Courtroom drama

Pre-emption from liability for automakers would not advance justice for injured victims nor encourage safer vehicles, which should be designed to go well beyond the minimum US safety standards. So what will the Supreme Court in Washington, DC decide?

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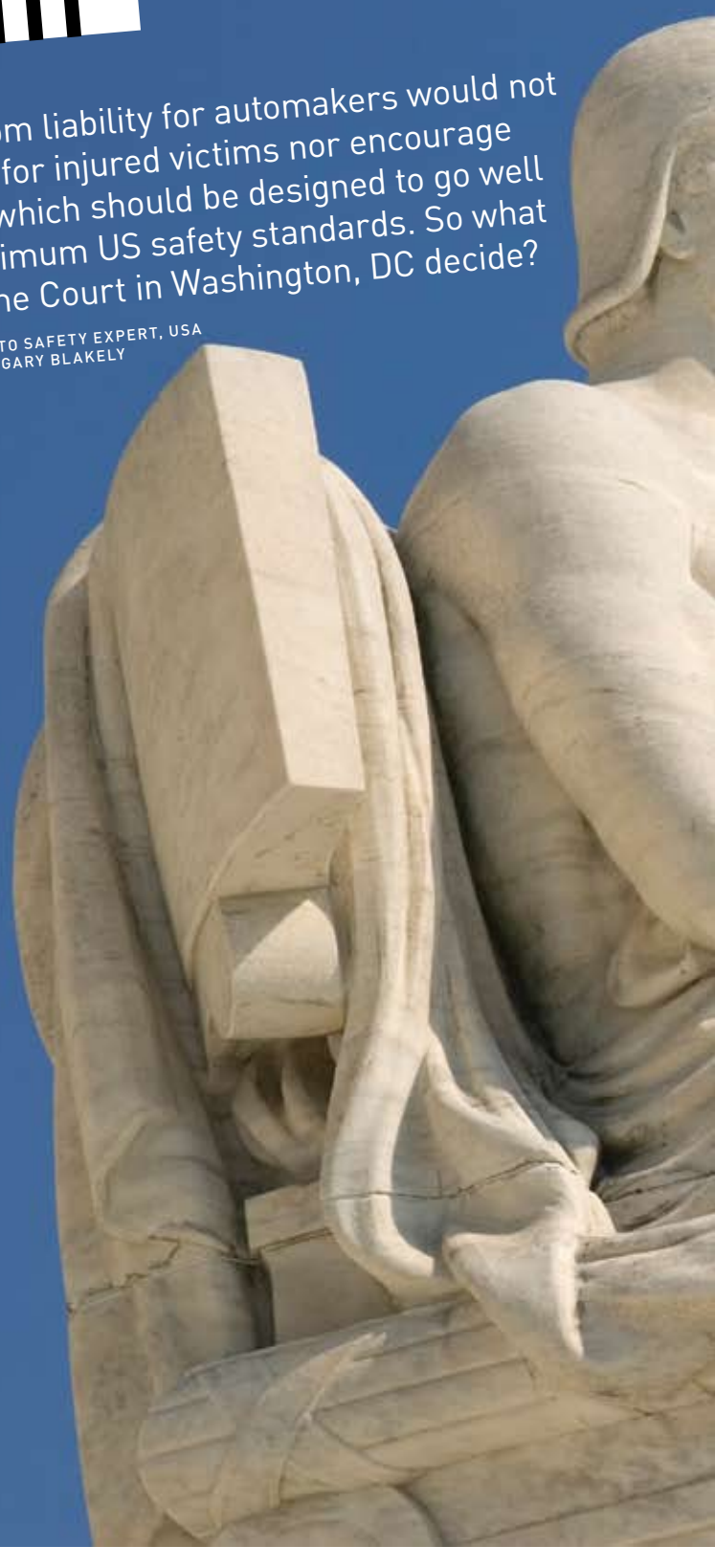
MAIN IMAGE COURTESY OF GARY BLAKELY



When the case of Williamson versus Mazda kicked off on 3 November 2010 at the US Supreme Court, in Washington, DC, I was there. The case was argued, with probing questions and comments from the Justices and lawyers. I obtained the hearing transcript, and I've read through the briefs by both sides. As a long-time auto safety expert – having consulted and testified in many auto defect trials across the USA for 40 years – I'm aware of what this case potentially means for auto safety.

