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For real change, charge top execs

By Jonathan Michaels

On Dec. 31, 2015, at 7:03 p.m., a Toyota Yaris careened out of control on the Interstate 10 freeway, accelerating uncontrollably through the Los Angeles metro. Unable to stop or slow the vehicle, the driver hurled off the freeway, striking another car and killing all of its four occupants, as well as a 7-year-old boy traveling in the Yaris.

All of this concerns a car that has a notorious reputation for being plagued with problems. In a study analyzing cars from 2009 to 2011, the Highway Loss Data Institute found that the Toyota Yaris had the “highest frequency” of injuries among all cars on U.S. roads, by a margin of 2-to-1 over the national average.

What’s concerning about the New Year’s Eve accident is that it is a near identical rerun of the August 2009 episode where a CHP officer and his family were trapped inside a Lexus (made by Toyota) with an accelerator that stuck. The horrific events were burned into the memories of many, as the CHP officer called 911 in a plea for help. The officer and his family of three were killed moments later when their Lexus slammed into the back of another vehicle, launching the Lexus 100 feet into the air, then down an embankment.

In a filing on Monday, the Department of Justice brought charges against Volkswagen for its part in the fraudulent scheme. Notably, none of the company’s executives have been named.

Memorialized in the chilling 911 call, the 2009 accident ignited a firestorm of litigation against Toyota for cases of “unintended acceleration” of its vehicles. At issue was Toyota’s electronic throttle control system, a mechanism where the engine throttle is controlled by an electronic signal sent from the gas pedal to the engine throttle, as opposed a mechanical linkage connecting the two, as was traditionally done.

The unintended acceleration melee ended in 2014, when Toyota agreed to pay \$1.6 billion to consumers in the class action settlement, and another \$1.2 billion to the U.S. Treasury in settlement of the Justice Department’s criminal complaint. Or so we thought.

The New Year’s Eve crash has renewed questions about vehicle safety, and in particular whether Toyota has completely resolved the problem. Shockingly, when Toyota issued a recall of its U.S.



New York Times

Two pedal assemblies recalled in 2010 after several deadly accidents involving Toyota vehicles with accelerators that became stuck while the car was being operated.

vehicles for the unintended acceleration, the Yaris was not among them. And yet, the Yaris contained the same electronic throttle control system that was at the heart of the dispute. What’s more, although Toyota did not recall the Yaris in the U.S., it did recall the car in Europe.

In fact, in a Consumer Reports study of 450 complaints made to the National Highway Traffic Safety Administration about vehicle unintended acceleration, the company found that 130 cases involved Toyota vehicles that were not recalled by the automaker. This included the 4Runner, FJ Cruiser, Land Cruiser, Sienna, Yaris and Scion.

Toyota will undoubtedly be sued for wrongful death for the fatalities caused by the New Year’s Eve crash, but that glosses over the larger, more fundamental issue that is at center of this debate. For years, manufacturers have responded to critical defects in their vehicles only when forced to do so. Toyota recalled (some of) its vehicles only after a blood-curdling 911 call was aired to the public. General Motors recalled (again, some of) its vehicles for an ignition switch defect after one of its engineers mistakenly testified in a deposition about knowing of the defect for over a decade. And Volkswagen recalled (yes, some of) its vehicles for emissions tampering only after a small West Virginia university published a study, exposing the fraud.

In each of the instances, the manufacturers were content to allow the public to be deceived, and reap monster profits from the very vehicles that were causing the harm. The Department of Justice filed criminal complaints against Toyota and General Motors, ultimately resulting in the transfer of some that profit to the U.S. coffers. Yet, in neither instance were any high ranking company officials criminally prosecuted or jailed.

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There are serious measures that could be employed, which would impact the way manufacturers behave, and ultimately prevent the kind of tragedy that befell the families of the Toyota Yaris incident. In April 2015, the U.S. Senate passed the Motor Vehicle Safety Whistleblower Act, a bill that gives whistleblower protection to employees and contractors of motor vehicle manufacturers, parts suppliers and dealerships who report vehicle defects. The whistleblowers are given anonymity when coming forward, as well as 30 percent of all fines paid by the automaker that exceed \$1 million.

The bill has been sent to the House for consideration, and as a sign that the public is fed up with automakers’ continuing misdeeds, the bill is predicted to have a 44 percent likelihood of success, up from 36 percent in April.

The Motor Vehicle Safety Whistleblower Act will go a long way toward shattering the glass culture of secrecy that has manifested in the automotive society for decades. But it needs to be coupled with individual accountability by high ranking company officials, charged with overseeing the design, manufacture and recall of their vehicles.

The Sarbanes-Oxley Act of 2002 got it right, and Congress ought to take a page out of its rulebook and apply it to the automotive sector. On the heels of the Enron scandal of 2001, the Sarbanes-Oxley Act requires that senior executives take individual responsibility for the accuracy and completeness of corporate financial reports, under the threat of prison. No one could seriously dispute that consumer safety is not at least as important as financial well-being.

Absent major reform, we should not only tolerate, but expect, those in command to lie, cheat and steal about the products their companies manufacture and distribute. Perhaps it’s the love of profit, or maybe it’s just the love of being the biggest, intertwined with loads of ego, that have created a culture of deceit. Whatever the case, Congress needs to wield its power in a proper and measured form, designed to cut the head off the snake once and for all.



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