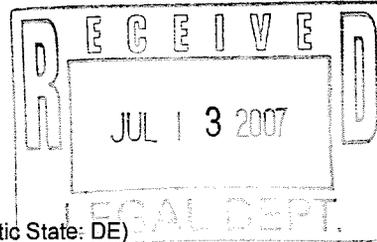


FILE START

P

TO: Ronald J. Roensch, Esq.
Toyota Material Holding, U.S.A., Inc.
1 Park Plaza, Suite 1000
Irvine, CA, 92614



RECEIVED

JUL 09 2007 *AR*

RE: Process Served in Illinois

TMHU LEGAL

FOR: Toyota Industries North America, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Kemper Auto Home Insurance Company, as Subrogee of [REDACTED] Pltf. vs. Toyota Industries North America, Inc., etc., and Toyota Motor Sales, U.S.A., etc., Dfts.

DOCUMENT(S) SERVED: Summons, Complaint

COURT/AGENCY: Kane County - 16th Judicial Circuit Court, IL
Case # 07 CHK 1264

NATURE OF ACTION: Seeking Protective Order for the Vehicle Event Recorder located on 2007 Lexus ES350- VIN# JTHBJ46072[REDACTED]

ON WHOM PROCESS WAS SERVED: C T Corporation System, Chicago, IL

DATE AND HOUR OF SERVICE: By Process Server on 07/05/2007 at 12:35

APPEARANCE OR ANSWER DUE: Within 30 days // 10/16/2007 at 9:30 a.m. - Case Management Conference

ATTORNEY(S) / SENDER(S): Thomas P. Scherschel
SmithAmundsen, LLC
3815 East Main Street
Suite A-1
St. Charles, IL, 60174
630-587-7910

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day, 790776791038

SIGNED: C T Corporation System
PER: Tawana Carter
ADDRESS: 208 South LaSalle Street
Suite 814
Chicago, IL, 60604
TELEPHONE: 312-345-4336

12:35
7-5

**IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

'07 CHK 1264

Case No. _____

KEMPER AUTO AND HOME INSURANCE CO, as Subrogee of PHILLIP HELFAND Plaintiff(s)	TOYOTA INDUSTRIES NORTH AMERICA, INC., a foreign corporation, TOYOTA MOTOR SALES, U.S.A., a foreign corporation, et al. Defendant(s)	<div style="border: 2px solid black; padding: 10px; text-align: center;"> RECEIVED JUL 13 2007 LEGAL DEPT. </div> <p style="text-align: right; font-size: small;">File Stamp</p>
SERVE THIS DEFENDANT AT: Name <u>Toyota Industries North America, Inc./c/o CT Corp.</u> Address <u>208 S. LaSalle St., Suite 814</u> City/State/Zip <u>Chicago, IL 60604-1101</u>		

Amount Claimed NA

Plff. Atty Thomas P. Scherschel Add. Plff. Atty _____

Atty Registration No. 6184669 Atty Registration No. _____

Address 3815 E. Main St., Suite A-1 Address _____

City, State and Zip St. Charles, IL 60174 City, State and Zip _____

SUMMONS

COPY

To the above named defendant(s):

A. You are hereby summoned and required to appear before this court at the _____

In room _____ at _____ m.. On _____, 19 _____ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgement by default may be taken against you for the relief asked in the complaint.

B. You are hereby summoned and required to file an answer in this case or otherwise file your appearance, in the office of the Clerk of this court, within 30 days after service of this summons, exclusive of the day of service. If you fail to do so, judgement or decree by default may be taken against you for the relief prayed in the complaint.

C. You are further Notified that a dissolution action stay is in full force and effect upon service of this summons. The Conditions of the stay are set forth on the reverse side of this summons, and are applicable to the parties as set forth in the statute.

TO THE SHERIFF OR OTHER PROCESS SERVER:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement thereon of service and fees if any, immediately after service. In the event that paragraph A of this summons is applicable this summons may not be served less than three days before the day of appearance. If service cannot be made, this summons shall be returned so indorsed.

This summons may not be served later than 30 days after its date if paragraph B is applicable.

WITNESS, [Signature] 19 _____

DATE OF SERVICE _____
(To be inserted by process server on copy left with the defendant or other person)

[Signature]
Clerk of Court

NOTICE TO DEFENDANTS - Pursuant to Supreme Court Rule

In a civil action for money (under \$15,000) in which the summons requires your appearance on a specified day, you may enter your appearance as follows:

1. You may enter your appearance prior to the time specified in the summons by filing a written appearance, answer or motion in person or by attorney to the Office of the Kane County Circuit Clerk, 301 W. Fabyan Parkway, Batavia, IL 60510 (located in the Campana Building).
2. You may enter your appearance at the time and place specified in the summons by making your presence known to the Judge when your case is called.

In either event YOU MUST APPEAR IN PERSON OR BY ATTORNEY at the time and place specified in the summons or a default Judgment will be entered against you.

When you appear in Court, the Judge will require you to enter your appearance in writing, if you have not already done so. Your written appearance, answer, or motion shall state with particularity the address where service of notice or papers may be made upon you or an attorney representing you.

Your case will be heard on the date set forth in the summons unless otherwise ordered by the Court. Only the Court can make this exception. Do not call upon the Circuit Court Clerk or the Sheriff's office if you feel you will be unable to be present at the time and place specified. Continuances can be granted only on the day set forth in the summons, and then only for good cause shown. You, or someone representing you, MUST APPEAR IN PERSON at the specified time and place and make such a request.

If you owe and desire to pay the claim of the plaintiff before the return date on the summons, notify the plaintiff or his attorney of your desire to do so. Request that he/she appear at the time specified and ask for the dismissal of the suit against you. Do not make such a request of the Circuit Court Clerk or the Sheriff, as only the Judge can dismiss a case, and then only with a proper court order which must be entered in open Court.

CONDITIONS OF DISSOLUTION ACTION STAY

750 ILCS 5/501.1
Chapter 40, paragraph 501.1, Illinois Revised Statutes

(a) Upon service of a summons and petition or praecipe filed under the Illinois Marriage and Dissolution of Marriage Act or upon the filing of the respondent's appearance in the proceeding, whichever first occurs, a dissolution action stay shall be in effect against both parties and their agents and employees, without bond or further notice, until a final judgement is entered, the proceeding is dismissed, or until further order of the court:

- (1) restraining both parties from physically abusing, harassing, intimidating, striking, or interfering with the personal liberty of the other party or the minor children of either party; and
- (2) restraining both parties from removing any minor child or either party from the State of Illinois or from concealing any such child from the other party, without the consent of the other party or an order of the court.

TO THE SHERIFF OR OTHER PROCESS SERVER.

DATE OF SERVICE _____

(To be inserted by process server on copy left with the defendant or other person)

WITNESS _____

Clerk of Court

NOTICE TO DEFENDANTS - Pursuant to Supreme Court Rule

In a civil action for money (under \$15,000) in which the summons requires your appearance on a specified day, you may enter your appearance as follows:

1. You may enter your appearance prior to the time specified in the summons by filing a written appearance, answer or motion in person or by attorney to the Office of the Kane County Circuit Clerk, 301 W. Fabyan Parkway, Batavia, IL 60510 (located in the Campana Building).
2. You may enter your appearance at the time and place specified in the summons by making your presence known to the Judge when your case is called.

