

Status Report

HLDI Data Indicates Standard's Effect

Strong Benefits Found For Safety Bumper Rule

A federal performance standard that took effect in the 1973 model year to protect automobile safety components in very low-speed collisions also has had a strongly beneficial effect on car repair costs, new findings from the Highway Loss Data Institute (HLDI) indicate.

The findings were forwarded to the National Highway Traffic Safety Administration (NHTSA) in connection with the agency's current performance standard – which took effect in the 1979 model year – to reduce property damage in low-speed crashes. A Senate amendment, to be considered in a House-Senate conference in coming weeks, would drastically undermine it. (See *Status Report*, Vol. 14, No. 11, July 13, 1979).

'Substantial Improvement'

In a letter forwarding the findings to NHTSA, HLDI's senior vice-president, Brian O'Neill, said they "give strong evidence that your agency's safety bumper standard, FMVSS 215, has been associated with substantial improvement in the loss experience of new cars to which it applies."

That standard took full effect for front bumpers in the 1973 model year and for both front and rear bumpers in the 1974 model year. It required that in specified low-speed impacts, there be no damage to safety-related components such as lights and windshields – but unlike the current standard, it contained no requirement that manufacturers choose bumper designs that *per se* would reduce economic damage in such crashes.

The HLDI findings compare collision coverage claim frequencies and payments for the 1972 model year – the one prior to the safety bumper standard's effectiveness – and subsequent model years. They use previously published HLDI results adjusted to account for a number of changes made to improve HLDI's data-handling capabilities between 1972 and 1978, including the addition of new data sources, changes in HLDI's system of classifying cars, and the expansion of its coding capabilities to include data for Japanese imports.

Frequencies Reduced

Principal conclusions of the new HLDI findings about claim frequencies are these:

- For each market class of cars – subcompact, compact, intermediate, and full-size – there were "substantial reductions in the claim frequency results for each of the 1973 through 1978 model years (in which the safety bumper standard was in partial or full effect) compared with the 1972 model year (in which no such standard was in effect).

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Strong Benefits Found For Safety Bumper Rule (Cont'd from page 1)

- “The 1973 model year claim frequency results were *from 7 to 15 percent lower than the corresponding 1972 model year results.*”
- “The 1974 model year claim frequency results were *from 16 to 28 percent lower than the corresponding 1972 model year results.* (The gasoline shortages that occurred in 1974 were probably responsible for some of the reductions in the 1974 model year claim frequency results.)”
- “The 1975 model year claim frequency results were *from 7 to 24 percent lower than the corresponding results for the 1972 models.*”
- “The 1976 model year claim frequency results were *from 15 to 28 percent lower than the corresponding results for the 1972 models.*”
- “The claim frequency results for the 1977 models ranged *from 4 to 30 percent below the claim frequency results for the corresponding 1972 models.*”
- “For the 1978 models, the claim frequency results were *from one percent higher to 28 percent lower than the results for the corresponding 1972 models.*”
- “The results shown in Table 2 convincingly show that, with the exception of the 1977 and 1978 model full-size cars, the 1973 through 1978 models had substantially lower claim frequency results than the corresponding 1972 models — *despite the fact that no adjustments for inflation were made to the claim frequency results.*”

Collision Payment Averages Down

Along with frequency-of-claims reductions, the HLDI findings show reductions in “average collision claims payments amounts for each new car each year.” These “average loss payments per insured vehicle year” reflect the product of frequency and average payment per claim.

“If the safety bumper standard did have an economic benefit to consumers,” the HLDI letter to NHTSA pointed out, “this would be reflected in HLDI’s adjusted average loss payment per insured vehicle year results — *as, in fact, it clearly is.*”

COWPS Rejects Legislative Action On Bumpers

The Council on Wage and Price Stability (COWPS) has told Sen. Robert Byrd (D.-W.Va.) that administrative rulemaking, rather than new legislation, is the “preferable” way to settle the future of the current federal property-damage bumper standard.

Responding to an inquiry from Senator Byrd, who is the Senate majority leader and sponsor of the Senate-passed amendment to undercut the standard, COWPS said that although it has questioned NHTSA’s cost-benefit analysis of the standard, it does not support “legislative action” to change the standard at this time “because the numerous remaining technical issues can best be resolved” in a public rulemaking proceeding. (See *Status Report*, Vol. 15, No. 3, Feb. 19, 1980.)

“Accordingly,” COWPS told Byrd, “we believe that NHTSA should now reopen the bumper damageability standard.”

