

...news, views and reviews from the Center for Justice & Democracy

CENTER FOR JUSTICE &  
DEMOCRACY  
\*\*NEWS\*\*

Dear Friends,

Where do you get your news these days? If you're like most busy people, reliable information can come from many different sources. And these days, many are tuning into podcasts.

Please join CJ&D's weekly podcast conversation, *Tort Helpings*, where you will hear the latest civil justice developments, get practical information and enjoy some very special guests!

Every week, *Tort Helpings* acknowledges its sponsors, thanking them on both the audio podcast and CJ&D's website. Sponsorship is a great way to tell listeners who you are, and to help CJ&D in a very important way.

As a special bonus, all sponsors receive a free complementary membership to CJ&D for the entire year.

If you would like more information about sponsoring *Tort Helpings*, please contact us. We look forward to hearing from you.

THANKS!

Sincerely,  
Joanne Doroshov  
Executive Director

## IN THIS ISSUE: AUTO SAFETY

### THE NEED FOR A REGULATORY FIX

In 2009, an estimated 33,963 people were killed on our nation's highways. Motor vehicle crashes continue to be a leading cause of death in the United States and are the number one killer of children. 2010 has turned out to be another dangerous year for passengers and drivers. Each month brings more news of unsafe and defective vehicles (see sidebar on p.4 for some of the more alarming recalls). Why are so many hazardous cars on the road in the first place? The answer lies, in part, with the National Highway Traffic Safety Administration (NHTSA), the federal agency responsible for auto safety.

In recent congressional testimony, former NHTSA Administrator and President Emeritus of Public Citizen, Joan Claybrook, called the agency, "the poor stepchild of the U.S. Department of Transportation (DOT),



responsible for addressing 95 percent of the transportation-related deaths with only one percent of the DOT budget." NHTSA's annual vehicle safety budget is less than \$200 million. To put this in perspective, Ford's third quarter 2009 income was \$35.5 billion. "The National Highway Traffic Safety Administration is a wonderful agency with a

(continued on page 2)

### THE TOYOTA HOT MESS

On August 28, 2009, off-duty California Highway Patrol Officer Mark Saylor, his wife, Cleofe, their 13-year-old daughter, Mahala, and Cleofe's brother, Chris Lastrella, were killed after Saylor's Toyota 2009 Lexus ES 350 sedan sped out of control, slammed into an SUV, careened through a fence, rolled over and burst into flames. One month after the fatal crash and public release of the 911 tape (see p.3), Toyota recalled 3.8 million vehicles in the U.S. for potential sudden unintended acceleration (SUA) defects. By January 2010, Toyota expanded the recall to over 5 million vehicles.

Investigations by Congress and the media show that Toyota knew about SUA dangers in its cars long before taking action. Among the evidence uncovered:

- A July 2009 internal document showing Toyota's Washington D.C. staff bragging about saving \$100 million by convincing U.S. regulators to end their 2007 investigation of SUA complaints with a relatively cheap floor mat recall.
- Documents from September 2009 revealing that Toyota's European division warned its distributors throughout Europe about sticking accelerator pedals long before the company told U.S. regulators. More specifically, the company's European division issued technical information "identifying a production improvement and repair procedure to address complaints by customers in those countries of sticking accelerator pedals,

(continued on page 3)

## THE NEED FOR A REGULATORY FIX *continued...*

vital mission but it is woefully underfunded, understaffed and outgunned by the industry it regulates,” Center for Auto Safety (CAS) Executive Director, Clarence Ditlow, told a U.S. Senate committee on May 19, 2010. “To expect today’s NHTSA to adequately regulate the trillion dollar auto industry is like asking a high school basketball team to beat the LA Lakers.”

Such funding problems have severely compromised the agency’s effectiveness. NHTSA’s Office of Defects Investigation is understaffed (57 employees and 18 investigators) and without the technical expertise needed to oversee today’s vehicles. As Claybrook explained in her March 2010 testimony, “Not only is there a gross imbalance in resources between NHTSA and any company whose vehicle is being investigated, there is an imbalance in knowledge and expertise which is exacerbated by lack of funding.” NHTSA information gathering and data systems are also suffering, with projects like the National Accident Sampling System (NASS) – which could expose defects like sudden unintended acceleration (SUA) much earlier – budgeted for investigations of only 4,000 crashes per year.



Other shortcomings include NHTSA’s failure to establish a public repository/database for crash data from Event Data Recorders (a.k.a, “black boxes”) present in most vehicles and request specific death and injury records from auto companies where there are known major defects. In addition, the agency has yet to issue a mandatory safety standard and is slow to upgrade or issue new safety standards based on investigations and testing.