In either event YOU MUST APPEAR IN PERSON OR BY ATTORNEY at the time and place specified in the summons or a default Judgment will be entered against you.

When you appear in Court, the Judge will require you to enter your appearance in writing, if you have not already done so. Your written appearance, answer, or motion shall state with particularity the address where service of notice or papers may be made upon you or an attorney representing you.

Your case will be heard on the date set forth in the summons unless otherwise ordered by the Court. Only the Court can make this exception. Do not call upon the Circuit Court Clerk or the Sheriff's office if you feel you will be unable to be present at the time and place specified. Continuances can be granted only on the day set forth in the summons, and then only for good cause shown. You, or someone representing you, MUST APPEAR IN PERSON at the specified time and place and make such a request.

If you owe and desire to pay the claim of the plaintiff before the return date on the summons, notify the plaintiff or his attorney of your desire to do so. Request that he/she appear at the time specified and ask for the dismissal of the suit against you. Do not make such a request of the Circuit Court Clerk or the Sheriff, as only the Judge can dismiss a case, and then only with a proper court order which must be entered in open Court.

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- (1) restraining both parties from physically abusing, harassing, intimidating, striking, or interfering with the personal liberty of the other party or the minor children of either party; and
- (2) restraining both parties from removing any minor child or either party from the State of Illinois or from concealing any such child from the other party, without the consent of the other party or an order of the court.

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

KEMPER AUTO AND HOME)
 INSURANCE COMPANY, as Subrogee of)
 PHILLIP HELFAND,)
)
 Plaintiff,)
)
 vs.)
)
 TOYOTA INDUSTRIES NORTH)
 AMERICA, INC., a foreign corporation,)
 TOYOTA MOTOR SALES, U.S.A., a)
 foreign corporation and other unidentified)
 entities involved in the manufacture and)
 sale of TOYOTA vehicles,)
)
 Defendants.)

FILED _____
 ENTERED _____
 2007 JUN 26 P 2:26
 JUDITH SEYLLER
 CIRCUIT COURT CLERK
 KANE COUNTY, ILLINOIS
 07 ON K 1 264
 LEON...
 JUL 9 2007
 GROVE...

COMPLAINT IN CHANCERY
FOR PROTECTIVE ORDER AND OTHER MISCELLANEOUS RELIEF

NOW COMES Plaintiff, KEMPER AUTO AND HOME INSURANCE COMPANY, as Subrogee of PHILLIP HELFAND, by and through attorneys, SmithAmundsen LLC, and as its Complaint in Chancery, states as follows:

1. On or about April 4, 2007, Plaintiff's subrogor, Phillip Helfand, was the operator of a motor vehicle manufactured and distributed by one or more of the Defendants, specifically a 2007 Lexus ES350, vehicle identification number: JTHBJ46G072022322.

2. At all relevant times, the subject vehicle and its operator, Phillip Helfand, were insured through a policy of public liability insurance issued by Plaintiff, Kemper Auto and Home Insurance Company, which was and is licensed to do business in Illinois.

NOTICE
BY ORDER OF COURT THIS CASE IS HEREBY SET FOR CASE MANAGEMENT CONFERENCE BEFORE THE ABOVE NAMED JUDGE ON 10-16-07 AT 9:30 P.M. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

3. Under the subject policy of public liability insurance, Plaintiff became and is subrogated to the rights of its insured, Phillip Helfand.

4. Upon information and belief, then subject accident occurred as a result of a mechanical defect present in the subject vehicle at the time it left the manufacturer and at the time it was placed in the stream of commerce by the distributor, each of which is named as a defendant herein.

5. Specifically, an automobile accident occurred on April 4, 2007 due to a mechanical defect which caused the subject vehicle to accelerate suddenly and uncontrollably resulting in the vehicle making violent contact with other vehicles and causing personal injury and property damage to third persons, to whom Plaintiff would be responsible in the event the subject accident were caused by negligence on the part of Plaintiff's insured subrogor, rather than caused by a mechanical defect.

6. In order to determine and memorialize the actual defect which caused the subject sudden acceleration and accident, it is necessary to inspect the vehicle and to download the vehicle event recorder, sometimes referred to as the EDR.

7. By virtue of this suit in Chancery, Plaintiff wishes to examine the vehicle and to put others on notice who may have an interest of the inspection and examination of the vehicle and to avoid claims of spoliation of evidence at a later date.

8. Further, to complete the necessary examination of the vehicle and its event recorder, Plaintiff will require information in the exclusive possession and

control of Defendants, which possess the information, software and training to download the event recorder and to interpret the data obtained there from.

9. Defendants have been contacted and advised of Plaintiff's desire to inspect the vehicle and to download available data from the event recorder.

10. Defendants have indicated in writing their desire to be present at the time of the inspection of the vehicle.

11. However, Defendants have declined to voluntarily provide the necessary equipment and software in its possession to download available data from the event recorder.

12. On information and belief, Defendants have in fact provided the necessary software and equipment in the past to evaluate event recorder data on vehicles in the United States and have no valid reason or just cause to refuse to provide the software, download equipment and all data parameters to Plaintiff by which Plaintiff can obtain and evaluate the relevant data to determine if there is data captured on the event recorder that would substantiate the claim of Plaintiffs' insured that the injuries and damages caused by the subject accident were on account of a defect in the subject vehicle which caused sudden acceleration by the subject vehicle.

WHEREFORE, Plaintiff seeks an order from this Court as follows:

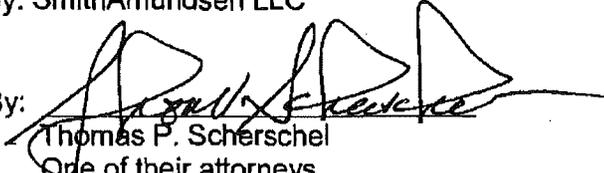
- i) Providing a date certain for the inspection of the subject vehicle, thereby placing all parties hereto on notice and allowing all interested parties to attend the inspection of the subject vehicle;

ii) Ordering that Defendants provide Plaintiff with all necessary parameters and information necessary to interpret data obtained from the event recorder(s) installed on the subject vehicle; and

iii) Ordering the Defendants to provide all necessary software and equipment to obtain all available information from all event recorders installed on the subject vehicle, and to do so within 21 days or such other reasonable time as the Court shall deem just.

