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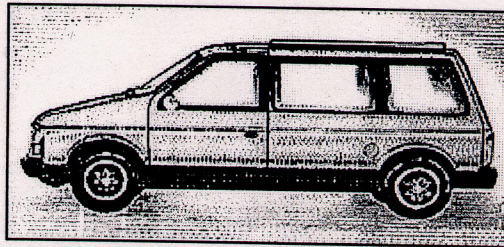
Why One Jury Delivered a Big Blow To Chrysler in Minivan-Latch Case

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Two months before Sergio Jimenez II was thrown from the back seat of his parents' 1985 Dodge Caravan and killed three years ago, a group of production experts at Chrysler met to review recommendations that might make future minivan models more competitive.


At the top of the list was safety. Chrysler's rear-door latches appeared to be failing sometimes, even in low-speed accidents, allowing the lift-up doors, or liftgates, to pop open and passengers to be hurled out.



Why not make the latches stronger, like those on a later minivan model, the Ford Windstar, suggested Paul Sheridan, then head of Chrysler's Minivan Safety Team.

"That ship has sailed," the minivan's top production engineer replied, according to Mr. Sheridan. "We told you that last time. Next subject." The engineer says he was misunderstood.

Link

 How a Tiny Law Firm Won a Mammoth Case

Last month, a federal jury in Charleston, S.C., awarded Sergio's parents and sister \$262.5 million in damages, including \$250 million intended to punish Chrysler Corp. After deliberating 2 1/2 hours, the jury found that Chrysler's negligent design and testing of the latch had caused six-year-old

Sergio's death.

Narrow Focus

The award, which Chrysler intends to appeal if the judge doesn't set it aside, set a record in the auto industry and shocked Chrysler. The company strongly denies any defect involving the latch and maintains that crash statistics prove its minivans are among the safest on the road. At the month-long trial, it argued that Sergio was thrown out a side window, not the rear door. It also contends the judge erred in narrowing the trial's scope so that jurors couldn't hear certain testimony, such as that Sergio's mother may have caused the accident

by running a red light and that Sergio wasn't wearing a seatbelt.

"The magnitude of the verdict suggests that something really went wrong with the process of the trial," says Kenneth Gluckman, Chrysler's top in-house lawyer for product-liability lawsuits.

Two years ago, the National Highway Traffic Safety Administration calculated that Chrysler liftgates pop open in collisions more frequently than its competitors'. It said the rate of passenger ejections was nearly double that of the rest of the minivan industry. Facing a possible recall, Chrysler agreed to replace the latches on 4.3 million minivans it had built since 1984. So far, Chrysler has spent \$115 million notifying minivan owners and installing new latches on about 61% of its minivans on the road that had the old-style latches.

More Coming

The threat of high-profile safety litigation is one the auto industry has lived with for decades, from Pinto gas tanks to sudden-acceleration claims to allegedly unstable sport-utility vehicles to GM pickups with side-mounted fuel tanks. Thirty-seven people have been ejected from Chrysler minivans and killed, according to the NHTSA. That is more than the 26 who died from burns in Ford Motor Co.'s Pinto but fewer than the 168 fatalities in General Motors Corp.'s C/K pickup trucks with side fuel tanks.

The Chrysler litigation is potentially more volatile because many of the suits involve children. "Basically you're gambling when you take one of these to trial," says Clarence Ditlow, a consumer advocate in Washington. "If your judgment is wrong, you come up with verdicts like in South Carolina. The potential amount of the award is so large that even if only 25% of the cases come up winners, you're still talking big money."

Arrayed against Chrysler is an alliance of plaintiffs' lawyers who have been jousting with the company for two years to gain access to internal documents and depose witnesses. Leading the Jimenez case was the Washington firm of Ross, Dixon & Masback, notable because the firm normally specializes in defense work. Chrysler currently faces about 40 injury or wrongful-death suits involving the latch, and more are expected. In the only other one to go to trial, Chrysler won when the jury found that the latch was defective but the victims fell out a side window.

While the damage award in the Jimenez case is likely ultimately to be reduced, the case raises concerns that seem sure to haunt the nation's No. 3 auto maker in future trials.

Among them:

- Chrysler marketed the minivan since the early 1980s as a family vehicle, but used a latch variation in early models that the rest of the industry had abandoned for passenger doors in the 1960s. The company altered the latches for new vehicles in 1988 but didn't inform owners of models already on the road, including the Jimenez family. And the modified latches still didn't meet the federal safety standard for passenger doors, a

standard that Chrysler's competitors either met or came closer to.

