

JOHN C. ALBERT
CIRCUIT COURT, BR. 3

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH

DANE COUNTY

2013 FEB 14 AM 11:13

DANE CO. CIRCUIT COURT

STATE OF WISCONSIN,
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857

Plaintiff,

v.

Case No. 13-CX- 3

Complex Forfeiture: 30109

TOYOTA MOTOR CORPORATION,
a Japanese Corporation,
1 Toyota-cho
Toyota City
Aichi Prefecture 471-8571
Japan;

TOYOTA MOTOR NORTH AMERICA, INC.,
a California Corporation,
601 Lexington Avenue, 49th Floor
New York, New York 10022;

TOYOTA MOTOR SALES, U.S.A., INC.,
a California Corporation,
19001 South Western Avenue
Torrance, California 90501; and

TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA, INC.,
a Kentucky Corporation,
25 Atlantic Avenue
Erlanger, Kentucky 41018.

Defendants.

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Dane County Circuit Court, 215 South Hamilton Street, Madison, Wisconsin 53703-3285, and to Phillip D. Ferris, Assistant Attorney General, Plaintiff's attorney, whose address is Wisconsin Department of Justice, 17 West Main Street, Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien

against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 14th day of February, 2013.

J.B. VAN HOLLEN
Attorney General



Phillip D. Ferris
Assistant Attorney General
State Bar No. 1000138

Attorneys for Plaintiff,
State of Wisconsin

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Defendants.

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.
CARLO ESQUEDA
CLERK OF CIRCUIT COURT

COMPLAINT

Plaintiff, State of Wisconsin, by its attorneys, J.B. Van Hollen, Attorney General and Phillip D. Ferris, Assistant Attorney General, brings this action against Defendants Toyota Motor Corporation, Toyota Motor North America, Inc., Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering & Manufacturing North America, Inc. (hereinafter collectively referred to as “Defendants” or “Toyota”) for violating Wis. Stat. § 100.18(1), and alleges as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to Wis. Stat. § 100.18(11)(d), to enjoin violations of Wis. Stat. § 100.18(1) and pursuant to Wis. Stat. § 100.26(4), to recover civil forfeitures for violations of Wis. Stat. § 100.18(1).

2. This Court has jurisdiction over the Defendants pursuant to Wis. Stat. §§ 801.05(1)(d), (3) and (4) because Defendants have transacted substantial business within the State of Wisconsin, or have engaged in acts or omissions in Wisconsin giving rise to violations of law alleged herein, or have engaged in acts or omissions either in Wisconsin or outside Wisconsin giving rise to violations of law alleged herein via solicitation or service activities carried on in Wisconsin by certain Defendants or via products, materials or things processed, serviced or manufactured by certain Defendants, that is motor vehicles or motor vehicle equipment, used within Wisconsin in the ordinary course of trade.

3. Venue for this action properly lies in Dane County, pursuant to Wis. Stat. § 801.50(2)(c) and (a) because, upon information and belief, certain Defendants transact business in Dane County, and certain violations alleged herein occurred in Dane County.

PARTIES

4. The Plaintiff, State of Wisconsin, is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin.

5. Defendant, Toyota Motor Corporation (hereinafter "TMC"), is a Japanese Corporation, with an address of 1 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan.

6. Defendant, Toyota Motor North America, Inc. (hereinafter "TMA"), is a California corporation, with its office at 601 Lexington Avenue, 49th Floor, New York, New York 10022.

7. Defendant, Toyota Motor Sales, U.S.A., Inc. (hereinafter "TMS"), is a California corporation, with its principal office at 19001 South Western Avenue, Torrance, California 90501.

8. Defendant, Toyota Motor Engineering & Manufacturing North America Inc. (hereinafter "TEMA"), is a Kentucky corporation, with its principal office at 25 Atlantic Avenue, Erlanger, Kentucky 41018.

