O/a 6-3-86

IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,761

CHRYSLER CORPORATION, a foreign corporation,

Petitioner,

v.

JACK E. WOLMER, Personal Representative of the Estate of MARY WOLMER and JACK E. WOLMER, Individually,

Respondent.

ON PETITION TO INVOKE DISCRETIONARY REVIEW OF A DECISION OF THE DISTRICT COURT OF APPEAL FOURTH DISTRICT OF FLORIDA

# PETITIONER'S INITIAL BRIEF ON MERITS

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## STATEMENT OF THE CASE

This is a discretionary review of a decision of the District Court of Appeal, Fourth District, which reversed an order of the Trial Court granting the Defendant's motion for directed verdict and judgment N.O.V. upon the issue of punitive damages.

The Plaintiff, Jack E. Wolmer, brought suit in the Circuit Court for the Seventeenth Judicial Circuit against Chrysler Corporation and two other Defendants.1/ The cause, for wrongful death, arose out of an automobile accident on September 27, 1977, in which his wife, Mary Wolmer, was killed while an occupant in a vehicle manufactured by Chrysler.

The Plaintiff claimed actual damages based on theories of negligence, implied warranty and strict liability; in addition, he claimed punitive damages. The cause went to trial before a jury upon the Plaintiff's Amended Complaint. The jury returned verdicts awarding actual damages -- upon the negligence claims only -- of $500,000.00 to the Estate of Mary Wolmer and $500,000.00 to Jack E. Wolmer, and awarding punitive damages of $3,000,000.00. (Appendix: 1-2) (R: 2091-92).

The Trial Court entered a remittitur of $300,000.00 actual damages on the claim of the Estate which was accepted by the Plaintiff. (R: 2094; 2102). The Trial Court subsequently entered its "Order Granting Motion of Chrysler Corporation for Directed Verdict and Final Judgment N.O.V. for Chrysler Corporation on Issue of Punitive Damages" on October 15, 1982. (Appendix: 3-7) (R: 2114-19). The Plaintiff appealed this latter order to the District Court of Appeal, Fourth District. That Court, in a decision entered July 17, 1985, reversed the order of the Trial Court with instructions to reinstate the punitive damage award. (Appendix: 8-10) From that decision, rendered pursuant to

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1/ The other Defendants, Bill Binko Chrysler-Plymouth, Inc. and Home Insurance Company, are not involved in the present matter.



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an order denying motions for rehearing, clarification and certification on September 19, 1985, the Defendant, Chrysler Corporation, petitioned for review in this Court.

This Court has jurisdiction over this appeal pursuant to Article V, Section 3(b)(3) of the Florida Constitution because the decision below expressly conflicts with the decisions of this Court and of other district courts and, in addition, expressly construes the Supremacy Clause of the United States Constitution. Appellant's petition to invoke this Court's discretionary review was granted on February 24, 1986.



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## STATEMENT OF THE FACTS

### A.

### The Accident

Mrs. Wolmer was killed while riding as a passenger in the back seat of her 1977 Plymouth Volare station wagon. The accident occurred when a 3/4 ton Chevrolet pick-up truck smashed into the rear end of the stopped Volare at more than 50 m.p.h. Witnesses, including the driver of the truck, gave varying estimates of his speed prior to impact, ranging from 50 to 65 m.p.h. (T: 116, 771-72; 990-991; 994; 1009-10).

The tremendous force of the crash, which was estimated at 344,000 foot pounds (T: 1313), caved-in in the back end of the station wagon some 2-1/2 feet on each rear side and a full three feet in the rear center. (T: 729, 1446). In addition, the floor pan of the Volare separated at the points where it had been welded to the rear rails of the car, the doors jammed shut, and the window next to Mrs. Wolmer broke upon impact. (Pl. ex. 55; T: 599-600; 1460; 786; 1664). Both the plaintiff's and defendant's experts described the impact as severe. (T: 777, 1595).

The force of the crash ripped off one of the rear shock absorbers and drove the jagged end of the shock absorber attachment into the fuel tank, rupturing it. The massive deformation of the rear structure of the Volare also pulled the fuel filler tube away from the fuel tank. (T: 581; 1341; 1444-45). The escaped fuel immediately ignited and severely burned the rear portion of the station wagon, killing Mrs. Wolmer instantaneously.

### B.

### Allegations of Defect

The Plaintiff alleged that the fuel tank system of the Volare was defectively designed because it permitted contact between the shock absorber and the fuel tank and allowed the filler tube to separate from the gas tank in this collision. The plaintiff also alleged that the Volare floor pan was defective because Chrysler should have used fusion welding to connect the floor pan to the rear rails of the car. Plaintiff, however, did not



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introduce any testimony that the use of fusion welding was either mandated by sound engineering practice, or, more importantly, would have allowed the floor pan to survive the tremendous forces involved in this collision. In addition, Plaintiff's own engineer testified that separation of welds in an impact of this magnitude was not a defect. (T: 603).

C.

Chrysler's Compliance with Federal
Motor Vehicle Safety Standard ("FMVSS") 301

The National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. Section 1381 et. seq., ("Safety Act") requires the Secretary of Transportation to prescribe safety standards for motor vehicles which both "meet the need for motor vehicle safety" and are "reasonable, practicable and appropriate." 15 U.S.C. Sections 1392 (a) and (f)(3). Among the standards promulgated under the Act is FMVSS 301. This standard, which was in effect at the time the Wolmer vehicle was designed and sold and which is in effect, without change, even today, prescribes specific performance standards for the integrity of motor vehicle fuel systems. 49 C.F.R. Section 571.301. Among the many tests which a vehicle is required to meet under this safety standard is the following applicable to rear-end collisions: a stationary vehicle hit from the rear by a 4,000 pound barrier moving at the speed of 30 m.p.h. can lose no more than 1 ounce of fuel in the first minute following the collision and no more than 5 ounces of fuel in the 5 minutes following the collision. 49 C.F.R. Sections 571.301, S.5.5. (Appendix: 11-16).

Both plaintiff's and defendant's experts were in substantial agreement that the force created by the impact of a 4,000 pound barrier moving at 30 m.p.h. was equivalent to the force generated in a vehicle-to-vehicle rear-end crash at substantially higher speeds. (T: 280, 831-32; 1168-69; 1298). Although the relative relationship varies slightly according to the comparative weight of the vehicles involved, a 30 m.p.h. barrier crash test produces a crash impact roughly equivalent to the impact involved when a stationary



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vehicle is hit from the rear by a car traveling at the rate of 45 m.p.h. (T: 1298; see also T: 831-32).

The evidence is undisputed that the fuel tank system of the Volare, including the filler tube, met and even exceeded this performance standard. The fuel system of the Volare was demonstrated to withstand crash tests successfully which replicated rear-end collisions at speeds of 45 m.p.h. with no or minimal loss of fuel.

D.

Chrysler's Testing and Development Program

The evidence at trial showed clearly and without contradiction that Chrysler had undertaken a lengthy testing and development program with the Volare, particularly with respect to assuring the integrity of its fuel system under impact conditions. This evidence of the testing program affirmatively established that Chrysler acted with substantial concern for the safety of its vehicle design.

This development began in 1973 and proceeded through pre-prototype, prototype and production stages. The first production Volare was the 1976 model, sold beginning in September, 1975. This was the first model vehicle required to meet compliance with FMVSS 301. (T: 303; 1124-27; 1136; 1176A; 1320). Although the 1976 model did meet compliance standards, Chrysler continued the development design and testing aimed at improving the margin of safety in the fuel system in subsequent models. It was the very purpose of the testing program to identify actual or potential problems with the system design and to develop corrective measures. (T: 303; 1125; 1127-29; 1320-21; 1591-94)

The results of nearly two dozen tests conducted by Chrysler were introduced into evidence. A majority of these tests were vehicle crash tests, conducted in accordance with FMVSS 301 protocols. The remainder were sled tests, which involved impacting component sections of a vehicle mounted on a moving sled. (T: 1168A-69A; 1180A)



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The tests were performed over a 2-1/2 year period. A majority were conducted prior to the sale of the vehicle; but at least half a dozen were completed subsequently.[2/]

| DATE | CRASH TEST | SLED TEST | EXHIBIT NO |
|---|---|---|---|
| 3/11/75 | VC 1084 | | Pl. 28 & 44 |
| 4/21/75 | | 2854 | Pl. 23 |
| 4/23/75 | | 2855 | Pl. 24 |
| 4/30/75 | | 2862 | Pl. 27 |
| 7/7/75 | VC 1131 | | Pl. 21 & 33 |
| 7/21/75 | VC 1139 | | Pl. 20 or 21 |
| 8/28/75 | | 2967 | Pl. 25 & 26 |
| 9/18/75 | | 2982 | Pl. 22 |
| 1/28/76 | VC 1247 | | Pl. 47 |
| 3/18/76 | VC 1270 | | Pl. 52 |
| 4/17/76 | VC 1288 | | Pl. 31 |
| 4/19/79 | VC 1309 | | Pl. 32 |
| 6/6/76 | VC 1326 | | Pl. 33 & 49 |
| | VC 1341 (FMVSS 301 Compliance Test) | | Pl. 20& Def.2 |
| 10/11/76 | (SALE OF WOLMER VEHICLE) | | Pl. 45 |
| 11/17/76 | VC 1442 | | Pl. 33 |
| 2/2/77 | | 3475 | Pl. 33 |
| 2/8/77 | VC 1497 | | Pl. 33 & 48 |
| 7/7/77 | VC 1637 | | Pl. 50 |
| 9/27/77 | (WOLMER ACCIDENT) | | |
| 10/24/77 | VC 1665 | | Pl. 33 |
| 10/24/77 | | 3798 | Pl. 32 |

An examination of these test reports in the order that the tests were conducted reveals how thoroughly Chrysler tested and retested its designs; even though the earlier tests showed that the fuel system design met FMVSS 301 requirements, further tests were run to develop design changes which assured still greater integrity in the fuel system.