KEMPER AUTO AND HOME INSURANCE
COMPANY, as Subrogee of PHILLIP
HELFAND, Plaintiff,
By: SmithAmundsen LLC

By:


Thomas P. Scherschel
One of their attorneys

Thomas P. Scherschel
SmithAmundsen LLC
3815 East Main Street, Suite A-1
St. Charles, IL 60174
(630) 587-7910
Atty. No. 6184669

CT CORPORATION

A WoltersKluwer Company

Service of Process**Transmittal**

05/17/2007

Log Number 512229684

RECEIVED

TO: Ronald J. Roensch, Esq.
Toyota Material Holding, U.S.A., Inc.
1 Park Plaza, Suite 1000
Irvine, CA, 92614

MAY 21 2007

RE: Process Served in Illinois

TMHU LEGAL

FOR: Toyota Industries North America, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: To: Toyota Industries North America, Inc.
DOCUMENT(S) SERVED: Letter
COURT/AGENCY: None Specified
Case # None Specified
NATURE OF ACTION: Letter of Intent - Consumer Complaint - Attendance in inspection of vehicle - 2007
Lexus ES 350, Vin No. 7THBJ4G072 [REDACTED]
ON WHOM PROCESS WAS SERVED: C T Corporation System, Chicago, IL
DATE AND HOUR OF SERVICE: By Certified Mail on 05/17/2007 postmarked on 05/08/2007
APPEARANCE OR ANSWER DUE: Within 14 days
ATTORNEY(S) / SENDER(S): Smith Amundsen
3815 E. Main Street
Suite A-1
St. Charles, IL, 60174
ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day, 798676799184
SIGNED: C T Corporation System
PER: Tawana Carter
ADDRESS: 208 South LaSalle Street
Suite 814
Chicago, IL, 60604
TELEPHONE: 312-345-4336

Page 1 of 1 / KS

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of the package only, not of its contents.



CERTIFIED MAIL

May 8, 2007

TOYOTA INDUSTRIES NORTH AMERICA, INC.
208 S. LaSalle St, Suite 814
Chicago, IL 60604-1101

Re: 2007 Lexus ES 350, VIN JTHBJ46G072 [REDACTED]

Toyota Industries North America, Inc.:

Please be advised that the above vehicle has been involved in an accident resulting in personal injuries and other damages to the occupant and to third parties. The driver has advised that the vehicle accelerated in the course of ordinary expressway travel and could not be stopped by depressing the brake.

To the extent that amounts are paid out to the driver or to third parties by Kemper Auto and Home Insurance Company, subrogation will be sought from Toyota in the event this accident appears to have been caused by failure of the subject Lexus vehicle referenced above

The vehicle is currently being held in secure storage in Elgin, Illinois. It is the intent of Kemper Auto and Home Insurance Company to have the vehicle inspected and to download the event recorder in attempt to determine the cause of the subject accident.

You are hereby placed on notice and invited to attend and participate in the inspection of the vehicle and downloading of the event recorder. Please contact the undersigned within 14 days so that your availability can be coordinated with other interested parties. In the event you have not responded within 14 days, we will understand that you do not wish to participate in the inspection of the vehicle and the downloading of the event recorder.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Thomas P. Scherschel', written over a printed name.

Thomas P. Scherschel

cc: Timothy A. Zahnow

Tps/mpb

3815 East Main Street • Suite A-1 • St. Charles, IL 60174 • 630-587-7910 TEL • 630-587-7960 FAX • www.salawus.com
CHICAGO, IL MILWAUKEE, WI ROCKFORD, IL ST. CHARLES, IL WAUKEGAN, IL WOODSTOCK, IL



PAGE 2/2 * RCVD AT 5/21/2007 2:20:20 PM [Pacific Daylight Time] * SVR:TMHJFAX01/0 * DNIS:8091 * CSID: * DURATION (mm-ss):01-08 ** TOTAL PAGE.02 **

SmithAmundsen LLC
3815 East Main Street, Suite A-1
St. Charles, Illinois 60174

P

Phone: (630) 587-7910
Fax: (630) 587-7960

FACSIMILE TRANSMITTAL

To: Mark Boyle

Fax: 312-422-0909

From: Tom Scherschel

Date: 7-12-07

Re: Kemper v. Toyota

Pages (including cover): 9

CC: *Kemper Auto / Helfand*

Urgent For Review Please Comment Please Reply Please Recycle

Notes:

Case No.: 07 CHK 1264

File No.: 3005315

**IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

KEMPER AUTO AND HOME)	
INSURANCE COMPANY, as Subrogee of)	
PHILLIP HELFAND,)	
)	
Plaintiff,)	07 CHK 1264
vs.)	
)	
TOYOTA INDUSTRIES NORTH)	
AMERICA, INC., a foreign corporation,)	
TOYOTA MOTOR SALES, U.S.A., a)	
foreign corporation and other unidentified)	
entities involved in the manufacture and)	
sale of TOYOTA vehicles,)	
)	
Defendants.)	

NOTICE OF MOTION

To: Mark Boyle
Donohue Brown Matthewson & Smith, LLC
140 S. Dearborn St.
Suite 700
Chicago, IL 60603

PLEASE TAKE NOTICE that on **July 16, 2007 at 9:00 a.m.** or as soon thereafter as counsel may be heard, I shall appear before Judge Colwell or any Judge sitting in his stead, in Courtroom 110 in the Kane County Courthouse, and then and there present Plaintiff's **Emergency Motion for Protective Order**, at which time and place you may appear as you see fit to do.

KEMPER AUTO AND HOME INSURANCE
COMPANY, as Subrogee of PHILLIP HELFAND,
Plaintiff,
By: SmithAmundsen LLC

By: 
Thomas P. Scherschel
One of their attorneys

Thomas P. Scherschel
SmithAmundsen LLC
3815 East Main Street, Suite A-1
St. Charles, IL 60174
(630) 587-7910
Atty. No. 6184669

Case No.: 05 L 756

File No.: 3002830

STATE OF ILLINOIS)
)
COUNTY OF KANE) SS.

PROOF OF SERVICE

To: Mark Boyle
 Donohue Brown Matthewson & Smith, LLC
 140 S. Dearborn St.
 Suite 700
 Chicago, IL 60603
 Fax: (312) 422-0909

The undersigned, being first duly sworn on oath, states that a true and correct copy of the following document:

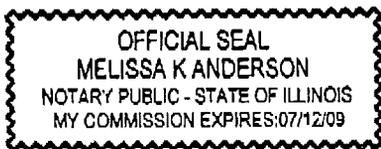
EMERGENCY MOTION FOR PROTECTIVE ORDER

was served via facsimile and via U.S. mail on this 12th day of July, 2007, before 5:00 p.m. by faxing a copy to the person listed above and by mailing a copy to the person listed above by depositing same in the U.S. mail in St. Charles, Illinois with proper postage prepaid.

Jeanne E. Kaminisch

SUBSCRIBED AND SWORN
To before me this 12th day of
July, 2007.

Melissa K. Anderson
Notary Public



07 CHK 1264

3005315

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

KEMPER AUTO AND HOME)	
INSURANCE COMPANY, as Subrogee of)	
PHILLIP HELFAND,)	
)	
Plaintiff,)	07 CHK 1264
vs.)	
)	
TOYOTA INDUSTRIES NORTH)	
AMERICA, INC., a foreign corporation,)	
TOYOTA MOTOR SALES, U.S.A., a)	
foreign corporation and other unidentified)	
entities involved in the manufacture and)	
sale of TOYOTA vehicles,)	
)	
Defendants.)	

EMERGENCY MOTION FOR PROTECTIVE ORDER

NOW COMES Plaintiff, KEMPER AUTO AND HOME INSURANCE COMPANY, as Subrogee of PHILLIP HELFAND, by and through attorneys, SmithAmundsen LLC, and moves this Court for entry of a protective order, and in support thereof, states as follows:

1. This action was filed for the purpose of obtaining the assistance of the Court in providing for the orderly inspection of a vehicle involved in an automobile accident.
2. A claim has been made that an automobile collision was the result of sudden acceleration involving a vehicle manufactured by the Toyota Motor Company, or one of its affiliate corporations, (Toyota) specifically a 2007 Lexus ES350, vehicle identification number: JTHBJ46G072022322.
3. The required inspections will ultimately include a physical inspection of the vehicle and the download of information contained on the vehicle air bag

07 CHK 1264

3005315

event recorder. The action will ultimately address the question of whether Toyota must cooperate in the inspection of the electronic event recorders contained in the vehicle. That issue is not addressed in this motion.

