



**Safety Research & Strategies, Inc.**

340 Anawan Street / Suite 200

Rehoboth, MA 02769

Ph. 508-252-2333, Fax 508-252-3137

[www.safetyresearch.net](http://www.safetyresearch.net)

## **Addendum to Safety Research & Strategies February 5, 2010 report: *Toyota Sudden Unintended Acceleration***

### **Exclusion of Early Camry Deaths Hamper Later Investigations**

NHTSA's decision not to include any but one of the fatal crashes in its official complaints, crash, injury, and death counts in their eight Toyota SUA investigations was a critical decision with serious consequences. By not counting deaths, the SUA investigations appeared to have less urgency and intensity. The impact of omitting the most serious incidents for consideration and further review – particularly in the first two years of NHTSA investigations – has reverberated through the subsequent probes and may have affected the recall remedies and the scope of those recalls.

In the span of six months, from September 2003 to March 2004, there were eight deaths that were alleged to have resulted from sudden unintended acceleration events in 2002-2004 Camry models. All eight deaths were reported to NHTSA via Vehicle Owner's Questionnaires or Early Warning Reporting data in an eight-month-period, beginning April 9, 2004, to the close of 2004. ODI only considered including one of these suspected deaths in any of the investigations. There is no evidence in the public files that ODI further investigated any of these deaths. These fatal incidents – save one noted, but not counted in PE04021 – are not mentioned in any of ODI's Closing Resumes or *Federal Register* notices, which describe, in greater detail, the agency's investigatory steps.

The details of most, as described in the EWR data or ODI narratives, are scant, but each ODI-reported incident alleges an important fact: The vehicle raced out of control without driver input. One of these incidents, described in a Vehicle Owner's Questionnaire contained a compelling detail in an Evansville, Indiana crash:

“When coming out of a parking lot, accelerator stuck, causing the vehicle to accelerate out of control. Vehicle grazed another vehicle, went across a street, grazed a building, and drove straight into another building. Driver was conscious when paramedic arrived... The police report stated the crash was due to a mechanical defect... EMTs at the scene stated both feet were ‘jammed’ on the brake.”<sup>1</sup>

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<sup>1</sup> ODI#10065362; April 9, 2004

Handwritten notes on the form state: Stuck Throttle. Engine surges. Toyota Rep. to inspect 5/5/04.<sup>2</sup>

During the six-month period in which these fatal crashes occurred, one investigation into SUA in Lexus LS and GS vehicles (DP03003) was opened and closed.<sup>3</sup> *An investigation specifically into Camry unintended acceleration had been considered but not opened,*<sup>4</sup> and based on another consumer petition,<sup>5</sup> a second investigation focusing on Lexus and Camrys (PE04021) was open – and still in the phase of discussing the parameters of the types of SUA incidents that would be examined.<sup>6</sup> According to a deposition taken in *Alberto v. Toyota*, Christopher Santucci, a former NHTSA Office of Defects Investigations (ODI) investigator and now Toyota’s Assistant Manager of Technical & Regulatory Affairs, testified that Toyota and ODI had discussions about the scope of PE04021 early on,<sup>7</sup> prior to March 23<sup>rd</sup>, when ODI investigator Scott Yon wrote a memo, tossing out instances where the operator was applying the brakes and longer duration events.<sup>8</sup> *These are the scenarios that appear to cover some of these fatal incidents.*

Based on the dates they were reported, NHTSA was informed of at least six – and possibly seven – of these fatal crashes that were alleged to have been caused by unintended acceleration or related to speed control. More troubling is that these reports were received just after the agency made the decision to narrow the scope of the investigation, *but not before they closed it.*<sup>9 10</sup>

Only one of these fatal incidents – in which a driver launched his Camry off a Las Vegas parking garage deck as he was slowly pulling into a space – is ever mentioned in the course of PE04-021 by the agency or Toyota.

These fatal incidents were not considered in the course of the agency’s next investigation (DP05002), which was based on another consumer’s petition from July 2005 alleging his 2005 Toyota Camry experienced multiple unintended acceleration events, including one that resulted in a crash. This petitioner also took pains to identify similar reported Camry incidents that NHTSA received.

There is no evidence that NHTSA did anything to investigate these fatalities further or to seriously consider them in their investigations.

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<sup>2</sup> ODI#10065362; April 9, 2004

<sup>3</sup> DP03003; Closing Resume; September 22, 2003

<sup>4</sup> Letter to NHTSA Kathleen DeMeter from unidentified Camry owner, ODI # 10023329; November 19, 2003.

