

# Auto accident involving use of "Black Box" on commercial vehicle

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

The following image is a computer digitized scan of a newspaper report of a recent case that Abrams & Abrams, P.A. handled with a successful outcome for their client.

## 'Black Box' Data Helps Net \$1.4 Million Settlement

By Genevieve E. Haas

Even though the defendant was the only surviving witness to a car accident, the family of a North Carolina girl killed in the collision recovered a \$1.4 million settlement – thanks to the on-board air bag computer, or "black box," that was in the defendant's vehicle.

A "black box" is a series of on-board mini-computers that record, among other things, a car's speed and throttle position, the status of its seatbelts, brakes, steering wheel and signaling devices, and its Delta-V (loss of velocity) numbers – all vital information in determining the cause of an accident. At the moment of a collision, this data is saved in the black box along with changes during the seconds before impact.

In this case, the girl and a friend were killed when their BMW collided with a commercial vehicle on a rural, two-lane road. The driver of the vehicle testified that the BMW suddenly swerved into his path while he was traveling at the speed limit.

That story didn't wash for married attorneys Doug and Margaret Abrams of Raleigh, N.C., and their co-counsel, Richard Gergel of Columbia, S.C. But initially it seemed hard to disprove.

"The hardest aspect in commercial vehicle wrecks, [is that] frequently the driver of the vehicle is the only one who survives or has any memory [of the accident,] and it's hard to reconstruct your case from the mouth of the defendant," said Doug.

Margaret added, "We felt strongly [that] the defendant's story was very much crafted to put him in the best possible light, given that there had been two deaths in this wreck."

And then a light bulb went on for Doug. "We were brainstorming the case and I had just come back from a seminar of lawyers who were involved in cases against car manufacturers, and the light came on



A car's "black box" can provide vital information in determining the cause of an accident.

that given the year and model of the vehicle, it had to have a black box," he said. "We called our accident reconstruction expert and he said, 'You're exactly right.' Then we checked with the highway patrol to see if they would be able to retrieve the data."

In North Carolina, this evidence was especially crucial because under state law a witness can't testify about the speed of a vehicle unless he or she actually saw it in motion. So even though the accident reconstruction expert hired by the plaintiffs' team could guess that the defendant had been speeding based on the 200 feet of skid marks left at the scene, there was no way to get that into the record.

But the black box came to the rescue.

"It was a tremendous problem that we

were up against," said Doug. "North Carolina law very much limits what an accident reconstruction expert can testify to. And jurors more and more want to see objective evidence that cannot be refuted or is very difficult to refute."

According to the black box data, the defendant in this case was traveling at about 97 m.p.h just a few seconds before impact. Armed with this knowledge, the plaintiffs' attorneys were able to create a detailed and comprehensive accident reconstruction using the report from their expert, computer animations and model and scale drawings.

"It made the whole scenario make sense in a way that simply did not make sense from their perspective," she said.

The defendants settled for \$1.4 million on date, before any responsive pleadings were filed. Most of the details of the case, including the names of defense counsel, remain confidential.

Doug said one reason the case settled so quickly was the quality of the attorneys on the other side. "We were dealing with a very talented and experienced defense counsel, and this facilitated a discussion that was fruitful far quicker than in other negotiations."

### A Tremendous Difference

The Abrams are enthusiastic about the benefits that black box data will have to offer small-firm and solo lawyers as state law enforcement teams catch up to the technology.

Said Doug, "North Carolina's major accident investigative team is one of the nation's leaders at retrieving data from black boxes. We're very fortunate to have a team that's on the cutting edge. It does a lot of teaching and setting up similar teams around the country."

But even if a highway patrol isn't able to get the information, they can always "call the dealer and get the manufacturer's representative to come and read it," said Doug. "The manufacturer will always cooperate with the highway patrol."

The ability to access that data can "make a tremendous difference to smaller firms who aren't able to spend the \$50,000 or \$100,000 that it takes to do an accident reconstruction," he said.

**Plaintiffs' attorneys:** Doug and Margaret Abrams of Abrams & Abrams, P.A. in Raleigh, N.C., and Richard Gergel of Gergel, Nickles & Solomon, P.A. in Columbia, S.C.

**Defense attorneys:** Confidential  
**The Case:** John Doe v. Commercial Co. (Confidential) **LWUSA**

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