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Inside Toyota's 'Books of Knowledge'

Automaker shields private info from plaintiffs; congressman asks: Did the company go too far?

Neil Roland

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WASHINGTON -- Over the years, Toyota has settled a lot of product liability lawsuits, in part so it wouldn't have to produce proprietary internal documents to the plaintiffs.

Toyota's critics -- including a former Toyota lawyer and a high-powered congressman -- say the automaker went beyond that routine legal strategy and illegally withheld documents that it was required to produce.

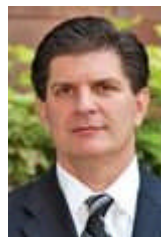
The ex-Toyota lawyer, Dimitrios Biller, who himself is suing the company in connection with his 2007 departure, contends that Toyota has managed to avoid paying much larger awards by withholding data from what are known inside the company as the "Books of Knowledge." The Books are a collection of sensitive electronic records about internal vehicle design, testing and performance, he says.

Toyota acknowledges that it hasn't given information from the Books to plaintiffs who have sued the company after crashes. But Toyota also says it either wasn't required to turn over such information or wasn't asked for it.

Biller has won a powerful supporter in Rep.

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Dimitrios Biller, a former Toyota lawyer, says the so-called Books of Knowledge consist of hundreds of thousands of electronic documents covering "Toyota's philosophy and specific tools it uses to develop, design, engineer, evaluate and test vehicles."

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Ed Towns, D-N.Y., chairman of the House Committee on Oversight and Government Reform. Towns says Biller's internal e-mails subpoenaed by the panel show that Toyota illegally withheld the Books in a number of lawsuits over the years.

Towns would like to have courts reopen all cases in which the Books should have been produced.

Towns' committee -- one of two House panels to hold public hearings this year on Toyota safety -- is studying the automaker's record on unintended acceleration, not rollovers. But he says the way Toyota handled documents in rollover cases may reflect on its credibility.

Lawyer's view

One Detroit lawyer who has represented plaintiffs in product liability cases against automakers for 37 years says a company would face stiff fines if it failed routinely to provide evidence requested in personal injury cases.

"The systematic withholding of evidence in discovery would not be favored by any court," said David Christensen, a partner with Charfoos & Christensen in Detroit. "That's an understatement."

Christensen was speaking in general terms and is unfamiliar with details of the Toyota case.

He said that when plaintiffs seek proprietary design documents from an automaker -- the kind Biller contends are contained in the Books of Knowledge -- companies generally release them after obtaining a protective order that forbids further distribution.

In a Texas case, a woman who was paralyzed after her Camry rolled over is seeking to hold Toyota in contempt of court for failing to turn over the Books.

Biller, who negotiated a \$1.5 million settlement with the woman in 2005 when he was with the company, speculates that she could have secured payment of as much as \$12 million if she had access to the documents. Toyota is contesting her claim.

Toyota, which also faces dozens of unintended acceleration suits, suffered a setback last week when the U.S. Transportation Department said it plans to seek the maximum \$16.4 million fine against the company for allegedly hiding a gas-pedal defect.

Plaintiff lawyers say the fine, which Toyota can contest, would bolster their cases.

While both Biller and Toyota agree that the Books of Knowledge are highly sensitive documents, they describe the contents differently.

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Inside Toyota's 'Books of Knowledge'

