

TOYOTA PRODUCT SCANDAL

ALLEGATIONS OF FRAUD, OBSTRUCTION OF JUSTICE, FROM FORMER ATTORNEY

It is rare that an inside "whistleblower" risks all by admitting personal knowledge of alleged fraud on courts, obstruction of civil justice and conspiracy. But these and further serious allegations are in a 100-plus page civil complaint filed in a California state court suit by one of the former top Toyota defense attorneys named Dimitrios Biller.

It is not in dispute that Biller was one of Toyota's defense attorneys inside the inner sanctum of the overall coordination of Toyota's computer files and therefore involved in responses to attorney and court ordered production of relevant documents. What is also not in dispute is that Toyota's attorneys have spent, and are continuing to spend, big money to try to seal up the entire court file, unsuccessfully to date. Biller was paid over two million dollars in a severance package and you have to wonder if Toyota was paying part hush money and part severance pay.

This is a big tempest, a tempest that I label as a lawsuit reformer's nightmare because it is not about a "frivolous" injured person's suit this time. It is about Toyota having hundreds of thousands or millions of dollars at stake in defending Toyota's brand against rollover lawsuits around the United States, mainly accidents involving Toyota vehicles in which consumers were seriously injured or killed in car rollovers. Such suits can involve analysis of roof strength and other product safety issues. In many suits, families' attorneys have alleged that Toyota knew it had inadequate roof strength and were seeking to discover what Toyota knew about its car quality, testing, and about other similar incidents. Attorneys are moving to reopen cases which Toyota's lawyers may have won.

Is it losing if an opposing party games the system? Yes, and forever, unless a party proves that there was fraud on the court that could not reasonably have been discovered. And just how would a victim's attorney know if Toyota fraudulently concealed its documents and did not produce relevant memos? Biller actually outlines some of the issues in his lengthy complaint which reads like a short novel. And, yes, there is a ton of bad blood between him and his former colleagues. Biller even sent his lengthy memo to his supervisors after he got a poor performance review before his firing. It's replete with references to how he and Toyota played hardball in fighting plaintiff's attorneys, but I suppose that stuff is not surprising. They have a business to run and protect. Ethically, that is.

ABOUT ATTORNEY ETHICS, ABOUT CIVIL JUSTICE AND ABOUT A LEVEL PLAYING FIELD

There is a bad smell emanating from this sordid affair, and no angels are in sight. Toyota issued a news release on its corporate website, and between that and their court pleadings, they essentially admit Biller was a coordinating defense attorney for its product liability defense outfit. However, Toyota essentially calls Biller an "unstable crackpot" in not so many words. Toyota claims lawsuits abound where Mr. Biller is involved, and there may be something to that, but let's get back to the point.

Toyota also admits Biller got a multimillion dollar severance pack-



age from the county entity that employed him to coordinate electronic discovery responses, and Biller was involved in managing outside attorneys handling the big Toyota cases. That is a lot of money to pay a blithering fool that Toyota makes Biller out to be. Or, was Toyota concerned about what Biller knew and was it concerned about paying for silence? Toyota says it has done absolutely nothing wrong and claims it's all fairy tale stuff.

When massive dollars are on the line, like defending product liability suits with a central coordinating law firm or defense attorneys, there is an effort to maintain central control of the faucet of information turned over. Would there be pressure to hold back documents that straddle the line? Sure. Would there routinely be "privilege" or other objections filed? Sure. But there comes a time, like receiving a court order, where the court may command that the documents be produced that only a defense attorney and the defendant client know about, until its produced. It is painful complying with the law sometimes for both plaintiff and defense attorneys, but we attorneys do it because we know the law requires compliance.

The public should be outraged over the total disconnect between the wholesome, safety conscious image that Toyota presents in millions of dollars of television advertisements versus these allegations of its former insider. Toyota has on one of its international websites a company code of ethics, and I sure hope Toyota can prove it followed the code in the USA, or many lawsuits may end up being retried. If Toyota withheld similar incidents or product testing results from courts and juries, there will be "do overs." And some of the attorneys at Toyota that determined it would not turn over documents, as Biller alleges, may have some explaining to do. To a judge or a state bar, perhaps.

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