

# THE SAFETY RECORD



## INSIDE THIS ISSUE

NHTSA Agrees to Correct Impala Star Ratings; GM, Enterprise Try to Allay Concerns over Deleted Airbags	1
Former Toyota Counsel Allegations Haunting Toyota Cases Past	1
NHTSA Probes Honda Airbag Recall; Consumers Complain of Inadvertent Deployments	2
NHTSA Advances Two Mandates of the Gulbransen Safety Act	4
NHTSA Adopts New Truck Braking Standards	5
Early Warning Data Becomes Recall Tracking System, Agency Release of Data Lags	5
Fatal California Crash Highlights Toyota's Sudden Unintended Acceleration Problem	7

### NHTSA Agrees to Correct Impala Star Ratings; GM, Enterprise Try to Allay Concerns over Deleted Airbags

REHOBOTH, MA – As Enterprise Rent-A-Car and General Motors scramble to correct the false advertising that claimed former fleet vehicles being sold used were equipped with “standard” side curtain airbags, the National Highway Traffic Safety Administration has agreed to correct the information on its consumer website.

Over a three-year period, GM had offered fleet buyers as a cost savings the option of deleting the standard side airbags in 2006-2008 Chevrolet Impalas and MY 2008-2009 Chevrolet Cobalt and Buick LaCrosse models. Last month, investigations by SRS and *The Kansas City Star* revealed that the troubled automaker and Enterprise, its biggest fleet customer and the nation’s largest used car seller, were re-selling these altered fleet vehicles – mostly the Impalas – to retail consumers and advertising them as having the important safety feature.

After the story received national attention, Enterprise, which had ordered 66,000 Impalas without the standard side air bags, offered to buy back 750 of them sold under false pretenses for \$750 over the Kelly Blue Book value. GM offered a desultory defense of the practice, saying that it did not violate NHTSA’s minimum standards for side impact protection and that the discount was an important selling point for its fleet customers.

NHTSA, however, has taken the matter more seriously. On September 2, SRS president Sean Kane wrote to NHTSA Acting Administrator Ronald Medford asking the agency to amend its side-impact NCAP information for the affected models. Medford responded two days later, with a thank-you note to Kane and a commitment to quick action.

“In light of this information, the agency reviewed side airbag data provided by GM for the models in question and found the information provided is

misleading,” Medford wrote. “Accordingly, the agency has revised the safecar.gov website to indicate that side curtain airbags are optional equipment for Model Years (MY) 2006-2008 Chevrolet Impalas and MY 2008-2009 Chevrolet Cobalt and Buick LaCrosse models. The agency also amended the crash test ratings information to reflect that the models tested for side impact crash protection were equipped with the optional side curtain airbags.”

Further, Medford said, beginning with model year 2011, the agency would request that vehicle manufacturers specifically state whether fleet models have different safety equipment from those models sold at dealerships and that differences will be noted in the ratings information provided.

The Impala, for example, won a five-star side-impact crash rating for the front driver’s seat and the four-star rating for the rear with the aid of the side curtain air bag. The

*(Cont. on p. 2)*

### Former Toyota Counsel Allegations Haunting Toyota Cases Past

Los Angeles, CA – Attorneys nationwide are taking a second look at their past Toyota cases in light of the explosive allegations leveled by former Toyota corporate counsel Dimitrios P. Biller, who has accused the automaker of hiding and destroying evidence in rollover cases.

Biller, Toyota’s former national managing counsel in charge of its Rollover Program from 2003 to 2007, filed suit in July against

his ex-employer in U.S. District Court of Central California, where Toyota Motor Sales is headquartered. During those four years, Biller alleges that Toyota’s top coterie of in-house counsel – including Christopher Reynolds, Vice President and General Counsel, Jane H. Martin, Assistant General Counsel, Eric Taira, Assistant General Counsel, and Dian Ogilvie, then-Senior Vice-President and General Counsel – conspired to “conceal, with-

hold, and destroy evidence and information, and obstruct justice.”

Among the documents Biller alleges were concealed was an internal memo requiring a 20 percent margin over that mandated by the FMVSS 216 compliance test. Yet, many of its production vehicles did not meet this internal standard and engineers and other company representatives repeat-

*(Cont. on p. 3)*

## NHTSA Agrees to Correct Impala Star Ratings; GM, Enterprise Try to Allay Concerns over Deleted Airbags

(Cont. from p. 1)

vehicle would have likely received a lower rating without it.