4. In the interim, the undersigned counsel has been advised by Mr. Scott Yon, of the National Highway Traffic Safety Administration, that NHTSA seeks to conduct a physical inspection of the subject vehicle on July 25, 2007.

5. Specifically, Mr. Yon has indicated that NHTSA will want to raise the vehicle on a jack and/or stands and raise the hood to view the area under the hood and to remove the driver floor mat, remove the wheels, and remove some of the brake hardware, to be replaced without disturbing the original condition of anything moved and placed back to its original condition. NHTSA will not disturb the airbag module, nor will it connect to or interface with any electrical/electronic systems on the vehicle. NHTSA will not take any items away from the inspection other than the photos. (See Memorandum (two pages) of Scot Yon, Investigator, Office of Defect Investigations, U.S. Department of Transportation, National Highway Traffic Safety Administration, attached hereto and marked Exhibit "A.")

6. Mr. Yon and the NHTSA are currently involved in the study of accidents attributable to sudden acceleration, or which are claimed to be attributable to sudden acceleration.

7. Mr. Yon would like to proceed with its inspection on July 25, 2007 to the extent outlined above, in order to complete its inspection in time to include the results of the inspection within the time limit of its current study of sudden acceleration claims.

07 CHK 1264

3005315

8. Plaintiff does not want to prejudice the interests of either party hereto, nor to be subject to claims of spoliation.

9. Toyota was properly served with this action on July 5, 2007.

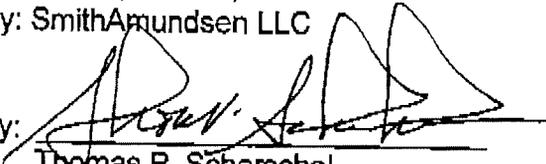
10. Toyota has subsequently forwarded this action to the attention of attorney Mark Boyle, of Donohue, Brown, Matthewson & Smith of Chicago, Illinois.

11. Attorney, Mark Boyle has received notice of this motion by facsimile, U.S. mail and by a telephone call from the undersigned counsel.

12. Time allowed for Toyota to file responsive pleadings had not yet expired at the time of the filing of this motion. However, the inspection sought by NHSTA would occur, if allowed, prior to the time Toyota would be required to file responsive pleadings.

WHEREFORE, Plaintiff seeks a protective order from this Court allowing the National Highway Traffic Safety Administration to conduct a physical non-destructive inspection of the subject vehicle on July 25, 2007, as outlined above and on Exhibit "A" attached hereto, at which time any representative(s) of the Defendants would be welcome to observe such inspection.

KEMPER AUTO AND HOME INSURANCE
COMPANY, as Subrogee of PHILLIP
HELFAND, Plaintiff,
By: SmithAmundsen LLC

By: 
Thomas P. Scherschel
One of their attorneys

07 CHK 1264

3005315

Thomas P. Scherschel
SmithAmundsen LLC
3815 East Main Street, Suite A-1
St. Charles, IL 60174
(630) 587-7910
Atty. No. 6184669



CORPORATION SERVICE COMPANY

LEGAL SERVICES

JUL - 9 2007

GROUP RECEIVED

NJP / ALL

Transmittal Number: 5226664

Date Processed: 07/05/2007

Notice of Service of Process

Primary Contact: Eric Taira
Toyota Motor Sales, U.S.A., Inc.
19001 S. Western Ave.
Torrance, CA 90501

Copy of transmittal only provided to: Dorothy Sutton

Entity: Toyota Motor Sales, U.S.A., Inc.
Entity ID Number 0290437

Entity Served: Toyota Motor Sales U.S.A., Inc.

Title of Action: Kemper Auto and Home Insurance Company, as Subrogee of [REDACTED] vs. Toyota Industries North America, Inc.

Document(s) Type: Summons/Complaint

Nature of Action: Personal Injury

Court: Kane County 16th Judicial Circuit Court, Illinois

Case Number: '07 CHK 1264

Jurisdiction Served: Illinois

Date Served on CSC: 07/05/2007

Answer or Appearance Due: 30 Days

Originally Served On: CSC

How Served: Personal Service

Plaintiff's Attorney: Thomas P. Scherschel
630-587-7910

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

Case No. **07 CHK 1264**

KEMPER AUTO AND HOME INSURANCE CO., as Subrogee of PHILLIP HELFAND Plaintiff(s)	TOYOTA INDUSTRIES NORTH AMERICA, INC., a foreign corporation, TOYOTA MOTOR SALES, USA, a foreign corporation, et al. Defendant(s)	LEGAL SERVICES
SERVE THIS DEFENDANT AT: Name: Toyota Motor Sales, USA, Inc. c/o Prentice Hall Corporation Address: 33 N. LaSalle St. Chicago, IL 60602 City, State & Zip:		JUL - 9 2007 GROUP RECEIVED File Stamp

Amount Claimed \$ NA

Pltf. Atty Thomas P. Scherschel
 Atty. Registration No. 6184669
 Address 3815 E. Main Street
 City, State and Zip St. Charles, IL 60174

Add. Pltf. Atty _____
 Atty. Registration No. _____
 Address _____
 City, State and Zip _____

SUMMONS

To the above named defendant(s):

- A. You are hereby summoned and required to appear before this court in room _____ of the
 Kane County Judicial Center, 37W777 Rt. 38, St. Charles, IL 60175 Kane County Court House, 100 S. 3rd Street,
 Geneva, IL 60134, at _____ m. on _____ to answer the complaint in this case,
 a copy of which is hereto attached. If you fail to do so, a judgment by default may be entered against you for the relief
 asked in the complaint.
- B. You are hereby summoned and required to file an answer in this case or otherwise file your appearance, in the Office of the
 Clerk of this Court, within 30 days after service of this summons, exclusive of the day of service. If you fail to do so, judgment
 or decree by default may be taken against you for the relief prayed in the complaint.
- C. You are further Notified that a dissolution action stay is in full force and effect upon service of this summons. The
 Conditions of stay are set forth on the reverse of this summons, and are applicable to the parties as set forth in the statute.

TO THE SHERIFF OR OTHER PROCESS SERVER:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. In the event that paragraph A of this summons is applicable, this summons may not be served less than three days before the day for appearance. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than 30 days after its date if paragraph B is applicable.

DATE OF SERVICE _____
 (To be inserted by process server on copy left with the defendant or other person)

WITNESS: [Signature] (date)
[Signature]
 Clerk of Court

NOTICE TO DEFENDANTS - Pursuant to Supreme Court Rule

In a civil action for money (excess of \$15,000) in which the summons requires your appearance on a specified day, you may enter your appearance as follows:

1. You may enter your appearance prior to the time specified in the summons by filing a written appearance, answer or motion in person or by attorney to the Office of the Kane County Circuit Clerk, 540 S. Randall Rd., St. Charles, IL 60174.
2. You may enter your appearance at the time and place specified in the summons by making your presence known to the Judge when your case is called.