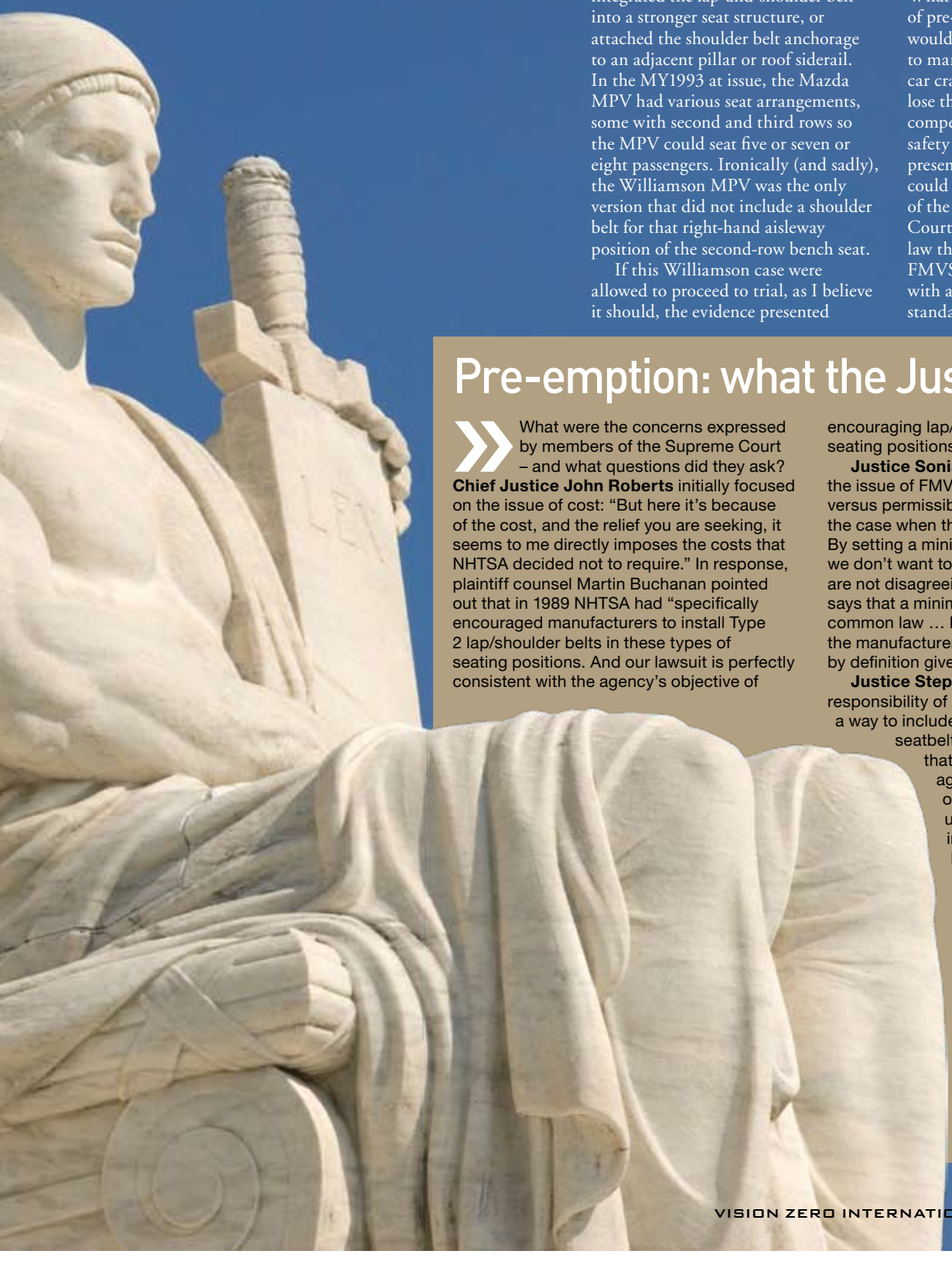
The US Supreme Court will soon make a momentous decision that could affect auto safety developments for many years to come. Mazda and other automakers want pre-emption from liability if the vehicle at issue complied with the relevant safety standard. If the Court grants such pre-emption – even in a narrowly focused ruling about this lapbelt-only versus lap-and-shoulder belt issue for rear centre seats – I believe there will be repercussions that could adversely affect vehicle safety and the international goals of Vision Zero.

A case in point

This particular case of Williamson versus Mazda is about whether providing only a lapbelt (Type 1) rather than a lap-and-shoulder seatbelt (Type 2) for a middle rear seat (or aisleway position) in a 1993 Mazda MPV minivan constitutes a defective design, albeit that it was a permissible option by NHTSA. Although it sounds quite impressive, those 'safety standards' are in my view more like bargain-basement minimums, much too weak and unrealistic compared with what actually happens in real-world accidents.

Mazda hadn't provided a lap-and-shoulder seatbelt for the second-row aisleway seat position in its 1993 MPV minivan, in the seven-passenger version, even though automakers were encouraged by NHTSA in 1989 to do so for all seating positions. Mazda installed only a lapbelt, with no shoulder belt, for that particular seat position, which thus made it a less crashworthy design. In a 2002 collision accident, the seatbelted female passenger jacknifed over the lapbelt and died of internal injuries. The case is still waiting to go to trial in a California state court, during which Mazda would have the opportunity to present its defences, including about costs and feasibility and why it elected not to also include a shoulder belt.

