

New Issue Emerges in 'Passives' Ruling

Concern that an automatic restraint requirement for new cars may encounter further lengthy delays has been raised in the passives case.

Arnold and Porter, attorneys for State Farm Mutual Insurance Co., told the U.S. Court of Appeals for the District of Columbia that State Farm is concerned the Department of Transportation (DOT) may be inclined to drag its feet during reconsideration of the issue. It is also worried that unless the same court panel — three

judges of the appeals court — that originally overruled the DOT's rescission of the rule retains jurisdiction over the matter, a new lawsuit may be required, possibly adding many more years of delay.

In June, the Supreme Court held that the government's rescission of the automatic restraint provisions of FMVSS 208 was "arbitrary and capricious," and the case was remanded to the appeals court with instructions to return it to DOT. (See *Status Report*, Vol. 18, No. 11, July 27, 1983.) *(Cont'd on page 7)*

Justice Sues General Motors Over X-Car Defects

Acting on behalf of the Department of Transportation, (DOT) the Justice Department is suing General Motors to force a recall of all 1.1 million 1980 model X-cars for brake-related defects and payment of a civil penalty in excess of \$4 million.

The complaint accuses GM of equipping these cars with brakes that the company already knew were defective from its own tests. The company then attempted to cover up the defects by giving false information throughout a three-year federal investigation of the matter, Justice said. The complaint was filed in the U.S. District Court for the District of Columbia.

Transportation Secretary Elizabeth Dole said this was the first action brought under the National Highway Traffic Safety Act asking for civil penalties against a manufacturer for providing false information during a defect investigation.

"The complaint is one of the most serious ever filed by NHTSA, [National Highway Traffic Safety Administration] and it reflects the priority this department has for automobile safety," said Dole.

The cars involved include the 1980 model Chevrolet Citation, Pontiac Phoenix, Buick Skylark, and Oldsmobile Omega. About 1.1 million of the cars were manufactured between January 1, 1979, and August 1, 1980.

GM disputed the charges and said it would fight the lawsuit.

The defect involves the braking system, which the government says has a tendency to cause the rear wheels of the cars to lock prematurely. When the rear wheels of the front-wheel drive cars lock, the cars can go into uncontrollable skids, NHTSA has said.

The agency says it has received more than 1,700 complaints about lock-up incidents, many of them allegedly resulting in accidents. NHTSA said it has received reports of 71 injuries and 15 deaths attributed to the defective brakes.

There already have been two recalls involving the braking defect. One was begun in 1981 and involved 47,000 cars equipped with manual transmissions. The second was conducted in February 1983 and covered 240,000 — including the 47,000 that had already been recalled. In both cases, the complaint states GM knew that the extent of the recall and the proposed repairs were inadequate.

The six-count complaint charges GM with a number of violations of federal law, including charges of at least 27 instances of providing false or misleading information — some of which was provided under oath. *(Cont'd on page 10)*

Lawsuit Dropped After FHWA Amends Criteria To Improve Road Safety

The Center for Auto Safety has dropped a lawsuit challenging the Federal Highway Administration's (FHWA) rule governing design criteria for "4R" road work off the interstate system.

When the Center discontinued the suit, it noted that the FHWA had already amended the rule to require that safety improvements be an integral consideration in performing such work (resurfacing, rehabilitation, reconstruction, and restoration). (See *Status Report*, Vol. 18, No. 3, March 1, 1983.)

For years, a battle has dragged on over whether the federal government should adopt geometric design standards that incorporate safety features for such highway work. Congress has said it should. Last fall, the highway agency issued a rule saying, in essence, that the states could set their own design standards subject to federal approval. In that rulemaking notice, the agency said the primary purpose of such work is to preserve and prolong the service life of existing highways.

The Center immediately filed suit to block that rule. It contended that many states would simply pave over existing roadways without eliminating safety hazards. Repaving alone would encourage motorists to drive faster, the Center warned, possibly leading to more frequent and more severe crashes.

Awareness Week

The Senate unanimously adopted and the House will soon consider a joint resolution designating the week of December 11-17, 1983, as the second annual "National Drunk and Drugged Driving Awareness Week."

The bill will reach the House floor shortly after Labor Day, congressional staff members said.

Reps. James V. Hanson (R.-Utah) and Michael D. Barnes (D.-Md.), chief sponsors of the House resolution, said they hoped to keep the anti-drunk driving momentum going by focusing attention on state and local efforts to combat the problem.

Following passage of the Surface Transportation Assistance Act of 1982, the FHWA revised the rule to conform with the new law. (See *Status Report*, Vol. 18, No. 1, Jan. 18, 1983.) The new rule stipulates that 4R work "is defined as work undertaken to extend the service life of an existing highway and enhance highway safety."

The FHWA "does consider the enhancement of highway safety as a primary objective of [4R] projects," the agency added.

In an April 8 technical advisory to FHWA regional offices, the agency instructed regional directors to reevaluate states' geometric design criteria submitted for 4R work to ensure they are consistent with that view.

