



OADC OUTLOOK

A Publication of the Oklahoma Association of Defense Counsel

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President's Letter

by Roger N. Butler, Jr.

Dear OADC Members:

Throughout the year, OADC has attempted to provide its membership with informative and unique continuing legal education opportunities. We began the year with a well attended and well received oil and gas seminar which was organized by our vice-president Jeromy Brown. At our summer meeting, two of Oklahoma's most prominent mediators, Joe Paulk and John Rothman, gave excellent presentations on distinct aspects of mediations, and alternative dispute resolution.

In October, thanks to Dan Folluo and a number of our members, our younger lawyers had the opportunity to attend a trial academy, which was very beneficial to them. Finally, very recently, OADC and the Defense Research Institute presented a seminar in Oklahoma City, "Business Diversification, Rainmaking and Associate Retention," with a guest speaker from Fort Lauderdale, Florida, Douglas M. McIntosh. By all accounts, Mr. McIntosh gave an excellent presentation, and the seminar was very informative.

During the past year, we have also attempted to provide our membership with relative information regarding the legislative process at the capitol in Oklahoma City. Elsewhere in this newsletter, James Milner, OADC's legislative consultant, comments upon the legislative outlook for next year, and how the Republican takeover of the legislature might affect that process.

On January 23, 2009, in Oklahoma City at Gaillardia Country Club, we will welcome Mike Heron as our new president at our winter meeting. Please make plans to attend that event. Mike will be a great OADC president.

Finally, I would like to thank everyone who has made my experience as president of this organization such an enjoyable one, including the officers, directors, and committee chairs. I can't think of a time I asked any of our members to do something for OADC, and was told no. I would especially like to thank our executive director, Skoshi Heron, who is an invaluable asset to OADC.

Sincerely,

Roger N. Butler, Jr.

CLINE YOUNG, Ph.D., P.E.

Consulting Engineer

THE CURRENT STATE OF EVENT DATA RECORDERS (BLACK BOXES)

Modern automobiles come in all manner of makes and models. From minivans to sports cars to tractor-trailers, numerous manufacturers produce a wide variety of personal and commercial vehicles. Like the many vehicles in which they are installed, automobile Event Data Recorders (EDR's) are not created equal. From manufacturer to manufacturer, the information recorded by EDR's and the steps necessary to download and store the information varies widely. Steps which will preserve data on one manufacturer's EDR may result in loss of all data if utilized on another manufacturer's EDR.

Recognizing the wide variance in EDR's, this paper will outline the differences between commercial and passenger vehicle EDR's, including several manufacturer-specific protocols for preservation and downloading of EDR data. As with all technical topics, there is a date of obsolescence. Therefore, the author has selected the end of model year 2007 as the date mentioned, but it should be noted that much of the information addressed in this article will still be valid for model year 2008 and beyond. Furthermore, the author has the equipment and training to download and analyze the data available from all of the systems discussed below except where noted otherwise.

COMMERCIAL VEHICLE EVENT DATA RECORDERS

DETROIT DIESEL ELECTRONIC CONTROL module (DDEC)

Starting with DDEC IV and continuing through DDEC VI in addition to the general parameters which contain information such as Governor Settings and Hard Brake Limit (factory set at 7 mph/s) are four categories of files that might contain information related to a specific accident. They are the Daily Engine Usage Report, Diagnostic Records (three of them), the Hard Brake Reports (two of them) and the Last Stop Record (one).

The Daily Engine Usage Report (appendix 1) can be used to check the hours of driving, idling and off for the engine. This can be useful under some circumstances to check whether or not the driver was in violation of any of the "Hours of Service" rules such as the 11 Hour Rule, the 14 Hour Rule or the 60 or 70 Hour Rule. The information is recorded by month and day in two hour increments with no indication of the number of starts or stops within that two hour increment.

The Diagnostic Records (appendix 2) will record the last three active diagnostic fault codes. Eleven data points are captured covering one minute before the fault became active and are reported in 5 second intervals. Among the data collected are vehicle speed, engine speed, engine load percent, throttle percent, brake switch, clutch switch, and cruise position. If a bench download (downloading the Electronic Control Module - ECM when not attached to an engine) is performed without a harness to protect against the creation of and reporting of new codes the new diagnostic fault codes will overwrite the old ones and the information which might have been related to the accident will have been lost. ***It is recommended by Detroit Diesel that rather than do a bench download the subject ECM should be attached to a virtually identical vehicle and then the download take place.***

The Hard Brake Reports (appendix 3) will record the last two Hard Brakes. The data are collected one minute before the Hard Brake and 15 seconds after and are reported in 1 second intervals. Among the data collected are vehicle speed, engine speed, brake status, clutch status, engine load, throttle percent and cruise status. Hard Brakes are created whenever the speed of the vehicle is at least 10 mph at the creation of the Hard Brake and the Hard Brake Limit (factory set at 7 mph/s) has been satisfied. Hence, it is not possible to set a Hard Brake when the vehicle speed is below 17 mph using factory settings. A similar restriction exists to prevent a Hard Brake from being created due to accelerations that spin the wheels. Of the two Hard Brake files, Hard Brake #1 is the most recent. ***It should be noted that the Vehicle Speed is calculated based on the Engine Speed; therefore, when the brakes are applied hard the Vehicle Speed will not represent the actual speed of the vehicle over the ground.***

The Last Stop Report (appendix 4) will record the last time the speed of the vehicle changed from at least 1.5 mph for 2 seconds to below 1.5 mph for at least 15 seconds. The data are collected for 1 minute and 45 seconds before the Last Stop and 15 seconds after the Last Stop. The data collected are the same as in the Hard Brake Record and are collected at 1 second intervals. ***As one can see from the ease with which a Last Stop Report can be created, the only way to preserve the Last Stop Report that is related to the accident is to tow the vehicle from the accident site WITH THE IGNITION TURNED OFF.*** When the ignition key is in the ON position the ECM will be powered up if the electrical system is still intact and could record new data overwriting some of the old.