9. Defendants are composed of numerous subsidiaries, some of which are based in the United States. However, Defendants' principal corporate offices are located at 1 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Toyota transacts business nationwide by manufacturing, assembling, advertising, marketing, promoting, selling, and distributing motor vehicles. Upon information and belief, Toyota transacts business in Wisconsin by advertising, marketing, promoting, selling, and distributing motor vehicles.

COMMERCE

10. Defendants were at all times relative hereto, engaged in trade or commerce in the State of Wisconsin, to wit: advertising, marketing, promoting, selling, and distributing motor vehicles.

BACKGROUND

11. Toyota manufactures, assembles, advertises, markets, promotes, sells, and distributes motor vehicles nationally. Upon information and belief, Toyota advertises, markets, promotes, sells, and distributes motor vehicles in the State of Wisconsin.

12. Since the formation of Toyota Motor Sales, U.S.A., Inc., on October 31, 1957, Toyota has manufactured, assembled, advertised, marketed, promoted, sold, and distributed millions of vehicles in the United States. Defendants, from January 1, 2003 through January 30, 2010, consistently represented in advertising and public statements that Toyota vehicles were safe and reliable transportation.

13. In 2011, Toyota Motor Sales reported that Toyota sold 1,644,661 vehicles in the United States.

UNINTENDED ACCELERATION

14. According to the National Highway Traffic Safety Administration (hereinafter referred to as "NHTSA"), the federal agency primarily responsible for maintaining motor vehicle safety in the United States, unintended acceleration generally "refers to the occurrence of any degree of acceleration that the vehicle driver did not purposely cause to occur."

15. Recent government studies into the possible causes of unintended acceleration in all vehicles, including Toyota vehicles, indicate that driver error (through pedal misapplication), and mechanical issues (such as "floor mat entrapment" of the accelerator pedal and the "sticky pedal" phenomenon) are the primary causes of reports of unintended acceleration.

TOYOTA RECALLS OF 2009 AND 2010

16. Reports of unintended acceleration in Toyota vehicles first prompted NHTSA investigations in 2003.

17. Between July, 2003 and April, 2009, NHTSA opened eight separate unintended acceleration-related investigations into Toyota vehicles.

18. One of the above-referenced NHTSA investigations resulted in a voluntary *equipment recall* of 55,000 all-weather floor mats for Lexus vehicles (“floor mat entrapment” recall, NHTSA campaign no. 09V-388). NHTSA determined that if the all-weather floor mats were not installed correctly, the floor mat may interfere with, or entrap, the accelerator pedal, causing a condition called “wide open throttle” – where the vehicle could potentially accelerate uncontrollably.

19. As a result of a separate NHTSA investigation conducted in January, 2009, Toyota agreed to voluntarily recall 26,501 of the 2004 Model Year Sienna minivans to replace a retention clip and floor carpet cover in or near the Sienna’s center console trim panel (the Sienna “Safety Improvement Campaign,” NHTSA campaign no. 09V-023). Prior to the recall, the design of the center console and a missing retention clip could have resulted in accelerator “pedal interference” – which could have caused instances of unintended acceleration.

20. In August, 2009, a tragic and fatal crash killed four members of the Saylor family in Santee, California. According to a NHTSA report on the crash, 911 calls, and the subsequent investigation by local law enforcement and NHTSA, the crash was likely caused when an improperly installed floor mat in the Lexus vehicle the Saylor family were driving entrapped the accelerator pedal. California Highway Patrol Officer Mark Saylor, the driver of the Saylor vehicle, and a highly trained and experienced driver, used his best efforts to slow the vehicle, but was unsuccessful. The floor mat entrapment, in conjunction with a push-button start ignition system in the vehicle, made stopping the vehicle impossible, despite obvious application of the brakes by Officer Saylor.

21. Soon after the Saylor crash, on September 29, 2009, Toyota issued a consumer advisory regarding the potential floor mat entrapment of the accelerator pedal.