In either event YOU MUST APPEAR IN PERSON OR BY ATTORNEY at the time and place specified in the summons or a default Judgment will be entered against you.

When you appear in Court, the Judge will require you to enter your appearance in writing, if you have not already done so. Your written appearance, answer, or motion shall state with particularity the address where service of notice or papers may be made upon you or an attorney representing you.

Your case will be heard on the date set forth in the summons unless otherwise ordered by the Court. Only the Court can make this exception. Do not call upon the Circuit Court Clerk or the Sheriff's Office if you feel you will be unable to be present at the time and place specified. Continuances can be granted only on the day set forth in the summons, and then only for good cause shown. You, or someone representing you, MUST APPEAR IN PERSON at the specified time and place and make such a request.

If you owe and desire to pay the claim of the plaintiff before the return date on the summons, notify the plaintiff or his/her attorney if you desire to do so. Request that he/she appear at the time specified and ask for the dismissal of the suit against you. Do not make such a request of the Circuit Court Clerk or the Sheriff, as only the Judge can dismiss a case, and then only with a proper court order which must be entered in open Court.

CONDITIONS OF DISSOLUTION ACTION STAY

750 ILCS 5/501.1

Chapter 40, paragraph 501.1, Illinois Revised Statutes

(a) Upon service of a summons and petition or praecipe filed under the Illinois Marriage and Dissolution of Marriage Act or upon the filing of the respondent's appearance in the proceeding, whichever first occurs, a dissolution action stay shall be in effect against both parties and their agents and employees, without bond or further notice, until a final judgment is entered, the proceeding is dismissed, or until further order of the court:

(1) restraining both parties from physically abusing, harassing, intimidating, striking, or interfering with the personal liberty of the other party or the minor children of either party; and

(2) restraining both parties from removing any minor child or either party from the State of Illinois or from concealing any such child from the other party, without the consent of the other party or an order of the court.

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

KEMPER AUTO AND HOME)
 INSURANCE COMPANY, as Subrogee of)
 PHILLIP HELFAND,)
)
 Plaintiff,)
 vs.)
)
 TOYOTA INDUSTRIES NORTH)
 AMERICA, INC., a foreign corporation,)
 TOYOTA MOTOR SALES, U.S.A., a)
 foreign corporation and other unidentified)
 entities involved in the manufacture and)
 sale of TOYOTA vehicles,)
)
 Defendants.)

FILED _____
 ENTERED _____
 2007 JUN 26 P 3:24
 JORAH SEYLLER
 CLERK
 CIRCUIT COURT
 KANE COUNTY, ILLINOIS

LEGAL SERVICES
 JUL - 9 2007
 GROUP RECEIVED

COMPLAINT IN CHANCERY
FOR PROTECTIVE ORDER AND OTHER MISCELLANEOUS RELIEF

NOW COMES Plaintiff, KEMPER AUTO AND HOME INSURANCE COMPANY, as Subrogee of PHILLIP HELFAND, by and through attorneys, SmithAmundsen LLC, and as its Complaint in Chancery, states as follows:

1. On or about April 4, 2007, Plaintiff's subrogor, Phillip Helfand, was the operator of a motor vehicle manufactured and distributed by one or more of the Defendants, specifically a 2007 Lexus ES350, vehicle identification number: JTHBJ46G072022322.

2. At all relevant times, the subject vehicle and its operator, Phillip Helfand, were insured through a policy of public liability insurance issued by Plaintiff, Kemper Auto and Home Insurance Company, which was and is licensed to do business in Illinois.

NOTICE
 BY ORDER OF COURT THIS CASE IS HEREBY
 SET FOR CASE MANAGEMENT CONFERENCE
 BEFORE THE ABOVE NAMED JUDGE
 ON 10-16-07
 AT 9:30 A.M. P.M.
 FAILURE TO APPEAR MAY RESULT IN THE
 CASE BEING DISMISSED OR AN ORDER OF
 DEFAULT BEING ENTERED.

3. Under the subject policy of public liability insurance, Plaintiff became and is subrogated to the rights of its insured, Phillip Helfand.

4. Upon information and belief, then subject accident occurred as a result of a mechanical defect present in the subject vehicle at the time it left the manufacturer and at the time it was placed in the stream of commerce by the distributor, each of which is named as a defendant herein.

5. Specifically, an automobile accident occurred on April 4, 2007 due to a mechanical defect which caused the subject vehicle to accelerate suddenly and uncontrollably resulting in the vehicle making violent contact with other vehicles and causing personal injury and property damage to third persons, to whom Plaintiff would be responsible in the event the subject accident were caused by negligence on the part of Plaintiff's insured subrogor, rather than caused by a mechanical defect.

6. In order to determine and memorialize the actual defect which caused the subject sudden acceleration and accident, it is necessary to inspect the vehicle and to download the vehicle event recorder, sometimes referred to as the EDR.

7. By virtue of this suit in Chancery, Plaintiff wishes to examine the vehicle and to put others on notice who may have an interest of the inspection and examination of the vehicle and to avoid claims of spoliation of evidence at a later date.

8. Further, to complete the necessary examination of the vehicle and its event recorder, Plaintiff will require information in the exclusive possession and

control of Defendants, which possess the information, software and training to download the event recorder and to interpret the data obtained there from.

9. Defendants have been contacted and advised of Plaintiff's desire to inspect the vehicle and to download available data from the event recorder.

10. Defendants have indicated in writing their desire to be present at the time of the inspection of the vehicle.

11. However, Defendants have declined to voluntarily provide the necessary equipment and software in its possession to download available data from the event recorder.

12. On information and belief, Defendants have in fact provided the necessary software and equipment in the past to evaluate event recorder data on vehicles in the United States and have no valid reason or just cause to refuse to provide the software, download equipment and all data parameters to Plaintiff by which Plaintiff can obtain and evaluate the relevant data to determine if there is data captured on the event recorder that would substantiate the claim of Plaintiffs' insured that the injuries and damages caused by the subject accident were on account of a defect in the subject vehicle which caused sudden acceleration by the subject vehicle.

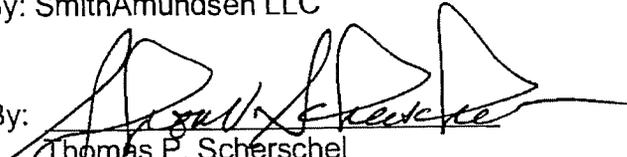
WHEREFORE, Plaintiff seeks an order from this Court as follows:

- i) Providing a date certain for the inspection of the subject vehicle, thereby placing all parties hereto on notice and allowing all interested parties to attend the inspection of the subject vehicle;

- ii) Ordering that Defendants provide Plaintiff with all necessary parameters and information necessary to interpret data obtained from the event recorder(s) installed on the subject vehicle; and
- iii) Ordering the Defendants to provide all necessary software and equipment to obtain all available information from all event recorders installed on the subject vehicle, and to do so within 21 days or such other reasonable time as the Court shall deem just.

