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newsmaker of the year

Lance Cooper and the Power of Discovery: One Case, 30M Recalls

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Some lawyers are known for what they do in the courtroom. Lance Cooper is known for the heavy lifting it takes to get there.

"I'm not a flamboyant trial lawyer. Some are and they can pull it off," Cooper said in his Marietta office recently. "Cases are won and lost in discovery. If you don't have the evidence you need, it doesn't matter how good a trial lawyer you are."

For illuminating the power of discovery in 2014, the Daily Report recognizes Lance Cooper as its Newsmaker of the Year.

The news Cooper made came in his representation of Ken and Beth Melton, who are suing General Motors Corp. They claim GM's mistakes caused the death of their daughter, Brooke, in 2010, after her 2005 Chevrolet Cobalt rolled off a highway.

GM would later use the word "bombshell" to describe Cooper's revelation in the deposition of Raymond DeGiorgio, the lead design engineer, for a certain faulty ignition switch in some models, including the 2005 Cobalt. An expert hired by Cooper had figured out that the ignition switch could turn off accidentally, causing cars to lose power and drivers to lose control. More significantly, the expert found that GM had improved the switch for future use—without telling the public or anyone who owned cars with the faulty part.

"This case needs to be settled," GM's defense lawyer in that deposition, Philip Holladay of King & Spalding, wrote in a memo to the company after Cooper's bombshell. "There is little doubt that a jury here will find the ignition switch used on [Melton's] 2005 Cobalt was defective and unreasonably dangerous and that it did not meet GM's own torque specifications."

(Holladay's memo was quoted in a report GM released in May. The report did not identify Melton's case by name, but Cooper maintained the case described was the one brought by the Meltons. The facts of the case in the report also match those of the Meltons' case.)

Holladay went on to write that Cooper "can compellingly argue that GM has known about this safety defect from the time the first 2005 Cobalts rolled off the assembly line and essentially has done nothing to correct the problem for the last nine years."

GM took Holladay's advice and settled with the Meltons in September 2013 for a confidential amount—which GM disclosed in the report was \$5 million. The company disclosed the figure to defend its general counsel, who denied prior knowledge of the defect. The report said a settlement has to be bigger than \$5 million for GM's GC to be notified.

Amazingly, the Meltons and Cooper are now trying to give that \$5 million back—so far, GM won't take it—so they can sue again. This time they're adding claims of fraud, saying they learned from documents and testimony in a televised hearing before the U.S. Congress that despite what he said in the "bombshell" deposition, DeGiorgio ordered the ignition switch to be changed but kept it secret by intentionally using the old part number on the new part.

GM has denied the allegations of a cover-up and is fighting the Meltons' effort to rescind the settlement, which a corporate spokesman said was "reached in good faith."

The case hit the news in January 2014, the month Mary Barra took over as GM's first woman CEO. Two weeks into the job, while riding home from the company's Detroit headquarters in her chauffeur-driven Cadillac Escalade, as Barra would later tell Time magazine, she got a call from her head of product development "saying we had this problem with the vehicles and

that we had to do a recall, and that it was large."

It wasn't nearly as large as Cooper was about to make it. The first recall in February was for 700,000 cars. Cooper wrote a letter to the government regulator, the National Highway Traffic Safety Administration, saying the recall did not cover nearly enough cars and demanding an investigation. The next week, GM doubled the recall to 1.5 million cars. Soon the number reached 2.6 million and was still growing. More defects came to light in the investigations that followed by the U.S. Congress, the company and its counsel, Anton Valukas of Jenner & Block in Chicago. Cooper's latest count of the total number of cars GM recalled this year is up to 30 million.

When 2015 begins, Cooper will be going after more discovery—this time from King & Spalding—about what GM knew about the ignition defect over the years. The firm promises a vigorous fight over attorney-client privilege and attorney work product.

The Blessing of a Political Loss

Cooper, 51, is a California native. While he was an undergraduate studying political science and economics at the University of California at Berkeley, he visited relatives in Marietta, where he went on a blind date with his future wife, Sonja.

When they married in 1987, she was working as an assistant district attorney in Cobb County. He transferred from Boston University School of Law to Emory University Law School, where he earned his J.D. in 1989. He first joined a California firm where he did defense work. But he found the big firm life was not for him, so the couple returned to Marietta, where he joined solo Jean Johnson. Later he practiced with plaintiffs' lawyer Andrew Jones.

From 2002 to 2003, Cooper served a term as president of the Georgia Trial Lawyers Association, a group he credits with helping him build his skills. In 2006, Cooper went out on his own. He won two \$1.1 million verdicts in 2010. His biggest win on record was a \$5.7 million verdict in 2012 in Paulding County for the family of a teen killed by a drug-impaired driver.