22. At NHTSA's request, on October 5, 2009, Toyota informed NHTSA that the company would recall affected vehicles to address the potential floor mat entrapment safety issue.

23. On November 2, 2009, Toyota announced that it would recall 3.8 million vehicles worldwide to address the floor mat entrapment safety concern 09V-388 ("floor mat entrapment" safety campaign; Toyota Recall No. 90L/9LG).

24. After reports surfaced that floor mat entrapment may not be the only mechanical cause of unintended acceleration in certain Toyota vehicles, on January 21, 2010, Toyota announced an additional recall of 2.3 million vehicles worldwide to address "sticky pedal" safety issues ("sticky pedal" recall, NHTSA campaign no. 10V-017). Essentially, when drivers of some affected vehicles depressed the accelerator pedal, that accelerator pedal would "stick," making the vehicle slow to return to idle, or difficult to slow down.

25. On January 27, 2010, Toyota expanded the November, 2009 floor mat entrapment recalls to include additional models ("floor mat entrapment" recall, NHTSA campaign no. 10V-023).

26. The number of vehicles affected by the pedal entrapment and "sticky pedal" recalls totaled nearly 6 million vehicles in the United States alone.

NHTSA'S TIMELINESS QUERIES

27. On February 16, 2010, NHTSA announced publicly that they would use their statutory authority to open timeliness queries to determine if Toyota had notified NHTSA of safety defects and carried out safety campaigns in a timely manner.

28. On April 5, 2010, NHTSA announced they would demand that Toyota pay the statutory maximum fine of \$16.375 million for failure to timely notify NHTSA of the “sticky pedal” defect. Although federal law requires automakers, including Toyota, to notify NHTSA within five days of learning of a potential safety defect, Toyota waited for nearly four months prior to notifying NHTSA.

29. According to NHTSA, Toyota knew of the “sticky pedal” safety defect on September 29, 2009, if not before, when it notified distributors in thirty-one European countries and Canada of the potential issue and provided repair procedures to address the issue. Despite having knowledge that consumers in the United States were experiencing the same phenomena, Toyota waited until January, 2010, to notify NHTSA of the “sticky pedal” issue and begin the recall process in the United States.

30. On December 20, 2010, NHTSA announced they would demand Toyota pay a second statutory maximum fine of \$16.375 million for the failure to timely notify the agency of the dangers of floor mat entrapment in certain Toyota and Lexus model vehicles.

31. According to NHTSA, Toyota at least became aware of the dangers of floor mat entrapment of the accelerator pedal on September 26, 2007, if not before, when it initially recalled 55,000 all-weather floor mats to address entrapment issues in certain Lexus models.

32. On December 20, 2010, NHTSA announced that Toyota faced a third statutory maximum penalty of \$16.050 million for failure to timely notify the agency of a safety defect that Toyota found and addressed in certain model trucks sold in Japan in 2004, which could result in a loss of steering control. Despite Toyota’s 2004 recall in Japan to fix steering relay rods in the Hilux trucks that were prone to failure, Toyota failed to notify NHTSA that consumers in the United States had filed similar complaints regarding equivalent models of the Hilux trucks

sold in the United States. Although Toyota notified NHTSA in 2005 of a voluntary recall of 1 million United States model trucks to address the same steering relay rod issue, NHTSA did not learn of the complaints from consumers in the United States until 2010.

THE "SLATER PANEL" REPORT

33. Shortly after the massive recalls of 2009 and 2010, and the announcement of one of NHTSA's record-setting fines against Toyota, Toyota announced the creation of the "Toyota North American Quality Advisory Panel" (hereinafter "Panel"). On April 29, 2010, Toyota announced the Panel members and indicated that the Panel would be chaired by Rodney Slater, who was the United States Secretary of Transportation from 1997 through 2001.

34. Toyota tasked the Panel to conduct an independent review of Toyota's safety and quality processes and to review the company's management structure.

