

## ABSTRACT

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*Tort Reform By Regulation: The National Highway Traffic Safety Administration Attempts to Preempt State-Sort Lawsuits with Its Proposed Roof-Strength Regulation*

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Abstract by Andrew Paul Kawel

The authors examine the National Highway Traffic Safety Administration's (NHTSA) Proposed Safety Standard 216 for vehicle roof strength and the agency's claim that the proposed rule preempts state tort lawsuits. The authors argue that NHTSA implicitly relied on *Geier v. American Honda Co.* in making such a claim, but that the Supreme Court incorrectly decided *Geier* in holding that the Safety Act, which empowers the Secretary of Transportation to set vehicle standards and delegate that authority to NHTSA, permits such NHTSA preemption power. In the authors' view, the *Geier* Court neglected to employ traditional tools of statutory interpretation that mandate the opposite result. Finally, the authors propound policy reasons that weigh against NHTSA's preemption of state tort lawsuits and conclude that NHTSA should withdraw Proposed Safety Standard 216 before it becomes a final rule.

The article highlights the Safety Act's saving clause that expressly provides that vehicle manufacturers may be liable under state tort law even if they comply with the federal safety standards. The authors see this potential liability at the state level as a powerful incentive for vehicle manufacturers to exceed federal safety standards. The authors argue not only that state tort lawsuits thereby further the Safety Act's goals of reducing vehicle injury and death, but also that such lawsuits are therefore not obstacles to the NHTSA safety standards and should not be susceptible to preemption. Furthermore, the authors believe that Congress should determine preemption but agencies should not.

Part I of the Article gives an overview of preemption law. Part II discusses the Safety Act and its relation to Proposed Safety Standard 216. Part III discusses the reasons why the Safety Act does not give NHTSA the authority to preempt state tort lawsuits and the faulty rationale of the *Geier* decision. Finally, Part IV discusses several policy reasons that caution against the application of NHTSA preemption power.