Only Two of Seven 1983 Model Cars Tested 'Pass' 35 mph Crash

In U.S. government tests at 35 mph, only two out of seven 1983 model cars demonstrated that they could probably protect a belted driver from death or serious injury in a frontal collision.

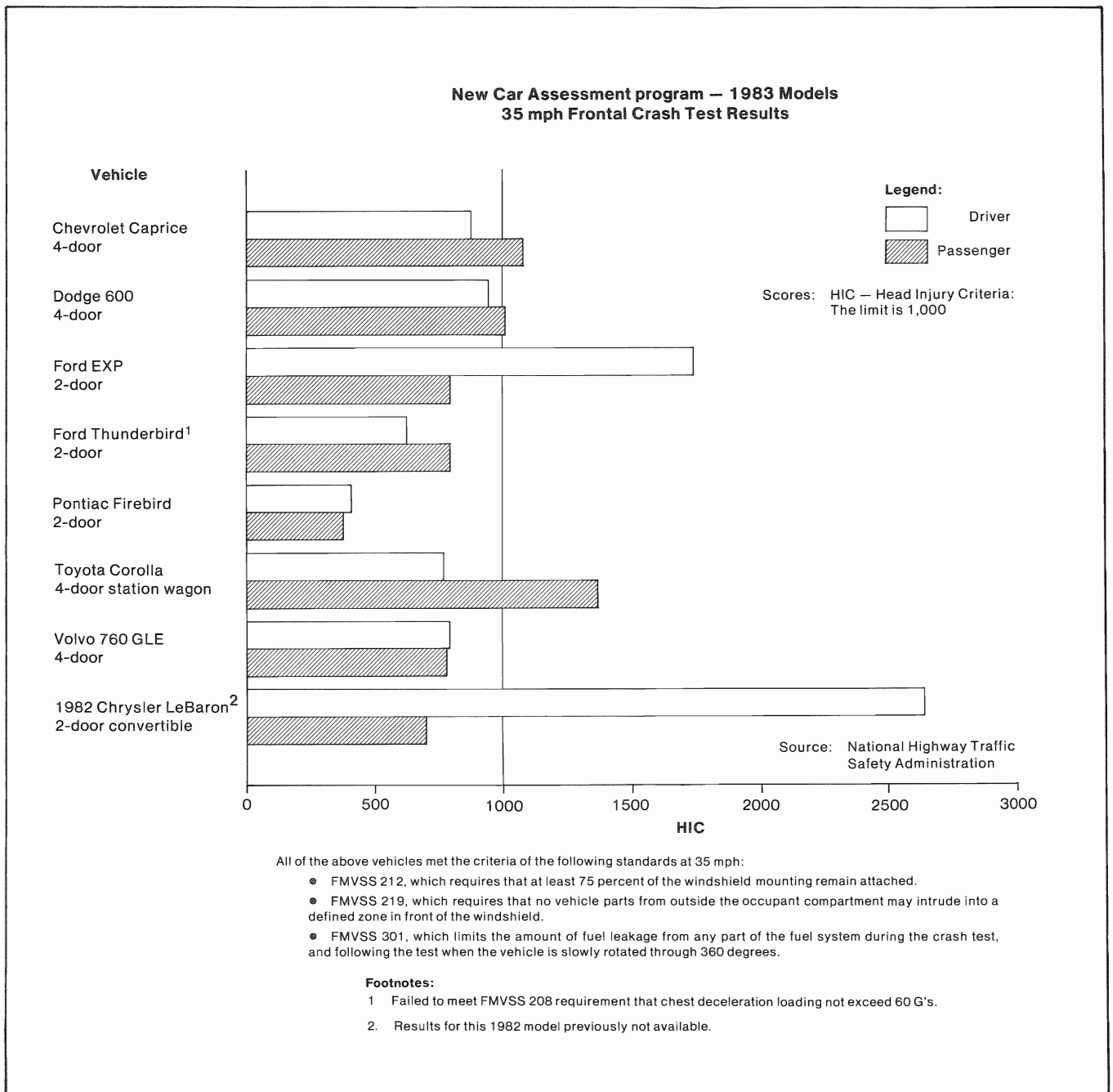
No information is provided by the government or manufacturers concerning the ability of automobiles to protect unbelted occupants. About 4 out of 5 drivers do not wear seat belts, surveys show.

The cars, the first 1983 models to be tested this year by the National Highway Traffic Safety Administration (NHTSA), included five domestic and two foreign models.

Three cars "passed" the head injury test on instrumented dummies. The test is 5 mph above the test speed requirement set for occupant protection under Federal Motor Vehicle Safety Standard (FMVSS) 208. The cars were a General Motors 2-door Pontiac Firebird, a 4-door Volvo 760 GLE, and a 2-door Ford Thunderbird. But the last "failed" to protect its driver from "serious-to-fatal" chest injuries.

The other cars tested were a 4-door Chevrolet Caprice, a 4-door Dodge 600, a 2-door Ford EXP, and a 4-door Toyota Corolla station wagon.

