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Testimony of Frank Clemente
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Before the Oklahoma Legislature
Joint Committee Hearing Concerning HB 2661

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Mr. Chairman and members of the conference committee, my name is Frank Clemente, Director of Public Citizen's Congress Watch. Public Citizen is a 160,000 member non-profit organization based in Washington, D.C., with nearly 800 members in Oklahoma. Founded in 1971, Public Citizen fights for consumer rights in the marketplace, safe and affordable health care, campaign finance reform, fair trade, clean and safe energy sources, and corporate and government accountability. Public Citizen has five divisions and is active in every public forum: Congress and state legislatures, the courts, governmental agencies and the media. Congress Watch is one of the five divisions.

Public Citizen has been very active in patient safety issues for decades, primarily through our Health Research Group, which periodically publishes state-by-state reports on Questionable Doctors (www.questionabledoctors.org) – those doctors who have been disciplined by state medical boards and federal agencies – and periodically ranks the quality of state medical boards in disciplining doctors.

Public Citizen's Congress Watch has been very active in legislative debates over medical malpractice and many other civil justice issues. Among other things, in the last 18 months we have produced numerous national studies and 16 state studies debunking the claims that there is a medical malpractice insurance "crisis" caused by the legal system and lawsuits.

HB 2661 is arguably the most anti-consumer and anti-patient legislation that has been seriously considered by a legislative body that we have ever seen. Each provision will facilitate illicit and harmful practices ranging from negligence to corner-cutting to outright scams. The sponsors appear to have accepted in their entirety the arguments of medical industry and corporate lobbyists, without any attempt to evaluate proponents' concerns against the countervailing interests of consumers and patients, tens of thousands of who are cruelly killed or permanently injured by defective products and medical malpractice and are defrauded year after year. While there are about 50 provisions in the bill that we object to, my testimony focuses on several of the most repugnant ones.

Government Standards Defense

Public Citizen has worked for decades on product safety and federal pre-emption issues. Joan Claybrook, president of Public Citizen, is a former head of the National Highway Traffic Safety Administration (NHTSA), which regulates the safety of cars and trucks. Public Citizen's Health Research Group, headed by Dr. Sidney Wolfe, is the premier watchdog of the U.S. Food and Drug Administration, which regulates drugs, medical devices and food safety. Public Citizen Litigation Group has sued the Occupational Safety and Health Administration more than any other group to force the agency to promulgate workplace safety standards. And we have been in court scores of times trying to limit corporate defendants from using the government standards defense as a shield against accountability.

I would particularly like to address in detail proposed section 71, which would create a rebuttable government standards defense to product liability lawsuits. The source of this provision is model language drafted by Prof. Richard Ausness. Ausness holds a law professorship at the University of Kentucky College of Law—a school endowed by Ashland Oil. Not surprisingly, Ausness espouses an extreme and eccentric view of the role of tort law. The provision is premised on the idea that regulatory standards alone are sufficient to guarantee the manufacturing of safe products. This premise is false.

As an organization that has worked closely with former federal agency regulators, we have heard plenty about the standard setting process in all its dimensions and why compliance with federal standards should not be recognized as a defense in product liability suits. The primary reasons are that government standards:

- Set minimum thresholds, and not state-of-the-art levels of design.
- Are usually written as performance, not design, standards. The manufacturer chooses the design and must be responsible for any safety defects it contains.
- Do not reflect the capability of the particular defendant to make a product safer because they apply on an industry-wide basis geared to the lowest common denominator, not tailored to a particular company.
- Often remain unchanged for long periods and become outdated.
- Are not written to and cannot anticipate and cover all-important aspects of a product, such as deadly safety defects in designs that manufacturers select for compliance.
- Usually do not regulate the safety of products over their foreseeable lifetime, but rather only when they are newly manufactured. Examples of the causes of defects which may manifest themselves over time include metal fracture, metal fatigue, premature wear-out, and time-dependent chemical processes.
- Must concentrate on high payoff problems without covering many crucial aspects of performance. Agency resources are limited and must be prioritized, often to the exclusion of important problems, while the civil justice system allows for individualized consideration of the safety of any product that has caused an injury.
- Are often a function of political legislative decisions, with less reliance on evidence as used in court cases. Manufacturers, particularly in a highly concentrated industry, play a