“NHTSA clearly recognized that this is an important issue to consumers – and not just in this immediate instance with GM vehicles,” Kane said. “By taking the extra step and requesting manufacturers disclose differences in fleet safety equipment, the agency is sending a clear signal that it won’t be party to the obfuscation of what is really ‘standard.’”

Kane also wrote to GM CEO Fritz Henderson in early September, suggesting that GM ought to be an active participant in undoing the damage. While GM did remove the erroneous information from its Certified GM website, many GM dealers continued to advertise the Impalas as having the standard

feature. Kane asked GM to re-brand the altered vehicles “to alert all future purchasers and dealers that this safety equipment was not included.” SRS’s request also called on GM to immediately “change its advertising and marketing materials to reflect that the feature is not standard, and that you alert all dealers and car buyer’s guide organizations of this anomaly on the 2006 through 2008 Impala, 2008 through 2009 Cobalt and any other vehicles that GM has marketed with “standard” side curtain airbags that were offered to fleet buyers without the feature.”

GM replied the following day, denying that the status of safety feature was ever hidden from buyers: “When modifications or deletes are made to a GM vehicle for fleet purchase, the deleted equipment is clearly

marked on the original window sticker as well as on the invoice. In GM-sponsored closed auctions, the content of each GM vehicle is fully disclosed,” said Brian Latouf, GM’s Director Global Structure & Safety Integration, Center in a letter to SRS.

Otherwise, Latouf said, the information on how to tell if the vehicle actually contained the standard side airbag was tucked away in the owner’s manual. In the case of auctions outside of GM’s control, buyer beware, he added.

In addition, GM said that it had taken steps to prevent further misunderstandings, including: modifying its GM Certified website so that when a dealer printed the window sticker, the side airbag feature would no longer be automatically listed;

contacted internet seller sites, such as AutoTrader.com, to inform them about the deletion for fleet vehicles; and asked eBay to change its advertisements for all certified GM used vehicles. The manufacturer also asked dealers with GM certified used vehicles and third party providers to correct their window stickers for the affected vehicles.

SRS estimates that approximately 200,000 fleet vehicles have the deleted side curtain airbags despite GM’s assertion that the feature was standard.

**More on Side Airbag Deletion:**  
[SRS Letter to GM](#)

[SRS Letter to NHTSA](#)

[GM Response to SRS](#)

[NHTSA Response to SRS](#)

[GM Allows Removal of Standard Side Airbag for Fleet Buyers](#)

## NHTSA Probes Honda Airbag Recall; Consumers Complain of Inadvertent Deployments

WASHINGTON, D.C. – Can you say rolling recall? The National Highway Traffic Safety Administration wants to know why Honda recently expanded from 4,000 to 440,000 a safety campaign for defective airbag inflators that began last November.

In July, Honda Motor Corporation announced that it was adding another model, more model years, and many more vehicles to a recall of airbag inflators that could explode, pierce the airbag and shoot metal fragments into occupants’ legs. On November 8, Honda recalled only 3,940 Honda Accord and Civic vehicles in certain VIN ranges in the 2001 model year. In its brief explanation to NHTSA, Honda said that in July 2007, it received a claim for an “unusual” airbag deployment, with photos. This initi-

ated an investigation to collect and analyze parts from “suspect propellant lots,” Honda said. In September 2008, after receiving a second claim of a similar deployment incident, Honda decided that some airbag inflators had a safety defect and announced a limited recall on November 11.

Eight months later, Honda expanded the recall to 2002 Acuras, Civics and Accords, and greatly widened the VIN range to enlarge the recall population one-thousand-fold. Again, in its defect notification to the agency, Honda claimed that two more reports of unusual airbag deployments – in May and June – prompted the second recall.

Honda’s minimalist explana-

tions apparently didn’t satisfy NHTSA. On August 19, the agency’s Recall Management Division sent a letter to Honda requiring “additional information to understand why HMC did not include the recent population in safety recall 08V -593 and to evaluate the timeliness of HMCs recent defect decision.”

NHTSA asked Honda how it determined which vehicles to include in the November recall population, to explain the difference between the airbag inflators in first and second recalls, and how the automaker determined the recall population in each case. The agency also asked for complaints; warranty claims; field reports and lawsuits related to the airbag inflator. Honda had until September 16 to reply.

And while the agency is asking airbag questions, it might want to query Honda about reports of non-crash side airbag deployments in late model Hondas. News stations in Colorado and Boston have recently aired stories about the plight of Honda consumers whose side airbags have deployed inadvertently when a car door was closed – or sometimes with no provocation.

