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Lasting Impact

How an Internal Memo Written 26 Years Ago Is Costing GM Dearly

Revelations Fan a Settlement In Fuel-Tank Fire Case; Huge Sums Now at Risk

A Jury Comes Away Livid

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How much damage can an internal memo do to a company after 26 years?

Just ask General Motors Corp.

The auto maker yesterday agreed to settle another in a string of personal injury lawsuits stemming from fuel-tank fires that erupted in collisions. The settlement — which two people familiar with it say is in “the mid eight figures” — comes after GM in July lost a similar case in state court in Los Angeles and was ordered by the jury to pay a record-setting \$4.9 billion in damages, an amount later reduced to \$1.2 billion. GM declined to discuss the latest settlement, which was reached under a confidentiality agreement.

The Georgia case, involving the 1997 death of a driver whose 1985 Chevrolet Chevette caught fire in a rear-end collision, was set to go to trial in state court in Atlanta Monday. But GM was dealt a serious setback earlier this month when the judge in the case, Gino Brogdon, blasted the company for “conduct rising to the level of obstruction of justice” in its efforts to keep out of court damaging internal documents sought by lawyers for the victim’s widow, Willene Bampoe-Parry.

The Famous Memo

Critical among those documents are lawyers’ notes of two interviews with Edward C. Ivey, who as a low-level engineer in 1973 wrote an internal memo examining the cost to GM of deaths by post-collision fuel-tank fires. In the now-famous memo, which has been widely distributed on the Internet, Mr. Ivey calculated the cost at \$2.40 a car — based on 41 million GM vehicles on the road at the time, rear-end collision fatality rates and an estimate that each human life “has a value of \$200,000.” The engineer went on to write in his memo, “This cost will be with us until a way of preventing all crash related fuel-fed fires is developed.”

In notes from a November 1981 interview with Mr. Ivey, one lawyer for GM, who has since died, wrote: “Obviously Ivey is not an individual whom we would ever, in any conceivable situation, want identified to the plaintiffs in a post-collision fuel-fed fire case, and the documents he generated are undoubtedly some of the potentially most harmful and most damaging were they ever to be produced.”

For years, GM has fought to keep the Ivey memo out of court, claiming that it didn’t reflect corporate policy. But the lawyers’ notes, which emerged as part of a separate case in Florida last year, have sorely undercut that explanation and have begun to cost the company dearly. In the Florida case, a state jury in Fort Lauderdale awarded \$33 million to the family of a 13-year-old boy who burned to death in a 1983 Oldsmobile Cutlass station wagon.

Cases Abound

The Ivey memo and related documents promised to haunt GM at the Atlanta trial — and could yet in the many cases that remain. About 100 fuel-system fire cases are still pending against GM, says Mikal Watts, a plaintiffs’ lawyer in Corpus Christi, Texas, who has a case scheduled to go to trial in Wichita Falls, Texas. Last week, a federal judge in that case, involving a 1990 Chevrolet pickup truck, ordered GM to turn over the lawyers’ notes of the Ivey interviews to plaintiffs. GM declines to specify how many such cases it is defending.

A close examination of the Los Angeles case shows just what an albatross the documents have become to the auto maker. That case involved a 1979 Chevrolet Malibu purchased used for \$500 by Patricia Anderson, an unemployed mother. Six years ago, on Christmas Eve, Ms. Anderson was driving home from church with her four children and a friend when they were rear-ended by a speeding drunk driver. Ms. Anderson escaped relatively unharmed, but her four children, who were in the back seat, suffered disfiguring burns, as did the friend, Jo Marion Tigner.

Cost Savings?

After an 11-week trial, the jury found that the car’s 18-gallon fuel tank, located under the trunk near the vehicle’s rear bumper, was dangerously vulnerable to rupturing in rear-end collisions — and that GM had placed it there to save costs.

“The court finds that clear and convincing evidence demonstrated that defendants’ fuel tank was placed behind the axle on automobiles of the make and model here in order to maximize profits — to the disregard of public safety,” Los Angeles Superior Court Judge Ernest G. Williams wrote in his decision last month in which he upheld the jury verdict but reduced the damages.

GM, which is appealing the verdict, denies that it sacrificed safety for profits. The company manufactured 7.5 million midsize “A-Cars” with the same tank design as Ms. Anderson’s Malibu between 1978 and 1983. Among them: the Buick Century, the Oldsmobile Cutlass and the Pontiac Grand Prix.

According to GM, federal statistics for burn deaths from rear-end collisions in

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those models show no heightened risk. In fact, GM says, fatality statistics show its cars fared better than competitors' models during the same period. Fifty-two people have died in rear-end collisions in A-cars made between 1978 and 1983 that burst into flames, according to fatality statistics compiled by National Highway Traffic Safety Administration. That is fewer than the 168 fatalities in GM pickups with sidesaddle fuel tanks that GM has also been sued over but more than the 26 who died from burns in Ford Motor Co.'s Pinto.

The company maintains Ms. Anderson's Malibu was hit at 70 miles per hour and that no fuel system could have withstood an impact at that speed. "We thought that the vehicle performed well in this accident. In fact, it saved the lives of these six people because of its design," says GM lawyer Richard Shapiro, of the Phoenix auto-industry defense firm Snell & Wilmer. "It is an unfortunate and sad and tragic event, but Ms. Anderson, Ms. Tigner and the four children were the victims of a drunk driver."

Such arguments did little to sway the jury. "The evidence the plaintiff presented against GM was truly overwhelming," says juror Billy Lowe, a janitor for United Parcel Service. "The jury was unanimous from the outset. It wasn't even close."