TABLE 1

ADJUSTED HLDI COLLISION COVERAGE AVERAGE LOSS
PAYMENTS PER INSURED VEHICLE YEAR IN 1978 DOLLARS*
BY VEHICLE MARKET CLASS

1972 Through 1978 Models During Their First Year of Availability

MARKET CLASS	MODEL YEAR						
	1972	1973	1974	1975	1976	1977	1978
Subcompact	\$97	\$93	\$71	\$82	\$73	\$81	\$89
Compact	92	76	60	68	62	63	78
Intermediate	94	81	68	73	71	66	71
Full Size	72	69	57	66	58	71	75

*Based on the consumer price index for car maintenance and repair.

The accompanying tables show reductions in average loss payments per insured vehicle year for the years in which the safety bumper standard was in effect compared to 1972, the no-standard year. Table 1 shows the effect in dollar amounts and Table 2 compares the 1973-1978 model years in percentage of of reduction from the 1972 model year.

As the HLDI letter to NHTSA points out in describing the tables, "In every market class, for each model year, with the exception of the full-size 1977 and 1978 models, there were substantial reductions compared to the corresponding 1972 model year results.

"For the 1973 models, the first cars required to meet FMVSS 215, the reductions ranged from 4 percent to 17 percent.

"For the 1974 models the reductions ranged from 21 to 35 percent.

"For the 1975 models the reductions ranged from 8 to 26 percent.

"For the 1976 models the reductions ranged from 19 to 33 percent.

"For the 1977 models the reductions ranged from one to 32 percent.

"For the 1978 models the differences ranged from a 4 percent increase for the full-size models to a 4 percent decrease for the intermediate market class."

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TABLE 2

PERCENTAGE DIFFERENCES BETWEEN 1972 AND 1973
THROUGH 1978 MODEL YEAR AVERAGE LOSS PAYMENT
PER INSURED VEHICLE YEAR RESULTS
BY VEHICLE MARKET CLASS

MARKET CLASS	MODEL YEAR					
	1973	1974	1975	1976	1977	1978
Subcompact	- 4	-27	-15	-25	-17	- 8
Compact	-17	-35	-26	-33	-32	-15
Intermediate	-14	-28	-22	-24	-30	-24
Full Size	- 4	-21	- 8	-19	- 1	+ 4

Strong Benefits Found For Safety Bumper Rule (Cont'd from page 3)

It is clear, the letter concludes, that "the collision coverage loss experience of the 1973 through 1978 models was substantially better than that of the corresponding 1972 models. Further, the improvements were less for the 1973 models, which had to meet much less stringent requirements under FMVSS 215, than for the later model years."

Warning that repair cost savings associated with NHTSA's previous safety bumper standard may understate those to be gained from the current property-damage bumper standard, the letter adds:

"Since FMVSS 215 was *not* a property damage reduction standard, but a standard addressing *only* damage to safety-related items, the mistake should not be made of assuming that the economic benefits from it are a measure of the savings that can be expected from an adequate property damage standard. The best that can be said of economic benefits resulting from FMVSS 215 is that, beneficial as they have been to consumers, they are less than the savings to be expected from an effective property damage standard."

More Sites Added To Crash Investigation List

The National Highway Traffic Safety Administration (NHTSA) this year plans an expanded effort to develop "nationally representative" statistics on motor vehicle crashes.

Since its creation, NHTSA has lacked a system to provide a detailed, representative portrayal of U.S. motor vehicle crashes, the losses they inflict, and the factors that produce these losses. Both NHTSA and the National Transportation Safety Board have concluded that such data, provided on a continuous basis, is badly needed to guide the development of countermeasures against crash deaths, injuries, and property damage.

To provide the needed data, NHTSA established the National Accident Sampling System (NASS) to regularly develop, and then conduct detailed investigations of, a national sample of motor vehicle crashes. As a beginning, NASS in 1978 established crash investigation teams at 10 sites around the nation. This year, NASS plans to place teams at an additional 20 sites. NHTSA says that by 1982, the teams will investigate crashes at a full complement of 75 sites, each of which is "typical of a portion of the national highway environment."

The teams are established in cooperation with state and local officials, the agency says. Their job is to "investigate and collect data on the environmental, vehicular, and human factors" associated with a sample of crashes that includes pedestrians, automobiles, motorcycles, bicycles, buses, and trucks, it adds.