Head injury criteria (HIC) measurements should not exceed a value of 1,000 in 30 mph impacts under FMVSS 208. "In general, the lower the score on the head injury criteria, the less likely drivers and front-seat passengers will be seriously injured or killed in a frontal crash at 35 mph," NHTSA said. The higher the



score, the more the likelihood front seat occupants would receive a serious or fatal injury.

Chest deceleration levels for both the driver and passenger dummies should not exceed 60 G's under the 30 mph test criteria and femur loads under 2,250 pounds are required, the agency said.

Of the three cars with scores lower than the 1,000 HIC threshold, the Pontiac had the lowest, most favorable, numbers (see figure above).

NHTSA said the results of crash tests for 23 other 1983 models should be released soon. If the agency publishes the remaining results before September, this

will mark the first year the new car information will be out before the end of the prior model year. (See *Status Report*, Vol. 18, No. 6, April 22, 1983.)

All of the cars included in the test program either belong to new model series that have never been tested under the program, or have undergone design changes that may affect their ability to protect occupants in crashes. Some of the design changes would not be readily apparent to consumers, a NHTSA official noted. For example, new seat belt retractors have been introduced in some models that would tend to lower the possibility of serious head injuries.

Screening Urged for Truckers Hauling Hazardous Materials

The National Transportation Safety Board (NTSB) has recommended that special licenses and screening procedures be required for truck drivers who haul hazardous cargoes.

In a series of recommendations on July 8 to the American Association of Motor Vehicle Administrators (AAMVA), a group composed of state officials, the safety board cited studies indicating that these drivers — particularly tank truck operators — should be screened to weed out reckless drivers and be required to pass a road test and written examination. The board said the drivers should be able to demonstrate:

- Proficiency in handling and operating the vehicles;
- Ability to follow emergency response procedures;
- Knowledge of loading and unloading procedures.

In a separate letter to the International Association of Chiefs of Police and various trucking groups, James Burnett, safety board chairman, asked the organizations to work with AAMVA to develop a uniform licensing procedure.

Since the Safety Board has concluded that operational experience and good driving conduct play a significant role in eliminating crashes involving trucks transporting hazardous waste, the board is seeking more information from the states on these matters. The data will be used to discover how much driving experience should be required and what traffic violations should disqualify individuals. The board asked AAMVA to use the information to develop specific criteria for state licensure of such drivers.

The safety board's recommendations were based, in part, upon its investigations of 15 crashes involving trucks hauling hazardous materials. "These accidents involved overturns, jackknifings, and collisions with trains, and collectively resulted in 61 fatalities and 283 injuries, most of which were caused by the release of the hazardous materials involved," the board said.

The NTSB's review of available driver records disclosed 11 license suspensions, 19 previous crashes, and 83 previous traffic convictions among the 15 drivers.

The board said other studies, including its 1981 review of rail and highway crossing crashes, indicate the need for a coordinated effort. In some cases, the board noted, individual carriers are already selective

about the drivers they hire. But drivers with poor records still manage to slip through.

"Conceptually, the National Driver Register (NDR), if completely functional, would provide the necessary screening mechanism for preventing some problem drivers from being licensed or employed to operate hazardous material trucks," the board noted.

"However, the NDR will highlight only serious traffic offenses, suspensions, or revocations. An interstate driver with, for example, 20 speeding convictions spread over 10 states may not be highlighted by the NDR as a problem driver. However, a search of the register would indicate the large number of violations," the board said.

The NDR provides a file of drivers whose licenses have been revoked or suspended. To speed up response to inquiries on drivers, the National Highway Traffic Safety Administration (NHTSA) is designing a new register that will permit a computerized reference service to the states, but it will be at least four years before the system is completed, a NHTSA official told *Status Report*. (See *Status Report*, Vol. 17, No. 15, Oct. 21, 1982.)

The AAMVA has not yet responded to the board's recommendations, but Don Bardell, president of the organization, said the group is looking at the "fiscal implications" of the request.

Council to Analyze Benefits Gained From 55 MPH Speed Limit

The National Research Council is studying the human and economic benefits gained from setting the national speed limit at 55 mph.

The study was authorized under the Surface Transportation Assistance Act of 1982. (See *Status Report*, Vol. 18, No. 1, Jan. 18, 1983.) This law requires an in-depth analysis of the human as well as economic benefits of the 55 mph speed limit enacted in January 1974 to conserve gasoline. Turning down the speed limit produced an added advantage: traffic officials also reported a sharp drop in the number of highway deaths, and, in January of 1975, the law was made permanent.

The Council, part of the National Academy of Sciences, will also focus on whether laws enacted by the states actually have deterrent value for violations

of the national limit, the Department of Transportation (DOT) said in an announcement of the study. In some states, fines assessed for speeding are minimal.

DOT said it expects the study to assess “the extent to which the 55 mph speed limit contributed to the decline in motor vehicle fatalities, and to estimate the likely contribution of the 55 mph speed limit in reducing fatalities now.” The panel’s report is expected by August of next year.

