

Toyota keeps tight lid on safety issues

The automaker has delayed recalls and blamed human error when owners claimed vehicle defects.

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During a routine test on its Sienna minivan in April 2003, Toyota Motor Corp. engineers discovered that a plastic panel could come loose and cause the gas pedal to stick, potentially making the vehicle accelerate out of control.

The automaker redesigned the part and by that June every 2004 model year Sienna off the assembly line came with the new panel. Toyota did not notify tens of thousands of people who had already bought vans with the old panel, however.

It wasn't until U.S. safety officials opened an investigation last year that Toyota acknowledged in a letter to regulators that the part could come loose and "lead to unwanted or sudden acceleration."

In January, nearly six years after discovering the potential hazard, the automaker recalled 26,501 vans made with the old panel.

In a statement to The Times, Toyota said that there was no defect in the Sienna and that "a safety recall was not deemed necessary" when it discovered the problem in 2003. The company called the replacement part "an additional safety measure."

A peerless reputation for quality and safety has helped Toyota become the world's largest automaker. But even as its sales have soared, the company has delayed recalls, kept a tight lid on disclosure of potential problems and attempted to blame human error in cases where owners claimed vehicle defects.

The automaker's handling of safety issues has come under scrutiny in recent months because of incidents of sudden acceleration in Toyota and Lexus vehicles, which The Times has reported were involved in accidents causing 19 fatalities since 2001, more deaths from that problem than all other automakers combined.

After Toyota this fall announced its biggest recall to

address the sudden-acceleration problem, it insisted publicly that no defect existed. That drew a rare public rebuke from the National Highway Traffic Safety Administration, which chastised the automaker for making "inaccurate and misleading statements."

In the wake of Toyota's announcement of the massive recall, The Times examined some of the ways the automaker has dealt with safety problems in recent years and found that:

■ The automaker knew of a dangerous steering defect in vehicles including the 4Runner sport utility vehicle for years before issuing a recall in Japan in 2004. But it told regulators no recall was necessary in the U.S., despite having received dozens of complaints from drivers. Toyota said a subsequent investigation led it to order a U.S. recall in 2005.

■ Toyota has paid cash settlements to people who say their vehicles have raced out of control, sometimes causing serious accidents, according to consumers and their attorneys. Other motorists who complained of acceleration problems with their vehicles have received buybacks under lemon laws.

■ Although the sudden acceleration issue erupted publicly only in recent months, it has been festering for nearly a decade. A computerized search of NHTSA records by The Times has found Toyota issued eight previous recalls related to unintended acceleration since 2000, more than any other automaker.

■ A former Toyota lawyer who handled safety litigation has sued the automaker, accusing it of engaging in a "calculated conspiracy to prevent the disclosure of damaging evidence" as part of a scheme to "prevent evidence of its vehicles' structural shortcomings from becoming known" to plaintiffs' lawyers, courts, NHTSA and the public.

As a result, plaintiffs attorneys are considering reopening dozens of product-liability suits against the automaker.

Toyota has called the allegations of the attorney, Dimitrios Biller, "both misleading and inaccurate" and noted that he is also suing another former employer. The company said it had "acted appropriately in product liability cases and in all reporting to federal safety

regulators."

In a written statement to The Times, Toyota said that it strove to keep government officials and consumers informed about potential safety problems with its vehicles, which it says are tested to meet or exceed federal standards.

"Toyota has absolutely not minimized public awareness of any defect or issue with respect to its vehicles," the company said.

Currently, Toyota is a defendant in at least 10 lawsuits alleging unintended acceleration that caused five fatalities and four injuries. Two of those suits are seeking class-action status.

But few, if any, sudden-acceleration cases ever make it to trial, according to attorneys who handle such cases.

After a 2007 crash of a Camry that accelerated out of control for 20 miles before killing the driver of another car in San Jose, Toyota was sued by members of the victim's family. Their attorney, Louis Franke, said the automaker "didn't want to go to trial," and paid them a seven-figure sum in exchange for dropping the case and signing a non-disclosure form.

In an interview, Guadalupe Gomez, the driver of the runaway Camry, said he also signed a confidentiality agreement and received a settlement from Toyota. He was initially arrested on suspicion of manslaughter for causing the crash, but charges were never filed.

