

## Suits Over Toyota's Sticky Gas Pedals Accelerate

By Leigh Kamping-Carder

*Law360, New York (February 01, 2010, 7:08 PM ET)* -- Toyota Motor Sales USA Inc. announced a remedy Monday for the sticky gas pedals that have forced the recall of millions of its vehicles worldwide, while at least four class actions in North America began the onslaught of related litigation.

Toyota said it had “rigorously tested a solution” involving installing a steel reinforcement bar in the pedal assembly of affected vehicles to get rid of friction that can cause the accelerator pedals to stick or return slowly to the idle position.

Still, the fix has not stopped individuals in the U.S. District Courts for the Southern District of Texas, Eastern District of Louisiana and Central District of California from filing putative class actions in recent days to recover what they see as lost resale value and costs associated with emotional distress.

In the latest suit, filed Friday, plaintiffs Albert and Sylvia Pena claim their Toyota Avalon unexpectedly sped up at a stop sign, leading to a collision, and recently accelerated without warning while going around a turn.

A Toyota owner named Steven Hamilton filed Canada's first proposed class action in the Ontario Superior Court of Justice on Monday, alleging Toyota and CTS Corp., an auto parts supplier, should have known of the defect in the throttling system in models manufactured since 2001.

“We are concerned that the recent announcement of a 'fix' appears not to address the ETCS-i system itself, nor the issue of a lack of fail-safe which would permit the driver to regain control of the vehicle in the event of an unintended acceleration,” said Hamilton's lawyer, Joel P. Rochon of Rochon Genova LLP.

In a statement, CTS said it had not manufactured gas pedals for Lexus models and had only made the part for Toyota models since 2005.

A representative for Toyota declined to comment on any matters related to litigation.

Being proactive, finding a fix and getting the information out to the public will likely go a long way to helping Toyota's defense, according to Edwin Baum, a partner at Proskauer Rose LLP. But he said the issue of unintended acceleration will dog the automaker well into the future.

“This will give rise to its own cottage industry for some time to come,” said Baum, who has represented automotive companies and leads Proskauer's product liability and consumer litigation practice.

In the future, Toyota will have a harder time defending claims that vehicle collisions are the result of mechanical failure, rather than driver error, Baum said.

Also on Monday, Toyota said it would take the “unprecedented” step of stopping production of the eight affected models for a week, as its dealers across the U.S. stay open late — in some cases around the clock — to repair the faulty accelerators.

“We are focused on making this recall as simple and trouble-free as possible, and will work day and night with our dealers to fix recalled vehicles quickly,” said Jim Lentz, president and chief operating officer of Toyota's U.S. operations.

About 2.3 million vehicles were subject to the U.S. recall, and an additional 1.9 million vehicles in Europe and China were affected, including some of the company's most popular models, including Camry and Corolla. On Jan. 26 the company announced that its U.S. dealers should stop selling those and six other affected models.

Toyota is expected to face at least \$250 million in warranty fees for this first round of repairs, according to Reuters.

The company announced a separate recall of 3.8 million vehicles in October, since expanded to include another million vehicles, to address a problem with the floor mats in certain Toyota and Lexus models that caused the accelerator to stick in place.

Approximately 1.7 million Toyota vehicles are subject to both recalls.

Five individuals have died as a result of the floor mat issues, according to the National Highway Traffic Safety Administration. The agency said it was unaware of deaths or injuries related to the sticky pedal issue.

A U.S. House of Representatives committee has scheduled a hearing for Feb. 25 to examine the source of the defect and the company's actions. The Energy and Commerce Committee will hear testimony from Toyota and NHTSA officials.