States face a penalty if they fail to enforce the national speed limit. If during a year statistical sampling reveals that less than half the motorists on a state’s highways are obeying the law, DOT can withhold a portion of the state’s highway funding.

Last year, NHTSA found that two states, Massachusetts and Nevada, were possibly not in compliance with the law, jeopardizing some of their funds. Hearings have been held to review their cases, a NHTSA spokesman said, but no decision has been made on whether any money will be withheld.

If such a decision is made, it will mark the first time that DOT has used the enforcement provisions of the 55 mph speed limit law.

(From *The Atlanta Constitution*, July 5, 1983)

Rear-Ending Standards For Bumpers

It may not have been the administration’s intention to jack up the costs of car repairs and insurance in this country, but no matter.

It was inevitable, after the National Highway Traffic Safety Administration scrapped a requirement last May that cars be equipped with bumpers capable of withstanding a 5-miles-per-hour crash without damage.

It’s already happening, according to claims data released last week by the [Insurance Institute for Highway Safety.] The institute reported a sharp increase in the number of claims submitted and the cost of repairs on 1983 Honda cars — among the first to switch to a 2.5 mph standard — when compared with claims on 1982 models bearing stronger bumpers.

“An alarming bellwether,” according to the institute’s Ben Kelley, who predicted not only higher insurance premiums, but “many, many more dollars ... coming out of the consumer’s pocket to pay for damage under the deductible.”

The switch has been applauded by Volvo, Chrysler and Volkswagen, which have already replaced the bumpers on most models, and by General Motors, which is still phasing the weaker ones in.

But not all manufacturers share their zeal for this dubious move. To their credit, Ford, Nissan, Toyota and American Motors have decided to stay with the stronger bumpers. Insurance companies may decide that the owners of those cars deserve favored status and lower rates.

All those who embraced the weaker standard realized a short-term reduction in their manufacturing costs; whether they lose sales remains to be seen. But in any event, the overall social accounting was clearly on the side of the 5 mph standard, which the administration unfortunately rear-ended.

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From *American Journal of Public Health*, Editorial, July 1983

Medical Data and Injuries

Injuries are the leading cause of death during the first four decades of the human lifespan. Their toll in death and disability is rivaled only by their high cost to society in foregone productivity and utilization of scarce resources.

For each death there are several hundred injuries, collectively requiring more physician contacts than any single disease. Measurement of the health effects of injuries, however, has generally focused on mortality. Now, due to the painstaking research of Barancik and his colleagues at Case Western Reserve and the Insurance Institute for Highway Safety, published in this issue of the Journal, [See *Status Report*, Vol. 18, No. 11, July 27, 1983.] we know that in a large, well-defined region, one person out of every five requires emergency room treatment for injury during a one-year period.

Why has a health problem of this magnitude received so little scientific attention compared with many diseases that have far less impact on our lives? Why are only a handful of epidemiologists dedicating their efforts to the many fascinating research questions waiting to be explored? Why have we waited until 1983 to measure such basic matters as the relative contribution of falls, crashes, and assaults to non-fatal injuries?

The answers, however varied, generally boil down to one essential element: the traditional emphasis on accidents as a behavioral problem, rather than on injuries as a health problem. In part, this relates to the source of our most detailed injury data: not the health system, but the police. Each year, some 50,000 deaths — one-third of all injury deaths — are caused by motor vehicles, and 32,000 injury deaths — one out of every five — are caused by firearms. Because such deaths are reported to the police, police investigations have been the basis of much of what we are told about these two major public health problems.

Police data are collected primarily for the purpose of showing who was at fault and documenting the basis for criminal charges. As a result, most police data on motor vehicle

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crashes apply to the driver and his or her actions, and tend to reinforce inappropriate notions about the importance of carelessness, driver error, and wrongdoing in the etiology of injury.

Some years ago, a team of crash investigators reviewed the details of 104 crashes that had caused serious personal injury or death, listing all the factors that contributed to the occurrence of each crash. On average, they listed more than six items per crash; 81 percent were related to the vehicle or the road, 19 percent to the driver. When they tried to record this information on standard police forms, however, there was no place to code most of the contributing factors they had identified. Of the ones that could be coded, 89 percent were related to the driver, 11 percent to the vehicle, none to the road. The reason we have heard so often that "90 percent of all crashes are caused by human error" is not that other factors aren't equally important, but that it is the business of the police to collect data on "human error."

Thus, one problem with police data on injuries is their emphasis on hard-to-change behavioral aspects rather than environmental problems that we have the ability to rectify. Another problem is that data are absent for the large proportion of injuries that are not reported to the police, even when they should be. The data from Northeastern Ohio suggest that three-fourths of all people injured in assaults are not known to the police!

For injuries unrelated to crime — such as falls, the leading cause of non-fatal injury — our main sources of data are surveys and the medical care system. By making good use of hospital data on injuries from emergency department records, Barancik and his associates have been able not only to estimate the magnitude of the problem (far greater than suggested by official statistics) but also to describe and analyze the source of injury. The latter information generally is not transferred from hospital records to other data bases such as the National Hospital Discharge Survey (NHDS). The result is a tragic loss of potentially valuable information.

