# ATTACHMENT 12

Dr. Mark R. Rosekind, Administrator
NHTSA Headquarters
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202-366-4000

30 March 2016

**Subject:** **Criminal Conspiracy of NHTSA : Complicity with the Fraud of FMVSS- 207**
**Reference:** **ARCCA Petition of 28 September 2015 to Amend 49 CFR 571.207, FMVSS 207**

9 Pages:

# Criminal Complicity of NHTSA with Fraud of FMVSS- 207 : Ongoing Collusion

Background : *Can Seats in Your Car be Deadly in a Crash?* (March 1, 2016 CBS News Los Angeles)
http://losangeles.cbslocal.com/2016/03/01/can-seats-in-your-car-be-deadly-in-a-crash/

As context, we connect the following behavior to the ongoing practices at NHTSA:

At right, Mr. Ted Frank, an attorney with affiliation to the American Enterprise Institute, the Center for Class Action Fairness, and the blog **Overlawyered.**

Beginning with a November 24, 2004 article he makes his attacks very personal by naming the plaintiff attorney that adjudicated with great success the Flax vs DaimlerChrysler seat-back failure infant death case:

### Jim Butler wins $105M verdict in Chrysler seat litigation

After libeling Butler, he slanders Clarence Ditlow:

*" . . . the Center for Auto Safety actually care(s) very little about auto safety."*

But just when you thought Frank's dementia was treatable, as if on-cue, he then libels guess-who? Attempting to undercut my status, and my contribution to the $105,000,000 verdict in Flax, Frank declares:

> *"The star witness in the Flax case is a former Chrysler middle manager, Paul Sheridan, who, though an MBA rather than an engineer, has made a career testifying that Chrysler's air bags, seat belts, liftgate latches, doors, brake-shift interlocks, fuel systems, and now seatbacks are not safe."*

That cue is not restricted to the playbook of Chrysler defense lawyers, as we will show below NHTSA all too frequently plays along.

Over the last twelve years, through every email and telephone number associated with this charlatan, I have tried to make contact but he is *"not available for comment*."

Frank's introduces his diversion and inveracity in the opening of his November 24, 2004 article:

> *"Another example of how personal injury attorneys and the Center for Auto Safety actually care very little about auto safety: In 2001, Louis Stockell, driving his pickup at 70 mph, twice the speed limit, rear-ended a Chrysler minivan."*

While some have argued that America is overlawyered, there is no refuting that Frank is under-brained.

With that opening he transitioned beyond buffoonery into outright lying. Frank selectively references the Appeals court ruling, but diverts from its recounting of the Flax accident facts:

> As Mr. Sparkman turned left from a private drive onto a public road, the Caravan was rear-ended by a pickup truck driven by Louis Stockell. According to the testimony of the accident reconstruction experts, the pickup truck was traveling between fifty and fifty-six miles per hour at the time of impact. The Caravan was traveling in the same direction at a speed between ten and fifteen miles per hour. At the moment of the impact, the Caravan experienced a change in velocity of approximately seventeen to twenty-three miles per hour. Accident reconstruction experts for both parties testified that Mr. Sparkman was not responsible for the accident and that the accident would not have occurred if Mr. Stockell had not been driving at an excessive speed.[2]

He cannot have it both ways. Frank ostensibly asserts that infants should die when *"the world's safest minivan"* experiences a mere 17mph delta-vee. Does anyone believe that if the infant's last name were Frank, that his dad pictured above would continue to rant that *"personal injury attorneys and the Center for Auto Safety actually care very little about auto safety"* ?

http://overlawyered.com/2004/11/jim-butler-wins-105m-verdict-in-chrysler-seat-litigation/

http://overlawyered.com/2004/12/update-joshua-flaxchrysler-verdict/

This ignorant, dishonest, typical behavior relates to the subject of *'Criminal Complicity of NHTSA with Fraud of FMVSS- 207 : Ongoing Collusion.*'

Recent NHTSA behavior and communications, regarding seat back failure and the ongoing petitions submitted to NHTSA requesting overhaul of FMVSS-207, is similar to the overreaching shown above.

But how does this relate to the current NHTSA Administrator, Dr. Mark Rosekind?


Airing on October 28, 2015, you are shown refusing to speak with the CBS News reporter Kris Van Cleave who was asking for *"a few minutes."* Despite repeated requests to speak about FMVSS-207, and a petition you had received less than a month earlier, you offered only rude rebuff.