> powerful role in influencing the scope and stringency of safety standards. Agencies lack resources and thus place substantial reliance on industry comments in adopting proposed rules; comments that are not submitted under oath, as they are in court, frequently overstate costs and understate capability of the company to comply with a higher standard.

Section 71 provides that there is a rebuttable presumption that a manufacturer is not liable for the formulation, labeling or design of a product if it complies with a federal safety standard applicable at the time of manufacture "that governed the product risk that allegedly caused harm."

Years ago NHTSA told manufacturers that "Our federal safety standards are and were intended by Congress to be minimum standards. The tragedy is that many manufacturers have treated the standards more like ceilings on safety performance than floors from which to improve safety."

The Gen3 Chrysler belt buckle is a good example of a defect covered by a totally inadequate standard. Although Federal Motor Vehicle Safety Standard (FMVSS) 209 (Seat belt assemblies) states, "Buckle release mechanisms shall be designed to minimize the possibility of accidental release," it does not specify any test. When the belt is tested by NHTSA in crash tests, the Gen 3 generally doesn't unlatch. This is because the instrumented dummy and the seat are positioned perfectly. But in real crashes the buckle does unlatch, and it cannot pass the ball test recommended by two European manufacturers—a test that the NHTSA failed to adopt.

In short, broad government performance standards are not a predictor of particular defective designs and should not be a shield behind which this legislature allows companies to avoid liability for their negligence or for intentionally making unsafe products. It is very difficult for federal performance standards to effectively address most safety design defects. To do so, federal standards would have to be so extensive they would inhibit manufacturer design choices. H.B. 2661 sets an impossible rule.

Under H.B. 2661, the only way a consumer could overcome the presumption that the manufacturer is not liable for the defective design that injured him would be to do the work of the federal agency but without the government's resources in:

- Identifying the deficiencies in the standard that failed to protect against the defect;
- Showing the manufacturer withheld or misrepresented material information related to the adequacy of the standard and the claimant's injury; or
- Demonstrating that the manufacturer failed to notify the government or consumers when it "learned" of the defect after manufacturing the product.

If a judge grants summary judgment on the basis of Section 71 and does not allow discovery, there is no way the plaintiff could overcome the presumption that the manufacturer is not liable.

In the case of automobile safety standards, there is one additional overriding reason why the "standards compliance as a defense" should not apply: Congress specifically provided in the National Traffic and Motor Vehicle Safety Act that compliance with the safety standards does not exempt a manufacturer from common law liability for defective products. This could be read to override any action by the Oklahoma legislature.

The auto safety statute also makes a clear distinction between non-compliance with "standards" and "defects." In 1966, Congress recognized that vehicles or equipment could not be regulated for safety solely by Federal Motor Vehicle Safety Standards. It enacted a dual approach. NTHSA has authority to issue federal vehicle safety standards, and also administers a vehicle safety defects program. The agency can investigate and order the recall of products that either (a) fail to comply with an applicable FMVSS, *or* (b) contain a safety-related defect. But some of the worst safety defects in automotive history involved products that complied with the federal safety standards for that vehicle system. These include:

- Ford Pinto gas tanks that exploded;
- Firestone 500 tires that de-treaded;
- GM CK pickup trucks with exploding side saddle gas tanks;
- Chrysler Gen3 seatbelts that inertially unlatch;
- 1994-5 Nissan Altima airbags that blind passengers; and
- Firestone ATX and Wilderness tires that de-treaded.