By settling, Toyota has managed to keep potentially damaging information out of the public eye, said Raymond Paul Johnson, a Los Angeles attorney who said he had settled four sudden-acceleration cases with the automaker.

"It's just a matter of risk control for them," Johnson said.

Toyota said that although it does not comment on individual cases, it "has resolved and will continue to resolve matters with litigants through confidential settlement when it is in both parties' interests to do so."

The majority of unintended acceleration incidents don't end up in accidents. But even after minor incidents, some consumers have obtained deals under which their cars were repurchased on favorable terms.

Tim Marks, a small

businessman in Camden, Ark., parked his daughter's 2006 Lexus IS 250 in front of the dealership last year and said his family would never drive it again after experiencing four sudden-acceleration events.

"They told my daughter she was texting while driving and wasn't paying attention," Marks recalled. "She is a 95-pound, little itty-bitty thing, but she was fixing to twist off on that man."

The vehicle was bought back and the title branded as a lemon, according to vehicle registration records. It was later registered in Florida, suggesting that the dealer resold it.

Much the same thing happened to Joan Marschall, a Visalia resident whose 2003 Camry accelerated on its own three times before she complained.

"I took it to the dealer and said I wouldn't drive it again," Marschall recalled. "I said I don't care if you tell me the computer says nothing happened. I know it did."

Marschall received a lemon buyback too. Registration records show the car was transferred to a new owner in Southern California.

Toyota said it had no policy to repurchase vehicles from customers complaining about sudden acceleration, though its dealers may act on their own to "preserve goodwill."

Some motorists who have confronted safety issues said the automaker has hidden information from them.

In January, Jeffrey Pepski, a financial consultant in suburban Minneapolis, took his 2007 Lexus ES 350 to the dealer after it accelerated out of control on a Twin Cities freeway, reaching 80 miles per hour.

Toyota sent an expert to examine the car Feb. 3 and download electronic data stored on the vehicle's computers. When Pepski asked for a copy of the data, he was refused.

"They said it was proprietary," Pepski recalled.

He filed a defect petition with NHTSA, and the dealer allowed Pepski to trade in the sedan for a sport utility vehicle. The Lexus ES was not branded a lemon and was resold in Minnesota, records show.

How Toyota handles requests like Pepski's has frustrated investigators and vehicle owners who want to get information contained on com-

Floor mat issue

Toyota says it is recalling the following vehicles and model years to address the risk of floor mats trapping the gas pedal:

- Toyota Camry: 2007-10
- Toyota Prius: 2004-09
- Toyota Avalon: 2005-10
- Toyota Tacoma: 2005-10
- Toyota Tundra: 2007-10
- Lexus ES 350: 2006-10
- Lexus IS 250 and IS 350: 2006-10.

puters in their vehicles.

Nearly all new cars today contain an event data recorder, often called a black box, that can record several seconds of key information when accidents occur or in other circumstances.

According to Toyota, its black boxes can capture vehicle speed, engine speed, brake pedal application, accelerator pedal position and seat belt usage, among other things. That data, experts say, could be crucial to investigating causes of sudden acceleration.

Unlike manufacturers such as General Motors Co. and Ford Motor Co., Toyota's data recorders are extremely difficult for non-Toyota personnel to read, said W.R. "Rusty" Haight, a black-box expert who owns a San Diego collision investigation company.

Toyota says it has only one device in the U.S. that can read the data. An operating manual for the device, a copy of which was reviewed by The Times, indicates that it takes two passwords to operate.

On its website, Toyota says that it "will not honor EDR readout requests from private individuals or their attorneys," because its device is a prototype.

On some safety issues, Toyota has little choice but to go public.

Sudden acceleration didn't become a national issue for the automaker until this fall, when it announced its largest recall shortly after a 2009 Lexus ES accelerated out of control and crashed in San Diego County, killing an off-duty California Highway Patrol officer along with his wife, daughter and brother-in-law.

In a 5:30 a.m. conference call the day before Thanksgiving, Toyota detailed remedies to prevent acceleration problems it has blamed on gas pedals trapped by floor mats. Toyota will replace or modify pedals, replace floor mats, modify floor well padding and add new safety software to seven models, representing 4.26 million cars and trucks.

The campaign follows eight recalls in the U.S. over the last decade to fix problems that in the automaker's own words could cause sudden acceleration or faulty throttle system operation, Times research shows.

