



Justice Denied?



How Federal Preemption in the New Proposal for Vehicle Roof Strength Undermines the Right to Trial by Jury and Automaker Responsibility for Safe Designs

The issue: The National Highway Traffic Safety Administration (NHTSA) in August 2005 issued a new proposal that requires a slight upgrade in the strength of vehicle roofs.

The problem: After more than 30 years of inaction, 70 percent of new vehicles will require no change to meet the standard, yet rollover crashes kill more than 10,000 people each year – one-third of all occupant deaths. The proposal is so weak it is projected by NHTSA to save only 11 to 44 lives annually – fewer than one-half of 1 percent of rollover deaths.

The Ford E-250 pictured above would comply with the new proposed rule, yet its occupant, Reverend Lawrence Harris, became a quadriplegic in a rollover crash.

To make a bad rule worse, the proposal states it would preempt tort liability for automakers. **This unprecedented power grab by federal authorities would leave victims uncompensated and remove incentives to improve designs for safety beyond the minimum required by the weak rule – imposing both a ceiling on safety and stripping victims like Rev. Harris of their due process rights under the law.**

Why should citizens care about preserving their protections under state common law and tort liability? Because liability law answers these three basic questions:

➤ **Q: Who should be held responsible for injuries and deaths?**

A: Those in a position to *prevent* the injury or death. It is far more cost-effective to avert harm in the first place, and the most responsible way to reduce lawsuits. It is also the ethical duty we owe to others out of respect for human life. Victims of roof crush cases deserve justice because automakers have known for years (since the late 1960s at least) how to prevent injuries in rollover crashes but have not designed vehicles to prevent this harm. Instead, they cut costs to maximize profits, impose gag orders to cover up harm, and lobby regulators to weaken new rules. And victims of misconduct should be fairly compensated by the perpetrator. When those who can prevent harm, yet choose not to, are let off the hook, society must pick up the tab, paying medical bills and higher insurance costs, etc., caused by the wrongful actions of a few. In addition to costs, rollover injuries incur untold suffering for victims.

➤ **Q: When government fails, who is there to protect citizens?**

A: Consumer justice attorneys stand with citizens, both the weak and the strong, to ensure that injured people are compensated by wrongdoers. NHTSA has not upgraded its “temporary” roof crush vehicle safety standard, issued in 1971, for 34 years, while the death toll from rollover crashes continued to mount. Its new proposal is deeply flawed, and will save few lives. In contrast, tort law establishes a duty of care that protects citizens when the government is too slow to act, when minimum standards are insufficient to prevent harm, or when standards are inadequately enforced. The tort system also brings to light useful information – most of the information about the harm from roof crush, its all-too-long history and its prevention has come from cases brought by injured plaintiffs.

➤ **Q: Why are juries entrusted with enforcing the common law and securing just outcomes?**

A: The Founders believed in the inalienable right to a jury trial, and specifically enshrined it in the Bill of Rights’ Seventh Amendment. While most citizens do not have a real voice in the regulatory decisions, they do understand what is fair. Juries charged with articulating ethical standards for a community define a common sense standard for reasonable care. They cannot be paid by either side and are free of political coercion. Our reliance on the collective wisdom of ordinary people to hold individuals accountable is a crucial democratic safeguard and a fundamental right of all citizens.