



Gmail

- 1) Injury claim presentation -
- 2) At fault rush to judgement, deceipt.
- 3) Notice to AAA of official appeal of T.C.R. of 2/23/19
- 4) Document "Safety Concerns" solution to Cruise-Control design.
- 5) No response to statements of [REDACTED] Facts.

NHTSA Ref No.: 11206504

Claim #: [REDACTED]; Policy #: [REDACTED] Original Reference #: (Add: [REDACTED])

2 messages

INFORMATION REDACTED PURSUANT TO THE FREEDOM
OF INFORMATION ACT (FOIA), 5 U.S.C. 552(B)(6)

Tue, Apr 16, 2019 at 1:32 AM

To: AAA Claims On Behalf of <brar.raman@aaa-calif.com>, [REDACTED]

Dear Raman Brar,

Thank you for notifying me by mail that an injury claim has been presented under the policy and the basis of any determination that the accident resulted in bodily injury or death. I have been informed by the Supervisor, Rich Tabach, 661-291-3823, that a victim, apparently the driver of the Honda Pilot (or the Jeep Grand Cherokee, although the Honda Pilot is my best guess.), is that person who has filed a bodily injury claim, that is thus far, "soft tissue injuries." You also have reminded me of the earlier finding of fault (the day after the Traffic Collision Report #: [REDACTED] was completed by Officer Sepulveda (Emp. #: 020958) (hereinafter, Officer Sepulveda [no employee # as that is unchanged for purposes of this report]), California Highway Patrol on 03/05/2019, to wit: 03/06/2019.

I was verbally notified on the 7th and the 8th of March, that "fault determination," would not be made until after the black box and all other sensors with information were recovered and all information available from them was retrieved, analyzed and interpreted, in order that all evidence be examined prior to the, "fault determination," being made. As I discovered on or about the 8th of March, this promise was not kept, based upon my having received the fault determination letter, the same day and also one day after I had been told that the determination would not be made until all the evidence with regard to the Mercedes, C350 (W) had been as characterized above. I asked for preservation of evidence no later than the 8th of March. I was told more than once that the evidence (M-B Ca. License Plate #: [REDACTED] #: WDDGF5HB2E [REDACTED]) would be preserved for Auto Club Examination; for my examination; for the potential examination of Mercedes-Benz.

I previously notified the Automobile Club of Southern California, Interinsurance Exchange, that I had filed an appeal with the California Highway Patrol of the contents of the Traffic Collision Report, as being inaccurate and presenting a false picture of what actually occurred on 02/23/2019 at approximately 3:55 PM (a more exacting time may be found on the automobile clocks and sensors) and as indicated in the Traffic Collision Report.

It is notable, that at the scene, at least one of the victims of one of the automobiles that my car collided with, was asked by an officer of the California Highway Patrol on one occasion that I actually heard with my own ears if he had talked to me or heard from me anything about what had happened. That victim told the officer that I had said that my foot was "Pinned", or, "stuck under the pedal" or, "caught under the pedal," or words to that effect. It is notable that such interaction by an officer of the Highway Patrol and a victim at the scene of the accident, in no way or manner, appeared in the Traffic Collision Report.

I submitted a report to the auto club as soon as I physically was able. In that report, key factors were included with regard to what happened as best as I could remember at that time. I will note that it was approximately 2 days after the accident that I fully recovered mentally and emotionally to be completely myself. I will reiterate that at the scene, I was not truly medically capable of supplying a complete statement because my articulation skills were impaired. Many of the details submitted on 02/24/2019 to my insurance call in # representative have been reiterated in multiple official communications made by myself in letter form; e-mail form and verbal form. Also notable is that no detailed time-line of what happened was taken from me at any time. Further, no officer of the CHP has ever asked me, "what happened?"

I will also point out that when I reported to the Emergency Room (E.R., hereinafter) for tests and a medical evaluation, the doctor did not take the time to take a complete statement of my condition. The E. R. was packed that day and my 35 minutes of treatment took over 4 hours to accomplish with my after-visit summary being incomplete. My wife and I both continue to suffer from our injuries through today, 04/15/2019, with her having

back, neck and chest injuries and me, knee injuries and chest injuries as well as a foot injury (right).

I am in official disagreement with the Interinsurance Exchange of the Automobile Club (Southern California) as to the cause of the accident; also, as to the principal party at fault.

- 1) There is nothing in the report that conclusively proves that I am principally (51%) at fault and am the cause of this accident.
- 2) The Traffic Collision Report upon which the, "at fault determination," was made is not just in error, it is substantially flawed.
- 3) The investigation which led to the information in the report was not properly carried out by the writer of the report, Officer Sepulveda.
- 4) Characterization of me, [REDACTED] as, (Page 14, line 14, 15), "...caused this collision for driving Vehicle #1 (V-1) (Mercedes) in violation of [REDACTED] -- Unsafe Speed.", is simply not the case. **(While alluded to, the officer did not include in the report a conclusion that my maneuver to save Vehicle #3 from a full-on rear-end collision, might have save my life and that of my wife and also may have saved the occupants of vehicle #3 from much more serious injuries, but driving my [REDACTED] car at the last moment to the left to the sandwich position where much of the energy of the impact was absorbed and spread out, rather than between the two cars, although the intention of the maneuver was solely to prevent an accident as long as possible in hopes of being able somehow to prevent an accident at all. That is far from a person driving in a manner consistent with unsafe driving for conditions.)**
- 5) **Some of the officer's basis for conclusions were partly based upon my statements to her, she reported. (Inferred, Page 11, under, "Cause:", lines 23-25. Her mistakes meant this shouldn't have even been a part of the report at all as it did not apply in this case of this accident.**
- 6) Officer Sepulveda, rather than asking me what happened, so that I could tell her, instead, asked me, in effect, if I had depressed the gas pedal which then (after depression) got stuck. I responded in the negative, in certain clear words, that such was not the case. This information was not included in the report by Officer Sepulveda, in the report. This is significant information.
- 7) Two other first responders, a tow truck driver, possibly a Triple-A driver called to the scene by a victim) asked me a question very similar in meaning and effect as did Officer Sepulveda, to wit: Had I accelerated and then the pedal got stuck?" The other professional was, I believe, a fire fighter. As mentioned, asked me the same question with regard to accelerating and a stuck pedal and I indicated, "No. That did not happen." No information with regard to these questions addressed to me appeared in the Traffic Collision Report.
- 8) The paramedic did not take complete information from me as to my physical (and emotional/mental) condition at the scene. (Some work was done; I recall a blood pressure being taken and was asked if I wished to seek my own medical attention.)
- 9) A victim (possibly the driver of Vehicle #2) (see above) asked me what had happened or did I know what happened, and I told him that my foot got caught under the accelerator pedal. A reasonably short time later, Officer Sepulveda (I believe it was she but I know I saw a CHP uniformed officer address said victim referenced here in item #9, about whether he'd spoken to me or heard anything (apparently from me) about what had happened. That person responded words to the effect that he asked me and that, I "...had stated that my foot got pinned (stuck) under the accelerator pedal". This event and my quoted words did not get included in the traffic collision report.
- 10) Research by me after the accident and following in the many days of my recovering from the accident, allowed me to look on the internet and to interview people I know with regard to Mercedes-Benz and cruise-control and gas pedal operation. The results were manifold, to wit: A Professor Emeritus at UCLA did a number of studies, statistical analysis and follow-up interviews on unintended accelerations and reached certain conclusions that have been shared with official government entities concerned with traffic safety. It covered the possibility of electrical failures and mechanical failures of the brake, gas pedal, cruise-control systems, both during start up of cars and during actual driving after the driver left his garage or parking area and was actually under way and driving forward. Results were varied, but studies were carried out after an unusually high number of unintended accelerations occurred during certain periods in United States driving history, so much so, that the numbers alarmed citizens, drivers, insurance companies and safety entities of the government and manufacturers who during some of these periods of time were accused of constructing defective and/or dangerous systems. Schmidt's results, he related, showed 100% driver error, rather than defects mechanically or electrically within the systems. Government agencies both Federal and State were advised of the results with written reports and were very aware of the results of the reports as were automotive manufacturers. Note: it is a generally known fact that the brake inter-lock system requiring the driver's foot to be on the brake in order to start the car and shift out of park, is one result that is in all cars today sold and distributed for use by the public,

as more or less direct result of the studies of Schmidt. (Multiple sources).

11) Distinct and apart from the accidents which were subject of Schmidt's investigations, cruise-control accidents have occurred and the victims or their families and attorneys have attributed the accidents to failures that occurred within the system (sources: the Internet with key words: "Cruise-Control related/caused accidents". Some of these had to do with deterioration; sub-standard materials that were cheaper; early failures of mechanical parts because of excessive wear, and bad design. Bad designs and materials are one kind of cruise-control failures. Another failure of the cruise-control system has to do with the, "Placement of the controls;" and, lastly, the failure of the manufacturer to design in safety systems to prevent common problems experienced by drivers with the cruise control.

12) Mercedes-Benz knew or should have known that its design of the cruise control systems from 2001 to 2011 was flawed and had the potential to cause accidents, some of them possibly including fatalities. Evidence of this is statements by Mercedes-Benz, USA officials to an automotive "INDUSTRY" journalist, Tom Murphy, on July 15, 2011 in Missoula, Montana at an official event of the automotive industry, visited officially by many automotive manufacturers, including Mercedes-Benz, USA. In fact, "Bernie Glaser, General Manager-Product Management for Mercedes-Benz USA, according to Murphy, emphasized the change in his presentation of the new M-Class (will apply to all classes-see below) "...to journalists here this week." Glaser is quoted, "A lot of research has been done, he says. "Customer feedback went into that decision, and the M-Class is the first Mercedes where this has been changed." What he was referring to was the position of the cruise-control stalks (also known as levers or column -placed levers, sometimes erroneously referred to as steering wheel levers.). An additional Mercedes employee was also quoted, one Jim Burch, Assistant Product Manager for both the M-Class and the GLK CUV, "...says the market drove the new layout."

"The (customer) comments were that there was some confusion with the cruise control," "Burch says." Burch continued, "We wanted to address that issue, and this was the best solution based on testing with those consumers."

Murphy introduced the change by stating that the M-Class, "...is the first Mercedes with the turn signal placed above the cruise-control stalk on left side of steering wheel, intended to eliminate driver confusion."

Murphy opened the text of his actual article saying, "Just about anyone who has driven a Mercedes-Benz in the past decade has experienced it: unintended sudden acceleration because of awkward placement of the cruise-control stalk on the left side of the steering wheel."

"A driver may think he is signalling to turn right, when inadvertently he has pushed the cruise control lever upward to the "accel" position, occasionally sending the vehicle bolting forward instead of slowing down to turn at an intersection. This could happen if the cruise control was on but not active."

"Left turns were somewhat less problematic because pushing the lever downward put the cruise-control system into the "decel" mode."

"Nevertheless, with the all-new '12 M-Class cross/utility vehicle going on sale in September, Mercedes has corrected the problem once and for all by placing the turn indicator at the 10 o'clock position and the cruise-control stalk at 8 o'clock."

"Until now, those placements were reversed in virtually all Mercedes vehicles, triggering complaints."

"The turn-indicator stalk, which also controls the windshield wipers and high-beam headlamps, is longer than the cruise-control lever, and Mercedes engineers are hopeful the new configuration will eliminate any confusion."

The above information is a document, never refuted by Mercedes-Benz which shows that they knew that these lever placements were dangerous. Given that there was a 2014 post/comment by a Mercedes driver put into both Tesla and Mercedes forums that he drove from San Diego County to a location in Arizona, "...his first long trip. Well, the German cruise control drove me crazy. I kept grabbing the signal stalk instead of the cruise control." He says a sentence or so later, "The stop to raise or lower the speed in one mph increments is almost impossible to feel, and as a result,, I would engage the "let her rip" adjustment and found myself blasting off instead of just moving up one mph. Very frustrating!!" This appeared on the forums of Mercedes-Benz on November 3, 2014. (Source: [REDACTED]). This person also filed a complaint about the Tesla he drove, it is to be noted in fairness.

Since the above, there were no additional warnings sent out by Mercedes, regarding use of the cruise-control. A review of the 2014 drivers handbook that comes with the car does not show any warnings about turning off the memory separately if one is not going to use the system for any length of time. The only information provided is that use of the brake, "cancels the cruise control."

The WardsAuto.com article also is confusing about what kind of research Mercedes-Benz, USA did in making their decision to simply swap the stalk or lever positions on the steering column. The same arm motions are required and the same muscle memories are required to move the levers through the same exact space. Yet

their engineers were, "...hopeful," that the problem would be solved.

13) Manufacturers of other brands have found solutions to the problem: they moved their cruise-control engagement/modification buttons to the steering wheel away from the cruise control lever. (Mercedes-Benz finally did this in 2017/18 and that is the position now away from the lever in 2019. (Distronic Cruise-Control + is an exception, apparently, but has other mitigation factors added that make it nearly impossible for this type of error to happen, as it did in my case [REDACTED])

14) One manufacturer has installed a 10 mph fail safe system. If the memory is in tact but not being actively used by the cruise-control, if the vehicle slows more than 10 miles per hour, less than the last recorded cruise-control managed speed, the cruise control will not engage at all until the accelerator pedal is engaged sufficiently to bring the car back up to within 10 mph of that saved memory of the last freeway speed maintained by the cruise-control.

15) Time/Distance Control Fail safe: Mercedes-Benz also failed to install a device that would inactivate the memory if more than a reasonable amount of time has elapsed since the last cruise-control use. The same is true for miles subsequently driven after last use of cruise-control. (Since traffic conditions change all the time, it stands to reason, that if the cruise-control hasn't been applied for use for more than say, 3 miles, or say ten minutes, it should be assumed that the traffic conditions or environment or road conditions have changed and the cruise-control memory should be cancelled by a form of an intervalometer; count-down timer or other device. The same is true for distance with a maximum of a few miles distance also resulting in the cancellation of the cruise-control memory.

Thus, what is known, is that Mercedes-Benz had it documented to them about the dangers of their cruise-control system from 2001 through 2011, and then again in 2014, but issued no warnings to the owners of cars with those types of systems installed. They also did nothing in the way of a fail safe as indicated above to mitigate the problems of their lever placement in their passenger vehicles. Because of the known problem and the lack of any substantive action on the part of Mercedes-Benz, the M-B manufacturer is responsible for the accident of 02/23/2019. Further, for me to be responsible, Mercedes-Benz, the Highway Patrol and the Interinsurance Exchange of the Auto Club should each have to prove that this unsafe system did not substantially cause the accident.

