



GM Battles To Withhold Safety Secrets

Car maker wants documents sealed in Conn. lawsuit

By THOMAS B. SCHEFFEY

It's a potentially explosive lawsuit focusing on the safety record of a major auto maker. And it has nothing to do with Toyota.

A small army of defense lawyers for once-mighty General Motors is battling in Connecticut court to seal court documents that indicate that poorly designed seat backs may have led to numerous deaths and injuries.

The case stems from a products liability lawsuit filed by Stamford lawyer Brenden Leydon, of Tooher, Woel & Leydon, on behalf of a Stamford waitress who was severely injured in an accident. On New Year's Eve, the woman's products liability case against Saturn of Stamford took a dramatic turn when Leydon attached six memos to a motion to add four former GM safety employees as defendants.

Those documents were from a Philadelphia case that involved a woman who had been killed in an accident involving a GM-made vehicle. In the documents, GM engineers and lawyers discuss product safety, costs, strategies and legal vulnerability.

GM says the documents were supposed to have been sealed in the Philadelphia case, but were mistakenly filed as public documents. On Feb. 16, GM LLC – General Motors' post-bankruptcy name – filed a motion to intervene in the Connecticut case. Its outside counsel, Wendy D. May of Houston, asked Leydon to return all copies of the exhibits to her and to join in GM's motion to seal the documents in the Connecticut case.

He didn't oblige. Leydon has made headlines opening up Greenwich beaches to greater public access. More recently, he was hired to represent a client injured after the accelerator of his Lexus went out of control.

Now he contends that GM's seats likely caused more deaths than Toyota's faulty accelerator pedals. "I think there's a big public safety argument" at the heart of the litigation, said Leydon. "It's not just a personal injury case."

The court files in question, he said, are "just incredibly damaging documents."

GM officials see it differently. GM spokesman Alan Adler told the *Law Tribune* these "documents are nearly 20 years old. They talk about vehicles that were developed in the late 1980s. Our vehicles now have completely different seat designs and specs. These aren't relevant to any current GM product."

Shipman & Goodwin lawyer Robert Simpson heads the long list of lawyers poised to represent GM; he directed questions to GM's public relations department. Also involved are other attorneys at Shipman and Bingham McCutchen, as well as Texas lawyers who specialize in seat-back failure cases.

GM contends the court documents are its proprietary work product and exempt from disclosure under attorney-client privilege. The company claims competitors could use the information to make safer cars, arguably getting a free ride from GM research efforts.

The hearing on the motion to seal the court file is set for March 30.

What Documents Show

The contested Philadelphia case – *Estate of Kimberly Louise Cool v. GM* – chronicles



Jesse Neider

Left, Stamford lawyer Brenden Leydon is skeptical of GM's claims that documents discussing seat-back safety must be sealed to prevent other car makers from gaining access to proprietary information.

debate within GM about the best design for seat backs to prevent injury and death in rear-end collisions. At the time, GM was using "yielding" seats that were engineered to give way in a crash. The theory was that these would reduce the incidents of severe whiplash and minimize head injuries.

But GM's data indicated otherwise. The court documents include a GM analysis that estimated that out of 940 fatal rear-end collisions involving its cars in 1989, 376 to 470 lives might have been saved with a

“high-retention seat.” Stiffer seat backs had a 40 to 50 percent effectiveness rate as a safety upgrade, according to the documents.

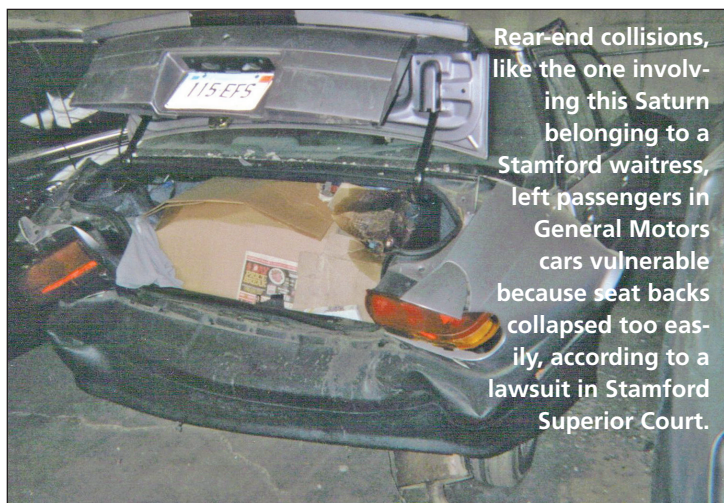
A memo sent on April 14, 1992 by engineer R.E. Hoffman, entitled “Seat Back Strength,” noted that a popular consumer information television program

was focusing on people who were “seriously hurt in rear crashes involving seat back collapse.” Hoffman noted that “our friends at Mercedes” were quick to say “they would not build a seat that would collapse in crashes as described in the program.” He concluded: “The bottom line was that the trust consumers put in manufactures to provide a safe vehicle is being violated with current seat designs.”