35. According to the Panel, Toyota granted Panel members full cooperation and was responsive to requests for information and assistance from Panel members.

36. In May, 2011, the Panel issued their report summarizing their findings upon completion of the first year of their two-year term.

37. The Slater Panel Report, as it became known, included several observations regarding Toyota's management structure and decision-making process that, in the Panel's view, may have contributed to the delay in identifying and resolving safety issues. To wit:

- a. Toyota's policy of "global centralization" – that is, maximizing control by TMC in Japan – "contributed to several of Toyota's quality and safety issues in North America." This "global centralization" policy hindered information-sharing and "delayed response time to quality and safety issues;"

- b. Toyota does not treat feedback from sources external to Toyota (such as consumer complaints or NHTSA concerns) in the same positive manner that it treats internal feedback; and
- c. Toyota conflates safety with quality, when these should be treated as separate qualities of a motor vehicle.

38. The Slater Panel Report also included several recommendations to improve Toyota's "safety and quality processes." According to the Panel, Toyota should

- a. Consider appointing one North American chief executive to oversee all North American operations;
- b. Include North American executives in decisions regarding product recalls;
- c. Strengthen communications and decision-making between regions;
- d. Seek out external feedback, including the creation of a "Consumer Representative Team" and integrate it into the decision-making processes;
- e. Work cooperatively with NHTSA and other regulators;
- f. Appoint a new "Chief Safety Technology Officer;" and
- g. Simplify the downloading and decoding of Electronic Data Recorder ("EDR") data.

VIOLATIONS OF LAW

Fraudulent Representations, Wis. Stat. § 100.18(1)

39. The State incorporates by reference and re-alleges each allegation contained in paragraphs 1-38.

40. The Defendants in promoting the affected vehicles referenced in the allegations above, with the intent to sell or with the intent to induce the public to contract for or purchase the

affected vehicles, made advertisements, announcements, statements and representations of fact that were untrue, deceptive or misleading in violation of Wis. Stat. § 100.18(1). Specifically, Defendants in advertisements, announcements, statements and representations, misrepresented, directly or by implication, Toyota motor vehicles and motor vehicle equipment as safe and reliable.

41. Each and every advertisement, announcement, statement and representation of fact that was untrue, deceptive or misleading with respect to Toyota motor vehicles and motor vehicle equipment being safe and reliable, made by or engaged in by Defendants, as recited above, constitutes a separate violation of Wis. Stat. § 100.18(1).

REMEDIES

42. Wisconsin Statute § 100.18(11)(d), states in relevant part as follows:

The department or the department of justice, after consulting with the department, or any district attorney, upon informing the department, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this section. The court may in its discretion, prior to entry of final judgment, make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, provided proof thereof is submitted to the satisfaction of the court.

43. Wisconsin Statute § 100.26(4), states as follows:

Any person who violates s. 100.18 (1) to (8) or (10) or 100.182 is subject to a civil forfeiture of not less than \$50 nor more than \$200 for each violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, State of Wisconsin, requests the Court enter judgment against the Defendants, as follows:

A. Issuing a permanent injunction prohibiting Defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in any violation of Wis. Stat. § 100.18(1);

B. Ordering Defendants to implement all recommendations of the Slater Panel Report;

C. Ordering Defendants to pay civil penalties of up to \$200 for each violation of Wis. Stat. § 100.18(1), pursuant to Wis. Stat. § 100.26(4), plus all applicable penalty assessments and surcharges;

D. Ordering Defendants to pay the Wisconsin Department of Justice its reasonable and necessary expenses of prosecution, including attorney fees, pursuant to Wis. Stat. § 100.263;

E. Ordering Defendants to pay all costs, fees and surcharges imposed under Wis. Stat. ch. 814 to the extent not already awarded; and

F. Granting such other and further relief as the Court deems equitable and proper.

Dated this 14th day of February, 2013.

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General



Phillip D. Ferris
Assistant Attorney General
State Bar No. 1000138

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