Two years ago, a NHTSA investigation found that the gas

Paper trail

More than once, Toyota has delayed a recall despite evidence suggesting safety problems.

Toyota's denial

In 2004, for example, Toyota told U.S. regulators it didn't need to recall a faulty steering component it recalled in Japan because it hadn't received complaints in the U.S. suggesting a defect:

Foreign Safety Recall / Other Safety Campaign Report

Subject: Steering Relay Rod Issue on certain Toyota Hilux and other Small Vehicles

1. Vehicle Manufacturer (Name) Address:
Toyota Motor Corporation (TMC)

2. Affected Vehicles:

| Make/Car Line | Model Year* | Countries | Action | Production Period | Number of Vehicles |
|-------------------|-------------|-----------|---------------|-------------------|--------------------|
| Toyota Hilux (WD) | | Japan | Safety Recall | December 14, 1998 | 300,496 |

*In Japan, there is no 1999

3. Substantially Similar Vehicles:
Make/Car Line: Toyota
Model Year: 1999

4. Description of Problem:
A fatigue crack may occur there is high steering effort occurrence for a long time causing a loss of vehicle.

5. Description of Change:
For all the affected vehicles, the steering relay rod will be replaced.

6. Determination to Conduct Safety Recall / Safety Campaign:
* The determination was made by TMC.
* Date of determination to conduct Safety Campaign: October 21, 2004
* Date campaign will commence later October, 2004

7. Reason the affected vehicles sold in the U.S. are not involved in this recall:
TMC has received field information from the Japanese market, but no similar information from the U.S. market has been received. In addition to the different steering relay rod design between the right hand drive and the left hand drive vehicles, TMC believes that the unique operation conditions in Japan, such as frequent standing full lock turns, such as for narrow parking spaces and other quarter maneuvering, greatly affects the occurrence of this problem. Therefore the safety campaign is to be conducted in Japan, but TMC is monitoring the field information in other countries.

Complaints Toyota knew about

But company records show that Toyota had received numerous complaints about the problem before that date. Here's an example of a complaint filed in October 2000 after the component, a steering relay rod, snapped at 60 mph:

CAN2000 Customer Contact Detail

File Number: 20001230836 Case Type: GENERAL Area Assigned: Adm CAC

PRODUCT: ABNORMAL CONDITION LINKAGE/STEERING, SUSPENSION

CASE HISTORY:
...137k miles...92 V6 Pick up...cust sts center link on steering snapped approx 8-9 days ago at approx 60 mph...cust sts wants to document... concern dangerous..."

In 2005, Toyota recalled nearly 1 million vehicles in the U.S. with the part.

Sources: Court records, Times research

Los Angeles Times

Recalls to fix various problems

Since 2000, Toyota has issued eight unique recalls to fix various problems that it said could cause unintended acceleration or a loss of speed control, according to a Times computerized search of federal regulatory filings. The recalls, including the identifying recall number, are listed below:

- 1998-2001 Camry: The accelerator cable housing could be deformed and break, potentially causing the throttle to stick. 01V012000.
- 2000 Tacoma, Echo, Corolla and Camry: A clip that holds a speed control device to the accelerator linkage could break and cause the accelerator to stick. 00V252000.
- 2004 Sienna: A missing retention clip can cause interior trim panel to interfere with the accelerator pedal. 09V023000.
- 2004-06 Highlander and Lexus RX: Clips used to hold a console cover can come loose and interfere with the accelerator pedal. 06V253000.
- 2004-10 some or all of the following models: Camry,

- Avalon, Prius, Tacoma, Tundra, Lexus ES 350, Lexus IS 250/350. The accelerator pedal can become trapped by an unsecured or incompatible floor mat. 09V388000.
- 2006 Lexus IS 250: Inadequate clearance between the accelerator pedal and a plastic pad embedded in the vehicle carpet can interfere with the accelerator pedal. 05V565000.
- 2006-07 Scion xA and Scion xB: A speed control device may have a faulty module that prevents the throttle from returning to idle when pushed once. 07V030000.
- 2007-08 Camry, Lexus ES350: Certain all-weather floor mats, if not secured by clips, can interfere with accelerator pedal. 07E082000.