According to one broadcast, 96 consumers have complained to NHTSA that their air bags spontaneously deployed. Honda has denied the problem; the insurance companies and dealerships often refuse to pay, blaming the manufacturer. The consumer is left with a repair bill of \$3,000-\$5,000. Owners of Accords, Civics and Elements have registered com-

(Cont. on p. 4)

## Former Toyota Counsel Allegations Haunting Toyota Cases Past

(Cont. from p. 3)

edly testified that Toyota had no such requirement. Biller also alleges that Toyota had a dolly rollover test protocol – never disclosed in 20 years of litigation – that required .55 millimeters of distance between the dummies' heads and the crushed roof. But, Biller maintains, Toyota destroyed the data in late 2005 or early 2006.

The company also routinely withheld internal e-mails from plaintiff's attorneys, he alleged, naming specific cases in which e-discovery was not turned over. One instance, *Campaigna v. Toyota*, involved a Toyota 4Runner rollover in which the driver died and the passenger was partially ejected, suffering permanent and disabling injuries. Attorney Lance Cooper, who represented the victims in *Campaigna*, said that he received no e-discovery in the case, despite having asked for it.

"That was consistent with Toyota's normal response to discovery. Beyond FMVSS compliance documents, they've always said that they don't retain materials past the production date of the vehicle," said Cooper, of The Cooper Firm, based in Marietta, GA. "I've always suspected Toyota was not forthcoming with discovery but could never prove it."

Biller portrays himself in 117-page lawsuit as a lone bulwark against these activities, repeatedly confronting "Toyota executives about the need to turn over the evidence it was concealing and withholding." According to his lawsuit, Toyota executives refused to comply with law, preferring to follow the company's "Golden Rule" — protect the client at all costs. In response to his attempts to

get Toyota to properly comply with discovery orders, company executives subjected Biller to intimidation and harassment, leading to "a complete mental and physical breakdown," he alleges.

Biller left Toyota in September 2007 with a severance package totaling nearly \$4 million in wages, legal expenses, and a \$2.3 million lump severance payment for emotional distress. In addition, Toyota forgave a loan in an unspecified amount that it made to Biller in 2005. (After a brief stint in the LA District Attorney's office, Biller also sued his subsequent employer for discrimination.)

Toyota has denied Biller's accusations, calling them "inaccurate and misleading," and proclaimed its dedication to the highest legal and ethical standards. But the plaintiff's bar – particularly those attorneys with Toyota rollover cases – is taking them seriously. Cooper says that he is considering re-opening *Campaigna*, which settled for an undisclosed amount. A California attorney is also seeking class certification for a lawsuit that would re-open previously determined rollover cases. Earlier this month, Richard McCune of Redlands, CA, filed a lawsuit alleging fraud, unfair practices and racketeering.

Texas attorney Todd Tracy is re-opening 15 cases that were settled in the last six years, when Biller worked at Toyota. The cases, which covered issues ranging from roof crush to restraints to rear seats, were all heard in the federal court's Eastern District of Texas in Marshall County. Tracy says that Biller's hefty severance package appears to buttress some of his claims.

"If he didn't have anything to say, why did they pay him \$3.7 million? Disgruntled employees

are fired everyday in this country and they don't get \$3.7 million," says Tracy of the Tracy Law Firm, located in Dallas. "We want to find out how deep this goes, and does it go beyond rollover and roof crush. It's time to open the vault, turn on the lights and get the discovery out in the light of day."

Similarly, John Kristensen of O'Reilly Collins in San Mateo, CA, believes that Biller's claims of discovery misconduct are part of a larger corporate defense strategy. Kristensen is representing four families who are suing Toyota over defective relay rods in Toyota 4Runners and other trucks made by the Japanese automaker. One of the crashes killed 18-year-old Michael "Levi" Stewart of Idaho.

On September 15, 2007, Stewart was driving near Fairfield, Idaho when the steering relay rod on his pick-up snapped. The truck rolled over, killing Stewart and leaving his passenger with a severe brain injury.

According to Kristensen, the case, now in the discovery phase, has already revealed that Toyota was not forthcoming with NHTSA about the defect. Toyota actually learned in 1988 that the steering relay rod – a part that is supposed to outlast the vehicle – was prone to failure, leaving the driver with no steering control. In the U.S., at least 40 consumers had contacted Toyota and its counsel before 2004 to complain that the steering relay rod had fractured in their vehicles, resulting in crashes that ranged from minor to serious.