Sites are planned this year for Tuscaloosa County, Ala.; Yuma County, Ark.; Contra Costa County, Calif.; Gilpin and Jefferson Counties, Colo.; Kankakee County, Ill.; Lake County, Ind.; Genesee County, Mich.; Berrien County, Mich.; St. Louis, Mo.; Douglas County (including Omaha), Neb.; Bergen County, N.J.; Bernalillo and Sandoval Counties, N.M.; Schenectady County (excluding the city of Schenectady), N.Y.; Rutherford and Cleveland Counties, N.C.; Philadelphia, Pa.; Allegheny County (excluding Pittsburgh), Pa.; Lackawanna County, Pa.; Meade, Corson, Dewey, Ziebach, Harding, Lawrence, Butte, and Perkins Counties, S.D.; Zapata, Jim Hogg, Starr, Brooks, Kennedy, and Willacy Counties, Texas; and Seattle, Wash.

UPDATE . . .

TRUCK SAFETY BILL ADOPTED: By a 69-to-16 vote, the Senate has adopted a commercial truck safety bill (S. 1390) proposed by Sen. Charles Percy (R.-Ill.). The bill would strengthen and broaden Department of Transportation authority to cover all commercial trucks over 10,000 pounds along with the health and safety of driver working conditions. The House Committee on Public Works and Transportation is considering a companion bill, H.R. 4971, along with several economic deregulation proposals. (See *Status Report*, Vol. 14, No. 12, Aug. 8, 1979.)

NHTSA Standards Benefits Found Far Outweighing The Costs

Vehicle safety standards save thousands of lives without harming manufacturers economically, a National Highway Traffic Safety Administration (NHTSA) report has found.

The report says NHTSA's safety standards, first issued beginning in the late 1960's, "have saved more than 55,000 lives through 1978, a number which is increasing by nearly 10,000 per year as newer, safer vehicle replace older, less safe ones."

The report addresses criticisms that NHTSA regulations are excessive and are diminishing competition in the automobile industry. It also responds to charges that agency rules feed inflation and stifle innovation.

Crash Toll Justifies Standards

Emphasizing the need for NHTSA regulations, the report notes that after birth defects, motor vehicle crashes "are the leading cause of death for the population 44 and under." Vehicle standards are warranted "by the annual loss of 50,000 lives and the millions of injuries in motor vehicle crashes," it says. These crashes are estimated to generate more than \$50 billion per year in costs to society such as lost income, medical care, insurance administration, and legal expenses. While providing one measure of the problem, these costs "in no way measure the tragic human loss" caused by vehicle crashes, it notes.

The report also discusses the impact of the agency's fuel economy standards. It concludes that by reducing oil consumption, they yield savings to consumers and strengthen the economy, creating a better business atmosphere for the automobile industry.

Effect on Auto Makers Disputed

The report refutes claims that regulatory costs are "fast bringing the automobile industry to the point where only the largest companies can survive." Regarding Chrysler Corp.'s dire financial straits, it says the firm's 1978 losses were due to "numerous marketing and operating problems including extensive debt financing, dependence on suppliers, and a product mix that did not adequately reflect market demand." (Chrysler's 1979 losses are not specifically addressed.)

"Although the financial health of some individual companies is in question, this is largely the result of previous corporate strategies, not regulations," the report comments. It notes that in the last decade, "through superior marketing strategy and product development, imports were able to prosper while domestic companies were losing ground. They accomplished this facing the same regulations as domestic manufacturers and in spite of a dollar devaluation which left them having to price their products hundreds of dollars above comparable domestic models."

Instead of hurting competition, NHTSA says its regulations, through their fuel economy requirements, "could make domestic manufacturers more competitive with smaller, more fuel efficient foreign cars."

Little Effect on Prices

The report concludes that regulatory price increases "are actually a small, often insignificant part of overall price increases," and that the most influential factor on car buying patterns "is the amount of disposable income available to consumers, not changes in the price of the vehicle due to regulation."

"Higher car prices have, in fact, resulted mostly from inflationary increases in production costs," it says. Total regulatory costs accounted for 2 to 11 percent of yearly price increases for 1976-1979 models, according to the report. It concludes that the overall cost of mandatory safety features on 1978 models, including manufacturer and dealer profit, was \$300 - about one-half the figure claimed by some auto makers.

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NHTSA Standards Found Far Outweighing The Costs (Cont'd from page 5)

NHTSA notes that because the cost of meeting standards benefits consumers by improving vehicle quality, it is not considered inflationary by the Bureau of Labor Statistics in computing the Consumer Price Index. According to the report, not only have NHTSA safety regulations “been a major factor in the decline of the fatality rate over the last decade,” but its “damageability and fuel economy standards will result in savings of about \$500 over the life of the affected vehicles.”

