

Robert Ruginis

September 11, 2014

David N. Kelley, Esq.
Independent Monitor
Cahill Gordon & Reindel LLP
80 Pine Street
New York, NY 10005-1702

Dear Mr. Kelley:

I am writing to inform you that Toyota Motor North America may already have broken the terms of the March 2014 deferred prosecution agreement by making misleading statements and concealing information on a safety issue related to unintended acceleration. I request that you investigate my case.

I am the owner of a 2010 Toyota Corolla which experienced an unintended acceleration crash on June 8, 2014.

We purchased the vehicle new in May 2010. The MY2010 Corolla was subject to the floor mat entrapment and sticky accelerator recalls. The dealership applied the “sticky pedal” remedy in February, before we purchased the vehicle. The floor mat remedy was applied in November 2010.¹ Our Corolla did not have Toyota’s Smart Stop technology installed. It would not have made a difference in this crash. Offered as a customer satisfaction campaign and not a recall, Toyota’s brake override, called Smart Stop Technology, “automatically reduces engine power when both pedals are pressed at the same time under certain conditions.”² The override only engages when “the accelerator is depressed first, and the brakes are applied firmly for longer than one-half second at speeds greater than five miles per hour.” “The feature doesn’t engage if the brake pedal is depressed before the accelerator pedal.”

At the time of the crash, a sunny, temperate afternoon, my wife, Kathleen Ruginis was making a slow, right hand turn to ease into a parking space on High Street in Bristol, RI. Her foot was on the brake, when the vehicle surged forward and crashed into an unoccupied parked Jeep in front of it.³ Fortunately, no one was injured.

On June 24, Toyota inspected the vehicle, which included a test drive, a physical inspection of the floor mat and accelerator pedal, and a download of the vehicle’s Event Data Recorder (EDR)

¹ [Toyota Information System VIN record \(Tab 1\)](#)

² [Toyota Safety; Smart Stop Technology; Toyota Motor Sales U.S.A. \(Tab 2\)](#)

³ [Report 14-372-AC ; Bristol Police; State of Rhode Island Uniform Crash Report; June 8, 2014 \(Tab 3\)](#)

to capture the pre-crash data. The latter was specifically at Toyota's request, and we had to sign permission slips from Toyota and Bosch, the EDR reader's manufacturer, to allow that portion of the inspection to occur.⁴ The EDR investigation report clearly showed that at the moment the airbag module made the decision whether to deploy (about the time of the impact), the voltage to the accelerator pedal was .78 (at idle)^{5 6}, the brake was engaged, yet both the speed of the vehicle and engine RPM's had doubled in less than 2 seconds.⁷

This second-by-second snapshot is entirely consistent with my wife's account of the events leading to the crash. Likewise, a witness in the front seat observed my wife's foot on the brake as the vehicle surged forward. Her account also mirrors those of many Toyota owners who have lodged complaints with the National Highway Traffic Safety Administration (NHTSA). Although NHTSA, in partnership with the NASA Engineering Safety Center did not study unintended acceleration in parking scenarios, they were the most common, as noted by NHTSA's 2011 report, *Technical Assessment of Toyota Electronic Throttle Control (ETC) Systems*:

Further review of the stationary and low speed incidents (combined) found that parking lot entry and exit accounted for the largest share of these incidents (40% of VOQs 64% of crashes. Many of the parking maneuver narratives reported incidents characterized by high engine power either after the driver applied the brake or immediately after shifting the transmission.”⁸

And yet, Toyota declined to take any responsibility for the vehicle's malfunction. In a July 9 letter denying our requests to be made whole,⁹ Toyota Legal Claims Administrator Donald Beierschmitt noted the results of the physical inspection and the test drive:

The accelerator pedal was thoroughly inspected and found to move smoothly with no restrictions or binding. There was no interference or obstruction found with the operation of the accelerator pedal. When the accelerator pedal was released it would always return to the idle position. The brake components were in good condition with no damage or leaks. The floor mat was properly anchored. The vehicle was test driven for 16 miles, at various speeds and road conditions with several accelerating and braking maneuvers being conducted and all systems performed properly with no unusual or unexpected reactions observed.¹⁰

However, Mr. Beierschmitt made no reference to the EDR readout, and concluded: “Based on our inspection of your vehicle it has been determined the incident was not the result of any type

⁴ [Toyota EDR Data Imaging Investigation Record; Toyota Motor Sales, U.S.A. \(Tab 4\)](#)

⁵ [Evaluation of Camry HS-CAN Pre-Crash Data; Roger Brown and Samuel White; SAE International; April 16, 2012 \(Tab 5\)](#)

⁶ [Confirmation of Toyota EDR Pre-crash Data; Roger Brown and Lance Lewis; Toyota Motor Sales, et al; April 16, 2012 \(Tab 6\)](#)

⁷ [Crash Retrieval Data for VIN 2T1BU4EE0AC346128; PDF Pg. 7; Fran Cavanaugh; June 24, 2014 \(Tab 7\)](#)

⁸ [Technical Assessment of Toyota Electronic Throttle Control \(ETC\) Systems; National Highway Traffic Safety Administration; February 2011 \(Tab 8\)](#)

⁹ [Letter to Toyota Motor Sales USA; Robert Ruginis; June 12, 2014 \(Tab 9\)](#)

¹⁰ [Re: Date of Loss June 8, 2014; Letter to Robert Ruginis; July 9, 2014 \(Tab 10\)](#)

of manufacturing or design defect.”¹¹ I followed up with a company representative to ask about this obvious omission. Toyota’s representative Ronald Inton, while conceding that the results of the EDR readout were not considered, refused to address the glaring conflict between the black box evidence, which contemporaneously affirmed my wife’s experience in the Corolla, and the inspector’s observations gathered on a short test drive.¹² The mendacity of this omission is underscored by Toyota’s public statements that its EDR reads pre-crash data accurately. In a 2012 technical paper published by SAE International, Toyota researchers concluded:

For the three vehicle models tested, the Toyota EDR pre-crash data and other parameters were accurate when compared with the HS-CAN data or observations. Based on the testing and analysis performed for this study, the Bosch CDR readout tool for Toyota vehicles can increase the understanding of vehicle crashes and help advance safety research and investigations.¹³

As you know, in the March 2014 DPA, Toyota admitted misleading U.S. consumers by concealing and making deceptive statements about safety issues, and, in exchange for deferred prosecution on one criminal wire fraud count, agreed to cooperate fully with government investigators and “truthfully and completely disclose all information with respect to the activities of itself and its subsidiaries...concerning all matters about which the Office inquires of it, which information can be used for any purpose.”¹⁴

Further, Toyota is required to “volunteer and provide to the Office any information and documents that come to Toyota’s attention that may be relevant to the Office’s investigation of this matter, any issue related to the Statement of Facts, and any issue that would fall within the scope of the duties of the independent monitor.”¹⁵

I understand that it is not the Independent Monitor’s role to adjudicate individual complaints or supplant NHTSA on technical issues. (I am also petitioning NHTSA to investigate this technical malfunction.) However, among your duties is to “review and assess whether Toyota’s policies, practices, or procedures *ensure that Toyota’s public statements in the United States related to motor vehicle safety are true and accurate.*”¹⁶ [Emphasis added.]