Nonetheless, Toyota didn't recall the part until 2004 and initially only in Japan. At the time, the Japanese automaker blamed the defect on driving conditions in Japan and only admitted to knowing about 11 instances of steering rod failures there and none in the U.S. Later, Toyota conceded that it actually knew of more than 80 relay rod complaints in both countries, according to news articles. Toyota didn't recall the relay rods in the U.S. until September 2005. This campaign covered the 1989-1996 model years for power-steering equipped 4Runner sport-utility vehicles, compact pickups and T-100 pickups. The initial recall resulted in a 30 percent repair rate, well below the norm for vehicle recall repairs. Stewart's 1991 truck was among those never repaired. Fearing NHTSA intervention because of the extraordinarily low recall rate, Toyota initiated a recall renotification campaign in 2007.

Kristensen says that his investigation has uncovered 100 instances of relay rod fractures. In some cases, the consumers had sent registered letters to Toyota's lawyers and had kept the faulty part, after Toyota declined to examine it. Kristensen said that he was mildly shocked by Biller's lawsuit, but not really surprised about the allegations within it.

"It seems to be a pattern and practice of Toyota to withhold relevant information – despite court orders and their legal obligations," he said. "If proven true, these are serious allegations."

## NHTSA Probes Honda Airbag Recall; Consumers Complain of Inadvertent Deployments

(Cont. from p. 2)

plaints on consumer- and model-specific Honda owners' websites.

These stories reported to NHTSA were typical:

"By shutting the pass side door the side curtain air bags deployed. This is on a 2008 Honda Accord, the warranty stated they would not pay for it even though when I bought the warranty I was told it covered everything even if the tiniest light bulb went out, my insurance co stated they would not pay because there was no accident and it is a malfunction... The only good thing is that we were not going down the road at the time and no one got hurt."

"The contact owns a 2008 Honda Accord. While driving 55 mph, the passenger side curtain air bag deployed without impact. The dealer stated that the contact must have struck something, although there was no damage to the vehicle. The insurance company inspected the vehicle and found nothing that would cause the air bag to deploy. The VIN was unknown. The current mileage was 8,000 and failure mileage was 7,500."

"The contact stated while the vehicle was idling in park, the front passenger door was pulled closed from the inside and pushed closed from the outside at the same time. The side curtain air bag deployed without warning. The service dealer and manufacturer were notified. Updated 11/02/06."

"It was April 22, 2009 around 3pm when I pulled into the Laundry Basket on Broadway in Bangor, Me. I opened the

rear passenger door to take the dirty laundry out of the back and then closed the rear passenger door. I opened the front passenger side door where my cousin was sitting and asked him to hand me some money for laundry. When I shut the front passenger door all of the passenger side air bags went off striking my cousin in the head. My cousin and I drove the vehicle over to Darling's Honda in Bangor where they were very helpful. After coming to an agreement I was given a rental car and my vehicle was to be inspected at no cost to me. I reported the incident to my insurance company as well. An adjuster from my insurance company took a look at the car and determined that it was a mechanical defect in the car so my insurance will not cover the repairs. After Honda took a look at the car they were unable to determine why the airbags went off and Honda America is refusing to cover the cost of the damages. My cousin that was sitting in the passenger seat when the airbag went off has a previous head injury that causes him to have seizures and after he was struck in the head by the airbags, he had a couple of seizures that night. Honda told me they are refusing to fix the vehicle because that would be admitting fault and they are afraid of a lawsuit from my cousin or myself. I had no intentions on filing a lawsuit, I just want my car fixed. After I got my car back from Honda all of the weather stripping is coming off the vehicle. Thank you for taking the time to read this."

So far, the media attention has compelled Honda to do one free repair for a Massachusetts man whose 2008 Accord suffered a spontaneous deployment when a passenger closed the door. But, NHTSA has not launched

an investigation.

While a non-impact airbag deployment is clearly a defect, NHTSA is faced with the prospect that Honda will take a hard-line that it is not a 'safety-related' defect because there have been no crashes or serious injuries. "At some point, NHTSA's lawyers need to apply the common sense rule and signify to manufacturers that failures of safety systems, regardless of whether they are directly injury-inducing, are defects nonetheless, and recalls are in order," said SRS president Sean Kane. "It's understandable that the agency may not want to expend its limited time and resources on a defect that isn't causing injuries or crashes, but at some point they need to draw the line in the sand – and the Honda side-airbag non-crash deployments is a good one to do that with."

