

## JUSTICE NEWS

**Department of Justice**

Office of Public Affairs

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### **Justice Department Announces Criminal Charge Against Toyota Motor Corporation and Deferred Prosecution Agreement with \$1.2 Billion Financial Penalty**

#### **Toyota Motor Corporation Admits to Misleading Consumers and U.S. Regulator About Safety Issues Related to Unintended Acceleration in Its Cars Independent Monitor to Be Appointed to Oversee Toyota's Public Statements and Reporting of Safety Issues**

U.S. Attorney General Eric Holder, U.S. Secretary of Transportation Anthony Foxx, U.S. Attorney for the Southern District of New York Preet Bharara, Inspector General of the U.S. Department of Transportation (DOT) Calvin L. Scovel III, National Highway Traffic Safety Administration (NHTSA) Acting Administrator David Friedman and Federal Bureau of Investigation (FBI) Deputy Assistant Director Joe Campbell announced a criminal wire fraud charge against Toyota Motor Corporation (“TOYOTA” or “the company”), an automotive company headquartered in Toyota City, Japan, that designs, manufactures, assembles, and sells Toyota and Lexus brand vehicles. The charge is that TOYOTA defrauded consumers in the fall of 2009 and early 2010 by issuing misleading statements about safety issues in Toyota and Lexus vehicles.

Also today, the Department of Justice announced a deferred prosecution agreement with TOYOTA (“the agreement”) under which the company admits that it misled U.S. consumers by concealing and making deceptive statements about two safety issues affecting its vehicles, each of which caused a type of unintended acceleration. The admissions are contained in a detailed statement of facts attached to the agreement. The agreement, which is subject to judicial review, requires TOYOTA to pay a \$1.2 billion financial penalty – the largest penalty of its kind ever imposed on an automotive company, and imposes on TOYOTA an independent monitor to review and assess policies, practices and procedures relating to TOYOTA’s safety-related public statements and reporting obligations. TOYOTA agrees to pay the penalty under a Final Order of Forfeiture in a parallel civil action also filed today in the Southern District of New York.

The criminal charge is contained in an Information (“the information”) alleging one count of wire fraud. If TOYOTA abides by all of the terms of the agreement, the Government will defer prosecution on the information for three years and then seek to dismiss the charge.

“Rather than promptly disclosing and correcting safety issues about which they were aware, Toyota made misleading public statements to consumers and gave inaccurate facts to Members of Congress,” said Attorney General Eric Holder. “When car owners get behind the wheel, they have a right to expect that their vehicle is safe. If any part of the automobile turns out to have safety issues, the car company has a duty to be upfront about them, to fix them quickly, and to immediately tell the truth about the problem and its scope. Toyota violated that basic compact. Other car companies should not repeat Toyota’s mistake: a recall may damage a company’s reputation, but deceiving your customers makes that damage far more lasting.”

“Safety is our top priority,” said Transportation Secretary Anthony Foxx. “Throughout this recall process, NHTSA investigators worked tirelessly to make sure that Toyota recalled vehicles with defects causing unintended acceleration, and to determine when they learned of it, and as we learned today, they succeeded in this effort in spite of extraordinary challenges. Today’s penalties follow NHTSA’s own record civil penalties of more than \$66 million – together, they send a powerful message to all manufacturers to follow our recall requirements or they will face serious consequences.”

“Toyota stands charged with a criminal offense because it cared more about savings than safety and more about its own brand and bottom line than the truth,” said U.S. Attorney Preet Bharara for the Southern District of New York. “In its zeal to stanch bad publicity in 2009 and 2010, Toyota misled regulators, misled customers, and even misstated the facts to Congress. The tens of millions of drivers in America have an absolute right to expect that the companies manufacturing their cars are not lying about serious safety issues; are not slow-walking safety fixes; and are not playing games with their lives. Companies that make inherently dangerous products must be maximally transparent, not two-faced. That is why we have undertaken this landmark enforcement action. And the entire auto industry should take notice.”

“To the families and friends of those who died or were injured as a result of these incidents, I offer my deepest sympathies for your loss and my highest admiration for the strength you demonstrate every day,” said DOT Inspector General Calvin L. Scovel III. “As is true for Secretary Foxx and DOT, safety is and will remain the highest priority of my office. The OIG is committed to working with our law enforcement and prosecutorial partners in pursuing those who commit criminal violations of the Department of Transportation’s or related laws. The efforts of this dedicated multi-agency team and the agreement reached with Toyota must serve as a clarion call to all auto manufacturers of the need to always be as vigilant and forthcoming as possible to keep the public safe.”

