Speaking events

William O. Whitehurst, Jr., President, left, presents an award to Christian D. Searcy, Vice President, at the meeting.

Chris Searcy gives the Dean's Address at Annual Meeting of the International Academy of Trial Lawyers in Miami, Florida

On March 29, 2008, Chris Searcy gave the Dean's Address at the 2008 Annual Meeting of the International Academy of Trial Lawyers held at the Key Biscayne Ritz Carlton, Miami, Florida. Chris is currently vice-president of the Academy. ■

Chris Searcy spoke at the Colorado Bar Association's 2008 National CLE Conference, January 7, 2008, at the Vail Cascade Resort Spa in Vail, Colorado. His topic was *"Hyperstimulation of Uterine Contractibility: Incompetent/Reckless Use of Oxytocin Resulting in Brain Injured Babies* – Reference Edwards v. Lee Memorial Health Systems (Offer $200,000; Jury Verdict $30.6 million)." ■

Chris Searcy also did a presentation on *"Opening Statement – Plaintiff"* for the Fort Lauderdale Chapter of the American Board of Trial Advocates at a trial demonstration sponsored by the Foundation of ABOTA as part of their "Masters in Trial" series. The subject of the demonstration, held May 2, 2008, at the Hyatt Regency Pier Sixty-Six in Fort Lauderdale, Florida, was *"Personal Injury Case Involving an 18-Wheeler – from Opening Statements to Jury Deliberations."* ■

Recent studies on roof crush injuries show that proposed industry standards are still inadequate for public safety

According to a recent report, about 35% of all passenger vehicle occupant deaths occurred in crashes in which the vehicles roll over. The threat of severe injury or fatality in rollover crashes varies considerably with the type of vehicle involved – a whopping 59% of occupant deaths involving sport utility vehicles occurred in rollover crashes; 25% of occupant deaths in cars occurred in rollover crashes. It is, therefore, not surprising that a new study published by the Insurance Institute for Highway Safety in March 2008 concluded that the risk of injury and death decreases when vehicle roof strength is increased. What is surprising, however, is that the National Highway Traffic Safety Administration is only just now completing a review of public comments on its proposed rule to change the almost 35-year-old roof strength standard. Congress had instructed NHTSA in its 2005 funding bill to reduce rollover deaths by issuing new performance standards that would improve vehicle stability, reduce passenger ejections, and increase roof strength.

Each year in the United States, approximately 120,000 passenger cars and 134,000 light trucks, SUVs, and vans are involved in rollover crashes, resulting in an estimated 10,000 fatalities. Automobile manufacturers have substantially improved the crashworthiness of the front, sides, and rear of their vehicles over the past years. Other improvements, including better design and expanded use of seatbelts, the lowering of a vehicle's center of gravity, and the use of devices such as electronic stability controls, have helped vehicle occupants avoid or survive a crash. But the roof strength standard issued by NHTSA remains virtually the same as it was when issued in the early 1970s, when passenger cars outnumbered light trucks 5-to-1, and SUVs were uncommon.

Current rules require that vehicles weighing 6,000 pounds or less have roof designs that can withstand a force equivalent to 1.5 times the vehicles weight – the "strength to weight ratio" – without crushing into the occupant's compartment more than five inches. NHTSA currently assesses roof strength with a test that involves pushing a metal plate

down on one side of the test vehicle's roof. Vehicles heavier than 6,000 pounds were exempt from the standard. The rule was expanded in 1994 to cover other passenger vehicles, but still exempts larger, heavier trucks and SUVs which, overall, have a greater tendency to roll over in a crash.

NHTSA's proposed new standard increases the strength to weight ratio to at least 2.5 times the vehicle's weight. The proposed rule would also provide for a more rigorous roof crush test that will apply a crushing force to both sides of the roof instead of one. It would continue to exclude some vehicles such as convertibles and small open-body trucks such as Jeep Wranglers. Safety groups argue that the only valid measure of vehicle roof strength is a "dynamic" test – actually putting a test vehicle through a rollover to simulate a real crash – rather than a quasi-static test involving pressing on the car with the windshield intact. The real issue, they say, is the ratio. They noted that in rollover crashes involving vehicles with strength to weight ratios greater than the proposed 2.5, there are far less roof crush incidents. The IIHS report, in fact, noted in its study of nearly 23,000 rollover crashes in 2006 that a strength to weight ratio of 3.16 would have saved 212 lives of the total 668 fatalities that were related to the rollover crashes in that study.

Over the last ten years, SDSBS has handled numerous cases involving roof crush injuries and deaths and has obtained awards that total $107.3 million. Many of the cases were resolved by settlement, simply because the cases were indefensible. The automobile industry has argued for years that occupant injury and death were not due to roof crush, but due, instead, to the occupants being hurled against the vehicle roof. It is absurd to blame these tragedies on the force of moving bodies when basic engineering analyses of rollovers indicate that it is not true.

A vehicle slides sideways before it rolls over. The side of the vehicle that is at the front of the slide is the "leading side." The opposite side is the "trailing side." In analyzing rollover crashes, it was noted that occupants on the leading side of a rollover rarely sustained serious injury, while occupants on the trailing side of the vehicle more often suffered serious injury or death. The reason is that the leading side occupant is somewhat protected because on first impact of the leading edge, the strength of the windshield helps to keep the roof from collapsing. Impact and friction forces are shared among the windshield header, the "A- and B-" pillars at the sides of the roof, and the roof rail. After the initial impact on the leading side roof edge, the vehicle's windshield shatters. As the vehicle continues its roll onto the trailing side of the roof, there is no longer a windshield to help support the roof, and the roof crushes into the occupant compartment. As Chris Searcy stated in 2005 after the proposed rule changes were first published, "Knowing that the windshield will shatter in a rollover and yet relying on it for the majority of the minimally-required roof strength makes no sense to objective engineers or juries. It's like providing bullet-proof armor that shatters after the first bullet strikes it."

The effects of the automobile industry's compliance with the proposed rule change (to be effective Sept. 1, three years following issuance of the final rule) will probably preempt some lawsuits. However, the proposed rule is still considered inadequate as a public safety measure. Public Citizen, a national, non-profit consumer advocacy organization based in Washington, DC, stated in a press release that the new rule is "so grossly inadequate that 70% of existing vehicles already meet it." Joan Claybrook, former NHTSA Administrator from 1977-1981, now president of Public Citizen, states that "NHTSA has chosen to fiddle around at the margins instead of overhauling its outdated safety standard to reflect the best protection possible for the public."

What is at stake for the automobile industry is no small amount of cost. Adequate A-pillars that could add substantial roof support would cost approximately $9 to $15 per vehicle (estimates vary considerably). Additional equipment on any vehicle would also add weight and the commensurate cost in fuel efficiency, critical in terms of the current cost of gasoline. With the vast number of vehicles manufactured each year in the United States, and the very close margin for the bottom line, manufacturers are reluctant to balance their cost benefit analyses against the value of someone's life. Further, any acknowledgement by manufacturers that vehicles have, in past years, been manufactured and sold under inadequate roof strength could result in a recall or liability of considerable magnitude. The lesson is both economic and moral. It is, also, time to do what is right. ■