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GM Told to Reveal Coded Data

*Lawyer Says Sensing
Devices May Explain
Wreck That Killed 2*

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Staff Reporter

A judge has given General Motors 30 days to release the decoded contents of a "black box" that recorded data in a 1997 wreck that killed two people.

For more than two years, GM has delayed sharing the information it retrieved from a 1997 GMC Chevrolet Cavalier after the car's 21-year-old driver, Timothy Langston, and 15-year-old Lee

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The device is similar to those installed in airlines to record flight data just before a crash, says lawyer Matthew C. Flournoy.

Cobb County State Court Judge Toby B. Proddgers says he wasn't convinced by GM's lawyer that the recorder has no relevant data.

Encoded Data In Sensing Device Considered 'Critical' by Plaintiffs

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Anderson were killed. A second passenger, Lee's sister, Alana, 16, suffered a permanent brain injury.

The Cherokee County accident occurred when the car unaccountably accelerated and then struck a tree, says plaintiffs attorney Matthew C. Flournoy of the Marietta firm Flournoy & Morgan.

The teen-agers' mother, Donna Anderson-Barahona and Langston's parents, Wayne K. and Carolyn B. Langston, filed a wrongful death/personal injury suit against GM last year, claiming that a vehicle malfunction led to the crash, Flournoy said. *Anderson-Barahona v. General Motors*, No. 99A1971-4 (Cobb St. Ct. April 5, 1999).

In an April 7 discovery hearing before Cobb County State Court Judge Toby B. Prodders, GM's local counsel, King & Spalding partner W. Randall Bassett, acknowledged the auto manufacturer "does not come here today with clean hands"—an apparent reference to the company's reluctance to share the information it had downloaded from the "black box"



JOHN DOWN/DAILY REPORT

"When they [GM] wouldn't give us the information from that black box, I knew I could not trust them," said Thomas W. Malone who helps represent the plaintiffs.

in any form but an indecipherable binary code.

Similar to Airline 'Boxes'?

The "black box," or Sensing and Diagnostic Module, is similar to devices installed in airliners that

record and preserve flight data moments before a crash, Flournoy says. Since 1990, GM has installed the sensor in more than six million vehicles as part of a collaboration with the National Highway Traffic Safety Administration to collect and analyze auto crash data, he says.

"Most [GM] customers don't even know they're there," he says.

Flournoy and his co-counsel, Atlanta sole practitioner Thomas W. Malone, insist the black box recorded information, such as the Cavalier's speed and throttle position, that is critical to their client's case.

But Bassett has argued the plaintiffs' lawyers are mistaken about the purpose of the box, which he says was designed primarily as an airbag sensor. He said the box does not contain any of the information that Flournoy and his co-counsel are seeking.

When lawyers representing the crash victims' families decided to allow GM to inspect Langston's 1997 Chevrolet Cavalier in September 1997—nearly two years before a suit was filed, "We did believe there was a 'black box' in the car that contained critical data we needed and would share with GM if they, of course, would share with us," Flournoy says. "We were not really certain what data would be in the 'black box'—until much later."

Flournoy says he learned only this year that the box might have recorded the vehicle's final speed, throttle position and braking information while reading in a legal magazine of an international symposium attended by GM engineers.

Sudden Acceleration

Langston was driving the teen-age girls home on Fate Con Road in

Cherokee County shortly after 1:30 a.m. April 14, 1997, when the car suddenly accelerated, Flournoy says.

"Without warning, the car went to full throttle," the attorney says. The brakes failed to override the accelerator and the car accelerated to nearly 90 mph before Langston swerved to avoid an oncoming car at an intersection, careened off the road, became airborne and struck a tree, Flournoy says.

The lawyer says he is certain, based on interviews with the surviving teen, that the car spontaneously accelerated—an allegation that Bassett contests as unfounded.

Langston, Anderson told him, registered a shocked, "Oh my God," as the car leaped forward just moments before the wreck.

GM withheld the promised crash data downloaded from the "black box" for more than a year before the suit was filed, Flournoy says.

When the auto giant this year finally relinquished the "black box" data to the plaintiffs' lawyers, it supplied only 64 lines of apparently encrypted binary code.

"They claim this data is a trade secret," Flournoy says. "My opinion—they encode it to keep it from injured people who may have a claim for a defective car."

Bassett says any deal to release information that GM may have made with the victims' families occurred long before King & Spalding was hired to defend the auto manufacturer

in this suit. General Motors, he says, has not produced all the requested documents—among them, data on cruise control systems going back 20 years—because "It's taken more time than expected."

"There's not some central location for documents," Bassett says. "Logistically, it's something that can take a significant amount of time."

GM, he says, is not being recalcitrant. "The corporation truly believes, and it is true, that producing that array of information is a huge burden and expense to the company and does not relate to the allegations in this case."

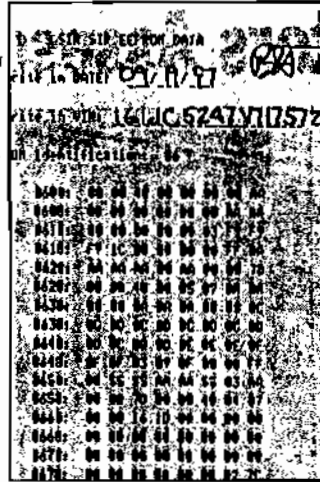
Flournoy insisted in court that GM engineers at an international symposium last year said the "black box" data may include the car's speed, RPM and throttle position within five seconds of the crash.

Judge Unconvinced by GM

In ordering GM to reveal the decoded contents of the data in the box, Judge Prodgers says he wasn't convinced by GM's statements about the purpose of the box.

If the information contained in the "black box" wasn't relevant, "GM wouldn't have undertaken to do it, so it was a big deal," he said.

"Then it gets this information and sits on it for two years," the judge continued. "I don't understand how General Motors could then say this is overly broad, unduly burdensome and will not lead to the discovery of admissible evidence. It might not be



This series of numbers is data taken from a sensor installed in the car that is now the subject of this litigation. The information has been encoded by GM.

the linchpin of the case, but back then, anyway, it was potentially the linchpin of the case."

On April 19, after more than a day of hearings, Prodgers gave GM 30 days to release to opposing counsel the information needed to decode the "black box" data. The company has as much as two months to release the remainder of the information the plaintiffs' lawyers are seeking.

But, GM's apparent lack of good faith led Flournoy's co-counsel Malone

to complain to Prodgers on April 7 that the auto manufacturer cannot be trusted.

"When they wouldn't give us the information from that black box, I knew I could not trust them," he said.

And if GM is hiding discovery under the guise of trade secrets, Malone said it would not be the first time the company has hidden relevant information during a product liability suit.

At least twice in recent years, a Fulton State Court judge has ruled that GM was obstructing the discovery process.

Last year, State Court Judge M. Gino Brogdon held that the auto giant had defrauded the court and obstructed justice by refusing to release GM documents relating to fuel-fed fires in GM vehicles. *Bampoe-Parry v. GMC*, No. 98VS138297 (Fult. St. Sept. 7, 1999).

A year earlier, in another case, Brogdon sanctioned the auto manufacturer, noting that after the company was ordered to deliver 81 boxes of documents to plaintiff's lawyers, it first unilaterally removed more than 2,000 documents in violation of the judge's court order.

As a result, Malone said, "It's going to be a big issue as to whether or not the 'black box' that they took from us in good faith is the same 'black box' that they say this information came from." □

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