Other systems that cover more than one manufacturer include seat backs that fail in even modest rear end crashes and rear seat lap belts without shoulder harnesses that paralyze and kill people, particularly children.

The U.S. Court of Appeals for the District of Columbia addressed the issue of motor vehicle safety standards and safety defects in 1998. The court said NHTSA "may seek the recall of a motor vehicle either when a vehicle has 'a defect related to motor vehicle safety' or when a vehicle 'does not comply with an applicable motor vehicle safety standard.' These provisions are not mutually exclusive, nor are they coterminous. Thus, an allegation of noncompliance may or may not include a charge that a vehicle has a safety defect." ((995 F Supp 150 (Feb. 4, 1998, DDC), rev 1998 WESTLAW 754389 (Oct. 30, 1998,CA DC).

There are numerous other examples of products that met government standards yet have caused grave harm to consumers. A more detailed list is attached to this testimony. In these cases, only the civil justice system has provided incentives to recall or remedy defects in the design of the products. The government standards defense, on the other hand, will result in many serious safety defects never being revealed by manufacturers because lawsuits won't force them to do so. And rather than recommend safety standard improvements as they often do now, plaintiffs lawyers may be placed in the position of opposing new or upgraded safety standards. These are perverse results from a perverse proposal.

Cap on "Non-Economic" Damages at $300,000

The bill would impose an arbitrary, one-size-fits-all cap of $300,000 on "non-economic" damages in all tort cases, regardless of the severity of injury or the number of defendants. "Non-economic" damages refers to compensation for pain and suffering resulting from severe injuries such as brain damage, paralysis, disfigurement, loss of limb, blindness or deafness, and lost child bearing ability. They differ from more easily quantifiable damages such as lost earnings and medical care.

Typically, pain and suffering damages exceed $300,000 only in cases involving permanent significant injuries. Thus, the cap most harshly affects those patients injured the worst. It would not affect patients with minor injuries. Moreover, a cap on non-economic damages has a disparate impact on women, children, the elderly, and those less economically fortunate. Those who have higher incomes would recover more for the same injury than children, the elderly, and stay at home mothers, who may have little if any economic damages. Finally, since the proposal contains no allowance for inflation, its arbitrary limits would become more unjust each day.

This category of damages has been targeted because it's politically easier to deny damages that aren't accompanied by an invoice or pay stub. It is clear from examinations of claim files that these damages are not skyrocketing—they are barely growing at all. A soon-to-be published study of Florida claims files, presented by Duke University researchers at a DePaul University Law School conference in April 2004, found that nearly all of the growth in awards over the past decade can be attributed to wage losses. In other words, as patients' incomes have grown, so have their losses when an injury disables them from work.

Texas law requires the Texas Department of Insurance to gather liability claims information from insurers, including the amounts of economic and non-economic damages payouts, and issue an annual report.

Texas Public Citizen analyzed 13 years of insurance company closed claims reports filed with the Texas Department of Insurance to determine payout trends in economic (lost income and medical care) vs. non-economic (pain and suffering due to injuries) damages. The study found that increased payouts are due to a rapid acceleration in economic damages, not non-economic damages. The study found the following:

- Economic damage awards in medical malpractice cases rose dramatically between 1988 and 2000 while non-economic damages declined. In 1988, economic damage awards totaled $82.8 million but had risen to $294.4 million by 2000 – a 212 percent increase. Non-economic damage awards, however, totaled $60.8 million in 1988 and declined to $40.2 million in 2000 – a drop of 34 percent.

- The non-economic percentage of the total yearly medical malpractice payout in Texas declined dramatically between 1988 and 2000. In 1988, non-economic damages comprised 42.4 percent of the total amount of medical malpractice payouts made by doctors. However, the non-economic share dropped dramatically to 12 percent by 2000. In contrast, economic damages comprised 57.6 percent of all doctor payouts in 1988 but climbed to 88 percent by 2000.

