

# Toyota Update Regarding the Biller and Tracy Litigation

October 12, 2009

TORRANCE, Calif. (October 12, 2009) ? In Los Angeles last week, Toyota moved to have the U.S. District Court dismiss the civil RICO claim that former Toyota attorney Dimitrios Biller filed against the Company as well as to compel arbitration of any remaining issues.

In its two filings, Toyota demonstrates that Mr. Biller's federal suit is "patently defective" in attempting to use the RICO Act as an "attempted end-run" around the pending California Superior Court suit brought by Toyota against him. "Biller and his consulting company misapply RICO by dressing up an employment dispute " properly brought, if at all, under state law " as a racketeering scheme," Toyota says in its court papers. "The RICO Act was never intended to control state law contract disputes." Toyota also points out that Mr. Biller fails to satisfy the fundamental elements required to make a claim under civil RICO, including proof of a racketeering enterprise or claims of financial harm.

In addition, Toyota's court papers state that Mr. Biller is seeking to "misuse this Court for a collateral attack on rulings issued by a California Superior Court in a pending matter involving many of the same allegations." Toyota notes that Mr. Biller's federal suit was only filed after a series of adverse rulings in the State court, stating that "rather than respecting these orders, Biller seeks to use this Court to evade them."

Also last week, a procedural hearing in Federal Court in Marshall, Texas on a lawsuit brought by plaintiffs' attorney Todd Tracy, which is based entirely on Mr. Biller's false accusations, was cancelled. The scheduled hearing, which did not relate to the merits of Mr. Tracy's suit, did not take place because Mr. Tracy was satisfied with the procedures Toyota already had in place to maintain documents relevant to the case. The parties also reached an agreement on a procedure for the handling of additional documents that Mr. Biller delivered to the Court that will provide Toyota with secure access to this material.

Commenting on the Texas suit, Toyota said, "We strongly dispute the unfounded claims in Todd Tracy's lawsuit, and we are confident that we have acted appropriately with respect to product liability litigation. We intend to defend vigorously against this lawsuit, as well as Mr. Biller's."

This week's developments follow an important California Superior Court ruling on September 25 in connection with the Biller litigation. Describing Mr. Biller's conduct as motivated by "personal financial gain", the Court said it would issue a preliminary injunction against Mr. Biller, converting the temporary restraining order that was already in place in the case. The Court also stated, with respect to the case before it, that in its opinion "Mr. Biller has violated the rules of professional conduct and the business and professions code and has done so intentionally."

All of these actions stem from the lawsuit that Toyota filed in November 2008 against Mr. Biller to stop his inappropriate use of Toyota case studies and other confidential Company information in promotional materials and seminars that he presented as part of his legal education business. Despite the Court's issuance of a restraining order against him in that case, Mr. Biller continued to disclose Toyota's information inappropriately. In addition, the lawsuit Mr. Biller filed in federal court in July disclosed even more confidential information and made inaccurate and misleading claims against Toyota regarding the conduct of product liability cases.

With respect to the California Superior Court's actions, Toyota said:

"We wish to underscore that Mr. Biller's allegations are both misleading and inaccurate, and hope that these rulings will help prevent Mr. Biller from continuing his false accusations against Toyota. We maintain the highest professional and ethical standards in our legal practices and remain confident that we have acted appropriately in product liability cases and in all reporting to federal safety regulators.

"In our view and in the view of the Superior Court of the State of California, Mr. Biller has repeatedly breached his ethical and professional obligations as an attorney and in his commitments to us, by repeatedly and inappropriately disclosing the Company's confidential information."

### **Additional Details on the Biller Litigation**

Contrary to Mr. Biller's allegations, Toyota vehicles are carefully and rigorously tested, and are all engineered to meet or exceed the high standards set by the National Highway Traffic Safety Administration (NHTSA), which is the global leader in motor vehicle safety. Among the many inaccuracies in his lawsuit, Mr. Biller has grossly mischaracterized Toyota's reporting to NHTSA. His accusations that Toyota misled NHTSA regarding roof strength standards are completely false. Contrary to his claims, there has never been any question about the completeness and accuracy of the information we have provided to product safety regulators.

The facts of the NHTSA situation cited by Mr. Biller are as follows. NHTSA has sought public comment on roof strength at various times over the past decade. In August of 2005, NHTSA announced proposed changes to Federal Motor Vehicle Safety Standard (FMVSS) 216 and requested voluntary comments from interested parties. The Alliance of Automobile Manufacturers filed comments with NHTSA on behalf of its carmaker members, which then included General Motors, Ford Motor Company, DaimlerChrysler, BMW Group, Volkswagen, Porsche, Mazda, Mitsubishi Motors and Toyota. Several manufacturers also submitted comments individually.

On November 21, 2005, Toyota filed a comment addressing certain aspects of the proposed revision to FMVSS 216. Contrary to Mr. Biller's allegation, it was the Alliance, not Toyota, that hired outside consultants to prepare supporting materials to submit with its comments to NHTSA. Toyota's comments were a realistic assessment of the structural changes and timetable required to comply with the proposed rules, and they were consistent with comments made by other manufacturers, as well as the Alliance.[\[1\]](#)

In this rulemaking proceeding, as in all rulemaking proceedings, NHTSA ultimately performed its own independent analysis in deciding on the content of new safety standards, including the stringency level and the lead time required for compliance.

Mr. Biller also exaggerates the incidence of roll-over litigation involving Toyota vehicles. In fact, Toyota vehicles have an excellent safety record relative to the millions of its cars on the road. While a roll-over accident can be severe, with 27 million Toyota vehicles currently in operation, roll-overs are a rare event.

Mr. Biller's actions and the timing of his lawsuit do not support his claim that he is motivated by the public interest. Rather, consistent with the view expressed by the California Superior Court, Mr. Biller's actions have been motivated by his own personal financial interests. Mr. Biller did not resign from Toyota because of ethics concerns. Instead, in making his demand for a severance package, he held open his option to return to work at Toyota as an attorney. He was also personally responsible for managing the cases cited in his lawsuit, and his actions at the time in defending those cases on Toyota's behalf are wholly inconsistent with the allegations he

has now brought forward.

Mr. Biller has also sued another of his former employers, the Los Angeles County District Attorney's Office, and some employees of that office for \$50 million, contending that his colleagues were conspiring to have him fired. Mr. Biller has also sued the attorney who negotiated his severance package with Toyota for legal malpractice. In court papers related to these suits, Mr. Biller claims he is disabled and has suffered from organic brain disease for most of his life.

Since Toyota's lawsuit against Mr. Biller in the Superior Court in California and its related restraining order predate his misleading claims regarding the conduct of product liability cases, Mr. Biller cannot claim that the reason Toyota sued him was to stop the disclosures he has made in his complaint.

Toyota agreed to a severance package for Mr. Biller in order to avoid the time and expense associated with his unsubstantiated allegations. Severance agreements are not unusual in cases of highly compensated individuals who have had access to confidential and proprietary information. Toyota acted honorably in agreeing to a mutually acceptable separation, but ultimately it was a mistake because Mr. Biller did not honor his obligations under the agreement.

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[\[1\]](#) NOTE: Toyota's initial comments regarding Mr. Biller's allegations included an incorrect statement regarding Toyota's comments directly to NHTSA. This oversight does not change the essential facts: that Toyota did not mislead NHTSA, did not hire an outside consultant to prepare an engineering report, did not hire a second outside consultant to change a prior engineering report, and that Mr. Biller's allegations are unfounded.