

Toyota Allegedly Hid Faults Behind 2005 U.S. Truck Recall

By Gabe Friedman

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LOS ANGELES - Revealing new details into an alleged cover-up related to a 2005 Toyota Motor Corp. recall that remains under federal criminal investigation, a plaintiffs' lawyer accused the auto maker of doctoring accident reports to delay a costly national recall over faulty steering rods.

The new allegations, included in a motion filed Tuesday, are part of an effort by John P. Kristensen, of O'Reilly Collins in San Mateo, to pierce Toyota's attorney-client privilege protections under the crime-fraud exception.

The motion asks Superior Court Judge Conrad Aragon to give plaintiffs access to documents and witnesses that could shed light into Toyota's 2005 recall of its T-100 pick-up truck, among other models, for problems with steering relay rods.

Kristensen, who represents the family of an Idaho teenager who died when the steering rod in his T-100 allegedly snapped, said he found incidents in which Toyota incorrectly coded the cause of accidents to hide an emerging problem with steering rods from federal regulators.

The auto maker has been battered by a rash of negative publicity from congressional hearings into whether its vehicles are prone to sudden unintended acceleration. Federal lawsuits from around the country over sudden acceleration issues have been consolidated in federal court in Santa Ana where a motion to dismiss is pending.

But the 2005 recall of vehicles for faulty steering rods also appears to be stirring up trouble for the company, whose U.S. headquarters are in Torrance. Earlier this summer a federal grand jury in Manhattan subpoenaed documents related to its steering rod recall, and this spring, the National Highway Traffic Safety Administration announced an investigation into the timing of that recall. It appears investigators are scrutinizing why Toyota recalled vehicles with faulty steering rods in the U.S. nearly a year after it did so in Japan.

"Plaintiffs have uncovered a number of instances prior to the 2004 Japanese recall where Toyota misled NHTSA by providing faulty early warning reports about accidents involving fractured steering relay rods," Kristensen wrote in his 16-page motion.

Toyota alleges the accident in Kristensen's suit was caused by driver error.

W. Neil Eggleston, of Debevoise & Plimpton in Washington, D.C., who is representing Toyota in the federal criminal investigation and Erika Z. Jones, of Mayer Brown in Washington, D.C., who represents the company in the NHTSA investigation, did not return calls seeking comment. A spokesman for Toyota declined to comment.

Though Kristensen alleges Toyota misidentified the cause of numerous accidents, he provided details on only one accident in his motion. But he wrote that the timing of that May 2004 accident is critical.

Zoe Chapman lost control of a Toyota T-100 pick-up truck that May while driving through Humboldt Redwoods State Park. According to photos, Chapman's testimony and internal Toyota reports, the steering relay rod in her truck severed.

In its report to NHTSA in the third quarter of 2004, which has been made publicly available online by NHTSA, Toyota listed the cause of accident as a faulty power train, however, omitting any mention of the broken steering rod.

At the time, the company had not announced any defects with steering rods in any of its vehicles. Several months later, in August 2004, a Japanese driver suffered a fatal accident in another Toyota pick-up truck, related to a defective steering rod. After the accident attracted media attention in Japan, Toyota announced a recall of 330,000 Japanese vehicles in October 2004 because of steering relay rods prone to crack, fissure and other flaws.

It wasn't until September 2005 that Toyota began a U.S. recall of nearly one million T-100s, 4Runners and other trucks with similar steering rods defects.

Kristensen alleges in the motion filed Wednesday that Toyota was concealing the cause of accidents in such a way that federal regulators could not detect a common trend.

"NHTSA had no method to cross-reference Toyota's [data] to see if they were being truthful about steering complaints in the United States market because Toyota intentional coded the [data] in a materially false manner. Had NHTSA known otherwise, it would have investigated the need for a recall in 2004, exactly what the law was designed to do," he wrote.

The motion asks the judge to invoke the crime-fraud exception so Kristensen can obtain information that Toyota claims is protected by the attorney-client privilege or work-product doctrine, including the Toyota field report on the Chapman accident; the right to question the inspector on his report; and to depose other Toyota executives in the chain of command that prepared the accident report to NHTSA.

The request for documents, which other lawyers with similar suits against Toyota would likely be interested in, comes less than a week after a similar motion was approved.

In a separate case, a former in-house lawyer at Toyota who is suing the auto maker for racketeering on allegations he was forced to commit discovery fraud, won the right last week to use attorney-client privileged materials under the crime-fraud exception. The arbitrator in that case stressed Toyota may not have committed any fraud or crime, but ruled the plaintiff had made a prima facie showing to invoke the exception.

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