

BP

2010 07787

CAUSE NO. _____

JEAN SHARON THOMAS
Plaintiff

VS.

TOYOTA MOTOR SALES, U.S.A., INC.;
CTS CORPORATION; and
FRED HAAS TOYOTA WORLD, LTD.
Defendants

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IN THE DISTRICT COURT OF

OF HARRIS COUNTY, TEXAS

189 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

COMES NOW JEAN SHARON THOMAS, Plaintiff, complaining of TOYOTA MOTOR SALES, U.S.A., INC.; CTS CORPORATION; and FRED HAAS TOYOTA WORLD, LTD., Defendants, and in support of his cause of action, respectfully shows the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiff alleges that discovery in this matter is intended to be conducted under Level 2 by Rule 190.3, Texas Rules of Civil Procedure.

FILED
Loren Jackson
District Clerk

FEB 05 2010

Time: 9:56am
By: M. Brennan
Harris County, Texas
Deputy

PARTIES

2. JEAN SHARON THOMAS was a resident of Harris County, Texas, at the time of the incidents alleged herein. Plaintiff JEAN SHARON THOMAS is the surviving mother of TRINA RENEE HARRIS, Deceased.

3. TOYOTA MOTOR SALES, U.S.A., INC. (hereinafter known as "Defendant TOYOTA"), is a corporation doing business in the state of Texas under §17.042, Texas

CONFIRMED FILE DATE: 2/5/2010

Civ. Prac. & Rem. Code. Defendant TOYOTA designs, develops, manufactures, and sells Toyota motor vehicles, including the vehicle which is the subject of this cause of action. It may be served with process through its registered agent, CT Corporation System, 350 North St. Paul St., Dallas, TX, 75201.

4. CTS CORPORATION (hereinafter known as "Defendant CTS") is a corporation doing business in the state of Texas under §17.042, Texas Civ. Prac. & Rem. Code. Defendant CTS designs and manufactures electronic components and sensors used in the gas pedal systems of Toyota vehicles, including the vehicle which is the subject of this cause of action. It should be served with process through its registered agent, CT Corporation System, 350 North St. Paul St., Dallas, TX, 75201.

5. FRED HAAS TOYOTA WORLD, LTD. (hereinafter known as "Defendant FRED HAAS"), is a limited partnership doing business in the state of Texas, which maintains its principal place of business 20400 I-45 North, Spring, Texas. Defendant FRED HAAS sells and leases vehicles, including leasing the Toyota vehicle which is the subject of this cause of action. It should be served with process through its registered agent, Boude E. Storey, II, 11757 Katy Freeway, Suite 1010, Houston, Texas, 77079.

VENUE AND JURISDICTION

6. Venue is proper in Harris County, Texas, pursuant to VTCA Civil Practice and Remedies Code, Section 15.002 (a)(1), in that all or a substantial part of the events or omissions giving rise to the claim occurred in this county.

7. Plaintiff has incurred damages in excess of the minimum jurisdictional limits of this court.

BACKGROUND FACTS

8. On or about December 18, 2009, between 10:00 p.m. and midnight, TRINA RENEE HARRIS, age 34, was driving a leased 2009 Toyota Corolla owned by Defendant FRED HAAS. She was traveling westbound on Berry Road in Houston, Harris County, Texas, returning home from a short trip to a neighborhood store. As she drove towards the intersection of Berry Road and the Hardy Toll Road East, the 2009 Toyota Corolla she was driving malfunctioned and suddenly accelerated uncontrollably at a high rate of speed. The vehicle sped through the intersection and crashed into the Hardy Toll Road cement embankment, resulting in the death of Mrs. Harris.

9. Plaintiff's telephone number was found on the cell phone of Mrs. Harris, so Plaintiff was the person first notified by the medical examiner's office that Mrs. Harris was involved in a fatal automobile crash.

WRONGFUL DEATH TEX. CIV. PRAC. AND REM. CODE, CHAPTER 71

9. Plaintiff JEAN SHARON THOMAS brings this action as the surviving parent of TRINA RENEE HARRIS, deceased, under §74.004, Tex. Civ. Prac. And Rem. Code. Plaintiff alleges liability as to all Defendants, Defendant TOYOTA, Defendant CTS, and Defendant FRED HAAS for injuries resulting in the death of TRINA RENEE HARRIS, such death caused by the Defendants' and their agents' wrongful acts, neglect, carelessness, unskillfulness, manufacturing defect, design defect, negligence and default. Plaintiff

maintains that TRINA RENEE HARRIS would have been entitled to bring this action for her injuries in her own right if she had lived.

PRODUCTS LIABILITY

10. One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if:

- (a) the seller is engaged in the business of selling such a product, and
- (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

This rule applies although:

- (a) the seller has exercised all possible care in the preparation and sale of his product, and
- (b) the user or consumer has not brought the product from or entered into any contractual relation with the seller.

Restatement (Second) of Torts § 402A, *Parsons v. Ford Motor Co.*, 85 S.W.3d 323 (Tex.App.-Austin, 2002).

