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February 26, 2010

Mr. Yoshimi Inaba
President and CEO
Toyota Motor North America, Inc.
601 13th Street, NW
Washington, DC 20005

Dear Mr. Inaba:

As you know, the Committee on Oversight and Government Reform has been conducting an investigation into Toyota's handling of vehicle recalls arising from incidents of sudden unintended acceleration. As part of this investigation, we have obtained and reviewed documents produced under subpoena from a former Toyota in-house lawyer, Mr. Dimitrios Biller. We have reviewed these documents and found evidence that Toyota deliberately withheld relevant electronic records that it was legally required to produce in response to discovery orders in litigation. Many of these documents concern "rollover" cases in which the plaintiff was injured. I am writing to request that you personally review these records and provide a response to these allegations.

Mr. Biller was a Managing Counsel in the Product Liability Group of Toyota Motor Sales, USA (TMS), from April 2003 to September 2007. This was a very senior position, in which he led the defense of some of the largest tort cases filed against Toyota, particularly "rollover" cases involving seriously injured victims, including quadriplegics.

In an internal memorandum dated September 1, 2005, entitled "A Serious Need to Get Documents/E-Discovery From TMC",¹ Mr. Biller informed his supervisor that he was concerned about Toyota's failure to produce electronic documents in litigation. While conducting a search for relevant evidence in the "Sears" case, Mr. Biller discovered a computer database known as "MIK". According to Mr. Biller, MIK had been in existence for a number of years and includes information about "design problems" and "countermeasures used to resolve issues." The MIK database can be searched by vehicle and by component part. Moreover, the information in MIK is maintained by Toyota Motor Corporation (TMC). Information from MIK "is down loaded by TTC [Toyota Technical Center] into secret electronic "Books of Knowledge."

¹ Memorandum from Dimitrios P. Biller to Eric Taira, "A Serious Need to Get Documents/E-Discovery From TMC", Sep. 1, 2005.

According to Mr. Biller, this information “has never been produced in litigation.” Further, Mr. Biller states unequivocally, “Clearly, this information should have been produced in litigation before today.” He adds that, “TMC is clearly not producing all of the relevant information/documents in its possession.” Finally, Mr. Biller concludes, “We need to start preserving, collecting and producing e-mails and electronic discovery.”

Despite Mr. Biller’s conclusion that Toyota was required to start preserving, collecting, and producing e-mails and other electronic documents, more than a year later the Books of Knowledge had still not been produced in litigation. In fact, the Biller documents indicate that Toyota entered into multi-million dollar settlements in tort cases where they feared that the plaintiff’s lawyer was getting close to discovering the existence of the Books of Knowledge.

For example, in an email dated December 6, 2006, Mr. Biller describes in detail to his superiors at Toyota that a major reason he agreed to a \$1.5 million settlement in the “Penny Green case” was to prevent disclosure of the Books of Knowledge. This case is particularly appalling, in that the victim, Penny Green, was a healthy young woman who was rendered a quadriplegic in the rollover of a Toyota vehicle.²

The documents also indicate that Mr. Biller was concerned that Toyota’s interactions with the National Highway Traffic Safety Administration (NHTSA) would be discovered. Mr. Biller wrote in an internal email in November 2006 that a plaintiff’s lawyer, Jeffrey Embroy, had “learned about the substantial involvement of TMA with NHTSA and how TMC communicates with NHTSA via TMA and the Alliance.”³

Finally, the Biller documents shine some light on Toyota’s handling of the sudden unintended acceleration problem. In an internal email sent in June 2005, Mr. Biller expresses his concerns about Toyota’s apparent failure to collect and produce relevant evidence:

Notably, in June 2005 Mr. Biller replied to an email on the Greenburg case, a lawsuit involving sudden unintended acceleration. In his memo, Mr. Biller annotates his reply to an email from Webster Burns, another Toyota executive:

“When this lawsuit was threatened, no one was surprised. This issue [sudden unintended acceleration] had been the subject of a number of meetings and the exchange of a number of documents between TMS and TMC, (*did anyone ever gather and organize all those documents and memorialize the “meetings”?* *If so, were [sic] are the documents and information about the meetings?*) [*emphasis indicates Biller’s comments*] and the possibility of a class action lawsuit was used as one way to try to get TMC to work on a series of proposed countermeasures.”⁴

In sum, the Biller documents indicate a systematic disregard for the law and routine violation of court discovery orders in litigation. People injured in crashes involving Toyota vehicles may have been injured a second time when Toyota failed to produce relevant evidence

² Email from Dimitrios Biller to Yuji Maeda and Masaki Konyanagi, “PRIVILEGED & CONFIDENTIAL/GREEN/DPB-120506-1, Dec. 6, 2006.

³ Email from Dimitrios Biller to Kei Kimata, “PRIVILEGED & CONFIDENTIAL/Campagna/CS1791”, Nov. 2, 2006.

⁴ Email from Dimitrios Biller to Webster Burns, “Response on Initial Thoughts on Greenberg”, June 14, 2005.

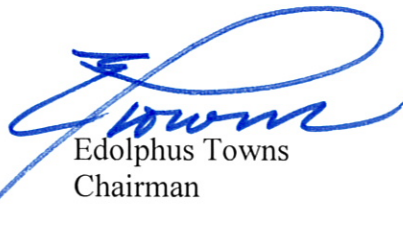
in court. Moreover, this also raises very serious questions as to whether Toyota has also withheld substantial, relevant information from NHTSA.

To aid in our investigation of these and related issues, please respond to the following questions:

1. What steps did Toyota take to address the concerns expressed by Mr. Biller in his September 1, 2005, memorandum regarding the need to produce relevant electronic records, including the Books of Knowledge?
2. Has Toyota disclosed the existence of the Books of Knowledge to NHTSA? If so, when and under what circumstances?
3. When did Toyota begin producing all relevant electronic documents in response to discovery requests in tort cases?
4. Have the Books of Knowledge been produced in response to discovery requests in litigation? If so, please list the cases in which they have been disclosed. If not, please explain why they have not been disclosed.
5. If it is true that the Books of Knowledge and other relevant electronic records were not produced in the course of litigation as required, will Toyota petition to reopen all closed cases so that the relevant evidence may be considered?

Your cooperation with this inquiry is greatly appreciated. Please provide your response to these questions no later than 12:00 noon on Friday, March 12, 2010. Should you have any questions regarding this request, please contact John Arlington of the Committee staff at 202-225-5051.

Sincerely,



Edolphus Towns
Chairman

cc: The Honorable Darrell Issa
Ranking Minority Member
Committee on Oversight and Government Reform