In the first test, VC 1084, a number of design improvements were incorporated into the 1976 fuel system for evaluation: the fuel tank was reworked to increase clearance, the shock attachment was lowered, longitudinal structures were reinforced and a heavy rubber cap was fitted over the shock attachment stud. When this test revealed that the retention straps cut into the fuel tank on impact, resulting in fuel loss, a series of sled tests were run to develop new straps (Test Nos. 2854, 2855, 2862).

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2/ The date of the test is important since the plaintiff alleged negligence only in the design and manufacture of the vehicle. There was no claim that Chrysler should have recalled the Wolmer vehicle. (R: 2004-14).



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In test VC 1131, fuel tank displacement was significantly reduced over that in test VC 1084 due to design changes. Potential problems were noted in respect to contact between the fuel tank and the shock bracket assembly, and the fuel tank and differential cover. The report noted that the next test would consider corrections in these areas.

Test VC 1139 was run with the newly developed contoured fuel tank straps and with a number of additional design changes: reinforced rear rails, energy absorbing bumpers, new rear springs, and a breakaway grommet filler tube. The fuel tank was specially prepared with a styrofoam corner to disclose any evidence of contact with other undercarriage members. The test results showed no fuel leaks after the impact and none during rollover (thus exceeding FMVSS 301 requirements). Some evidence of contact with the fuel tank and underbody members was found.

Further sled tests were conducted to evaluate the fuel tank strap design and retention system (Test Nos. 2967 & 2982).

In tests VC 1247 and VC 1270, the fuel system again showed no leakage during the time prescribed in the FMVSS 301 protocol, although traces of leakage were found thereafter in VC 1247 and in the carburetor in VC 1270 on rollover.

In test VC 1288, evaluating a larger fuel tank with a modified fill tube, some deformation was revealed in the tank although no leakage was found following impact or for 30 minutes thereafter. Due to a slight displacement of the modified fill tube, the car failed the rollover test. In VC 1309, the vehicle was equipped with a new design fuel tank, strengthened rear rails and a modified fuel tank strainer. Some contact between the tank and other underbody members was noted but there was no leakage following the impact and only a trace of leakage on rollover.

Test VC 1326 evaluated the entire 1977 fuel system design. No leakage was revealed during the 30 minutes following impact. A slight leak -- well below FMVSS 301 limits -- was found on rollover. Fuel tank contact with undercarriage members was found to be slight.



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As a result of this lengthy series of development tests aimed at evaluating the feasibility of numerous proposed design changes, 13 design modifications were implemented by Chrysler in its production model of the 1977 Volare. (T: 1591-93). As conceded by the Plaintiff's own engineer/witness, these changes materially improved the fuel system and its environment (T: 852). Indeed, he forthrightly admitted on cross that the fuel system design of the 1977 Volare, in respect to the shock absorber and the fuel tank, met the standard of care of good engineering practice (T: 620).

The official compliance test, VC 1341, was conducted shortly afterwards. The 1977 Volare fully met and even exceeded all FMVSS 301 requirements. (T: 341; 1589). While occasional problems appear in testing subsequent to VC 1341, it must be noted that these tests involved the evaluation of proposed modifications in designs tested for 1978 and 1979 models; it must also be noted that all tests subsequent to VC 1341 were conducted after the manufacture and sale of the Wolmer vehicle and are thus irrelevant to any issue of knowledge by Chrysler of the impact characteristics of the 1977 Volare during the time period relevant to this suit (see footnote 2, supra).

E.

Decisions of Trial Court
and the District Court of Appeal

Plaintiff contended that despite the Volare's compliance with the federal safety standard governing fuel system integrity, Chrysler knew that at higher crash speeds, such as those involved in the Wolmer accident, the integrity of the fuel system would fail. Plaintiff's claim for punitive damages rested on the contention that Chrysler's failure to redesign the fuel system of the Volare so that it would withstand rear-end collisions at speeds of 50-55 m.p.h. constituted a "reckless indifference to human life."

Chrysler moved for a directed verdict on the issue of punitive damages at the close of the plaintiff's case. The trial court reserved ruling on the motion. In its answers to special interrogatories, the jury specifically held that the car was not defective when sold and was not sold in a condition "unreasonably dangerous" to the user. (R: 2090).



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Nevertheless, the jury found Chrysler liable for negligence and awarded punitive damages. The trial court subsequently entered a remittitur of compensatory damages -- which was accepted by the plaintiff -- and granted Chrysler's motion for a directed verdict and judgment N.O.V., striking the punitive damage award.

In its opinion granting the directed verdict, the trial court found that:

> *1) there was no evidence from the voluminous test reports, documents, and testimony that Chrysler had knowledge of any uncorrected design defect in the fuel system of the Volare or even that it should have been put on notice that a problem might exist at higher speeds;*
>
> *2) there was no evidence that any of the design decisions made by Chrysler, which were alleged by plaintiff to have been defective, were the result of any factors other than the considered judgment of Chrysler's engineers;*
>
> *3) there was no evidence that Chrysler ignored or failed to follow any safety recommendations of its engineers;*
>
> *4) there was no evidence in the record that Chrysler was aware of any prior crash fires involving a Volare station wagon;*
>
> *5) the evidence did show that Chrysler ran a great number of tests in developing the Volare, and, when problems arose, steps were taken to correct them.* (Appendix: 6).

Thus, the court concluded that, while Chrysler may have been negligent in designing the Volare, there was no evidence to support a finding that Chrysler had acted with a "reckless disregard" "which was the equivalent of criminality." (Appendix: 7).

On appeal, the District Court of Appeal reversed the entry of the directed verdict and judgment N.O.V. The District Court found that Chrysler knew that the Volare's fuel tank system might not survive high speed crashes and continued to market the vehicle without redesigning it to ensure integrity at higher crash speeds, such as those involved in the Wolmer accident. Applying the standard enunciated in *Johns-Manville v. Janssens*, 463 So.2d 242 (Fla. 1st DCA 1984), the District Court held that this evidence met the standard for the imposition of punitive damages. (Appendix: 9).



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## SUMMARY OF THE ARGUMENT

I.

The decision of the District Court of Appeal was, for several reasons, clearly erroneous, and must be reversed. First of all, the District Court applied a legal standard for the imposition of punitive damages which, by its terms, did not require a showing of the type of reckless indifference or conduct equivalent to criminality this Court has repeatedly held must be shown to support such an award. To the extent that the District Court's order was based upon the application of an erroneous legal standard, its decision must be reversed.

II.

The evidence presented at trial, even construed in the light most favorable to the plaintiff, cannot in any event sustain a reasonable finding that Chrysler engaged in the type of egregious and quasi-criminal conduct necessary to justify the imposition of punitive damages. Even assuming that there was sufficient evidence from which to infer that Chrysler had knowledge that the fuel tank integrity might fail at the crash speeds involved in the Wolmer accident, this is not sufficient to support an award of punitive damages as there are here none of the aggravating circumstances required to substantiate a finding of wantonness or reckless indifference.

III.

The District Court's decision is erroneous for an additional reason as well. The Chrysler Volare complied with a federal safety standard, which expressly and comprehensively addressed the specific aspect of vehicular performance challenged by the plaintiff. Where a federal statute requires that a safety standard be "reasonable, practicable and appropriate" and "meet the need for vehicle safety", compliance with such a standard must, as a matter of law and public policy, preclude a finding of reckless indifference or conduct equivalent to criminality.



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IV.

Next, the District Court erred when it held that the Trial Court's post-trial order granting a directed verdict and judgment N.O.V. could not be supported by the jury's own finding that there was no defect or dangerous condition present in the Volare when sold by Chrysler.

V.

Finally, the District court erred in disregarding the express preemption provision contained in the federal Safety Act. Both the express language and the history of the Safety Act indicate a clear congressional intent to ensure uniformity of safety standards which are "not identical" to the federal standard applicable to the same aspect of vehicular performance. Uncontroverted evidence established that the fuel system in the 1977 Volare complied with the federally-mandated standard. Punitive damages are inherently regulatory and here serve only to compel compliance with a standard higher than the federal standard governing the same aspect of vehicular performance. Requiring adherence to such a standard impermissibly interferes with the congressional goal of achieving nationwide uniformity in vehicular safety standards. The District Court erred in holding that the Safety Act did not preclude the punitive damage award and, accordingly, its decision must be reversed.



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## ARGUMENT

### I.

### THE DISTRICT COURT APPLIED AN ERRONEOUS LEGAL STANDARD IN REVERSING THE ENTRY OF THE DIRECTED VERDICT.

The District Court concluded, based on its interpretation of the evidence, that sufficient evidence existed from which a jury could infer that Chrysler had knowledge that the fuel tank system of the Volare would not survive rear-end collisions at the crash speeds involved in the Wolmer accident. The court then held that Chrysler's conduct in deciding to market the Volare, despite its alleged knowledge of this risk, was sufficiently egregious to sustain an award of punitive damages. (Appendix: 9).