Simply attributing it to the driver, when no driver error has been found is not proof. The driver has proven that had Mercedes-Benz done anything, i.e.: warning the owners of the cars; suggesting to turn off the memory each time use of cruise-control was stopped; or putting the activation controls on the wheel away from the directional signal, all would have prevented the accident. Because the officer did not properly investigate the matter and made only an erroneous showing in the traffic collision report based upon inaccurate and very incomplete information, the assigning of me driving in a manner unsafe for conditions is not supported. In fact, a proper interview with me would reveal that I was providing extra space prior to the lever confusion for the car/cars in front of me.

The above is true to the best of my belief and knowledge.

[REDACTED]

07/25/2019
Date

#

Brar.Raman <Brar.Raman@aaa-calif.com>

Tue, Apr 16, 2019 at 11:52 AM

To: [REDACTED]

Good morning [REDACTED]

I have forwarded your email to the injury adjuster. If there is any change, injury adjuster will follow up with you. Thanks.

Sincerely,

note: No response to "statements of facts."

Raman Brar

Claims Service Representative II

Office: 661-852-4031 Fax: 657-720-6073

Brar.Raman@aaa-calif.com

Manager: Gina Thompson Phone Number: 661-852-4034

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From: [REDACTED]

Sent: Tuesday, April 16, 2019 1:33 AM

To: Brar.Raman [REDACTED]

Subject: Claim [REDACTED]; Policy #: [REDACTED]; Original Reference #: (Add: [REDACTED])

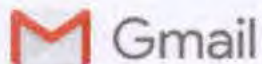
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1) Bruised-Right Foot Notification to A.A.A. (safety related?)



Foot Bruise

1 message

Wed, Apr 17, 2019 at 9:39 AM

[REDACTED]
To: Nguyen.Tiffany@aaa-calif.com

Dear Tiffany - Brar informed me that I should share with you a photo of my bruised foot. This is further proof of my foot being pinned under the accelerator pedal. Bruise is in exact spot where parts of underside of pedal pinned my foot to the floor. Please include and provide to investigative team looking at black box.

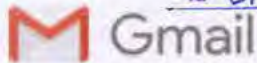
Thank you,

[REDACTED] [REDACTED]

Gmail - RE: [REDACTED] shared 1 photo with you

NH TSA-Ref. No. 11206304.

1) Share bruises on foot with AAA. 2) Why it is, "Safety Issue,"



RE: [REDACTED] shared 1 photo with you

11 messages

Nguyen.Tiffany <Nguyen.Tiffany2@aaa-calif.com>

Wed, Apr 17, 2019 at 10:45 AM

To: [REDACTED]

Received, thanks.

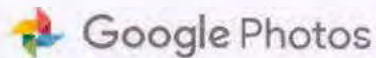
From: [REDACTED] via Google Photos) [mailto:[REDACTED]]

Sent: Wednesday, April 17, 2019 10:42 AM

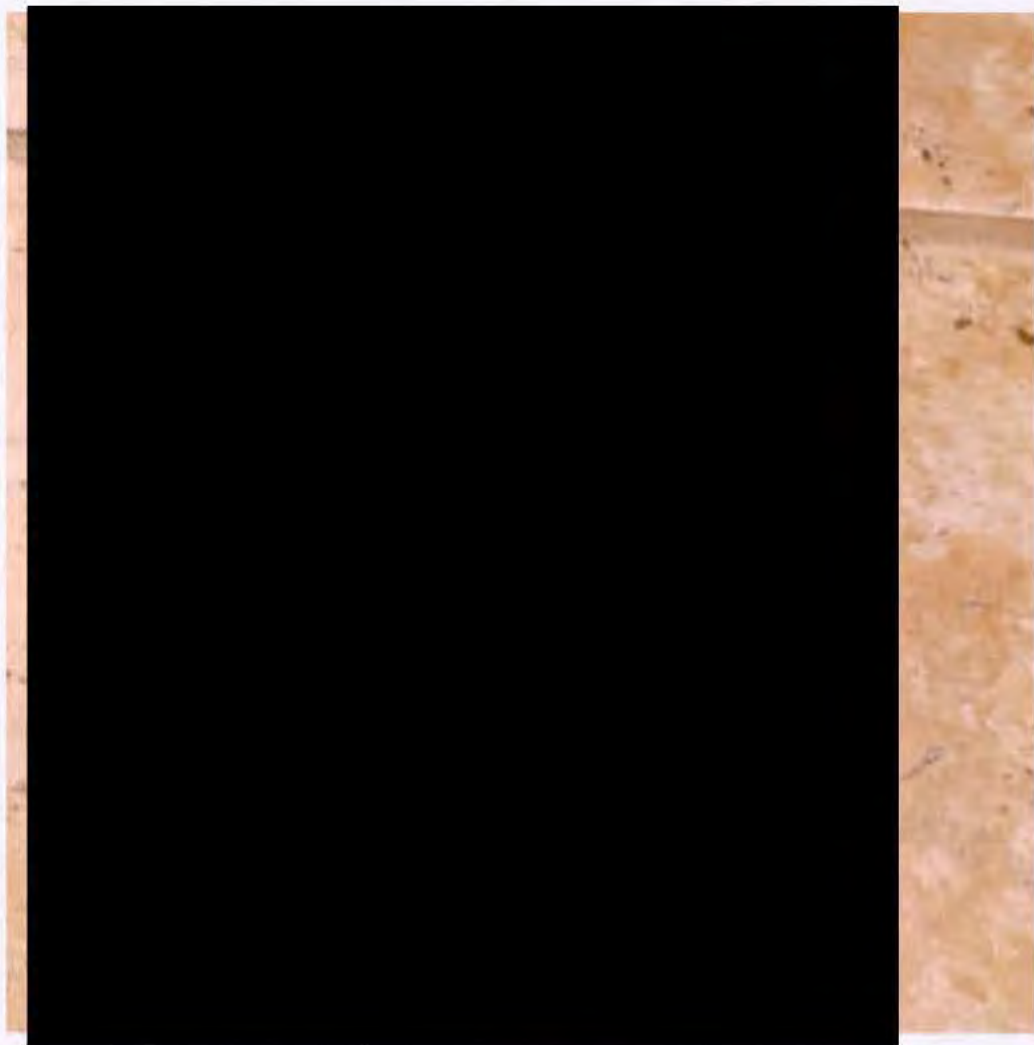
To: Nguyen.Tiffany

Subject: [REDACTED] shared 1 photo with you

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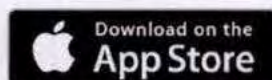
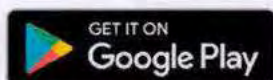
[REDACTED] Another view of [REDACTED] foot



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Thu, Apr 18, 2019 at 11:12 AM

To: "Nguyen.Tiffany" <Nguyen.Tiffany2@aaa-calif.com>

Hi Tiffany,

What is your personal opinion about whether or not I had my foot pinned under the accelerator pedal after viewing my foot injury/bruise in the same spot as the pedal? Also, after viewing the photo of the gas pedal assembly showing old dust disturbed, as if by foot being pinned under gas pedal?

Thank you,

[REDACTED]

Nguyen.Tiffany <Nguyen.Tiffany2@aaa-calif.com>

Thu, Apr 18, 2019 at 11:25 AM

To: [REDACTED]

H [REDACTED],

I'm sorry it is hard for me to tell. I'm not sure how your foot was pinned under the accelerator.

[Quoted text hidden]

[Quoted text hidden]

Fri, Apr 19, 2019 at 8:06 AM

To: "Nguyen.Tiffany" <Nguyen.Tiffany2@aaa-calif.com>

I'm not sure how my foot was pinned under the accelerator either. I assume you mean, how did it get there? I don't know how it got there, myself. I just know that it was pinned there. This is not something that took me a long time to tell people, since, at the scene, one of the drivers (I believe) asked me what happened and I informed that person, then and there, that my foot was pinned under the accelerator. The bruise is evidence of the pin, not how it got there.

Further, something caused the factual smudge in the dirt/dust in the photograph of the gas-pedal assembly. If there are no further postulations by anyone involved in this matter, that disruption of an even layer of dirt/dust must be considered as having been cost by my pinned foot. Given that the car's status is in accident preservation, nothing else could have caused this disruption of the dirt or dust other than my pinned foot. Don't

you agree?

PS: I believe that Triple-A should notify the other drivers of my claims, because it may materially affect their decisions on what they would do, if they had or have all the facts [REDACTED]
[Quoted text hidden]

[REDACTED] > Fri, Apr 19, 2019 at 9:03 AM
To: "Nguyen, Tiffany" <Nguyen.Tiffany2@aaa-calif.com>, [REDACTED]

Having reviewed what happened in my mind, so many times, to know what actually happened, consider this, which I've mentioned in writing before: Approaching the Olympic Blvd. off-ramp area on the I-405 Southbound, while in Lane #1, before anything began to happen, I had been going from the brake to the floor board of the car. This is because, in the stop and go traffic, and with the environment including the fact that the freeway was in a downhill condition at that point, I did not need to use the gas pedal. I also was maintaining extra distance between myself and the car in front of me. My experience in these heavy traffic conditions had taught me that because a lot of other cars dart in and out, it is better to have a longer distance to the car in front of me, than most other drivers seem to me, to maintain from the car in front of them. I like a larger air cushion or "air bubble" in front of me than most drivers provide. In fact, at that time frame, some cars had already been darting in front of me. Traffic was such that I thought or decided that I wanted to exit the freeway. Unlike the officer's leading question to me about whether I'd put my foot on the accelerator, as I've said before, I was putting my foot alternately on the brake and then just coasting while taking my foot off the brake. Since I did not require the gas pedal to move slowly up towards the car in front of me as I just coasted down hill, my foot was moving from the brake to the floor board, momentarily, as I did not want to hit the gas pedal. It was during one of those interludes where I placed my foot onto the floorboard (rather than the gas pedal which was unnecessary for forward movement that I looked over and past my wife at one point to check the conditions in Lane #2. Without knowing for sure, but speculating on the most likely scenario, it is most-likely that while looking over my right shoulder at Lane #2 to quickly check its lane conditions, that my foot may have migrated just two or three inches to a position where my toe was under the edge of the accelerator. I say this, because I do not recall noticing my foot moving at all. It's just that I can't think of any other way that this might have happened.

Notwithstanding how my foot managed to move where it wound up, I followed through with my idea to put on the right turn signal with the intent to notify drivers that I desired/intended to move over from lane #1, to lane #2. Because of the darting cars that I mentioned above, I kept my hands on the wheel and my eyes on the road up to that point. I was still making the usual small corrections to the steering wheel, with my hands somewhere near the 9 to 10 o'clock position on the left and my right hand on the wheel near the 3 to 2 o'clock position, there.

Removing my left hand from the steering wheel, as I have done hundreds if not thousands of times before, I then rotated my shoulder, arm, and hand, through the arc, from underneath the lever(s) to activate the right turn signal. As it turned out, that motion is also directly in the path of the cruise-control stalk. I must have hit the end of that stalk, causing it to go past positions 1& 2, directly to position #3, which according to the 2014 Mercedes-Benz Drivers' Manual, is called the, "Accel" position. (As I did this, I still did not realize that the cruise-control lever was the one that I had touched, rather than the intended, "right directional signal.")

At that point in time, however, the cruise-control recognized the memory that was held in the memory bank of the cruise-control, although it had not been active for more than twenty minutes and also had not been active for perhaps ten miles, nominal.

That is when the car leapt forward under full-acceleration, totally shocking and surprising me. (It totally shocked and surprised my wife as well as she would later relate, but also I was aware of at the time because of her immediate alerts to me that the car was going too fast and to slow it down.)

It was also at that time that my foot became pinned underneath the accelerator pedal. (It is at this point that I want you to know that I immediately lost control of the Mercedes. I've mentioned this in writing before.)

Tiffany - No one likes to hear long and highly detailed descriptions of pretty much anything. The above is very detailed. Although it is speculative with regard to how my foot got pinned under the pedal, the probability of what

I suggested here, is very high. If you or any other expert might suggest something else, I am open to hearing it, and if it sounds in any way factual, I would just as easily agree to that as what probably happened. To this point, no one has suggested any alternative. I wish that someone would. But until your experts tell me something else, what other scenario is there?

Hope all well with you.

[REDACTED]
[Quoted text hidden]

Nguyen.Tiffany <Nguyen.Tiffany2@aaa-calif.com>

Fri, Apr 19, 2019 at 2:05 PM

To: [REDACTED]

Thank you for the email, I'm not say.

[Quoted text hidden]
[Quoted text hidden]

Nguyen.Tiffany <Nguyen.Tiffany2@aaa-calif.com>

Fri, Apr 19, 2019 at 2:07 PM

To: [REDACTED]

Cc: "Tabach.Rich" <Tabach.Rich@aaa-calif.com>

Thank you for the email.

This file is transfer to Rich for handling. Thanks

[Quoted text hidden]
[Quoted text hidden]

To: "Nguyen.Tiffany" <Nguyen.Tiffany2@aaa-calif.com>

Fri, Apr 19, 2019 at 10:32 PM

Hi Tiffany,

Please review and add this to my submissions. It is the M-B Instructional for the 2011 year and shows the juxtaposition of the stalks/levers of cruise-control and Direction Signals. Further, it mentions warnings not to use cruise-control in wet and slippery conditions; around curves and corners; heavy traffic. There is no warning about the position of the levers. This is constructive mainly because of the WardsAuto.com Industry article by Tom Murphy, already submitted to you.

Mercedes acknowledged the problem with the levers confusion in that article, as I hope that you have read. And they changed the levers as a result of the "confusion."

One would think that there would be a warning with the new system and subsequent systems employing the new lever position. None was provided, however.

[REDACTED]
[REDACTED]
[Quoted text hidden]

Fri, Apr 19, 2019 at 10:44 PM

To: "Nguyen.Tiffany" <Nguyen.Tiffany2@aaa-calif.com>

Hi Tiffany,

Please include the owner's manual of the 2014 Mercedes-Benz to the material I have submitted. In the past, I mentioned that there is no warning in the manual for lever confusion. However, the WardsAutomotive.com article, which I submitted to you shows the cruise-control section change that the article discusses, due not only to lever confusion, but also "sudden acceleration" in the exact conditions which I have outlined, both in the article and in contrast to the Mercedes-Benz video regarding the 2011 cruise-control usage with warnings that do not include what happened to me.

[REDACTED]

Thanks, [REDACTED]

On Fri, Apr 19, 2019 at 2:08 PM Nguyen.Tiffany <Nguyen.Tiffany2@aaa-calif.com> wrote:
[Quoted text hidden]

Nguyen.Tiffany <Nguyen.Tiffany2@aaa-calif.com>
To: [REDACTED]

Mon, Apr 22, 2019 at 10:23 AM

Thank you

[Quoted text hidden]
[Quoted text hidden]

Nguyen.Tiffany <Nguyen.Tiffany2@aaa-calif.com>
To: [REDACTED] Tabach.Rich" <Tabach.Rich@aaa-calif.com>

Mon, Apr 22, 2019 at 10:24 AM

Thank you

[Quoted text hidden]
[Quoted text hidden]

NHTSA Ref. No: 11206504

1) Failure to Warn Public, Owners of "Safety Concern."