### More on Honda Airbags:

[Could Closing Car Doors Too Hard Cause Air Bags To Deploy?](#) (WCVB, Boston)

[American Honda Statement Concerning Side Curtain Airbag Deployment](#) (WCVB Boston)

[Some air bags spontaneously deploy; Honda blames drivers](#) (9 News, Denver)

## NHTSA Advances Two Mandates of the Gulbransen Safety Act

WASHINGTON, D.C. – Only power windows with express-up designs would have to be equipped with an auto-reverse feature, and all vehicles will have to install a brake to shift interlock, under two notices of proposed rulemaking published in the last month.

NHTSA proposed these rules to satisfy two mandates contained within the Cameron Gulbransen Kids Transportation Safety Act. The bill was named after 2-year-old Cameron Gulbransen, who was killed when his father, a pediatrician from Long Island, inadvertently backed over him, because the blind-zone behind his SUV made it impossible to see the toddler. The legislation required NHTSA to – for the first time – develop a rearward visibility standard, mandate a brake-to-shift-interlock and require power windows to have an automatic reverse feature.

Longtime NHTSA activist Janette Fennell, founder of Kids and Cars, is vowing to fight the agency's weak power window proposal.

"This is an issue people have been working on since the advent of power windows, back in the 60s," she says. "There's plenty of research and understanding that power windows exert so much force when they are going up that they can injure, maim and kill. But there's just been terrible resistance to prevent that from happening. There have been numerous petitions and numerous people bringing

(Cont. on p. 6)

### NHTSA Adopts New Truck Braking Standards

WASHINGTON, D.C. – The National Highway Traffic Safety Administration has passed a strict new braking rule for heavy trucks designed to significantly reduce fatalities, injuries and property damage by reducing their stopping distances by 30 percent.

The July Final Rule was the conclusion of a rulemaking that began in December 2005, after the agency published *An Analysis of Fatal Large Truck Crashes*. The report painted a sobering statistical picture. According to 2006 data, large truck fatal crashes comprised 12 percent of all highway fatalities in that year. A total of 385,000 large trucks were involved in crashes – with 4,732 resulting in 4,995 fatalities; 106,000 people were injured in crashes with large trucks. Three-quarters of the killed and injured people were occupants of another vehicle. These statistics were buttressed by a 2005 Federal Motor Carrier Safety Administration analysis, which found that the fatality rate for large truck crashes was 66 percent higher than that of passenger car crashes. Combination trucks – tractor-trailer combinations – alone had a fatality rate nearly double that of passenger

vehicles. The crash fatality rate for single-unit trucks was about 23 percent higher than for passenger vehicles.

Under current Federal Motor Vehicle Safety Standard 121, most truck tractors are required to stop within 355 feet, when tested at 60 mph, pulling an unbraked control trailer, loaded to their Gross Vehicle Weight Rating; and within 335 feet, when tested at 60 mph in the unloaded condition. The emergency brake stopping distance is set by 720 feet, when tested at 60 mph in the unloaded condition. The standard doesn't specify different requirements for different vehicles based on their weight or number of axles.

The new rule – covering 130,000 tractor trailers manufactured annually – will require heavy tractor trailers to stop in not more than 250 feet when fully loaded at a speed of 60 miles per hour, and 235 feet when at their lightly loaded weight. A small number of very heavy, severe service, tractors will be required to stop within 310 feet. This amounts to a 30-percent reduction in the stopping distance compared to the current standard, and well above what the trucking indus-

try argued for. Truck manufacturing groups maintained that the reduction should be limited to 20-25 percent, citing increased costs and the complexity of the upgrade – especially for two-axle and severe service tractors.

But the agency decided that the benefits of a 30 percent reduction far outstripped those of a more limited rule. The regulatory analysis estimated twice as many benefits in fatalities and serious injuries at the 30-percent reduction versus 20 percent; and a five times more significant savings in property damage estimates.

“The purpose of these amendments is to reduce the number of fatalities and injuries associated with crashes involving tractor-trailer combinations and other vehicles,” the agency said. “Once all subject heavy truck tractors on the road are equipped with enhanced braking systems, we estimate that annually, approximately 227 lives will be saved and 300 serious injuries will be prevented. In addition, this final rule is expected to prevent over \$169 million in property damage annually, an amount which alone is expected to exceed the total cost of the rule.”

The agency also said that its test-

ing had demonstrated that there were several readily available solutions to meet the new requirements. They included the installation of enhanced drum brakes, air disc brakes, or hybrid disc/drum systems, which many vehicles in the commercial fleet already use.

