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'Black Box' Ruling Could Transform Auto Crash Litigation

By Elaine McArdle

In the first ruling of its kind in the country, a Georgia state court judge last month ordered General Motors to turn over the code to its "black box," a sensing device installed in millions of automobiles that records speed and other information that can help determine how an accident occurred.

In response, GM has turned over 107 pages of documents to the plaintiffs' lawyers in a product liability case. But it's still unclear whether these documents include the code that will enable the plaintiffs' team to determine what happened in the car wreck.

"We're going to have to have our expert analyze this," says Matthew Flournoy, one of the attorneys for the plaintiffs. "We don't really know [if GM complied with the order] until our expert sees if he can apply these documents to break the code."

The ruling has far-reaching implications for car accident cases since these black boxes – similar to those used to determine the cause of plane crashes – have been installed in 6 million GM vehicles since 1990, as well as in Ford, Volvo and other vehicles. They can determine the speed and throttle position in the car, braking information, whether airbags deployed and other data critical for reconstructing how a car accident occurred. (For a more detailed discussion of the issue, see *"Black Box Will Revolutionize Auto Litigation, But Few Lawyers Know These Data Recorders Already Exist,"* 99 LWUSA 729; Search words: Bowden and Rosenbluth.)

Investigators (above) examine the fatal wreck of a 1997 Chevy Cavalier. The car's 'black box' may prove whether the vehicle accelerated spontaneously before slamming into a tree.

In a motion to compel hearing on April 19, Judge Toby B. Prodgers gave GM 30 days to turn over the code that will translate the encrypted computer printout of the black box data from a 1997 car accident in which two people were killed. The plaintiffs had allowed GM to inspect the black box in exchange for GM's sharing the information. But the company did not turn over the printout for almost a year after it got the box, and even then, it was in an encrypted form useless to the plaintiffs.

Judge Prodgers ruled that not only did the plaintiffs have a right to the code, but they also had a right to have their own expert use the code to interpret the printout.

"This is a really significant ruling. To be honest, this [code] could be a factor in almost any car-accident case," says Flournoy of five-lawyer firm in Marietta, Ga. Flournoy was part of a team of lawyers that filed a product liability suit on behalf of a young adult and a teenager killed in the accident and a third victim who sustained permanent brain injury. The suit claims that a sudden, unexplained acceleration of a 1997 GMC Chevrolet Cavalier caused the accident.

This model has a history of problems with sudden acceleration, says Larry Wight, a solo in Roswell, Ga., who originally took the case and brought Flournoy and others in as co-counsel. And the particular car in question had a history of repair problems in the short time the driver owned it, he adds.

It was Wight who allowed GM to inspect the car five months after the accident, at which time GM engineers announced the existence of the black box. But they would not turn over the contents, claiming it was proprietary.

The judge's ruling thus has implications not just for this case, but others involving GM and other vehicles with black boxes.

"There's nowhere else I'm aware of anywhere that GM's been ordered to share the code," Flournoy says.

In response to the judge's ruling, GM produced a two-inch stack of documents in mid-May, Flournoy says.

"They're claiming that what they

See BLACK BOX, page B4

BLACK BOX

from page B1

sent us, with the proper expert, can decode the alphanumeric" data GM previously submitted, he says. But they won't be able to tell whether GM complied with the order until the plaintiffs' expert analyzes the documents.

GM spokesman Terry Rhadigan was unavailable for comment before deadline.

GM had resisted turning over the code for more than two years, arguing that it was proprietary information. It also argued that the black box installed in the plaintiff's Cavalier only recorded whether airbags were deployed during the accident, not the speed or acceleration of the vehicle.

But the plaintiffs' team – which also includes Atlanta solo Thomas Malone and Chris Searcy of West Palm Beach, Fla. – argued that if the information was irrelevant, then GM would not have delayed so long in sharing it. And Flournoy believes that the lengthy printout – 64 lines of alphanumerics – suggests it contains much more information than simply airbag deployment.

Flournoy also argued there was no reason for the information to be encrypted in the first place, as other car companies have no interest in finding out what caused a particular accident.

"The reason they encode it is to keep it from victims of defective products," Flournoy says.

During the hearing, the plaintiffs' team refused to accept GM's proposal that the company interpret the printout and then share that information with the court.

"Your honor, you made an excellent observation that we do need the code for our expert to independently verify that their [GM's] interpretation is correct. No disrespect to counsel, but we do not trust General Motors Corporation on this issue," Flournoy said during the hearing.

Defense counsel said he could not explain why GM had taken so long to turn over the printout, other than to state that the information contained in it did not relate to any allegations in the case.

"Your Honor, I would note General Motors doesn't come here today with clean hands," said GM's defense attorney, W. Randall Bassett of Atlanta who noted that his firm wasn't involved in the case at the time GM inspected the black box. "I don't have an excuse, nor do I purport to present one, as to why this [printout] wasn't provided sooner."

In response to defense claims that it has a proprietary interest in the code, the judge noted that the company was protected by a confidentiality agreement in the case.