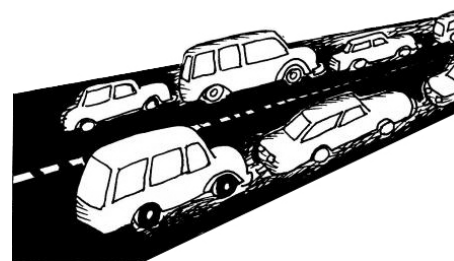
NHTSA also pays little attention to the work of its enforcement engineers and investigators (who review tens of thou-

sands of consumer defect complaints, research problems with particular make/model vehicles and analyze all the data), rarely exercises its authority to review companies’ recall letters to ensure they truly alert the public to product dangers and the need for repairs, relies on peer review panels to approve agency requests for voluntary recalls and allows automakers to substitute so-called “service campaigns” for full safety recall campaigns. According to Claybrook, unless NHTSA makes enforcement a top priority, the agency will never be “the government cop on the corporate beat.”

The fact that there is no public record of meetings between manufacturers and NHTSA – which, according to CAS’s Ditlow, often occur at the conclusion of a defect investigation “where the important decisions are made and are attended by former NHTSA employees representing the manufacturer” and “frequently include presentation of documents by either NHTSA or the manufacturer on why there should or should not be a recall” – is equally problematic. “These meetings are not about data submissions by manufacturers,” Ditlow explained to Congress. “They are about secret deals to close investigations without recalls that ultimately result in deaths and injuries to consumers.”

In addition, there is a “revolving door” between NHTSA and automakers. As Claybrook told a House subcommittee on May 6, 2010, “[A] large number of former NHTSA officials, including Administrators, the top presidential appointee, deputy administrators, general counsels, and chiefs of the enforcement, rulemaking and research divisions, as well as technical staff have left NHTSA over the years to be employed by vehicle and equipment manufacturers as consultants, lobbyists, attorneys or on staff.”

The auto industry has also used its vast resources to lobby Congress for protection. Data from the Center for Responsive Politics (CRP) show that since 2000 the auto industry has spent more than \$520 million on lobbying activities and



hired thousands of individual lobbyists. Federal campaign contributions may further explain why Congress has failed to act. According to the CRP, since 2000 the auto industry has given federal candidates over \$93 million, more than an eighth of which comes from auto manufacturers.

Sadly, it’s taken deaths and injuries from runaway Toyotas (see **The Toyota Hot Mess**, p.1) for Congress to undertake its first major review of NHTSA, the last time being 2000 after rollovers from Ford Explorers/Firestone tires claimed hundreds of lives. Given NHTSA’s record, reform is long overdue.



90 Broad Street Suite 401  
New York, NY 10004  
Phone: 212.267.2801  
Fax: 212.459.0919  
centerjd@centerjd.org  
<http://centerjd.org>

### IMPACT

Editor:  
Daniel Albanese

Contributor:  
Emily Gottlieb

© Copyright 2010 Center for Justice  
& Democracy.  
All rights reserved.

sudden rpm increase and/or sudden vehicle acceleration.”

- A January 16, 2010 internal email from a Toyota public relations executive warning a colleague to tell the truth about accelerator problems. “I hate to break this to you but WE HAVE A tendency for MECHANICAL failure in accelerator pedals of a certain manufacturer on certain models,” the e-mail began. “We are not protecting our customers by keeping this quiet,” added the PR executive. “The time to hide on this one is over. We need to come clean.”
- A January 16, 2010 internal memo from executive coordinator for corporate communications for Toyota Motor Sales U.S.A. Inc. to the vice president of external communications, stating, “Now I talked with you on the phone, we should not mention about the mechanical failures of acc. pedal because we have not clarified the real cause of the sticking acc pedal formally, and the remedy for the matter has not been confirmed.” He further wrote that

Toyota executives were concerned that news of the mechanical failures “might raise another uneasiness of customers.”

Toyota’s post-recall actions also reflect the extent to which the company seemed to care more about its bottom line and image than public safety. For example, internal documents show how Toyota officials sought to develop a PR campaign to attack the credibility of key congressional witnesses, who had testified before Congress about acceleration problems with the company’s cars. The effort was based in part on a survey entitled “Kane/Gilbert Debunking Message Test,” conducted for Toyota by Joel Benenson, President Obama’s chief pollster, to undermine testimony from safety consultant Sean Kane and Southern Illinois University Carbondale auto technology professor David Gilbert. As U.S. Rep. Bart Stupak (D-Mich.) put it, “Unfortunately, Toyota appears to have been more interested in messaging than scientific inquiry.”

In addition, Toyota reneged on its pledge to conduct an independent investigation into SUA defects, telling Congress it had

hired an outside research firm, Exponent, to do the work when in fact the firm was hired by defense counsel representing Toyota in class action lawsuits. “Toyota says that Exponent’s work is ‘comprehensive’ and ‘independent,’ but the documents reviewed by the Committee do not support these assertions,” U.S. Rep. Henry A. Waxman (D-Cal.) pointed out at a May 20, 2010 hearing.

