

Kotin's Verdict: Warning to Toyota Drivers

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Corboy & Demetrio attorney Dan Kotin writes about the recall of Toyotas due to sudden acceleration and the responsibility of consumers when defective products are identified in his column "Kotin's Verdict: Warning to Toyota Drivers," published by Pioneer Press. Following is the article:

Kotin's Verdict: Warning to Toyota drivers

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By DAN KOTIN Contributing Columnist

The recent wave of Toyota recalls related to sudden acceleration and the barrage of media attention about them have shed light on an effective relationship between our government and corporate America to identify defective products and warn consumers to stop using them.

But I worry that we, the public, fail to appreciate that with each recall comes the responsibility for citizens to take action and stop using these products until they are fixed.

The pain of injuries or deaths caused when a product fails is compounded by the deceit we feel when we pay hard-earned money for a product and rely upon the manufacturer's representation that we will be safe if we use it correctly. I can only imagine the betrayal that was felt by the drivers of Toyotas whose cars suddenly and inexplicably accelerated out of control.

For decades, the Consumer Product Safety Commission and the National Highway Traffic Safety Administration have been our watchdogs on these issues, issuing 800 recalls in 2009. The system works like this: The government recommends a recall, and after much negotiation, manufacturers usually comply and offer either refunds

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or repairs.

You see, failure of the manufacturer to go along with the government's recommendation would be virtually indefensible in a lawsuit when the defect results in injury or death.

After a recall, it becomes the additional responsibility of the manufacturer to somehow alert users to stop using the product until repairs are made.

Since November, Toyota has issued several high-profile recalls involving many of its models for a variety of defects, all of which seem to cause cars to accelerate out of control. These recalls have called for the replacement of floor mats, foot pedals, and computer software.

With the constant media coverage focusing on these issues for several months now, it is unlikely that any Toyota owner is unaware of the problem. With that awareness comes an obligation.

In Illinois, a manufacturer is strictly liable for injuries caused by a product that is sold in an "unreasonably dangerous condition." But the law is also clear that if the consumer "assumed the risk" of injury by using the product with a known defect, then he or she can be partially or completely responsible for the injuries that are caused.

This means that not only might I be responsible for my own injuries if I ignore a recall and my Toyota accelerates out of control and crashes, but I also may also be liable to the innocent pedestrian who is run over by my speeding car.

At a trial, jurors are often asked to determine the percentages of responsibility that should be assessed to different players in a crash or other tragedy. I have heard Toyota drivers say, "I need my car to get to work," or offer similar excuses for ignoring these recalls. To those people, I can offer only the following advice: If you choose to drive a recalled car, then you had better hope and pray that nothing goes wrong. Because if it does, a jury may fairly conclude that you are more at fault than the manufacturer.

You see, product liability is a two-way street. Manufacturers have a duty to distribute products that are safe for their intended use. When a defect is discovered, the manufacturer must inform all users of the danger and repair the product if possible.

Once that is done, however, it becomes our responsibility as consumers to heed the warnings and stop using the product until the defect is corrected. If we fail to do so, then we may have to accept responsibility for our own injuries as well as those of any innocent victims.

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