KEMPER AUTO AND HOME INSURANCE
COMPANY, as Subrogee of PHILLIP
HELFAND, Plaintiff,
By: SmithAmundsen LLC

By:


Thomas P. Scherschel
One of their attorneys

Thomas P. Scherschel
SmithAmundsen LLC
3815 East Main Street, Suite A-1
St. Charles, IL 60174
(630) 587-7910
Atty. No. 6184669

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

KEMPER AUTO AND HOME)
 INSURANCE COMPANY, as Subrogee of)
 PHILLIP HELFAND,)
)
 Plaintiff,)
 vs.)
)
 TOYOTA INDUSTRIES NORTH)
 AMERICA, INC., a foreign corporation,)
 TOYOTA MOTOR SALES, U.S.A., a)
 foreign corporation and other unidentified)
 entities involved in the manufacture and)
 sale of TOYOTA vehicles,)
)
 Defendants.)

FILED _____
 ENTERED _____
 2007 JUN 26 P 3:21
 DEBORAH SEYLLER
 CIRCUIT COURT CLERK
 KANE COUNTY, IL

07 CH K 1264

RECEIVED
 JUL 13 2007
 LEGAL DEPT.

COMPLAINT IN CHANCERY
FOR PROTECTIVE ORDER AND OTHER MISCELLANEOUS RELIEF

NOW COMES Plaintiff, KEMPER AUTO AND HOME INSURANCE COMPANY, as Subrogee of PHILLIP HELFAND, by and through attorneys, SmithAmundsen LLC, and as its Complaint in Chancery, states as follows:

1. On or about April 4, 2007, Plaintiff's subrogor, Phillip Helfand, was the operator of a motor vehicle manufactured and distributed by one or more of the Defendants, specifically a 2007 Lexus ES350, vehicle identification number: JTHBJ46G072022322.

2. At all relevant times, the subject vehicle and its operator, Phillip Helfand, were insured through a policy of public liability insurance issued by Plaintiff, Kemper Auto and Home Insurance Company, which was and is licensed to do business in Illinois.

NOTICE
 BY ORDER OF COURT THIS CASE IS HEREBY
 SET FOR CASE MANAGEMENT CONFERENCE
 BEFORE THE ABOVE NAMED JUDGE
 ON 07/16/07
 AT 9:30 A.M. P.M.
 FAILURE TO APPEAR MAY RESULT IN THE
 CASE BEING DISMISSED OR AN ORDER OF
 DEFAULT BEING ENTERED.

3. Under the subject policy of public liability insurance, Plaintiff became and is subrogated to the rights of its insured, Phillip Helfand.

4. Upon information and belief, then subject accident occurred as a result of a mechanical defect present in the subject vehicle at the time it left the manufacturer and at the time it was placed in the stream of commerce by the distributor, each of which is named as a defendant herein.

5. Specifically, an automobile accident occurred on April 4, 2007 due to a mechanical defect which caused the subject vehicle to accelerate suddenly and uncontrollably resulting in the vehicle making violent contact with other vehicles and causing personal injury and property damage to third persons, to whom Plaintiff would be responsible in the event the subject accident were caused by negligence on the part of Plaintiff's insured subrogor, rather than caused by a mechanical defect.

6. In order to determine and memorialize the actual defect which caused the subject sudden acceleration and accident, it is necessary to inspect the vehicle and to download the vehicle event recorder, sometimes referred to as the EDR.

7. By virtue of this suit in Chancery, Plaintiff wishes to examine the vehicle and to put others on notice who may have an interest of the inspection and examination of the vehicle and to avoid claims of spoliation of evidence at a later date.

8. Further, to complete the necessary examination of the vehicle and its event recorder, Plaintiff will require information in the exclusive possession and

control of Defendants, which possess the information, software and training to download the event recorder and to interpret the data obtained there from.

9. Defendants have been contacted and advised of Plaintiff's desire to inspect the vehicle and to download available data from the event recorder.

10. Defendants have indicated in writing their desire to be present at the time of the inspection of the vehicle.

11. However, Defendants have declined to voluntarily provide the necessary equipment and software in its possession to download available data from the event recorder.

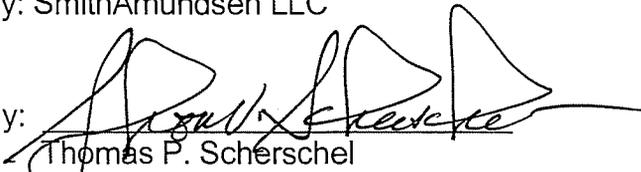
12. On information and belief, Defendants have in fact provided the necessary software and equipment in the past to evaluate event recorder data on vehicles in the United States and have no valid reason or just cause to refuse to provide the software, download equipment and all data parameters to Plaintiff by which Plaintiff can obtain and evaluate the relevant data to determine if there is data captured on the event recorder that would substantiate the claim of Plaintiffs' insured that the injuries and damages caused by the subject accident were on account of a defect in the subject vehicle which caused sudden acceleration by the subject vehicle.

WHEREFORE, Plaintiff seeks an order from this Court as follows:

- i) Providing a date certain for the inspection of the subject vehicle, thereby placing all parties hereto on notice and allowing all interested parties to attend the inspection of the subject vehicle;

- ii) Ordering that Defendants provide Plaintiff with all necessary parameters and information necessary to interpret data obtained from the event recorder(s) installed on the subject vehicle; and
- iii) Ordering the Defendants to provide all necessary software and equipment to obtain all available information from all event recorders installed on the subject vehicle, and to do so within 21 days or such other reasonable time as the Court shall deem just.

KEMPER AUTO AND HOME INSURANCE
COMPANY, as Subrogee of PHILLIP
HELFAND, Plaintiff,
By: SmithAmundsen LLC

By: 
Thomas P. Scherschel
One of their attorneys

Thomas P. Scherschel
SmithAmundsen LLC
3815 East Main Street, Suite A-1
St. Charles, IL 60174
(630) 587-7910
Atty. No. 6184669



U.S. Department
of Transportation

Memorandum

National Highway
Traffic Safety
Administration

Subject: Helfand Vehicle Inspection (VOQ 10189655)
VIN: JTHBJ46G072022322

Date: July 12, 2007

From: D. Scott Yon - 202-366-0139, scott.yon@dot.gov
Investigator, Office of Defect Investigations, NHTSA, US DOT

To: Mr. Tom Scherschel
Attorney representing vehicle insurer (Unitrin Kemper)

This letter is further to our recent conversations regarding the above subject. In connection with a defect investigation the agency is conducting (PE07-016) NHTSA would like to inspect the Helfand vehicle on Wednesday, July 25, 2007 at the Copart facility in Elgin, IL. Unitrin Kemper has advised that the vehicle is currently under your control. Myself and Mr. Bill Collins from NHTSA's Vehicle Research and Test Center in East Liberty OH will conduct the inspection.

NHTSA will bring the proper tools and equipment; we ask that the vehicle be placed on a paved, hard surface for the inspection process (for safety purposes).

NHTSA will not intentionally destroy or damage any subject vehicle component or material, i.e., this is intended to be a non-destructive inspection process.

NHTSA will not remove any subject vehicle components or materials from the inspection facility other than photographic evidence.

Any individuals or parties who wish to attend the inspection are welcomed by NHTSA; please advise me directly of all attendees at least one day in advance.

Any subject vehicle materials or components removed for inspection purposes will be reinstalled to their original position/condition as part of the process.

