

Disputed Toyota documents could shed light on safety accusations

An arbitrator is asked to unseal the documents in a federal case in which a former company lawyer claims the automaker concealed evidence.

By Ken Bensinger and Ralph Vartabedian

As Toyota Motor Corp. scrambles to contain its sudden-acceleration crisis, another potential blow to the automaker's credibility is lurking in the form of a former Toyota attorney who is accusing the automaker in federal court of concealing safety issues from the public.

A ruling expected soon in the suit could make public thousands of internal Toyota documents that show the company conspired to hide evidence in court, according to Dimitrios Biller, who defended Toyota in product liability cases until 2007.

Biller, of Pacific Palisades, alleged in a federal lawsuit filed last summer that the automaker has a long history of hiding and destroying evidence as part of a strategy orchestrated from company headquarters in Toyota City, Japan.

Toyota and Biller have been involved in a tangle of litigation in state and federal courts for months, centered on 6,000 internal documents obtained by Biller. He says the documents show a pattern of illegal behavior in which Toyota fraudulently withheld evidence in product liability cases.

At Toyota's urging, the documents have been kept confidential by court order since last summer. But now a California arbitrator is considering whether they can be made public. Attorneys for Toyota and Biller made their final filings in the matter last week, and a decision is expected soon.

If the arbitrator rules in Biller's favor, a legion of plaintiff's attorneys are waiting to reopen long-closed cases against Toyota.

Although the allegations don't directly concern Toyota's growing sudden-acceleration headache, the Biller case is another assault on the automaker's credibility, which has taken a hit in the current crisis.

"Toyota is a very secretive corporation," Biller, 47, said in an interview. "It doesn't believe anybody outside the corporation deserves to know what is going on inside, even if it kills somebody."

Toyota denies Biller's allegations and contends that any attempts on his part to reveal documents would be a violation of a \$3.9-million severance agreement he signed with the company.

"Mr. Biller is legally bound not to reveal documentation he acquired when he was in our employ," said Celeste Migliore, a Toyota spokeswoman.

But attorneys who have been involved in litigation with Toyota are watching every move.

"If this is as widespread as suggested [by Biller], then you're going to have lawyers all over the country wondering what was hidden from them in their cases and deciding what that means for their clients," said Jeff Embry, a Tyler, Texas, attorney working on a Toyota rollover case.

Biller came to Toyota in 2003 to manage the company's defense of lawsuits involving rollover and crushed-roof accidents. Biller said he took multiple cases to trial, reversing a corporate strategy of settling.

Biller said he began noticing problems after two years with the automaker. While preparing to litigate a rollover case, he said, he visited various Toyota offices and discovered troves of documents that hadn't been provided to him through normal channels.

"I was distraught because I knew there probably was stuff in there that the company did not produce," Biller said.

Normally companies gather all relevant documentation, including e-mails, engineering documents, memos and regulatory filings, in anticipation that plaintiff's attorneys may request them as part of the legal discovery process.

"Lawyers have obligations to their clients and to the court," said Carl Tobias, a University of Richmond law professor who specializes in product liability issues. "Right now, people are wondering what the company knew and when they knew it."

According to Biller, he uncovered a "conspiracy" to keep potentially damaging internal information such as vehicle test reports away from outside attorneys in as many as 300 cases.

"Toyota does not believe it has to follow orders or turn over documents," Biller said. "They just don't think the rules apply to them."

Frustrated by what he described as resistance from his supervisors to resolve the matter, Biller left the automaker in September 2007 and signed a severance agreement.

He acknowledges that he has been in treatment for mental health issues since late 2005, which he attributes to the stress he was placed under by Toyota. "I never saw a shrink in my life before working for Toyota," he said.

In a statement last fall, Toyota said that Biller's "allegations are both misleading and inaccurate." The automaker sued Biller in California, alleging he had violated his severance agreement, in late 2008. That case is pending.

Biller has also sued the Los Angeles County district attorney's office in federal court after a three-month stint working there, following his departure from Toyota, ended in his termination. In state court he has sued the attorney that represented him in negotiating the severance agreement. Both cases are pending.

"Mr. Biller appears to be very litigious," said James Gilbert, an Arveda, Colo., attorney who said he has handled dozens of rollover cases against Toyota, including ones managed by Biller.

Still, Gilbert said, "Biller was on the inside, so who knows what he knows."

Biller's argument took a blow in late December, when a Texas attorney who had moved to reopen a rollover case against Toyota based on the allegations suddenly moved to dismiss. The attorney, E. Todd Tracy, said that Toyota had shown him a "mirror" copy of the documents Biller possessed and they did not convince him he had a strong-enough case to move forward.

Toyota subsequently said it had shown Tracy only "nonprivileged" documents.

In late December, Biller notified Toyota that he intended to provide a complete copy of the documents to the Los Angeles Times, prompting the automaker to ask a California arbitrator to bar him from showing them to anyone.

While that issue is pending, a federal judge in Texas may also have a hand in the Biller matter.

Part of Biller's complaint against Toyota alleged that it had hidden evidence in a rollover case that left a young woman paralyzed. That case was settled in spring 2007, but based on Biller's allegations Embry in September asked a federal judge to sanction the automaker for contempt of court.

Embry has called Biller as a witness in the case.

"We went to get him under oath and ask him if he was asked to conceal evidence," Embry said. "We want to see justice done."

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