

# **Unsafe Driving Commercial Vehicle Wreck**

**Air Bag Computer evidence leads to \$1,400,000.00 settlement.**

Defendant Driver Claimed Plaintiff's Intestate Swerved - Plaintiff Alleged Defendant's High Speed - Air Bag Computer Evidence - \$1.4 Million Mediated Settlement

**Brief statement of claim:** The plaintiff's intestate, a minor, was killed in a wreck involving her vehicle and a commercial vehicle on a two-lane road.

Both occupants in the vehicle being driven by the plaintiff's intestate were killed. The defendant driver was the only survivor and only witness. He contended that the plaintiff's intestate had suddenly swerved into his lane.

The plaintiff contended that the defendant driver was traveling at an extremely high rate of speed, lost control, and crossed the center line and collided nearly head-on with the car driven by plaintiff's intestate. The defendant driver left more than 200 feet of skid marks, according to plaintiff's counsel.

**Principal injuries (in order of severity):** Wrongful death

**Special damages:** n/a

**Tried or settled:** Settled

**County where tried or settled:** Confidential

**Case name and number:** John Doe v. Commercial Company (confidential)

**Date concluded:** Spring 2002

**Name of judge:** n/a

**Amount:** \$1.4 million

**Insurance carrier:** n/a

**Expert witnesses and areas of expertise:** n/a

**Attorney for plaintiff:** Doug Abrams and Margaret Abrams of Abrams & Abrams, P.A., Raleigh

**Other useful info:** The plaintiff's attorneys learned that the defendants' vehicle had an air bag computer which recorded the change in velocity at the time of impact, and which could be used by plaintiff's accident reconstruction expert to extrapolate defendant driver's speed prior to applying his brakes.

Upon request by the plaintiff, the N.C. Highway Patrol downloaded the information from the air bag computer "black box." The data retrieved from the computer was used to corroborate the calculation of a pre-braking speed for the defendant's commercial vehicle in excess of 90 m.p.h.

The plaintiff's attorneys prepared a very detailed computer simulation to demonstrate that the defendant driver had lost control of the vehicle and crossed into the path of the plaintiff's intestate vehicle.

A lawsuit was filed and prior to filing of an answer by defendants, mediation was conducted. The mediation lasted from 9:00 a.m. until midnight, when the case was resolved.

# Unsafe Driving Commercial Vehicle Wreck

## Vehicle's Air Bag Data Key To \$1.4 Million Settlement

The family of a minor killed in a two-car wreck has recovered a \$1.4 million settlement after the other driver's air bag computer showed he was speeding over 90 m.p.h.

Air bag monitoring systems, commonly called "black boxes," have been installed in GM cars and many other vehicles for several years (see sidebar). Originally designed for quality control purposes, the on-board computers can record information ranging from velocity changes to engine speed prior to impact.

That information can make or break an auto tort suit, especially if the defendant is the only one who survives the crash. That's what happened in the most recent case, which ended in a confidential settlement.

"The black box information was critical," said Raleigh attorney Doug Abrams, a lawyer for the plaintiff. Margaret Abrams and Columbia, S.C. attorney Richard Gergel were co-counsel. "Without it, the case would have been incredibly difficult to prove," Abrams said. "We knew in our heart that we were right about the defendant's speed from looking at the skid marks. But an expert couldn't testify to that. We wouldn't have been able to establish scientifically that the defendant's vehicle was speeding in excess of 97 m.p.h."

Since 1998, an increasingly wide range of vehicles, both passenger and commercial, have air bag computers, according to Abrams. The reason: in order for an air bag to fire properly, sensors must distinguish between hitting a curb from hitting another car. With technological advances, manufacturers have been able to put more information on the computer chips and read it in a number of different ways, Abrams said.

"It's just another example where lawyers have to understand technology in order to represent their clients properly," he said. "In commercial vehicle crashes, the commercial driver is often the only survivor. If a tractor-trailer runs over a passenger car, the truck driver is the only person who lives. That means plaintiffs often only have evidence from the mouth of the defendant to reconstruct the wreck. These black boxes are a major tool for doing that."

"My belief is that there are still many attorneys who are unaware that many vehicles, certainly those built after 1998, have black boxes that can be read by the manufacturer or an accident reconstruction expert."

"The state highway patrol also has the capacity to read certain black boxes, depending on the year of manufacture and particular vehicle involved," said Abrams. "For solo practitioners or small firm lawyers who aren't set up to spend a lot of money on accident reconstruction experts, getting black box information from the highway patrol is essential."

The details of Abrams' case are confidential pursuant to the parties' settlement agreement. But some facts were revealed in a case report to Lawyers Weekly (see page 14).

The plaintiff's intestate, a minor, was killed in a wreck on a two-lane road involving her vehicle and a commercial vehicle.

Both occupants in the minor's vehicle were killed. The driver of the commercial vehicle was the only surviving witness to the crash — and he said the accident was caused when the plaintiff's intestate suddenly swerved into his lane.

The plaintiff disagreed, arguing the commercial driver was traveling at an extremely high rate of speed, lost control, crossed the center line and hit the minor's car nearly head-on.

The commercial vehicle left more than 200 feet of skid marks, according to the case report. The skid mark evidence implied the defendant was driving too fast, but it didn't prove it, Abrams said. For scientific proof, he turned to the air bag computer on the defendants' vehicle. It recorded the change in velocity at the time of impact. That information could be used by the plaintiff's accident reconstruction expert to extrapolate the commercial driver's speed before he hit the brakes.

Abrams asked the North Carolina Highway Patrol to download the information from the air bag computer's "black box." The data retrieved was used to corroborate the calculation of a pre-braking speed for the defendant's commercial vehicle in excess of 90 m.p.h.

The result: a confidential mediated settlement for \$1.4 million.

Newer GM vehicles have black boxes that can be read by anyone with third party software from vendors like Vetronix, Abrams said. Although Ford and Chrysler don't have open source codes yet, the information from those vehicles can still be retrieved by calling the manufacturer in to read it, he said.

"The important thing is that it allows nondestructive testing of the vehicle," said Abrams. "You simply download the information onto a computer disk, then anyone who has Vetronix can read it."

"I'm not aware that air bag computer information has previously been used in a case in this state," he said. "This may be the first time."

That kind of evidence has been accepted in other states in much the same way that black box information is received in airplane crashes, according to Abrams.

"Bear in mind that kind of information could make a dramatic change in North Carolina law," said Abrams. "In this state, we have a firm rule that if a witness has not seen a vehicle while it's moving, the witness can't testify about its speed. That's clear, black letter law."

Attorneys can ask an expert how long it takes a person to bring a vehicle to a stop at different speeds, according to Abrams.

"But they can't say, 'In my opinion, this vehicle was going 97 m.p.h.," he said. "The reality is that, without a black box, braking evidence can be misleading for the jury, particularly if a vehicle has ABS brakes that may not leave any skid marks.

"But with a car's black box, what you get is an interpretation of physical data, much as if the jury is watching a videotape of the vehicle in motion," said Abrams. "From that physical data you can extrapolate how fast the vehicle was going. And there are virtually no credibility issues involved with the readout from an on-board computer."