Texas has adopted section 402A of the Restatement (Second) of Torts providing for strict liability for the sale of dangerously defective products, *McKisson vs. Sales Affiliates, Inc.*, 416 S.W.2d 787, 788-789 (Tex. 1967). A manufacturer who places into the stream of commerce a dangerous product by reason of some defect is strictly liable in tort to someone who sustains injury because of the defect. *Darryl vs. Ford Motor Co.*, 440 S.W.2d 630, 633 (Tex. 1969). The essential elements of a strict liability case are as follows:

- (a) a product defect;
- (b) that existed at the time the product left the manufacturer's hands;
- (c) the defect made the product unreasonably dangerous; and
- (d) the defect was a producing cause of Plaintiff's injuries. *Rourke v. Garza*, 530

S.W.2d 794, 798, 801 (Tex. 1975).

11. Defendant TOYOTA designed and manufactured the 2009 Toyota Corolla that was leased from Defendant FRED HAAS by TRINA RENEE HARRIS, deceased; and Defendant CTS designed and manufactured the electronic components and sensors used in such vehicle. This 2009 Toyota Corolla vehicle contained a defect in its accelerator pedal and/or its components and sensors that caused uncontrollable acceleration on the day of the accident, resulting in the death of Mrs. Harris. The vehicle referenced was a completely unmodified new car at the time of the inception of its lease to Mrs. Harris, and the defect existed at the time the product left the manufacturer's hands. The defect present within Mrs. Harris's 2009 Toyota Corolla caused her car to accelerate uncontrollably, making the vehicle unreasonably dangerous during any use of the vehicle whatsoever. The defect within the vehicle that caused it to accelerate uncontrollably immediately prior to the accident referenced is the proximate and producing cause of Mrs. Harris's accident and her subsequent death.

NEGLIGENCE

12. Defendant TOYOTA MOTOR SALES, U.S.A., INC., had a duty to abide by all safety standards and industry regulations when manufacturing and selling automobiles within the United States, and to avoid producing an unreasonably dangerous product for use by the general public. Defendant TOYOTA negligently breached such duty in the following respects:

- a. by designing and manufacturing a defective vehicle, and in particular the accelerator system;
- b. by not properly testing its vehicles, and particular the accelerator system ;
- c. by failing to take sufficient corrective action when it was made aware of malfunctions with its accelerator pedals; and
- d. by failing to sufficiently warn consumers of the dangers of its defective vehicles, and in particular of its defective accelerator pedals;

These defects proximately caused pain and suffering to TRINA RENEE HARRIS and resulted in her death.

13. Defendant CTS had a duty to design and manufacture electronic components and sensors to be used in the accelerator systems of Toyota vehicles such that the accelerator systems would function in a safe and predictable manner. Defendant CTS breached such duty in the following respects:

- a. by designing and manufacturing defective products;
- b. by not properly testing its products;
- c. by failing to take sufficient corrective action when it was made aware of malfunctions with its products; and
- d. by failing to sufficiently warn consumers of the dangers of its defective products;

14. Defendant FRED HAAS had a duty as owner and lessor of its vehicle to notify its lessee of any known potentially dangerous conditions of the vehicle driven by TRINA RENEE HARRIS. Defendant TOYOTA began notifying owners, including Defendant FRED HAAS, at least by late October, 2009, that the accelerators of such vehicles may stick. Defendant FRED HAAS

failed to notify TRINA RENEE HARRIS of a potential danger and failed to make her aware that a problem existed.

DAMAGES

15. Defendants' negligence, as described above, directly and proximately caused pain and suffering to TRINA RENEE HARRIS and resulted in her death. During the time period of uncontrollable acceleration, Mrs. Harris undoubtedly realized her plight and thereby suffered extreme emotional distress and feared for her life and safety.

16. As a direct and proximate cause of Defendants' negligence, as described above, Plaintiff JEAN SHARON THOMAS has been caused severe mental pain and suffering, mental anguish, emotional trauma, grief, and sorrow. Plaintiff has suffered the loss of love, comfort, companionship, society, care, maintenance, support, services, advice, counsel, and reasonable contributions of pecuniary value that she would, in reasonable probability, have received from TRINA RENEE HARRIS had she lived. Plaintiff's losses are incalculable and irreplaceable, but Plaintiff seeks the sum of \$25,000,000.00 (Twenty-Five Million and no/100 Dollars) in recompense.

EXEMPLARY NEGLIGENCE

17. The negligence of all Defendants, Defendant TOYOTA, Defendant CTS, and Defendant FRED HAAS, was of such a character as to make them guilty of gross negligence. Their actions involved such willful acts or omissions and gross neglect as to expose others to an extreme degree of risk, and could only have resulted from a conscious indifference to the rights, safety and

welfare of others. Plaintiff hereby sues for exemplary damages in an amount of \$25,000,000.00 (Twenty-Five Million and no/100 Dollars).

JURY DEMAND

19. Plaintiff hereby formally makes this demand for a jury trial, pursuant to Rule 216, Texas Rules of Civil Procedure, and tenders the required jury fee.

PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein and, upon final hearing that Plaintiff have judgment against Defendants, jointly and severally, with prejudgment and post-judgment interests thereon at the legal rate, for costs of court and attorney's fees where applicable, and for such other and further relief, special and general, at law and in equity, to which she may show herself justly entitled.

RESPECTFULLY SUBMITTED,



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