Like police data, medical records are not created for the purpose of studying and preventing injuries. They have the advantages, however, of permitting the identification of virtually all seriously injured persons (provided they are supplemented with data on deaths that do not come to medical attention), giving information on the nature and mechanism of injury, and facilitating study of the outcome and costs of injury.

Should trauma be a reportable disease? Should we have a National Trauma Registry? These questions have often been asked; the implications boggle the mind. Even if reporting were limited to hospital-treated injuries, some 50 million cases each year would qualify. Of even greater concern than the difficulties and costs of collection, storage, and analysis of so much data is the bias introduced by the substantial underreporting that could be expected.

With proper sampling, however, the problem could become manageable, the costs reasonable, the information gain invaluable. The work reported here suggests what can

be accomplished with a 2 percent sample. A stratified sampling system to examine 10 percent of hospital admissions and 100 percent of deaths has recently been developed for studying seriously injured Maryland children. If we develop comparable injury information systems elsewhere, and incorporate better injury data (including the "E codes" for cause of injury) into existing sampling systems such as the NHDS, we should see an exponential increase in our knowledge and understanding of injuries. Perhaps most important, thoughtful use of medical records as a source of injury data will help to emphasize that injuries are a serious *health* problem deserving the same scientific attention as cancer and heart disease.

Susan P. Baker, MPH

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Wirth: Failure to Fix The Ford Transmission Cost 50 Additional Lives

Since the Ford Motor Co. and the Department of Transportation (DOT) agreed to send warning labels to Ford owners rather than fix defective transmissions, 50 people have died and over 500 have been injured in "park-to-reverse" incidents, a House subcommittee chairman has charged.

In a recent hearing before the House Subcommittee on Telecommunications, Consumer Protection, and Finance, Rep. Timothy Wirth (D.-Colo.) said that more than 230 people have been killed and some 2,000 injured in such incidents. The involuntary "park-to-reverse" shift occurs when an idling Ford vehicle ostensibly left in "park" slips into reverse and can then mow down anyone in its path.

Wirth charged the settlement, which averted the potentially largest auto recall in history, failed to solve the defect problem, but Diane Steed, deputy administrator of the National Highway Traffic Safety Administration (NHTSA) disagreed. "At the present time," said Steed, "I am not inclined to disturb this settlement," primarily because the "rate of accidents, deaths, and injuries reported has been declining...."

In December 1980, then DOT Secretary Neil Goldschmidt and Ford attorneys agreed the company would send a letter warning all Ford owners of vehicles built between 1970 and 1979 equipped with automatic transmissions that their transmission may be hazardous. A label headlined "important safety precaution" was enclosed with the letters and owners were told to affix the labels to their cars. (See *Status Report*, Vol. 16, No.

1, Jan. 19, 1981.) Surveys by the Center for Auto Safety indicate only about 7 percent of the affected Fords actually carry the stickers.

Clarence Ditlow, director of the Center for Auto Safety, in testimony before the Subcommittee, said that “automatic transmissions in 23 million Fords made from 1966 through early 1980 contain the most serious defect ever recorded by the DOT.” He accused NHTSA of playing a “numbers game of trying to show a decline in park-to-reverse accidents....”

Ditlow stated the incidence of fatalities attributed to the defect actually rose after the warning stickers were mailed to Ford owners. The death rate may be underreported, he said, because in a check of Ford records, the Center uncovered deaths that had not been reported by Ford and “Ford has recently acknowledged ‘misplacing’ some 550 to 600 accident and injury reports that NHTSA requested”

This failure, Ditlow said, makes it likely the auto maker has a record of considerably more deaths than the 38 known publicly to have occurred since the warning labels were mailed.

A Ford vice-president, Helen O. Petrauskas, maintained — as the company has all along — that “there is no defect in the design or operating characteristics of Ford automatic transmissions that causes or contributes to these accidents.”

Ford attributes the tragedies to driver error that occurs when the operator mistakenly believes he or she has shifted into park without actually doing so.

One witness, testifying to his personal experience with the transmission, said he had bought his used 1977 Lincoln Continental after the warning labels were sent to Ford owners. The car he bought bore no sticker, said Henry Lewis, a Harrisburg, Pennsylvania resident.

One cold morning, he said, he left the car in “park,” engine idling, while he shut his garage door. The car “slipped into reverse,” and rammed him through the 3/8 inch plywood door, breaking both his legs.

Former NHTSA Administrator Joan Claybrook said the agency’s expertise was “stopped by the politics of the day” when Goldschmidt decided to seek a settlement rather than a recall. Claybrook estimated Ford eventually will pay out in awards and settlements of lawsuits in excess of the \$100 to \$120 million that was originally estimated to be the cost of repairing the defect.

Claybrook added “recall of their [auto industry’s] defective vehicles can often be more advantageous than refusal to recall....For both its reputation and its financial health, Ford has suffered grievous injury which could have been significantly mitigated by an early recall.”

