

How America's militant consumers fight for car safety

Stewart Dresner

The \$16m (£8.3m) suit brought against British Leyland in the United States last week over allegedly defective cars will be of serious concern to other companies in the American market.

The suit was brought by a group of consumers coordinated by the Centre for Auto Safety (CAS). It demonstrates the increasingly successful harnessing of a variety of legal techniques by consumer organizations to try to ensure that products perform the tasks for which they were designed, and do so in a manner which is safe to the user.

The CAS was established in 1970 by Ralph Nader together with Consumers' Union (the American counterpart of the Consumers' Association), but has been independent since 1973. It has concentrated its efforts on car safety and related issues and has had a remarkable degree of success which would have been difficult to achieve as merely a subsidiary interest of either of its founders.

The CAS operates from Washington and consists of a team of 15 lawyers, writers, researchers and engineers. It has been vigorous in promoting and using effective vehicle safety legislation with which it has counterebalanced the powerful American motor industry lobby.

The organization has fre-

quently and successfully petitioned the appropriate government department, the National Highway Traffic Safety Administration (NHTSA), to further car users' safety over the objections of the car manufacturers. This has resulted in regulations limiting the flammability of cars' interior materials; improving rear lights; ending the exemption from safety standards for vehicles weighing less than a ton; and raising the standards for energy-absorbing steering columns.

Because of its expertise on car issues, the CAS's lawyers frequently advise non-specialist lawyers and their clients on product liability law suits involving vehicle safety. The award of \$128m in compensation and punitive damages against the Ford Motor Company for a badly positioned petrol tank on its Pinto model in February this year is an exceptional example of what assiduous research and cooperation by engineers and lawyers can achieve.

It also gives manufacturers in general a strong economic incentive to produce safe products.

There is something of a parallel in the United Kingdom for these features of the CAS's work. For example, the Consumers' Association's *Motoring Which?* and the Automobile Association are represented in the work of British Standards Institution committees.

They are also consulted by the Department of Transport on car safety issues such as EEC draft directives on tyres, wing mirrors and the type of glass to be used in windscreens, though, as with tyres, "consultation" sometimes takes place after the decisions have been taken by the department, which makes the process a charade.

Similarly, both organizations offer their members legal advice.

In the United States, manufacturers of all consumer products are subject to mandatory "recalls". The United States Consumer Product Safety Commission has ordered manufacturers to recall and carry out corrective action on paint sprayers, anthrax contaminated imported yarn and babies' dummies.

One of CAS's most prominent areas of work is its campaigning for car manufacturers to recall faulty vehicles. However, owing to the size and value of the product, motor vehicles pose particular problems and manufacturers often fight extremely hard to resist a recall, as it is expensive and the manufacturers consider it detrimental to their image.

In the early 1970s the CAS had to rely mainly on consumers' letters (of which they have received well over 50,000 since 1970) to monitor the incidence of faulty design and components in cars. With this evidence and that of its engineers, the CAS was able to generate sufficient publicity to force the Ford Motor Company to announce the recall of more than 400,000 1972 Torinos and Montegos to replace faulty rear axles.

In the latter half of 1972 the CAS wrote nine letters to Gen-

eral Motors and the Department of Transportation demonstrating the need for a shield to prevent stones causing a locking of the steering system. As a result, in January 1973, General Motors announced a recall of 3.7 million of its 1971 and 1972 models.

Since 1974 the CAS has been able to supplement the evidence of its own letters by getting access to letters and other data in the files of the NHTSA. This was achieved only after a long battle.

The principle of public access to government documents was the purpose of the original 1967 Freedom of Information Act. However, the exemption covering "investigatory files compiled for law enforcement purposes . . ." was held by the department to be sufficient grounds to deny the CAS access to letters between itself and car manufacturers concerning possible safety-related defects.

The United States Court of Appeal agreed with the NHTSA. Nevertheless, in 1974, when the Freedom of Information Act was amended by Congress, the CAS successfully lobbied to ensure that the new investigatory records exemption would permit public access to such vital areas of legitimate general interest. The CAS, having battled to win the right of access, now uses it regularly.

When the NHTSA suspects that a vehicle has a design fault and decides to open an investigation, it informs the manufacturer and publishes the relevant information to bring it to the attention of the public. The CAS uses a combination of its information from the NHTSA's files and its own data to press publicly for the departments to order a recall of the defective vehicles.

It was a result of such research that the CAS in April, 1977, publicized alleged safety-related defects in British Ley-

land Jaguars, Triumphs, MGs, and Austins sold in the United States.

In the United Kingdom the situation is different. Here, the Department of Transport does not have the power of mandatory recall as an ultimate sanction. There is no right of public access to government information to investigate safety-related motor vehicle defects or anything else.

Last year in the United States a record 12.6 million vehicles were recalled, with 195 separate recall campaigns by United States manufacturers (including General Motors, Ford and Chrysler) involving 10.7 million vehicles, and 49 recalls by non-United States manufacturers involving 1.94 million vehicles. In the United Kingdom the Department of Transport declines to release information it may hold on the number of vehicles involved in voluntary recalls.

British Leyland, in its recent Teesside Crown Court case concerning wheels dropping off its Allegro cars, was said by the judge to have concealed the fault until there had been more than a hundred accidents. In the United States such hiding of the facts would have been impossible.

The carefully documented basis for the American suit against British Leyland not only demonstrates the vigour of the CAS and British Leyland's increasing accountability to its consumers. It is also a warning to manufacturers of all consumer products sold in the United States of the increasingly militant consumer lobby and the need to give safety a priority.

How long will it be before the consumer climate in the United Kingdom becomes equally hot for manufacturers?

The author formerly worked at the Consumers Association. © Stewart Dresner, 1978.