WARNING: Only a technician/engineer/reconstructionist that is familiar with the needs of the accident reconstruction community and knows how to extract all of the data from the Electronic Control Module (ECM) should perform an accident reconstruction download.

For the complete article go to www.OADC.org

Oklahoma's Legislative Past is History*

In the past election, Republicans took charge of the Oklahoma Legislature for the first time since statehood. This trend in Oklahoma made political history statewide, as well as nationally. Statewide, Republicans captured two Senate seats belonging to Democrats to gain control of the Senate with a 26 to 22 margin for the first time in state history. The Republicans also increased their numbers from 57 to 44 in the state House of Representatives to 61 to 40

What does this mean for Oklahomans? With both legislative bodies under the control of Republicans, the following issues will likely be addressed.

Lawsuit Reform Both the President Pro-Tempore of the Senate, Senator Glenn Coffee (R) and the Speaker of the House, Representative Chris Benge (R) have indicated that lawsuit reform will be priorities for them. While some predict a single issue addressed in a several bill approach, it is my belief that an omnibus bill similar to SB 507 from 2006 will be placed on the desk of Governor Brad Henry early in the session. If Governor Henry vetoes the measure, look for it to be placed on his desk again... and again...and again.

Employee Law There is not a lot on the horizon that affects employee law but look for a fight to change the state's immigration law. Some minor amendments might be made, but a flat out repeal or revamp is out of the question as Oklahoman's overall supported the passage of HB 1804. Legislation prescribing English as the official language in Oklahoma will be introduced, and possibly pass the House. Its likelihood of becoming law is unknown by me.

Workers Compensation Reform Several OADC workers compensation lawyers met with senators and representatives over two years ago when the special session on workers compensation reform was being considered and eventually passed. The message: Don't enact the legislation as part will be held unconstitutional, and part will not be enforced. Our members could not have been more prescient. Legislation will be introduced on both sides seeking changes, but meaningful reform will only come from a group that is able to transcend politics and successfully meld the interests of workers and employers.

Education Education advocates will seek increased funding. Republicans have preached accountability in regard to educational funding, stating that education funding represents over 60% of the state's \$7 billion budget. Democrats maintain that education is underfunded, and teachers poorly paid. Look for a protracted fight on this issue this coming year.

Tax Reform/Spending Reform Oklahoma Republicans will continue to examine ways to lower the state income tax, lower or eliminate the franchise tax and other taxes they consider to be anti-competitive. To balance possible reductions in taxes, they will also seek to reduce the cost of state government. Look for the Republicans to give zero based budgeting serious consideration in order to control spending of state agencies. Contrarily, look for the Democrats to continue to advocate for more spending contending that several state agencies are underfunded. They will make the case that tax cuts from previous years are putting Oklahoma in a dangerous budget predicament.

As to Governor Henry, he will face some serious tests the next two years as he must find a way to work constructively with a Republican-controlled legislature. One thing is for sure, the politics of Oklahoma is in the past, and its future is going to be something to watch.

**This article is written by James Milner, Legislative Consultant to OADC and does not reflect the opinions or position of the association or any of its members.*

OADC Statement of Financial Position September 30, 2008	
Assets	
Current Assets	
CASH-OPERATING ACCOUNT	\$ 74,493.33
CASH-INVESTMENT ACCOUNT	\$ 53,928.33
Total Current Assets	<u>\$128,421.66</u>
Total Assets	<u>\$128,421.66</u>
Liabilities and Net Assets	
Net Assets	
UNRESTRICTED NET ASSETS	<u>\$128,421.66</u>
Total Net Assets	<u>\$128,421.66</u>
Total Liabilities and Net Assets	<u>\$128,421.66</u>

Third Annual Trial Academy is a Success

The Oklahoma Association of Defense Counsel sponsored its Third Annual Trial Academy at the Marriott Courtyard in downtown Oklahoma City on Thursday, October 16 and Friday, October 17, 2008. Twelve (12) practicing lawyers participated, as attendees and, by all accounts, the event was a rousing success.

Special thanks to Tulsa Attorneys Mike Hill, David Russell and Phil Richards who presented the morning session. Mike spoke on Jury Selection and provided an excellent question and answer forum where practical questions were answered; David presented his topic on “Finding A Theme for Trial”; and Phil presented a section on Opening Statements.

The afternoon was rounded out with a presentation on expert witnesses by Tulsa Attorney Dan Folluo, Cross-Examination by Tulsa Attorney Bill Leach, Direct Examination by Oklahoma City Attorney Kayce Gisinger and Closing Arguments by Oklahoma City Attorney Mike Felty.

The second day of the academy involved a workshop with Tom Wolf’s firm providing crucial witness testimony from Jason Kreth, John Shears and Juston Givens.

A fact pattern was given to the participants with Jason, John and Juston providing the expert and lay testimony for the participants to conduct direct and cross examination. As usual, this was one of the more entertaining aspects of the academy as our “newly created” witnesses basically fabricated testimony with impunity (Actually, it was a little scary at times because they were so believable).

The afternoon session on Friday required the participants to conduct voir dire, opening statements and closing statements to their peers. Special thanks are due OADC Members, Jon Starr, Lynn Babb, Phil Richards, David Russell and Dan Folluo who helped facilitate the Friday workshop.

Overall, it was a great learning experience and we look forward to next year’s event for what is rapidly becoming a valuable benefit for new trial lawyers in our State.