New Issue Emerges

In ‘Passives’ Ruling (Cont’d from page 1)

Arnold and Porter then filed a motion with the appeals court, urging that the three-judge panel retain jurisdiction over the case. The law firm said such a move would “facilitate judicial review should it become necessary.”

In a later filing, the firm pointed out to the court an article by Michael Wines in the July 9 issue of the *National Journal*. Wines said that Diane Steed, then acting administrator of NHTSA, told him the Supreme Court’s order probably would require extensive new studies before a decision could be issued on a new regulation.

“I think that if the Court said anything to us, it was ‘Take your time,’ she said.”

In remarking on the quote, Arnold and Porter said, “Apparently, the new administrator reads the Supreme Court’s opinion quite differently than do petitioners.”

In a response to the Arnold and Porter filing, the Justice Department told the appeals court, “Ms. Steed did not make the statements quoted in the interview.” Justice attached a letter that Steed had written to the *National Journal*. However, in the letter, Steed did not deny making the “take your time” statement. Instead, she asserted that Wines made an “incorrect interpretation of my comment and of the agency’s reaction to the Supreme Court’s remand of the passive restraint rulemaking. The thrust of my views, clearly expressed to Mr. Wines, was that we are going to take sufficient time to consider the court’s decision very carefully before we engage in future rulemaking....Specifically, we do not plan ‘extensive new studies’ of this issue and I did not say that in the interview with Mr. Wines....”

Wines, who tape-recorded the interview, told *Status Report* that the “take your time” remark was an exact

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New Issue Emerges In 'Passives' Ruling (Cont'd from page 7)

quote. "I stand behind what I wrote", he said, "I think that the conclusions I drew are certainly logical."

All along, the Justice Department, on behalf of NHTSA, has opposed the motion to keep the case before the same court panel. Justice said the motion goes beyond the Supreme Court's 9-0 decision calling the rescission of the rule "arbitrary and capricious." If there is any dispute over a future DOT ruling, said Justice, parties can file a new lawsuit.

Arnold and Porter said that is what they hope to avoid. "As the Supreme Court observed in its opinion in this case, 'the automobile industry [has] waged the regulatory equivalent of war' against passive restraints, delaying their implementation for 'nearly a decade,'" the firm said.

"Should future judicial review be necessary to uphold the Supreme Court's decision, there can be no doubt but that it would be most expeditiously accomplished by this court since it has exhaustively reviewed the extensive administrative record.

"A failure to retain jurisdiction might be argued to require the filing of a new lawsuit (respondents certainly contend that it did). An entirely new suit — which might require yet another panel of this court (or even another circuit) to master the intricacies of the passive restraints issue — could well mean further years of delay. And, as this court is well aware, each year's delay costs this country thousands of deaths and tens of thousands of injuries."

Bill Carries With It Strong Language For Passives, Bumpers

Congress has agreed on a Department of Transportation (DOT) 1984 spending bill that carries forward strong language in favor of automatic restraints and bumpers.

In action approving the bill before the August recess, Congress left undisturbed a Senate appropriations committee report noting the Supreme Court's finding that DOT's rescission of the automatic restraint

DOT 1984 Safety Appropriations Highlights (in millions)

National Highway Traffic Safety Administration

Operations and research	\$78 million
Rulemaking	\$ 6.100
Enforcement	11.058
Highway Safety	12.060
Research & Analysis	39.312
General Administration	7.050
Office of the Administrator	2.420

State & Community Highway Safety Grants* (\$100)

Alcohol Safety Incentive Grants* (38)

Total NHTSA Programs \$216 million

Federal Highway Administration**

Bureau of Motor Carrier Safety	\$13.020
Motor Carrier Safety Grants	8.000
Highway Safety Researchg	8.500
Rail-Highway Crossings	15.000
Highway Safety Grants	9.738

Total \$54.258 million

* These program levels set in Surface Transportation Assistance Act of 1982. See *Status Report*, Vol. 18, No. 1, Jan. 18, 1983.

** Reflects only appropriations; additional safety-related funding set out in STAA.

provisions of Federal Motor Vehicle Safety Standard (FMVSS) 208 was "arbitrary and capricious." (See *Status Report*, Vol. 18, No. 11, July 27, 1983.)

"In view of the Supreme Court opinion, the [appropriations] committee urges the department to resolve this matter so that passive restraints can be made available to the American public at the earliest practicable date," the report said.

A House report directing the National Highway Traffic Safety Administration (NHTSA) to push forward with air bag-related projects was also left intact. (See *Status Report*, Vol. 18, No. 10, July 7, 1983.)

The Senate committee report noted NHTSA plans to analyze the 1983 model year bumper insurance claims data and cost and weight data on 1984 model bumpers. The Senate committee has told NHTSA to report by May 1, 1984, on the results of this analysis and, in addition, directed NHTSA to include in the

May 1 report, “an outline of steps the agency will take to increase the bumper standard, or a detailed explanation of how the existing 2.5 mile standard is beneficial to the American consumer.”