The Supreme Court should become informed of the long history of lap-and-shoulder seatbelts being integrated within the seat itself. That specific technology was demonstrated at the Stapp Car Crash Conference in 1966, in *Design of low-cost seating for effective packaging of vehicle occupants*. I have



also encouraged integrating lap-and-shoulder belts into the seat, as published in *Road Test* magazine in 1968 in *The seat that can save your life*. By 1991, GM had already installed lap-and-shoulder belts in the middle rear-seat position, demonstrating it could be done. Thus, Mazda could have integrated the lap-and-shoulder belt into a stronger seat structure, or attached the shoulder belt anchorage to an adjacent pillar or roof siderail. In the MY1993 at issue, the Mazda MPV had various seat arrangements, some with second and third rows so the MPV could seat five or seven or eight passengers. Ironically (and sadly), the Williamson MPV was the only version that did not include a shoulder belt for that right-hand aisleway position of the second-row bench seat.

If this Williamson case were allowed to proceed to trial, as I believe it should, the evidence presented by both sides would illuminate the technical feasibility and cost factors involved, so the jury could then determine if Mazda acted reasonably in the interests of safety for the passenger in the centre rear-seat position.

Potential outcomes

What if the court rules in favour of pre-emption? First, automakers would likely try to apply pre-emption to many other cases, and the injured car crash victims would potentially lose their rights to pursue justice and compensation for injuries caused by safety defects. These long-time rights presently exist in all 50 states, but could be taken away by the 'supremacy' of the Federal government in a Supreme Court ruling. Importantly, the original law that created NHTSA and the FMVSS explicitly states, "Compliance with any Federal motor vehicle safety standard under this title does not

Pre-emption: what the Justices said...

» What were the concerns expressed by members of the Supreme Court – and what questions did they ask?

Chief Justice John Roberts initially focused on the issue of cost: "But here it's because of the cost, and the relief you are seeking, it seems to me directly imposes the costs that NHTSA decided not to require." In response, plaintiff counsel Martin Buchanan pointed out that in 1989 NHTSA had "specifically encouraged manufacturers to install Type 2 lap/shoulder belts in these types of seating positions. And our lawsuit is perfectly consistent with the agency's objective of encouraging lap/shoulder belts in these seating positions."

Justice Sonia Sotomayor focused on the issue of FMVSS minimum requirements versus permissible options. "But that's always the case when the agency sets a minimum. By setting a minimum it's basically saying we don't want to mandate more … But you are not disagreeing that the statute by its term says that a minimum doesn't pre-empt state common law … But the default is always that the manufacturers have an option. A minimum by definition gives manufacturers options."

Justice Stephen Breyer focused on the responsibility of automakers to figure out a way to include the safer lap-and-shoulder seatbelts. "Nothing in the agency that I can find says that the agency really wanted a mix of options. I mean, they said it's up to the manufacturer … And in 1989, I think – we are at least quoted on the other side – what the agency said was, well, we see these lap-and-shoulder belts are actually more effective. Now, we are reluctant to recommend them for the centre seat or aisle seat because people might get caught in the spools. On the other hand, manufacturers may be able to work out that problem. Therefore, we encourage the manufacturer to try to figure a way around it."

exempt any person from any liability under common law." The law states that exemption or pre-emption from liability is therefore not an option!

Second, there will be lobbying efforts by automakers to keep US safety standards at the lowest levels possible, so that any vehicle they make will easily comply. As an example, the 'slow-push' test on the roof in FMVSS 216 was languishing since the mid-1970s at a strength-to-weight ratio (SWR) of only 1.5 – while deaths in rollover accidents soared to about 10,000 per year in the USA. The new requirement is an SWR ratio of only 3.0, which is an improvement but not nearly enough – and there's still no dynamic rollover test requirement. Incidentally, many vehicles already exceed 4.0, which makes a mockery of NHTSA's future requirement being only 3.0!

Ironically, in the Supreme Court hearing, the lawyer representing Mazda stated: "The typical case where a Federal Motor Vehicle safety standard establishes only a minimum, like the standard for braking performance or roof structure, is not going to be pre-empted. Geier says that and we're not challenging that."

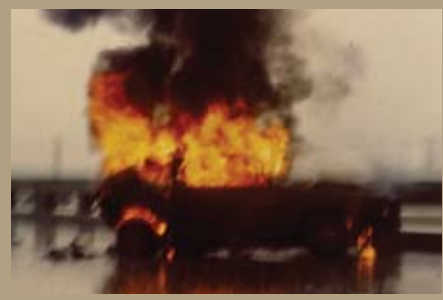
Third, there will no longer be the potential risk of liability as an incentive for an automaker to go beyond the minimum to thus make a safer vehicle. But rather than allowing vehicle safety technology to stagnate, pro-safety automakers and Tier 1 suppliers should still develop safer technologies that go beyond the minimum FMVSS requirements, demonstrating to the public that safer vehicles do exist. These would also be praised by the Insurance Institute for Highway Safety and others to spur their demand.