'Value Analysis'

Key among the evidence presented by the plaintiffs' lawyers was the Ivey memo, written in June 1973 and titled "Value Analysis of Auto Fuel-Fed Fire Related Fatalities." Mr. Ivey was working on new fuel systems at the time for Oldsmobile, then GM's lead division for designing fuel tanks. According to his memo, rear-end accidents in GM cars were causing as many as 500 deaths a year "where bodies were burnt."

In more than a dozen depositions in both the Anderson and prior cases, Mr. Ivey had said under oath that he wrote the memo on his own, couldn't recall why he prepared it or who at GM he may have shown it to. The \$200,000 value for human life he relied upon, says GM's Mr. Shapiro, was derived from government statistics and reflected a dollar value to society, not the company. He faults Mr. Ivey for "a poor choice of words."

But that argument didn't hold water once Brian Panish, the lead plaintiffs' lawyer, showed the jury notes of the interviews that GM lawyers conducted with Mr. Ivey in 1981, which surfaced for the first time in the Florida suit. In those notes, one lawyer said of Mr. Ivey, "He wrote a report 'for Oldsmobile management' and believes it was probably for Mutty specifically," referring to Paul R. Mutty, GM's lead fuel-system designer for the A-car. "He characterizes the nature of his analysis submitted to Mutty and others as one to assist them in 'trying to figure out how much Olds could spend on fuel systems.'"

Question of Credibility

GM declines to comment on the notes, saying they are privileged attorney-client communications. But it was their disclosure in the Georgia suit that prompted the judge in that case to slam GM for hiding evidence earlier this month. And to the jurors in the Anderson case, Mr. Ivey, who still works for the company and testified in a videotaped deposition, came across as GM's least-credible witness.

"It was a joke," says Geraldine McAdory, a public information supervisor for the Social Security Administration in Los Angeles. "Here's a guy who spent 15 hours on something that he says he didn't produce to his boss. . . . I'm a supervisor at work. I would never waste my time on something like this without asking a supervisor whether it was worth my time."

Also troubling to the Los Angeles jurors was the timing of the Ivey memo. When Mr. Ivey wrote it in 1973, GM was planning a new, trimmed down version of the A-Car for 1978. This would include the lighter,

narrower, more compact Malibu that Ms. Anderson would eventually buy. The key question confronting Mr. Ivey's boss, Mr. Mutty, was where to place the fuel tank: under the trunk or over the axle?

Mr. Mutty, now retired from GM, testified that he never saw the memo and couldn't even recall Mr. Ivey's name. As the lead engineer for the fuel system, Mr. Mutty said, the decision on where to place the tank was his. He opted for under the trunk after performing a series of successful 50-mile-per-hour crash tests in 1974 with tanks in both locations. Cost was never a factor, GM says, because the 1978 Malibu was a brand new vehicle. The fuel tank could be installed in either location at the same cost.

Stunning Demonstration

But GM produced no documentation to back up that claim. And when jurors examined the earlier version of the Malibu compared to the 1979 model that Ms. Anderson purchased, they were stunned. Mr. Panish's firm had bought both versions of the car, painted the fuel tanks bright yellow and stood them side by side in a Los Angeles warehouse owned by the firm. Mounted on blocks a few feet away were the crushed and incinerated remains of Ms. Anderson's car.

The newer Malibu weighed 800 pounds less than the older one. In the earlier version, the tank had been 20 inches from the bumper. In the new one, it was 11 inches away, or six inches closer than a GM design directive issued in 1969 had said was safe. And missing from the newer car but glaringly apparent to the jury in the older one was a metal brace across the frame in the crush area separating the fuel tank from the back of the car.

"I guess I was kind of shocked," says Ms. McAdory. "The most lethal part of the car to me is its gas tank, and to make that more vulnerable? To me that was not a smart move."

GM says the new version of the Malibu met the minimum 30-mile-per-hour "moving barrier" test—in which a vehicle is slammed with a 4,000-pound battering ram—that the NHTSA adopted in August 1974 at the auto industry's urging. But the company raised the standard internally to 33.7 mph in 1978, after a series of tests the previous year produced inconsistent and unreliable results, and the company became concerned that the A-car's fuel system could be compromised.

Beefing Up Trouble Spots

As an added measure in January 1979, GM approved a package of modifications to beef up trouble spots detected at the higher test speed, including buckling in the car's left rear frame rail and tearing away of the metal straps that secure the tank to the car's underbody. The same year, GM went a step further: It ordered fuel systems in all future A-car designs be able to exceed NHTSA's standard and withstand a 50-mph car-to-car collision, beginning in 1983.

But all of that was too late for Ms. Anderson's Malibu. And to counter that fact, GM lawyers made a bold gambit. They promised jurors that a 1979 Malibu like Ms. Anderson's could withstand the 50-mph crash test, even though that standard wasn't in place the year her car was made. Fifty miles-per-hour was the speed at which Ms. Anderson's attorney, Mr. Panish, contended her car was hit.

Damaging Notes

"You will see the films of that test in this case," lead GM defense lawyer Arthur Greenfield said in his opening argument. "This design was so good that 20 years after it's manufactured, a street car, one that could be bought off the street, could be brought in, hit in the rear by another car at 50 miles an hour, and still have no holes in the tank."

GM hired Phoenix-based consultants Failure Analysis Associates Inc. to set up the test in January 1998, but with some controls that struck jurors as weighted in favor of the defense. The Anderson car had been hit by a