2013/2014 C350 (W) cruise-control video are same; slight reference of the "new" cruise-control position mentioned by M-B

4 messages

Fri, Apr 19, 2019 at 10:56 PM

To: "Nguyen, Tiffany" <Nguyen.Tiffany2@aaa-calif.com>, [REDACTED]

Hi Tiffany,

[REDACTED] here with re [REDACTED]

Please review the cruise control video for 2013. There were no changes for 2014 and the operation is therefore identical in the C350 models such as the one I drove during the accident.

[REDACTED]

You will note that despite talking about the lever changes, there was no real warning as to what the problem had been with the old lever placement. There were no warnings by Mercedes-Benz with regard to the lever placement.

Why not? Remember the WardsAuto.com article that discusses the sudden acceleration caused by lever confusion? Please share these manual evidences with your supervisor as well and ask that he review them.

Thank you,

Fri, Apr 19, 2019 at 10:59 PM

To: [REDACTED]

Hi. There are videos on the use of the cruise control for the vehicle. No warnings after the WardsAuto.com article describes lever confusion. The 2013 video is same system as 2013 with no change. The 2011 video of the cruise control lever and operation shows the contrast in position of the levers. Shows no warnings with regard to the position of the levers.

Love, Dad

[REDACTED]
[Quoted text hidden]

Fri, Apr 19, 2019 at 11:13 PM

To: [REDACTED]

I hope to locate the WardsAuto.com article. A careful reading of that article is illuminating and instructive. Love, Dad

[REDACTED]

When one reviews the positions of the levers in the 2011 and then 2012-2016 (all the same) and then reads the WardsAuto.com, surely it is suggestive that swapping lever positions doesn't change the danger (cited in the article) particularly in an attempt to deploy the right-turn directional signal: the shoulder-arm-hand motion is in an upward arc. In scenarios where the driver is keeping his/her eyes on the road and reaching for the signal, the

motion is the same for 2011 (from essentially the year 2000 models) as it is for the 2012-2016 models, including the 2014 C 350 M-B.

The danger admitted to (sort of) by the M-B officials in mixing up the levers by the driver is specifically cited by Tom Murphy in the article.

Thus far, in what is an obvious need for a warning to the user of the establishment of one of five different fail-safes that would provide driver and other drivers, protection on the highway, were all ignored by Mercedes-Benz.

Love, Dad
[Quoted text hidden]

Nguyen.Tiffany <Nguyen.Tiffany2@aaa-calif.com>

Mon, Apr 22, 2019 at 10:21 AM

To [REDACTED] <[REDACTED]> "Tabach.Rich" <Tabach.Rich@aaa-calif.com>

Thank you

From: [REDACTED]

Sent: Friday, April 19, 2019 10:57 PM

To: Nguyen.Tiffany; [REDACTED]

Subject: 2013/2014 C350 (W) cruise-control video are same; slight reference of the "new" cruise-control position mentioned by M-B

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Gmail - There is no convincing you of Mercedes bad design being ...

NHTSA Ref. No. 11206504.

Notify AAA that further evidence of a safety - Design-Defect



Gmail

(Continued) had been found on the Internet.

There is no convincing you of Mercedes bad design being the Cause of My 2-23-19 Accident Claim # [REDACTED]

2 messages

[REDACTED] > Sun, Apr 21, 2019 at 8:56 PM
To: [REDACTED] "Nguyen.Tiffany"
<Nguyen.Tiffany2@aaa-calif.com>

Hi Jeff, Dana, Tiffany

Despite the fact that I cannot convince you that Mercedes-Benz cause the accident, I found a more recent article than the 2011 article about Mercedes-Benz moving its cruise control stalks as lever confusion prevention. It also shows people testing, found the same problem with the levers, in a different group willing to say so, as follows:

[REDACTED]

Read this very short article or skip even shorter to 2nd to last paragraph in the article, which says, "By the way, for years now Mercedes has been putting its cruise control switch on a stalk that comes out of the left side of the steering column. We always thought that was a bad design, because it's pretty easy to hit it by accident when you're using the turn signal stalk. In fact, we've done that when testing Mercedes cars. And it required an immediate change of pants."

The rest of the article has interesting corollaries, even if not directly related to my situation, such as discussing the design of buttons on the steering wheel to turn on and operated cruise-control, as I personally pointed out, along with articles I sent to you, pointing that out as well, Tiffany.

Please include in my file. By the way there is now a lot of professionals that state the design is both bad and dangerous.

Respectfully,

[REDACTED]

Nguyen.Tiffany <Nguyen.Tiffany2@aaa-calif.com> Mon, Apr 22, 2019 at 10:20 AM
To: [REDACTED]
<[REDACTED] "Tabach.Rich" <Tabach.Rich@aaa-calif.com>

Thank you

From: [REDACTED]
Sent: Sunday, April 21, 2019 8:57 PM
To: Asmodeous; dana ellis; Nguyen.Tiffany
Subject: There is no convincing you of Mercedes bad design being the Cause of My 2-23-19 Accident Claim [REDACTED]



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NHTSA - Reference No. [REDACTED]
1) Solicit help from M.B. - Particular expert suggested.



FW: Claim: [REDACTED]

8 messages

Tabach.Rich <Tabach.Rich@aaa-calif.com>

Mon, May 6, 2019 at 9:31 AM

To: [REDACTED]

[REDACTED] please read below. This came from the investigator that typically does our EDR readings. He advised there's nothing he would be able to assess from the EDR that would determine the event other than the vehicle sped up. So, he made the suggestion I have included below. We have the vehicle on hold for now, so you can let me know what, if anything you want to do to proceed.

Rich Tabach
Claims Service Representative
Office 661-291-3823 fax 714-754-2094

Manager: Joseph Minkin phone: 661-291-3810

"We're always with you"

InterInsurance Exchange of the Automobile Club

It might be possible to access crash data through the Mercedes Benz technical services.

I would suggest having the Insured contact Mercedes Benz and file a complaint about uncontrolled

acceleration.

When he contacts MB, he should ask for technical assistance. They are located at [3860 Lakewood Blvd.](#),

in Long Beach, CA. He can ask for Eric Wierman,

CRFTS Engineering Services / Field Technical Services.

*** Disclaimer ***

Mon, May 6, 2019 at 2:45 PM

To: "Tabach.Rich" <Tabach.Rich@aaa-calif.com>

Thank you for your contact, Rich. I will make the contact as suggested including Mr. Eric Wierman. The CRFTS Engineering Services/Field Technical Services in Long Beach sounds like the place to follow-up.

Will let you know further progress. Thank you, [REDACTED]

[Quoted text hidden]

Tue, May 7, 2019 at 11:59 PM

To: "Tabach.Rich" <Tabach.Rich@aaa-calif.com>

Dear Rich, (Please copy this to your Supervisor for me. Thank you.)

It is me again, [REDACTED]

I'm surprised that the only thing that data turned up was a sudden acceleration in Claim # [REDACTED]. From research on the Internet I learned that there are a combination of information not only from the black box, but also from two other sensor systems that are in the car. One is the air bags sensors. I forgot about the other one but it is in the Mercedes. Others include accelerator position/angle; and whether or not the cruise control was active during the crash. I know that the C350 allegedly requires Mercedes-Benz technicians in the 2014 model, from the Bosch Technical Bulletin that is posted on the Internet. Since I am an injured person in the accident and since [REDACTED] is too and has received two treatments for those injuries after evaluation at Kaiser-Permanente and since the damage totaled our car, and since I have provided the only description of what happened since the Traffic Collision Report investigation was so poorly done and done in a so-called "cop-fashion" with a decision as to what happened made in advance, apparently, with the officer never asking me what happened, how can the arrest report be trusted. The idea that I was somehow driving too fast for the conditions under the basic speed law, is not supported. The CHP officer created a piece of fiction to suit herself and then tried to pass that fiction off as fact in the Traffic Collision Report. I worked for 37 years as a Deputy Probation Officer. I worked for 20 years in a specialized anti-gang enforcement unit. I received well over a thousand hours of training from Los Angeles police officers, sheriff's deputies, the FBI, Judges, attorneys, Alcohol, Tobacco and Firearms and others from many municipal police departments. I was also assigned to be a partner with CRASH, Special Problems Unit and other specialized task forces that included State and Federal agencies. I observed police techniques during my on-the-job training. I observed police officers doing good work. I observed police officers doing bad work. I observed police officers lie to suspects. I observed them attempt to lead suspects into making statements that they did not want to make. And I observed police officers writing reports compare stories with their fellow police officers and then lie in reports saying certain things happened when they did not happen, when I was there as a part of the task force. Very quickly, the officers learned "what was expected" from them in corroborating their partner's reports and stories. I observed out and out racial discrimination. I sat in the interrogation room and watched police officers, Sergeants and detectives do interrogation of suspects. And I also observed and learned that there were good detectives and one that were not so good. I learned that police work starts with the officer on the street or those sent to check out a specific kind of call. And I was with police when I observed shootings. I mean, I volunteered for specialized units. Leading questions and lies are permitted by the police. I actually saw this young police officer engage in the types of bad police work that I observed in my career. It is not totally clear that the officer made up her mind before she knew what happened, but I'm about 95% sure that was what I was observing in this case. The structured questions put to me in a way that the officer was attempting to enlist any number of responses that she could use to meet her preconceived notions of what happened were clear to me. At this point, I produced two separate photos of evidence that are not absolute proof

that my foot was pinned under the gas pedal, which was also my statement at the scene to one civilian and one professional. Any statements that I made about that did not reach the officer's ears nor did it reach her ability to hear, store and then use information. Because the officer produced no verifiable statements within context regarding the cause, (except a misleading statement within the report, there is really no statement about what happened other than my statement. If only the officer has asked me what happened, I would have told her. She did not bother.

Now, I [REDACTED], your insured am asking for your support in getting the information available to support my account, the true account of what happened. We need experts who can go through the data and find out what that data can tell us about the accident. For me, a statement that all the people looking into the data that they managed to locate that says there was a sudden acceleration and that is all they can tell, is not enough. It is either insufficient work or an insufficient look or possibly a look by people who do not have the expertise to find out what that data says and what the interpretation of that data can prove or imply.

Meantime, I'm continuing my effort to reach the person who you mentioned is an employee at the Lakewood facility in Long Beach, but thus far I have called three numbers and have reached a dead end, with regard to Eric Wieman. I would have hoped the referral would include an advance introduction and actual contact information

In general in this case, everyone in general from AAA has been honest with me except for one person. That person gave me a lot of information and did her job, throughout, with one exception. I've already mentioned this in writing. While telling me orally on the 7th and the 8th, that all information in the case, including forensic information from the car would be examined before a finding of fault was made, she knew when talking to me over the telephone that she had already signed the letter finding me at fault, (based solely on the police report she told me later) solely because an incompetent or dishonest California Highway Patrol Officer created a report that included aspects and conclusions that were untrue. The report contained information taken out of context. The officer put in an element of the report that had no basis for what she did: ask the tow truck driver to check the pedal. Actually, the manner in which he did it was also not accurate, but I can't prove that. Since the little test that was done did not duplicate the conditions for which the officer claimed she was checking for the condition of the gas pedal. No one ever suggested a stuck pedal. Yet the officer checked for a stuck pedal. This is an additional showing that the officer made up her mind about what happened prior to gathering any or all facts. The number of pertinent facts that she did not note or gather is significant as I've pointed out before.

The officer put nothing in the report that supports that I was driving unsafely or with a speed that was unsafe for conditions. The only thing that was supported in the traffic collision report is that the car itself was driving at an unsafe speed. My statements, none of which have been in any way refuted by anyone is that the car had an unintended (and unsafe) acceleration. There is not one thing in the Traffic Collision Report that shows that I did anything to cause the unsafe acceleration. Not one except a dishonestly obtained out of context statement of a word or two that had nothing to do with what the officer implied or said that it did.

The officer made a statement which was based upon nothing or at least incomplete information: she stated on page 10 of 14 of the report, lines 6 and 7, the following added on statement of a compound sentence (never a good idea in a valid investigation by law enforcement, to wit: "...and his injuries are consistent with being the driver of V-1 at the time of the collision." Normally this sounds OK and makes it appear as if the CHP Officer is "covering the bases." However, how did the officer know that statement to be true. There were two professional on the scene who's job it is to inquire about my injuries: the Paramedic and the Police Officer. In this case neither of those of those professionals asked me about my injuries. The paramedic took a blood pressure but did not inform me what it was. Further, I tried to explain my injuries to the Paramedic but he stopped me and said he'd get to them later. I thought that was very odd. What he did ask me was weather or not I would seek my own medical treatment and I indicated in the affirmative. What I wanted to do was to discuss my injuries with the Paramedic and get his take on them, but the Paramedic then coldly walked away from me and never asked another question nor did the Paramedic allow me to tell him my injuries. The CHP Officer also never asked me what injuries I had. I was wearing long pants.. The Officer could not see my legs and I also was wearing socks and shoes, Sketchers brand which were nearly new and I had only worn them a few times. (It is possible that those shoes played a part in my foot remaining stuck under the accelerator pedal after my right foot was pinned there. This is because the top of the shoe had a loose weave material which might have gotten stuck or caught on something sharp inside of the assembly or under the gas pedal.) The officer who visited me only very briefly perhaps 2 or at most 3 times, did not spend much more than a few seconds with me at each time. I also wanted to detail my injuries to the officer, but she never gave me that chance. What I'm saying is the the Officer

(Sepulveda) could not make the statement with a certainty that my injuries were, "... consistent with being the driver of V-1...", because she noted two injuries, one of which she could not have known about. I had sustained six injuries during the accident two of which still are impacting my life. That is the right leg injury and my chest injury from the air bag. The officer incorrectly stated I had a left leg injury (I did but she could not have known that and also that injury, despite causing me a lot of bruising did not hurt as much as my right leg which was in tremendous pain as was my right foot (from being pinned under the gas pedal during the collision). Plus the officer noted only the one injury on my right hand despite a bleeding injury to my left hand left without noting it. (6 Injuries: one to each hand, (2); injuries to both legs, including both knees; (2); the right foot with severe pain and eventual bruising (from accelerator pedal pinning my foot) (1) and severe pain to my solar plexis area (1). Total : Six (6).