The type of egregious conduct necessary in order to justify the imposition of punitive damages was first enunciated by this Court in *Carraway v. Revel*, 116 So.2d 16, 20 (Fla. 1959):

> *The character of negligence necessary to sustain an award of punitive damages must be of a gross and flagrant character, evincing reckless disregard for human life, or of the safety of persons exposed to its dangerous effects, or there is that entire want of care which would raise the presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others which is equivalent to an intentional violation of them.*[3/]

This standard was expressly approved and reaffirmed by this Court in both *White Construction Co. v. Dupont*, 455 So.2d 1026 (Fla. 1984) and *Como Oil Co. v. O'Loughlin*, 466 So.2d 1061 (Fla. 1985). Moreover, this Court also held in both *White* and *Como Oil* that the type of conduct sufficient to warrant an award of punitive damages must be equivalent to the conduct necessary in order to sustain a criminal conviction for

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3/ In the case of McCreary v. State, 371 So.2d 1024 (Fla. 1979), this Court carefully analyzed the quality of that type of culpable conduct which met the Carraway standard for manslaughter (or punitive damages). Recklessness, even if likely to cause death or great bodily harm to another is not sufficient to meet that standard. This Court held that, in addition to recklessness, there must be further aggravating circumstances such as a flagrant character to the conduct to satisfy this test.

manslaughter. *White Construction Co. v. Dupont*, 455 So.2d at 1028; *Como Oil Co. v. O'Loughlin*, 466 So.2d at 1062. As this Court recently emphasized, even gross negligence cannot support an award of punitive damages; the only permissible basis for such an award is evidence of "behavior which indicates a wanton disregard for the rights of others". *United States Concrete Pipe Co. v. Bould*, 437 So.2d 1061 (Fla. 1983).

Although the District Court paid lip-service to the *Carraway* standard, a review of the decision makes clear that the District Court in fact did not apply this standard in deciding the issue of whether there was sufficient evidence in the record of egregious conduct on the part of Chrysler to sustain an award of punitive damages. Instead, the District Court, mistakenly concluded that this standard had been "restated" for application specifically -- and unlawfully -- to products liability cases by the First District Court of Appeal in *Johns-Manville Sales Corp. v. Janssens*, 463 So.2d 242 (Fla. 1st DCA 1984).

The District Court then quoted and applied the following diminished standard set forth in that case:

> *A legal basis for punitive damages is established in products liability cases where the manufacturer is shown to have knowledge that its product is inherently dangerous to persons or property and that its continued use is likely to cause injury or death, but nevertheless continues to market the product without making feasible modifications to eliminate the danger or making adequate disclosure and warning of such danger.*

*Johns-Manville Sales Corp. v.Janssens*, 463 So.2d at 249.

The *Janssens* standard, by its terms, does not require the "entire want of care," the "conscious indifference to consequences" or the "wantonness" equivalent to manslaughter mandated by this Court's decisions in *Carraway*, *White* and *Como Oil*.[4/] Instead, this

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4/ It is significant to note, however, that the evidence introduced in Janssens would likely meet the standard for punitive damages stated by this Court in Carraway, White and Como Oil. The evidence in that case established not only that the defendant was aware of the "high probability" of serious health risks posed by exposure to its products, but also that over a period of some thirty years, it had made "conscious decisions at the executive level not to disclose the presence of this danger nor to alert affected individuals to the potential harm that could result". 463 So.2d at 246. The evidence also showed that defendant's own medical director "had recommended the use of warning labels in 1951 or 1952 or earlier, but Johns-Manville rejected his recommendation because the warnings would "have caused decreased products sales". Id. at 250.



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standard again by its very terms requires only that the manufacturer 1) be aware of a danger which poses a risk of injury and 2) continue to market the product without either eliminating the danger or warning consumers of the risk.

Understandably, this Court has never endorsed such a broad test. In fact, the test articulated by the District Court is not test at all. It is a guarantee of punitive damages in every product liability case. Every product has some inherent risk, and every manufacturer has knowledge of that fact. Every person who is involved in a product-related accident can therefore meet the two-pronged "test" articulated by the Court below. That is why these factors alone are not sufficient to sustain an award of punitive damages under the prior decisions of this Court.[5/]

That is why these factors alone are not sufficient to sustain an award of punitive damages under the prior decisions of this Court.

The decisions of this court establish that there must be evidence of some aggravating circumstances that demonstrate reckless, malicious, outrageous, oppressive or fraudulent conduct -- mere knowledge of a danger standing alone cannot and should not be sufficient to support a punitive damage award. Thus, in several recent cases this Court has found that punitive damages should not have been awarded where the facts showed conduct far more egregious than any jury could infer from the evidence in this case.

In *White*, for example, defendant's employee operated a 40-ton loader at top speed in an area where people were working. The evidence established that the loader's brakes had not operated for some time and that the defendant was well aware of the brake deficiency, yet failed to take any corrective action until after the plaintiff's accident. This Court held that "[a]lthough this evidence would be sufficient to show that [the

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5/ It is by no means clear that even the Court in Janssens intended its "test" to apply to all product liability cases as the Court below has done; the opinion in that case holds that its formulation applies where the product is inherently dangerous -- a very narrow category of cases which the courts of this state have held not to include automobiles. Lollie v. General Motors Corp., 407 So. 613 (Fla. 1st DCA 1982), Pet. for Rev. den. 413 So.2d 876 (1982).



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defendant was] negligent, it was not sufficient, as a matter of law, to submit the issue of punitive damages to the jury". Id. at 1028. (Emphasis added).

In *Como Oil*, the owner of a tank truck was held not liable for punitive damages despite the fact that the truck lacked the customary safety devices; what equipment it did have was known to be malfunctioning; and the owner failed to give any instructions or training to the truck driver who negligently allowed hundreds of gallons of explosive gasoline to overflow, causing a serious fire. In both *Como Oil* and *White*, the defendant was 1) aware of a defect which 2) posed a serious risk of harm and 3) persisted in its course of conduct despite this knowledge. Yet in both cases this Court held that these elements did not satisfy the *Carraway* standard.

Similarly, in *Detroit Marine Engineering, Inc. v. Maloy*, 419 So.2d 687 (Fla. 1st DCA 1982), a products liability case, the First District held that there was no basis for the imposition of punitive damages even though the manufacturer continued to market a plastic steering wheel despite the warnings of its engineering staff that the design of the wheel without a metal frame insert contained serious defects (it was subject to breaking and deterioration) and therefore should not be marketed. Id. at 689-90; 693. Thus, punitive damages were held not to be appropriate despite the fact that the manufacturer 1) knew of the existence of a defect which 2) posed a likelihood of serious injury, 3) ignored the warnings of its engineers, and 4) continued to market the product anyway.

It is clear that a manufacturer's mere knowledge of a danger, without more, is insufficient to warrant a punitive damage award. Unlike the foregoing cases, in the decisions relied on by the plaintiff and the District Court of Appeal, numerous aggravating factors, which are not present here, made the imposition of punitive damages at least arguably appropriate.

In *Piper Aircraft Corporation v. Coulter*, 426 So.2d 1108 (Fla. 4th DCA 1983), for example, the court found that the following evidence revealed sufficiently egregious conduct to sustain an award of punitive damages: (i) the manufacturer's test pilot, aware



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of accidental door openings between 1954 and 1959 on the same model aircraft as was involved in this case, advised his superiors of the dangers and of the need to modify the aircraft; (ii) the manufacturer took no action either to remedy the defect or to warn purchasers; (iii) the test pilot was ordered to destroy his records regarding problems with the aircraft; and (iv) after the sale of the aircraft to plaintiff's decedents, the manufacturer redesigned the aircraft to correct the door problem but failed to advise prior purchasers of the defect. Nothing in the opinion even suggests that mere knowledge of a defect or dangerous condition alone could support an award of punitive damages.

In *American Motors Corp. v. Ellis*, 403 So.2d 459 (Fla. 5th DCA 1981), the evidence clearly showed that the design of the vehicle's fuel tank and filler system was dangerous, that AMC knew it "could not survive crash tests at relatively low speeds"; that AMC was aware, from its own crash tests, "of the catastrophic results of fuel tank fires in its vehicles" but decided, because of a desire to maximize profits, not to implement design changes recommended by its engineers which would have corrected the defect, and that AMC failed to conduct additional crash tests to develop alternatives until compelled to do so by the federal government. Id. at 467.

Similarly in *Dorsey v. Honda Motor Co. Ltd.*, 655 F.2d 650 (5th Cir. 1981), modified, 670 F.2d 21 (5th Cir. 1981), cert. den. 459 U.S. 880 (1982), there was evidence that Honda's own crash tests on prototype vehicles had clearly revealed the existence and substantial danger of the very design defect that was later to cause plaintiff's injury. Despite undeniable knowledge of the defect and recommendation from one of its research and development employees about how to improve the safety of the vehicle, Honda took no steps whatever to eliminate or even reduce the hazards. 655 F.2d at 653, 656.

Likewise, in *Toyota Motor Company, Ltd. v. Moll*, 438 So.2d 192 (Fla. 4th DCA 1983), there was evidence, for example, that for some years prior to the manufacture of the 1973 Toyota involved therein, Toyota knew, on the basis of its crash test results (which were conducted at far lower speeds than were the tests on the Volare), of the dangerously



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defective design of the fuel containment system, which it nevertheless incorporated into the plaintiff's vehicle. Moreover, one of Toyota's executives testified that the company's own research finally persuaded management that a more safely designed fuel containment system could be implemented. This safer design was in fact adopted in the 1973 line, with the sole exception of the 1973 model Corona, the vehicle involved in this accident. Finally, the speed of the impact in the *Moll* accident was estimated to be as low as 28 m.p.h. -- almost half the speed of the impact in this case.