Thus, capping non-economic damages awarded to survivors of medical malpractice would do little, if anything, to stop the rise in the amount of overall malpractice payouts.

Let us not delude ourselves: given the recent huge increases in American workers' productivity, this trend will only increase. That means that when the next malpractice crisis arrives in about a decade—and the inevitability of the insurance cycle makes this all but certain—doctors will return to this capital demanding that they no longer be required to compensate malpractice

victims' full lost wages either. And there will be no pretense that those damages are "non-economic."

Defendants Control Payouts for Future Damages

By instituting a "periodic payment rule," the bill would allow defendants and insurance companies to string out payments for future damages over the life expectancy of the victim (or the number of years that the claimant will require medical care or be disabled), rather than have to pay up front. Defendants would be able to invest and earn interest on the vast majority of a plaintiff's damage award. Victims would be left to cope with unexpected needs and changing medical, transportation or housing costs. The legislation would provide no protection to the victim if the defendant's insurance company became insolvent.

Ten-Year Statute of Repose

Section 4.B. requires that product liability lawsuits be brought within ten years of the original sale of the product. This deviates substantially from the reasonable, common-sense expectations of a consumer that usually guide the law. Many of us have visited very old manufacturing sites, such as mills, shops or breweries that are maintained today as historic sites or restaurants, and know that the old equipment does not meet today's safety standards and that we should not touch it. By the same token, we know that it's probably not safe to eat a two-week old doughnut. To suggest that ten years is a reasonably expected life-span for all products is ridiculous; yet this is the legal effect of an arbitrary ten-year statute of repose.

We all know that many products are expected to last more than ten years, most notably, automobiles. Automobiles built in the early 1990s contained many modern safety features, such as air bags, anti-lock brakes, and eye-level taillights, yet Section 4.B. places them in the same category as the Chevrolet Corvair—truly an absurdity. This provision disadvantages elderly, thrifty, or less affluent drivers who are more likely to buy older vehicles and other older products.

Abolition of Joint Liability

The doctrine of joint and several liability says that when two defendants, such as a doctor and a hospital, are both found liable for negligence, a plaintiff may collect the entire award from either of them if necessary. Section 27 would change this rule, and leave patients with no recovery for the share of damages assigned to an uninsured, underinsured, or bankrupt defendant.

The traditional rule has two primary rationales. First, as between an innocent victim and a culpable defendant, it is fairer to leave the negligent party holding the bag. Second, that additional negligent party is almost always in a better position to prevent the harm from occurring than is the victim. For instance, a hospital has access to a doctor's disciplinary and negligence history, while a patient, by law, does not. A retail store can decline to sell goods produced by shady or uninsured manufacturers. Joint and several liability provides the incentive

for parties with greater access to knowledge about risks to use their position to protect consumers.

Examples of Defective Products Meeting Federal Standards that Proved Inadequate to Protect Consumers from Death and Injuries

There have been many examples of products in which federal regulatory standards failed to protect consumers from death and injuries. Many such products containing design flaws were later taken off the market, often exposed as dangerous by consumer lawsuits. Legislative proposals that would establish a government standards defense a so-called rebuttable presumption against consumer lawsuits for products complying with federal standards would allow manufacturers to cut corners on safety and prevent consumers from holding such wrongdoers accountable.

If compliance with federal standards were made a defense in product liability lawsuits, then auto, tire, pharmaceutical, and many other manufacturers would be excused from liability for defects that kill and injure tens of thousands of innocent consumers. There are more than 50 Federal Motor Vehicle Safety Standards covering virtually every aspect of motor vehicle safety– from the tires and door locks to brakes and crashworthiness. Auto and tire companies have repeatedly tried to use compliance with National Highway Traffic Safety Administration safety standards to defend even the most defective products. But the courts generally do not find them preemptive, because as they examine the facts and evidence, they find that broad government performance standards are not a reliable predictor of particular defective designs and should not be a shield behind which companies can hide to avoid liability for their negligence, or for intentionally making unsafe products.