There is at least one out of context statement the author of the Traffic Collision report, which she wrote, consisting of as follows (page :11 of 14) (# [REDACTED] for reference), that is a second time there was no foundation for the officer's statement, in the report, as follows: "Regarding P-1's statement concerning V-1's accelerator pedal; I asked the Tip Top Tow employee to sit in the driver's seat and apply pressure to the pedal. He stated the pedal was moving smoothly." First of all, I made no statement about the accelerator pedal, except that it had pinned my foot to the floor board. Further, the officer did not hear me state that my foot was pinned under the accelerator pedal, because she refused to listen to my account of what occurred. Instead she asked me if the accelerator pedal had gotten stuck. I clearly responded, "No, that it had not." She didn't ask what happened. She did not listen to the sequence of events that led to what happened. I have explained my right foot use in the chain of events leading up to the "Sudden Acceleration." Very safely maintaining a long distance from the car in front of me; using a brake-coast-brake method in the down hill section of the I-405, where the accident occurred. The Officer did not give me a chance to explain this. Instead she confused me with her inquiries and I wasn't feeling well and was just about at my worst when the officer kept at me about the location of my right foot. At some point I mistakenly got caught in the middle of a sentence starting to misstate what happened. I mentioned that my foot got stuck somewhere. That was true. It was under the pedal. I had, however, been trying to get my words straight to form a word picture of what happened and I had mentioned those words. Unequivocally, I did not state that I had taken my foot off the accelerator. (Even though earlier, before the sequence prior to the "Sudden Acceleration" after which I immediately lost control of the car, I had both put my foot on the gas and taken it off the gas pedal, this was prior to the sequence that led to the, "Sudden Acceleration." That activity occurred at least 30 seconds to a minute before the events leading to the "Sudden Acceleration." (This is also called a U.A., in the literature for "Unintended Acceleration.") Following up on this sequence that led to the, "Sudden Acceleration," let me add and reiterate from earlier written summaries that I was braking, then putting my foot on the floor board and then braking, as needed for not only safety, but an extra air bubble/cushion of air between the front of my car and the rear of the car in front of my car. I was being extra cautious. Then during that form of driving, I looked quickly at my wife to see if she was OK and also glanced at the #2 lane to assess the traffic therein. Seeing that the lane was packed like all lanes in the stop and go conditions (everyone agreed upon the conditions being stop and go), I decided to signal to the right to let other traffic know that I wanted to change lanes from Lane #1 to Lane #2.

It is important to note that no one at the scene or otherwise has ever stated that up to this point in my driving, that I was driving in any manner other than being consistent with the California Basic Speed Law.

While continuing to watch the road and remaining distant from the car in front of me, I then attempted to signal with my right directional signal. I made the motion I always make to put on the signal. With no other explanation (but with the possibility that the car's acceleration system failed at that moment), the car went into a Sudden (and completely Unintended) Acceleration. Immediately, I lost all control of the car with the exception of the fact, that despite all the pain in my right foot, which immediately also was pinned by the accelerator pedal to the floor board (with foot being under the accelerator pedal), I did still have some steering control, but was rapidly losing that because the car "bolted forward" under full acceleration with neither of my feet having anything to do with that acceleration. Once again, Officer Sepulveda did not allow me to explain this to her. Even my wife, sitting next to me did not know what had happened. At the time of the accident and the very fast events leading up to it, Officer Sepulveda was located, northbound on the I-405 Freeway, South of Constitution Avenue, according to her report. She could not have known what happened.

On Page 12 of 14, Officer Sepulveda stated on lines 10 through 14, the following: "Party #1 (P-1) [REDACTED] related in essence the following: he was driving Vehicle #1 (V-1) (Mercedes) on I-405 southbound, south of Olympic Boulevard in the #1 lane at approximately 15-20 mph. (I did not mention, "...south of Olympic Boulevard..."

to the officer as I had no idea that I was south of Olympic Boulevard at that time). "He felt the accelerator pedal 'press forward' and felt V-1 'get faster.'" (This is the point at which the sequence and the words written by Officer Sepulveda deviate from the truth and deviate from what happened. It is also the point at which my medical and emotional condition had continued to drop to a low point. The officer did not provide me the time to go into what I meant about, "...the accelerator 'press forward...'" ("Press forward" are two words for it, although not the most descriptive or accurate. However this piece of the statement does confirm or conform to the idea that the pedal was at that point on top of my foot. That is why I "felt" the accelerator. It really plunged forward at high speed, banged into the top of my foot causing extensive pain, shooting pain and pain which caused an involuntary jerk of my leg away from the source area of the pain inflicted by the pedal. (My foot hurt extensively for days and even weeks after the pedal pinned it to the floorboard. Eventually a deep bruise surfaced to the top of my arch and presented itself as part of the healing process and I took a photo of the injury when I first noticed the bruise. I sent a copy of the foot to AAA and the California Highway Patrol. This augmented a photograph sent to both agencies was in addition to a cell phone picture I took of the pedal assembly which shows fresh smudging of old dirt right in the area of where I was struggling to get my foot out from under the accelerator pedal.)

Officer Sepulveda continued her report, stating, "He took his foot off the pedal..." **This statement, these seven words are complete fiction by CHP Officer Sepulveda. I never used those words at all. They are a fabrication. They are a lie. I can't say this any clearer: she made this part of the report up.** Because I had not put my foot on the accelerator prior to this as previously and extensively documented I not only wouldn't have used those words, I didn't use those words at all. Because that is not what happened. However, those words fit into the pattern of questions by her, by a Firefighter, by a tow truck driver (perhaps the AAA driver) and by Officer Sepulveda when she suggested to me via question that I had "pressed the accelerator pedal and then it got stuck," or words to that effect. (At the time, it amazed me that people came to me and made no effort to help me with my injuries and the shock I was in. Not an offer of a blanket nor a place to sit. Nothing. No one asked me to show where it hurt on my body or what my injuries were. Instead, they were proposing to me a scenario of what had happened; on three different occasions by three different people. I kept wondering why no one asked me what happened, as well as not inquire about my injuries/health and made no offer of help at the scene. There was no thought that I might be a victim, just as the passengers and operators of the other vehicles were victims. There was, however, a "Rush To Judgement." To summarize, I could not have taken my foot off the accelerator pedal because my foot was pinned under it. No one has any evidence to refute this fact. This isn't just a story. It is what happened.

In connection with the above paragraph, still on page 12 the sentence on line 13 is a continuation of the sentence at end of line 12, to wit: "...and it became "pinned somewhere." This is where officer Sepulveda linked the two parts of the sentence together and put them out of sequence. That is out of the sequence of events. That is, I already had my foot pinned under the accelerator pedal when Officer Sepulveda made up the first group of words and then put my subsequent words after that, thus creating Officer Sepulveda's sequence of events. Again, a work of fiction. Difficult or impossible for anyone to catch except me, because I was the only one who experienced the sequence of events. Officer Sepulveda or another CHP Officer asked one of the occupants of one of the vehicles if they knew what happened and that person informed the officer that I had told him that my foot got pinned underneath the gas pedal or accelerator pedal. I saw the officer approach the person and ask the question and then receive the answer. This information, material to the facts of what happened, did not make it into the Traffic Collision Report. Notable isn't the fact that the Officers leading question about the stuck accelerator pedal also did not make it into the report.

At no time was I doing anything but driving properly and safely. Then following traffic rules and laws I attempted to signal to traffic that I wished to move into the right lane. It is only after my attempt to signal resulted in my hand and arm and shoulder(to some extent) engaged in an action done hundreds of times before. But this time I must have hit the cruise control first or perhaps only.

I have never stated that I have hit one lever only to have another lever activate. I believe this may have happened in the past but I was able to immediately correct it. One thing that I know I've done before was to attempt to signal with the directional signal lever in some cars and inadvertently activated the windshield wipers. I always thought that was a bad design.

It took me two days after all that occurred to have a kind of brain fog disappear and for me to finally recover from a state of shock. I still had the ability to report the accident and did so, the day after the accident. However for

the bulk of the day after I got home on the 23rd, I slept. Other than reporting the accident, I also slept for the remainder of the day on the 24th. I slept until somewhat later on the 25th as well at which point my wife and cousin and a friend all convinced me to go in to get checked at the Emergency Room, Kaiser-Permanente, Woodland Hills, Ca. I was there for about six hours but was actually attended to for only about 30-40 minutes by personnel and just a few short minutes by the doctor. I attempted to detail my injuries to the doctor but practically in the middle of my detailing my injuries to the doctor she turned and ran off. After various tests and x-rays were completed, and after I was told that it would take a very long time for my injuries to heal, I was given a walker to help me get around and I was given an after-visit summary and released home via my friend [REDACTED]

As my head cleared, I went over some notes I'd taken about what had happened. I realized that either something in the electronics of the car had failed causing the "Sudden Acceleration" of the car, or I had inadvertently without even knowing it, activated the Cruise-Control lever. After doing a public search on the Internet, it became clear to me that what had happened was caused by a known design failure by Mercedes-Benz. For some reason, no agency of the Federal nor of the California State government had done anything to have this dangerous design corrected. (See the submissions of both the WardsAuto.com article by Tom Murphy, dated July 11, 2011; the SF Gate article covering a radio show run by a person who owned an auto repair facility and answered questions of callers on a PBS set of channels, known as, "The Truth About Cars." The program happened to answer a caller's general question about cruise control use and damage it might cause to a car. As an aside, two paragraphs of the show/article were devoted to detailing known problems with the Mercedes-Benz cruise control lever positions on the left side of the steering column. As professional testers of clients' cars under repair and maintenance had to be tested for safety prior to release to customers. It was during such testing that both of the garage owners experienced hitting the wrong stalk when attempting to use the directional signal. I've submitted to a copy of the article for inclusion in my case to my adjusters. There is a 3rd Internet Forum article with a detailed complaint by a driver of a Mercedes-Benz C350 with article dated November 3, 2014 in which the driver picked up his Mercedes-Benz in San Diego County, Oceanside and drove it to Cave Creek, Arizona. He was very angry and detailed his constant problems throughout the trip with hitting the directional signal rather than the cruise control lever or stalk. He admitted not reading the owner's manual in terms of proper operation of the cruise control. None the less, this is another documented reference to the confusion owners have suffered with regards to the design of the placement of the cruise control levers. Source is both a Tesla and a Mercedes Forum site. Submitted by Avanti5010 and typrier. Mercedes experienced another cruise-control crisis in 2004, when it recalled 137,000 M-Class SUV's for cruise controls that might not turn off when the brakes were applied. The disengagement problem gave impetus to the recall. (Source: <https://www.torquenews.com/106/mercedes-benz-recalls-137000-m...>).

A review of several Mercedes-Benz u-tube videos on their cruise-control function does not mention the lever confusion problem. There is no warning in the videos. Also, the owner's manuals of the C350 have been reviewed for the 2014 year and there is not caution and no warning about the lever confusion issue. There are no suggestions or warnings in the drivers handbooks/manuals for the cars, nor any of the cars from 2012 through 2016. It is telling that Mercedes-Benz finally put cruise control on the steering wheel in their latest design, except for Distronic systems which have their own fail safes making the same scenario in those cars unlikely, even if the cruise control were mistakenly activated, the Distronic system applies the brakes automatically via sensors and cameras. Even a recall warning, had it reached me, with suggestions for mitigation, would have prevented this February 23, 2019 injury accident.

Just as an aside, two days after this herein referenced accident, which caused severe bruising to my wife [REDACTED] and to me because of the air bags, an air bag recall was issued for our 2014 Mercedes-Benz. We would also ask that a pain and suffering and treatment subrogation, as required, as well as the below:

A preponderance of evidence has been submitted to show and demonstrate that I was not driving in violation of California Vehicle Code Section 22350. The false or error filled report by CHP Officer Sepulveda does not support her finding. The blind acceptance of a CHP report in this particular case should not be accepted by AAA and its insurers. Instead, the facts should form the basis of the determination. Because all three agencies, that is AAA, California Highway Patrol and Mercedes-Benz all have a vested interest in resolving this case in the most economical fashion possible. Instead, I request the right thing be done regardless of the cost or of the policies of the stated agencies.

Settlement desired: I wish to be relieved of the major responsibility for the accident in claim # [REDACTED] Mercedes-Benz knew it had a bad or dangerous design that would affect a certain percentage of people and had

the potential to cause injury accidents. In order to do so I desire that Mercedes-Benz, USA and any related companies be held responsible for the accident. Mercedes-Benz has a history of cruise-control problems be responsible for the accident.. Mercedes-Benz made a half-hearted effort to deal with the problem, as previously detailed in documents submitted and referenced herein. A warning should be sent out to all owners of Mercedes-Benz to prevent future accidents of a similar nature from happening.

At this point the causality of the accident has been covered: Mercedes-Benz gave a car to me which had a defect in the acceleration system which malfunctioned due to the defect. Mercedes-Benz will need to bring in experts to find out from the data what actually happened. Further, they must be notified that AAA, thus far, has only found that there was a sudden acceleration, although no further details were given to me.

Nothing in the factual scenario has pointed towards me doing anything behind the wheel of the car, that resembles driving faster than was safe for conditions. The only thing that is supported is that the Mercedes-Benz C350 (W) was driving faster than was safe for conditions and it was happenstance that I was behind the wheel of the car at the time. Mercedes-Benz had constructed a car that was sold to me second-hand that was kept in excellent condition and had new tires on it and had been at Mercedes-Benz of Thousand Oaks for complete service including alignment and inspection of trunk and handbrake for problems likely due to a prior auto accident (wherein certified repairs were completed of those problems) according to AAA and Newcastle Automotive which is the business that did the repairs. The service was between 15 August and 17 August 2018, when Silver Star, AG on the paperwork but AKA Mercedes-Benz of Thousand Oaks. At that time, I brought up the possibility of electrical wiring problems possibly developing later to the service adviser, Dave Hollander, and I asked him to ensure that the car was completely checked out to make sure that the car was totally safe to drive. Having picked up the car, I noted the repairs made and that a "World Class Inspection," had been performed. That was done on August 17 when the car was noted to have 25,741 miles on it. (A further mileage check may be found with AAA who sent out mileage questionnaire somewhere between October 2018 and January 2019. I believe AAA recorded the car's mileage as of the time of the accident as 34,366. Almost 9,000 miles had been driven in just over six months between the accident the prior full service (of which I have a copy). I counted right around 100 of the multi-point inspection as shown on the service bill which outlined all that was done. It was extensive.

Lastly, if my settlement desired is not honored, I demand that a hearing be held by an impartial arbitrator and that the results be binding upon all parties.

P.S.: Further evidence may still be brought in photographically and electronically by experts from the sensors and black box of the Mercedes-Benz by AAA, Mercedes-Benz or the California Highway Patrol.