Savings Will Exceed Added Costs

As for future models, NHTSA estimates that the cost of meeting major new safety and fuel economy rules will add \$520 (in 1978 dollars) to the price of 1985 passenger cars over that of 1978 models. But it says buyers of 1985 models will save \$1790 over the lifetime of their vehicles, primarily from gas savings. “Consumers should realize a new vehicle lifetime savings of about \$1,300 for a model year 1985 automobile compared to a 1978 model,” it adds. In addition, the report predicts the new rules will lead to “reductions of thousands of highway casualties.”

Responding to industry charges that it is stifling innovation, NHTSA says that on the contrary it considers itself a “primary agent” for promoting technological progress. In this connection, the agency cites its regulatory prodding of the industry to develop major life-saving technology in the form of automatic restraints, and to improve fuel efficiency.

Most '79 Cars Fail NHTSA Crashworthiness Test

Reporting that most of the American-made and all of the imported cars tested failed in a 1979 crash test program to provide occupant protection in frontal crashes at speeds slightly beyond the minimum requirements, Joan Claybrook, head of the National Highway Traffic Safety Administration (NHTSA), said the tests “show that there are substantial differences in the degree of crash protection that manufacturers build into cars.”

NHTSA said that failure in the tests meant that instrumented dummies, secured by safety belts, sustained forces in excess of levels permissible in the vehicle safety standards. The frontal crashes were into barriers at 35 mph, which is 5 mph above the speed that all cars are required to meet by federal standards. Only 9 of the 33 cars tested passed the occupant restraint test.

“The test results show that manufacturers have designed most of their cars to meet only the minimal federal safety requirements in 30 mph crash tests, and not much more,” Claybrook said.

First results of the program were announced last October, rating occupant protection, windshield retention, windshield intrusion, and fuel leakage resulting from a 35 mph frontal impact, and fuel leakage in a 35 mph rear impact. (See *Status Report*, Vol. 14, No. 16, Oct. 29, 1979.) The crash test program is an initial step toward producing a federal automotive crashworthiness rating system as authorized under Title II of the Motor Vehicle Information and Cost Savings Act.

Last October's report covered 20 frontal and 14 rear tests, and the final report just released involved an additional 13 frontal and 14 rear tests. Only four cars were given a passing rating on all tests. They were: Plymouth Horizon, Chevrolet Citation, Ford Mustang, and Dodge Magnum/Chrysler Cordoba. All other cars involved failed in one or more test areas.

Improved Driver Register Urged To Detect Problem Truckers

Motor carriers should have access to the National Driver Register (NDR) through state licensing authorities, the National Transportation Safety Board has recommended. Such access would prevent truckers from providing false information about their driving records to prospective employers, the board said.

That and other recommended improvements to the register – a file of information on drivers whose driving privilege has been revoked or denied by a state – would help cut the fatality rate associated with truck crashes, the board believes. In 1978, heavy truck crashes accounted for 10 percent of all highway deaths and, in crashes involving heavy trucks and cars, 32 car occupants were killed for every truck driver fatality. That ratio may get even worse, the board said, as consumers switch to smaller, more fuel efficient cars, and trucking firms switch to larger trailers, also for fuel economy reasons.

'Buddy System' Developed

Although most states are at least nominally committed to the "one driver, one license" concept, the board found in its study of 44 heavy truck crashes that 11 of the 44 drivers involved held a total of 30 licenses. Together, the drivers' records showed a total of 98 suspensions, 104 crashes, and 456 traffic convictions. Board investigators found that truckers have developed a "buddy system," through CB radio contact, whereby truckers share home addresses to facilitate obtaining multiple licenses. Multiple licenses permit drivers with bad records to "spread" their traffic convictions among two or more states, thereby helping them to elude punishment.

The board pointed out that many truckers have excellent driving records, but that there is a disproportionate number of problem drivers "whose records of traffic convictions, driver license suspensions, and accidents indicate a flagrant and repeated disregard for the safety of other highway users."

One case investigated by the board involved a school bus which was struck from behind by a loaded tractor semi-trailer weighing about 75,000 pounds. Three children were killed and 29 children were injured in the crash. The driver of the truck had a record of 41 traffic convictions in eight states, six suspensions, and four previous crashes but held two valid driver's permits at the time of the crash. (See *Status Report*, Vol. 13, No. 9, June 29, 1978.)