<sup>5</sup> DP04-003

<sup>6</sup> PE04-021; Opening Resume; National Highway Traffic Safety Administration; March 5, 2004

<sup>7</sup> Deposition of Christopher Santucci; Pg. 283; *Alberto v. Toyota*; December 9, 2009

<sup>8</sup> Complaints Update; PE04021; Scott Yon; National Highway Traffic Safety Administration; March 23, 2004

<sup>9</sup> PE04021; Closing Resume; National Highway Traffic Safety Administration; July 22, 2004

<sup>10</sup> Table 1: Fatal Incidents Reported to NHTSA 2003-2004; Safety Research & Strategies

In DP05002, Toyota mentions a May 2004 inspection of a vehicle that experienced an SUA event.<sup>11</sup> The timing suggests it is the Evansville, Indiana crash in which the driver was pulled from the vehicle with both feet on the pedal. *The fact that this is a fatal incident is never mentioned, and again, it is not counted in the investigation.*

When did Toyota receive notice of these fatalities? It is clear that the automaker had direct knowledge of the Evansville, Indiana crash. Toyota is also likely to have had early direct knowledge about one that occurred on March 14, 2004 because the complainant stated they contacted the company:

“My mother and friend started out for church, the friend had come to pick her up when the 2004 Toyota Camry with less than 3000 miles on it was having difficulty shifting into reverse, then when she shifted into drive the car accelerated uncontrollably EST speed on 80 - 92 mile a hour in less than 250 ft when the car hit a mobile home. They hit so hard it moved double wide almost a foot. Killing my mother the passenger and injury to her friend the driver. No air bag deployed and when Toyota was contacted they refused to speak to us. Attorneys have said that Toyota is so big, not cost affective....so I watch and in two years there are many many more now....how many more have to die before something is done.”<sup>12</sup>

It is also likely that Toyota was informed of the March 15 crash that occurred in Delray Beach, FL. According to interviews with the family of the driver, Leonard Rubin, the leased vehicle was returned to the dealer after the crash; Mr. Rubin refused to drive it again. Mr. Rubin’s son-in-law, Marvin Cohen, reported the incident to NHTSA, and received a return phone call from an agency representative. As he recalls it, the agency said that the evidence in this crash was inconclusive. (Mr. Rubin was never charged in the crash.)<sup>13</sup>

In this context, Toyota’s language on June 4, in responding to PE04021, is interesting, to say the least:

“Long duration incidents involving uncontrollable acceleration when brake pedal application had no affect are not within the scope of this investigation...” “In reviewing 8013543 and 10045944, Toyota believes that if the throttle had opened, as was alleged by the complainant, and *the consumer was applying the brake pedal as stated the vehicle brakes would have restrained vehicle motion.* For this reason, we believe that these complaints are unrelated to the failure of the electronic throttle control system, and again consider them as similar to complaints referenced in other SA investigations and, per your memo, outside the scope of this investigation.”<sup>14</sup>

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<sup>11</sup> DP05002; Attachment Response 3 Inspection data; Toyota Motor Corporation;

<sup>12</sup> ODI# 10171110;

<sup>13</sup> Interview with Marvin Cohen; February 16, 2010

<sup>14</sup> PE04021; Toyota Response; Chris Tinto; Toyota Motor Corporation; June 4, 2004

ODI# 8013543 states: At a stop with brakes applied vehicle suddenly surged forward. Engine raced and rpm's went up to 6000. Consumer shifted to neutral to stop vehicle. Vehicle has Not been examined by dealer.\*ak<sup>15</sup>

ODI# 10045944 states: While pulling into a parking space, at 2-4 mph, with my foot on the brake, the car suddenly accelerated at full speed, jumping the curb and hitting a tree with full force. Because of previous concerns with throttle problems noted with the dealership at 1000 and 5000 mile check, I immediately called the Lexus dealership. After a conference call with Lexus roadside assistance and the dealership, my car. Was flat bedded to the dealership. The frontal crash rendered the vehicle undrivable. Radiator damage with leakage of fluid covered a portion of the parking lot. The Lexus dealership said they was no problem with the car. I could have been killed or somebody else live could have been in danger... On the night of the accident I learned by reviewing complaints from the Office of Defect Investigations on the NHTSA web site that the problems have been known by the corporate office of Lexus from as early as January, 2002 in regards to all of the above problems. I also found out there have been two recalls on this vehicle that I was not informed about. I will be requesting an investigation with the Lexus east regional office and discussing this with the Rockville Lexus office. I believe that this car is unsafe to drive.”<sup>16</sup>

Why are they talking about these complaints, but not fatalities, in which there was clear evidence that the driver was trying to brake the vehicle before the crash?