Both the House and Senate committees directed NHTSA to expand and improve its new car assessment program. Within the framework of the new car assessment program, both committees directed NHTSA to develop, in the words of the House committee, “an adequate consumer information program concerning the crashworthiness of bumpers on new cars.” The House also directed NHTSA to provide a report by July 31, 1984, detailing its “actions taken to improve the new car assessment program and to develop an effective consumer information program for bumpers.”

The report should include a description of “how bumper crashworthiness data is to be collected and verified; what percentage of cars sold in the U.S. such data will cover; and how much information will be made available to the public.” The House appropriations committee also told NHTSA to explain the advantages and disadvantages of requiring the bumper crashworthiness information to be printed on new car stickers.

Conferees on the appropriations bill shuffled spending priorities somewhat, under NHTSA’s allocated \$78 million for operations and research programs, but the total amount is almost the same funding level sought by the administration in its budget request.

See table for 1984 funding levels under the final appropriations measure.

Districts May Be Liable For Injuries Sustained In School Van Crashes

School districts using conventional vans to transport pupils may be held liable if a student is injured in a crash, counsel for the National Highway Traffic Safety Administration (NHTSA) has advised.

“It is our opinion that private liability could result if a child is injured in a vehicle that does not comply with federal [school bus] safety standards...” wrote Frank Berndt, chief counsel for NHTSA. The fact that state regulations might permit the use of vans for school transportation would not be relevant, Berndt said in response to an inquiry from the Wisconsin School Bus Association.

Meeting Adjourned?

The National Highway Traffic Safety Administration (NHTSA) has been warned that its funding of advisory committee meetings will be watched closely next year.

When Rep. William Lehman (D.-Fla.), chairman of the House Appropriations Subcommittee on Transportation, brought the transportation appropriations report to the floor for a vote, he had a special word for the safety agency.

The National Highway Traffic Safety Advisory Committee, Lehman said, “seems to have a penchant for holding national conferences at taxpayers’ expense, which appear to produce little of real value.”

He warned NHTSA to “take a close look at the need for this group’s proposed national conference in May 1984 in light of similar conferences planned the same month, and the need for this group to establish subcommittees which hold national meetings in order to plan national meetings.”

Vans used as school buses can be outfitted with a “school bus package” to conform with federal rules. The package contains about 30 items required on larger, conventional school buses. The items include special flashing lights, yellow and black paint, special “crossover” mirrors, and safety windows.

Ironically, the vans — because they weigh under 10,000 pounds — are required to be equipped with seat belts at every seating position. Large school buses are not.

Berndt told the school bus association that even though a vehicle classified as a school bus (one that is used to transport 10 or more pupils) under federal law may fall into another state classification, “the decision of that state not to adopt the federal classification has no effect on the application of the federal school bus standards to that vehicle.”

Wisconsin and Florida state regulations permit the use of conventional vans for student transportation, Richard Rechlicz, the executive secretary for the association, said in a letter to Berndt.

A spokesman for the Wisconsin group said the association has not decided what course of action to take.

Justice Sues General Motors Over X-Car Defects (Cont'd from page 1)

According to the 14-page complaint, General Motors knew in December 1978 — fully a year before the X-car went into production — that the car's brakes had "a tendency to experience premature rear wheel lock-up under a wide variety of conditions." The company also knew, according to the complaint, that the lock-ups would cause the cars to skid out of control.

General Motors created a special task force to study the problem and it recommended a number of solutions — including the use of heavier, finned rear brake drums instead of smooth drums, the use of less aggressive brake linings, and 27 percent proportioning valves, the complaint says.

Yet, it began producing the car without making the recommended changes. The complaint says that GM had "determined or in good faith should have determined" that the rear brake system contained safety-related defects, yet did not notify the safety agency and offer to repair them.

Later, the company redesigned the braking system and the parking brake for 1981 models in order to alleviate the lock-up problem. Still in communications with NHTSA, which was investigating the matter, GM denied that it had done so. In fact, says the complaint, GM furnished "false and misleading responses to NHTSA's information requests in at least 18 instances."

Among GM's misleading claims, according to the Justice Department, was an assertion that the company had never learned that the 1980 models were prone to rear lock-up through testing, nor that it had ever prepared any written analysis of the problem.

Furthermore, GM's own tests after the 1980 models had gone into production showed that the front wheel brake systems were prone to excessive corrosion, the complaint says. The corrosion lowered the effectiveness of the front wheel brakes, contributing even further to the lock-up problem. Nevertheless, GM did not report these findings, though legally required to do so.

On March 4, one day after Rep. Timothy Wirth (D.-Colo.), chairman of the House Subcommittee on Telecommunications, Consumer Protection, and Finance, held a hearing on NHTSA's handling of the defect inquiry, (see story, page 11.) NHTSA issued a special order directing GM to reply under oath and to provide documents regarding the case.

"General Motors furnished false and misleading responses to this special order in at least nine instances," the government told the court.

NHTSA has not revealed how it discovered that the company had been providing the agency with false information, but sources said that documents obtained under subpoena subsequent to the special order revealed discrepancies in GM's submissions.