The report *'Are carmakers, government ignoring deadly seat back danger,'* reviews the research data of ARRCA, Inc. which had petitioned you regarding FMVSS-207 on September 28, 2015. Their PETITION to Amend 49 CFR 571.207, FMVSS 207-Seating Systems was forwarded to you by:

Alan Cantor
Louis D'Aulerio
Mike Markushewski
Gary Whitman
Larry Sicher

Mr. Cantor is featured on the October 28, 2015 report demonstrating the irrelevance of FMVSS-207.

During the time you were refusing to speak about FMVSS-207 and the September 2015 ARRCA petition, a trial was scheduled for February 2016. The severe-injury litigation of Rivera versus Audi ended with a Texas jury verdict of $124.5 million:

- Given the documented historical criminality, one ponders why the ARRCA petition was not likewise terminated during this Audi trial to accommodate their defense case. One explanation is that, unlike the Chrysler situation in Flax (discussed on cover Pages 18 thru 21), there was no former internal Audi lawyer working for NHTSA at the time of the Rivera trial.
- Apparently the Texas jury decided they had sufficient data to adjudicate the matter regarding the well-known inadequacy of FMVSS-207.
- As discussed on cover Pages 2, 23 and 24, the Texas jury did not agree with NHTSA's operative position that Jesse Rivera, Jr was merely a *"defect trend"* (ATTACHMENT 11).

Let us now connect you to all of the above, and to the 'Ongoing Collusion' theme.

The jury verdict in Rivera versus Audi compelled you to respond to CBS News regarding FMVSS-207 and the ARRCA petition. That CBS report entitled, *'Can Your Seats by Deadly in a Crash,'* aired on March 1, 2016. Still refusing to appear, you instead sent the following:

> *"NHTSA has considered changes to its seating standards for years. The agency recognizes that the current standard is decades old, and it has received requests and formal petitions over the years to amend or strengthen the standard. In 2004, after several years of research and analysis, the agency formally terminated a rulemaking proceeding aimed at changing the standard. The agency did so for several reasons, but fundamentally the decision rested on the difficulty of providing data, as opposed to anecdotal evidence, for safety benefits of a change to the standard. This is an enormous challenge because the kind of high-impact rear-end crashes that are generally cited as justifying a change are relatively uncommon. For example, rear-impact crashes account for roughly 3 percent of all traffic fatalities; fatal crashes in which seat failure occurs and results in injury or death are even less common. And as you know, the agency is required to perform cost-benefit analysis to demonstrate net benefits for any regulatory change we would propose. Bottom line: The absence of data demonstrating real-world benefits meant the agency could not pursue a rulemaking.*
>
> *Since that decision, the agency has engaged in a number of activities related to the seating standard. The agency issued an upgrade to its standard for head restraints that took full effect in model year 2011. We are also have engaged in research to develop injury criteria for a new rear-impact test dummy, known as BioRID. This dummy, significantly more capable than previous models used in rear-impact tests, could help the agency develop comprehensive proposals to improve rear-impact protection for the traveling public. More recently, in late 2015, we were petitioned by ARCCA, Inc. and Mr. Kenneth Saczalski to revisit rulemaking on improving the seat back strength standard. The agency has not made a determination on the disposition of those petitions. In a separate but related effort, they agency also announced plans to include automatic emergency braking (AEB) in our New Car Assessment Program 5-star safety ratings. AEB has the added potential of reducing the incidence and severity of rear impact crashes from occurring in the first place."*

**MEMO**: We start with the NHTSA promotions about AEB. The reader would be interested to know that the Chrysler Safety Leadership Team (SLT) that I had chaired analyzed numerous outside supplier proposals for the automatic braking system in 1993 and 1994. Those systems were recommended for further research & development during formal presentations to upper Chrysler management in February 1994. Connected to *'The Chrysler-NHTSA Conspiracy Against a "Whistleblower"*' (Pages 10 thru 14), NHTSA was handed the February 1994 SLT presentation on April 11, 1995 . . . and then they promptly hid it as part of their conspiracy with Chrysler and the DOJ. It was not until Michael Brooks of the Center for Auto Safety filed a FOIA request that my SLT materials were released to the public file (in 1999).

Like requests to update FMVSS-207, the idea for AEB is decades old.

We review the major points of your email to CBS News Los Angeles:

> *"The agency recognizes that the current standard is decades old . . ."*

How many? Two? Three? Four decades? FMVSS-207 germinated from an irrelevant Society of Automotive Engineers (SAE) working paper from the 1960's. The paper was not based on any real world testing of crash dynamics, let alone human physiology. It was merely *"penciled in"* into the Transportation Safety Act. Let us be specific Dr. Rosekind, FMVSS-207 is over <u>five decades old</u>. You continue:

> *"In 2004, after several years of research and analysis, the agency formally terminated a rulemaking proceeding aimed at changing the standard."*

**Really?!** Is that what happened prior to November 2004? Is that the true criteria upon which a covert entry was buried in the Federal Registry during the trial of Flax versus DaimlerChrysler? Was that the true reason that NHTSA contacted ONLY the DaimlerChrysler lawyers in Flax? And was it former internal Chrysler lawyer Jacqueline Glassman that conducted the *"research and analysis"* ?