Respectfully submitted,

[REDACTED], Insured/Claimant/Victim

Tabach.Rich <Tabach.Rich@aaa-calif.com>
To: [REDACTED]

Wed, May 8, 2019 at 1:31 PM

[REDACTED] I appreciate your efforts in this investigation, however, there is no evidence of their design flaw directly causing this loss, plus in your own words, your hand pushed the lever connected to the cruise control. Regardless, of the bad design, part of this accident was human error. I don't believe any judge would deflect liability to a vehicle if I was to deny and you were sued. Our job is to protect you and secure releases of their liability. Unless we can tangibly show a design flaw or mechanical defect that directly caused a vehicle to change course of action, we have no basis to escape liability and transfer negligence to the manufacturer. You are certainly entitled to go after the manufacturer on your own, but I can promise you if I tell the other party's attorneys that it is the fault of the vehicle, not the driver, they will consider your

policy limits open and sue for a lot more than what we would have paid had we just reviewed the medical specials.

Thanks for your understanding.

Rich

Rich Tabach

Claims Service Representative
Office 661-291-3823 fax 714-754-2094

Manager: Joseph Minkin phone: 661-291-3810

"We're always with you"

InterInsurance Exchange of the Automobile Club

From: [REDACTED]
Sent: Tuesday, May 07, 2019 11:59 PM
To: Tabach.Rich
Subject: Re: FW: Claim: [REDACTED]

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[Quoted text hidden]

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[REDACTED] Thu, May 9, 2019 at 10:14 AM
To: "Tabach.Rich" <Tabach.Rich@aaa-calif.com>, [REDACTED] MBUSA_CAC@mbusa.com

Actually, a careful look at all of my submissions will show that I said or implied that, "I must have touched the lever," or words to that effect. The opportunity for AAA experts to show that cruise control was activated, by your statement was not shown. What was shown, only was a "sudden acceleration," according to the data received. At this point, the only thing that has been demonstrated by anyone (CHP, Auto Club-AAA, Mercedes-Benz (who has thus far sat on this information and made no attempt to look at the car), was a sudden acceleration. At this

point, the data supports: 1) I was driving; 2) There was a sudden acceleration (which put the car immediately out of control); 3) There was an accident-injury collision involving four cars and their occupants caused by the Mercedes-Benz. That is all that has been shown.

The CHP officer conducted an extremely flawed investigation; made up completely one sentence; none of the information supplied by the officer supports that I was in any way driving in fashion that was unsafe for conditions. There really is nothing. The officer also wrote a part of a sentence (upon which she says she based her claim) that supports the fact that my foot was pinned under the accelerator pedal. There would appear to be a design flaw that allows a persons foot to A) Go under the accelerator pedal; B) to be pinned by the accelerator pedal with no fail-safe system in place to correct for it.

Although my reports and statements the day after the event as well as the day of the event when the officer had an opportunity to ask me what happened, she failed to do so. She did develop a theory before she ever spoke with me; did not properly record injuries no my statement. And without one shred of evidence, decided that I was driving dangerously because I was driving in a manner not consistent with the Basic Speed Law of California. When? At what point? I never even put my foot on the accelerator and that much I know and have documented.

Although I was the driver, the only thing that anyone suggests is that I drove while making a "human error." At this point, we know also that there was a sudden acceleration, but we don't know why. A Judge, if he is a true judge that applies the law, will agree that thus far, there has been no finding of the cause of the known, "sudden acceleration." I've looked in the report and see nothing that even implies that I did anything to cause the Mercedes to accelerate. (a series of questions by professionals on the scene to all who were there provided no explanation for the sudden acceleration. One thing is true, however. I have presented two photographs that are actual evidence of "something." With my statement that my foot got pinned under the accelerator and with no other explanation how the recent smudges were seen in the photograph under the accelerator pedal and on the assembly; and with the photograph of my foot injury exactly in the position where the bruise would be if my foot had been pinned under the accelerator pedal, the laws of Physics apply: If my foot was under the accelerator pedal, it could not have been on top of the accelerator pedal at the same time. Since the sudden acceleration implies that the pedal went to the floor (this should be able to be shown by the data recorded which shows accelerator pedal angle), then it would be impossible to go from foot on top of the accelerator to underneath it. The structure of the accelerator pedal assembly and the method by which the gas pedal works establishes these two distinct areas. The scant seconds in which the entire even transpired does not allow for any human being to put their foot under the accelerator pedal after its activation. That means that it was under the pedal prior to and just prior to the sudden acceleration. A judge who looks at actual facts will agree with that. Arguments against this position, are solely a stubbornness of a position taken. There is no evidence at all that my foot wasn't pinned, but there is three forms of evidence that it was pinned, including cited words by the officer in the Traffic Collision Report citing my words to the effect that I, "felt" the "accelerator" pedal...; and, my own words later in several versions all with my statement that my foot was pinned under the accelerator. These are 4 evidence forms showing my foot was pinned. There have been enough statements with the sudden acceleration proof now in that also show that the car was immediately out of my control. With this span of about 1 second, there is nothing in the arrest report about any theoretical actions that I took nor evidence of actual actions that I took that are even recorded. Some positive action by the accused must take place to show that the accused did something that then and thereafter caused the chain of events the resulted in the crash. There are not any. The CHP Officer's Traffic Collision Report (TCR) has already been show to be full of errors and jumps to conclusions both as to injuries of two parties and as to some idea (completely unsupported) that she appeared to push (lack of several crucial statement made not included in the report plus her own question addressed to me for no apparent reason) an idea that I stepped on the accelerator (where did she get that? I never told her that.) pedal causing the sudden acceleration. Other than a few words that the officer fabricated claiming that I made a statement making it look like I lifted my foot from the accelerator pedal, the officer put forth nothing. Examine that one false statement for a moment and presume that what she wrote that I said was true: that is that I stated that I took my foot off the accelerator pedal (the only statement in the entire report concerning anyone doing anything with the Mercedes accelerator pedal in connection with the accident, then the sudden acceleration finding doesn't make sense. That is because if I lifted my foot off the accelerator pedal as CHP Officer Sepulveda asserted and wrote, then the car would have decelerated instead of accelerating right into the accident. That absolutely and unequivocally does not match the possibilities under the physcial evidence at the scene and the occupants and drivers' statements (Laws of momentum and force; laws of gravity and friction; engine compression during deceleration, slowing the vehicle instead of speeding it up.

What does the above mean or imply or prove or suggest? It actually proves that there is a conflict between the officer's statement that I, in effect, removed my foot from the accelerator and later proof by AAA that there was a sudden acceleration. There should be more data to clarify the data already collected and apparently, from my research into the Bosch equipment designed to collect and read the information, the 2014 model was not one that had easy access of the data even available to it. That means Mercedes-Benz experts and equipment are the only ones that we know of (at the present time) who can retrieve and interpret the data. (I have asked for this all along, stating that I have nothing to hide, right from the beginning (see my earliest statements).

What else has thus far been proven? Nothing. We know there was a sudden acceleration. We do not know what caused it.

Rich. I reiterate that most of my statements and many of them early on talk about how my head did not clear for at least two days after the accident. That after that, I started to go over what happened, time and time again in my own mind. My earliest recollection did not include actually making an effort to put on the directional signals. I concluded (erroneously as my conclusion had no evidence to base it upon except suppositions based upon certain thoughts before the actual event or event horizon, that I had that I wanted to go into the #2 lane. It has been since all of that time and after discussions and after reading material on the Internet that I concluded that it was logical that I next attempted to put on the directional signal (right turn type).

In the above historical recall of facts, however, I left out one of the other possibilities: that an actual physical equipment failure occurred, causing the sudden acceleration.

It is important to read all of my material, voluminous as it is, because it lays out the facts of what happened with the exception of some gaps which are logical to infer given the sequences noted; however, they point to two possibilities: First, that a Mercedes-Benz acceleration system failed or in other words, there was an equipment failure; or secondly, the scenario that I originally put forth under the proposition "that it must have happened because that is the next most likely scenario." But that is an error in thinking. Following investigative procedure, both of those possibilities must be investigated via the sensor information gathering and recording procedure, with the evidence showing that one of those two possibilities is confirmed; less certain is to show that either of the two possibilities is ruled out by the sensor information; the third and last scenario is that even having gathered all the sensor information, there is no further illumination as to what actually caused the "sudden acceleration."

Based on this last statement, and the uncertainty of what I actually did, to hold me 51% responsible is also a rush to judgement. So that finding should be set aside and put on "hold," pending further scientific forensic testing as we discussed. That does mean involving Mercedes-Benz.

Perhaps it would be, "Putting the cart before the horse," to discuss the three outcomes mentioned above.

According to you, a Judge (I presume you mean a trial judge) would likely say that I was responsible because of admission (that admission was not accurate but based on what I thought must have happened but it was erroneous and my earliest statements do not include such admission. I still to this day do not recall striking the cruise control nor activating it. Many of my written statements will confirm this feature of my statements.

If it does come to a preponderance of evidence that I did attempt to put on the right directional signal, thus far there is no evidence one way or the other, which of the two levers I actually hit. A trier of fact will look at what has been proven and the statements in order to draw conclusions. That trier of fact would advise the parties to perform further testing by qualified experts to see if a determination by scientific forensic investigation of the evidence to actually determine whether or not the cruise control lever or stalk was hit.

If it is determined that the cruise control was not activated, it therefore follows that a mechanical failure occurred. This is true based upon Newton's laws as well as the laws of quantum physics (equaling fact), which state the red and blue ball scenario which is a further extrapolation of the dead cat experiment. These scientific laws state that if there are two possibilities before there is proof of either of them, both are equally possible to be true. It also states that if one of the possibilities is proven to be either true or false, the other possibility must be the opposite of the first finding of truth. (When a blue ball is in a box in one part of the universe, and a red ball is in a box in another part of the universe and no one knows which ball is in which box, then each of the two boxes has an equal chance of being the box which contains red or blue. If the scientific observer can only get to one of the

boxes, the possibilities remain that both of the boxes could contain either a red or a blue ball. However, reality changes when the observer lifts the cover off of the box and observes either a blue or a red ball. Which ever one he observes, erases the possibility of both colors in the other box, despite the fact that no observer lifts its cover to see what is inside. It is already and reality that its color is the opposite of the color known, as it was known that one ball was red and one was blue when placed into those same boxes.

Right now, it is equally possible that a mechanical failure caused the car to accelerate as did a driver error resulting in accidental activation of the cruise-control. It is even possible that there is a third and as yet unknown cause of the, "sudden acceleration." It is also true that until the forensic science look has been completed, we don't know what caused the acceleration; that is we do not know if a red or blue ball is in the box closest to us. The information (or entropy) is out there. When the information is retrieved it will be the equivalent of taking off the cover of one of the boxes.

Lastly, "driver error," historically was responsible for the famous rash of crashes in the United States, in most cases, rather than equipment failure. None-the-less, Congress took the steps necessary to ensure that the brake interlock system to prevent the accidents, was installed on all cars for sale in the United States, back in the 1980's, which is common knowledge, not requiring citation. Despite the fact that it was proven that human error was responsible in virtually all the cases, the brake interlock system remains on all cars sold new in the United States. It is also true that the manufacturers did all the testing they possibly could to show that mechanical error was not responsible for these, "Unintended Accelerations, because they did not want to pay out an incredible amount of dollars to litigants. Strangely, it was found that this accident phenomena occurring in the thousands in the United States, did not occur at all in all other countries studied.

Yes, driver error. But Rich the manufacturers were held to a standard that made them responsible for driver error. That is they all had to spend the money to install these added systems to prevent the driver error from causing further accidents. Again, this is now common knowledge. The insurance companies probably did not mind this as well, because this interlock system prevented thousands of accidents that might have resulted in payouts of one kind or another to cover the property damages. **Rich; thus there is precedent for taking an action to ensure the safety of the very people committing the driver errors. (Better for society, don't you agree?)**

I have actually demonstrated that Mercedes-Benz knew for years that the system was unsafe. They even made a token effort to make the system safer. But did their actions make the cruise-control system safer? I say no that it did not. Cleverly in their public statements, Mercedes-Benz employees referred to the problem as, "comments." The manufacturer intentionally fell short of making any statements about safety. None-the-less they did that token effort in 2012. See radio show documentation and Industry Insider article documentation to support this.

I did a survey of Mercedes-Benz literature and videos meant for customer education. The videos in 2012 did not mention the change in lever placement. Finally in 2013 or 2014 there was a vague reference in the change of the placement of the levers with absolutely no explanation for the change of the placement of the levers. But, Mercedes knew. The amount of caution that Mercedes exercised to continued their bad design by swapping problem A for problem B, is amazing.

About half or more of the people who wrote into forums on the subject of cruise control lever placement spent their time praising General Motors or Chrysler or Ford cruise control systems. Some of these "commenters" derided persons who might get confused in lever activation or selection, variously calling them names or questioning whether or not they should even be allowed to drive. One commenter couldn't believe that Mercedes even attempted to solve the selection confusion with a lever swap. It is curious that Mercedes did not explain how two levers in the same relative positions corrected a problem that existed because of those positions (juxtapositions). But Mercedes-Benz did not during the WardsAuto.com article so often referenced by me in my communications.

Fast forward to the model years after 2016 model year. Mercedes-Benz did not exactly develop a "Split Personality," but it did at last engineer "safer" Cruise-Control systems for a good deal of its passenger vehicle fleet for sale in the United States. Cars without the specialized Distronic or Distronic Plus and similar systems had their cruise control actuation system move from a stalk on the left side of the steering column to a system of switch gear/electronic touch control combination located on the left side of the steering wheel on the 9 o'clock

position. At the very least, the directional signal remained in its logical position on the steering column on the left side of the steering wheel. The possibility of confusing levers was eliminated. I have used the system and found that it is a bit difficult for me to get used to. However, with time I hope to also be able to use it without taking my eyes off the road. The chance of my making "driver errors" while attempting to turn on the cruise control has been virtually eliminated. The simplest and best cruise control I've run into is on my 2001 Mustang. There are two buttons on the steering wheel controlling most of the cruise control functions. The only lever of the left side of the steering column is the directional signal. It is impossible for a driver error as happened frequently on the pre-2017 Mercedes-Benz models to occur with this system. Even if mistakes are made none of them result in catastrophic occurrences. Any mistakes only activate small changes in the cruise control speed allowing plenty of time to correct, before anything untoward happens.

Presumably, even with the new location of Mercedes-Benz Cruise-Control systems, "Accel" or "Resume," could be activated and cause a hard and undesired acceleration. I do not know if any fail-safe systems mitigate that potential, as of yet in the Mercedes-Benz newest cars. Notwithstanding, the actual lever confusion is eliminated in this system as mentioned in other communications with interested parties. No stalk or lever there to have this confusion occur. Why did Mercedes finally move the system to the steering wheel? Is that a question that should be answered relative to our case? If the answer is that the change was made because this change in access location is safer, then it is relevant. Why? Well isn't that what I've been saying, relative to the cruise control (assuming it can be shown the cruise control was on)?

