

# 'Irritated' Judge Nearing Verdict On Mass. Car Data Law

By [Chris Villani](#) · [Listen to article](#)

Law360 (February 2, 2022, 4:53 PM EST) -- An exasperated federal judge said Wednesday he was close to a verdict in a suit challenging Massachusetts' revised "right to repair" law, yet he pressed attorneys for a group of manufacturers about why they didn't tell him that new Subaru and Kia vehicles complied with rules they claimed are impossible to follow.

After sitting through a bench trial last summer, U.S. District Judge Douglas P. Woodlock decided in October to [hear new evidence](#) about the cars in question, which can simply turn off the so-called telematics systems at the center of the law. The law broadens a 2012 version that gave independent repair shops access to cars' diagnostic and repair information.

The Alliance for Automotive Innovation, which represents big-name car brands like [General Motors Co.](#), [Toyota Motor Corp.](#) and [Volkswagen AG](#), sued after Massachusetts voters passed the expanded law at the ballot box.

Judge Woodlock, describing himself as "irritated," pressed Alliance attorney John Nadolenco of [Mayer Brown LLP](#) on why the automakers didn't realize two of their members had taken steps to comply with the law before hearing the evidence and two sets of closing arguments.

"We will ask whether we are dealing with concerted ignorance, willful blindness, or simply 'don't ask, don't tell,'" Judge Woodlock said.

Nadolenco said the Alliance did not find out Subaru and Kia had disabled telematics systems on new cars being sold in Massachusetts until the fall, after the evidence had been presented to the judge.

But he also stressed that the evidence in question was not the smoking gun that the state attorney general, whose office is defending the law, has [made it out to be](#).

"We simply didn't know during the case that Kia was doing what it was doing," Nadolenco

said, adding there is nothing inconsistent about the proposed findings of fact that the carmakers submitted at the trial's conclusion.

"It was never disputed at trial that companies could turn off telematics — that was a truism from the get-go of the case," he said. "The new evidence is not new evidence; it was admitted to throughout the course of the case."

As the case [sped to trial](#), both sides agreed to pick a subset of automakers to question during the discovery process, and Subaru and Kia were simply not part of that group, Nadolenco added.

"There is nothing nefarious there; they just weren't selected," he said.

Judge Woodlock said he was "trying to figure out why I should be as irritated as I am."

"Is it an ethical violation? I think probably not," the judge said. "Do I encounter it from time to time? Yes I do. Do I like it? No I don't."

The Massachusetts law broadens a 2012 version that gave independent repair shops access to cars' diagnostic and repair information. Attorney General Maura Healey's office has argued that turning off the telematics systems is a simple way for carmakers to comply with the law and not have to share any data.

Yet the Alliance has said switching the technology off is avoiding, not complying with, the law.

The automakers further claim giving independent auto mechanics access to a vehicle's telematics system — which tracks data such as location, speed, braking and vehicle diagnostic information — puts manufacturers at risk of violating federal safety standards by forcing them to either disable certain safety features or create a cybersecurity risk if the data falls into the wrong hands.

Judge Woodlock seemed skeptical of the latter argument during Wednesday's hearing, saying the [National Highway Traffic Safety Administration](#) has not explicitly said the Massachusetts law would cause the carmakers to violate federal law.

"What we got was a Zen koan or perhaps the Oracle at Delphi telling us what the role of NHTSA would be, but we certainly didn't get someone saying 'this is a violation of federal law,'" the judge said.

"What you got was them saying they are concerned," Judge Woodlock said, adding dryly, "Aren't we all?"

The judge signaled that the case was nearing an end. He referenced the trial of the former chief of staff to a Massachusetts mayor convicted of corruption, a case that was slated to go to a jury in December but was pushed back to March when a government witness tested positive for COVID-19.

Judge Woodlock said he wanted to have the automakers' suit decided before the jury trial begins March 7, asking the attorney general to delay enforcing the law a bit longer until he reaches a verdict.

The Alliance for Automotive Innovation is represented by John Nadolenco, Andrew J. Pincus, Archis A. Parasharami, Eric A. White and Erika Z. Jones of Mayer Brown LLP, Elissa A. Flynn-Poppey, Laurence A. Schoen and Andrew Nathanson of [Mintz Levin Cohn Ferris Glovsky and Popeo PC](#), and its own Charles H. Haake.

The attorney general is represented by Robert E. Toone, Eric A. Haskell, Phoebe Fischer-Groban and Julia Kobick of the Massachusetts Office of the Attorney General and by Special Assistant Attorney General Christine Fimognari.

The case is Alliance for Automotive Innovation v. Healey, case number [1:20-cv-12090](#), in the [U.S. District Court for the District of Massachusetts](#).