Faced with a weak, ineffective NHTSA and the slow pace of congressional action, injured victims and their families have turned to the civil justice system for help. As of June 8, 2010, 40 sudden-acceleration lawsuits filed against Toyota Motor Corp. in California’s state courts will be coordinated into a single legal proceeding in Los Angeles. Related federal multidistrict litigation encompassing more than 200 lawsuits is pending in nearby Santa Ana. The federal judge overseeing the sudden acceleration litigation recently ordered Toyota’s lawyers to turn over tens of thousands of pages of internal documents that the company had already provided to Congress and NHTSA.

The entire nation awaits.

Transcript of the August 28, 2009 “911 call” made by Chris Lastrella shortly before he and his family were killed after their Toyota 2009 Lexus ES 350 sedan sped out of control, slammed into an SUV, careened through a fence, rolled over and burst into flames. (p. 3)

911 OPERATOR: 911 Emergency, what are you reporting?

CHRIS LASTRELLA: Yeah, we’re in a, we’re in a Lexus [inaudible]. We’re going north on 125.

911 OPERATOR: I’m I’m sorry your cellphone’s cutting out.

LASTRELLA: We’re going north 125.

911 OPERATOR: Mm-hmm.

LASTRELLA: And our accelerator’s stuck.

911 OPERATOR: I’m sorry?

LASTRELLA: Our accelerator’s stuck [inaudible].

911 OPERATOR: Okay, northbound 125. Where are you passing?

LASTRELLA: We’re passing, uh, where are we passing [inaudible]? We’re going 120 Mission Gorge. We’re we’re in trouble. We can’t – there’s no brake.

911 OPERATOR: Okay.

LASTRELLA: Mission Gorge, end freeway half mile.

911 OPERATOR: Okay. And you don’t have the ability to, like, turn the vehicle off or anything?

LASTRELLA: We’re now approaching intersection. We’re approaching intersection [inaudible]. We’re approaching intersection. Hold on. Pray. Pray [inaudible]. Oh oh Oh WHOA (sound of a crash).

911 OPERATOR: Hello?



## 2010 AUTO RECALLS

**January:** Toyota recalls 2.3 million vehicles because of sticky accelerator pedals.

**February:** Chrysler recalls more than 355,000 minivans due to faulty crash sensors.

**March:** GM recalls 130,000 cars for brake problems, Honda recalls 412,000 Odysseys and Elements because of brake issues and Nissan recalls 540,000 cars due to brake and fuel gauge problems.

**April:** Ford recalls 33,000 vehicles for seat problem.

**May:** Nissan recalls 42,000 trucks because of poor welding on a suspension part and over 134,000 Infiniti G35 Sedans and Coupes for faulty airbags.

**June:** GM recalls 1.5 million vehicles due to fire risks, with Chrysler recalling 570,000 Jeeps and Minivans because of fire and brake issues plus 25,000 Caliber and Compass models for sticky accelerator pedals.



---

## WIPING OUT VICTIMS' RIGHTS

### Graves Amendment.

Congress is now considering legislation that repeals a 2005 law, which was buried in a 900-page transportation bill, which preempted numerous state vicarious liability statutes that required rental companies to assume responsibility when their uninsured drivers caused accidents. As a result of this law, many victims injured by uninsured rental car drivers have no recourse against a financially responsible vehicle owner and no ability to be compensated.

### *Williamson v. Mazda Motor of America.*

On May 24, 2010, the U.S. Supreme Court agreed to decide whether federal regulations that set vehicle safety standards bar state product liability lawsuits against carmakers who've installed lap-only seatbelts. Then Solicitor General Elena Kagan had urged the justices to hear the case, arguing that lower courts "repeatedly have over-read" Supreme Court precedent and preempted seatbelt design lawsuits "even though the federal agency that promulgated and administers that regulation disagrees."

### Automaker Bankruptcies.

When GM and Chrysler filed for bankruptcy in 2009, both companies sought immunity from past and future product liability suits involving the tens of millions of GM and Chrysler cars on the road. Facing mounting pressure from victims, lawyers, state attorneys general and consumer groups, the companies agreed to accept responsibility for defect-related injuries suffered by consumers who bought their GM and Chrysler vehicles post-bankruptcy. Yet the automakers will not compensate anyone injured or killed by defective cars if the accident occurred before the bankruptcies, further victimizing over 1,000 consumers – some with catastrophic injuries, many of whom are children.



## CJ&D's New Podcast Series: *Tort Helpings*

Go to our website and check out our Podcasting Series, *Tort Helpings*, where you can listen to some delicious commentaries and analysis about our tort system, civil justice and important news of the day.

If you would like to sponsor a podcast, contact us at [centerjd@centerjd.org](mailto:centerjd@centerjd.org).

<http://www.centerjd.org/>