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A Bumpy Road Ahead

Toyota enters this week's congressional hearings reeling from news of a criminal investigation and claims that it withheld evidence.



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By [Matthew Philips](#) | Newsweek Web Exclusive

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This week's congressional hearings on Toyota's safety problems are shaping up to be a lot more than the mere public shaming we've come to expect from recent corporate floggings on Capitol Hill. They could yield crucial insights that determine how Toyota's recall crisis develops in the months ahead. Already, they've brought to light [internal documents](#) that show Toyota boasted of saving \$100 million by limiting a 2007 floor-mat recall to just 55,000 vehicles.

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On Monday, staff members of the House Oversight Committee began examining some 5,000 more documents that Toyota has successfully fought to keep sealed for nearly two years, but that the House Oversight Committee subpoenaed last Thursday. The documents belong to a former Toyota defense attorney, Dimitrios Biller, who claims they offer proof that the company systematically withheld evidence of safety defects in cases involving more than 300 rollover accidents.

Should committee members make them public, the documents could deal a major blow to Toyota's effort to climb out of this crisis. They could also be blood in the water for trial attorneys across the country preparing to sue the world's biggest carmaker. Toyota says it's fought to keep the documents sealed because they contain information protected by attorney-client privilege, but also confidential trade secrets. Though it won't

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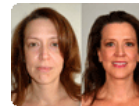
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speculate on the potential damage the documents could do if made public, Toyota is clearly taking these hearings seriously: it's recently worked to shore up political support and has [bolstered its D.C. lobbying operations](#).

Biller, a former lead defense counsel for Toyota in cases involving rollover accidents, resigned in 2007 over what he alleges were Toyota's "criminal acts" of withholding and even destroying documents requested by plaintiffs' attorneys. For more than a year, he's been locked in a legal dispute with the company. Toyota initially sued him in November 2008, claiming he violated the confidentiality agreement of his \$3.7 million severance package when he set up a consulting firm. Toyota says Biller disclosed privileged information during seminars he held, and sued him for \$33.5 million in a California state court.

In July, Biller countersued with a corrupt practices RICO case filed in federal court, claiming Toyota's withholding of evidence constituted criminal conspiracy. Biller alleges that Toyota's suit against him is based on the testimony of two lawyers the company hired to attend his seminars with the intent of getting him to violate his confidentiality agreement by asking questions about his time at Toyota. "Not only did he not violate his severance agreement, at no time did these guys tell him they were there at the behest of Toyota," says Biller's attorney Jeff Hall. "They lied to him. It's entrapment."

But Toyota argues that Biller was discussing privileged information related to the company's legal strategies. Toyota admits that it sent the two attorneys to Biller's seminar, but maintains that it was within its legal right to do so. A judge so far has agreed with Toyota and has thrown out Biller's RICO claims. The cases have been combined into an arbitration hearing.

Biller's federal countersuit has caused a number of cases to be refiled, specifically ones in which he defended Toyota. One of them involves Penny Green, a 20-year-old quadriplegic paralyzed in 2005 when the roof of her 1997 Camry caved in during a rollover accident outside Ft. Worth, Texas. Green's original case, filed in 2006 and defended by Biller, was settled after Toyota produced a limited number of documents regarding the testing and evaluation of the Camry's roof strength. Biller claims his bosses at Toyota instructed him to conceal evidence from Green's attorney, including test results that he says showed that none of Toyota's vehicles met safety requirements regarding head clearance. Toyota denies this. In a statement to NEWSWEEK, Mike Michels says Toyota's vehicles "meet or exceed federal safety standards for this and other tests." Asked about withholding evidence, Michels says, "Toyota routinely produces documents concerning the design, testing, evaluation and engineering of the product. Under its general practices, these documents are maintained by Toyota for as long as the business or legal needs exist."

Whether that means that Toyota ever deliberately withheld any evidence remains to be seen. As part of Green's refiled case, her attorney, Jeff Embry, subpoenaed Biller to appear in court, which he did last Thursday. Minutes before the trial was to begin, Toyota successfully petitioned the Texas Supreme Court to issue an emergency stay of the case. Not long afterward, Rep. Darrell Issa, a California Republican and the ranking minority member of the House Oversight Committee, subpoenaed Biller's documents.

"If what Biller says is true, that there was a systematic corporate approach to violating court orders all over country, this is going to spell serious trouble for Toyota," says Embry.

Toyota enters Tuesday's House Energy and Commerce Committee hearing on the heels of a double whammy of bad news. On Monday, it revealed not only that federal prosecutors have [launched a criminal investigation into its safety problems](#), but also that the Securities and Exchange Commission has subpoenaed documents related to unintended acceleration and the company's disclosure practices.

The House Oversight Committee will hold its hearing Wednesday morning. In attendance will be Toyota CEO Akio Toyoda, who will likely face tough questions regarding the 2007 recall Toyota says it successfully limited

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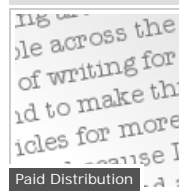



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to 55,000 vehicles, as well as anything that emerges from the Biller documents. Officials from the National Highway Traffic Safety Administration will also be there and could face questions regarding e-mails that insurance company [State Farm has released](#) showing that it first contacted NHTSA in 2004 with complaints that its customers driving Toyotas were seeing a pattern of unintended acceleration. Committee members will also likely ask questions related to the cultural differences between Japan and the U.S., and how that may have led to some of these safety or communication problems.

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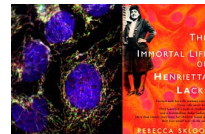


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