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A conversation with the lawyer who reported Toyota to the feds

Amanda Bronstad
August 04, 2010

Since announcing the recall of 8 million vehicles due to defective floor mats and accelerator pedals, Toyota Motor Corp. has paid a \$16.4 million fine to U.S. regulators and faces a separate investigation by the National Highway Traffic Safety Administration (NHTSA). Additionally, the company has been subpoenaed by a federal grand jury.

Toyota's continuing legal drama got worse in July after the company reported receiving a second subpoena — this time aimed at steering rods. In May, NHTSA announced a probe of a 2005 recall involving steering-related problems in Toyota 4Runners, trucks and pickups.

NHTSA had been tipped off by John Kristensen, a lawyer at San Mateo, Calif.-based O'Reilly Collins, who sued the company last year in Los Angeles County, Calif., Superior Court alleging that Toyota had long known about the steering rod problems, having issued a recall because of the same problem in Japan the year before.

Kristensen talked to *The National Law Journal* about why he contacted NHTSA, what's potentially in store for Toyota and the status of his case. His comments have been edited for length and clarity.

NLJ: What exactly did you tell NHTSA in May?

JK: We uncovered — and we knew this before we filed the lawsuit — that Toyota made false statements to the federal government regarding why they were issuing a recall for their Japanese customers but not the United States. They indicated they didn't have field information in the United States, but there's uncontroverted evidence they had been warned the rods were failing in the United States and were leading to some accidents and injuries. They waited a year to tell the government.

NLJ: Isn't this just another possibility of a fine, not criminal charges?

JK: It's not just fines. Who knows where it leads? It's illegal to falsely inform the government of defects in automobiles, and if it leads to being reasonably likely for someone to get injured it could lead to more than fines.

NLJ: How is Toyota's handling of this defect and recall different from its handling of the sudden acceleration defects, like sticky accelerator pedals and floor mats?

JK: Four years ago, as a result of a highly publicized accident [in Japan], they quickly issued recalls. They said they were sorry to their customers, they didn't explain what they were sorry for, and apologized to their government for not issuing recalls in a more prompt manner. This sounds like the same story we're hearing now. The real question is: We've learned we can't trust them four years ago, why believe them now? Four years ago, they said they'd do better. Now, they say they'll do better. It looks like they have a focus on how to handle corporate PR disasters, and they're just following the same script.

NLJ: Your case has been going on for more than a year. Why contact NHTSA now?

JK: NHTSA had opened up a couple of investigations, particularly about the sticking pedal recalls. And they weren't happy with Toyota misleading them about a one- or two-month time period. And we wanted to let NHTSA and the American public know that it wasn't the first time they've done this.

NLJ: What do you think the federal grand jury is looking at?

JK: I think there are questions about whether Toyota or specific individuals violated the TREAD (Transportation Recall Enhancement, Accountability and Documentation) Act. Congress passed a law making stricter reporting requirements to manufacturers after the Ford/Firestone fiasco. One of the main limitations was that Ford was issuing recalls in Venezuela and Saudi Arabia before the U.S. and didn't tell anyone. So the government said that if you issue a recall overseas and not the U.S., you have to tell us in five days and you have to tell us why. They've also included civil penalties and there are potential criminal penalties under the TREAD Act. For the criminal act, obviously, you have to find the intent on behalf of somebody to mislead the government. You have to show they knowingly and willfully provided false information to NHTSA with the intent to mislead regarding a safety defect that in fact causes death or serious bodily injury.

NLJ: Your case was filed on behalf of Michael Stewart, who was killed in an accident. What happened?

JK: He was driving his friends home on a Friday night in September 2007 and the steering rod snapped in his pickup, causing him to go off the road. The drainage ditch caused the vehicle to roll over. The driver died and one of the passengers was in a coma and suffered severe brain injuries.

NLJ: What is the status of your case?

JK: The [California] Court of Appeal is hearing briefing on a matter where we're trying to get the deposition of an executive. It's a fairly simple issue: Does California have jurisdiction over Toyota Motor Corp. so we can compel the production of evidence? Or does Toyota have an advantage over its American competitors in that they can only comply with the parts of the discovery act which they can choose?

NLJ: Meanwhile, Toyota on July 29 recalled 412,000 Avalons and Lexuses for steering problems. What do you think of this?

JK: It is two-fold: They seem to have a serious quality control issue but, at the same time, maybe they're finally starting to address it.

Amanda Bronstad can be contacted at abronstad@alm.com.