As described in the DPA’s Statement of Facts, misleading statements and concealment lie at the heart of the Department of Justice’s four-year probe. It describes several – but by no means all – of Toyota’s assurances that it was confident that it had determined the root cause of unintended acceleration and that “The safety of our owners and the public is our utmost concern and Toyota

¹¹ [Re: Date of Loss June 8, 2014; Letter to Robert Ruginis; July 9, 2014 \(Tab 10\)](#)

¹² [FAX to Ronald Inton; Robert Ruginis; July 30, 2014 \(Tab 11\)](#)

¹³ [Confirmation of Toyota EDR Pre-crash Data; Roger Brown and Lance Lewis; Toyota Motor Sales, et al; April 16, 2012 \(Tab 6\)](#)

¹⁴ [Re: Toyota Motor Corporation - Deferred Prosecution Agreement; U.S. Department of Justice; March 19, 2014 \(Tab 12\)](#)

¹⁵ [Re: Toyota Motor Corporation - Deferred Prosecution Agreement; U.S. Department of Justice; March 19, 2014 \(Tab 12\)](#)

¹⁶ [Re: Toyota Motor Corporation - Deferred Prosecution Agreement; U.S. Department of Justice; March 19, 2014 \(Tab 12\)](#)

has and will continue to thoroughly investigate and take appropriate measures to address any defect trends that are identified.”¹⁷

Toyota continues to make such public assurances. On the day the Deferred Prosecution Agreement was announced, Toyota issued a press release in which Christopher P. Reynolds, Toyota Motor North America’s chief legal officer stated:

We have made fundamental changes across our global operations to become a more responsive company – listening better to our customers’ needs and proactively taking action to serve them. “Specifically, we have taken a number of steps that have enabled us to enhance quality control, respond more quickly to customer concerns, strengthen regional autonomy and speed decision-making. And, we’re committed to continued improvement in everything we do to keep building trust in our company, our people and our products. Importantly, *Toyota addressed the sticky pedal and floor mat entrapment issues with effective and durable solutions, and we stand behind the safety and quality of our vehicles.*”¹⁸ [emphasis added]

This is not what occurred in our case.

- Toyota’s Event Data Recorder showed that my wife’s foot was not on the accelerator pedal, but on the brake when the crash occurred and that the vehicle speed suddenly jumped.
- Toyota’s physical inspection showed that our unintended acceleration crash was not caused by floor mat entrapment or a sticking accelerator pedal; therefore Toyota’s solutions to the unintended acceleration problem by launching the sticky pedal and floor mat entrapment recalls have not been “effective and durable.”
- Toyota has not identified the root cause of our crash; therefore the company cannot conclude that “the incident was not the result of any type of manufacturing or design defect.”
- A vehicle that accelerates suddenly, without the driver’s input is an unsafe vehicle; therefore, in our case, Toyota did not stand behind “the safety and quality” of this vehicle.
- In denying our claim, Toyota misled us by specifically excluding the one important piece of evidence that was unfavorable to the company’s position, but one the company has publicly proclaimed its great faith in. Toyota cherry-picked the data to claim to conclude there was no problem.

¹⁷ [Re: Toyota Motor Corporation - Deferred Prosecution Agreement; U.S. Department of Justice; March 19, 2014 \(Tab 12\)](#)

¹⁸ [Toyota Enters Agreement with U.S. Attorney Related to 2009-2010 Recalls; Toyota Motor Sales, U.S.A.; March 19, 2014 \(Tab 13\)](#)

Concealing a safety issue and making misleading statements to an individual customer may not rise to the same level of chicanery as lying to a Congressional inquiry, or NHTSA investigators, or the Department of Justice. But, I have done a great deal of reading about the history of this issue, and, at its essence, what Toyota did to me is no different than what it did to thousands of other customers, and to those governmental entities over a span of over a decade – ignoring problematic data to make it look as though there is no unintended acceleration issue, making definitive statements about root causes without adequate investigation; making public promises of integrity while privately practicing deceit; and employing every means at its disposal to limit its liability of what appears to be a difficult-to-resolve technical issue, at the expense of the customer’s safety. In other words, I see that nothing has changed.

The question remains: Is the Independent Monitor’s position legal window-dressing or, will you enforce its terms?

I am available to discuss this with your office at a mutually convenient time and place.

Sincerely,

Robert Ruginis