Finally, the costs of caring for the crash victims will be borne by society, rather than paid by the automakers, whose vehicles were so poorly designed as to increase injury severity, or in some cases cause the accident in the first place. These include quadriplegics (weak roof), brain-damaged (ineffective airbag) and burn victims (unsafe fuel tank). Automakers would no longer weigh-up the consequences of their less-safe design choices in terms of potentially compensating victims of those decisions.

In a previous Supreme Court opinion in 2000, Geier versus Honda, the court ruled in favour of pre-emption, on whether the failure to install airbags could proceed to trial. The opinion noted that NHTSA wanted to gain insight on a variety of passive restraint systems, with airbags as one option, so OEMs had choices about whether or not to include airbags. That is not the same issue in 'Williamson', as NHTSA had already decided that combination lap-and-shoulder belts were safer than lapbelts alone, and encouraged automakers to use them in all seating positions.

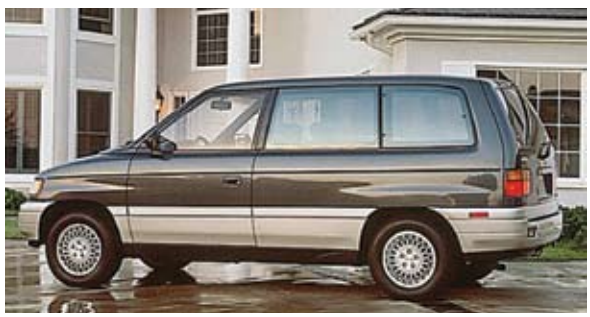
Case of the unsafe fuel tank

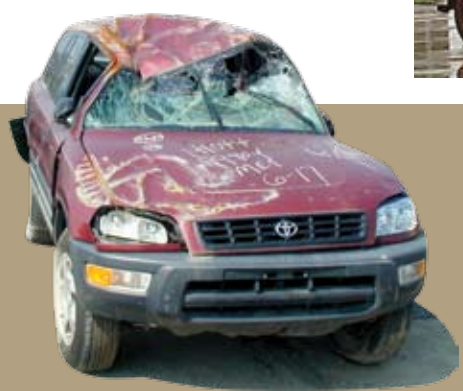
When the Ford Pinto was involved in many fiery collision accidents in the 1970s, Ford's defence included the rationale that they complied with the Federal safety standard. But FMVSS 301 only required a frontal impact at 30mph into the barrier, and there was no rear impact at all! If pre-emption had applied, Ford would have escaped liability, and there would have been no legal risk incentive to make safer fuel tanks. In the late 1970s, NHTSA finally added a rear-impact crash test requirement, but only at 30mph.



The author, Byron Bloch, attended the oral arguments at the US Supreme Court

A 1993 Mazda MPV minivan





Case of the unsafe roof in rollovers

In a rollover accident, the roof buckled and crushed down, resulting in a man becoming a quadriplegic. He filed against the automaker, alleging the roof was defectively designed with a weak open-section windshield header and A-pillars that were partially reinforced. The automaker says the vehicle complied with 'safety standard' FMVSS 216, which required only a 'slow push' downwards on the roof, up to a load of 1.5 times the vehicle weight, with no more than 5in of crush. With pre-emption, the legal case might be tossed out, and the injured person wouldn't be able to present their case to a jury that the roof was needlessly too weak.

Conclusion

It is imperative that the Supreme Court does not grant pre-emption from liability to automakers whose vehicles are made to simply comply with – in my opinion – weak safety standards. It is important to preserve the states' common law rights for injured victims to pursue justice and compensation for the injuries worsened by needlessly defective and unsafe vehicles. Futher, the risk of liability serves as a strong public-policy incentive for automakers to make vehicles with ever-increasing safety that often far exceeds NHTSA's minimum requirements. The fatality-reduction quest of Vision Zero requires that pre-emption not be granted. ❮

• *Byron Bloch has been a US auto safety expert in design and crashworthiness for about 40 years, advocating the adoption of airbags, fuel tanks forward-of-axle, integrated seats, stronger roofs for roll-over protection, truck underride guards, and other crashworthiness technologies. He inspects accident vehicles, lectures, writes, appears on TV, testifies in court on behalf of crash victims, demonstrates exemplar designs that are safer and produces documentaries analysing car crash accidents and vehicle safety. His website is at www.autosafetyexpert.com*