Federal Legislation Urged

Although carriers are required to routinely check the driving records of applicant drivers, they must rely on information provided by the applicant. Owner-operators, "who are themselves problem drivers," in effect screen their own records.

The current law authorizing the NDR should be amended, the board said, not only to permit carrier access to driver records through the states, but to permit a "driver records pointer service" which would refer NDR to the states in which a commercial driver has a record of conviction for a moving traffic violation, or denial or withdrawal of his license.

In addition, the board said amendments to the NDR legislation should provide a more rapid response to users and an automated switching service to facilitate direct on-line exchange of driver record information among the states.

The board noted that the National Highway Traffic Safety Administration is currently evaluating the register (see *Status Report*, Vol. 14, No. 12, Aug. 8, 1979), and is considering legislation that would permit commercial drivers to request an NDR report through a state and furnish it to a prospective employer.

Saying that "a serious limitation of the current system is its reliance on the driver for driver record information," the board said it believed that "driver record information used in motor carrier screening should be obtained directly from an official source."

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Improved Driver Register Urged To Detect Problem Truckers (Cont'd from page 7)

In addition to its recommendation for legislative changes, the safety board urged:

- Secretary of Transportation Goldschmidt to develop within a year, a “positive incentive” (presumably grants), to encourage state implementation of the “one-license” provision of Highway Safety Program Standard No. 5, “Driver Licensing.”
- That the governors of Arizona, Arkansas, Florida, Idaho, Iowa, Oklahoma, Rhode Island, Tennessee, and West Virginia abolish state requirements that non-resident drivers employed by state residents obtain a driver license in the employer’s state.
- The Federal Highway Administration to revise its motor carrier safety regulations to develop criteria for disqualifying commercial drivers based on a driver’s traffic conviction record. The board said the agency should move on its proposal within the next year.

Copies of the report and recommendations, “Safety Effectiveness Evaluation of Detection and Control of Unsafe Interstate Commercial Drivers Through the National Driver Register, State Driver Licensing Policies, and Federal Motor Carrier Safety Regulations,” NTSB-SEE-80-1, may be obtained from the Publications Branch, National Transportation Safety Board, Washington, D.C. 20594.

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Automatic Restraints And Products Liability Law

By Joan Claybrook

During the past few years, manufacturers and others have repeatedly invoked the specter of a products liability “crisis” in an effort to substantially limit the rights and remedies of persons injured by defective products. As a result of corporate lobbying, numerous products liability “reform” bills, which would make wholesale revisions in current products liability law, have appeared in Congress and state legislatures. Predictably, industry places much of the blame for the current situation on “overzealous” trial lawyers and “pro-consumer” courts which have supposedly subjected manufacturers to near absolute liability for injuries caused by their products.

Likewise, federal safety regulations have been cited as a potential source of increased products liability claims. However, just as the corporate assault on “unnecessary” federal regulation is unfounded,¹ so too is the charge that federal product safety regulations create products liability problems rather than reduce them. The National Highway Traffic Safety Administration (NHTSA) faced numerous industry products liability arguments during its rulemaking to establish the automatic crash protection safety standard. However, the agency clearly demonstrated that despite industry claims, the automatic restraint standard would have a beneficial effect on products liability.

In July 1977, former Secretary of Transportation Brock Adams issued the final rule requiring manufacturers

to equip their cars with restraints that automatically protect an occupant in a crash. The air bag system, such as those offered as an option in certain 1974-76 General Motors cars, and the automatic belt, which Volkswagen uses in some of its Rabbit models, are examples of restraint systems providing automatic occupant crash protection. Beginning in 1981, all fullsize cars must have automatic restraints, with such protection extended to the occupants of intermediate and compact cars in 1982 and to all cars in 1983.

During and following the automatic restraint rule-making, vehicle manufacturers and dealers claimed that installing automatic restraints in new cars would increase their exposure to product liability claims. They said that “endless lawsuits” would allege the failure of automatic restraints to provide adequate crash protection. Such suits, according to them, might assert that an air bag deployed too soon, too late, or not at all, or that a retractor on an automatic belt did not lock properly.

Manufacturers also raised questions about whether the products liability climate, combined with supposed “exaggerated public expectation” about the benefits of automatic restraints, might lead to liability claims against manufacturers in cases where automatic restraints performed as they were intended to perform, but an occupant was still injured. As a consequence of these concerns, the availability and cost of products liability insurance were

also put forward as another problem facing vehicle manufacturers and dealers.