- Chrysler destroyed early films of minivan-crash tests, design documents and computer records, actions the company says are routine.
- Engineers considered an additional method of strengthening the latches on new models for as little as 25 cents apiece in 1990 but didn't do so because the move would have undercut Chrysler's position with safety regulators that there was no problem with the latches.
- Chrysler tried political persuasion to resist a recall after being warned by NHTSA in November 1994 that "the latch failure is a safety defect that involves children."

Cumulatively, says one of the jurors, the evidence painted a devastating picture of corporate indifference. "We want people to understand why we made the decision we did," says Linda Jordan, a 42-year-old business consultant. "We knew what we were doing. When you speak to a company as big as Chrysler, you've got to speak to them on terms they'll understand."

Chrysler conceived of the minivan, with its huge rear door, or liftgate, in the early 1980s and marketed it primarily to mothers with young children. The doors are latched secure at the bottom of the door frame and swing up and out of the way for ease in loading and unloading. The vans, the Dodge Caravan, the Plymouth Voyager and the Chrysler Town and Country, caught on immediately and helped bring about the company's resurgence. They were widely imitated, but Chrysler continues to dominate the U.S. market.

In the early 1980s, however, the concept was so new that there were no federal safety standards in place for liftgates. Chrysler was left to create its own.

What it came up with was weaker than the standard for passenger doors. Most of the pending lawsuits contend the latches are substandard because they bend or tear loose in an accident, freeing the hatch to pop open. But lawyers in the Jimenez case pointed to another alleged flaw: the design of the latch in early minivans. The company used a claw-shaped fork that latched around a thumb-sized metal post at the base of the door.

The posts, known as strikers, had been manufactured for decades with mushroom-shaped heads at the top. The reason: The impact of a collision could force latches to ride over "headless strikers," popping open the door. And since ejections from vehicles had long been recognized as a leading cause of death in car accidents, headless strikers hadn't been used in passenger doors since the 1960s.

But Chrysler chose to mill off the heads. Engineers believed the head, or flange, might snag cargo, such as grocery bags. Federal regulators required no crash tests on the new latches, and Chrysler performed none.

That was the first of many decisions that would trouble the jury. "I think we all felt that any time you're designing something new to put on a vehicle that you're marketing to a family, you should be

checking out every aspect of what you're doing," Ms. Jordan says.

Missing Reason

Then came Chrysler's decision in mid-1988 to replace the headless striker in new models with a flanged striker. The witness Chrysler used to explain why, a retired body designer, wasn't involved in the decision. "We can't explain the reason for making that change," said Jerome E. Mitchell Jr., who, like most Chrysler witnesses, testified in a videotaped deposition. In a postverdict interview, Chrysler officials still couldn't explain the change.

A midyear design alteration would normally involve stacks of paperwork, proposals and meeting minutes. "It was a number of years ago and those documents simply don't exist any more," Mr. Mitchell said. He testified that he asked the people who were involved in the decision, but no one could recall.

That hurt Chrysler's credibility. "They never could say why they did it," says juror Linda Ward, a 48-year-old secretary who bought her third Chrysler minivan in June to haul around her two grandchildren. "You know they did it for a reason. You know they did it because they felt it was unsafe."

Another problem for Chrysler was that two films of tests involving left-side crashes at Chrysler's proving grounds in Michigan in 1983 were missing. The executive in charge of impact testing at the time, William Shollenberger, testified that Chrysler always filmed its tests and always kept a record of any anomalies in a computer log. But he couldn't explain why films of the two tests had been pulled from the archives, shredded and burned in 1988. Films of tests done at about the same time, involving front-end collisions, were still available. Two lines of data from the log had also been deleted.

Films Destroyed

Mr. Shollenberger said the company routinely destroys test films after five years, unless the vehicle is the subject of a lawsuit. He had no explanation for why films of left-side collisions were destroyed, but not some films of tests performed before and after involving front-end collisions. And two lawsuits involving the latch were pending when the films were destroyed. Chrysler said the tests were irrelevant because they had been done to see how the minivan's fuel tank held up, not its rear-door latch. Moreover, while no one could recall whether latches broke, Chrysler re-enacted the tests for the trial and found nothing wrong.

"That seemed very deceitful to me," Ms. Ward says. "I mean, why would you just lose that certain test in that certain year? I work in a real-estate office, and I know how important it is to save every note and every piece of paper."