NHTSA will not connect to, or interface with, any electronic system or information storage device on the subject vehicle, i.e., this is intended to be a physical inspection only. *Please note that NHTSA does have a strong interest in the contents of the airbag control module since it is directly pertinent to our investigation. NHTSA requests advanced notice of any future actions that might impact the data it contains, including the removal or interrogation of the device or the disposal of the subject vehicle.*

Below is a protocol for what we propose to do; please advise any questions or revisions. I look forward to your prompt response.





U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

Memorandum

NHTSA PROPOSED PROTOCOL FOR HELFAND VEHICLE INSPECTION

- 1) Visually inspect and fully photograph the exterior portions of the vehicle including the VIN and Certification labels.
- 2) Visually inspect and fully photograph the interior portions of the vehicle including the instrument panel, glove box, under-seat, under-dash, and floorboard areas. Remove the driver side floor mat; visually inspect and photograph the mat and retainers.
- 3) Visually inspect and fully photograph the underhood area of the vehicle (Note: The hood is damaged from the crash and fire. It appears it can be opened based on the photos I have seen. If this turns out not to be the case we will discuss further at the inspection.)
- 4) Visually inspect and fully photograph the trunk area of the vehicle.
- 5) Raise the vehicle and place it on safety stands (or raise it on a lift if the facility has that capability).
- 6) Visually inspect and fully photograph the undercarriage area of the vehicle.
- 7) Remove one front and one rear wheel and tire assembly from its axle; visually inspect and photograph each.
- 8) At the two positions where the wheels have been removed, disconnect the brake caliper from the brake armature without disturbing the hydraulic circuit. Remove the inboard and outboard brake pads and hardware. Visually inspect and photograph all components.
- 9) Reassemble and or reinstall all removed components.
- 10) Remove the vehicle from the safety stands.

Estimated inspection time required: two to three hours

1000
KEMPER AUTO (HELFAND)

PLEADINGS

1000000

FILE START

File #03-07-286
LAW OFFICE OF STEWART C. CRAWFORD & ASSOCIATES
BY: Leslie Britt, Esquire
ATTORNEY I.D. NO.: 86591
223 North Monroe Street
Media, PA 19063
Telephone: (610) 565-7050

Attorney for Plaintiff

ENTERED AND FILED
07 MAY 14 PM 1:19
PROTHONOTARY'S OFFICE
LANCASTER, PA.

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY,
PENNSYLVANIA

CIVIL ACTION – LAW

ALLSTATE INSURANCE COMPANY
309 Lakeside Drive, Suite 100
Horsham, PA 19044

v.

TOYOTA MOTOR SALES, U.S.A, INC.
19001 South Western Avenue
Torrance, CA 90501

IN CIVIL ACTION

NO.: CI-07-04925

LEGAL SERVICES

JUN 11 2007

GROUP RECEIVED

COMPLAINT

1. Plaintiff, Allstate Insurance Company, is an insurance company licensed and authorized to do business in the Commonwealth of Pennsylvania with one of its principal places of business at the above captioned address.
2. Defendant, Toyota Motor Sales, U.S.A., Inc., is a corporation engaged in the business of designing and manufacturing motor vehicles and is authorized to do business in Pennsylvania, with a principal place of business at the above captioned address.
3. On June 17, 2006, Plaintiff had a written policy of insurance with Shahnaz Daneshvar, hereinafter referred to as named insured, said policy is at present not available for attachment to this complaint.
4. On the aforesaid date, Plaintiff's insured owned and operated a 2005 Toyota Corolla, VIN # 2T1BR32E85C362888 when it was involved in an incident.
5. On the aforesaid date, the insured vehicle was pulling into her driveway located at 359 Hilltop Drive, Leola, Pennsylvania when, without warning, the insured vehicle

unexpectedly accelerated and the engine started to run at a high RPM. The insured tried to brake but was unable to, as a result of which the insured vehicle struck a tree and sustained damages.

6. Plaintiff's insured vehicle was examined National Forensic Consultants, Inc. on July 6, 2006, and it was determined that the accelerator electrical system malfunctioned which caused the insured vehicle to be uncontrollable and strike a tree.

7. The defect in the accelerator electrical system failed to function properly, causing Plaintiff's insured vehicle to run improperly at an excessive PRM, lose control and strike a tree.

8. The vehicle driven by Plaintiff's insured was manufactured, designed and marketed by Defendant.

9. The resultant losses and damages sustained by Plaintiff resulted directly and proximately from Defendant's breach of express and/or implied warranties of merchantability or fitness for a particular purpose, which consisted of the following:

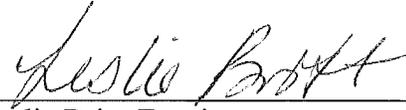
- (a). Defendant did not have the vehicle adequately, properly and/or timely tested prior to its use;
- (b). The vehicle was not fit for the ordinary purpose for which the product is customarily used;
- (c). The Defendant knew or should have known the defective accelerator electrical system was likely to cause damage to owner's vehicle;
- (d). The Defendant knew or should have known that Plaintiff was relying upon the expertise of the Defendant in manufacturing, designing, assembling, leasing, supplying and/or repairing the vehicle.
- (e). In expressly or impliedly warranting that the vehicle was safe for use;
- (f). In expressly or impliedly misrepresenting that the vehicle was safe for use.

10. As a direct and proximate result of the breach of these express and implied warranties, Plaintiff has suffered damages in the amount of \$16,031.37.

11. Pursuant to the aforesaid policy of insurance, Plaintiff became liable for the damages that arose out of this incident.

12. Pursuant to the aforesaid policy of insurance, Common Law, and governing statutes, Plaintiff is subrogated for all money paid and seeks recovery of a sum totaling \$16,031.37.

WHEREFORE, Plaintiff demands judgment for \$16,031.37 interest and costs of suit.

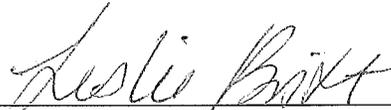


Leslie Britt, Esquire
Attorney for Plaintiff

Date: 5-11-07

VERIFICATION

The undersigned hereby states that she is an authorized agent of Plaintiff insurance company in this action and verifies that the statements contained in the foregoing Complaint are true and correct. The undersigned understands that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.



Leslie Britt, Esquire
Attorney for Plaintiff

Date: 5-11-04

[Faint, illegible text]

ALLSTATE INSURANCE
(DANESHVAR, SHAHNAZ)

PLEADINGS

FILE START

COPY

WRAITH LAW
16485 Laguna Canyon Rd., Suite 250
Irvine, California 92618
(949) 251-9977
www.ca-lemmon.com

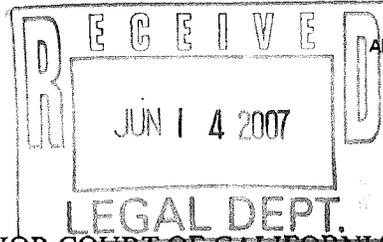
1 WILLIAM F. WRAITH, SBN 185927
2 WRAITH LAW
3 16485 Laguna Canyon Rd., Suite 250
4 Irvine, California 92618
5 Tel: (949) 251-9977
6 Fax: (949) 251-9978

7 Attorneys for Plaintiff
8 LARRY CHRISTY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MAY 17 2007

ALAN SLATER, Clerk of the Court



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

11 LARRY CHRISTY,

12 Plaintiff,

13 vs.