At any rate, I will place Mercedes-Benz on notice that AAA has had experts look at some of the sensors or black box and was able to confirm a, "sudden acceleration." This is in order to put the onus on them to examine all sensors and the black box.

Since this is now the only independent evidence of what happened at the scene, it opens up the possibility that a factory defect caused that acceleration. The reason was not produced during the examination, if I understand you correctly, Rich?

Respectfully,

[REDACTED]
Copy: Susan of M-B, Headquarters, Executive Referral Manager; Thread Reference Numbers [REDACTED]
[REDACTED] not all numbers might be correct, but all included to ensure that one of them is a proper thread reference. My apologies for that. A.F.

[Quoted text hidden]

[REDACTED]
To: "Tabach.Rich" <Tabach.Rich@aaa-calif.com>

Sat, May 11, 2019 at 12:03 AM

Talked with Susan, who thus far has been the one at Headquarters assigned to communicate with me on this matter.

She informed me that Mercedes-Benz analyzed the data which revealed that the gas pedal is functioning normally. The cruise-control system was functioning normally. The brake was functioning normally. She says that electronci mal-function was ruled out. She notified me that there is no black box on that particular year and model of car (2014 Mercedes-Benz) for retrieval of more sophisticated data. I figured that having determined that all of these systems were operating normally (don't know how they figured that out, since methodology was not available), the Mercedes Technical people probably were able to tell if it was the accelerator or the cruise control which caused the sudden acceleration. So I asked her. She said the data did not give any indication of weather or not it was the gas pedal or the cruise control pedal. I discussed with her the fact that my foot was pinned

under the pedal. She stated the team did not investigate that and restricted their investigation to see if the system operated as built to function. Then she repeated that everything functions the way it should. She emphasized that the cruise control must be safe because it was "approved" by Mercedes-Benz. I responded that many recalls on automotive systems approved by manufacturers had been recalled because of poor, dangerous or bad design. She became flustered and frustrated with the questions about whether it was gas pedal or cruise control that had actuated the now known, "Sudden Acceleration."

She said that Mercedes-Benz makes no determination with regard to anything in accidents, other than whether something works. Susan carefully worded everything, but in essence stated that Mercedes-Benz tech people do not do any detective work into the causes of the accident. They only sort of clinically look at individual systems to see if they work. Further, there was no comment of the design or designs of the equipment. She stated that Mercedes-Benz equipment was, "approved." Apparently the idea is that if someone along the way, with the power to approve or disapprove a system, "approves" a system, then the system is???? Interpretation? To infer? I get the idea that she wanted me to fill in the word, "perfect;" or, "safe." As I mentioned, the fact that "Mercedes-Benz," approved the equipment and the design, means that it is safe. The inference is that a mistake (in the design, for example) couldn't be made if Mercedes-Benz, "approved, "the system. My summary, is that this is a very arrogant manner of viewing their systems.

I believe that Mercedes-Benz has been getting away with an unsafe design for years. There have been signs that Mercedes-Benz knew that the design was unsafe as two articles point out. There are some comments from Americans that confirm that they "think" that the design is unsafe. Asking Susan to comment upon the articles and what those articles mean, was like asking her the question in a language that she did not understand. There is always a reason that the question can't be addressed or answered with honesty. For example expertise is so narrow that the expert can only answer a question within their range of expertise. When I asked Susan to discuss if the arc of the angle that a person's hand glides through space isn't the same for both the directional signal and the cruise control, she would not answer. Susan was very sweet. She is very intelligent. The main problem is that when narrowing questions down to the possibilities that people in general might make and error moving the hand in the same direction for both levers, she changes the subject or declines to answer, because that is not their job.

One thing has been ruled out, at least by Mercedes-Benz: They claim there are no mechanical problems. Yet they cannot narrow down solely whether or not it was cruise control of the pedal that was activated causing the sudden acceleration. This makes it difficult for an outsider to know which it was. However, despite the CHP Officer's incorrect theory that I pressed my foot on the accelerator (apparently) thus causing unsafe driving and therefore the cause of the accident, I certify that I did not put my foot on the accelerator after I last put my foot on the brake, after the accident. If what I'm saying is true, then what the CHP Officer stated in the report is untrue: I was not driving the car faster than conditions permit. I was driving safely.

Continuing to drive safely, I looked at that lane to the right of me and observed the tight conditions. I know that I formed the intent to signal the right.

Based upon all systems being correct (Mercedes-Benz Technical, according to Susan of M-B Headquarters, Atlanta, Ga., and perfectly operational with their statement that there are no faults, only two possibilities remain: The Accelerator or the cruise control activated the car's explosive move forward. My assertion that I did not step on the gas pedal is further bolstered as the system not activating the forward thrust under highest possible power, causing immediate loss of control of the vehicle: my right foot, the only one I was using for the operations of driving was pinned under the accelerator pedal immediately as the gas pedal went down.

Because the gas pedal went down, if Mercedes-Benz people are both honest and competent, and all systems are operating perfectly with no malfunction, the only possible system that could have caused the car to experience the verified by AAA Technical, "sudden acceleration," is the Cruise-Control system. The system was activated, because of no other known method by me, as a process of elimination. (The blue and the red ball experiment by mathematicians and astronomers, now common knowledge) Since the gas pedal was not operator activated, then the cruise-control was the system activating the, "sudden acceleration."

The first thing that I must do, is to get the interested parties to agree that I activated the cruise control and not the accelerator pedal. Mercedes-Benz is one of the interested parties. Susan has said to me as best as I understand it, is that Mercedes-Benz has no interest in making such a determination. (If it cannot be agreed

upon that one of the other was the activating system, then Mercedes-Benz cannot be held responsible for anything, because causality is unknown and unverified, and that is a proposal as their motive. Leave equivocation over the two extant possibilities and no error of fact can be shown or demonstrated. Mercedes is in the clear in that event.

The second interested party is the first agency upon the scene: The California Highway Patrol. They have a vested interest in continuing to assume that I pressed or depressed the accelerator pedal causing the now verified, "sudden acceleration." Their officer has been placed under scrutiny at my request for filing a defective (and with a bout five words, a false), as well as misleading, Traffic Collision Report. As long as no one but me (an actual victim, not a perpetrator) is blamed for putting his foot on the accelerator, the CHP Officer would be correct in her conclusions and she would be off the hook. Each large agency protects their own, which is an unwritten law of organizations. In so doing, they protect themselves.

The third entity I must convince is AAA, my insurance company. Now, Rich, I know you have already suggested that I admitted hitting the cruise control. That lone act made me an unsafe driver? In other words, the act of attempting to put on my right-hand directional signal made me an unsafe driver? Yes, you would say, because I committed a driver error. Even though my right foot was pinned under the accelerator and there are two pieces of circumstantial evidence for which no one has provided an alternate explanation. (Susan, today on the phone said, that Mercedes-Benz does not look at things such as prints in dust. Instead it focuses on things like does the gas pedal work as intended. However, and this is important! Mercedes-Benz had their chance to weigh in on the circumstantial evidence and the question of what caused that dirt/dust pattern of cleanliness on the gas pedal assembly, and they declined. (I'm positive that our conversation was recorded, as I was warned that it, "may be."

I'm willing to admit, at this point for the reasons stated above and in the past, that I attempted to put on the right-hand directional signal.

Having admitted to attempting to put on the signal, I also state unequivocally that my hand, arm and shoulder worked together to move my hand through the space of two of the levers: The cruise-control lever and the directional signal lever. I inadvertently ran into the cruise control lever (only remaining possibility), before reaching the directional signal which I don't recall reaching or activating, due to running into the cruise control lever first.

Is the above, driver error. The answer is not a simple, "yes," or "no." It is a, "conditional-yes."

At this point, I am saying that I did not avoid the cruise-control lever, which I did not see, because the traffic density, I chose to keep my eyes on the road in the interests of driver safety. Instead, I put my hand about where I always put it when I want to signal a right-hand turn." (Activating the directional signal requires an arcing motion, upward and behind the steering wheel.) I will obtain photos of the levers with my hand behind them, which will show the path of motion necessary for activation.

The on-line u-tube videos that are public view, which are instructional, show the movement as being "up". The Mercedes-Benz videos of 2013-2015 do not show a complete picture of both levers with a person avoiding the cruise control lever. Additionally, no warning regarding these two levers and their juxtaposition is provided, by the manufacturer.

Why hasn't Mercedes-Benz ever stepped up to the plate to provide warnings about their system? Maybe to do so would result in a response from the NHTSA, saying, "Well, if you must provide a warning about the danger in your system, you need to change the system." Maybe there are a number of drivers who have experienced lever confusion and either had an accident or narrowly avoided an accident as a result of the design. Maybe it would open a flood of law suits.

If one looks at the article by Tom Murphy in 2011, and examines the language of the quoted officials of Mercedes-Benz, they do not ever approach the idea of driver safety. They basically only acknowledge, "comments." It is not exactly clear from their statements, just who the "comments" came from. Drivers of Mercedes-Benz? Occupants of other vehicles injured by a Mercedes-Benz where there was lever confusion? There is a sort of, "double-speak," by the Mercedes-Benz management employees. There is a suggestion of testing. But then there is a suggestion of holding something like Poll by management as again, "comments," are

referenced. There is no definitive statements of who it really was in Mercedes-Benz that provided in-put in 2010 and/or 2011, into the so-called new design, that resulted in the change of location of levers that Mercedes-Benz readily admits and actually comment about.

The journalist, Tom Murphy, (no rookie) provides his opinion without substantiation (no attribution of documentation offered or provided) that Mercedes made the change, "...intended to eliminate driver confusion." Maybe he did have some information from Mercedes-Benz or maybe he had information from some other source. It is doubtful that he had a lot of sources, based upon the kind and type of journalist he was and which agency he worked for: "WardsAuto." This is not a regular magazine for the average consumer. This is not a "Consumer Reports," type of journal. This is not a "Better Business Bureau" type of organization. An internet review reveals that this organization has developed over time huge resources and access to statistics and information gathering that caters to "Industry." It is more of an "insider," organization, in particular serving the auto industry, world wide. WardsAuto participate or hosts gatherings of auto manufacturers and it writes accounts of the gatherings. These vary widely depending upon the purpose. Some of this organization's reach includes polling its readers/subscribers with regard to market analysis of all kinds relative to new technology and how it might enter new automobile designs. It offers reports on the importance of markets in China, for example, for manufacturer's prospect of sales to the types of transportation most likely to be consumed within China, again for example. It projects the automotive demand and health in South American markets. This company stakes its earnings and its earnings potential on providing a wide variety of information to the automotive industry and saves the manufacturers from having to hire and employee an infrastructure to obtain the same information that the manufacturers are able to obtain for a fraction of the cost from WardsAuto. Further, WardsAuto, world wide is not the only organization providing statistics and various services to the Automotive industry. There is competition. In more than one country.

What is the point of giving all this above information? It is to evaluate the accuracy of the statements of Tom Murphy, the journalist who works for Wards Auto that wrote the article that makes the following clear from the July 15, 2011 statement article: "Just about anyone who has driven a Mercedes-Benz in the past decade has experienced it: unintended sudden acceleration because of awkward placement of the cruise-control stalk on the left side of the steering wheel." (The author made an error as such lever is located not on the steering wheel per se, but behind the steering wheel (relative to the driver's position) on the steering column. It is one of 3 levers mounted on the left side of the steering column in the 2014 Mercedes-Benz C350W (common knowledge).

Add me, [REDACTED] to the list of, "Just about anyone who has driven a Mercedes-Benz has experienced it: unintended sudden acceleration because of awkward placement of the cruise-control stalk on the left side of the steering wheel (column)."

The two paragraphs above employ terminology that requires definition. The words, "Just about anyone," means, "nearly everyone." Or, some people might say that it means, "most people." At any rate, dictionary definitions tend to show it as a heavy majority of people. Apparently a majority of people driving a Mercedes-Benz have had confusion as their end-result when trying to apply the directional signals in all models are covered, according to the Mercedes-Benz manufacturer executives interviewed for the article as they state the M-Class is the first of the models that will have a changed lever position. All the rest will follow. And history records that the placement change of directional signal/cruise-control did occur in all models including the M-B C350W, 2014.

There had to be a reason for the change. One of the problems with M-B management discussing the reason for this change, is that there is nothing specific, other than the mention of "comments." The journalist use the word, "complaints." Bernie Glaser, General-Manager, product management said that, "Customer feedback went into that decision..." (The nature and methodology of that, "feedback" was not provided.) Thus it is with a bit of smoke and mirrors, rather than facts that these generalized statements are offered by M-B management.

Jim Burch, Assistant Product Manager for the M-Class and the GLK-CUV, stated that the, "Market drove the new (the decision for) the new layout." (No definition of what the "Market," is, was provided except a loose description. "The comments were that there was some confusion with the cruise control," according to Burch.

What is clear, is that it was problems with the cruise control and not the directional signals that caused the change in the lever placement.

The next sentence by Burch makes no sense and quote, "We wanted to address that issue (cruise-control-

confusion), and this was the best solution based on testing with those consumers." When manufacturers do testing, they don't do it with consumers. There are all kinds of liability problems with that. Testing is done with dummies or computers and with engineering tests. If this was a survey or a poll, or suggestions by consumers, the manager did not say so. He called it testing.

Mercedes admitted to confusion with the cruise-control.

Now, with the combined work of Mercedes-Benz (all systems fully functional); AAA ("Sudden Acceleration" confirmed; statements and photographs by [REDACTED] driver of vehicle causing the accident that show a certainty, that [REDACTED] did not step on the accelerator pedal which then by default mean that [REDACTED] attempted to put on the directional signal, but failed to do so and instead activated the cruise-control lever, unintentionally moving it all the way to the third position where the "Accel" position ("Resume") was reached. By the nature of the way the system operates and was designed to operate (for some unknown reason) that "driver error" by [REDACTED] made it impossible for any other response from the Mercedes-Benz C350W to occur: Full throttle acceleration occurred.

Mercedes-Benz did not state what the normal response to this would be, but the average person would state that immediate brake application would be the fastest and most usual response.

Susan, a Manager for Mercedes-Benz, at their headquarters was asked about what a person with their foot pinned under the accelerator should have been and she replied, "Apply the foot brake with the left foot; she quickly added put on the emergency foot brake," and it sounded as if she had another suggestion but did not complete stating it.

