from 29 percent to 3 percent, depending on the type of crash. For example, a Norwegian study found a 10 percent reduction in multiple-vehicle daytime crashes. Two Danish studies, conducted after the nation began requiring them, found smaller, but similar decreases in day-time crashes and found left-turn crashes reduced by more than a third. Transport Canada also did research on this question, comparing 1990 model year vehicles equipped with daytime running lights to 1989 model year vehicles without them, and found a reduction of 11 percent.

The Insurance Institute for Highway Safety has been studying the effect of DRLs since 1985. The first study showed that commercial fleet passenger vehicles modified with DRLs experienced 7 percent fewer daytime multiple-vehicle crashes. A second

IIHS study in 2002 of crashes in nine states found a 3 percent decrease in daytime crashes for DRL-equipped vehicles.

"I think the research is pretty clear," says IIHS spokesman Russ Rader. "We didn't submit a formal comment, but we did support making them mandatory. The benefit is small, but it is there."

Nonetheless, this is the second time the agency has turned down a request to make DRLs mandatory. The IIHS petitioned NHTSA for their mandatory use in 1985. The agency granted the petition, then abruptly terminated the rulemaking in 1988, saying that the matter wasn't "a national safety issue," and that automakers opposed it. Then, in 1990, GM decided that it was for the installation of DLRs. Many state traffic laws prohibited the use of headlights during daylight hours, creating a formidable stumbling block. The automaker convinced NHTSA to override state laws and harmonize its regulations with Canada, which required them, with a new rule. Established

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Judge Rejects Malibu; Awards \$21 Million in Roof Crush Case

LOS ANGELES, CA – A Superior Court judge has dismissed Jaguar Land Rover's claim that the paralyzing injuries sustained by a Simi Valley man were caused by his diving into the roof during a rollover, and awarded him \$21.1 million in damages.

Sukhasagar Pannu, 53, a former member of the Hong Kong national field hockey team, was rendered a quadriplegic in the 2003 crash. Pannu was sideswiped by a 16-year-old driver on the 118 freeway, and lost control as he attempted to avoid a collision. Pannu's Land Rover Discovery vehicle rolled several times. As a result of a spinal cord injury, Pannu permanently lost control of his arms and legs. He now lives with his parents and three children, who provide for his care.

L.A. Superior Court Judge Robert H. O'Brien issued the verdict on May 18 after a bench trial. Garo Madirossian, the L.A. attorney who represented Pannu, said that both sides opted for a bench trial after receiving rulings on various motions that each side perceived as favorable.

"This case had very sympathetic plaintiff and a pretty good fact pattern. (Pannu) was fault-free," Madirossian said. "Still, we were very, very concerned until the verdict came in that we would be second-guessed all over the country."

Land Rover whipped out the tired –but-lately-not-so-true defense that collapsing vehicle roofs don't kill people – people kill themselves when they fling their heads into the roofs. This theory was lent credence by GM tests in 1985. O'Brien found that the rollover – and Pannu's injuries – were more likely the result on a vehicle with a high center of gravity and a weak roof. In his written opinion, the judge dismissed the diving defense:

"Finally, the almost complete roof crush of plaintiff's vehicle occurring in such split second timing leads a reasonable person to immediately assume that the roof came crushing down on plaintiff's head as it rolled over, causing his head to flex forward and breaking his neck. The hard evidence compels the conclusion that the roof crushed downward such that no driver occupant could survive."

"He was a very, very bright judge," said Madirossian.

The Indian auto manufacturer Tata Motors acquired Jaguar Land Rover from Ford Motor Company in 2008. Warren Platt, the defense attorney who represented Jaguar Land Rover said that company planned to appeal.

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in 1993, the amendment to FMVSS 108, permitting the voluntary application of daytime running lights, superseded those state laws.

The debate then turned to the limits on the intensity of the daytime beams. GM wanted a 7000 cd limit, in keeping with Canadian regulations. The

agency resisted, fearing that the lights would visually obscure the turn signals and create unnecessary glare. In the Final Rule, the agency decided to reach a compromise, allowing a 7000 cd upper limit on upper beam, as long as they were mounted below the side mirror and inside the mirror mounting

heights to avoid direct mirror glare from the rear. After GM installed the DLRs on all of their makes, including Saab and Saturn, the agency began to get complaints from motorists about the distracting glare. In 1998, the agency published an amendment, cutting the permitted intensity by more than half, to an upper limit of 3,000 cd.

NHTSA Unveils Tire Fuel Efficiency Consumer Information Proposal

WASHINGTON, D.C. – The day that gave the tire industry the shakes has come. National Highway Traffic Safety Administration is now seeking comment on its tire fuel efficiency, maintenance and safety consumer education program.

The consumer program is but one aspect of the agency's much larger tire fuel efficiency program, which was included as an amendment in the Energy Bill of 2007. It requires NHTSA to establish through the rulemaking process a tire fuel efficiency rating system and to test specifications to assess tire fuel efficiency. Besides the tire maintenance consumer education campaign, the public outreach effort includes a requirement to provide tire fuel efficiency information to consumers, via the internet and tire stores.