By May 1990, regulators at NHTSA were becoming concerned about the crashworthiness of rear-door latches, noting in a letter to all manufacturers that liftgates and hatchbacks tended to fly open in accidents far more frequently than passenger doors. The safety agency asked each company to look at its own crash-test standards

for liftgates to determine whether they should be toughened.

Although some competitors' liftgates also didn't meet the federal standard for passenger doors, all came closer than Chrysler's. Still, the company maintained that an upgrade wasn't needed. Seat belts were the best protection against being ejected from a minivan, it wrote to the agency.

But when Chrysler tested its latch, the results were mixed. In one test, it pulled apart at 1,300 pounds of force, far below the federal passenger-door standard of 2,000 pounds, according to internal records presented by the plaintiffs at the trial. The company assigned senior engineer Henry G. Cook to calculate the cost of meeting the federal standard. His estimate: 25 to 50 cents per latch, plus a one-time cost of \$125,000 to retool machinery to make thicker and stronger parts, he wrote in a July 1990 memo. The latches could be modified in 32 weeks, he estimated.

But Mr. Cook recommended against it. "As stated in our response to NHTSA that we do not believe there is a significant problem with liftgate retention," Mr. Cook wrote in July 1990, "I recommend that we continue with the current latch system at least through 1993 unless mandated to change by NHTSA."

The jurors saw that as shortsighted. "I was surprised they didn't go ahead and correct the problem," juror Bennie Rhett says. "I felt like they should have done it," Ms. Jordan says. "I have no idea why they didn't, and they couldn't tell you why."

Slipping Sales

For Chrysler, the latch problem -- and how it ultimately would come to be perceived by jurors -- would only get worse in the early 1990s. While the company was marketing safety as its first priority in national ad campaigns, it was concerned about minivan accidents in which children had been killed. In the Detroit suburb of Mount Pleasant in late 1992, a Chrysler-minivan liftgate had popped open in an accident in which two infants in the rear seat had been ejected and killed.

Mr. Sheridan testified that at the time, when he was a Chrysler planning analyst, the company had another concern: Sales appeared to be slipping because of safety concerns. To attack the problem, he said, Chrysler appointed him as chairman of a 13-member Minivan Safety Team. The group, Chrysler maintained at trial, was assembled to look at marketing concerns about safety that could be addressed in a revamped design for the 1996 minivan.

When it met for the first time in February 1993, Mr. Sheridan said, the Mount Pleasant accident was fresh in the minds of all. An in-house lawyer cautioned the group that no notes should be taken, Mr. Sheridan said, adding that meeting minutes he drafted later and circulated were ordered rounded up and destroyed. And in April 1993, when he recommended to the development team that latches be replaced in existing vehicles, Mr. Sheridan testified, he was turned down.

Any drastic changes in the existing latch, he said he was told by Chrysler's top production engineer for minivans, Chris Theodore, "would indict everything we have done in the field." It was a year later, Mr. Sheridan testified, when he raised the issue again, that Mr. Theodore told him, "That ship has sailed."

Credibility Strategy

Mr. Theodore says he doesn't recall the earlier meeting. As for the remark about the ship having sailed, Mr. Theodore says he wasn't addressing the issue of whether to replace existing latches but rather a question about latches for a coming minivan model.

However, at the trial, Chrysler presented no witnesses to dispute Mr. Sheridan. This is a move, the spokesman says, that the company isn't likely to repeat in any future trial. The defense team, which was led by David Tyrrell of Tampa, Fla., confined itself to attacking Mr. Sheridan's credibility.

Defense lawyers cast him as a disgruntled and dishonest former employee who had no engineering experience. Mr. Sheridan had been demoted on grounds of poor performance and later fired for allegedly leaking crash-test results unrelated to the minivan to a trade magazine, the defense said. Mr. Sheridan says he didn't leak any results.

The jury found him credible. An accomplished race-car builder, Mr. Sheridan had at times received glowing performance reviews at Chrysler. In 1985, he had won the coveted Lee Iacocca Chairman's Award for excellence. And unlike many of Chrysler's witnesses, jurors noted later, Mr. Sheridan wasn't paid to testify.

"I believed every word he said," Ms. Jordan says. "I really did, because I felt like he really didn't have anything to lose."

Jurors also didn't believe Chrysler expert witnesses who said the child must have been ejected through a side window, not the back. Plaintiff lawyers unearthed six crash witnesses, who testified that Sergio was thrown out the back door.

