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## W.Va. lawsuit targets Toyota

Federal class action filed in Charleston says massive recall not big enough

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CHARLESTON, W.Va. -- Toyota's massive recall this month of millions of vehicles doesn't include every car that might have a faulty electronic throttle system that might cause unwanted acceleration, according to a class-action lawsuit filed in federal court in Charleston a couple of months ago.

On Tuesday, Toyota Motor Corp. announced that it would stop new sales of certain models, including such top sellers such as the Camry, Avalon, RAV4 and Tundra. Worldwide, the recall and sales freeze is expected to include as many as 9 million vehicles.

In the United States, the recall includes eight models, and goes back as far as 2005, and does not include any cars made by the automaker's Lexus division.

The Charleston lawsuit, filed in November, names 13 models that have an electronic throttle-control system, or ETCS, which allegedly has "a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver." And the time frame extends as far back as 2002 for Camrys, and 1998 for Lexuses.

Moreover, when reports of incidents caused by unwanted acceleration led to an investigation by a federal agency in 2004, the information provided by Toyota officials was limited in scope so as to exclude incidents that lasted longer than one second or where the driver couldn't stop the unwanted surge by applying the brake, according to the lawsuit.

"Toyota, through [Toyota Motor North America], thus deceptively concealed from [the National Highway Traffic Safety Administration], as well as from the news media and consumer safety groups that monitor NHTSA safety defect investigations, an entire universe of potentially relevant customer complaints," the lawsuit states.

Toyota has recalled the 2009-10 RAV4 crossover, the 2009-10 Corolla, the 2009-10 Matrix hatchback, the 2005-10 Avalon, the 2007-10 Camry, the 2010 Highlander crossover, the 2007-10 Tundra pickup and the 2008-10 Sequoia SUV.

In addition to those, the lawsuit alleges, several other models and years are at risk: 2007-08 FJ Cruisers, 2003-08 Tacoma pickups, 2002-09 Camrys, 2000-09 Tundra pickups, 2001-09 4Runner SUVs, 2001-09 Land Cruisers, 2005-09 RAV4s, 2001-09 Sequoias, 2004-09 Siennas, 2005-09 Corollas, and 2004-09 Highlanders. "Lexus models" from 1998 to 2009 also are listed.

The lawsuit names Toyota Motor Corp., based in Japan, as well as its North America and West Virginia subsidiaries, as defendants.

Toyota did not respond to multiple requests for comment on Friday.

### Horrific crashes

In August, an off-duty California Highway Patrol officer and three members of his family,

including his wife and daughter, were killed when a Lexus on loan from a dealer accelerated out of control outside San Diego. According to the recording of a 911 call made from the car, it had no brakes as it reached speeds of more than 100 mph before coming to rest in a dry riverbed and bursting into flames.

In the aftermath, authorities suggested that a floor mat lodged under the gas pedal might have been to blame. On Sept. 29, Toyota issued a consumer safety advisory, asking owners of certain models to remove their driver's side floor mats until it could develop a remedy.

But more than a year earlier, a Flint, Mich., woman was driving a 2005 Camry to a neighborhood grocery store when it suddenly sped up without warning, according to a wrongful-death lawsuit filed in Genesee County Circuit Court.

"The vehicle accelerated from an intended speed of less than 25 mph to a speed of approximately 80 mph, despite Guadalupe Alberto's having vigorously and desperately applied her brakes, and traveled at that high speed for approximately 1/4 of a mile, collided with a tree, went airborne, and then collided with another tree," the lawsuit states.

The floor mats had been removed from the car before the incident occurred, the lawsuit maintains.

Charleston lawyer Ben Bailey and several other lawyers represent the plaintiffs in the West Virginia class action and the Alberto case in Michigan.

"We filed these lawsuits several months ago because we think there is a danger to the public that isn't fully understood," he said. "We're concerned about the absence of a failsafe, and we know from our case in Michigan that floor mats are not the problem."

#### **A lack of a failsafe**

Many automakers began using electronic throttle-control systems between 2000 and 2005, said Byron Bloch, a Maryland-based auto safety expert and independent consultant. This means that instead of pulling on a cable, pressing the gas pedal sends an electronic signal to a computer module that receives information from other sensors in the car.

The electronic system processes information, including engine temperature, oxygen levels and pedal position, in an effort to control emissions and optimize fuel efficiency, he said.

"So now you're asking this little computer, which was purchased from the lowest bidder, typically, to do a lot of information and signal processing," Bloch said.

Unlike other automakers, such as Audi, Mercedes-Benz, Volkswagen and Nissan, there is apparently no override feature in Toyotas that idles the engine when the driver steps on the brake, he said.

"The Toyota system has not incorporated a failsafe design element that would instantly prevent runaway acceleration and would prevent the continued acceleration when the driver backs off from the accelerator," Bloch said.

Before including the electronic throttle control in 2002 cars, Toyota would've tested the system extensively in the previous four or five years, he said. Once cars with the new systems went to the public, the company would monitor its consumer complaints and claims made under warranty for indications that there were problems.

"Toyota must have long known about the problems with their electronic throttle-control system, including its engine control module, beginning back in the 2002-2003 period," Bloch said, noting that Toyota issued a Technical Service Bulletin in 2002 about engine surge problems in the 2002 Camry.

Although such documents, if they exist, have not become public, Toyota's internal warranty and replacement parts knowledge, and their internal directives to re-design the system, would indicate that Toyota had ample prior knowledge of a growing safety problem, he said.

### **Political connections**

The National Highway Traffic Safety Administration, the federal agency tasked with overseeing car safety, did launch an investigation into unintended acceleration incidents in 2004, but after discussing the issue with senior officials at Toyota Motor North America, at least one of whom used to work at the NHTSA, the agency limited the scope of its investigation.

Incidents lasting longer than one second, where the car couldn't be controlled by applying the brake and where the unintentional acceleration happened as the car was being shifted into gear, weren't included. That left out incidents like the fatal accidents in California and Michigan.

"Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed," the class-action lawsuit states. "Both the agency and the manufacturer issued statements blaming the driver's-side floor mat, despite evidence that floor mats were almost never the cause."

During George W. Bush's presidency, the agency and the auto industry had close ties, safety expert Bloch said. Andrew Card, Bush's chief of staff, was a former lobbyist for the auto industry who worked for General Motors.

"While NHTSA staff tries to do a good job, they are headed up by political appointees in the administrative and legal counsel offices. During the 2001-2008 era, those appointees included lawyers from GM and Chrysler," he said. "So it may be that some investigations were terminated for political reasons."

In a sworn deposition in December, Christopher Santucci, who worked for the NHTSA's Office of Defects Investigation before going to work for Toyota in 2003, said he "discussed" the agency's investigation with his former colleagues before the agency decided to limit the scope.

In response to a question that asserted the NHTSA's decision worked out well for Toyota, Santucci replied: "You say it worked out well for Toyota, I think it worked out well for both the agency and Toyota in the meaning of which Toyota provided what they were looking for and trying to satisfy the agency's demands."

Santucci said he didn't know why Toyota limited the focus of its warnings, which were later expanded into this month's recall, and didn't include all years of Toyota vehicles with an electronic throttle-control system.

"Did NHTSA ask Toyota the questions I just asked you, about what is different about these models that you're recalling and from the earlier models that also had the ETCS?" a lawyer asked during the deposition.

"I don't recall them asking," Santucci said.

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