The complete absence of any of these aggravating factors makes the imposition of punitive damages inappropriate in this case.[6/] The District Court's conclusion that merely because Chrysler allegedly had knowledge of a defect, and sold the vehicle despite that knowledge, punitive damages were warranted is thus clearly contrary to the prior decisions of this Court and is in conflict with the decision of the First District in *Detroit Marine Engineering, Inc. v. Maloy.* Accordingly, to the extent that the District Court's reversal of the directed verdict and judgment N.O.V. was based on this conclusion, the court committed a clear error of law and its decision must be reversed.

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6/ For example, as the trial court correctly found, there was no evidence that Chrysler was aware of any prior crash fires involving a Volare and no evidence that the design choices made by Chrysler were based on anything other than the best judgment of its engineers. In fact, as he found, when Chrysler's tests identified problems in its designs, it undertook to correct them.



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II.

## THE EVIDENCE ADDUCED AT TRIAL WAS INSUFFICIENT AS A MATTER OF LAW TO SUPPORT A FINDING THAT CHRYSLER ACTED WITH "RECKLESS DISREGARD" IN DESIGNING AND MARKETING THE VOLARE.

The evidence introduced at trial cannot support a finding of the kind of "reckless disregard", equivalent to criminality, required under the *Carraway* standard. First, as the trial court found, the evidence, even drawing all inferences in favor of the plaintiff, could not support a conclusion that Chrysler knew of any defect in the fuel system of the Volare which would cause it to fail at the crash speeds involved in the Wolmer accident. Secondly, and more fundamentally, Chrysler cannot be held liable for punitive damages, both as a matter of law and public policy, for failing to design a vehicle which would have exceeded the federally-mandated safety performance standards. Because of the far-reaching consequences of this latter aspect of the District Court's ruling on all manufacturers who design their products to meet federal performance standards, it is this issue which will be addressed first.

### A.

### As a Matter of Law, Chrysler Cannot Be Held Liable For Punitive Damages for Failing to Exceed Federal Performance Standards

There is no dispute that Chrysler engineered the fuel tank system of the Volare to meet and pass the crashworthiness tests established for fuel tank systems by FMVSS 301. That standard, as previously noted, mandates that a car's fuel tank system successfully pass a crash test which replicates the forces involved when a vehicle traveling at the speed of 45 m.p.h. crashes into a car that is standing still. The District Court of Appeal, however, found that Chrysler could be held liable for punitive damages because it knew that the design of its fuel tank system might not withstand crashes at even higher speeds and failed to redesign the car to withstand such crashes. Thus, the District Court's decision, in effect, held that Chrysler's conduct in designing the fuel system of the Volare



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to meet FMVSS 301 instead of some undetermined higher level of crash resistance, was criminally reckless.

The adverse effect of this decision on the manufacturing community is apparent. Manufacturers must know, and indeed are entitled to know, the degree -- or at least some threshold level -- of safety they are required to ensure in their products. Federal motor vehicle safety standards that delineate the parameters of specific aspects of vehicular performance represent such a determination. To hold, as the District Court did, that a failure to exceed federal performance standards constituted reckless disregard for human safety and manifested such egregious and wanton conduct as to warrant punitive damages unjustifiably places all manufacturers who design their products to meet reasonable, specific federal performance standards in a precarious and uncertain situation that does not serve societal interests.

The imposition of punitive damages for failing to exceed a federal safety performance standard is especially unjustified here. What the District Court failed to understand is that whenever a car manufacturer adopts and develops a design for a particular aspect of vehicular performance aimed at meeting a federally-mandated level of safety -- which will as a matter of practical necessity, fall somewhere short of perfect and absolute crash resistance -- the governmental agency and the manufacturer know that there is a risk that under more stressful and hazardous conditions, the car may fail.

Under the District Court's reasoning, however, car manufacturers will be liable for punitive damages whenever they sell a car knowing that it will not be as crash resistant at crash speeds greater than those for which they designed the car. Presumably, if Chrysler had designed the Volare to withstand rear-end collisions of 50 m.p.h. or 60 m.p.h., knowing that at 65 m.p.h. the fuel tank system might fail, the District Court, under its reasoning, would find this "reckless indifference" to human life. Florida law cannot permit such an unjust result.



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This Court has made it clear that a manufacturer cannot be required to design a perfect product or to eliminate all risk from its product. *See, e.g., West v. Caterpillar Tractor Co.*, 336 So.2d 80, 86-87 (Fla. 1976); *Ford Motor Co. v. Evancho*, 327 So.2d 201, 204 (Fla. 1976). *See also Husky Industries Inc. v. Black*, 434 So.2d 988, 991 (Fla. 4th DCA 1983); *Builders Shoring & Scaffolding Equipment Co. v. Schmidt*, 411 So.2d 1004, 1007 (Fla. 5th DCA 1982) ("failure to make the device foolproof does no . . . make the product defective"). In the field of automotive engineering, this means, of course, that a car manufacturer is not required to design an absolutely safe car, nor in the context of this case, a car which is invulnerable at any speed.[7/] *Ford Motor Co. v. Evancho*, 327 So.2d at 204. It is reasonable safety which is required, and a reasonably safe design, not absolute safety or design perfection. Id. See also, *Hurt v. General Motors Corporation*, 533 F.2d 1181, 1184 (8th Cir. 1977) ("No doubt the manufacturers of automobiles could design and build an automobile with the strength and crash-damage resistance features of an M-2 army tank. I believe the average and reasonable automobile user desires only a reasonably safe, economical form of motor transportation. No greater burden of design-performance ought to be imposed upon automobile manufacturers by either judge or jury").

Thus, this case presents, initially, a question of what level of crash resistance could and should have been reasonably expected from the fuel tank system of the Volare. Although opinions may differ on this issue, Chrysler's adherence to a federal safety standard, adopted by a federal agency specifically charged with ensuring motor vehicle safety, cannot as a matter of law constitute the type of conduct equivalent to criminal manslaughter required under the *Carraway* standard to support a punitive damage award.

FMVSS 301 specifically and comprehensively addresses the question of how crash-resistant the fuel tank system of a car must be before it can be deemed safe enough to be

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7/ Indeed even if it were possible to manufacture such a car, it is doubtful whether it would be desirable. It does not take much imagination to envision what such a car would look like, how much it would weigh, how much gas it would use, or how much it would cost.



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sold to consumers. Although FMVSS 301 does not purport to tell manufacturers how they must design their cars, it establishes a series of crash tests which the fuel tank system of a car must successfully survive before the car can be sold.

The level of crashworthiness required by FMVSS 301 is not an arbitrary standard nor, as the plaintiff suggested, is it unrealistically low. FMVSS 301 was promulgated by the National Highway Traffic Safety Administration ("NHTSA") pursuant to the Safety Act which mandates that any safety standards adopted a) "meet the need for motor vehicle safety" and b) are "reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed." 15 U.S.C. Section 1392 (a) and (f)(3). The Safety Act also requires that in developing safety standards, the Secretary of Transportation undertake a detailed factual investigation which involves, *inter alia*, conducting experiments and tests on cars and accumulating data on motor vehicle accidents and injuries. 15 U.S.C. Section 1395. Moreover, NHTSA has an obligation to investigate claims of safety defects and to order a recall or other steps be taken to remedy problems involving vehicular safety. 15 U.S.C. Section 1412 (b).

Thus, the performance standards set forth in FMVSS 301 are, by law, the result not only of a detailed factual investigation by a government agency (NHTSA) which clearly possesses a special expertise in the area, but are also the result of a reasoned balancing test, or calculus, which weighs the safety needs of car users against such considerations as feasibility and cost.

Chrysler does not here contend that NHTSA's reasoned conclusion on this issue necessarily precludes a jury from conducting its own balancing test or from resolving that balancing test differently than did NHTSA. In other words, Chrysler is not challenging in this case the jury's right to have imposed liability for compensatory damages. Chrysler does submit, however, that to find it guilty of "reckless indifference" to human safety for adopting the NHTSA safety standard as its performance goal, instead of some higher standard, is to find NHTSA itself -- an agency statutorily charged with

the responsibility of enacting standards that "meet the need for motor vehicle safety" -- guilty of reckless indifference to human life. This is a conclusion which is, on its face, patently absurd.

Moreover, it is no answer to say that the FMVS standards represent merely "minimum" standards of safety. All standards, by definition, are "minimum" standards. The level of the maximum required by Congress is that the standard be "reasonable" and "meet the need for motor vehicle safety". It may be presumed that if NHTSA, an agency with considerable authority and expertise, did not feel that its standards ensured a reasonable level of safety or met "the need for motor vehicle safety," it would have changed those standards. It has not done so. FMVSS 301, the standard at the time the 1977 Volare was built, continues to remain the safety performance standard for fuel tank systems today.

Chrysler does not ask this Court to declare a rule which would preclude liability for punitive damages whenever an allegedly defective product conforms to applicable safety regulations. Chrysler believes, however, that such liability should be precluded as a matter of law under the following circumstances, each of which are present here:

> *1) a government agency with special expertise is statutorily required to promulgate safety standards for the product involved;*
>
> *2) the agency promulgates a safety standard which specifically addresses the characteristic or part of the product alleged to be defective;*[8/]
>
> *3) there is no showing that the investigative or decision-making process by which the standard was adopted was arbitrary or capricious, or that the standard adopted is patently unreasonable in terms of the degree of safety it provides;*
>
> *4) the product conforms to the safety standards.*

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8/ It is this second factor which distinguishes this case from the decision in Dorsey v. Honda Motor Company, Ltd., 655 F.2d 650 (5th Cir. 1981) (applying Florida law). In Dorsey, although some parts of the vehicle met federal safety standards, there were no federal safety standards which applied to the specific aspect of vehicular performance challenged by the plaintiff -- the strength of the "A-pillar" (which collapsed inward crushing the plaintiff's head) and the overall strength and crash-resistance of the passenger compartment. Id. at 657.