The following are examples of products that were approved under federal standards but nevertheless proved dangerous to consumers.

Unsafe Drugs with FDA Pre-Market Approval

Duract

Duract, a pain management drug, was approved by the U.S. Food and Drug Administration (FDA) in July 1997. Despite warnings about the risks associated with its long-term use, the drug became a common treatment alternative for chronic conditions such as osteoarthritis or rheumatoid arthritis. In February 1998, the FDA received reports of severe hepatitis, liver damage and death in patients taking Duract for more than 10 days. Specifically, FDA data revealed that serious liver damage was reported in one of every 10,000 people who were administered the drug. These alarming reports led the FDA and the manufacturer to withdraw Duract from the market shortly thereafter.

Redux

Redux was one of the two drugs making up the once-popular diet drug combination known as Fen-Phen. Approved by the FDA in April 1996, more than two million prescriptions were administered in the first six months alone. In September 1997, the FDA recalled Redux from the market after receiving widespread reports of primary pulmonary hypertension, heart valve problems, and neuropsychological damage to the brain in patients taking the drug.

Rezulin

Rezulin, a drug prescribed to maintain blood sugar levels in patients suffering from adult-onset diabetes, was approved by the FDA in 1997. Initially thought to be a breakthrough for patients who failed to respond to other therapies, the FDA later disclosed that at least 61 patients taking Rezulin died of liver failure, while another seven required liver transplants. New concerns have surfaced about Rezulin's detrimental effect on the heart. The FDA has since revised its estimate and now suspects that Rezulin may be linked to more than 400 deaths.

Defective Motor Vehicles and Equipment Meeting Federal Auto Safety Standards

Firestone Tires

In the 1990s, Firestone made the ATX and Wilderness tires for Ford's new sport utility vehicle, the Explorer. Ford set the specifications and insisted on cost reductions, reducing the tires robustness. Because the Explorer was prone to rollover, Ford also reduced the recommended tire inflation from a maximum of 35 psi to 26 psi. With use, these tires degraded and the tread separated on some tires, causing catastrophic crashes, many of them rollovers. These tires passed the antiquated, 30-year-old federal tire safety standard. The U.S. Department of Transportation documented at least 200 deaths and 700 serious injuries from crashes involving these Firestone tires. A disproportionately large percentage (25%) of these occurred in Texas due to warm weather and long-distance driving of these heavy vehicles at high speeds, causing them to overheat. Even though they met U.S. safety standards, the DOT found them to be defective and required a recall.

The earlier Firestone 500 steel-belted radial tires, recalled in 1978, were defended by the company, which cited its 99% pass rate on Firestone's compliance tests with Federal Motor Vehicle Safety Standard (FMVSS) 109. But it failed so often in actual use that it caused 3,300 crashes, 41 deaths and 125 injuries.

Sport Utility Vehicles/Rollovers

Every year more than 10,000 people – one-third of all occupant fatalities – die in rollover crashes, despite the fact that rollovers account for less than 3% of all crashes. Not surprisingly, the occupants of sport utility vehicles (SUV) are three times more likely to die in a rollover crash than occupants of passenger cars. This statistic is particularly shocking when we consider that the number of top-heavy, rollover-prone SUVs being driven by the public has skyrocketed since 1994 and now comprises more than one-half of all new vehicle sales.

A major area of current litigation is lack of roof strength. The government standard, FMVSS 216, is woefully inadequate. It is a static test that tests only one side with a procedure that relies

on the windshield to provide 40% of the roof strength. In the real world, the windshield breaks during the first part of the first roll and the unsupported roof collapses on the occupant. National Highway Traffic Safety Administration (NHTSA) statistics show there are at least 7,000 deaths and serious injuries each year due to roof crush.