NHTSA had originally proposed reducing emergency brake stopping distances by 20-30 percent but decided to drop it after the Truck Manufacturers Association stated that manufacturers would have to modify the ABS algorithms to allow more drive wheel lockup, compromising vehicle stability and control.

“NHTSA considered this, as well as the relative rarity of a crash-imminent situation during a brake failure, and decided to maintain the status quo,” the agency said.

The agency gave manufacturers two years lead time for the majority of three-axle tractors to comply with the Final Rule, and four years for two-axle and severe service tractors.

### Early Warning Data Becomes Recall Tracking System, Agency Release of Data Lags

CROWNSVILLE, MD – A new analysis of Early Warning Data by statisticians Randy and Alice Whitfield, of [Quality Control Systems Corporation](#), appears to show that the system is functioning more like an identifier of failed recalls than a spotter of developing trends.

Using 2003 to 2008 EWR data, QCS identified their top 10 vehicles with troubling trends for injuries and deaths. The 1999 Ford Explorer remains, hands down, the most worri-

some vehicle causing fatalities – despite a 2000 recall of the vehicle's OEM Firestone Wilderness tires, and despite its role as the mother of the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act. Passed by Congress in October 2000, TREAD was supposed to usher in a new era of prevention. NHTSA would collect manufacturer information related to death, injury, property damage, warranty claims, field reports and production numbers on a

quarterly basis, and sift the numbers for emerging problems. Much of the EWR data was to be public, affording other individuals and organizations an opportunity to do the same.

“Judging from consumer complaints that may be related to death and injury claims continuing through 2008 on our top ten issues list, many of the ‘early warning’ signals we see are anything but early,” Randy Whitfield said. “Finding a root

cause – if there is one – requires good detective work by competent engineers. Our rankings help to show where it makes the most sense to look. Because the data for deaths and injuries since the end of 2008 are still secret, it's harder to get a good jump on new, potential problems.”

Using five and a half year's worth of death and injury claims, the Whitfields were able to show which vehicles are in  
(Cont. on p. 6)

## Early Warning Data Becomes Recall Tracking System, Agency Release of Data Lags

(Cont. from p. 5)

involved in unusual patterns of deaths and injuries. They then correlated that data with consumer complaints in the NHTSA database. Finally, the Whitfields associated injuries/deaths and consumer complaints with recalls that were launched to address related problems. For the first time since the Whitfields began mining the EWR deaths and injuries information, each of the vehicle and component combinations on their top 10 list appeared to be clearly linked to specific consumer complaints. These problems, in turn, appeared to be well-recognized issues supposedly addressed by earlier recalls.

However, the links to specific vehicle defects, Randy Whitfield said, is an open question. EWR codes the injuries and deaths by broad component categories, such as “suspension.” The VOQs are similarly coded, but they also contain the actual text of consumer

complaints, making it easier to see specifically what about a problematic suspension may be to blame. From there, complaints, injuries and deaths can be correlated to recalls.

“We don’t offer this as statistical proof,” he said. We don’t think these are the top 10 most defective vehicles. What we are saying is that this is a useful tool for finding red flags.”

The results demonstrate, at a minimum, that EWR appears to be documenting the continuation of old problems. For example, the 2004 Toyota Tundra was eight in the EWR injuries/death list due to a

suspension issue, and was also the target of many VOQs, in which consumers reported a separation in the ball-joint leading to a loss-of-control crash. This continues to show up in Toyota’s EWR and NHTSA’s VOQ data, despite a recall in 2005 initiated to repair the problem.

In March 2007, the Whitfields filed a Freedom of Information Act lawsuit against the agency for the release of Early Warning Reports related to Ford Explorer fatalities. The Whitfields had been requesting the numbers to better analyze a rise in tire-related Explorer fatalities. In September 2008, after a protracted legal battle over EWR

accessibility among the agency, the Rubber Manufacturers Association and Public Citizen ended with a ruling that Congress had not mandated that EWR data be confidential, NHTSA released some of the information to the Whitfields. They finally settled the lawsuit in November, for \$4,000 meant to cover reasonable attorneys’ fees and expenses.

In the meantime, the Whitfields, who have submitted eight FOIA requests for EWR data, are still waiting for the agency to provide the first two quarters of 2009 reports, so that they can continue their analyses.