There is no evidence in the record which implicates in any way, the integrity of the process used by NHTSA in adopting FMVSS 301, or the integrity with which NHTSA conducted the statutorily-mandated balancing test of risk, feasibility, and cost. Moreover, there is no evidence in the record to show that the required performance test (which the Volare passed) was unreasonable in any respect in light of statistics on impact speeds in typical real-life rear-end collisions. Although both the plaintiff and the District Court repeatedly referred to the barrier crash impact test as the "30 m.p.h. test", thus implying that such a test was conducted at speeds which were unrealistically low, the evidence is undisputed that the test actually duplicates the forces involved in crashes between stationary vehicles and cars traveling at speeds of 45 m.p.h.

Chrysler's failure to ensure that the fuel tank system of the Volare would withstand rear-end collisions of the magnitude involved in the Wolmer accident cannot form the basis for a punitive damage award. Although a jury may find a manufacturer negligent for failing to design cars which exceed federal safety standards, the fundamental question on which punitive damage liability turns is whether a failure to exceed a reasonable federal safety standard constitutes conduct equivalent to manslaughter. Under the circumstances presented here, the answer is a clear "No."

B.

The Evidence Was Insufficient as a Matter of Law to Establish Chrysler's Knowledge of a Defect

The insufficiency of the evidence begins and ends with a simple fact: the jury in this case found that the Chrysler Volare was neither defective in design nor unreasonably dangerous. So, too, the federal agency charged by Congress with the responsibility for establishing vehicular safety standards found that the performance standard that this car met satisfied the need for motor vehicle safety and was reasonable. And yet, plaintiff contended on appeal, and the District Court found, that Chrysler knew there was a defect



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in this vehicle. This cannot be. Surely Chrysler cannot be deemed to know of a defect when both the federal agency and the jury in this case found that there was no defect.

Judicial screening of punitive damages claims is the primary safeguard against the unwarranted imposition of punitive damages. As this Court has held, "(i)t is in the province of the trial court to determine as a matter of law whether or not there is a basis for punitive damages . . . ." *Buie v. Barnett First National Bank*, 266 So.2d 657, 659-60 (Fla. 1972) (emphasis added). In making that determination, the court must ask whether "some reasonable basis for an inference of wantonness, actual malice, deliberation, gross negligence, or utter disregard of law on defendant's part may be legitimately drawn by the jury trying the case". Id. at 659 (emphasis added). Here, the trial court was entirely correct in its conclusion that under no reasonable view of the evidence could the jury legitimately infer that Chrysler had acted with the degree of wanton misconduct necessary to justify the imposition of punitive damages under the law of this state.

It is important that trial courts employ their authority to articulate, as a matter of law, what does and what does not constitute a reasonable basis for an award of punitive damages. Courts, including the United States Supreme Court, have recognized the dangers posed by excess punitive damages. See e.g., *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974) (noting that juries "assess punitive damages in wholly unpredictable amounts bearing no necessary relation to the actual harm caused"); *In re: Paris Air Crash*, 622 F.2d 1315 1319-20 (9th Cir.), cert. den., 499 U.S. 976 (1980) (referring to the "serious and often unpredictable effects of allowing actions for punitive damages").

Courts also have recognized that the problem is particularly acute in product liability litigation:

> *Defendants in this area of litigation are generally manufacturers and frequently, as is the case here, large national concerns that command little sympathy from jurors. Plaintiffs in these cases, on the other hand, often have been injured severely, normally while exercising due care for their own safety. Furthermore, punitive damages are subject to abuse because they have little or no relation to the actual damages suffered by a plaintiff ... [J]udgments for punitive damages are now routinely entered across the nation, and staggering sums have been awarded.*



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*Moore v. Remington Arms Co.*, 100 Ill. App. 3d 1102, 1114, 427 N.E.2d 608, 617-17 (1981). See also Owen, "Problems in Assessing Punitive Damages Against Manufacturers of Defective Products", 40 Chi. L. Rev. 1, 56-57 (1982) (emphasizing that "the risks of an erroneous jury award of punitive damages in a products liability case are so great, as is the probability that the error will contaminate the entire case, that trial courts should give especially careful consideration to motions [for summary judgment, directed verdicts, judgments notwithstanding verdicts, and new trials]").

Plaintiff's claim for punitive damages rests exclusively on his contentions that Chrysler had actual knowledge that the design of the fuel tank system of the Volare would, i) in rear-end collisions at speeds greater than those tested by Chrysler, cause the shock absorber to break off and puncture the tank and ii) cause the fuel filler tube to pull out entirely from the gas tank. Plaintiff attempted to prove these contentions by introducing a series of reports containing tests results from a variety of tests -- including sled tests, rollover tests, and rear-end collision tests -- performed by Chrysler during the developmental stage of the Volare. In all, evidence of some 20 tests was introduced, each of which was carefully reviewed by the trial court in ruling on the post-trial motions.

Taking all of the evidence introduced by plaintiff, four irrefutable facts stand out:

*1) In no test performed by Chrysler prior to sale of the Wolmer vehicle did the rear shock absorber break off;*

*2) In no test performed by Chrysler did the rear shock absorber puncture the gas tank;*

*3) In no rear-end crash test involving the production design fuel tank did the fuel filler tube pull out of the gas tank and cause a fuel leakage as the result of any uncorrected defect;*

*4) The production design Volare successfully withstood each of the rigorous fuel systems integrity tests set forth by FMVSS 301.*

Plaintiff's contention that Chrysler knew or should have known that in crashes involving speeds greater than 45 m.p.h. (the equivalent speed at which it tested), these problems might occur, rested on the following evidence:



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*1) In some of the tests conducted, the gas tank came into contact with the rear shock absorber;*

*2) In several sled tests and in one rollover test (not a rear-end collision test), the fuel filler tube slipped out and in one rear-end barrier crash test the tube slipped out 1/10 of an inch, causing no leakage.*

These facts cannot sustain any reasonable inference that Chrysler had knowledge of any defect in the design of the Volare which might cause the fuel system to fail at the crash speeds involved in the Wolmer accident. Although the rear shock absorbers contacted the gas tank in some of the tests performed, contact between a tank and other underbody members is expected to occur in motor vehicles in impacts of even moderate severity due to impact forces and the consequent crush of the body structure -- a phenomenon conceded by plaintiff's own engineer. (T: 851-52; see also 1364). In the Volare, Chrysler's engineers had devoted considerable effort to (1) reducing the degree of contact between the tank and other underbody members, and (2) assuring that all other members, including the shocks, were smooth, rounded and unlikely to cause a puncture or breach in the tank on contact.[9/] The puncture in the Wolmer's vehicle tank was not caused by the type of contact with the "friendly" surfaces of the shocks noted in the development tests, but by contact with the jagged edge of the left shock absorber's arm produced when that member broke in the impact. No shock absorber broke -- or even suffered deformation -- in any of the tests conducted by Chrysler prior to the manufacture and sale of the Wolmer vehicle. Chrysler's efforts at providing additional clearance and reducing potential contact between the tank and shocks and its efforts to make potential contact surfaces friendly does not constitute "reckless disregard".

Similarly, in each sled test in which the fuel filler tube slipped out (Pl. Ex. 23-27), the slippage was caused by the failure of the metal straps holding the gas tank. These straps broke, allowing the gas tank to sag or drop away from the car which in turn,

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9/ Significantly, even in an impact the magnitude of that in the Wolmer accident, there was no breach produced in the tank by any contact with these rounded and smooth-surfaced members, including the unbroken right shock. (T: 1463-65). Even Plaintiff's expert conceded that contact with the rounded surface of a shock absorber could not breach the fuel tank. (T: 794).



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partially pulled out the tube. This problem with the weakness in the straps was corrected (See above), and indeed, the straps held properly in the Wolmer accident. In the one barrier crash test which did result in some slippage, the tube pulled out 1/10 of an inch, but there was no fuel loss on impact. This test was conducted to evaluate a modified fill tube (Test VC 1288, Pl. Ex. 31). In subsequent tests, including the compliance test, this problem did not occur with the fill tubes then used.

The plaintiff, and the District Court of Appeal, also tried to make much of a memorandum drafted by Chrysler's engineers. (Pl. Ex. 29). The plaintiff alleged, and apparently convinced the District Court, that this memorandum "concedes" that the Volare only "marginally" met the standards of FMVSS 301. This document, on its face, cannot bear this construction as it plainly refers to the ability of the Volare to withstand the front-angle collision tests of FMVSS 301, not the rear-end collision tests. (See T: 1288).

Despite the absence of any evidence that Chrysler had actual knowledge of any defect in the Volare's fuel system, the plaintiff contended, and the District Court apparently agreed, that Chrysler was recklessly indifferent to human life because it was "clearly foreseeable" that at crash speeds greater than 45 m.p.h., the shock absorber, as a result of the greater force involved, might break and rupture the tank and the fuel filler tube might slip out completely. The District Court and the plaintiff, however, are fundamentally wrong in failing to distinguish between knowledge of a defect and knowledge of a risk. Although Chrysler's engineers may have been negligent in failing to perceive and guard against the risks involved in collisions at greater speeds, there is no evidence that they knew of any actual defect in the car. Knowledge of a risk alone does not warrant the imposition of punitive damages. Indeed, it cannot be otherwise, for whenever a car is designed, there is always the risk that at some greater level of stress than that tested either the design or the materials might fail.

