

Koua Fong Lee Can't Sue Toyota For Damages For Wrongful Imprisonment

Koua Fong Lee was convicted in October 2007 of vehicle homicide in the death of three people on June 10, 2006 when his 1996 Toyota Camry crashed into the rear of their car at a stop light at an Interstate off-ramp in St Paul, Minnesota.

The jury rejected Lee's defense that on the off-ramp his car accelerated even though he was pressing hard on the brake. Lee was sentenced to 8 years in prison. His conviction was affirmed on direct appeal.

In response to national publicity about people experiencing unexplained acceleration and the inability to break their Toyota vehicle, in November 2009 Toyota initiated a recall of over 4 million vehicles.

In the course of reporting about the recall ABC News ran a national story about Lee's case. Lee's lawyer was contacted by people around the country who saw the story and owned an older model Camry similar to Lee's that had suddenly accelerated and experienced brake failure. Lee filed a post-conviction petition based on the new evidence that a defect in his Camry could have caused the collision as he testified at trial, and ineffective assistance of counsel.

During a four-day evidentiary hearing in August 2010 Lee introduced new expert evidence that the brakes on his car didn't work properly, and the testimony of nine Toyota Camry owners who had a similar problem of sudden acceleration and brake failure.

Kiersten Jaeger, a St. Paul high school Spanish teacher, testified that when her 1996 Toyota Camry suddenly began accelerating, "It seemed to drive itself."

Lisa Falchetti of San Diego testified about when her 1996 Camry suddenly accelerated, "Ever been on a runaway horse? It was like it was out of control." She said of her July 2007 experience, "I loved my Camry till then; now I'm scared of it." She was taking her parents to the airport after a visit when, "All of a sudden my car started accelerating. I hit the brakes really hard, put both of my feet on the brakes, put the car into neutral. The car was screaming, revving like it was going to blow up."

Kurt Thomson of Stillwater, Minnesota is 6 feet tall and weighs 220 pounds. He testi-



Koua Fong Lee with his wife Panghoua Moua after his release from prison on August 5, 2010

fied that when his 1995 Camry suddenly accelerated, "I had both feet on the brakes, pushing as hard as I could, and I couldn't stop it. My butt was raised off the seat. I was pulling back on the wheel." Thomson ended up rear-ending another vehicle at a four-way stop.

John S. Gathright Jr. of Richmond, Virginia testified that when he was headed home in rush-hour traffic on a freeway his 1995 Camry "took off like a wild horse. I could not control it. Before this little journey was over, I was going 90 to 95 miles per hour." He testified, "It was running like a wild bull. It was chaos. I managed to weave between all the cars. Wherever there was a slot, I took it." He was eventually able to drive his car to the side of the freeway and turn it off.

Patrick Powers testified that in April 2008 his 1996 Camry suddenly accelerated until he was going more than 110 mph on a freeway in Milwaukee. He said he was only able to stop his car after 8 miles.

Michael Frazier testified that in September 2006 he was driving his wife's 1996 Camry in rush-hour traffic north of Boston when the engine began to race. He said that to try and stop the car he pushed on the brake pedal with both feet. He pushed so hard that the brakes eventually caught fire.

After the hearing concluded the Ramsey County district attorney offered Lee a deal that if he pled guilty to a lesser felony charge he would be immediately freed with his driver's license suspended for 10 years and 15 years of probation. Lee rejected the deal.

On August 5, 2010 Judge Joanne Smith, who was Lee's trial judge, ruled that if Lee's jury had known the new evidence it could have changed their verdict. She vacated Lee's conviction and ordered a new trial. The judge also ordered that Lee could be released on bail. An hour after the judge's ruling Ramsey County District Attorney Susan Gaertner announced during hastily called press conference that Lee would not be re-

tried, saying, "I believe the system worked, and this is a very good day for the criminal justice system." The charges against Lee, 32, were subsequently dismissed.

Family members of the people killed in the crash of Lee's car filed a federal lawsuit against Toyota after the recall was announced. After Lee's charges were dismissed he filed a motion to be allowed to join the lawsuit against Toyota. In November 2010 the motion was granted.

On June 13, 2011 U.S. District Court Judge Ann Montgomery ruled in response to a motion by Toyota that the company was not liable for damages for the time that Lee was imprisoned. Judge Montgomery ruled that Lee was wrongly convicted due to a long chain of actions and decisions by prosecutors, his attorney, the judge and the jury, but that none of Toyota's alleged actions can be considered a "substantial factor" in bringing about Lee's wrongful incarceration for more than 2-1/2 years. However, the judge is allowing other parts of the lawsuit to go forward, including injury claims by Lee and his relatives, other injured crash victims, and claims by survivors of people killed in the crash.

The two attorneys who represented Lee *pro bono* in his post-conviction appeal, Eagan, Minnesota defense attorney Brent Schafer and Corpus Christi, Texas attorney Robert Hilliard, [were finalists](#) for the 2011 Trial Lawyer of the Year Award by the Public Justice Foundation.

Sources:

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- Judge limits ability of Minn. man jailed for fatal crash to sue Toyota; lawsuits can advance, AP Story, *Washington Post*, June 13, 2011.
- In Koua Fong Lee case, justice delayed was justice denied, *Minneapolis Star-Tribune*, August 8, 2010.

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