In another April 1992 memo labeled “privileged & confidential attorney-client communication,” GM in-house lawyer Gary P. Toth outlined what he called “The Problem.” In that memo, he said GM lacked “documentation to support the design of ‘yielding’ seats which can result in occupant ejections and the risk of severe head and/or neck injury in rear collisions.”

In defending personal injury cases in court, Toth explained, GM was having difficulty justifying its current design. There was, he wrote, no GM test or data “to support assertions of reduced neck loading and head impact potential with ‘yielding’ seats.”

Toth recommended that GM improve its knowledge of the physics of seat-back failure in collisions, and apply that knowledge uniformly to all its cars. The worst consequence of not doing this, he contended, is that “we are unable to effectively demonstrate that we exercised ‘reasonable care’ as a caring corporation to design seats which will reduce the risk of injury [or worse] to



Rear-end collisions, like the one involving this Saturn belonging to a Stamford waitress, left passengers in General Motors cars vulnerable because seat backs collapsed too easily, according to a lawsuit in Stamford Superior Court.

Contributed Photo

our customers in rear collisions.”

Adler, the GM spokesman, said the Toth document was more a presentation than a memo, and that it has been disclosed in print articles and TV reports. “We’ve always said it’s a privileged communication,” said Adler, “but courts have disagreed with us over time.” GM LLC will continue to assert a right to seal that document, he said.

‘Legally Relevant’

Attorney Leydon represents Stamford waitress Denise Cece-York, who was injured in a 1996 Saturn. He said her seat back collapsed “like a beach chair” when she was struck from behind in July 2007. Cece-York suffered neck injuries and nearly died, and now can only walk with extreme difficulty, Leydon said.

He contends GM’s long knowledge of its seat-back problem makes the older documents legally relevant. “If current seat backs aren’t sufficient, we could reach back in time and say, ‘You’ve known about this for 30 years, and here’s the evidence for that.’”

In another sealed document, GM explored “Crashworthiness Strategy Development.” It listed seven safety technologies that would cost the car maker from \$3.50 to \$35 per vehicle. “High retention seat backs,” at a cost of \$12 per seat, topped the list in terms of potentially providing the most protection.

The document recommended that GM offer the high-retention seat as a premium option on all vehicles “as long as you have a competitive advantage, thereafter at market pricing.”

Commented Leydon: “Their financial analysis was that they were better off marketing the better seat as a safety premium rather than just putting it in all the cars. They calculated that they would make more money that way.”

GM’s motion to seal court records, included a Feb. 9, 2010 affidavit from retired GM engineer Joseph S. Rice. He contended the documents were valuable to GM in part because they show safety research that was “not fruitful.” If this were widely known, he said, competitors would save “resources, manpower and money” developing safer seat backs “to the detriment to GM LLC.”

GM spokesman Adler said: “We may be government-owned today, but hopefully that’s not forever. For the hundred years we weren’t owned by the government, I think the idea was we were in business to make good vehicles, but to sell them at a profit. We’re not a charity.”

But in matters of safety, and the cost to society of auto injuries and fatalities, Leydon said, the bottom line isn’t the only thing to consider. He said that the projected death toll from Toyota’s faulty accelerators is 50 people over a 10-year period. In comparison, he said GM envisioned better seat backs saving about 400 lives a year in 1990.

“The [court documents] are clearly relevant to the car in question, because the changes GM made didn’t start going into effect until 1997 for upscale cars, and wasn’t fully implemented for years after that,” Leydon said.

He claims GM’s motivation in sealing the documents is more about avoiding damaging publicity than revealing trade secrets to competitors. “I think it’s hard to say, ‘We don’t want competitors to know how we kill people and don’t make the fixes, because our competitors would do the same thing.’” ■