

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

THE STATE OF IOWA, ex rel.)
THOMAS J. MILLER, ATTORNEY GENERAL)
99AG25112)

Plaintiff,)

v.)

TOYOTA MOTOR CORPORATION;)

TOYOTA MOTOR NORTH AMERICA, INC.;)

TOYOTA MOTOR SALES USA, INC.;)

and)

TOYOTA MOTOR ENGINEERING &)
MANUFACTURING, NORTH AMERICA, INC,)

Defendants.)

EQUITY NO. 73640

PETITION

CLERK DISTRICT COURT

19 FEB 14 AM 8:25

POLK COUNTY IA

Plaintiff, the State of Iowa ex rel. Attorney General Thomas J. Miller, by Special Assistant Attorney General William L. Brauch, brings this action against Defendants for violating the Iowa Consumer Fraud Act, Iowa Code section 714.16, as follows:

I. JURISDICTION AND VENUE

1. This action is brought by the State of Iowa ex rel. Attorney General Thomas J. Miller, pursuant to the provisions of the Iowa Consumer Fraud Act, Iowa Code section 714.16.
2. This Court has jurisdiction over the Defendants pursuant to Iowa Code section 714.16, because the Defendants transacted business within the State of Iowa at all times relevant to this Petition.

3. Venue for this action properly lies in Polk County, Iowa, pursuant to Iowa Code section 714.16(10), because the Defendants transact business in Polk County, Iowa and/or some of the transactions out of which this action arose occurred in Polk County, Iowa.

II. PARTIES

4. Plaintiff is the State of Iowa ex rel. Attorney General Thomas J. Miller.

5. The Attorney General of Iowa is charged, inter alia, with the enforcement of the Consumer Fraud Act, Iowa Code section 714.16(7).

6. Defendants are Toyota Motor Corporation (hereinafter "TMC"), Toyota Motor North America, Inc. (hereinafter "TMA"), Toyota Motor Sales USA, Inc. (hereinafter "TMS"), and Toyota Motor Engineering & Manufacturing North America Inc. (hereinafter "TEMA").

7. Defendants are composed of numerous subsidiaries, some of which are based in the United States. However, Defendants' principal corporate offices are located at 1 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Toyota transacts business in Iowa and nationwide by manufacturing, assembling, advertising, marketing, promoting, selling, and distributing motor vehicles.

III. FACTUAL ALLEGATIONS

8. Toyota manufactures, assembles, advertises, markets, promotes, sells, and distributes motor vehicles nationally and in the State of Iowa.

9. Since the formation of Toyota Motor Sales, USA, Inc., on October 31, 1957, Toyota has manufactured, assembled, advertised, marketed, promoted, sold, and distributed millions of vehicles in the United States. Defendants, from January 1, 2003 through January 30, 2010, consistently represented in advertising and public statements that Toyota vehicles were safe and reliable transportation.

10. In 2011, Toyota Motor Sales reported that Toyota sold 1,644,661 vehicles in the United States.

UNINTENDED ACCELERATION

11. According to the National Highway Traffic Safety Administration (hereinafter referred to as “NHTSA”), the federal agency primarily responsible for maintaining motor vehicle safety in the United States, unintended acceleration generally “refers to the occurrence of any degree of acceleration that the vehicle driver did not purposely cause to occur.”

12. Recent government studies into the possible causes of unintended acceleration in all vehicles, including Toyota vehicles, indicate that driver error (through pedal misapplication), and mechanical issues (such as “floor mat entrapment” of the accelerator pedal and the “sticky pedal” phenomenon) are the primary causes of reports of unintended acceleration.

TOYOTA RECALLS OF 2009 AND 2010

13. Reports of unintended acceleration in Toyota vehicles first prompted NHTSA investigations in 2003.

14. Between July, 2003 and April, 2009, NHTSA opened eight separate unintended acceleration-related investigations into Toyota vehicles.

15. One of the above-referenced NHTSA investigations resulted in a voluntary *equipment recall* of 55,000 all-weather floor mats for Lexus vehicles (“floor mat entrapment” recall, NHTSA campaign no. 09V-388). NHTSA determined that if the all-weather floor mats were not installed correctly, the floor mat may interfere with, or entrap, the accelerator pedal, causing a condition called “wide open throttle” – where the vehicle could potentially accelerate uncontrollably.

16. As a result of a separate NHTSA investigation conducted in January, 2009, Toyota agreed to voluntarily recall 26,501 of the 2004 Model Year Sienna minivans to replace a retention clip and floor carpet cover in or near the Sienna's center console trim panel (the Sienna "Safety Improvement Campaign," NHTSA campaign no. 09V-023). Prior to the recall, the design of the center console and a missing retention clip could have resulted in accelerator "pedal interference" – which could have caused instances of unintended acceleration.