Source: Times research

pedal in Camry and Lexus ES sedans could be trapped by rubber all-weather floor mats — the same problem being addressed in the current recall. Toyota responded by recalling 55,000 of the vehicles, but only enlarged a warning label on the underside of the mat and on its packaging.

In 2005, Toyota recalled 3,567 Lexus IS 250 sedans because the gas pedal had a propensity to stick on a floor pad. In 2006, it recalled 367,594 Highlander and Lexus RX SUVs after receiving complaints that an interior cover could interfere with the accelerator pedal, keeping it depressed.

All those followed a 2003 recall in Canada of 408 Celicas, also for floor mat interference with the accelerator pedal.

In the ongoing Sienna recall, Toyota is replacing a hard-plastic trim panel over the center console. In its statement to *The Times*, the automaker said that pedal entrapment could only be caused in the event of a missing attachment clip, which might not be replaced after service work.

Toyota said it issued the recall voluntarily after a single complaint to NHTSA prompted an investigation by the agency. "In response to Toyota's voluntary campaign, regulators closed the investigation," the company said.

NHTSA officials did not respond to a written question about the recall and the agency's oversight of the matter.

The Sienna incident wasn't the only time that Toyota issued a recall long after discovering a problem.

In 1994, NHTSA slapped Toyota with a \$250,000 fine, at the time the agency's second-largest, for providing misleading information about a fuel leak in Land Cruisers and waiting two years to undertake a recall to fix the problem. Toyota acknowledged that it failed to conduct a timely recall but denied withholding information from the agency.

A decade later, Toyota recalled about 330,000 vehicles in Japan after a 2004 crash there — caused by a broken steering linkage — seriously injured five people. The vehicle in the accident, a Hilux Surf, was sold in the U.S. as the 4Runner. Other truck models sold here, includ-

ing the Toyota 4x4 and T100 pickups, also used the same linkage, a steering relay rod.

Despite that, the company told NHTSA in an October 2004 letter that it would not conduct a U.S. recall because it had not received information here indicating a problem with the part.

Documents entered in four lawsuits filed in Los Angeles this year, however, show that Toyota had received numerous consumer complaints dating from 2000 and had replaced dozens of the parts under warranty. The documents also show that Japanese police, in an investigation of the defect, said that Toyota employees had known about the problem since 1992 and should have initiated a recall immediately.

In September 2005, Toyota recalled nearly 1 million vehicles in the U.S. to replace the part, its second-largest campaign.

It came too late for Zackary Audulewicz of Ila, Ga., relatives said. The 20-year-old was driving his Toyota 4x4 to work in August 2003 when the pickup lost control. A witness said she heard a pop and saw a spark just before the pickup careened off the road, flipped into the air and rolled on its roof. Audulewicz was killed instantly.

"I feel like they knew about the problem long before the recall," said Don Audulewicz, Zackary's father and one of the plaintiffs in the suits. "I can't understand why whoever was making decisions at Toyota would do that."

Toyota declined to discuss the case, citing its policy not to comment on pending litigation. In a written statement, Toyota explained that its own investigation of the defective steering component part led it to broaden the recall to include the T100 truck.

On several occasions in the last decade, Toyota has been admonished by judges for failing to provide evidence. In 2000, for example, a Missouri state judge sanctioned it for failing to disclose results of five rear-impact tests of Corollas "despite numerous discovery requests." He ordered a new trial.

In 2007, California's Court of Appeal found that "Toyota had intentionally violated two orders compelling discovery" of

stability test results in a case involving a Toyota-made forklift that tipped over and killed a worker. The court slapped Toyota with a \$138,984.33 sanction and ordered a new trial. Toyota, which denied wrongdoing, ultimately settled the case.

E. Todd Tracy, a Texas attorney with 22 years of experience litigating against automakers, believes that Toyota's issues with legal discovery run far deeper than a few sanctions.

Over the last three months, he has moved to reopen 17 lawsuits against the automaker related to vehicle rollovers because he now believes Toyota routinely hid information in those cases.

His argument rests on four boxes of documents submitted by Biller, the former Toyota attorney. The contents have not yet been revealed, but Tracy believes they prove that Toyota hid crucial information about rollovers in those lawsuits.

"This is clearly information that Toyota does not want the public to see," Tracy said. "For years, they were the gold standard, but right now they have more problems than they know what to do with."

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