The black box – or Sensing and Diagnostic Module, as it's officially called – is currently installed in millions of automobiles made by Ford, Volvo and GM. It's installed in all 1999 Buick Century Park Avenue and Regal models; the Cadillac Eldorado, DeVille and Seville models; the Chevrolet Camaro and Corvette, and the Pontiac Firebird. Within five years, the box will be installed in every GM car. Ford has also equipped hundreds of thousands of its cars with a similar device, and other manufacturers will probably do the same.

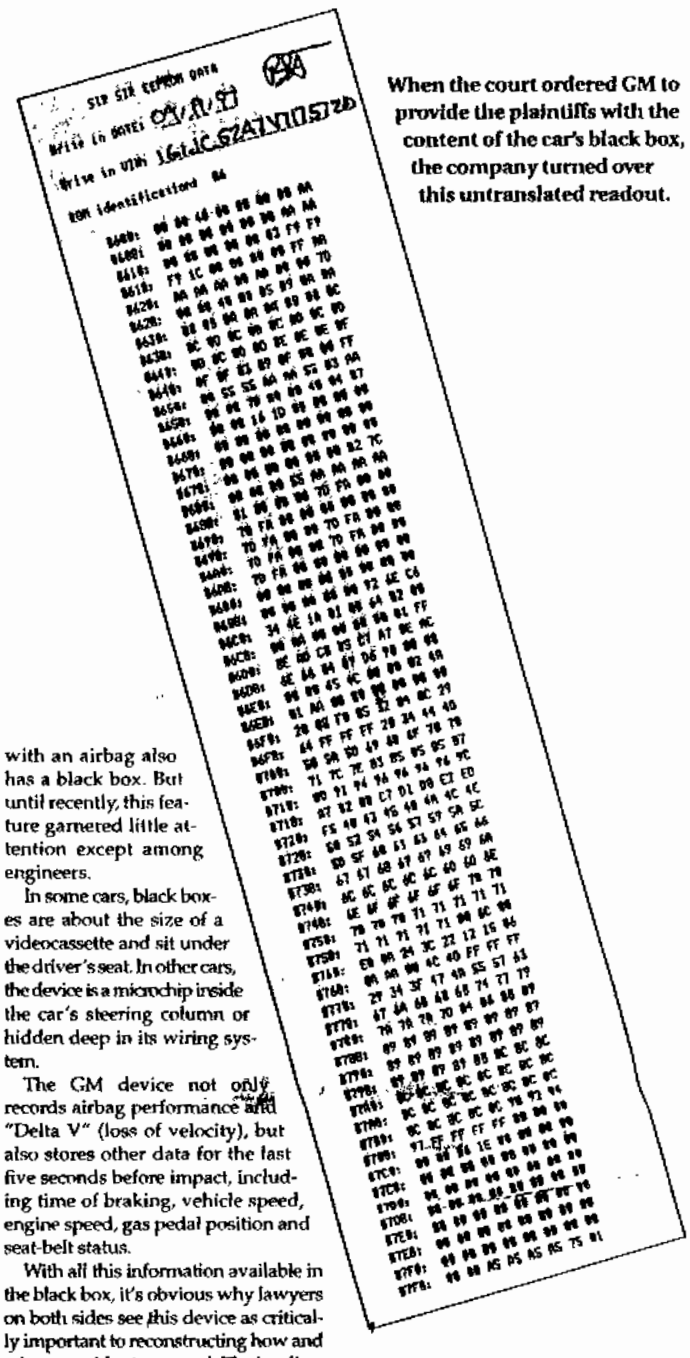
Yet many lawyers remain unaware of the existence of SDMs, notes Flournoy. At a recent meeting of the Georgia Trial Lawyers Association, Flournoy spoke on the topic and found that many members didn't realize these devices were used, and so remained unaware of their critical importance in accident litigation.

Although the power of the information is undeniable, it remains one of the auto industry's best-kept secrets. At an ATLA meeting last year, litigator Lawrence Friedman of Bacon Raton, Fla., found that among a roomful of experienced trial lawyers, not one was familiar with the technology.

But plaintiffs' lawyers expect that to change in upcoming months as more lawyers seek to use the black box data.

Flournoy says that within days of the ruling, a lawyer in Pennsylvania who was in a discovery battle with GM over the black box data called to ask him for advice. "Ultimately, this will change the way cases are litigated," says John Rupp, a Chicago defense lawyer and co-chair of the Defense Research Institute's Auto Products Speciality Litigation Group.

Chevrolet started the black-box trend back in 1973 as part of an early airbag system. Black boxes provide a constant flow of data that "tell" airbags when to inflate. Today, almost any car with an airbag also has a black box. But until recently, this feature garnered little attention except among engineers.



When the court ordered GM to provide the plaintiffs with the content of the car's black box, the company turned over this untranslated readout.

In some cars, black boxes are about the size of a videocassette and sit under the driver's seat. In other cars, the device is a microchip inside the car's steering column or hidden deep in its wiring system.

The GM device not only records airbag performance and "Delta V" (loss of velocity), but also stores other data for the last five seconds before impact, including time of braking, vehicle speed, engine speed, gas pedal position and seat-belt status.

With all this information available in the black box, it's obvious why lawyers on both sides see this device as critically important to reconstructing how and why an accident occurred. The implications for car-crash and product liability litigation are revolutionary. LWUSA