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FILED
2013 MAY 10 PM 4:06
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 IN RE: TOYOTA MOTOR CORP.
12 UNINTENDED ACCELERATION
13 MARKETING, SALES PRACTICES,
14 AND PRODUCTS LIABILITY
15 LITIGATION

Case No: 8:10 ML2151 JVS (FMOx)

16 } **DECLARATION OF A. BENJAMIN**
17 } **KELLEY IN SUPPORT OF**
18 } **OBJECTIONS OF ALLEN ROGER**
19 } **SNYDER AND LINTON STONE**
20 } **WEEKS TO CY PRES**
21 } **PROVISIONS OF CLASS ACTION**
22 } **SETTLEMENT**

23 THIS DOCUMENT RELATES TO:
24
25 ALL ECONOMIC LOSS CASES

26 Date: June 14, 2013
27 Time: 9:00 a.m.
28 Place: Courtroom 10C
Judge: Hon. James V. Selna

COPY

BY FAX

1 I, A. Benjamin Kelley, declare as follows:

2 1. From 1967 to 1969 I was a senior official of the U.S. Department of
3 Transportation, in which capacity I was closely involved with the creation of the
4 motor vehicle safety regulatory activity now known as the National Highway
5 Traffic Safety Administration, including public information and education programs
6 undertaken by that agency. From 1969 through 1984, I was senior vice president of
7 the Insurance Institute for Highway Safety, in which capacity I participated in the
8 design and operation of that organization's research and communications activities,
9 including those directed at evaluating the effectiveness, if any, of efforts to reduce
10 motor vehicle crash injuries through public education and information campaigns. I
11 have taught and lectured on injury control policy at the university level, and have
12 frequently testified on injury control issues in Federal and state legislatures and the
13 courts. My full biography and bibliography are available at
14 www.producthazardcommunications.com

15 2. I do not have a financial stake in this litigation and am not being paid
16 for this declaration. I am submitting this declaration in support of the objections of
17 Allen Roger Snyder and Linton Stone Weeks to the proposed settlement of this
18 lawsuit.

19 3. The settlement proposal calls for creation of a "\$30 million
20 Automobile Safety Research and Education Fund" to underwrite "automobile safety
21 research and education related to issues in the litigation." The "issues in the
22 litigation," as described by the Plaintiffs in their settlement proposal, are "defects in
23 materials or workmanship in five specific parts related to the acceleration system
24 and targeted in the litigation." The parts covered are: "(i) Engine Control Module;
25 (ii) Cruise Control Switch; (iii) Accelerator Pedal Assembly; (iv) Stop Lamp
26 Switch; and (v) Throttle Body Assembly."

1 4. As described in Plaintiffs' complaint in this litigation, the central
2 issue is that, "Irrespective of whether these SUA events are caused by floor mats,
3 pedals, an unknown failure in the ETCS, or a failure in other aspects of the
4 electrical systems, Toyota vehicles with ETCS are defective. This defect renders the
5 vehicles unsafe."

6 5. Parts (1) and (2) of the "Automobile Safety Research and Education
7 Fund" make no mention whatsoever of these "issues in litigation," despite being
8 supposedly "related" to them. Instead, they would pursue long-discredited
9 approaches for changing the behavior of drivers – rather than the safety
10 performance levels of vehicles "rendered unsafe" – through various "educational"
11 and public information attempts, i.e.:

12
13 *(Part 1) Research focused on consumer knowledge and use of defensive driving*
14 *techniques and vehicle safety systems, including use of active safety*
15 *technologies in order to reduce UA. The program will start with a new national*
16 *consumer study focusing on driver attitudes, behaviors, and levels of*
17 *understanding concerning defensive driving techniques and the proper use of*
18 *vehicle safety systems...*

19 *(Part 2) National driver safety education campaign... The campaign will*
20 *enhance American drivers' understanding of vehicle safety technologies and*
21 *their ability to respond appropriately in emergency situations. It will also*
22 *educate drivers on defensive driving skills, the proper use of technology, and*
23 *the most important vehicle safety errors associated with UA and driver*
24 *attention. The outreach will include a combination of print, television, Internet,*
25 *and radio advertising and public service announcements...*

26 6. The implied but clear premise of Parts 1 and 2 is that drivers, not
27 Toyota or vehicle defects such as the ones Toyota has admitted to, were responsible
28 for incidents of unintended sudden acceleration, and that somehow "educating"
drivers will solve the problems brought on by Toyota's misbehavior. This is a
dangerous and dishonest assumption.

1 7. The seriously flawed nature of the “Automobile Safety Research and
2 Education Fund” thus is seen to be two-fold: first, Parts 1 and 2 fail to meet the
3 settlement’s own criterion of relevance to the “issues in litigation,” and, second,
4 these parts are premised on notions about “driver responsibility” for the crashes of
5 unsafe vehicles that have been shown to be groundless by a wealth of research.