I then added the fact that the sudden and very hard fall of the accelerator pedal produced so much pain in my foot that I had a reflex response (not possible for a human to overturn in favor of something else as it is involuntary) from the instant and severe pain that a complete jerk of my right leg occurred (pulling response away the source of pain). She did not allow me to complete the two subsequent efforts I made to free my foot. In thousands of hours of driving, nothing like this has ever happened to me before. In just a very short period of time the car in a very short distance of stop and go driving had already reached a speed where an accident may have happened. As it happened, the first thing I thought of was the ignition and I attempted twice to pull out the key. Frankly, so shocking was the entire event to my system and so sudden was the high speed, I did not think of putting on the foot brake with my left foot. In fact, I never thought of it until someone days later suggested that method to me. I've never been a two footed driver and I was trained that it is safer and easier on the car systems to drive as a one-footed driver. (I was also trained to drive a stick shift, but this car has no foot clutch pedal.)

I did research situations where the emergency brake was applied during sudden accelerations and in the cases I could find, the Emergency brake was not nearly sufficient in strength to stop a powerful engine under full acceleration. So that suggestion would have not been effective. My efforts to reach the key failed on two quick successive efforts as the g-force had me pinned to the seat (combined with my right foot being pinned under the accelerator pedal).

These are special circumstances, I admit. However in this combination of "driver error," and pinned foot, I don't believe anyone under normal circumstances and all things be averaged out and thus equal could have done anything to stop the car once the sudden acceleration began.

The only way this accident could have been prevented was one of, or more than one of, a design change--or any number of up to four fail-safes that could have been built in, plus one other method: a recall with the sole purpose of providing owners of these cars with this extant lever arrangement a warning and a revision in suggested use: i.e.: Always turn off the cruise-control at the lever, even if initially turning it off with the foot brake. Such would prevent the potential for any lever confusion between the cruise-control and the directional signal.

Mercedes-Benz, according to the literature had from the year 2000 to the year of 2016 (effectively model year 2014) to change the lever placement to steering wheel buttons or switches to make even an occasional "lever confusion," impossible to happen. They did not do so.

Mercedes-Benz could have raised the thresh hold of minimum speed to access the cruise-control memory via the "Resume" or "Accel" position by manual movement of the hand to a minimum of 45 miles per hour. Or

similarly simply made 45 miles per hour the minimum speed for cruise-control to operate at all. Mercedes-Benz failed to do so.

Mercedes-Benz could have put a distance fail-safe in effect so that if one, two or at a max three miles are traveled without resuming cruise-control, the memory would be cancelled as a safety feature. The driver would have, with the Mercedes-Benz cruise-control as configured, simply one small move with the lever for re-activation, barely any added work or effort, a great trade off for the safety it would afford. Mercedes failed to do that.

Mercedes-Benz could have put an interval (with a sensor or intervalometer) of time elapsed since the cruise-control was last activated/used. A period of time of over 10 minutes would seem to be reasonable, but one might even go to 15 or at maximum, 20 minutes since the last use of cruise-control. If not used for that length of time, memory would be cancelled. This would allow for change in traffic or weather conditions and would add to the safety of the vehicle. In my case, more than a half hour had elapsed since I last used the cruise-control and traffic conditions had in deed changed. Mercedes-Benz failed to do this.

Lastly, Mercedes-Benz could have issued a warning to owners of their cars, after the model year of 2011 (2012), that they should always cancel cruise control with the lever by turning off the memory retention, thus erasing the memory and preventing sudden acceleration in any situation. Mercedes-Benz failed to do so.

The financial cost of doing any or all of the above suggested safety changes that they did not do, of course would vary. But, it could have saved lives, injuries and property damage. How much is that or was that worth, not to do so. Especially with a company that talks about safety.

It is pointless to speculate why, in 2011-2012, Mercedes-Benz did not do more to assure the safety of its customers. The main point is that they did not.

As the episode previously cited indicated, a garage that repaired and maintained all types of cars, including Mercedes-Benz discovered during their post-work safety test drives, even these experienced professionals accidentally activated the cruise-control, causing unintended sudden acceleration during their test driving. The stated that it surprised and scared them to the extreme, when it happened. (They used a euphemism to describe their reaction.)

Let me say something else that is true. If Mercedes-Benz had done any of the above mentioned/suggested safety measures for their cruise-control system in 2011-2012, the accident with my 2014 C350W Mercedes Benz would not have happened.

Those who believe all systems are safe, if one just follows the instruction manual cannot see that the instruction manual did not deal with unintended sudden accelerations that were caused by lever confusion. This was brought to their attention. And Mercedes-Benz did actually do something. But, from my accident, it is clear that they did not do enough.

With regard to the other way the accident could have been avoided, that would include turning off the memory at the lever. But the Mercedes-Benz manual and their instructional videos never suggest that as a part of how to use the cruise-control. In fact they only mention that one of the ways to deactivate cruise-control is to step on the brake (or clutch in a stick shift car). In fact, in my first contact with a Mercedes-Benz employee, her last words to me were, "All you have to do to turn off the cruise control is to step on the brake." This was in phone conversation to M-B headquarters when I first attempted to tell them about the accident and suggested lever confusion might be the cause.

Since driver error is part of what happened to cause the accident, by what basic fundamental aspect do I believe places the responsibility on or upon Mercedes-Benz, other than if they had acted as suggested above, herein, the accident would not have happened?

Basic trust in the brand, Mercedes-Benz is one reason. A company known for safety innovations surely would not leave something such as cruise-control in a method of operation (MOA) where the possibility of an accident might occur. Interestingly, until my research into complaints with regard to Mercedes-Benz cruise-control, after my accident, I had never heard about problems with UA's (Unintended Accelerations) with Mercedes-Benz. (I

had heard of the problems with Toyotas, however, for example.)

Mercedes-Benz is taking the (arrogant) position that their cruise-control system is, "approved," by Mercedes-Benz and therefore it is entirely safe.

If the Mercedes-Benz system is safe as claimed above, then it is their position that I of free will somehow engaged in driving the car but did not follow the driver's manual operating instructions. But I did.

How then did I have an accident: A bad and defective design that has caused so many drivers to have lever confusion that in 2011, Mercedes-Benz chose to do something about it. It appears that what they chose to do was not sufficient to take away completely, the tendency for some drivers to continue to have lever confusion (that was dangerous).

Is there any other evidence that Mercedes-Benz has done something to reduce the danger of their cruise-control's control features? Yes. In my 2019 C300W, AMG Line, the cruise-control activation methodology has been moved from a lever on the left side of the steering column to buttons/switches/sensor on the steering wheel. An effort to research the reason why Mercedes-Benz did so, revealed absolutely nothing about this change. This time, unlike 2011, there is no "insider" industry article to state the reason for the change. (Mercedes is a member or has been a member of a number of automotive manufacturers groups with all different kinds of goals and intents. Among them in Europe was a long time group of major European manufacturers in which improved safety of the cars and their systems was one of the goals. (Source: General Internet search with Mercedes-Benz and safety as the key search words.)

I researched the opening of the article by Tom Murphy attempting to find the actual dictionary definition of, "Just about anyone..." It seems to mean, "Everyone," but with a qualification that is so slight, it is not significant. Just about anyone means, also, "anyone." It also appears to mean the average person within a specified or non-specified environment. Or it means, "That it might as well be everyone." Weather or not he provided a source, Tom Murphy was referring to most drivers of Mercedes-Benz's for any length of time have experienced at least a momentary error in selecting either the cruise-control lever or the directional signal lever when intending to do the opposite. Sometimes the outcome is more dangerous than at other times, depending upon which lever was desired and which one was deployed.

Rich, I know you know. But calling your attention to the definition of influence, I have found many definitions. Some of them are: 1) to influence something without actually causing it to happen. 2) The power to have an important effect on someone or something; 3) a power, causing an effect without any direct observable causal relationship; 4) The effect of one thing upon another; 5) having or exerting an effect.

A car is not only a moving vehicle, it is a confined space. Basic systems of the help it to start and stop and to transport people and/or cargo. Additional systems are meant to make the basic job of starting and stopping, called driving, easier. Some would argue not to forget all the comfort and luxury items a car has, but actually all of them perform the same function: they assist the driver and his passengers (hence the driver) in many imaginable and even unimaginable manner, during driving and even parking.

The driver of a car is a customer and driving is a privilege. The driver selects the car and its features based upon his own ideas of what a car should be and should offer. As time has progressed, safety features, just as much as convenience features have continually been added to cars, usually by the manufacturer, so that the business can successfully compete with other manufacturers. Advertising is a field where its success depends upon attracting a purchaser often enough to buy the product that the company turns a profit. Cars are one of the most expensive products that the average person in the USA purchases during his or her life.

Of all the ratings for car manufacturers, initial owner experience and the scarcity of problems with the car in early and even later ownership are of a high priority. With the movement towards cars that are ever more autonomous, safety has become one of two areas that is stressed by manufacturers as they attempt to sell to the public through advertising and reputation. Mercedes has a number of advertising campaigns and motto's such as, "The best or nothing." They also currently and for years talk about their safety innovations such as seat belts, ABS braking systems, lighting systems, pre-crash preparation by sensors in the car; and blind spot warning in the rear-view outside mirrors. The industry talks about the safety of cruise-control systems such as that currently exhibited by Nissan's Rogue. The car has a cruise-control system whereby the car drives itself. It

combines that system with another which keeps the car centered in its lane. (These are all parts and precursors of the self-driving cars, and as such, governments and governing bodies and auto manufacturers have already developed certain, "levels" of self-driving potential of vehicles which tout what they can and cannot do.

Mercedes-Benz has assiduously circumvented talking about its cruise-control in its advertising for the most part, particularly in the United States, with regard to it being a major safety feature. Instead, it emphasizes its move towards technology with "smart steering wheel controls". It speaks of the luxury of its various DISTRONIC Plus systems of cruise control, but with this system warns the drivers of its cars, still not to rely on it for braking nor for auto start and stop and it discusses under what circumstances the cruise-control shuts off until re-initiated by the driver.

Mercedes introduced a system of cruise control at one point which was on my 1999 and 2000 C280's, that was very good. It's been a long time, but the lever was a skinny metal rod with a plastic handle on it and one had only to go in or out or up and down to claim full benefit of the lever. Apparently, it was located above the directional signal. During my many years of using those levers and including my acquisition of the C350 in 2008 along with another new Mercedes-Benz sedan bought new in the US with a 5-speed manual transmission, all having this same familiar cruise control. During those model years and also including an SLK sports convertible I never had a real problem with the cruise-control. (I've owned other cars and I have upon too frequent of an occasion accidentally activated my windshield wipers when I was attempting to activate my turn signals. (I always thought it made no sense to incorporate windshield wipers with directional signals.)

Then Mercedes-Benz changed the lever arrangement as documented for the 2012 model year. I was not aware of it at the time, but this was a most-dangerous arrangement. That was brought home to me on February 23, 2019, when I (most apparently) attempted to turn on my right hand turn signal without taking my eyes from the road, and inadvertently activated the cruise-control "Accel" position ("resume") causing me immediately to lose control of the car. I was unable to ever regain full control of the car because of the rare situation of having my foot pinned by the accelerator pedal in a most painful manner actually causing me to cry out and to have an involuntary reflex reaction of jerking my leg away from the source of the pain.

Having extensively detailed the elements and sequence of events, the combination of 'lever confusion' and the pain generated by having my foot pinned to the floor area resulted in an unusual situation that made it impossible for me to stop the event sequence that happened at the even horizon.

Despite the fact that I did not put on the signal as it states in the operators manual, I stated a series of circumstances that show that Mercedes-Benz has a bad design. At the same time I eventually began to look into the design to see if I was the only one this had ever happened to. While not exactly duplicating my specific circumstances, I found that apparently, nearly everyone who has driven one of these older, but still reasonably contemporary Mercedes-Benz vehicles has experienced "lever confusion" and that unintended and sudden accelerations occurred to them. Not only was I not alone in this happenstance, the incidence of this was rather common.

Mercedes-Benz know all about this. They really did nothing to fix the problem. Mercedes, it has been discovered, tightly controls information about their owner's experiences with the cruise-control. I submit that there is a reason for this and the reason is greed. It is arrogance. By Mercedes own admission today, its manager disclosed that nothing should ever go wrong with the system because it is, "Approved." (by Mercedes-Benz.)

Mercedes-Benz' "approved" cruise-control system resulted in my having had lever confusion and the result was an unfortunate 4-car injury collision. An incompetent and incomplete investigation by a relatively young California Highway Patrol Officer resulted in a report conclusion, not at all supported by facts, that I had been driving too fast for conditions on the roadway. The report inaccuracies were numerous and I have documented them. Since I happened to be an honorably retired Probation Deputy with years of training and experience in investigations, I know what a good and a bad investigation is. I just happened to be, "an expert," in the area and was thus able to analyze the report.

Mercedes-Benz put a system in place that influenced what happened. That is, it influenced my actions in several ways. It did not warn me to make sure to turn off the cruise-control memory when not in use (see the manual, 2014 and the videos of 2014, where that is not advised. In fact in 2019, conversation with a Mercedes-Benz

headquarters employee still had her saying to me directly that I turn off the cruise-control by pressing the brake.

As seen by definition, "influence" can be a powerful force that can lead to an effect, even though there is no obvious or apparent connection. This is the case when a design of the Mercedes-Benz cruise-control feature the levers lined up in the same plane as the motion necessary to activate both levers is the same and in the same direction within that plane. No one has spoken of how many inches apart the levers are. No one has spoken about a hand on the wheel going behind the wheel only about an inch or so with a hand, while keeping eyes on the road and hands nearly virtually on the wheel at the same time, with left hand coming off the wheel only for a moment to make the motion necessary to activate both levers. It is nearly the same motion and when not looking, unless a person has a perfect kinesthetic touch memory, just missing the exact location of one lever by a small margin of error is enough to activate the incorrect lever (not the one of choice, that is.).

Again. The location of the levers influenced what happened. Heavily. The lack of warning of a situation regarding and about which Mercedes-Benz knew well was key in what happened. Its manuals and videos did not include the "lever confusion" experienced by "Just about anyone" who had driven their cars. While Mercedes-Benz has relied upon the fact that there is no apparent connection between the lever placement and actuation design, ergonomically, (by pointing to an instructional of how to operate the cruise-control in isolation, Mercedes-Benz does not even mention to be wary of its lever juxtaposition arrangement. Mercedes-Benz placed an obstacle in the way of its directional signal lever. However all it supplies is an operation guide for the lever and for the lever that is an obstacle to be overcome in all situations. Of course at a stop, one can look at the lever and follow the manual and then, for example, execute a right turn. But in busy traffic conditions, with a lot going on and heavy traffic, the driver's attention is upon not getting into an accident and upon safety. The distractions are just enough where the driver's actions are influenced by the placement of the levers and their improper ergonomics to such an extent, that the design makes for a relatively high probability that one cannot follow the manual and video operations, even if one wants to. This of course is not all the time. I've been driving since I was [REDACTED] years of age and am now [REDACTED] and just took my driver's test in December. I had one of the highest scores of all drivers of all ages, missing only 3 points off a perfect score. Even my driving evaluator informed me that his best ever score when he took the test himself was a, "-4."