Several months ago – before the agency posted this notice – tire retail industry leaders fired off hysterical editorials wringing their metaphorical hands over the prospect of a group outside of the tire industry being tapped to administer the program. Roy Littlefield, the Tire Industry Association's executive vice president, was specifically rattled by the prospect of trial lawyers and "so-called safety experts" educating consumers. Jim Smith of *Tire Review*, seconded those fears and named names: "Sean 'Old Tires Are Death' Kane."

The 148-page document outlining the contents and the strategy of such a program, however, do not hint of any sinister plots. The agency envisions a national tire maintenance consumer education program that focuses on "tire inflation pressure, alignment, rotation, and treadwear to maximize fuel efficiency, safety, and durability of replacement tires."

In January 2009, the agency began test-marketing its informational materials and potential tire labeling. The goals of this consumer research were to understand reactions to consumer expectations for a tire fuel efficiency rating program; get feedback related on its effectiveness; and gauge consumer preferences of tire label designs.

Since 2005, NHTSA has been issuing public service announcements about the importance of tire maintenance and in that year, also published a Final Rule mandating tire pressure monitoring systems (TPMS) for all new automobiles by the 2008 model year. "TPMS, however, is no substitution for proper tire maintenance. Despite the fact that all new vehicles are equipped with a TPMS, NHTSA believes that proper tire maintenance is still the most important information to convey to consumers. Smaller reductions in inflation pressure than measured by the TPMS can affect not only fuel efficiency, but also tire lifespan and vehicle handling," the agency said.

NHTSA says it plans to step up its game "using innovative methods of dissemination" on the internet, at retail locations, and through "interactive mediums." Absent from any mention in the lists of a tire's safety characteristics is age. This is not surprising, given the program's origins in a fuel efficiency bill. But it is, nonetheless, an omission – if the goal is to promote tire safety. As the agency's own research has shown, tread depth is not measure of robustness, but tire age does matter, particularly if it is used in hot climates, where the effects of tire age are exacerbated. As for the outside groups tapped to run the program, the agency mentions that it will use "existing partners and identify new ones" to deliver the message. They include "any interested tire retailers, state or local governments as well as manufacturers who share NHTSA's goal of promoting the importance of proper tire maintenance." Trial lawyers and Sean Kane must have been inadvertently dropped off the list.



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Chrysler, GM Bankruptcies Concluded, Defect Victims Cheated

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ment, in which GM agreed to accept liability for any future claims against vehicles built under its old ownership. Current and pending claims, however, have been wiped off the table.

In a mere 40 days, GM emerged from bankruptcy with fewer brands, fewer workers and a whole lot of taxpayer cash – \$50 billion. (GM is keeping its Chevrolet, Cadillac, Buick and GMC brands and selling or shuttering Hummer, Saturn, Saab and Pontiac.) As of July 10, the majority owners of General Motors are the taxpayers, with a 61 percent stake; and the United Auto Workers health care trust, which owns 17 percent; the Canadian government, which owns 11.7 percent, with the remainder going to bondholders of the old company.

CEO Fritz Henderson told the Associated Press that the revamped automaker will be “faster and more responsive to customers than the old one.”

“Apparently the new GM is doing that by telling the old customers who have been harmed by a GM defect to drop dead,” said Rosemary Shahan of Consumers for Auto Reliability and Safety.

Best feet forward aside, consumer and auto safety advocates are not done demanding that the new companies do something to compensate victims of defects. Indiana Congressman Andre Carson has filed the *Jeremy Warriner Consumer Protection Act* after Jeremy Warriner, who lost both legs and suffered severe burns in a vehicle fire he alleges was sparked by a faulty brake fluid container on his 2005 Jeep Wrangler. The bill would require the newly-restructured GM and Chrysler to carry liability insurance and force the car-makers to cover claims made against them for any defective products produced by their predecessor company. A consortium of attorneys and consumer groups are working on other avenues of redress.

For more background on the GM and Chrysler bankruptcies:

www.safetyresearch.net/chrysler-gm-bankruptcy/

GM / Chrysler Bankruptcies: What's In What's Out

The terms of the Chrysler and GM bankruptcies have created arbitrary and artificial classes of claimants. Here are the current parameters for liability:

Chrysler: *Date of Bankruptcy Exit:* June 10

What's Out: The new Chrysler has no liability for any vehicles built by the old Chrysler. That means: the liability for all current, pending and future claims of any Chrysler vehicle built before the automaker exited bankruptcy belong to the old company.

Recovery of Unsecured Claims: Projected to be zero (or at most ½ cent/dollar).

General Motors: *Date of Bankruptcy Exit:* July 10

What's In: The new GM agreed to assume liability for vehicles built by the old company, if the incident occurs after July 10, when GM exited bankruptcy.

What's Out: The old GM retains the liability for all current and pending claims. If the incident occurred before July 10th, it is considered a pending claim, even if it has not yet been filed.

Recovery of Unsecured Claims: Unsecured claims in GM are predicted to receive between 10-20 cents on the dollar, several years from now. This is based on projections; there is no guarantee. Cost of administration claims will likely be paid in full for anyone having an accident in the five weeks in between when GM entered and exited bankruptcy, once the old company is liquidated.