GM assistant general counsel, William L. Weber, issued a statement saying the company was "surprised" by the Justice Department suit.

"It is especially unwarranted in view of the fact that GM has cooperated extensively with NHTSA to develop the facts which will show clearly that no further recall or other corrective action is appropriate.

"GM has voluntarily recalled about 240,000 vehicles," Weber said, adding, "We believe such action was appropriate to allay customer concern.

"Also, we categorically deny the government's assertion of misrepresentation. Accordingly, we will vigorously defend the lawsuit."

GM X-Body Brake Chronology:

November 26, 1979

NHTSA opens Engineering Analysis E80-024 on X-body rear wheel lock up.

July 2, 1981

NHTSA opens Defect Investigation C81-09 on all 1980 model year GM X-body vehicles.

August 5, 1981

GM conducts a recall (ODI 81V-095) for certain X-body vehicles with manual transmissions, approximately 47,300 vehicles.

December 7, 1982

NHTSA grants a petition from the Center for Auto Safety (P83-6) to expand the GM X-body investigation to model years 1981, 1982, and 1983.

December 17, 1982

NHTSA urges GM to review its position on the alleged safety defect.

January 14, 1983

NHTSA announces an Initial Determination of a safety related defect in approximately 320,000 of the 1980 model X-body cars.

February 9, 1983

GM announces recall of 240,000 1980 model X-body cars with manual transmissions, and certain early production models with automatic transmissions.

Source: National Highway Traffic Safety Administration

Agency Guidelines Not Followed In GM X-Car Probe

The investigation of General Motors' X-car has itself been the subject of an investigation.

The General Accounting Office (GAO) has found "serious problems" with the way the National Highway Traffic Safety Administration (NHTSA) handled its probe of rear brake lockup problems among GM's 1980 X-cars.

At a recent hearing before the House Subcommittee on Telecommunications, Consumer Protection, and Finance, J. Dexter Peach, director of GAO's resources, community, and economic development division, released a report sharply critical of the safety agency's handling of the investigation.

Peach said NHTSA did not follow its own guidelines and practices in its pursuit of the X-car lockup problems. The agency's lack of aggressiveness in monitoring the effectiveness of an early General Motors recall (see accompanying story) that the agency had reason to suspect would not solve the problem, and long postponements ultimately "delayed the recall of cars with potential safety defects," the GAO report said.

Rep. Timothy Wirth (D.-Colo.), chairman of the subcommittee, said, "while NHTSA was going slow on the X-car probe, 15 people [were] killed, 71 Americans [were] injured, and nearly 2,000 more...complained to the government. This is an inexcusable track record for an agency, whose primary obligation...is to remove dangerous vehicles from our roads."

GAO recommended that:

- The NHTSA administrator "reaffirm the need for compliance with the policies and procedures for conducting defect investigations."
- Clarify certain policies, such as when test results should be disclosed and what test information should be provided the manufacturer.
- Top officials be involved in the defect investigation process.

The GAO report said that until November 1982, "Decisions regarding most of these [NHTSA's] actions were made by a single NHTSA official, with no apparent review" by top agency officials.

The official, George Anikas, former head of the office of defect investigations, had testified at an earlier

hearing before the subcommittee. He said the course of the agency's investigation had been characterized by sharp disagreement among the engineering staff, disagreement so strong there had been "near fistfights." (See *Status Report*, Vol. 18, No. 5, March 25, 1983.)

In addition to the procedural problems outlined by its review, GAO said an "anonymous allegation" of a possible conflict of interest and misuse of travel funds by a "key" NHTSA employee involved in the defect investigation had been referred to the Inspector General of the Department of Transportation.

Specifically, GAO found that:

- The engineering analysis of the defect, the first stage of investigation, was opened on Nov. 26, 1979, and dragged on until July 1, 1981. Normally, NHTSA tries to complete such analyses within six months.
- A press release was not issued when the formal defect investigation, the second stage of the investigation was opened. Such press releases are part of the "normal practice," said GAO, because they notify the public of the potential hazard and help the agency acquire additional information.
- An information request letter, though drafted, was never sent to auto magazines, consumer groups, and others who might have information about the problem.
- A contract to gain detailed information from consumers who alleged they had experienced the lockups or knew people who allegedly had been injured or killed as a result of lockup incidents, was not awarded until March 1983 — nearly 21 months after the formal investigation was begun.
- NHTSA's audit of GM's recall of 47,000 cars was delayed five months because the company provided the wrong information, GAO said. Even so, the audit "should have been planned and implemented earlier because NHTSA questioned the adequacy of the remedy," GAO said.
- The results of a preliminary test conducted in July 1981 were shared with the manufacturer, though no mention of the test was made in the public index. The results of a subsequent test conducted in November 1981, which disclosed GM's proposed remedy might not work, were kept secret until January 1983.

NHTSA general counsel Frank Berndt side-stepped most of the questions surrounding the handling of the case by saying that the whole matter had been referred to the Inspector General.

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