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Patterson crash could raise costly legal complications

By Chad Halcom

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The longer it takes for Oakland County Executive L. Brooks Patterson and his driver to recover from their injuries in an Aug. 10 auto collision, the more costly that recovery becomes — and who pays that cost could become a complicated legal question.

One wrinkle is that three out of the four men involved in the crash were not wearing seatbelts, which can carry a penalty against them if any of them goes to court to cover expenses for their injuries. Another is that several companies have connections to the Volkswagen Passat that struck Patterson's car, which could make insurance coverage difficult to sort out.

With no date set for his release from **McLaren Oakland Hospital** in Pontiac, and Auburn Hills police considering a possible criminal charge against the Passat driver, local experts said the facts of the case could be ripe for the civil courts.

Patterson, 73, and chauffeur James Cram, 60, of Owosso, remained hospitalized Friday at McLaren Oakland and **Detroit Receiving Hospital**, respectively, after the Chrysler 300 Cram was driving crashed into a Volkswagen Passat attempting a left turn in front of it at Opdyke Road and Walton Boulevard.

Patterson, who was in the front passenger seat of the 300, sustained a broken leg and hip, wrist fractures and a head cut, said Chief Deputy Executive Gerald Poisson.

Cram, a field claims investigator for the county Department of Risk Management and Safety who provides some on-duty security for Patterson, remained at the spinal trauma unit at Receiving. Poisson would not elaborate on Cram's injuries and said doctors "haven't shared" any information on if or when he might return to work.

"It's likely those are the kinds of injuries that meet the legal threshold for one or both of them to sue. But that's a moving target," said Jeffrey Bussell, an attorney at **Gursten, Koltonow, Gursten, Christensen & Raitt PC**, which does business as **Michigan Auto Law** in Farmington Hills.

"You'd have to look at all of the insurance policies affecting the other car (Passat) and driver, and see if there are any clauses that affect course-of-employment driving as well, to who's the primary insurer. There could be multiple coverages in play."

The Passat, a fleet vehicle owned by **Volkswagen Group of America Inc.**, was on loan to Farmington Hills-based **Robert Bosch LLC** as a marketing tool to promote its Bosch diesel fuel systems, and Bosch in turn had furnished the vehicle to a sales employee of Ferndale-based **WOMC 104.3 FM**, owned by **CBS Radio Inc.**

"As part of the marketing efforts, a media outlet was using the Passat. At the time of the accident, no one from Bosch was in the vehicle," Bosch corporate communications Chandra Lewis said in a statement.

Debbie Kenyon, market manager at CBS Radio Detroit, declined to comment on details of the Patterson crash. The Detroit division of CBS radio also manages **WWJ 950 AM**, **WXYZ 1270 AM** and **WXYZ FM 97.1 the Ticket**.

But Deputy Director of Police Thom Hardesty at the **Auburn Hills Department of Emergency Services** confirmed the vehicle was loaned to WOMC, however. Police are not identifying the Passat driver nor his passenger, a 51-year-old Fraser man, while the investigation is pending, and it was not immediately clear if either was a radio station employee.

Of the four men in the collision, only the Passat passenger was wearing a seatbelt, police said.

"There are no complaints of either car traveling at an excessive speed at the time," Hardesty said. "And according to my investigators, while a complete reconstruction hasn't been done ... nothing in the evidence in the collision to suggest an impact at above the speed limit."

At least 9,262 people involved in vehicle crashes in 2011 were not wearing a seatbelt or had no seatbelt available in the vehicle, according to data from the **Michigan State Police** Criminal Justice Information Center. Of those people, 3,410 were injured in the crash and 199 died.

But the agency's crash data on uninjured passengers may be incomplete, because police officers are not always required to list them in accident reports, said MSP Departmental Specialist Michael Ransom.

Whether the WOMC employee was driving, and on the job, could also affect whether insurers for the station, Volkswagen or the driver cover certain non-medical costs such as lost wages after three years, ongoing attendant care or other expenses not covered by the state Worker's Disability Compensation Act or Michigan's no-fault auto insurance law.

If the Passat driver committed a civil infraction in the left turn as police allege, then Patterson or Cram could have standing to sue the other driver, or Volkswagen as the fleet vehicle owner, or the station depending on the insurance policies for each, Bussell said.

Worker's comp would likely cover Cram if his driving was employment-related, and Bussell noted that no-fault covers 85 percent of "lost wages" for three years up to a monthly cap of \$5,104 for a long-term disability — a cap Patterson far exceeds at a salary of more than \$173,000, meaning the difference could be covered in litigation.

The pair could also have standing to sue for non-economic damages such as pain and suffering if they can meet the legal threshold for proving a "serious impairment of a body function" — which looks increasingly likely the longer both are hospitalized — said Michael Hutchinson, founder and managing partner of Detroit-based **Hutchinson Cannatella PC**.

His firm defends companies in various personal injury and automotive negligence lawsuits, and represents some self-insured fleet owners and rental car companies. But Hutchinson adds that any civil

court judgment in their favor will be reduced by 5 percent credit if it's proven they were not wearing seatbelts.

Chad Halcom: (313) 446-6796, chalcom@crain.com.