17. In August, 2009, a tragic and fatal crash killed four members of the Saylor family in Santee, California. According to a NHTSA report on the crash, 911 calls, and the subsequent investigation by local law enforcement and NHTSA, the crash was likely caused when an improperly installed floor mat in the Lexus vehicle the Saylor family were driving entrapped the accelerator pedal. California Highway Patrol Officer Mark Saylor, the driver of the Saylor vehicle, and a highly trained and experienced driver, used his best efforts to slow the vehicle, but was unsuccessful. The floor mat entrapment, in conjunction with a push-button start ignition system in the vehicle, made stopping the vehicle impossible, despite obvious application of the brakes by Officer Saylor.

18. Soon after the Saylor crash, on September 29, 2009, Toyota issued a consumer advisory regarding the potential floor mat entrapment of the accelerator pedal.

19. At NHTSA's request, on October 5, 2009, Toyota informed NHTSA that the company would recall affected vehicles to address the potential floor mat entrapment safety issue.

20. On November 2, 2009, Toyota announced that it would recall 3.8 million vehicles worldwide to address the floor mat entrapment safety concern 09V-388 ("floor mat entrapment" safety campaign; Toyota Recall No. 90L/9LG).

21. After reports surfaced that floor mat entrapment may not be the only mechanical cause of unintended acceleration in certain Toyota vehicles, on January 21, 2010, Toyota announced an additional recall of 2.3 million vehicles worldwide to address “sticky pedal” safety issues (“sticky pedal” recall, NHTSA campaign no. 10V-017). Essentially, when drivers of some affected vehicles depressed the accelerator pedal, that accelerator pedal would “stick,” making the vehicle slow to return to idle, or difficult to slow down.

22. On January 27, 2010, Toyota expanded the November, 2009 floor mat entrapment recalls to include additional models (“floor mat entrapment” recall, NHTSA campaign no. 10V-023).

23. The number of vehicles affected by the pedal entrapment and “sticky pedal” recalls totaled nearly 6 million vehicles in the United States alone.

NHTSA’S TIMELINESS QUERIES

24. On February 16, 2010, NHTSA announced publicly that it would use its statutory authority to open timeliness queries to determine if Toyota had notified NHTSA of safety defects and carried out safety campaigns in a timely manner.

25. On April 5, 2010, NHTSA announced it would demand that Toyota pay the statutory maximum fine of \$16.375 million for failure to timely notify NHTSA of the “sticky pedal” defect. Although federal law requires automakers, including Toyota, to notify NHTSA within five days of learning of a potential safety defect, Toyota waited for nearly four months prior to notifying NHTSA.

26. According to NHTSA, Toyota knew of the “sticky pedal” safety defect on September 29, 2009, if not before, when it notified distributors in thirty-one European countries and Canada of the potential issue and provided repair procedures to address the issue. Despite having

knowledge that consumers in the United States were experiencing the same phenomena, Toyota waited until January, 2010, to notify NHTSA of the “sticky pedal” issue and begin the recall process in the United States.

27. On December 20, 2010, NHTSA announced it would demand Toyota pay a second statutory maximum fine of \$16.375 million for the failure to timely notify the agency of the dangers of floor mat entrapment in certain Toyota and Lexus model vehicles.

28. According to NHTSA, Toyota at least became aware of the dangers of floor mat entrapment of the accelerator pedal on September 26, 2007, if not before, when it initially recalled 55,000 all-weather floor mats to address entrapment issues in certain Lexus models.

29. On December 20, 2010, NHTSA announced that Toyota faced a third statutory maximum penalty of \$16.050 million for failure to timely notify the agency of a safety defect that Toyota found and addressed in certain model trucks sold in Japan in 2004, which could result in a loss of steering control. Despite Toyota’s 2004 recall in Japan to fix steering relay rods in the Hilux trucks that were prone to failure, Toyota failed to notify NHTSA that consumers in the United States had filed similar complaints regarding equivalent models of the Hilux trucks sold in the United States. Although Toyota notified NHTSA in 2005 of a voluntary recall of 1 million United States model trucks to address the same steering relay rod issue, NHTSA did not learn of the complaints from consumers in the United States until 2010.

THE “SLATER PANEL” REPORT

30. Shortly after the massive recalls of 2009 and 2010, and the announcement of one of NHTSA’s record-setting fines against Toyota, Toyota announced the creation of the “Toyota North American Quality Advisory Panel” (hereinafter “Panel”). On April 29, 2010, Toyota

announced the Panel members and indicated that the Panel would be chaired by Rodney Slater, who was the United States Secretary of Transportation from 1997 through 2001.

31. Toyota tasked the Panel to conduct an independent review of Toyota's safety and quality processes and to review the company's management structure.

32. According to the Panel, Toyota granted Panel members full cooperation and was responsive to requests for information and assistance from Panel members.

33. In May, 2011, the Panel issued their report summarizing their findings upon completion of the first year of their two-year term.