Moreover, a conclusion that Chrysler knew of a defect would fly in the face of the jury verdict. Although the District Court's opinion states that the jury could reasonably



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infer that Chrysler knew that the Volare was "inherently dangerous", the jury plainly concluded just the opposite. In answers to special interrogatories, the jury found that the Volare as sold was neither defective nor "in a condition unreasonably dangerous to the user." (R: 2090).

The testimony of plaintiff's expert witness that Chrysler's alleged conduct constituted "reckless indifference" cannot supply "proof" of what the evidence in the record failed to substantiate. As the Court in *Palm Beach County v. Town of Palm Beach*, 426 So.2d 1063 (Fla. 4th DCA 1983) recognized in ruling that an expert could not properly opine upon an ultimate issue where the testimony was couched in terms embracing a legal standard: "Regardless of the expertise of the witness, generally, and his familiarity with legal concepts relating to his specific field of expertise, it is not the function of the expert witness to draw legal conclusions. That determination is reserved to the trial court". Id. at 1070.

Similarly, in the instant case, it may have been appropriate for the plaintiff's expert to testify regarding the purported defects in the design of the 1977 Volare, but it was not his function to draw legal conclusions. The latters, as the Court made clear in *Palm Beach County*, involves a determination properly reserved to the trial court. In the instant case, of course, the Trial Court determined that the evidence did not support the legal conclusion advanced by the expert. The District Court of Appeal erred in permitting the conclusory testimony of plaintiff's expert to supplant the reasoned legal opinion of the trial judge.



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III.

THE DISTRICT COURT ERRED IN HOLDING THAT THE ORDER OF THE TRIAL COURT GRANTING A DIRECTED VERDICT AND JUDGMENT N.O.V. COULD NOT BE SUPPORTED BY THE SPECIFIC FINDINGS OF THE JURY THAT NO DEFECT OR DANGEROUS CONDITION EXISTED ON THE VOLARE.

In its verdict on the basic liability issues, the jury entered its determination that the Volare was neither defective nor in a condition unreasonably dangerous when sold. Accepting this specific finding as a datum in reviewing the sufficiency of the evidence to support a claim for punitive damages, it is clear that the evidence in the record falls far short of that which is sufficient to meet the requirements of the *Carraway* standard. Since the Plaintiff's punitive damage claim was predicated on his contention that Chrysler marketed a vehicle which it knew to be defective and unreasonably dangerous, the existence of a defect or dangerous condition in the Volare was an essential element in his punitive damage equation. The absence of a defect or dangerous condition would thus invalidate the equation and eliminate the claim.

The District court acknowledged the force of this point, but held that a jury's determination of particular issues in its verdict could not be considered by a trial judge in entering a post-trial order for directed verdict or judgment N.O.V.

Although the District Court found no authority directly upon this issue, the opinion of this Court in the case of *Bankers Multiple Line Ins. Co. v. Farish*, 464 So.2d 530 (Fla. 1985) specifically evaluated the evidentiary support for a verdict in light of a jury's determination of other issues in the case. The plaintiff had sued Bankers and its agent, MacArthur, for tortious interference with contract. The jury exonerated MacArthur, but found Bankers liable for compensatory and punitive damages. Bankers filed a motion for judgment in accordance with motion for directed verdict contending that since the jury exonerated its agent, then Bankers, as principle, could have no liability.[10/] This court

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10/ See Farish v. Bankers Multiple Line Ins. Co., 425 So.2d 12, 19 (Fla. 4th DCA 1982).



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held that Bankers would have prevailed on this point but for the fact that other officers of the company had involvement independent of MacArthur which, although admittedly tenuous, was sufficient to support a finding against Bankers and to require affirmance of the order of the trial judge denying judgment in accordance with motion for directed verdict.

Thus, this Court accepted the jury's determination of an underlying issue -- the agent's liability -- as an established datum in reviewing the evidence to determine if there was adequate support for a secondary issue -- the principal's liability. In the present cause, the District Court chose not merely to reject this principle in evaluating the evidentiary support for punitive damages; it went further, and ignoring the jury's determination that no defect or dangerous condition existed in the Volare, predicated its holding on the existence of that very thing that the jury found not to exist.



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## IV.

## THE DISTRICT COURT OF APPEAL ERRED IN DISREGARDING THE EXPRESS PREEMPTION PROVISION IN THE SAFETY ACT, WHICH PROHIBITS A CLAIM FOR PUNITIVE DAMAGES UNDER THE CIRCUMSTANCES PRESENTED IN THE INSTANT CASE.

The "Supremacy Clause" of the United States Constitution (Art. VI, cl. 2) requires that all conflicts between federal and state law be resolved in favor of federal law.

> *This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, and any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*

To preserve federal supremacy, this Court as well as the United States Supreme Court has invalidated state laws that conflict with the exercise of federal power. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436 (1819); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 210-11 (1824); *Sheetmetal Workers International Association v. Florida Heat & Power, Inc.*, 230 So.2d 154 (1970); *Atlantic Coast Line Railroad v. Chase & Co.*, 109 Fla. 50, 146 So. 658 (1933).

Principles of federal preemption also apply where, as here, it is not state statutory law that creates a conflict with federal law, but rather it is the state's judicial power to regulate conduct through an award of damages under state tort law that establishes an unavoidable and impermissible conflict with federal law. As the United States Supreme Court has reasoned:

> *[R]egulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy. Even the State's salutary effort to redress private wrongs or grant compensation for past harm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme.*

*San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 246-47 (1959) (citation omitted). *See also Chicago & Northwestern Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 327 (1981) (preempting state common law damage action for a carrier's negligent failure to maintain a roadbed and for tortious interference with contractual relations); *Old*



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*Dominion Branch No. 496, National Association of Letter Carriers v. Austin*, 418 U.S. 264, 271-72 (1974) (preempting state common law damage action for libel); *Sears, Roebuck & Co. v. Stiffell Co.*, 376 U.S. 225, 229-31 (1964) (preempting state common law action for unfair competition).

The rationale of these cases applies all the more forcefully where, as here, the challenged exercise of state judicial power -- i.e., the award of punitive damages -- is, by its very nature, specifically aimed at regulating conduct. As this Court recently held: "Punitive damages are awarded to punish the wrongdoer and to deter the commission of similar acts in the future." *St. Regis Paper Co. v. Watson*, 428 So.2d 243, 247 (Fla. 1983).

Federal preemption may occur (i) if Congress, in enacting the federal law at issue, expressly indicates an intention to preempt state law, e.g., *Shaw v. Delta Air Lines*, 463 U.S. 85 (1983); or (ii) if, in the absence of an express preemption provision, Congress otherwise indicates an intent to occupy an entire field of regulation, e.g., *Fidelity Federal Savings & Loan Association v. de la Cuesta*, 458 U.S. 141, 153 (1982); or (3) if state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67-68 (1941), or merely "frustrates the objectives of the [federal] Act in some substantial way," *Edgar v. MITE Corp.*, 457 U.S. 624, 632 (1982).

The plaintiff's claim for punitive damages in the instant case is preempted under the first and third of these principles. The language of the Safety Act and its legislative history demonstrate that Congress envisioned a comprehensive and uniform federal regulatory scheme designed to promote increased safety for persons involved in automobile accidents. To that end, Congress placed "primary responsibility" for setting safety standards "squarely upon the Federal Government." S. Rep. No. 1301, 89th Cong., 2d Sess., reprinted in [1966] *U.S. Code Cong. & Ad. News* 2709, 2712. Thus the Safety Act, in clear, unequivocal language, prohibits states from establishing or maintaining "any



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safety standard" that is "not identical" to federal standards "applicable to the same aspect of performance." 15 U.S.C. Section 1392(d).

In addition to this express preemption provision, plaintiff's punitive damage claim is also barred under the principle of conflicting purposes. The imposition of punitive damage liability under state tort law would interfere substantially with the congressionally-mandated objective that "industry be guided by one set of criteria rather than a multiplicity of diverse standards." H.R. Rep. No. 1776, 89th Cong., 2d Sess. 17 (1966).

A.

The Federal Safety Act and its Implementing Regulations Expressly Preempt Plaintiff's Punitive Damage Claim

In the Safety Act, Congress required the Secretary of Transportation to prescribe Federal Motor Vehicle Safety Standards that "meet the need for motor vehicle safety" and that are "reasonable, practicable and appropriate." 15 U.S.C. Section 1392 (f)(1) & (2). These safety standards constitute a mandatory scheme of regulation aimed at improving motor vehicle safety in the United States. 15 U.S.C. Section 1381. The more than fifty different standards, each applying to a particular component system of the motor vehicle, encompass many, but certainly not all, of the essential safety-related aspects of automotive design and performance. The regulations implementing these standards are extensive. See 49 C.F.R. Section 571.

The standards adopted by the Secretary preempt all state regulations governing a particular aspect of vehicular performance that differ in any way from the federal standard. More specifically, the Safety Act provides:

> *Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment, any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard.*



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15 U.S.C. Section 1392 (d) (emphasis added). This explicit and unambiguous preemption clause is exceptionally broad and written in the "strongest possible terms"; it prohibits any state standard relating to the same aspect of performance -- whether that state standard is higher or lower than the federal standard. *Chrysler Corp. v. Tofany*, 419 F. 2d 499, 512 (2d Cir. 1969) (Friendly, J., concurring).