Despite repeated requests from safety advocates and members of Congress over the past two decades, NHTSA has failed to establish a standard for rollover prevention, implementing instead a weak consumer information program. Moreover, FMVSS 216 regulating roof crush prevention has never been upgraded to a dynamic test since it was issued in 1973, 30 years ago. Yet hundreds of lawsuits have documented the inadequacy of this standard.

GM Side-Saddle Gas Tanks

Over the years, 1,800 people have been killed in 1973-87 C/K side-saddle gas tank fire crashes (with at least half dying from fires, not trauma) — more such fatalities than seen with any other defective vehicle. About 30 people die in these crashes every year. An estimated 4 million of these trucks are still on our highways. It is astonishing that neither the government nor GM ever recalled these trucks – because there is a simple fix. GM has known from the beginning that it is feasible to fix the gas tanks but has refused to stop the slaughter of its customers on the highway.

The problem began when the trucks were redesigned in the late 1960s. At that time, the pickup truck gas tanks were inside the passenger cab, which of course was extraordinarily dangerous. As GM debated where to relocate the tanks, Executive Truck Engineer Alex Mair recommended in a 1964 memo that the new underbody gas tanks be placed as close as possible to the center of the vehicle, inside the frame rails. But the top brass at GM wanted to be able to advertise a truck that could hold more gas than the competitive Ford and Chrysler trucks, whose tanks were inside the frame rails for safety reasons. Ignoring safety, GM decided to place two 20-gallon tanks outside the frame, enabling them to boast in ads that GM truck owners could drive farther than in competitors' trucks without having to stop for gas.

Placing gas tanks outside the frame makes them highly vulnerable to destruction in side-impact crashes. As one former GM employee said, these tanks split open "like melons." Crashes produce sparks that ignite spilling gas, leading to fires that literally roast helpless victims. Another GM engineer said that the only worse place to put a fuel tank would be on the front bumper.

In 1978, NHTSA required a side-impact fuel tank test at 30 mph for light trucks, but used a flat, wide barrier that spread the crash forces over the side of the pickup, failing to engage the side-saddle gas tanks in a side-impact crash.

Following a 1992 consumer petition for a recall and after evaluating all the evidence, the engineering staff at NHTSA agreed that the vehicles were dangerous and called on GM to voluntarily recall the C/K pickups. When GM refused, Transportation Secretary Federico Pena found, in 1994, that GM had known about this defect since the early 1970s, and he issued an initial determination of a safety defect, which would lead to a mandatory recall.

GM then swung into action, using its political muscle to maneuver a deal with the Justice Department, which overrode Secretary Pena. Under the deal, GM avoided a recall of the deadly trucks but agreed to spend $51 million for research and other safety programs. Nevertheless,

numerous lawsuit and settlements have cost GM a half-billion dollars, money it should have spent to repair these vehicles and prevent hideous deaths and injuries.

Nissan Altima Air Bags

Records of detailed investigations involving seat-belted passengers show that 1994 and early 1995 Nissan Altima air bags have caused severe eye injuries to more than two dozen people. Last year, federal investigators knew of 32 such cases, and Public Citizen and the Center for Auto Safety have learned of others since then. The air bags have damaged retinas, caused irises to detach, led to permanently dilated pupils and can even rupture an eyeball. The victims have been left with blurred vision, light sensitivity and blindness in one or both eyes. Many people were completely blinded for weeks before regaining only partial vision. In most cases, the injuries occurred during minor, low-speed crashes in which the driver walked away unscathed. The vehicle passed the air bag safety standard, FMVSS 208, because the standard cannot measure the blinding effects on instrumented dummies used in the standards testing.

These Nissan Altimas have a serious eye-injury rate for passengers that is 20 times greater than other models surveyed. Although NHTSA has been investigating since March 2001, when Public Citizen and the Center for Auto Safety asked the agency to look into the problem, it has taken no final action. It is estimated that about 197,500, of the 249,000 made remain on the road.