However, after thoroughly reviewing these arguments, NHTSA concluded:

- Manufacturers, dealers, and suppliers do not face an increased overall risk of liability because of the use of automatic restraints. The nature of a manufacturer's liability for automatic restraint-related injuries is no different from its current liability for injuries caused by manufacturing or design defects in such existing vehicle safety features as energy-absorbing steering wheels, manual seat belts (most of which have many of the same mechanisms as automatic belts), and braking systems. In fact, the installation of automatic restraints should decrease the number of products liability claims. Many people previously injured or killed in crashes caused by vehicle manufacturing defects or design problems, such as stalling engines, inadequate brakes, collapsing wheels, exploding tires, and jamming throttles, will be protected by automatic restraints.

- According to a 1977 report by the Interagency Task Force on Product Liability, the average cost of products liability insurance represents less than one percent of a company's gross sales. The study found that in comparison with other industries, the automotive industry's products liability insurance costs are generally well below average.

- Products liability insurance is available to cover the automatic restraint-related claims experienced by vehicle

manufacturers and suppliers. In addition, new indemnification programs begun by vehicle manufacturers are likely to minimize most of the products liability problems faced by vehicle dealers as a result of factors beyond their control.

- Manufacturers do not face liability due to "exaggerated public expectations" in instances where the automatic restraint performed as intended but an occupant was still injured. General Motors has already successfully defended its air bag system in court by proving that the crash occurred below the speed at which the bag was designed to deploy.

Sources of Potential Liability

During the automatic restraint rulemaking, manufacturers devised several hypothetical questions about their liability for automatic restraint-related products liability claims. One basis for possible liability involves the failure of the restraint to perform properly in a crash. In the case of an air bag, the alleged defect could be the failure of the bag to deploy, or the bag's premature, late, or improper deployment. In the case of an automatic belt, a defective retractor could fail to lock up in a crash, or the belt could break. However, the field experience of automatic restraint-equipped cars, which have now traveled approximately three billion miles, has demonstrated that air bags and automatic belts are highly reliable and effective.

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The Case Of The 'T. J. Hooper'

In the accompanying article, Joan Claybrook has argued convincingly that auto makers won't face special product liability risks if they offer air bags to their customers.

Another aspect of the air bag issue is that manufacturers may be placing themselves in legal jeopardy by *failing* to offer the lifesaving restraints. This has been explained by Andrew R. Hricko of the Insurance Institute for Highway Safety in a discussion of the legal ramifications of automatic restraints. (See *Status Report*, Vol. 12, No. 4, March 2, 1977.) Hricko cited one example of how courts have held that failure to provide adequate, available safeguards can result in legal liability. The case, decided in 1932, concerned the tug boat *T. J. Hooper*, which was equipped with a radio transmitter to send distress signals but did not have a radio receiver.

A barge towed by the *T. J. Hooper* sank in a storm off the coast of New Jersey, and the cargo owners sued for damages, contending that if the vessel had been properly equipped, the captain would have had warning of the storm and would have taken shelter. The court held that the lack of the radio receiver when such equipment was readily available and reliable constituted negligence.

"As the radio receiver on ships was an idea whose time had come, so too a court may find that the air bag is also an idea whose time has come," Hricko observed. "The danger to the manufacturer is that it may have been an idea ignored by them too long, establishing potential liability over a number of years when air bags were available for use."

Automatic Restraints And Products Liability Law (Cont'd from page 9)

While the concept of automatic restraint is an innovative approach to crash protection, the equipment used in such systems is based on long-standing technology. For example, GM has pointed out that the same organization that produced the Apollo guidance systems developed the electronics and crash sensors of GM's air bag system, and "the same quality level went into our crash systems that went into the Apollo."²

The extensive crash testing and research done by manufacturers on automatic restraints is far greater than the testing done on most new automotive products. For example, GM President Eliot M. Estes has indicated that GM's new line of X-body cars has undergone more testing (220 prototypes traveling six million miles) than any other GM car.³ However, before offering air bags as an option in certain of its fullsize cars, GM conducted a 1000-car field test with the vehicle accumulating over eight million miles during an eight-month period.⁴

In discussing reliability issues, critics have said that even if automatic restraints are nearly 100 percent reliable, there will be a significant number of crashes each year in which people will be injured when the automatic restraint does not deploy. NHTSA, however, has estimated that very few cars per year might be involved in a crash where an air bag was designed to deploy, but did not. In addition, the injury-reducing potential of automatic restraints provides a sharp contrast to the approximately 28,000 occupants killed annually in vehicles that do not have automatic crash protection. More than 9000 deaths and tens of thousands of moderate and severe injuries, which currently provide the basis for numerous products liability suits, could be prevented annually when the entire vehicle fleet is equipped with automatic restraints.