As other courts have found, Section 1392 (d) preempts state motor vehicle safety standards whenever those standards have been both "applicable to the same aspect of performance" and "not identical to" a Federal Motor Vehicle Safety Standard. *Vehicle Equipment Safety Commission v. National Highway Traffic Safety Administration*, 611 F.2d 53, 55 (4th Cir. 1979) ("Federal promulgation of such safety standards precludes state regulation dealing with the 'same aspect of performance of . . . vehicle[s]'"); *Juvenile Products Manufacturers Association v. Edmisten*, 568 F. Supp. 714, 718 (E.D.N.C. 1983) ("Congress designed a scheme which insured national uniformity. This approach, evidenced conclusively by the language of the federal statute and its accompanying regulations, provides perhaps the strongest indication of a congressional intent to preempt state regulations").

In the instant case, plaintiff's claim was predicated upon the allegation that the design of the Chrysler vehicle as it related to fuel tank integrity following a rear-end collision was woefully inadequate. (See Plaintiff's Amended Complaint at paragraph 34) Federal Motor Vehicle Safety Standard ("FMVSS") 301 governs the precise aspect of vehicular performance challenged by plaintiff. The regulations implementing FMVSS 301 provide, in pertinent part:

> *S1. Scope. This standard specifies requirements for the integrity of motor vehicle fuel systems.*
>
> *S2. Purpose. The purpose of this standard is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after motor vehicle crashes.*

49 C.F.R. Section 571.301. Sections S6.2-S6.5 provide for the range of crash test impact modes: vehicles are to be impacted in the front, both at a perpendicular angle and at



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angles up to 30 degrees from the perpendicular; they are to be impacted from the rear and from each side. Finally, subsequent to impact testing, each vehicle must be subjected to a 360 degree static rollover test.

The implementing regulations thus prescribe testing modes covering the full ambit of anticipated impact and post-impact conditions that might compromise fuel system integrity. Of particular application to the present case, Section S6.2 provides:

> *Rear moving barrier crash. When the vehicle is impacted from the rear by a barrier moving at 30 mph, . . . fuel spillage shall not exceed the limits of S5.5.*

Section S5.5, setting forth the performance criteria for fuel system integrity, states:

> *Fuel spillage: Barrier crash. Fuel spillage in any fixed or moving barrier crash test shall not exceed 1 ounce by weight from impact until motion of the vehicle has ceased, and shall not exceed a total of 5 ounces by weight in the 5-minute period following cessation of motion.*
>
> *For the subsequent 25-minute period...fuel spillage during any 1-minute interval shall not exceed 1 ounce by weight.*

Here, then, we have a pervasive regulatory scheme governing the integrity of vehicular fuel systems, and we have a specific regulation establishing performance standards for assessing the integrity of motor vehicle fuel systems in rear-end impact situations.

The evidence in this case established without contradiction that the final production design model of the 1977 Volare stationwagon involved in Mrs. Wolmer's accident fully complied with the requirements of this standard. (See Def. exh. 2; Pl exh. 20; Tr. 341, 1203-05, 1227-40, 1589). Reduced to its essentials, the basis of the plaintiff's punitive damage claim was the contention that the fuel system design of the 1977 Volare was not adequate, in one or more of several particulars, to maintain its integrity and protect vehicle occupants from injury in the event of a rear-end collision. This is set forth explicitly in paragraph 34 of Plaintiff's Amended Complaint:

> *34. Such tests proved conclusively to Defendant, Chrysler, that the basic design of its cars as related to fuel tank integrity following rear-end crashes, was totally inadequate to prevent fuel leakage in grossly excessive quantities.*

(R. 2021).

It is clear, then, that the conduct which the plaintiff sought to make the subject of punitive damage liability fell precisely within the ambit of conduct regulated by FMVSS 301 -- the design of the fuel system of the Volare and the sufficiency of the testing procedures utilized by Chrysler to develop and analyze the performance of that design. In essence, the gravamen of the claim for punitive damages is that the common law of this State requires that Chrysler, in the design and testing of its vehicles, meet a higher standard than that prescribed by FMVSS 301. This conclusion flows, inescapably, from the very nature and judicially-articulated purpose of punitive damages in this State: to punish and to deter, that is, to compel or regulate conduct, under threat of penalty. *United States Concrete Pipe Co. v. Bould*, 437 So.2d 1061, 1066 (Fla. 1983) (Ehrlich, J. concurring); *St. Regis Paper Co. v. Watson*, 428 So. 2d 243, 247 (Fla. 1983). See also J. Ghiardi & J. Kircher, *Punitive Damages Law and Practice*, Section 2.06-2.09 (1981).

Because the award of punitive damages in the instant case thus constitutes, as a practical matter, the establishment of a standard not identical to the federal standard governing the precise aspect of performance upon which plaintiff's claim for punitive damages was predicated, the District Court of Appeal's reinstatement of that award stands in irreconcilable and unconstitutional conflict with the express preemption provision embodied in Section 1392(d) of the Safety Act.

B.

Plaintiff's Punitive Damage Award
Stands as a Significant Impediment to
the Accomplishment of the Full Purposes
and Objectives of the Safety Act and Is
Therefore Prescribed by the Supremacy Clause

State regulation of motor vehicle safety through punitive damage liability violates a "controlling principle" underlying the Supremacy Clause: it frustrates the implementation and full effectiveness of the purposes of the Safety Act. Cf. *Perez v. Campbell*, 402 U.S. 637, 652 (1971). The legislative history of the Safety Act demonstrates



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Congress' intent to assure that safety standards governing motor vehicles sold and used all over the country would be uniform throughout the nation:

> *The centralized, mass production, high volume character of the motor vehicle manufacturing industry in the United States requires that motor vehicle safety standards be not only strong and adequately enforced, but that they be uniform throughout the country.*

S. Rep. No. 1301, 89th Cong., 2d Sess., reprinted in [1966] U.S. Code Cong. & Ad. News 2709, 2720 (emphasis added). Indeed, the express preemption provision set forth in Section 1392 (d) was enacted to achieve this precise goal:

> *Basically, this preemption subsection [Section 1392 (d)] is intended to result in uniformity of standards so that the public as well as industry will be guided by one set of criteria rather than by a multiplicity of diverse standards.*

H.R. Rep. No. 1776, 89th Cong., 2d Sess. 17 (1966) (emphasis added).

Compelling vehicle manufacturers, through the coercive threat of punitive damage liability under state law, to seek to conform their conduct to evanescent standards set through ad hoc jury determinations, necessarily impedes the congressional goal of securing "uniformity" in vehicular safety standards. At the same time, such an approach unwarrantedly deprives members of the motor vehicle industry of the single and clearly defined set of criteria which Congress intended they should be able to rely upon in governing their conduct. The preemption doctrine plainly invalidates any state law that would thus "stand[] as an obstacle to the accomplishment of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). The District Court of Appeal, relying upon an elliptical reading of the decisions in *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984) and *Elsworth v. Beech Aircraft Corp.*, 37 Cal. 3d 540, 691 P.2d 630, 208 Cal. Rptr. 874 (1984), cert. denied, 105 S. Ct. 2345 (1985), as well as the general "savings" clause in the Safety Act, erred in concluding otherwise.

In *Silkwood*, the defendant owned and operated a plant in which plutonium fuel pins for use in nuclear power plants were fabricated. Pursuant to the Atomic Energy Act, the release of and exposure to radioactive materials in the defendant's plant were subject to regulations that had been promulgated by the Nuclear Regulatory Commission. One of



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the defendant's employees, who claimed to have been contaminated by nuclear material in the workplace, brought an action against the defendant based on common law tort principles under Oklahoma law. 464 U.S. at 241-43. Following a trial in which the plaintiff prevailed on her claims for both compensatory and punitive damages, the United States Court of Appeals for the Tenth Circuit, adopting a broad preemption analysis, vacated the punitive damage award, holding that because of the federal statutes regulating procedures at the defendant's plant, punitive damages could not be awarded. Id. at 245-46.

On appeal, the United States Supreme Court disagreed with the Tenth Circuit, reasoning that the field preempted by the Atomic Energy Act did not extend so far as to encompass the plaintiff's claims. Unlike the Federal Safety Act at issue in the instant case, the federal law involved in *Silkwood* contained no express preemption provision. Rather, the preemptive effect of the Atomic Energy Act had been inferred by the Court in an earlier decision in which an examination of the statutory scheme and legislative history of the federal law governing nuclear safety persuaded the Court that Congress intended to preempt state regulation. Id. at 249-50.

Thus the issue presented in *Silkwood* was whether the imposition of punitive damage liability on the defendant fell within the scope of that inferred preemption. In concluding that it did not, the Court looked to the primary purposes underlying the Atomic Energy Act -- the promotion of nuclear power and the encouragement of widespread participation in the safe development and utilization of atomic energy -- and reasoned that an award of punitive damages in the case before it would not hinder the accomplishment of those purposes. Id. at 257.

In relying on the decision in *Silkwood*, the District Court of Appeal ignored critical factual and public policy considerations at the very heart of the instant case, which render the ruling in *Silkwood* inapplicable to the issues raised in the instant appeal. First the Federal Safety Act at issue here not only includes an express preemption provision,



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but that provision describes precisely those circumstances under which federal law will displace state law. As previously discussed, Section 1392 (d) requires preemption where, as here, the exercise of state law is aimed directly at a specific aspect of vehicular performance that is addressed in detail and comprehensively in a regulation adopted for the express purpose of implementing the nationwide goals underlying the federal regulatory scheme.