### Tracking: Early Warning Reporting Data, Deaths & Injuries Through 2008

See “Methods,” *Injury Prevention* 2004; 10:88-92 (not based on simple counts – with recent incidents)

Fleet	Potentially Related Consumer Complaints	Potentially Related Recalls
2002 Ford Explorer	Liftgate hinges and struts, shattered glazing	04V442000
2004 Chevrolet Venture	Sliding power door and handle	04V597000
2004 Ford F-350 SD	Engine stalls	05V270000
2003 Ford Explorer	Liftgate hinges and struts, shattered glazing	04V442000
2007 Lexus ES 350	Unintended accelerations	07E082000
1999 Ford Explorer	Tire-related, loss of control crashes	00T005000
2004 Ford F-250 SD	Engine stalls	05V270000
2004 Toyota Tundra	Loss of control due to ball joint separation	05V225000
2002 Jeep Liberty 4X4	Loss of control due to ball joint separation	03V460000
2000 Ford Expedition	Control switch fires	05V017000

Source: *Quality Control Systems Corp.*

### NHTSA Advances Two Mandates of the Gulbransen Safety Act

(Cont. from p. 4)

this to auto manufacturers and NHTSA, and it just keeps coming back: Not enough people die to make this change. This is the farthest we’ve ever gotten and I’m not giving up. We can’t let this opportunity slip through our fingers.”

The agency has been working to satisfy the mandates of the

Gulbransen bill since March, when NHTSA published an Advance Notice of Proposed Rulemaking for a rearward visibility standard that would expand the required field of view to enable drivers to detect areas behind the motor vehicle.

In August, the agency followed up with a Notice of

Proposed Rulemaking to require a brake-to-shift-interlock be installed in all automatic transmission vehicles manufactured for sale after September 2010. This aspect of the Gulbransen Act was the lowest hanging fruit for the agency, since in August in 2006, the Alliance of Automobile Manufacturers and the Association of International Automobile

Manufacturers reached a voluntary agreement which required full implementation of BTSI not later than September 1, 2010. Consumer advocates continued to lobby for a regulation that would cover all vehicles sold in the U.S. – not just those from the major automakers. They also wanted a rule that would

(Cont. on p. 8)

## Fatal California Crash Highlights Toyota's Sudden Unintended Acceleration Problem

SANTEE, CALIFORNIA—A horrific sudden unintended acceleration crash that killed four – including a California Highway Patrol officer who was at the wheel of the 2009 Lexus when it plunged over an embankment and burst into flames – may raise the profile of SUA incidents as the National Highway Traffic Safety Administration weighs granting a defect petition to re-investigate the problem in Lexus vehicles.

On August 28, Mark Saylor and his wife Cleofe, both 45, their 13-year-old daughter, Mahala, and 38-year-old brother-in-law, Chris Lastrella, were killed after reporting to a 911 operator that they could not stop their Lexus ES 350, as it careened down Route 125. The tape of the brief call, released to the public last week, features the voice of Lastrella, telling the operator that the vehicle had no brakes. The call ended with occupants calling on each other to pray.

Despite reports that little was left of the burnt wreckage, among the components allegedly recovered from the crash were the brakes, the accelerator and the floor mats. CHP investigators have already speculated that a misplaced all-weather floor mat could have caused the crash, and Toyota is instructing dealers to inspect vehicles for proper floor mat installation. Floor mat entrapment has been a convenient root cause for NHTSA and automakers in sudden unintended acceleration incidents, because ferreting out intermittent electronic problems is much more difficult and presumably more expensive to fix. Unsecured floor mats have often been suspected of or have taken the blame for sudden unintended acceleration. In the last 40 years, the agency has

launched nine separate floor mat investigations; manufacturers have initiated 19 floor mat recalls.

In a press release issued on September 14, Toyota attempted to deflect rising concerns about electronic defects:

“We are instructing all of our Lexus and Toyota dealers to immediately inspect their new, used, and loaner fleet vehicles and we urge all other auto-makers, dealers, vehicle owners, and the independent service and car wash industries to assure that any floor mat, whether factory or aftermarket, is correct for the vehicle and properly installed and secured.”

Since 1999, NHTSA has received seven defect petitions to investigate sudden unintended acceleration, and launched eight SUA investigations into GM, Ford, Toyota and Volkswagen models. In the last decade, manufacturers have launched 31 recalls.

Many others who have studied the problem say that floor mat interference may account for only some of the reported incidents – the complaint data show that some vehicles and some manufacturers are outliers. NHTSA and manufacturers, however, tend to reduce that number by narrowly defining the problem and then throwing out complaints that don't exactly fit.