By the time Mr. Sheridan was fired in December 1994, federal regulators were taking a hard look at the minivan latch. A preliminary inquiry had been launched a year earlier after two children had been ejected from a 1992 Chrysler minivan outside Washington, D.C., and one was killed. The police officer who investigated had complained to NHTSA that the impact of the collision wasn't severe enough to justify a liftgate's popping open.

In February 1994, the inquiry had broadened into a full-blown investigation of all Chrysler minivan latches. But by then, Chrysler had already decided to make the latches 50% stronger for models beginning in 1995. The question was whether it should replace latches in vans already on the road as part of a voluntary recall. NHTSA had the authority to request such a recall by issuing a public letter even before it pinpointed the precise defect.

And indeed, asking for a voluntary recall appeared to be the direction

the agency was taking when, in November 1994, it invited a team of Chrysler executives to review data and crash-test films in Washington. Using an overhead projector, NHTSA investigators flashed bar graphs of data comparing Chrysler minivan accident statistics with its competitors'.

Chrysler minivan liftgates, they said, popped open twice as frequently. In two crash-test videos played in slow motion, Chrysler minivans were rammed on the left rear side at speeds of 31 to 37 miles per hour. Each time, the liftgates buckled and tore off at the latch as the vehicles spun violently, hurling unbelted test dummies out the back door. In similar tests of its competitors' vehicles, the doors held. And, in fact, the door also held in a test of a 1991 Chrysler minivan fitted with the strengthened latch.

Political Moves

But Chrysler wasn't persuaded. It countered with a blizzard of its own data challenging the government's. And then, in a move that jurors said disturbed them, the company mounted a campaign in Washington to pressure NHTSA into dropping its voluntary-recall policy.

"If we want to use political pressure to try to squash a recall letter we need to go now," Vice Chairman Tom Denomme told Chairman Robert Eaton and President Robert Lutz in December 1994, according to a memo shown to jurors.

Chrysler's Washington office mobilized, contacting the House Commerce Committee, which oversees NHTSA and where auto makers have an ally in Michigan's Rep. John Dingell, the committee's ranking Democrat, according to correspondence used as evidence at the trial. Chrysler helped committee staffers draft a letter criticizing the recall policy. It was signed by Mr. Dingell and Committee Chairman Michael G. Oxley and sent in January to Richard Martinez, NHTSA's administrator at the time.

Publicly asking auto makers to recall cars because of a suspected defect before an investigation is complete could hurt a company's safety record, the congressmen complained. Instead, why couldn't NHTSA and auto makers agree to a "confidential settlement"?

The letter didn't specifically address Chrysler, and NHTSA says no pressure was exerted. However, in March 1995 Chrysler agreed to replace the latches on existing minivans without acknowledging they were defective or that passengers could be killed or injured in ejections.

Under terms described in one Chrysler document shown to the jury, which the company called a proposed settlement, there would be "no acknowledgment of [a] defect to NHTSA or to owners' and "no acknowledgment of [a] safety problem." In Chrysler's proposal, NHTSA would agree to deny requests by the public for copies of the crash tests. NHTSA denies knowing of any proposed settlement and says its policy is always to block the release of findings, including crash-test films, until its investigations are formally closed and the agency issues a report.

Chrysler maintained throughout the trial that its lobbying effort wasn't aimed specifically at the minivan. "No sir. That absolutely did not happen," said Chrysler's chairman, Mr. Eaton. But the jury wasn't persuaded. "All of that just incriminated them so badly it wasn't funny," Ms. Jordan says. "I just think it was one more piece of the same puzzle. It was very damaging to them. On a scale of one to 10, it was about an eight."

And Mr. Eaton, she and two other jurors who were interviewed agreed, was a terrible witness. Appearing to some jurors as indifferent in his videotaped deposition, Mr. Eaton staunchly defended the old latches and the minivan's safety record. But Mr. Eaton testified that he didn't know why passenger-door safety standards were promulgated, had never reviewed NHTSA's materials regarding the Chrysler latch, didn't know about the Minivan Safety Team, was unaware of whether Chrysler had ever conducted minivan crash tests and had never looked at a latch.

"Every question he was asked, he answered, "I don't know. I don't remember. I can't recall," " Ms. Jordan says. "If you're going to be chairman of the board of a company you've got to know what's going on. None of us believed he didn't know what was going on."

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