The Coopers have raised five children and are active in their Presbyterian church and the pro-life movement. He said he tends to be conservative, but he sometimes supports Democratic candidates. He said he and other trial lawyers share a devotion to the Seventh Amendment, the right to trial by jury in civil cases, that transcends political lines.

Cooper once ran as a Republican for Georgia State Senate, but he considers it a blessing that he lost in a runoff. He called his political foray an enjoyable experience but a "selfish ambition that fortunately was not granted" because it would have taken him away from his family and his law firm.

Cooper said he is determined not to grow the size of his firm, despite the deluge of calls about potential new cases that have come since the publicity from the Melton case. He did add a second lawyer and moved to a larger office this year, but he said those changes were planned before the GM issue went viral.

He added a marketing director, Victoria Schneider, in 2012, who has kept track of articles and news reports about him. Her count for the year: 400. He said his goal is to stay small enough to be involved in every case—currently about 20, the same as a year ago.

He said he has settled about a dozen claims against GM this year through the victims compensation fund the company set up for cases brought because of the ignition defect the Melton case revealed.

The Melton Case

In the recent interview, Cooper reflected on the Melton case, which started March 10, 2010. Brooke Melton was on her way to dinner to celebrate her 29th birthday, driving a highway in Paulding County on a rainy evening. Suddenly, she lost control of her 2005 Chevrolet Cobalt, which skidded into another vehicle and then rolled off the road and down a bank. By the time her parents reached her at the hospital, it was too late to say goodbye.

Initially, the police blamed the crash on Brooke. The parents sought Cooper's help to defend a lawsuit from the driver she hit, who was injured but survived. But the police report didn't make sense to the Meltons because they knew their daughter, a nurse, was a responsible and careful driver. They also knew she'd been having trouble with her engine shutting off and had just taken the car to a GM dealer for what she was told was a repair of the problem, according to the lawsuit brought against GM and the dealer.

Cooper began investigating with his paralegal Doreen Lundrigan, a mechanic and an engineer. They first suspected a power steering failure. But they were puzzled when black box data revealed Brooke's key was in the accessory position, not set to run. They also noticed her air bags didn't deploy, which turned out to be because the car lost power.

Cooper's engineer, Mark Hood of McSwain Engineering Inc. in Pensacola, Fla., went to an auto parts store to buy a collection of similar switches to test them and find out what happens. To his surprise, the new switches he bought for a 2005 Cobalt were not the same as the switch in Brooke's car, even though the part number was identical. The new switch was sturdier and not apt to flip to the off position when bumped or jarred like the old one.

As Cooper alleged and GM executives would later admit to Congress, the company had changed the part without making the substitution known, and without recalling the cars with the faulty switch.

That parts change was what the Valukas Report—commissioned and embraced by GM—would later call the "bombshell" Cooper dropped in the DeGiorgio deposition. The renewed lawsuit is driven by the attempt to find out who at GM knew about it and when.

More Discovery Ahead

Now, as Cooper and his firm—with help from the Beasley Allen law firm in Montgomery, Ala.—prepare to examine thousands of documents due from GM by the end of the year, Cooper is in his sweet spot. More discovery.

Even if he finds more discovery gold, the odds are long against lawyers who do what he does. Cooper recalled a "low point" from 2010 when he lost a case against Kia Motors Corp. He represented the family of a grandmother who died from a low-speed fender bender after her air bag punched her in the chest, damaging her heart. Cooper built a case against Kia for a malfunctioning air bag.

Kia's lawyer managed to convince the jury that the grandmother must have done something wrong, perhaps leaning out of the normal driver's position to reach for her coffee, which spilled on the dashboard.

Looking back, Cooper said he believes jurors are not inclined to award damages to adult children of someone killed in a car crash.

It remains to be seen whether a jury would vote differently for bereaved parents like the Meltons. "Their case is so unique in that what they chose to do in taking on GM has no doubt changed the lives of thousands if not tens of thousands of people who were driving around in defective cars," Cooper said.

The Meltons are also uniquely positioned to return their settlement money and sue again, compared to, for example, a family with a loved one severely disabled and requiring lifetime care or one that has lost a bread winner. "Then you have a lot of pressure to settle," he said.

Cooper said the Meltons are by no means wealthy, but "they've provided well for themselves." He's retired from the trucking industry. She's retired from work in customer support for a manufacturer's representative. They can pursue their case, and they're finding a measure of solace in their search for the truth.

"The hope it brings is that not only does the family have a right to take this company to court, but that the civil justice system can work for the public good," said Cooper. "We're not just fighting each other for money."