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## The Justice Department's Unjust Toyota Fine

**Cost of safety violations: 0. Cost of paperwork violations: \$1.2 billion.**

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Toyota has agreed to pay \$1.2 billion and submit to federal oversight for three years to resolve Justice Department charges that it withheld information at the height of a 2009 national media furor. A triumph for safety? Or have aggressive federal prosecutors seized on relatively minor missteps to stampe an image-conscious company into a big payout?

In 2011 the National Highway Traffic Safety Administration (Nhtsa) published a thorough study by its engineering staff of the claims of unintended acceleration (UA) in Toyotas. Car and Driver magazine concisely summed up its findings: Aside from situations "caused by accelerators hanging up on incorrectly fitted floor mats, the accidents were caused by drivers depressing their accelerators when they intended to apply their brakes. 'Pedal misapplication' was the DOT's delicate terminology for this phenomenon."

Nhtsa examined 58 [Toyota 7203.TO +1.70%](#) vehicles that figured in alleged UA crashes. It found no signs that either throttles or brakes had failed, and typically no data indicating sustained braking at all. Of 40 vehicles with usable "black-box" data on board, one was a floor-mat entrapment case. The agency concluded that it "believes that the most likely cause of the remaining 39 UA incidents was pedal misapplication."

The original uproar was set off when a Lexus crashed in San Diego on Aug. 28, 2009. In later investigations, both Nhtsa and the San Diego County sheriff's office concluded that the car had been fitted out with too-long floor mats belonging to another model, trapping a floored accelerator.

Horrifying as mat-entrapment accidents may be, they are rare: The feds have identified only one fatal Toyota crash with this pattern other than the one in San Diego. There also is nothing unusual about sudden-acceleration claims—they've been lodged against [Audi](#), [NSU.XE +0.01%](#) Honda, Ford, Mercedes, [GM](#), [GM -0.71%](#) Subaru, basically every auto maker.

Toyota had recognized the mat concern as early as 2007 on a Lexus model, and now, out of caution, it also recalled millions of cars to have gas pedals altered so oversize, stacked, or otherwise errant mats would be less likely to overtake and smother them.

Nevertheless, the Justice Department on March 19 announced a one-count wire fraud indictment of the Japanese company, simultaneously settled by Toyota's agreement to pay \$1.2 billion. Why the

huge sum? Supposedly, the company had made that much in extra sales by inappropriately reassuring the public, Congress and regulators that it was adequately handling the (almost entirely bogus) furor.

According to the Justice narrative, Toyota carried out its symbolic mat fix on only some models and waited a couple of months to flag other models where freak mat accidents might just as easily happen. Yet there's no good evidence that Toyota's several-million-car mat fix averted even one serious crash, let alone that extending it to a few million other cars slightly earlier would have mattered. The only way to lower this kind of risk all the way to zero—in any vehicle—would be to ban mats altogether or put the pedals somewhere other than on the floor.

Manhattan U.S. Attorney Preet Bharara's statement of agreed facts fulminates about a second supposed coverup, that of "sticky pedal" syndrome: unwanted friction might make some gas pedals stick on the way back up. Toyota informed Nhtsa about sticky-pedal in October 2009, but the feds complain that the company should have come clean a few weeks earlier than that.

Left out of all this is the conclusion reached in the Nhtsa's 2011 report: There was no evidence sticky pedals played a role in any of the accidents. The agency also acknowledges that sticky or otherwise, a gas pedal can be overridden by properly functioning brakes.

Toyota's cars are hardly unsafe. For the 2001-04 model years, for example, Toyota and Lexus accounted for five of the 12 models with the lowest death rates per driver year, and zero of the 12 with the highest. But the company is a multinational whose bottom line depends on a return to good publicity and putting legal troubles behind it in the huge U.S. market.

The auto maker has agreed not to contest a few instances in which employees hid the ball from regulators—perhaps the worst being an instance where an aborted minor reformulation of a pedal design was not to be revealed to dealers because that would mean informing Nhtsa too—and several instances where employees dithered about whether to report data to the agency right away and took pains to present facts to the public in the most flattering light.

Were these episodes worse than what you'd expect from a large firm on a crisis footing responding to rapid information demands? Maybe. Did they worsen any real-world safety outcomes? Even the Justice Department, trying to justify its billion-dollar legal mugging, can't credibly claim they did.

Toyota employees aren't the only ones capable of hiding the ball and presenting contestable data in the most flattering light. Justice's grandstanding, self-congratulatory press release goes to some lengths to plant the notion—already being accepted as fact in parts of the press—that unintended acceleration is some mysterious phenomenon of auto design unrelated to flooring the accelerator. Nhtsa's own 2011 report gives them good reason to know better.

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