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<p>OEMs & Suppliers Manufacturing Executives Design Future Product Green Cars Technology Cutaways Talk from the Top World Congress Special Sections</p>	<p>The Books contain "proprietary and commercially sensitive information regarding job process flow, manuals, procedures and regulatory information" compiled since 2002, Toyota said in a March 12 letter to Towns' panel.</p> <p>The company said materials from the Books "have not been produced because the materials were not responsive to the requests at issue, because the case settled before any production could take place or because the production of BOK [Books of Knowledge] material was not otherwise required."</p> <p>Biller said the Books consisted of hundreds of thousands of electronic documents covering "Toyota's philosophy and specific tools it uses to develop, design, engineer, evaluate and test vehicles."</p>
<p>Part of the job</p>	
<p>Retail Finance & Insurance Marketing Remarketing Service & Parts Auto Auctions NADA</p>	<p>In an interview last month, Biller said he read portions of the Books as part of his job as manager of a Toyota legal team handling rollover litigation at the automaker's U.S. headquarters in Torrance, Calif.</p> <p>Biller, who worked for Toyota from 2003 to 2007, said the most damning records show that Toyota sold several models even after they failed to meet the company's internal testing standards.</p>
<p>Global Europe German Asia China</p>	<p>Entire contents © Crain</p> <p>One model sold was the 1996 4Runner SUV, which fell short of Toyota's standard for vehicle weight-to-roof strength, he said.</p> <p>Other models also were sold after they failed to meet Toyota's standard for clearance between the driver's head and roof after a rollover, Biller said.</p>
<p>Auto Shows Detroit Chicago Geneva New York Shanghai Frankfurt Paris Tokyo Los Angeles</p>	<p>In the interview, Biller said he was given a blanket order by superiors in the United States and Japan to withhold the Books in litigation.</p> <p>His superiors' pressure to violate the law and get him to leave the company contributed to an emotional breakdown that resulted in Biller's losing a job he took after leaving Toyota, he said.</p> <p>Asked about Biller's claim that he was ordered to withhold the documents, Toyota spokeswoman Cindy Knight said the company has acted properly in its disclosure practices.</p> <p>"Toyota takes its legal obligations seriously and strives to maintain the highest professional and ethical standards," she said in an e-mail. "We are confident that we have acted appropriately with respect to product liability litigation and our discovery practices."</p>
<p>Data Advanced-Propulsion Plans Car Cutaways Europe Data Incentives Inventory -- North America Dealer Data Market Data Books</p>	<p>In an e-mail, Towns said: "The central issue is has Toyota been illegally withholding documents for years? I think we have to cut through the smoke screen put up by Toyota and keep our eyes on that question if we want to get to the bottom of this."</p> <p>E-mail review</p> <p>With the approval of committee staff, <i>Automotive News</i> reviewed 21 of the 6,000 pages</p>

of Biller documents obtained by the House panel.

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In an e-mail dated Dec. 6, 2006, and sent to superiors in the United States and Japan, Biller wrote: "Plaintiff's discovery efforts directed at [Toyota Technical Center] were getting too close to requiring TTC to produce the 'Books of Knowledge.' "

Biller's e-mail also said Toyota Motor Sales U.S.A. "concluded that it would be better to pay a premium to settle this case and avoid producing the 'Books of Knowledge' before Toyota and its counsel had an opportunity to inspect those materials. TMS concluded that a \$1 million premium to settle this case for as much as \$2 million would be worth the price to buy more time related to the Books of Knowledge."

In the e-mail, Biller was briefing his bosses about his negotiation of a \$1.5 million settlement with Pennie Green, who became a quadriplegic at the age of 16 as a result of a 2005 rollover accident while driving a 1997 Camry.

In an interview, Biller said Toyota would have had to pay \$10 million to \$12 million to Green if she were granted access to the information in the Books about the Camry's not meeting Toyota's own head clearance standards -- information her lawyer had requested.

Toyota defied a court order requiring disclosure, and Green settled for a much lower amount, said Biller and Green's lawyer.

Green seeks to have Toyota held in contempt for failure to produce court-ordered documents. Toyota has challenged the judge's authority in a motion before the Texas Supreme Court.

Biller has been subpoenaed by Green's lawyer to appear as a witness.

In its March 12 letter to Towns, Toyota acknowledged that it didn't give Green the Books of Knowledge.

The company "searched for potentially responsive BOK, but as a result of reviewing for and determining actual responsiveness of the information, no such information was produced," the letter said.

Joining Toyota

Biller, 47, went to Toyota after 14 years at the Pillsbury Winthrop law firm in Los Angeles, where he said he represented [Ford Motor Co.](#) and Chrysler Corp. in product liability cases.

After resigning from Toyota, Biller received a \$3.7 million severance package.

The automaker sued him last year for \$33.5 million, saying he broke terms of his severance agreement by taking company documents. Biller has filed a countersuit against the company alleging defamation and improper treatment that led to his resignation.

The two suits have been consolidated under court-supervised arbitration, says Biller's lawyer, Jeffrey Allen of Santa Monica, Calif.

Biller also is suing the Los Angeles district attorney's office, where he worked after leaving Toyota, alleging wrongful termination.

In the 2008 Los Angeles suit, which is pending, Biller said he was fired after nine weeks on the job because of allegations by his employer of incompetence, emotional instability and inability to get along with colleagues.

Allen says Toyota is sending copies of Biller's suit to members of the news media in an effort to discredit his client.

Said Allen: "The suit has no bearing on whether Toyota withheld and destroyed evidence in violation of the law."

You can reach **Neil Roland** at nroland@crain.com.

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