

Judge OKs Use of Confidential GM Files

Family to Use Documents in Wrongful Death Trial

By NOREEN MARCUS

Hollywood-What's in the plain white envelope a General Motors lawyer handed Broward Circuit Judge Arthur Franza this week?

So far only the judge and somebody at GM know for sure. As with the plain brown envelope in the O.J. Simpson criminal case, though, hints of damning evidence have taken on a life of their own in this high-stakes wrongful death trial.

Whatever is in the envelope, it's not O.J.'s knife. Still, the contents are sensitive enough that GM risked Franza's wrath by sending a lawyer to his courtroom last week without the envelope.

When it finally appeared, whatever is in the envelope had the veteran judge shaking his head and saying, "It's just too much to...sweep under the rug."

The mystery may be solved soon. Franza, relying on "my own sense of what's right and wrong," ruled on Tuesday that a half-dozen of the 16 documents in the envelope are fair game for the jury to see.

Lawyers for Constance and Robert McGee of Pembroke Pines, who sued GM over the 1991 auto-fire death of their teen-age son, fervently want the jury to see the documents.

They say the papers show GM attorneys conspired with engineer Edward Ivey to lie about a "smoking gun" memo he wrote in 1973.

The internal memo, already part of the trial that began on Dec. 1, calculates the annual cost of fire fatalities to GM: \$2.40 per car.

The memo says it would be worth about \$2.20 per car to prevent fuel-fed fires in all accidents.

Shane McGee was 13 when he died in a freak fire in an Oldsmobile Cutlass station wagon that erupted after a cargo trailer rammed the Olds, puncturing its fuel tank.

A 21-year old relative also perished and four family members were burned in the blaze at a Virginia highway toll booth.

The family's lawyers say deaths could have been prevented if the company had been willing to spend \$4.50 per car on protective shields.

Why Ivey wrote the memo is a key point in the case. If he did as an academic exercise, the memo doesn't prove the company chose savings over safety. GM says safety always comes first in designing cars.

IF Ivey wrote the memo for GM management and they used it to make decisions about how to build cars, however, that could help the McGees. They are seeking punitive damages

against the giant automaker for alleged wrongdoing.

Earlier in the trial, Ivey testified he can't recall why he wrote the memo. He doesn't think he wrote it for GM management, he said in a videotaped deposition that was played for the jury.

The McGees countered with whistle-blower Ronald Elwell. While working as a GM expert on vehicle fires in 1981, Elwell testified, he saw the memo and met with Ivey to discuss it. Ivey told him he did the cost analysis to help Oldsmobile management decide how much to spend on fuel tanks, Elwell said.

The same battle – Ivey's word against Elwell's – figured in previous GM product liability trials.

What's different this time is that the GM mystery documents support Elwell, McGee lawyers Bob Kelley and Sheldon Schlesinger say.

GM, under threat of "very severe sanctions" for not sending the envelope sooner, complied with Franza's deadline on Monday. Lawyer Terrence Russell delivered the goods.

Franza took all 16 papers to his chambers to read them privately. A half-hour later he was back in court.

The judge said he stopped at the second document, Number 210, described in court papers as "memo containing attorney summary of interview with E. Ivey, reference to 6/29/73 Ivey memo.

The memo has never been used in a GM trial, Schlesinger said, GM keeps it out by persuading judges it falls under the privilege against revealing attorney-client confidences.

GM lawyer Russell argued vigorously for the privilege to apply in the McGee trial. If he had to open his files and reveal all his client

communications, Russell said, joking, "I would be in deep trouble".

Franza was unmoved. GM "marks practically everything confidential, he said. He ruled Number 210 "contradicts the testimony of Mr. Ivey and supports the testimony of Mr. Elwell."

GM lawyers are appealing. Unless a higher court steps in quickly, however, Number 210 and other papers will come into trial, where the public, as well as the jury, can scrutinize them.