Second, unlike here, the conduct challenged by the plaintiff's common law claim for punitive damages in *Silkwood* implicated only localized activity having no impact on the broader national concerns or purposes underlying the federal law and regulatory scheme at issue. In essence, the claim in *Silkwood* was aimed solely at punishing and deterring the defendant from continuing those unsafe practices within its plant that allegedly exposed employees to an unreasonable risk of harm in the workplace. In sharp contrast, the punitive damage claim in the instant case challenges conduct that necessarily has substantial implications with respect to interstate commerce and the federal goal of assuring that one set of uniform motor vehicle safety standards prevails throughout the country.

As discussed earlier, the legislative history of the Safety Act reveals Congress' recognition that by its very nature the motor vehicle industry requires nationally uniform standards to rely upon in designing and manufacturing products that are mass produced and distributed for use across the country. Indeed, automobiles and their component parts may be designed in one state, manufactured in another, assembled in still another, and, quite obviously, driven in and across many other states. Moreover, because automobile accidents occur in, and involve residents of, every state, manufacturers necessarily are exposed to the risk of lawsuits predicated upon alleged defects in their products under the common law of fifty different jurisdictions.

Sensitive to the interstate implications of the activities of this industry and committed to promoting vehicular safety on all the nation's highways under one set of



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criteria, Congress enacted a preemption provision in the Safety Act with the goal of national "uniformity" of regulatory standards specifically in mind. The punitive damage claim in the instant case contravenes this federal goal, seeking to compel through the exercise of state law, the very "multiplicity of diverse standards" that Congress intended Section 1392 (d) to proscribe.

It is patently clear that the rule articulated in *Silkwood* -- i.e., where state law does not "frustrate any purpose of the federal remedial scheme," there is no preemption -- has no application to the instant case. Indeed, it is the corollary of that rule, expressly reaffirmed by the Court in *Silkwood*, that must govern here. As the Supreme Court made plain, it was "not suggest[ing] that there could never be an instance in which the federal law would preempt the recovery of damages based on state law." Indeed, federal law will "preempt the recovery of damages based on state law" where, as is clearly the case here, "the imposition of a state standard in a damages action would frustrate the objectives of the federal law." Id. at 256.

A contrary result is not, as the District Court of Appeal erroneously found, supported by the preemption analysis in *Elsworth v. Beech Aircraft Corporation*, 37 Cal. 3d 540, 691 P.2d 630, 208 Cal. Rptr. 874 (1984), cert. denied, 105 S. Ct. 2345 (1985). In that case, the parties did not raise, and the California Supreme Court did not address, any of the critical issues involving federal supremacy that are presented by the instant action. First, unlike here, no claim for punitive damages was asserted by the plaintiff in *Elsworth.* Second, and in further telling contrast to the present case, there is no mention in *Elsworth* of an express preemption provision in the federal statute, which, the defendant argued, preempted the plaintiff's claim.

Third, the central issue raised by the plaintiff's lawsuit in *Elsworth*, which was predicated upon the common law doctrine of negligence per se, was whether the allegedly defective product manufactured by the defendant was in violation of certain federal safety standards. In the instant case, of course, (i) no question has been raised as to the



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propriety of the plaintiff's recovery of compensatory damages based upon state common law of negligence; and (ii) there was uncontradicted testimony at trial establishing that the vehicle involved in plaintiff's decedent's accident complied with applicable federal regulatory standards.

Fourth, there is no mention of finding in *Elsworth* of an articulated congressional policy underlying the federal regulatory scheme at issue requiring, as here, nationwide uniformity of safety standards. Instead, the court in *Elsworth* determined only that the purpose of the regulations at issue was simply to "protect those who fly in airplanes," and therefore the plaintiff's common law claim, which sought to expose the defendant's failure to comply with certain specific safety regulations, would enhance rather than frustrate the purpose underlying the regulatory scheme. In sum, the decision in *Elsworth* is based entirely on issues that have no relevance to the instant case, and thus cannot support the District Court of Appeal's conclusion that the preemption analysis followed by the California Supreme Court leads to a similar result here.

Finally, noting that the Safety Act includes a general "savings" clause, the District Court of Appeal assumed without analysis that the apparent conflict between this clause and the preemption provision in Section 1392 (d) constituted a "tension" Congress apparently found tolerable. The "savings" clause provides:

> *Compliance with a Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law.*

15 U.S.C. Section 1397 (c). Under the circumstances of this case, where the imposition of punitive damage liability conflicts irreconcilably with federal motor vehicle safety policy and necessarily establishes a state standard "not identical to the Federal standard" -- results that are proscribed by the express terms and legislative history of Section 1392 (d) -- the "savings" and preemption clauses must be interpreted in a manner that harmonizes the underlying purposes of the provisions. Since Congress cannot properly be held to have intended to enact two provisions that cancel each other and are thus superfluous, the provisions must be construed *in pari materia.* See *Stafford v. Briggs*, 444 U.S. 527, 535



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(1980) ("[I]t is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute . . . and objects and policy of the law."), quoting *Brown v. Duchesne*, 60 U.S. (19 How.) 183, 194 (1857); cf. *Jerecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961).

Where, as here, a reasonable accommodation can be struck so as to preserve the policies underlying both the savings and preemption clauses without doing violence to principles of federal supremacy, there is no need to relegate Sections 1392 (d) and 1397 (c) to the amorphous sphere of "tense coexistence." Indeed, by construing Section 1397 (c) to "save" common law remedies but only to the extent that they do not establish a conflict with the purposes and policies of the Safety Act, such accommodation can be forged. Where, as here, for example, plaintiff challenges as defective an aspect of vehicular performance specifically and comprehensively governed by a federally-mandated regulation in the Safety Act, and it is established that the challenged product complied in all relevant respects with the requirements of that regulation, Section 1392 (d) ought to bar recovery of punitive damages as a matter of law. Where, on the other hand, such factors are not present, and a common law remedy can be harmonized with the purposes and policies of the Safety Act, Section 1397 (c) would "save" such a claim.

Such a reading, construing the apparently conflicting clauses *in pari materia*, is compelled by substantial Supreme Court authority holding that "savings" clauses cannot preserve common law remedies that conflict with a federal law or its policies. In *Texas & Pacific Railway v. Abilene Cotton Oil Co.*, 204 U.S. 426, 446-47 (1907), for example, the Court held that the Interstate Commerce Act precluded a common law action for damages for unjust and discriminatory rates, notwithstanding that the Interstate Commerce Act stated, even more categorically than the "savings" clause here:

> *Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies.*



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The Court recognized that it was impossible to interpret this language literally while giving effect to the broader purposes of the federal regulatory scheme. Concluding that the literal language of the "savings" clause had to yield, the Court held:

> *This clause, however, cannot in reason be construed as continuing in shippers a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the act. In other words, the act cannot be held to destroy itself.*

204 U.S. at 446. *Accord Chicago & Northwestern Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 331 (1981); *T.I.M.E. Inc. v. United States*, 359 U.S. 464, 473-74 (1959). In *Pennsylvania Railroad v. Puritan Coal Mining Co.*, 237 U.S. 121, 129-30 (1915), the Court explained Congress' intent in including the "savings" clause in the Interstate Commerce Act:

> *That proviso was added at the end of the statute, not to nullify other parts of the act, or to defeat rights or remedies given by preceding sections, but to preserve all existing rights which were not inconsistent with those created by the statute.*

Id. at 129.

In *Edgar v. MITE Corp.*, 457 U.S. 624 (1982), the Court found preemption, notwithstanding a provision in the federal statute preserving state law "insofar as it does not conflict with the provisions of [the federal act] or the rules and regulations thereunder." In construing the import of this provision, the Court held that although Congress did not "explicitly prohibit" state regulation, it left to the courts the task of determining whether state law conflicted with federal law. If such conflict were found, state law of course would be void. Id. at 631. Thus, in *Edgar*, even though there was "no contention that it would be impossible to comply with both [the federal act] and the more burdensome [state law]" the Court viewed the dispositive issue to be "whether the [state law] frustrates the objectives of the [federal act] in some substantial way." 457 U.S. at 631-32. Finding that the state law "upset the careful balance struck by Congress" and therefore stood as an "obstacle[] to the accomplishment and execution of the full purposes



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and objectives of Congress," the Court held that the "savings" clause did not prevent preemption. 457 U.S. at 634.

As the foregoing line of decisions from the Supreme Court makes clear, even where it would be possible to comply with both federal and state law, an irreconcilable conflict mandating resolution in favor of preemption occurs whenever, as here, state law would frustrate the purposes and policies of the federal statutory scheme in a substantial way. The District Court of Appeal erred, therefore, in finding that plaintiff's claim for punitive damages was preserved under Section 1397 (c). Under the circumstances presented in this case, Section 1392 (d) preempts plaintiff's claim for punitive damages.



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## CONCLUSION

For the reasons enumerated in the Argument above, the Petitioner, Chrysler Corporation, submits that the decision of the District Court of Appeal under review was in error. It respectfully requests that this Court quash the decision and remand this cause to the District Court with instructions to reinstate the Order of the Trial Court granting directed verdict and judgment N.O.V. upon the claim of the Plaintiff for punitive damages.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, by mail, this 31st day of March, 1986, to GIL A. HADDAD, ESQUIRE, Post Office Box 345118, Coral Gables, FL 33114; JOEL S. PERWIN, ESQUIRE, 1201 City National Bank Bldg., 25 West Flagler Street, Miami, FL 33130; EDWARD T. O'DONNELL, ESQUIRE, Suite 4500, 200 South Biscayne Boulevard, Miami, FL 33131-2378, and JOSEPH S. KASHI, ESQUIRE, Post Office Box 14723, Fort Lauderdale, FL 33302.

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