Ford Pinto

The Ford Pinto was affordable, gas efficient, and stylistically pleasing-- but lacked one essential element: safety. Ford discovered fatal design flaws in the gas tank during a routine crash test performed right before production of the Pinto was to begin. Ford's crash tests revealed that several design defects in the fuel tank and rear structure exposed consumers to serious injury or death in 20-30 mile-per-hour collisions. In April 1971, shortly before the 1972 Pinto was placed on the market, Ford's vice president of car engineering, Harold MacDonald, chaired a product review meeting to discuss a report that had been prepared by Ford engineers. This report recommended deferring, from 1974 to 1976, the incorporation into all Ford cars, including the Pinto, of either a shock absorbent "flak suit" to protect the fuel tank at a cost of $4 per car, or a nylon bladder within the tank at a cost of $5.25 to $8 per car. This deferral would allow Ford to realize a savings of $10.9 million. Ford's management knew that the gas tank created a significant risk of death or injury from fire but decided to go forward and begin manufacturing the new Pinto anyway, knowing that these "fixes" were feasible at nominal cost.

That same year, in April 1971, Lee Iaccoca and Henry Ford met with President Richard Nixon. A Watergate tape reveals they asked him to not issue an upgrade to the fuel tank standard that was being considered. NHTSA didn't issue it until 1974, and only under threat from Congress. The new standard required a 30 mph test in the rear (the original test applied only to the front) and took effect in 1977.

Ford's 1971-1976 Pintos complied with the old minimal federal standard and had to be redesigned to meet the new one. Nevertheless, in June 1978, Ford recalled all 1.4 million 1971 through 1976 Pintos for fuel system modification, after it was required to do so by NHTSA. By the time of the recall, however, Pinto fuel-fed fires had killed at least 27 people and injured many others. It was a lawsuit – in which an enraged jury awarded a $125 million punitive damage

award (rates reduced to $3.5 million) for Ford's knowing refusal to protect occupants from fires – that had brought the problem to the attention of DOT.

During the same time Ford made the Pinto in the U.S., it manufactured the Capri in Europe – a vehicle of similar size. But the Capri was designed to pass a higher level of protection in Europe. Its gas tank was located above the rear axle years before the new U.S. standard took effect in 1977 that forced Ford to redesign the Pinto.

Automobile Seat Backs

Even auto manufacturers wouldn't sell a vehicle that just barely meets the ridiculously weak federal standard for the vehicle seat back strength. This standard is so weak that lawn chairs meet its requirements, so weak that an occupant wouldn't be able to put a wallet in his back pocket without breaking the seat back. Automakers make them stronger than the federal standard. But they still fail too frequently in rear-end impacts, sending front-seat occupants crashing into the roof or back window and sometimes crushing children in the back seat. Auto makers urge parents to place children in the back seat, even as they make weak seat backs. Numerous lawsuits have documented these failures, which can cause death, paralysis and quadriplegia.

Child Car Seats

Child car seats are the most recalled product ever. Virtually all comply with federal standards. Yet we see infant seats where the carrier separates from the base; low shield boosters that even NHTSA says shouldn't be used with kids weighing 30-40 pounds that still meet the standards, but eject, or paralyze kids; and convertible seats that break at a couple of miles above the sled test, which does not mimic any car or crash pulse in existence for the last 30 years. Lawsuits filed on behalf of mangled children have documented many of these defects.

Rear Lap Belts

Rear-seat lap belts without shoulder harnesses met the DOT standard for cars and trucks in the outboard positions until model years 1990 and 1991, respectively, and in the center seats are still permitted for a few more years. Thousands have died or were paralyzed, mostly children, for this heinous design, which was banned in Australia decades earlier. U.S. manufacturers resisted installing rear shoulder belts until Congress, in the late 1980s, demanded NHTSA issue a standard. Lawsuits have documented the need and the carnage.

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