

Court

No. USAP9 No. _____

No 11-55919

IN THE
SUPREME COURT OF THE UNITED STATES

Frances Hines — PETITIONER
(Your Name)

VS.

Toyota Motor Sales USA Inc. — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____
_____, or

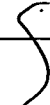
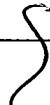


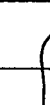
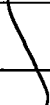
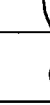
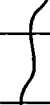
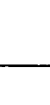

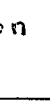



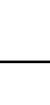
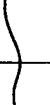
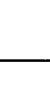
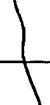
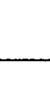
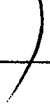




☐ a copy of the order of appointment is appended.

Frances Hines
(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Frances Hines, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse Deceased	You	Spouse Deceased
* Employment See Below	\$ Retired	\$ N/A	\$ 1	\$ N/A
Self-employment	\$ N/A	\$ 	\$	\$ 
Income from real property (such as rental income)	\$ N/A	\$ 	\$	\$ 
Interest and dividends	\$ N/A	\$ 	\$	\$ 
Gifts	\$ N/A	\$ 	\$	\$ 
Alimony	\$ N/A	\$ 	\$	\$ 
Child Support	\$ N/A	\$ 	\$	\$ 
* Retirement (such as social security, pensions, annuities, insurance) <small>Bank of America</small>	<small>S.S.</small> \$ 598.00 \$ 1625.46 \$ 296.00 - Pension	\$ 	\$	\$ 
Disability (such as social security, insurance payments)	\$ N/A	\$ 	\$	\$ 
Unemployment payments	\$ N/A	\$ 	\$	\$ 
Public-assistance (such as welfare)	\$ N/A	\$ 	\$	\$ 
Other (specify):	\$ N/A	\$ 	\$	\$ 
Total monthly income:	\$	\$ 	\$	\$ 

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Retirement Employment	Gross monthly pay
Retired Boston Retirement system	One City Hall Square Room 816 Boston, MA 02201-2038	3/1/2019 until Present	*\$ 1625.46
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
Spouse Deceased			\$
			\$

4. How much cash do you and your spouse have? \$
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Checking 1 Santander Bank	\$ 307.00	\$ Spouse Deceased
Checking 2 Santander Bank	\$ 90.00	\$ }
Savings 3 Tremont Credit Union	\$ 4600.00	\$ }

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☒ Home Value Over \$305,000

☒ Other real estate Value N/A

☒ Motor Vehicle #1 Year, make & model 2020 Chevy Trax Value Leased vehicle

☒ Motor Vehicle #2 Year, make & model N/A Value _____

☒ Other assets Description N/A Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money

Amount owed to you

Amount owed to your spouse

N/A
\$
\$
\$

N/A
\$
\$
\$

N/A
\$
\$
\$

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name
N/A
\$
\$
\$

Relationship

\$
\$
\$

Age

\$
\$
\$

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

You

Your spouse

Rent or home-mortgage payment
(include lot rented for mobile home)

\$ 979.84

\$ N/A

Are real estate taxes included? ☒ Yes ☐ No

Is property insurance included? ☒ Yes ☐ No

Utilities (electricity, heating fuel, water, sewer, and telephone)

\$ 156.00 Monthly

Home maintenance (repairs and upkeep) Variable

\$ 1800.00

Food

\$ 220.00 Mo.

Clothing

\$ 195.00 yearly

Laundry and dry-cleaning

\$ N/A

Medical and dental expenses

Copymt Medical \$ 376.00
Dental - \$ 378.00 5/26/2022
Jan. thru August, 2022

Each Chevy - Oil & Filter
You
Your spouse

Transportation (not including motor vehicle payments) - \$ 70.40 mo. \$ N/A
APT - \$ 60.41 Monthly
 Recreation, entertainment, newspapers, magazines, etc. \$ 48.01 Monthly \$ S
Verizon Home Phone \$ 69.01 Monthly
AT&T Cellphone \$ 47.00 Monthly
 Insurance (not deducted from wages or included in mortgage payments)

Homeowner's or renter's Mortgage \$ 979.64 Mortgage \$ _____
 Globe Life Ins. - 2 x years - Life \$ 43.79
 Life \$ 97.94 mo. \$ _____
 Health Tuft Health Plan - \$ 53.83 mo. \$ _____
 Motor Vehicle \$ 118.00 mo. \$ _____
 Other: Medicare & Social Security \$ 147.00 Monthly \$ _____

Taxes (not deducted from wages or included in mortgage payments)

(specify): _____ \$ _____ \$ N/A

Installment payments

Motor Vehicle \$ 235.00 \$ Deceased
 Credit card(s) Debit \$ _____ \$ _____
 Department store(s) \$ 0 \$ _____
 Other: Property Taxes car 470.00/year \$ 79.00 mo. \$ _____

Alimony, maintenance, and support paid to others \$ N/A \$ _____

Regular expenses for operation of business, profession, or farm (attach detailed statement) \$ N/A \$ _____

Other (specify): Ch \$ _____ \$ _____

Total monthly expenses: \$ _____ \$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☒ Yes ☐ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☒ Yes ☐ No

If yes, how much? \$75.00 per hour - Total Balance to be Determined (Estimate \$2500)

If yes, state the person's name, address, and telephone number:

EDWARD WARREN, Business / Legal Consultant - Advocate
1752-574 Blue Hill Ave
Dorchester, MA 02124

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I am a widower, Retired from City of Boston, Boston Public School March 1, 2019, I am on a Fixed Monthly Income. I am low income. I can not get a PRO-Bono attorney between \$450.00 to \$500.00 and hour. I have sought due to Toyota Motor Sales Inc. USA Market Problem in 2005, Toyota Camry, Impairment) I am financial challenge. I am disabled (Walking Impairment)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 25, 2022

Frances Hines

(Signature)

No. 11-55919

No. USA 9

IN THE
SUPREME COURT OF THE UNITED STATES

Frances Hines — PETITIONER — Pro-se
(Your Name)

vs.