According to the allegations in the information, as well as other documents filed today in Manhattan federal court, including the Statement of Facts:

In the fall of 2009, TOYOTA deceived consumers and its U.S. regulator, the National Highway Traffic Safety Administration (“NHTSA”), by claiming that it had “addressed” the “root cause” of unintended acceleration in its vehicles through a limited safety recall of eight models for floor-mat entrapment, a dangerous condition in which an improperly secured or incompatible all-weather floor mat can “trap” a depressed gas pedal causing the car to accelerate to a high speed. Such public assurances deceived customers and NHTSA in two ways: First, at the time

the statements were made, TOYOTA knew that it had *not* recalled some cars with design features that made them just as susceptible to floor-mat entrapment as some of the recalled cars. Second, only weeks before these statements were made, TOYOTA had taken steps to hide from NHTSA another type of unintended acceleration in its vehicles, separate and apart from floor-mat entrapment: a problem with accelerators getting stuck at partially depressed levels, known as “sticky pedal.”

### *Floor-Mat Entrapment: A Fatal Problem*

TOYOTA issued its misleading statements, and undertook its acts of concealment, against the backdrop of intense public concern and scrutiny over the safety of its vehicles following a widely publicized Aug. 28, 2009 accident in San Diego, Calif., that killed a family of four. A Lexus dealer had improperly installed an incompatible all-weather floor mat into the Lexus ES350 in which the family was traveling, and that mat entrapped the accelerator at full throttle. A 911 emergency call made from the out-of-control vehicle, which was speeding at over 100 miles per hour, reported, “We’re in a Lexus . . . and we’re going north on 125 and our accelerator is stuck . . . there’s no brakes . . . we’re approaching the intersection . . . Hold on . . . hold on and pray . . . pray.” The call ended with the sound of the crash that killed everyone in the vehicle.

The San Diego accident was not the first time that TOYOTA had faced a problem with floor-mat entrapment. In 2007, following a series of reports alleging unintended acceleration in Toyota and Lexus vehicles, NHTSA opened a defect investigation into the Lexus ES350 model (the vehicle involved in the 2009 San Diego accident), and identified several other Toyota and Lexus models it believed might likewise be defective. TOYOTA, while denying to NHTSA the need to recall any of its vehicles, conducted an internal investigation in 2007 which revealed that certain Toyota and Lexus models, including most of the ones that NHTSA had identified as potentially problematic, had design features rendering entrapment of the gas pedal by an all-weather floor mat more likely. TOYOTA did not share these results with NHTSA. In the end, the Company negotiated a limited recall of 55,000 mats (no vehicles) – a result that TOYOTA employees touted internally as a major victory: “had the agency . . . pushed for recall of the throttle pedal assembly (for instance), we would be looking at upwards of \$100 million + in unnecessary costs.”

Shortly after TOYOTA announced its 2007 mat recall, company engineers revised internal design guidelines to provide for, among other things, a minimum clearance of 10 millimeters between a fully depressed gas pedal and the floor. But TOYOTA decided those revised guidelines would only apply where a model was receiving a “full model redesign” – something each Toyota and Lexus model underwent only about once every three to five years. As a result, even after the revised guidelines had been adopted internally, many new vehicles produced and sold by TOYOTA – including the Lexus ES350 involved in the 2009 San Diego accident – did not comply with TOYOTA’s 2007 guidelines.

After the fatal and highly publicized San Diego accident, TOYOTA agreed to recall eight of its models, including the ES350, for floor-mat entrapment susceptibility. Thereafter, as part of an effort to defend its brand image, TOYOTA began issuing public statements assuring customers that this limited recall had “addressed the root cause of unintended acceleration” in its U.S.-sold vehicles.

As TOYOTA knew from internal testing it had completed by the time these statements were made, the eight-model recall had not in fact “addressed the root cause” of even the floor-mat entrapment problem. Models *not* recalled – and therefore still on the road – bore design features rendering them just as susceptible to floor-mat entrapment as those within the recall population. One engineer working at a TOYOTA facility in California had concluded that the Corolla, a top-selling car that had not been recalled, was among the three “worse” vehicles for floor-mat entrapment. In October 2009, TOYOTA engineers in Japan circulated a chart showing that the Corolla had the lowest rating for floor-mat entrapment under their analysis. None of these findings or this data were shared with NHTSA at the time.

### *The Sticky Pedal Problem*

What is more misleading, at the same time it was assuring the public that the “root cause” of unintended acceleration had been “addressed” by the 2009 eight-model floor-mat entrapment recall, TOYOTA was hiding from NHTSA a second cause of unintended acceleration in its vehicles: the sticky pedal. Sticky pedal, a phenomenon affecting pedals manufactured by a U.S. company (“A-Pedal Company”) and installed in many Toyota brand vehicles in North America as well as Europe, resulted from the use of a plastic material inside the pedals that could cause the accelerator pedal to become mechanically stuck in a partially depressed position. The pedals incorporating this plastic were installed in, among other models, the Camry, the Matrix, the Corolla, and the Avalon sold in the United States.

