

Gavel to Gavel: Skipping basics cost Toyota

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By Chris Paul

This is not another article about the reports of sudden acceleration of some Toyota vehicles. In fact, my bet is that the alleged problem is similar to those that were identified by investigators in the mid-1980s, when unintended acceleration claims were leveled against Audi. But Toyota might not fare so well in the legal arena, and it created at least one major hurdle itself.

Documents are surfacing that will hurt Toyota in litigation. An internal PowerPoint presentation delivered in July 2009 to the president of Toyota's North American operations listed "wins" for the company. Toyota employees were apparently proud to report that they achieved "favorable recall outcomes" and "secured safety rulemaking favorable to Toyota." Among those rulings was a 2007 issue with Camry and Lexus ES 350 sedans for complaints that accelerator pedals were not working properly. The document notes a "negotiated an equipment recall" without a finding of a defect, meaning that instead of fixing the cars, Toyota recalled certain floor mats that it said could become stuck under the accelerator pedal.



The presentation, which Toyota intended to be confidential, was disclosed as a result of subpoenas by one of three congressional panels holding hearings on Toyota safety issues.

The legal and public relations problems this document causes for Toyota are obvious. If the document reflects that actual known safety issues were avoided, then it is a smoking gun that should be used to punish unacceptable conduct. But even if we accept that Toyota did put safety foremost, and that this document is simply being misinterpreted, it still carries with it legal exposure that could have been avoided had Toyota employees been educated to communicate effectively in a litigious society.

Documentation and records are created in every business and all of these are subject to being found in legal proceedings. This includes records in every form of media, whether written on paper, or created electronically. There is little that is private, particularly if the records have any connection with business activities. What happened at Toyota is just a very clear example of what will be found if the records of any organization are subject to scrutiny.

This Toyota example shows failures in multiple areas of basic business communications.

Confidentiality is not achieved by simply labeling a record as such. In fact, marking a document "confidential" might be the reason the document gets extra attention. Personnel need to understand how documents can be kept confidential.

Even if confidentiality may be successfully claimed, documents need to be created with an understanding that they may someday be made public. This means considering content and including context of any statements that are made. Records created to simply brag on success rarely will be done thoughtfully, and any business that even hints that the goal was saving money over safety is in for a battle. In the Toyota example, we can be sure that they wish they had stated that they showed the regulators evidence that proved that the accelerator was not a problem and avoided an unnecessary recall, and that this was done in their efforts to continue to devote resources to real safety issues.

A little education and training of employees might have avoided the problem. Instead we will get to see this play out in the press and the courts.

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