Does Mr. Ted "Overlawyered" Frank, and his "*70 mph, twice the speed limit*" lie regarding the Flax infant death connect to your March 1, 2016 email? To the theme of ongoing collusion? You state:

> *"This is an enormous challenge because the kind of high-impact rear-end crashes that are generally cited as justifying a change are relatively uncommon."*

High impact = high speed . . . correct? Like Frank's 70 mph? Generally cited? By NHTSA, DOJ and Chrysler during EA94-005?

Relatively uncommon? You mean like the low-speed low delta-vee rear collision to Mrs. Geneva Massie that did not kill her, but permanently maimed her <u>only due to the seatback failure in her Chrysler minivan</u>; a woman that will see out her life in a wheelchair? (Please see last page, this attachment.)


You have now admitted that the seat back failure defect actually exists, affirming my cover Page 24 discussion on Failure Mode Effects Analysis (FMEA). As Administrator you will continue to enforce a NHTSA "relatively uncommon" roll-of-the-dice approach as justification for doing nothing? The FMEA operative, and the protection of just one "defect trend" is beyond your understanding (ATTACHMENT 11)?

Your claims about cost as an excuse to not address an irrelevant standard borders on the inane:

> "*And as you know, the agency is required to perform cost-benefit analysis to demonstrate net benefits for any regulatory change we would propose."*

Tell us Dr. Rosekind, what cost-benefit analysis have you done during the previous five decades regarding FMVSS-207? Is such taxpayer funded? And the actual per-vehicle cost is what, exactly?

You proclaim that a tautology is your justification for five decades of NHTSA complicity on FMVSS-207:

> *"Bottom line: The absence of data demonstrating real-world benefits meant the agency could not pursue a rulemaking."*

As discussed on cover Page 4, the *"absence of data"* is a NHTSA problem. This reality was again emphasized by the Clarence Ditlow letter of March 16, 2016 to Transportation Secretary Foxx.

First you acknowledge that your data management system is broken. But then you claim that you are unable to *"demonstrate real world benefits"* because of that broken system. That is insidious.

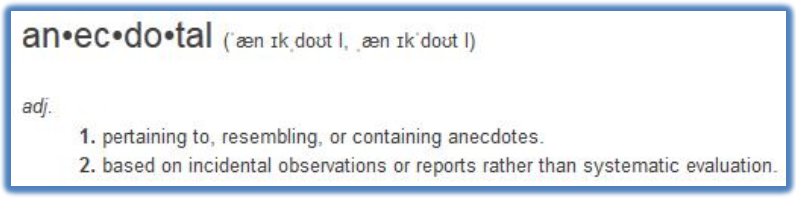
Most of your second paragraph is off-point PR. Most of that verbiage does not connect to the issues at trial in Rivera versus Audi, or the cases reported by CBS News. But the following is on-point:

> *"More recently, in late 2015, we were petitioned by ARCCA, Inc. and Mr. Kenneth Saczalski to revisit rulemaking on improving the seat back strength standard. The agency has not made a determination on the disposition of those petitions."*

Referring to **Dr.** Kenneth Saczalski . . . other than hundreds of additional severe injury and death that have occurred since his 1989 petition, and the crimes by NHTSA such as during the 2004 Flax trial wherein his petition was "terminated" . . . there is no incremental technical data . . . other than that intrinsic to front seats with integrated belt systems. That latter has never been deemed *"too tough"* (ala Dr. Augenstein, cover Page 15). Essentially all the "data" you could possibly need is already in your possession.

For presentation format reasons, I saved this ruse for last:

> "*The agency did so for several reasons, but fundamentally the decision rested on the difficulty of providing data, as opposed to* ***anecdotal evidence****, for safety benefits of a change to the standard."*




Anecdotal evidence? Is that what trial after trial, and secretly settled litigation after litigation, and petition after petition have been based upon?

We indulge your rhetoric focusing on what you might also deride as merely anecdotal, but demonstrating NHTSA complicity with the fraud that "*seats are designed to collapse in an energy absorbing way."*

I have shared the following montage with lay people . . . I have connected it to the ruse that FMVSS-207 (as promoted by all NHTSA administrators with the notable exception of Dr. Sue Bailey) is derived from detailed understudy, elaborate crash tests, cost-benefit analysis, and the notion that this standard implicitly dictates that "*seats are designed to collapse in an energy absorbing way."* **A bold-faced lie**. ♦

♦ I have a thirty year readership of FMVSS-207 . . . and I cannot find any such seat design or human physiology design criteria in the verbiage; direct or implied. FMVSS-207 is just a static pull-test number.