The sticky pedal problem surfaced in Europe in 2008. There, reports reflected instances of “uncontrolled acceleration” and unintended acceleration to “maximum RPM,” and customer concern that the condition was “extremely dangerous.”

In early 2009, TOYOTA circulated to European Toyota distributors information about the sticky pedal problem and instructions for addressing the problem if it presented itself in a customer’s vehicle. These instructions identified the issue as “Sudden RPM increase/vehicle acceleration due to accelerator pedal sticking,” and stated that should a customer complain of pedal sticking, the pedal should be replaced with pedals manufactured by a company other than A-Pedal Company. Contemporaneous internal TOYOTA documents described the sticky pedal problem as a “defect” that was “[i]mportant in terms of safety because of the possibility of accidents.”

TOYOTA did not then inform its U.S. regulators of the sticky pedal problem or conduct a recall. Instead, beginning in the spring of 2009, TOYOTA quietly directed A-Pedal Company to change the pedals in new productions of affected models in Europe, and to plan for the same design changes to be rolled out in the United States (where the same problematic pedals were being used) beginning in the fall of 2009. The design change was to substitute the plastic used in the affected pedal models with another material and to change the length of the friction lever in the pedal.

Meanwhile, the sticky pedal problem was manifesting itself in U.S. vehicles. On or about the same day the San Diego floor-mat entrapment accident occurred, staff at a U.S. TOYOTA subsidiary in California sent a memorandum to staff at TOYOTA in Japan identifying as “critical” an “unintended acceleration” issue separate and apart from floor-mat entrapment that had been identified in an accelerator pedal of a Toyota Matrix vehicle in Arizona. The problem identified, and then reproduced during testing of the pedal on Sept. 17, 2009, was the sticky pedal problem. Also in August, the sticky pedal problem cropped up in a U.S. Camry.

On Sept. 9, 2009, an employee of a U.S. TOYOTA subsidiary who was concerned about the sticky pedal problem in the United States and believed that TOYOTA should address the problem prepared a “Market Impact Summary” listing (in addition to the August 2009 Matrix and Camry) 39 warranty cases that he believed involved potential manifestations of the sticky pedal problem. This document, which was circulated to TOYOTA engineers and, later, to staff in charge of recall decisions in Japan, designated the sticky pedal problem as priority level “A,” the highest level.

By no later than September 2009, TOYOTA recognized internally that the sticky pedal problem posed a risk of a type of unintended acceleration – or “overrun,” as Toyota sometimes called it – in many of its U.S. vehicles. A September 2009 presentation made by a manager at a U.S. TOYOTA subsidiary to TOYOTA executives gave a “current summary of O/R [overrun] types in NA [North American] market” that listed the three confirmed types as: “mat interference” (*i.e.*, floor-mat entrapment), “material issue” (described as “pedal stuck and . . . pedal slow return/deformed”) and “simultaneous pedal press” by the consumer. The presentation further listed the models affected by the “material issue” as including “Camry, Corolla, Matrix, Avalon.”

### *Hiding Sticky Pedal from NHTSA and the Public*

As noted, TOYOTA had by this time developed internal plans to implement design changes for all A-Pedal-Company-manufactured pedals in U.S. Toyota models to address, on a going-forward basis, the still-undisclosed sticky pedal problem that had already been resolved for new vehicles in Europe. On Oct. 5, 2009, TOYOTA engineers issued to A-Pedal Company the first of the design change instructions intended to prevent sticky pedal in the U.S. market. This was described internally as an “urgent” measure to be implemented on an “express” basis, as a “major” change – meaning that the part number of the subject pedal was to change, and that all inventory units with the old pedal number should be scrapped.

On Oct. 21, 2009, however, in the wake of the San Diego floor-mat entrapment accident, and in the midst of TOYOTA’s discussions with NHTSA about its eight-model entrapment recall, engineers at TOYOTA and the leadership of TOYOTA’s recall decision group decided to cancel the design change instruction that had already been issued and to suspend all remaining design changes planned for A-Pedal Company pedals in U.S. models. U.S. TOYOTA subsidiary employees who had been preparing for implementation of the changes were instructed, orally, to alert the manufacturing plants of the cancellation. They were also instructed not to put anything about the

cancellation in writing. A-Pedal Company itself would receive no written cancellation at this time; instead, contrary to TOYOTA's own standard procedures, the cancellation was to be effected without a paper trail.

TOYOTA decided to suspend the pedal design changes in the United States, and to avoid memorializing that suspension, in order to prevent NHTSA from learning about the sticky pedal problem.