14 TOYOTA MOTOR SALES, U.S.A., INC.,
15 a corporation, and DOES 1-10, Inclusive,

16 Defendants.

Case No.: **07CC06115**

**COMPLAINT FOR VIOLATION OF
THE SONG-BEVERLY CONSUMER
WARRANTY ACT (CALIFORNIA
CIVIL CODE SECTION 1790 ET SEQ.)**

[UNLIMITED CIVIL CASE - AMOUNT
DEMANDED EXCEED \$25,000]

**JUDGE GEOFFREY T. GLASS
DEPT. C33**

18 COMES NOW Plaintiff LARRY CHRISTY and alleges as follows:

19 **I. FIRST CAUSE OF ACTION**

20 **VIOLATION OF THE SONG-BEVERLY**

21 **CONSUMER WARRANTY ACT, CALIFORNIA**

22 **CIVIL CODE SECTION 1790 et seq.**

23 (AGAINST ALL DEFENDANTS)

24 1. Plaintiff LARRY CHRISTY is an individual residing in the County of Orange,
25 State of California.

26 2. Plaintiff is informed and believes that Defendant TOYOTA MOTOR SALES,
27 USA., INC. ("TOYOTA") is a corporation, currently doing business in the County of Orange,
28

1 State of California.

2 3. Plaintiff is ignorant of the true identity, nature, or capacity of the defendants sued
3 herein under the fictitious names DOES 1 through 10, inclusive. Plaintiff will seek leave of
4 court to amend this Complaint to allege such names and capacities as soon as they are
5 ascertained.

6 4. Plaintiff is informed and believes, and thereon alleges, that each of the defendants
7 is in some manner responsible for the events set forth in this Complaint and proximately caused
8 the injuries and damages to Plaintiff as alleged in this Complaint.

9 5. Plaintiff is informed and believes and thereon alleges that at all material times, the
10 defendants, and each of them, were the agents, servants, and employees of the other defendants,
11 and each of them in such a way as to cause each defendant to be jointly and severally liable and
12 responsible for the conduct of one another. The conduct of each defendant was within the course
13 and scope of the authority granted each defendant by the other defendants. Each defendant
14 ratified and approved of the acts or omissions of each other such as to cause each to be jointly
15 and severally liable for the conduct of each other defendant.

16 6. On or about March 18, 2005, Plaintiff purchased a new 2005 Toyota Sienna, VIN
17 5TDZA23C45S273758 (the "Vehicle"), which was manufactured, distributed, or sold by
18 TOYOTA. Pursuant to the Song-Beverly Consumer Warranty Act (the "Act") Plaintiff is a
19 "buyer" of a "consumer good." The Vehicle was purchased primarily for personal, family, or
20 household purposes. The Vehicle is a "new motor vehicle" under the Act.

21 7. In connection with the purchase, Plaintiff received an express written warranty in
22 which TOYOTA undertook to preserve or maintain the utility or performance of the Vehicle or
23 to provide compensation if there is a failure in utility or performance for a specified period of
24 time. Amongst other things, the warranty provided that in the event a defect exists or develops
25 with the Vehicle during the warranty period, Plaintiff could deliver the vehicle for repair services
26 and the Vehicle would be repaired.

27 8. Pursuant to the Act, the sale of the Vehicle was accompanied by each Defendant's
28 implied warranty of merchantability. In addition, each Defendant is a manufacturer, distributor,

1 or seller who had reason to know at the time of the retail sale that the Vehicle was required for a
2 particular purpose and that Plaintiff was relying on the each Defendant's skill or judgment to
3 select or furnish suitable goods. Accordingly, the sale of the Vehicle was accompanied by each
4 Defendant's implied warranty of fitness.

5 9. During the warranty period, the Vehicle contained or developed defects and
6 nonconformities, which caused the vehicle to have an unintended acceleration, the brakes to fail,
7 and other defects which substantially impair the use, value, or safety of the vehicle. The
8 existence of the defects constituted a breach of the implied warranties.

9 10. Plaintiff delivered the Vehicle in a reasonable time to TOYOTA's representative
10 in this state, or where delivery could not be reasonably accomplished, Plaintiff delivered the
11 Vehicle to an agreed-upon independent service and repair location. Plaintiff delivered the
12 Vehicle on each occasion for the purpose of having each of the defects corrected and repaired
13 under the applicable warranties.

14 11. However, TOYOTA and its representatives have refused or failed to service or
15 repair the Vehicle to conform to the applicable express warranty after a reasonable number of
16 attempts.

17 12. In addition, TOYOTA and its representatives failed to commence the service or
18 repairs of the Vehicle within a reasonable time and failed to service or repair the Vehicle so as to
19 conform to the applicable warranties within 30 days, in violation of Civil Code Section
20 1793.2(b).

21 13. Plaintiff duly performed all the conditions on his part under the purchase contract
22 and under each warranty, except to the extent that Defendants, and each of them, prevented or
23 excused such performance.

24 14. Each Defendant violated the Act by, amongst other things, failing to comply with
25 the obligations under the express warranty, failing to comply with the obligations pursuant to the
26 implied warranties, and failing to comply with the obligations of Civil Code Section 1793.2(b).

27 15. Plaintiff has been damaged by Defendants' failure to comply with the obligations
28 under the Act, including TOYOTA's failure to comply with its obligations under the express

WRAITH LAW
16485 Laguna Canyon Rd., Suite 250
Irvine, California 92618
(949) 251-9977
www.ca-lemml.com

1 warranty, each Defendants' failure to comply with the obligations of the implied warranties, and
2 Defendants' failure to comply with the obligations specified in Civil Code Section 1793.2(b).

3 16. Plaintiff has rightfully rejected and/or justifiably revoked acceptance of the
4 Vehicle, and has exercised a right to cancel the sale. By serving this Complaint, Plaintiff does so
5 again.

6 17. Accordingly, Plaintiff seeks the remedies provided in the Act, including those in
7 California Civil Code section 1794. Plaintiff is entitled to restitution pursuant to the Act,
8 including the actual price paid or payable by Plaintiff. Plaintiff is also entitled to incidental and
9 consequential damages incurred by Plaintiff. Further, pursuant to the Act, Plaintiff is entitled to
10 recover costs and expenses, including attorney's fees.

11 18. Each Defendants' failure to comply with its obligations under the Act was willful,
12 justifying an award of a civil penalty of up to two times Plaintiff's actual damages.

13 **Therefore, Plaintiff LARRY CHRISTY prays for the following against each defendant:**

- 14 1. For general, special, and actual damages according to proof at trial;
- 15 2. For rescission of the sale contract and restitution of all consideration paid or
16 payable by Plaintiff;
- 17 3. For incidental and consequential damages according to proof;
- 18 4. For a civil penalty as provided in the Act;
- 19 5. For reasonable attorneys' fees;
- 20 6. For costs of suit incurred herein;
- 21 7. For pre-judgment interest as permitted by law; and
- 22 8. For such other and further relief as the Court deems just and proper.

24 Dated: May 15, 2007

WRAITH LAW

25
26 By: 

27 WILLIAM F. WRAITH, Attorney for Plaintiff
28 LARRY CHRISTY

CHRISTY, LARRY

PLEADING