**Shown on the following pages is . . . what you might deride as . . . anecdotal evidence:**

Zero to over 180 mph in approximately 3 seconds . . . the seats must not collapse:


Zero to 18,000 mph in under two minutes . . . the seats must not collapse:

***A wheel-driven***, and typical Pro Street drag race vehicle, a Chrysler Hemi Barracuda, that accelerates from zero to 182 mph in just over four seconds . . . the high seat strength is a requirement:

Dr. Rosekind, given this anecdotal evidence, is your intention to contact the following organizations:

United States Navy
National Aeronautics and Space Administration
National Hot Rod Association

and inform their leaders that they must '*cease and desist'* from further routines because, in lockstep with the following groups:

Selected members of the Original Equipment automotive industry
Selected members of the 'Tier One' seat suppliers to Original Equipment industry
Members of the automotive defense bar
FMVSS-207 defense experts like Dr. Jeffrey Augenstein,

you and NHTSA have done "*several years of research and analysis"* and determined that the seats used by those three organizations cannot collapse, have never collapsed, and will never collapse *"in an energy absorbing way"* ??

**Personal Anecdotal Memo:** Please re-review ATTACHMENT 10. Do you see the vehicle pictured behind me, along with the SFI Foundation approved drag race seat? Please note the excerpt from the April 11, 1995 Sachs/Abraham trip report which mentions *"a stock car race."* Do you see the last page of ATTACHMENT 10? That is my 1982 Mercury Capri. I still have it. It is not a Pro Street level car; it is classified under Super Stock.

During a final round race, at Milan Dragway in Milan, Michigan, in 1989 the same year that Dr. Kenneth Saczalski submitted his FMVSS-207 petition, I left the starting line as usual. However, about half-way through acceleration in first gear (wide-ratio C5 transmission), my front seat collapsed and I was thrown head-long into the rear seat cushion. Scores of spectators, including Hot Rod Magazine writer Todd Whitman, witnessed my plight. With my feet and hands off the controls, I nearly lost my car and my life. Fortunately I recovered control of the Capri, and was able to return to the pits intact.

Was my Capri seat FMVSS-207 compliant? Yes. Was it designed to *"collapse in an energy absorbing way"*? No, implicitly not. Did it endure the delta-vee associated with Mr. Ted Frank's "70 mph" ? Not even close. In fact, its delta-vee was approximate to that endured by the Chrysler minivan seat that collapsed and permanently injured Mrs. Geneva Massie (fourth page this attachment).

I can assure you Dr. Rosekind, upon exit from my Capri on that sunny summer 1989 day, I did not declare my Capri or my life to be merely *"anecdotal."* I considered both to be precious.

Connecting to the personal attacks from Mr. Ted Frank above, and so interpreted in your March 1, 2016 derision about "anecdotal evidence," is it your opinion that my testimony in FMVSS-207 related litigation is merely anecdotal? (Please see next page.)

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Links:

http://arcca.com/blog_post/why-nhtsas-current-automobile-seat-strength-standards-need-to-be-raised/

https://www.youtube.com/watch?v=VDwLoGsCdRA

http://www.cbsnews.com/videos/are-carmakers-government-ignoring-deadly-seat-back-danger/

http://losangeles.cbslocal.com/2016/03/01/can-seats-in-your-car-be-deadly-in-a-crash/

http://sfifoundation.com/

https://www.youtube.com/watch?v=DyC3ZLpbA_o

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July 16, 2014

Paul V. Sheridan
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Via email to
pvs6@Cornell.edu
and ordinary U.S. Mail

RE: Geneva Massie, et al., v. Chrysler Group, LLC, et al.

Dear Paul:

I just wanted to take a minute to express my appreciation to you for helping us in the above-captioned matter. There is no question in my mind that our disclosing you as an expert witness had an impact. Chrysler knows full well what you bring to the table regarding its resistance to providing occupant safety in foreseeable collisions, even in the face of your making your concerns in that regard well known to management.

I hope to have the opportunity to work with you again on a future case. In the meantime, while we did not get very far into the case because it was in everyone's best interest to reach an early resolution, I sincerely appreciate your assistance and cooperation. Best regards.

Yours very truly,

James A. Lowe
jlowe@lewm.com

JAL:pd

# END OF DOCUMENT

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