6 8. For decades it has been well-established by responsible research that
7 the “driver education,” “media outreach,” and other behavioral-change schemes
8 envisioned by the settlement agreement are a waste of time and money – and worse,
9 a distraction of attention and funding from the real issues of motor vehicle safety,
10 which were identified conceptually by injury control pioneers such as Hugh
11 DeHaven and William Haddon, M.D. decades ago. The results of responsible
12 research include, but are not limited to, the following:

- 13 • “There is little reason to think driver education should produce drivers less
14 likely to crash.” (*Driver Education Renaissance?* Williams et al, *Injury*
15 *Prevention*, 2004)
- 16 • “Seat belts were 1st installed in passenger cars in the late 1950s, and their
17 installation in all new vehicles was required in 1968. About the same time,
18 several public awareness efforts were implemented in the United States (as
19 well as in Australia) to encourage seat belt use. Perhaps the most widely
20 known of the early U.S. efforts was the *Buckle Up for Safety* campaign
21 sponsored by the National Safety Council in 1968. This was an extensive
22 public service campaign that was recognized and remembered by a high
23 percentage of the public. However, this campaign appeared to have little, if
24 any, effect on seat belt use... Other public information programs were
25 implemented by the automobile industry in Michigan, one of which was a
26 paid media campaign, but neither produced a substantial increase in use (e.g.,
27 Oakland County Traffic Improvement Association, 1969, and Motorists
28 Information Institute, 1978).” (*Strategies to Increase Seat Belt Use*, DOT HS
811 41, November 2010)

- 1 • “Education alone won’t make drivers safer. It won’t reduce crashes. Highway
2 safety is a much broader field now than it used to be. The focus has expanded
3 from trying to prevent crashes by educating people to change their behavior.
4 This approach was too narrow. And it failed because education alone almost
5 never changes driver behavior. For more than 30 years, highway safety
6 professionals have recognized that what’s needed to reduce crash losses is a
7 mix of measures... Such messages waste resources and drain energy from
8 effective highway safety approaches. Today’s vehicle and road safety
9 programs are based largely on research and engineering. But when it comes
10 to changing the behavior of drivers and others on the road, research findings
11 often are ignored. Many programs are based on wishful thinking instead of
12 science.” (Introduction to Status Report, “*Special Issue: What Works and
13 Doesn’t Work to Improve Highway Safety*, Insurance Institute for Highway
14 Safety, Vol. 36, No. 5, May 19, 2001)
- 15 • “Overall, the research evidence suggests that most current driver training
16 contributes little to reductions in accident involvement or crash risk among
17 drivers of all age and experience groups.” (*The Effectiveness Of Driver
18 Training As A Road Safety Measure*, RACV Insurance of Australia, Nov.
19 2001)
- 20 • Regarding the “Safe Performance Curriculum,” an allegedly superior and
21 more effective driver education program than had previously been available:
22 “... the major result of this demonstration project was that the improved
23 driver education program, Safe Performance Curriculum, was not an
24 effective accident reduction countermeasure. Indeed, the direction of the
25 differences in crash rates was opposite to what had been predicted. .. These
26 results suggested that the SPC was not effective in reducing collision
27 involvement. As disappointing as this finding might be, it was even more
28 disturbing to show that the greatest incidence of collisions was found among
those in the SPC group. Despite the fact that most of the differences were not
statistically significant, the consistent pattern of the results was
disconcerting.... The review of the scientific evaluations performed to date
provides little support for the claim that driver instruction is an effective
safety countermeasure--the overwhelming preponderance of evidence fails to

1 show that formally trained students have a lower frequency of crashes than
2 those who do not receive such training. Even worse, a few studies showed a
3 safety disbenefit of driver education/training.” (*Effectiveness and Role of*
4 *Driver Education And Training In A Graduated Licensing System*, D. R.
5 Mayhew and H. M. Simpson, [J Public Health Policy](#). 1998;19(1):51-67)

- 6 • “States that used larger amount of federal funds for driver education during
7 the late 1970s had increases in fatal crash rates, whereas those that used
8 federal funds for such programs as spot improvements in high risk sites on
9 roads had reductions in fatal crash rates...Among adults, little effect of
10 education on subsequent crash records has been found...” (*Behavioral and*
11 *Environmental Interventions for Reducing Motor Vehicle Trauma*, L.R.
12 Robertson, Annual Review of Public Health, Vol. 7: 13-34 -Volume
13 publication date May 1986)
- 14 • “...the most important difference between the high and low seat belt use
15 States is enforcement, not demographics or funds spent on media.” (Hedlund,
16 DOT HS 810 962, August 2008.)
- 17 • “Driver Education Does Not Equal Safe Drivers.” (Status Report coverage of
18 “driver education” research, Insurance Institute for Highway Safety, Vol. 32,
19 No. 11, January 7, 1997)
- 20 • “The Motorists Information, Inc., campaign is another illustration of the fact
21 that there are no prospects for increasing and sustaining high belt use by
22 persuasion. “ (*Auto Industry Belt Use Campaign Fails*,” Leon Robertson,
23 IIHS, August 1977 – See also IIHS Status Report, Vol. 12, No. 13, August
24 15, 1977).

25 9. The above are a small sample of research and study demonstrating
26 the serious flaws in the settlement agreement’s “Automobile Safety Research and
27 Education Fund” scheme. At a minimum, these flaws need to be remedied if any
28 such scheme is put into operation by the parties. This can only happen if the stated
intent of the scheme – to relate to “issues in the litigation” – is adhered to.

1 10. As shown by research exemplified by the summaries above, the
2 proposed Part 1 and Part 2 projects would be a waste of money, would lack safety
3 benefits, and would divert attention and resources away from the pressing issues
4 raised in the litigation, which urgently need research attention.
5

6 I declare under penalty of perjury under the laws of the United States that the
7 foregoing is true and correct, and that this declaration was executed at Pebble
8 Beach, CA on May 07, 2013.
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10 _____
A. Benjamin Kelley
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