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Other Voices: NHTSA roof-crush standard could deny justice for crash victims

Posted by [avmachow](#) September 07, 2008 00:12AM
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By William Funk, Nina Mendelson and Sidney Shapiro

The decades-long push to require airbags in automobiles is a case study in how safety improvements can travel a long and winding road through the regulatory process. A new standard for the strength of automobile roofs is now nearing the end of its own seemingly endless trek through the National Highway Traffic Safety Administration (NHTSA). But unlike the airbag rule, which has saved thousands of lives since implementation, NHTSA's "roof-crush" rule will have little effect in the short-term, and could, in the long run, end up slowing down the march toward safer automobiles.

The reason the roof-crush rule could backfire is that the administration plans to use it to undercut one of the most effective mechanisms for encouraging manufacturers to build safer automobiles - lawsuits brought by accident victims alleging faulty design and construction. According to the administration, the new rule will "preempt" future lawsuits - tort actions, as lawyers call them - about roof strength.

Although the Supreme Court once found that a NHTSA regulation did preempt state tort law given the particular circumstances, NHTSA has taken that as an invitation to repeatedly assert that new regulations preempt accident victims' right to take manufacturers to court. It is part of a much larger pattern during the Bush administration, a sort of "stealth tort reform," whereby regulatory agencies shield industry from the harm defective products cause.

In the case of the roof-crush rule, it's a particularly bad deal for consumers, because the new standard itself will do little to make automobiles safer. Each year in the United States, rollover accidents kill about 10,000 drivers and passengers. SUVs and other vehicles with a high center of gravity are generally more prone to rollover accidents, but NHTSA has yet to issue a rule to reduce the chance of rollovers, despite ample evidence of the problem. The roof-crush rule is the closest the agency has come.

But the new standard is already met or exceeded by 68 percent of automobiles. NHTSA projects that the new rule will likely save about half of 1 percent of the 10,000 lives lost each year to rollover accidents - or about 10 percent of the 500 who die from rollover roof crushes. Saving 50 or so lives is good, but saving more with a stronger standard would have been much better.

It was 1973 when the last roof-crush rule was issued - long before sales of SUVs and other high-center-of-gravity vehicles went, pardon the expression, through the roof. No doubt one reason that most automobiles now on the road exceed both the old and new standard is that manufacturers rightly fear that cutting corners will invite lawsuits from accident victims.

One such rollover victim was a U.S. Army officer serving in Saudi Arabia. Maj. Barry Muth sustained severe spinal injury when the roof of the Ford Crown Victoria he and a colleague were traveling in collapsed after rolling over. He and his family sued, alleging that the roof should have been stronger. A jury heard the evidence and ruled in his favor. At trial, Ford never argued that the 1971 standard preempted such a lawsuit. But if the case had involved a car built subsequent to the NHTSA's new standard, you can bet that would have been their first and loudest argument.

By seeking to deny future accident victims the same right that Major Muth exercised, NHTSA is both stretching its authority under law and making bad public policy. Lawsuits like Maj. Muth's not only bring an opportunity for accident victims to receive justice and help discourage shoddy design and manufacturing choices by carmakers, but also help provide regulators with critical information they need to enforce current safety standards and create future ones. The agency is not invited to the industry's internal meetings about safety issues. Sometimes, the information uncovered during lawsuits becomes the basis for future public policy discussions about safety.

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The final version of NHTSA's regulation won't be issued until October. Let's hope that between now and then the agency reconsiders its efforts to undercut lawsuits that give victims an opportunity for justice and help protect other consumers from similar problems.

Law professors William Funk, Lewis & Clark Law School in Oregon; Nina Mendelson, University of Michigan; and Sidney Shapiro, Wake Forest University; are member scholars of the Center for Progressive Reform and co-authors of the new CPR White Paper, Regulatory Preemption at the National Highway Traffic Safety Administration available at www.progressivereform.org.

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