In early November 2009, TOYOTA and the leadership of a U.S. TOYOTA subsidiary became aware of three instances of sticky pedal in U.S. Corollas. Shortly thereafter, the leadership of the recall decision group within TOYOTA discussed a plan to finally disclose the sticky pedal problem to NHTSA. The recall decision group was aware at this time not only of the problems in the three Corollas in the United States but also of the problems that had surfaced in a Matrix and a Camry in August 2009 and been reproduced through testing in September 2009. The group was also familiar with the sticky pedal problem in Europe, the design changes that had been implemented there, and the cancellation and suspension of similar planned design changes in the United States. Knowing all of this, the group's leadership decided that (a) it would not disclose the September 2009 Market Impact Summary to NHTSA; (b) if any disclosure were to be made to NHTSA, it would be limited to a disclosure that there were some reports of unintended acceleration apparently unrelated to floor-mat entrapment; and (c) NHTSA should be told that TOYOTA had made no findings with respect to the sticky pedal problem reflected in the reports concerning the three U.S. Corollas, and that the investigation of the problem had just begun.

On Nov. 17, 2009, before TOYOTA had negotiated with NHTSA a final set of remedies for the eight models encompassed by the floor-mat entrapment recall, TOYOTA informed NHTSA of the three Corolla reports and several other reports of unintended acceleration in Toyota model vehicles equipped with pedals manufactured by A-Pedal Company. In TOYOTA's disclosure to NHTSA, TOYOTA did not reveal its understanding of the sticky pedal problem as a type of unintended acceleration, nor did it reveal the problem's manifestation and the subsequent design changes in Europe, the planned, cancelled, and suspended design changes in the United States, the August 2009 Camry and Matrix vehicles that had suffered sticky pedal, or the September 2009 Market Impact Summary.

### *TOYOTA's Misleading Statements*

After the August 2009 fatal floor-mat entrapment accident in San Diego, several articles critical of TOYOTA appeared in U.S. newspapers. The articles reported instances of TOYOTA customers allegedly experiencing unintended acceleration and the authors accused TOYOTA of, among other things, hiding defects related to unintended acceleration.

On Nov. 25, 2009, TOYOTA, through a U.S. subsidiary, announced its floor- mat entrapment resolution with NHTSA. In a press release that had been approved by TOYOTA, the U.S. subsidiary assured customers: "The safety of our owners and the public is our utmost concern and Toyota has and will continue to thoroughly investigate and take appropriate measures to address any defect trends that are identified." A spokesperson for the subsidiary stated

during a press conference the same day, “We’re very, very confident that we have addressed this issue.”

In truth, the issue of unintended acceleration had not been “addressed” by the remedies announced. A-Pedal Company pedals which could experience stickiness were still on the road and still, in fact, being installed in newly-produced vehicles. And the best-selling Corolla, the Highlander, and the Venza – which had design features similar to models that had been included in the earlier floor-mat entrapment recall – were not being “addressed” at all.

Again, on Dec. 23, 2009, TOYOTA responded to media accusations that it was continuing to hide defects in its vehicles by authorizing a U.S. TOYOTA subsidiary to publish the following misleading statements on the subsidiary’s website: “Toyota has absolutely not minimized public awareness of any defect or issue with respect to its vehicles. Any suggestion to the contrary is wrong and borders on irresponsibility. We are confident that the measures we are taking address the root cause and will reduce the risk of pedal entrapment.” In fact, TOYOTA had “minimized public awareness of” both sticky pedal and floor-mat entrapment. Further, the measures TOYOTA had taken did not “address the root cause” of unintended acceleration, because TOYOTA had not yet issued a sticky pedal recall and had not yet recalled the Corolla, the Venza, or the Highlander for floor-mat entrapment.

#### *TOYOTA’s False Timeline*

When, in early 2010, TOYOTA finally conducted safety recalls to address the unintended acceleration issues it had concealed throughout the fall of 2009, TOYOTA provided to the American public, NHTSA and the United States Congress an inaccurate timeline of events that made it appear as if TOYOTA had learned of the sticky pedal in the United States in “October 2009,” and then acted promptly to remedy the problem within 90 days of discovering it. In fact, TOYOTA had begun its investigation of sticky pedal in the United States no later than August 2009, had already reproduced the problem in a U.S. pedal by no later than September 2009, and had taken active steps in the months following that testing to hide the problem from NHTSA and the public.

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This case is being handled by the Office’s Securities and Commodities Fraud Task Force. Assistant U.S. Attorney Bonnie Jonas, Deputy Chief of the Criminal Division and Assistant U.S. Attorney Sarah E. McCallum are in charge of the prosecution, and Assistant U.S. Attorney Sharon Cohen Levin, Chief of the Money Laundering and Asset Forfeiture Unit is responsible for the forfeiture aspects of the case.

#### **Related Materials:**

[Deferred Prosecution Agreement](#)

[Toyota Information](#)

Toyota Statement of Facts

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Office of the Attorney General

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