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Toyota Sued Over San Diego Accident

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By **DIONNE SEARCEY**

Relatives of a California Highway Patrol officer killed along with his family when a Lexus accelerated out of control have sued parent **Toyota Motor Corp.** in one of the toughest cases the Japanese car company may face.

In the wake of congressional hearings and recall notices, Toyota has taken a public-relations beating and could be vulnerable on many legal fronts. But many of the other high-profile lawsuits involving unintended acceleration filed against Toyota have circumstances that could give the company another factor to blame.

In one case, a driver was epileptic and medical examiners couldn't determine whether he had suffered a seizure. Another driver had suffered a stroke. Yet another driver was elderly and was parking his 2005 Camry near a precarious bluff.

The California case could prove more challenging for the car company. The San Diego accident has already drawn the concern of U.S. highway-safety regulators as well as prominent media coverage. The suit also comes in the wake of bruising congressional hearings where lawmakers questioned Toyota executives about the car maker's response to reports of sudden unintended acceleration. Toyota has recalled 8.5 million vehicles worldwide.

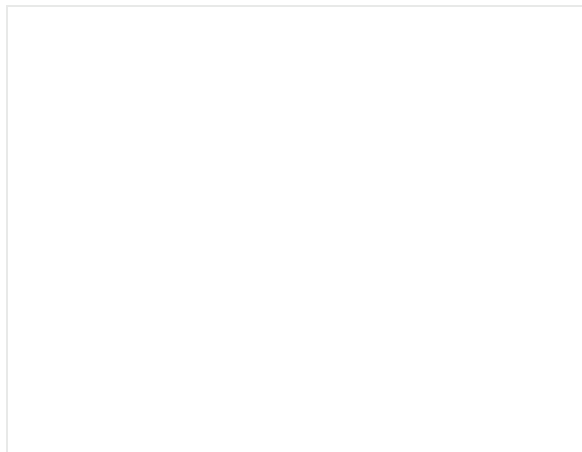
Federal safety regulators have received reports of 52 fatalities blamed on sudden acceleration in Toyota vehicles. Suits seeking class-action status have been filed, and each wrongful-death suit could seek millions of dollars in damages.

The California lawsuit was filed Tuesday in San Diego Superior Court on behalf of relatives of Mark Saylor, an off-duty California Highway Patrol officer who was driving a 2009 Lexus in August when it accelerated to 120 miles an hour on a freeway.

Witnesses said the Lexus slammed into a Ford Explorer, plowed over a curb and went through a fence before it flipped and burst into flames, killing Mr. Saylor and three family members. The suit blames Toyota and a Lexus dealership for product liability and negligence.

Legal experts say the Saylor suit could be tough for Toyota to defend against. The Lexus was a loaner vehicle from a dealership, and the prior driver had told the dealer the accelerator had become stuck, a lawyer for the family said. The Lexus was outfitted with thick floor mats designed for another type of vehicle.

One of Toyota's recalls blames sudden-acceleration issues on floor mats that can entrap accelerator pedals. A harrowing tape of a 911 call from Mr. Saylor's vehicle in which cries of



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"hold on" and "pray" are heard has circulated on the Internet, intensifying the negative publicity for Toyota.

Tim Pestotnik, a lawyer for the victims' relatives who filed the suit, declined to comment on whether settlement talks with Toyota had occurred.

A Toyota spokeswoman said the company doesn't comment on litigation. Toyota executives have expressed their sympathy for the Saylor relatives.

Separately, the U.S. Department of Transportation said Wednesday it had received 10 reports about sudden acceleration in Toyota vehicles whose owners said had their gas pedals fixed and floor mats removed under the recalls. The agency said it has not verified the claims.

Incidents of unintended acceleration in vehicles that have received the mechanical fixes, if verified, could call into question Toyota's assurances that vehicle electronics are not to blame.

Other suits against Toyota involving fatalities or serious injuries attributed to unintended acceleration may be more difficult for plaintiffs to win as they have details that could point to other causes. These may fit the classic criteria for "human error," a theory favored by car makers and safety regulators that suggests the bulk of sudden-acceleration accidents are caused by the driver mistakenly hitting the gas instead of the brake.

Safety advocates say drivers aren't to blame but instead point the finger at the electronic throttle systems, which regulates a vehicle's speed by a computerized system instead of a cable connected from the gas pedal to the engine.

Plaintiffs lawyers are playing a major role in how Toyota's troubles are playing out in public. For its hearing last week, a congressional committee heavily relied on testimony cobbled together by auto-safety advocate Sean Kane, whose for-profit research firm has produced voluminous reports on sudden acceleration incidents and is backed financially by several plaintiffs' attorneys suing Toyota.

Mr. Kane arranged the testimony of Rhonda and Eddie Smith, who said their Lexus zoomed out of control to about 100 mph on a Tennessee highway. He also helped set up the testimony of a university expert who found that an undetected electronic failure could cause sudden acceleration incidents.

Asked about his role, Mr. Kane said: "We went to Congress without anybody paying for that. That was on our own dime. Our work is well foot-noted and well documented."

Plaintiffs' attorneys have closely tracked the congressional hearings. They hope to use testimony from Toyota executives to bolster the numerous suits seeking class-action status that attempt to hold Toyota responsible for lost value of consumers' vehicles due to the recalls.

Accusations during testimony on Capitol Hill that Toyota failed to act when it knew there were problems may prompt lawyers to accuse the company of violating federal racketeering laws, said Northeastern University law professor Tim Howard, who is coordinating several dozen lawsuits filed in 35 states.

Mr. Howard and several lawyers who represent plaintiffs in suits against Toyota say it is too soon to tell what Toyota's legal strategy will be; Toyota declines to comment. The company so far hasn't made overtures to settle recent cases involving sudden acceleration, lawyers said.

—Kate Linebaugh contributed to this article.

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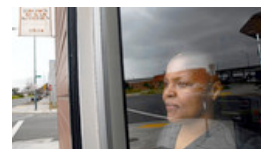
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