



Toyota's nightmare

As Toyota faces lawsuits over sudden unintended acceleration, here's what you can expect

BY LAWRENCE R. BOOTH

The US headquarters of Toyota is a stone's throw from my office in Torrance. What has been going on there is the subject of months of controversy and now a diminishing amount of speculation. From the Toyota CEO's appearance in Congress to the company being hit by the U.S. Department of Transportation with the largest fine in history, over \$16 million, the question remains, are their problems with "Sudden Unintended Acceleration" (SUA) over? More importantly, have we seen the last of the runaway cars leading to sickening crashes and loss of life? Finally, are their series of band-aid recalls anything but an elaborate charade?

Sticky pedals

In a masterful bit of PR, Toyota has the mainstream media talking about sticky pedals. This creates the image they want of a pedal somehow mechanically being stuck, causing the car to continue to accelerate. First, they said it was floor mats interfering with the gas pedal. When accidents continued with the floor mats in the trunk, then they began replacing a particular model of pedal or modifying it at their dealers. We saw commercials of mechanics making these modifications on television. The supplier of those pedals, CTS, complained loudly that their pedals were just fine.

Over the last 20 years, nearly all car manufacturers have gradually given up using mechanical accelerator systems. The days of cables and rods linking the accelerator to the throttle butterfly

started to disappear in 1988 when BMW introduced the first Electronic Throttle Control (ETC). These systems rely on sensors to relay the driver's intentions to the engine control module, which is a computer that controls the opening and closing of the throttle. Unfortunately, these systems can be the subject of glitches caused by electric shorts, bad microchips, faulty software design or even an atmosphere of electromagnetic waves. When getting on airplanes, we all have experienced the announcement to turn off all electronic gear and stow cell phones, ostensibly to avoid having our personal electronics interfere with the plane's navigation systems. The auto industry has borrowed its electronic technologies from aviation, but the difference is that, in a multi-million dollar airplane, the systems are much more sophisticated, expensive and backed up with multiple redundancies.

The auto industry is well aware of the problems caused by these electronics. There have been a number of examples over the years of SUA incidents on various makes of cars, but never to the extent suffered by Toyota.

To make matters worse the National Highway Traffic Safety Administration's minimum standards on the subject go back to 1972 when all cars had mechanical throttles. An attempt to revise them in 2004 was stopped by the industry, which objected to the testing methods. And the problem gets worse because temporary intermittent glitches in poorly designed electronics may never repeat themselves and are nearly impossible to trace.

Informing the public

Toyota has had reports of SUA incidents in their vehicles, originally in Europe and Asia and later in the United States, for a very long time. As a result of certain deadly crashes, they finally went public. First, they blamed these accidents and near accidents on floor mats and told everyone who owned certain models to put these mats in the trunk; then began issuing modified mats through their dealers.

But the deadly crashes continued with the mats in the trunk. So, they issued another recall limited to models which had a gas pedal manufactured by a certain company. When those pedals were being replaced, the component manufacturer CTS yelled foul. Amid all these pedals being modified, we saw on television a spokesman who looked like a mechanic saying that his family rides in those cars, so don't worry.

Still, with the mats in the trunks and modified or replaced pedals, the accidents and incidents continued. Critics argued that since most of these incidents involved cars taking off at 90 miles-per-hour, it does not make sense that the pedals would always get stuck wide open. Mixed signals came from Toyota executives as to whether the electronics were to blame. Most recently, internal Toyota e-mails came to light showing a corporate strategy as to when to let the public know that their cars might suddenly go out of control. Finally, the story continues with Toyota conceding that the newest models have a redundant safety device consisting



of yet another electronic device which overrides the throttle controls when the driver hits the brakes. Of course, there is no explanation as to why this was needed if the ETCs were not to blame.

Lawsuits

There have now been a large number of lawsuits ranging between ordinary claims for injuries or death due to product defects to class actions for diminution in value of thousands of cars. Many of the individual cases involve accidents which occurred years ago in Toyotas manufactured over a long period of time. In California, these individual cases are timely because of the well-accepted rule that the two-year statute begins to run only on discovery of the defect. (See Witkin, California Procedure, Fifth Edition, section 575.) There has been at least one heartbreaking

case where the driver actually went to prison because an accident, which was the prototype of SUA incidents, sadly caused others to die.

My future columns in *Plaintiff* on the Toyota matter will discuss the following vital issues along with recent developments in the ongoing litigation:

- The main defense in these cases will be pedal error, claiming that drivers accidentally stepped on the gas instead of the brake. This should not be treated lightly since it may have considerable merit depending on the facts of the accident.
- Proving ETC defects. Including non-recalled models in the litigation.
- Why plaintiffs should avoid the federal court, if possible.
- Suing dealers and other entities to avoid the federal court.

- The jurisdictional status of Toyota and its U.S. subsidiary.

- Who to sue including Toyota in Japan, its U.S. subsidiary, dealers, pedal manufacturers and others.

- The possibility of punitive damages based on claims of delay or failing to inform the motoring public.

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