These deaths and injuries indicate that Toyota had ample notice of a growing problem – in the form of eight deaths in six months – all of which were reported to NHTSA, and in the public domain, by the end of 2004. It also shows that Toyota knew that in a real-world uncontrolled acceleration event, the brakes were not overcoming a fully open throttle as reported by owners – with the most serious consequences – and yet the company continued to insist that the brakes would always work.

It is always easier to examine these issues in hindsight; however, these deaths occurred so closely together, with similar circumstances and in the same vehicle model. How could this not have gotten Toyota's and the agency's attention at the same time they were investigating unintended acceleration in these vehicles? The decision, early on, to exclude these deaths in 2002-2004 Camrys from the count, grows ever more significant with each subsequent defect petition and each investigation closing that with no finding.

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<sup>15</sup> ODI# 8013543

<sup>16</sup> ODI# 10045944

**Table 1. September 2003-March 2004 Toyota Camry Fatal Incidents Alleging Unintended Acceleration**

Date of Incident	ODI Number	Model	MY	Injury	Deaths	Incident Location	Date Received by NHTSA	Incident Description
20030904	10072605	CAMRY	2002	1	1	Wilmington, MA	20040514	Maria Cafua was entering I-93 at exit 39 at 5:30 in the morning when her car suddenly shot across three lanes of travel and was hit, broad side, by another vehicle traveling in the high speed (3rd) lane. Traffic at the time of the accident was light. It is believed that the Camry experienced an un-commanded acceleration causing Mrs. Cafua to lose control resulting in the accident and her death. The Camry has been stored since the accident and no changes have been made to its post accident condition. Vehicle is available for inspection /testing by NHTSA. *AK
20040122	10065859	CAMRY	2002	0	2	Las Vegas, NV	20040409	Witnesses saw my parents vehicle (a 2002 Toyota Camry) coming to a stop and then suddenly accelerate.*ak According to news reports, George and Maureen Yago drove off the fourth floor of a parking deck, while slowly heading into a parking space.
20040314	10171110	CAMRY	2004	2	1	Phoenix OR	20040529	My mother and friend started out for church, the friend had come to pick her up when the 2004 Toyota Camry with less than 3000 miles on it was having difficulty shifting into reverse, then when she shifted into drive the car accelerated uncontrollably est speed on 80 - 92 mile a hour in less than 250 ft when the car hit a mobile home. They hit so hard it moved double wide almost a foot. Killing my mother the passenger and injury to her friend the driver. No air bag deployed and when Toyota was contacted they refused to speck to us. Attorneys have said that Toyota is so big, not cost affective....so i watch and in two years there are many many more now....how many more have to die before something is done. See also 10074472. *dsy *nm; 'difficulty shifting from park to reverse, then upon shifting into drive the car accelerated uncontrollably, would not stop, collided with a mobile home, air bags did not deploy, resulting in the death of one passenger and injury of driver *la Fatal victim: Ethyl Marlene Foster.
20040315	10094578	CAMRY	2003	1	1	Delray, FL	20041215	While in a parking lot and backing out of a parking space vehicle accelerated, hitting a pedestrian. *ak Leonard Rubin incident. Blossom Malick fatal victim.
20040316	10065362	CAMRY	2003	0	1	Evansville, IN	20040429	When coming out of a parking lot accelerator stuck, causing the vehicle to accelerate out of control. Vehicle grazed another vehicle, went across a street, grazed a building, and drove straight into another building. Driver was conscious when paramedic arrived. They found the driver with both feet still on the brake pedal. Driver was transported to the hospital, and later died due to fatal injuries from the crash. The insurance company preserved the vehicle as evidence. The police report stated the crash was due to a mechanical defect. *AK *nm Juanita Grossman crash.
20040316	EWR	CAMRY	2003	0	1	South Attleboro, MA	20040800 (approximate)	According to a news account, 83-year-old man collapses and dies of a heart attack <i>after</i> crash. This report is found in Toyota's EWR 2004 second quarter report to NHTSA in which the company coded this incident as "speed control" related. Matthew Rarus crash
20040514	10073168	CAMRY	2002	1	1	Honolulu, HI	20040526	A Toyota Camry 2002 driven by a 68 year old lady was parked, and then crashed into a storefront after going forward. Backed into traffic 40 feet away, struck vehicles, and went forward again killing pedestrian as well. Case under investigation. Recent accident. Previous reports of sudden acceleration. All Camrys should be recalled before more loss of life. Possible power train/automatic transmission problems."

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