In view of all that I have submitted, I have shown that a bad design was an powerful influence upon me and my driving, such that what has happened to apparently thousands of people, happened to me and I made a driver error due to levers placed very close to one another and who's required actions were the same, in a traffic scenario where I had to rely on muscle memory to safely attempt to put on a right directional signal. A slight error caused me to do what so many others have done: hit the incorrect lever. It is that action alone and it is that exact action at that very point in time that was causal of and to the accident. Had this dangerous design not existed, or if Mercedes-Benz, who knew of the problem but did nothing substantial to correct the problem (2011-heavily documented)--had they done any of a number of easily done actions, this accident that I was in and victimized me and my wife in addition to the others, would never have happened.

Respectfully submitted,

[REDACTED]

Wed, May 22, 2019 at 12:10 AM

To: "Tabach.Rich" <Tabach.Rich@aaa-calif.com> [REDACTED]

My continued efforts to locate Eric have failed as no one in M-B says they have ever heard of him.

Also, I stand corrected with regard to the 2003 Farmer's Market Tragedy. The suspect was in fact convicted on all 10 counts of vehicular manslaughter. He was given probation and house arrest approximately 4 years after the tragedy. The judge ruled that he was no healthy enough to serve his sentence in prison; that prison did not have the facilities to handle his many medical problems. Mostly, after that a nursing assistant was hired to look after the man and to give him his medications and he subsequently died two days after his [REDACTED] birthday. It was the National Transportation Safety Board which made the finding that he was not criminally negligent and that it is likely that high stress combined with his age and factors that were researched and discussed by the

professionals was the cause of a tragic accident.

The court on the other hand had witnesses describe his actions during and just after the "accident" and decided that he was very intent, both hands on the wheel, looking straight ahead. He was heard to say that the pedestrians shouldn't have just stood there but should have gotten out of the way of his car. There was no empathy for the victims. His actions with a victim on the hood of his car and another under his car did not appear to stir any caring by him. That is among the reasons the court ruled as it did.

As mentioned there was factual scientific information about what drivers do in different situations found in the pages from 35 to 38 discussing: 1) Driver error; 2) Driver Responses to stimuli under differing conditions; 3) Changes in position and how those changes effect what a driver does, lending to or causing driver error; 4) Driver's perception after initial mistakes are made or after an "Unintended Acceleration," begins.

Despite the Buick driver being convicted of all 10 counts of vehicular manslaughter, and was the major contributor to the loss of life and injuries and property damage, none-the-less, civil suits resulted in a number of large awards to victims and their families and percentage fault was attributed to the City of Santa Monica and organizations responsible for pedestrian safety at Farmer's Market. Further it was found that the manuals discussing the safety were not up to date and that recommendations for a specific change in the barriers in the street had already had precedent in another part of the country where temporary but locking steel cylindrical barriers had been put into the street. Generally regarded as permanent, they none-the-less can be quickly removed to allow emergency vehicles to get through if it became necessary. The same procedure can be followed if the street area is to be opened for specific reasons or has some days open and some closed.

Even though those organizations and municipality did not seek to hurt anyone, they were negligent in their "plan for safety;" they were also negligent in what they did for safety, not following State and National recommendations; and they failed to put in place certain barriers that most certainly would have substantially reduced deaths, injuries and property damage. In other words, the courts ruled that although these entities did nothing to cause what happened to happen, the physical and paperwork plans for designs were inadequate and therefore set conditions where, although they did nothing to cause what happened, they did nothing to prevent it. Further the necessary design changes were know and available and had been implemented else where in the USA.

This National Transportation Safety Board (hereafter: NTSB) report is analogous and parallel to my situation, in that while Mercedes-Benz did not do anything to make me commit driver error in mistakenly, unintentionally and inadvertently activating the cruise-control system which immediately and then and there caused a full, "Unintended Acceleration," was just as described in the NTSB report. The decision of the courts in the civil cases is just like my situation: While there were manuals and videos available to the public (includes me) that showed how to operate the Directional Signals and the cruise control, those manuals did not discuss location of the two steering wheel mounted stalks in terms of their juxtaposition. Further, despite continuing to receive, "comments" by their own admission, regarding, "Driver Confusion," Mercedes-Benz did not warn owners and/or drivers of their vehicles of this known safety problem. (Sufficient documentation has been presented to show that the words, "known safety problem," are true and an accurate representation of what the Manufacturer knew and how long the knew it (from the year 2000 through 2016).

Thus far Mercedes-Benz provided to official statements with regard to what happned: First, what I claimed to have happened, could not have happened, because, 1) "... when you apply the brake when previously using cruise-control, the system turns off;" and, 2) Even if your right foot was pinned under the accelerator, "...you could have used your left foot to apply the brake." The first statement is attributed to the woman of first contact at Mercedes-Benz in Atlanta, Georgia at Mercedes-Benz headquarters. Additionally, she refused to refer me further to a manager, as this accident did not meet the standard for sending the accident and its elements, "...to the next level." The second statement was by Susan, the manager with who I had several phone contacts, e-mail contacts, and U.S. Mail contacts. She stated her offering of opinion in what was our last telephone conversation. We attempted to keep things civil and we wished one another a Happy Mother's Day (to come a couple of days later in 2019). Having already introduced the NTSB Report with the information contained in the Report in the year 2004, with the explanation of what happens to drivers (someone actually added the word, "elderly," to the report, although the research appears to have stemmed or come from studies of drivers of all ages. Report conclusions is that the physical movements and conditions described were increased or enhanced in elderly drivers because of years of habitual driving responses; because of a slower response time to a

stimulus; and a loss of some flexibility in thinking during a "panic" situation.

(The NTSB Report also documented that driving different cars over a period of years that has different systems provides a sort of "learning" that is stored in the brains of drivers that can contribute to driver confusion, particularly in times of stress. This aspect of the M-B system has not resulted in any statement regarding 'safety' by any Mercedes-Benz official or manager that I have been able to locate anywhere on the Internet. (Allegedly, 'safety' is a number 1 concern of Mercedes-Benz which has been members of various U.S. and International organizations concerned with improving safety in all automobiles. I haven't located official safety statements regarding cruise-control in U.S.A. sold Mercedes-Benz nor any other make for that matter.

Although the Report did not detail anyone getting their foot caught under the accelerator pedal specifically, the Report did detail how that might have occurred, discussing changed position as impacting subsequent actions and cited reasons about how changed positions for one reason or another could result in an atypical response by a driver. In the Report, discussion was focused on the right foot and a confusion regarding location of the brake pedal and accelerator pedal. It may just as well have been explaining two things: 1) Migration of driver's foot under the accelerator pedal;

2) Changed position influencing muscle memory to make a slight error during the arcing motion of a left hand from the steering wheel towards (a usual target) inadvertently activating the cruise-control lever while intending and attempting to put on the right-hand directional signal.

Interestingly, Mercedes-Benz has chosen to ignore the scholarly and scientific investigations and the Report that demonstrate just why the inadvertent application of the cruise-control occurs. "Ignore," meaning that the manufacturer did not do something substantive to help to reduce risk. In doing nothing, Mercedes-Benz is not unlike the Municipality of Santa Monica and their safety plans that included bad designs. While Mercedes-Benz did nothing substantive to correct the situation, they did do something, as detailed in the WardsAuto article in July 2011 Industry Insider article where Mercedes-Benz managers discussed the change of position of the levers, because of "comments." In the same article, however, there were statements never refuted by Mercedes-Benz that the arrangement of the two levers resulted in a majority of users of Mercedes-Benz automobiles accidentally hitting one of the levers when their intent was to activate the other lever.

Despite adding more length to this statement of facts, it cannot go unsaid, that Mercedes-Benz ignored the recommendations of the 2004 NTSB Report discussing accidents and information gathering which would lead to obtaining information from cars involved in accidents so that data would be generated that could be accessed and lead to the making of changes in automobiles that would progressively make those auto safer and safer, accident by accident as more and more data was retrieved and interpreted. According to Susan of Mercedes-Benz, there was or is no Event Data Recorder in the 2014 models of the C350 (W). (I do not know if this is accurate or not. Tripple A did retrieve one piece of data, showing that the car experienced a high speed acceleration.) I would need their statement as to which sensors provided that factual information, to know what was examined in order for that conclusion to be drawn. Mercedes-Benz technical field personnel (no names provided) did an examination of the vehicle. However, and telling, Manager Susan who related this information to me over the telephone did not provide to me a written copy of Mercedes-Benz official findings. Therefore the information that Susan provided to me, is in effect, hearsay.

In a related aside, I have read and observed several reviews of the 2019 Mercedes-Benz C300 (W) four-door sedan (Coupe as well) on the Internet, by a variety of professional and quasi-professional reviewers. In one of the reviews of the C300, it was stated, in effect, that, "...Mercedes-Benz is in the process of phasing-out cruise-control from a stalk on the steering column to a location on the steering wheel (switches/buttons operation).

My search has revealed four different recordings of data discussing the problems with the Mercedes-Benz, as I have documented and made hard copies to save in manila folders with storage of same in fireproof controlled atmosphere storage. Note: Mercedes-Benz has not issued any recalls or warnings regarding their cruise-control and a continuous search for such information or comments by M-B with that single 2011 exception, [vague though it was], has thus far been fruitless.

I have also discovered a lot of information on cruise-control systems on makes and models of all kinds. This is found with comments on many sites all over the internet. Comments vary tremendously, but include aspects of safety and ease of use and practicality. Comments also cover systems that are difficult to use. Apparently this is an emotional subject because, commenters at times call each other all sorts of unflattering names, question

other commenters intelligence and advocate for all automotive to copy their favorite system with some wanting laws passed to mandate such systems.

Lastly, many professionals in many fields have commented that they, "...do not believe in coincidences." I'm sure they occur sometimes, but often what appears to be coincidence or just an isolated fact is in fact, instead a coordinated effort to control thought by controlling speech. I believe that the lack of statements by Mercedes-Benz and the very-guarded language used even in an insider article is a very concerted effort by Mercedes-Benz to make the danger of their design, go away, by eliminating any real language on the subject of safety of their cruise-control systems, in hope of making it, "not a thing," to use a current expression.

It appears that for completely different reasons, a lot of organizations and entities, public and private are either wittingly or unwittingly aiding Mercedes-Benz in this effort to eliminate any conversation of the safety of their systems. However, there was that one program by actual M-B testers, The Truth About Cars, that did refer to safety when the program orated by owners of a fairly large Automotive Repair and Service Business, stated in effect, "We always thought it was a bad design." They confirmed that even as professional drivers/testers, they had multiple incidents of inadvertently hitting the Cruise-Control and even reported being frightened by those incidents.

Thank you for again reviewing that Mercedes-Benz is partially responsible for the accident on 2/23/2019. How much? That is unknown. But with thousands of drivers driving those M-B models with those two levers mounted on the steering column, at the very least, a recall with warning, signed off on by all the owners of those cars should be strongly considered to be mandatory by an agency with the power to authorize said recall and/or warning.

Respectfully and very sincerely,
[REDACTED]

PS: I don't hate Mercedes-Benz. I like the company and its general reputation for safety. I like the M-B cars and their precision. However, even as I am now driving a new M-B C300 with cruise-control now on the steering wheel instead of on a stalk on the steering wheel, I have noted at least one and possibly two buttons or switches that are located so close to one another that I an other owners of the car have mistakenly hit the wrong button. Amazingly, (to me) the button is a roller switch that manages the volume of the audio/sounds of the radio, certain warning sounds, telephone volume, navigation volume and perhaps others. It is a switch that is used multiple times by most drivers every time they drive their car somewhere. Pretty much anywhere. The switch which is less than an inch away, is some sort of switch that completely turns off the central information and infotainment screen along with access to all kinds of aides. On two occasions in two different M-B's I inadvertently hit that switch and the whole car literally went silent and all the screen on that central monitor went entirely black. There was no warning statement as to what had happened. The first time it happened was in Mercedes loan car, and E300. What ever happened, when I returned the car to Mercedes-Benz, they were not immediately able to correct it. They told me they would send the car back to, "the garage," to have the problem fixed. The second time it happened, was in my new C300 W M-B. I was still shocked that this happened and stressed a bit. The car continues most of its operational functions when this happens. I was on my way home when this occurred so that several minutes later, I pulled into my garage, shut the engine off and pulled out the owner's/driver's manual. It took me approximately 15 minutes of intense search, looking through the buttons one by one until I discovered this sort of "kill" switch to the infotainment system. The manual identified the function and it was only then that I could locate the switch. I discovered that hitting the switch a second time, allowed the infotainment system to switch back on and to again become usable.

The above was a very lengthy, "diatribe." Yet it is factual. My friend [REDACTED], has also a 2019 C300 Coupe (2-door) and we were at a restaurant and walked to his new car to take a look. He related , at some point, the strangest car experience he had with the car: having the infotainment systems (and apparently some other systems) just suddenly shut down. He looked while driving for a resolution on the dash areas but could not locate how to fix the problem. He was only able to fix the problem after he stopped the car and opened the driver's manual and he relates it took him a five minute search to find out which switch was responsible and where it was located. (He never said so, but it is quite likely that he was attempting to adjust the volume roller switch and hit that, "kill switch," instead, causing the, "black-out." Even in a 2019 Automobile the Engineers put two switches right next to each other that causes driver selection confusion. M-B has a proclivity for this,

apparently.

Respectfully,

Please provide copies to all managers reviewing my 2/23/2019 accident C#:

On Mon, May 6, 2019 at 9:31 AM Tabach.Rich <Tabach.Rich@aaa-calif.com> wrote:
[Quoted text hidden]

Tabach.Rich <Tabach.Rich@aaa-calif.com>

Wed, May 22, 2019 at 9:54 AM

Thanks for the information.

Rich Tabach

Claims Service Representative

Office 661-291-3823 fax 714-754-2094

Manager: Joseph Minkin phone: 661-291-3810

"We're always with you"

InterInsurance Exchange of the Automobile Club

From:
Sent: Wednesday, May 22, 2019 12:11 AM
To: Tabach.Rich;
Subject: Re: FW: Claim:

ATTENTION: This e-mail came from an external source. Do not open attachments or click on links from unknown or unexpected emails.

My continued efforts to locate Eric have failed as no one in M-B says they have ever heard of him.

[Quoted text hidden]
[Quoted text hidden]
[Quoted text hidden]