34. The Slater Panel Report, as it became known, included several observations regarding Toyota's management structure and decision-making process that, in the Panel's view, may have contributed to the delay in identifying and resolving safety issues. To wit:

- a. Toyota's policy of "global centralization" -- that is, maximizing control by TMC in Japan -- "contributed to several of Toyota's quality and safety issues in North America." This "global centralization" policy hindered information-sharing and "delayed response time to quality and safety issues;"
- b. Toyota does not treat feedback from sources external to Toyota (such as consumer complaints or NHTSA concerns) in the same positive manner that it treats internal feedback; and
- c. Toyota conflates safety with quality, when these should be treated as separate qualities of a motor vehicle.

35. The Slater Panel Report also included several recommendations to improve Toyota's "safety and quality processes." According to the Panel, Toyota should

- a. Consider appointing one North American chief executive to oversee all North American operations;
- b. Include North American executives in decisions regarding product recalls;
- c. Strengthen communications and decision-making between regions;
- d. Seek out external feedback, including the creation of a “Consumer Representative Team” and integrate it into the decision-making processes;
- e. Work cooperatively with NHTSA and other regulators;
- f. Appoint a new “Chief Safety Technology Officer;” and
- g. Simplify the downloading and decoding of Electronic Data Recorder (“EDR”) data.

36. Iowa Code section 714.16(2)(a), states in relevant part as follows:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

37. As used in the Consumer Fraud Act, the term “person” includes:

any natural person or the person’s legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.

Iowa Code section 714.16(1)(j).

38. Neither all nor any part of the application for injunctive relief herein has been previously been presented to or refused by any court or justice. Iowa R. Civ. P. 1.1504.

39. In an action by the state, no security shall be required of the state. Iowa R. Civ. P. 1:207.

III. VIOLATIONS OF LAW

IOWA CONSUMER FRAUD ACT

40. The State incorporates by reference and re-alleges each allegation contained in paragraphs 1-39.

41. All of the acts and practices engaged in and employed by the Defendants as alleged herein, are unfair or deceptive acts or practices which are declared unlawful by Iowa Code section 714.16. Specifically, Defendants:

- a. **Failed to warn of a known danger:** Defendants failed to disclose to consumers and regulators known safety risks associated with operation of Toyota motor vehicles and motor vehicle equipment;
- b. **Misrepresented safety and reliability:** Defendants misrepresented, directly or by implication, Toyota motor vehicles and motor vehicle equipment as safe and reliable;
- c. **Failed to perform consistent with contract obligations imposed by express and implied warranties:** Defendants failed to timely diagnose and repair Toyota motor vehicles and motor vehicle equipment that were the subject of consumer complaints related to sudden unintended acceleration as required pursuant to express and implied warranty representations and terms and as required by state warranty and Lemon Laws; and
- d. **Failed to share critical safety related information and decision making between Japan and North American Toyota officials:** Defendant TMC

withheld safety related decision making authority and critical safety data, information, engineering/design changes and safety repairs from TMNA.

42. Defendants' omission to disclose material facts to consumers, as alleged herein, constituted an unlawful practice pursuant to Iowa Code section 714.16.

IV. REMEDIES

43. Iowa Code section 714.16(7), in relevant part, provides:

If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys or property, real or personal, which have been acquired by means of a practice declared to be unlawful by this section, including the appointment of a receiver in cases of substantial and willful violation of this section.

. In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under authority of this section. A penalty imposed pursuant to this subsection is in addition to any penalty imposed pursuant to section 537.6113. Civil penalties ordered pursuant to this subsection shall be paid to the treasurer of state to be deposited in the general fund of the state.

44. Iowa Code section 714.16(10) provides:

In an action brought under this section, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys' fees, for the use of this state.

V. REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter an order:

A. Issuing a permanent injunction prohibiting Defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair, deceptive or misleading conduct, as provided by Iowa Code section 714.16(7);

B. Ordering Defendants to make such orders or judgments as may be necessary to restore to any person in interest any money or property which may have been acquired by means of an unlawful practice under Iowa Code section 714.16, as provided by Iowa Code section 714.16(7);

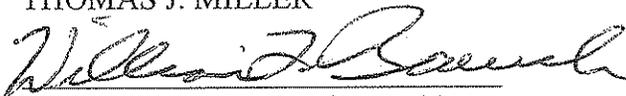
C. Ordering Defendants each to pay civil penalties of up to \$40,000 for each violation of the Consumer Fraud Act, as provided by Iowa Code section 714.16(7);

D. Ordering Defendants to pay all costs, court costs, and attorney fees for the prosecution and investigation of this action, as provided by Iowa Code section 714.16(11); and,

E. Granting such other and further relief as the Court deems equitable and proper.

Respectfully submitted,

STATE OF IOWA ex rel.
ATTORNEY GENERAL
THOMAS J. MILLER



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