The Lexus ES350 is a case in point. In October 2007, NHTSA closed an Engineering Analysis into unintended acceleration, affecting 55,000 2002-2008 Lexus ES350 and Toyota Camry vehicles. Drivers had reported that vehicles continued travelling full throttle despite attempts to stop the vehicle.

Some reacted by applying the brake pedal multiple times, depleting the braking system's vacuum-based power assist and overheating the brakes, which further diminished the brakes' effectiveness. Others attempted to turn the vehicle off by depressing the engine control button, unaware that the button had to be depressed for three seconds to stop the engine when the vehicle is in motion.

At the conclusion of an 11-month probe, Toyota and NHTSA's Office of Defect Investigations concluded that the problem was floor mat interference. In September 2008, Toyota launched a recall to replace the all weather mats with a new design that, Toyota claimed, would reduce the potential for mat interference with the throttle pedal.

On April 8, the agency published the Opening Resume for another Defect Petition involving SUA and the Toyota Lexus. The petition was filed by a Lexus owner who had experienced an unwanted and uncontrolled acceleration event, but felt that the Preliminary Evaluation (PE7-016) was too narrow in scope and did not adequately address all complaints made to NHTSA about vehicle speed control concerns, according to the Opening Resume.

In the initial complaint to NHTSA, the driver described a “sudden uncontrollable surge in acceleration” causing the vehicle to accelerate from 60 mph to over 80 mph. The driver attempted to brake with both feet, but only reduced the vehicle speed to about 45 mph:

“With my speed reduced, I alternated between pumping the accelerator pedal and pulling up on it from the underside with

my right foot as it became clear that the throttle was stuck in an open position. The vehicle continued to speed back up to over 65 mph with less pressure on the brake pedal.”

The driver finally slowed the vehicle to about 25 mph, amid clouds of smoke and the smell of overheated brakes. He shifted into neutral, and depressed the start/stop button, but nothing happened. Instead, the rpms began to increase on the tachometer. The petitioner described shifting back into drive.

“The vehicle jolted and rapidly accelerated to 60-plus mph. As the brakes were fading quickly, I was certain that I would need to shift back into neutral and let the engine blow up to stop the vehicle. Suddenly the acceleration surge stopped and I was able to bring the vehicle to a stop about 1 and a half to 2 miles from where it had started. I quickly shifted into ‘park’ and depressed the start/stop push button to turn off the engine. The vehicle seemed to shudder as I did so.”

The unidentified petitioner, from Plymouth, Minnesota, also requested an “investigation of MY 2002-2003 Lexus ES300 for those longer duration incidents involving uncontrollable acceleration where brake pedal application allegedly had no effect,” that were not within the scope of preliminary investigation. The agency has not yet decided whether to grant the request.



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### NHTSA Advances Two Mandates of the Gulbransen Safety Act

*(Cont. from p. 6)*

require the brake-to-shift interlock to work when the key was in any position – including the accessory position – that could start the vehicle – an important omission of the voluntary agreement.

NHTSA's proposed rule would require that the service brake pedal be depressed before the transmission can be shifted out of "park," and would function in any starting system key position. Like the voluntary agreement, automakers would be required to install them on vehicles manufactured for sale after September 1, 2010.

The Gulbransen Safety Act gave the agency a lot more leeway in the power window rulemaking. NHTSA has taken a half step – proposing a rule that only requires an auto-reverse system (ARS) for power windows with an express button – meaning those that close with one touch of the button. NHTSA said that mandating ARS on all windows was unnecessary because the majority of the safety problem was addressed by the new "safer switch" requirements. While auto-reverse might prevent these myriad minor inju-

ries, the agency said that the K.T. Safety Act's purpose was to prevent deaths and serious injuries to children, so it focused its safety analysis on the most grievous cases of power window entrapment.

Fennell argued that switch design is only part of the problem. Although there have been cases in which a child kneeling on a rocker switch activated the window, there have been just as many cases when someone else in the car was activating the window. Fennell maintains that the agency's data collection efforts are not vigorous enough and that the agency tends to artificially reduce the scope of the safety problem by automatically throwing out any instance in which the way the window was activated was inconclusive. Further, she says all of the vehicles with one-touch power window closure already have an auto-reverse feature, so no car maker is actually affected by the proposal.

"NHTSA is supposed to be a safety agency. The proposed rule does nothing to reduce one injury or one death. Why do all vehicles in Europe have auto-reverse? Because it's safe. I'm not happy with this. They've really done nothing."

### Take VSIRC for a Test Drive

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