Another argument raised by manufacturers is that even if automatic restraints function as intended, they will still be held liable for any injuries that occur in a crash because of the supposed "exaggerated public expectations" about automatic protection.⁵ Such an argument assumes that a manufacturer has absolute liability for any crash-related injuries caused by its product, when in fact current products liability law only holds a manufacturer liable for injuries caused by defective products. Manufacturers are not held to a duty of producing "an accident-proof or fool-proof vehicle," but only to a duty of producing a vehicle which does not subject "the user to an unreasonable risk of injury in the event of a collision."⁶

Thus, manufacturers have not been held liable in instances where current manual belts have performed as intended, but an occupant still was injured.⁷ They have, however, been found liable for injuries caused or aggravated by such manufacturing and design defects as a seat belt that broke during a crash allowing the driver to be thrown from the car and killed,⁸ or a seat belt that detached from the frame of a truck during a crash and caused the driver to suffer injuries five times greater than they would have been

if he had been adequately restrained.⁹

GM has already successfully defended its air bag system in a suit alleging that the air bag failed to inflate during a crash. GM was able to show that even though the driver sustained minor injuries, the air bag system performed as intended because the crash occurred at a speed below the deployment level GM had designed for its system.¹⁰

A review of the 1977 interagency task force report on products liability shows that the automotive industry, in comparison to the other industries studied, is in a good position with regard to products liability costs. Between 1975 and 1976, the absolute number of automotive personal injury products liability cases in federal district courts decreased, and the percent of automotive personal injury products liability cases to all personal injury products liability cases dropped from 18 percent to 13 percent.¹¹ The study also found that the average settlement and judgment for automotive products liability claims not only declined between 1972 and 1976, but declined at a much greater rate than the average of all industries studied.¹²

An important finding of the task force was that the average products liability insurance cost for most companies represents somewhat less than one percent of their gross sales.¹³ The report found that the average cost per \$1000 of sales for comprehensive general liability insurance (which provides coverage for a number of different types of liability including products liability) for the automotive industry is well below the average for most industries and is at the average for industries with gross sales exceeding \$100 million. Where companies were able to report the portion of their insurance costs directly related to products liability coverage, the report found that the average cost per \$1000 of sales for products liability insurance for automotive firms is far below average.¹⁴

Although insurance companies have frequently called for "reform" legislation to solve the current products liability "crisis," during the automatic restraint rulemaking they recognized automatic restraints as a solution to, not a cause of, vehicle products liability claims. They consistently stated that automatic restraints should decrease, not increase, products liability claims and that insurance is available to cover possible automatic restraint-related products liability claims.

In summer 1977, two insurance trade associations (whose members wrote approximately 85 percent of the general and products liability insurance in the US) wrote Secretary Adams about charges that an automatic restraint standard would pose increased products liability problems for the vehicle industry.

The American Mutual Insurance Alliance (AMIA) pointed out that during negotiations accompanying former Secretary Coleman's automatic restraint demonstration program, one company offered to insure air bag-equipped cars "at the same price the manufacturers paid for their non-air bag equipped models."¹⁵

In a June 1977 letter, the American Insurance Association (AIA) assured Secretary Adams that automatic restraint component suppliers, as well as vehicle manufacturers, could obtain adequate products liability coverage. AIA noted that, "the demonstrated reliability of passive restraint technology under a wide variety of circumstances makes it highly unlikely that component manufacturers will have difficulty retaining their product liability coverage even in high-volume production."¹⁶

In addition to vehicle manufacturers, automobile dealers have also raised questions about a possible increase in their products liability exposure for cars equipped with automatic restraints. However, indemnification programs begun by Chrysler, Ford, and General Motors may minimize dealers' products liability problems resulting from factors beyond their control. The agreements provide that the manufacturers will indemnify their dealers in suits based on alleged defects in the design, manufacture, and assembly of the vehicle. Eight foreign manufacturers have also entered into similar products liability indemnification agreements with their dealers.¹⁷

As has been clearly demonstrated, industry attacks on the products liability effects of the automatic restraint standard were groundless. However, just as with many of industry's claims about the products liability "crisis," those arguments can gain acceptance because of the power of industry to publicize its views. It will take an equally powerful effort by federal regulators, trial lawyers, and consumer groups to ensure that the public is provided safer products

and does not lose its right to recover for injuries caused by defective products.

¹Claybrook, "Crying Wolf," *Regulation*, Nov./Dec. 1978, pp. 14-16.

²Testimony of David S. Potter, Vice President, General Motors Environmental Activities Staff, in Hearings on *Installation of Passive Restraints in Automobiles*, before the Subcommittee on Consumer Protection and Finance, House Interstate and Foreign Commerce Committee, Sept. 9 and 12, 1977, p. 115.

³*Automotive News*, March 19, 1979, p. 30.

⁴Smith and Bennett, "Field Testing 1,000 Air-Cushion-Equipped Automobiles," in *Air Bag Development and Technology*, Hearing before the US Senate Committee on Commerce, 93rd Cong., 1st Sess., Aug. 1, 1973, pp. 89-100.

⁵Testimony of H.L. Misch, Vice President, Environmental and Safety Engineering, Ford Motor Co., in Hearings on *Installation of Passive Restraints in Automobiles*, before the Subcommittee on Consumer Protection and Finance, House Interstate and Foreign Commerce Committee, Sept. 9 and 12, 1977, p. 79.

⁶*Larsen v. General Motors*, 391 F. 2d 495, 502 (8th Cir., 1968).

⁷*Hurt v. General Motors Corp.*, 553 F. 2d 1181, 1184, (8th Cir. 1977).

⁸*Engberg v. Ford Motor Co.*, 205 N.W. 2d 104 (S.D. 1973).

⁹*Stahl v. Ford Motor Co.*, 381 N.E. 2d 1211 (Ill. 1978).

¹⁰Bureau of National Affairs, *Product Safety and Liability Reporter*, Sept. 30, 1977, p. 727.

¹¹Interagency Task Force on Product Liability, *Final Report of the Legal Study*, Volume III, Table A, p. 10.

¹²Interagency Task Force, *Final Report of the Industry Study*, Volume I, Table IV-29, p. IV-56.

¹³Interagency Task Force, *Final Report*, p. III-3.

¹⁴*Final Report of the Industry Study*, Volume I, Table IV-11, p. IV-31, and Table IV-13, p. IV-34.

¹⁵Interagency Task Force, American Mutual Insurance Alliance letter of May 25, 1977, to Secretary Adams, NHTSA docket 74-14-N8-188.

¹⁶American Insurance Association letter of June 27, 1977, to Secretary Adams, NHTSA docket 74-14-N8-231.

¹⁷*Cars & Trucks*, July 1978, p. 29.

Deputy Administrator Named For NHTSA

Transportation Secretary Neil Goldschmidt has designated Eugene Amato as the new deputy administrator of the National Highway Traffic Safety Administration (NHTSA).

Amato, 47, was most recently a consultant to Goldschmidt. He fills the vacancy created when Howard J. Dugoff was appointed last July to head the Research and Special Program Administration of the Department of Transportation (DOT). Although not yet officially sworn in, Amato has begun his new job on an unofficial basis.

Before joining DOT, Amato was a senior financial analyst for the National Semiconductor Corp., an electronics company.

On The Inside

- **HLDI DATA** indicate strong benefits have been derived from the performance standard to protect auto safety components. . . . Page 1
- **ADMINISTRATIVE RULEMAKING** rather than legislative action on bumper issues is urged by the Council on Wage and Price Stability. . . . Page 2
- **ADDITIONAL SITES** are designated by NHTSA for collection of NASS data on motor vehicle crashes. . . . Page 4
- **UPDATE:** The Percy commercial truck safety bill has been adopted by the Senate and awaits House approval. . . . Page 4
- **SAFETY STANDARDS** save thousands of lives without inflicting economic harm on industry, a NHTSA study finds. . . . Page 5
- **SUBSTANTIAL DIFFERENCES** in crash protection built into various cars are found in a series of NHTSA crash tests. . . . Page 6
- **TRUCK DRIVER EMPLOYERS** should have access to the National Driver Register records, the NTSB recommends. . . . Page 7
- **JOAN CLAYBROOK** writes of "Automatic Restraints and Products Liability Law" in an article reprinted from Trial Magazine. . . . Page 8
- **THE CASE OF T. J. HOOPER** is recalled in connection with the Claybrook products liability discussion. . . . Page 9
- **EUGENE AMATO** has been named as the new deputy administrator of the National Highway Traffic Safety Administration. . . . Page 11

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