Toyota Motor Sales USA Inc. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Supreme Court, Santa Ana, California 9th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Frances Hines
(Your Name)

23 West Minster Avenue
(Address)

Roxbury, MA 02119
(City, State, Zip Code)

617-840-7341
(Phone Number)

MOTION FOR APPEAL

I would like to file an appeal on the Case No. SACV 11-416 JVS (FMOx), based on the Federal Rule of Civil Procedures 12(b)(6), on the grounds that my complaint was time barred by applicable statute of limitations. I will show and prove in the upcoming statements and paragraphs, that I did file a motion within the statute of limitations and was decline a fair and just hearing. Also, a material point of fact that was overlooked in this decision, was that I, the Plaintiff/Appellant did not have a copy of the motion to dismiss that was filed in the UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. CASE NO. 11-55919 (**SEE APPENDIX A**), also see DOCUMENT, CASE NO. 11-55919 (**APPENDIX B**), therefore I'm requesting to be heard properly, effectively and to be judge base on the merit of the case and abundance of evidence displayed.

STATEMENT OF CASE (Summary)

- October 2004, Purchase new 2005 Toyota Camry
- June 4, 2005, went to OJ Car Wash, Dorchester, MA to wash vehicle.
- June 4, 2005, Vehicle accelerated (while driver's feet on brake) on its own into traffic, causing major damages, airbags deployed, median struck, driver knocked unconscious, fractured legs, neck and torn rotator cuff, facial scars, physical impairment, two surgeries, 6 months leave of work, permanently disable, pain and suffering and emotional damages as well as stress.
- October 2009, Toyota Recall Information discover
- Case file in Superior Court on February 7, 2011, Docket NO. 11 0476F

(**SEE APPENDIX C**, Frances Hines verses Toyota Motor US, paperwork files on February 7, 2011, @ Superior Court, Boston, MA. **Docket#11 0476F**)

REASON FOR GRANTING THE WRIT

My reason for submitting this grant request is to be heard and handle appropriately. I feel that I am being legally bombarded and thrust around by the court. I believe that their decisions regarding my case as a consumer has been mishandled and also that Toyota Motor, Inc. is trying to escape their role and their responsibilities regarding this issue/accident. I have been through a terrible ordeal. This accident has changed my life completely, things that I could do, should be doing, I cannot do them anymore. I'm disable, emotional challenge, my motor skills are subpar and I will have to live like this for the rest of my life. There have been medical appointments procedures, physical therapy, in house and out patience care, and my situations will be on-going.

On June 4, 2005, I had an accident in my 2005 Toyota Camry. I filed a complaint in Suffolk superior court in Massachusetts on February 7, 2011, against Toyota Motor Inc. (**See Appendix C**). I asked to amend the above reference case to add **Breach of Contract** which falls within the

six-year period under the GLc. 260, &12 (the mass. Fraudulent concealment statute), (See **Appendix B & D**).

I had no communicated knowledge of the recall at the time of the accident in 2005. I received knowledge of the recall in 2009, through television, social media and the internet, therefore the statute of limitation cannot and should not in 2005.

What is the legal term for information?

Information is essentially **communicated knowledge**, or in other words a form of communication. It is a formal criminal charge that initiates the criminal proceedings in courts. It is simply a formal accusation, also known as a complaint that the prosecuting attorney (or sometimes some other law officer) usually files.

Thus, Toyota had a fiduciary duty and legal obligation to me, as a consumer.

The court in California did not handle Breach of contract. (**See Appendix F, Civil Minutes—General**)

Massachusetts General Laws

CHAPTER 260. LIMITATION OF ACTIONS.

Section 12. Fraudulent concealment: commencement of limitations.

Section 12. Fraudulent concealment; commencement of limitations.

Section 12. If a person liable to a personal action conceals the cause of such action from the knowledge of a person entitled to bring it, the period prior of the discovery of his cause of action by the person so entitled shall be excluded in determining the time limited for the commencement of the action.

CONCLUSION

Toyota knew long before 2009 about the problems and defects with their vehicles, specifically, their 2005 Toyota Camry and in spite of their knowledge, continued to sell defected vehicles. Toyota breached in duty of contract to its consumer is evident. This is deceptive practice.

It is unlawful and is known as **fraud or misrepresentation, on when I (every) consumer is sold a vehicle under false pretense of without complete knowledge of said vehicle defects. Also, I (every) consumer is protected under consumer laws (Chapter 93A, section I & II, See Appendix G)**, and can choose to file a lawsuit for any and all damages accrued.

As a direct and proximate of Toyota's wrongful doing, Fraudulent concealment. I was sold a defective vehicle at full price. When I purchased the subject vehicle, I was unaware of the hidden and potential defects and the dangers that it will cause.

I am also requesting that UNITED STATES COURT, transfer this case back to Boston, MA

Base on their mishandling of this case and the facts attached to this case, I am seeking to be awarded triple damages, from the original amount requested of \$1,235,462.00. Also see copy of medical expenses (**Appendix H**), note further bills will be forwarded

Also attached is supporting evidence & lawsuit (recall and defective information for 2005 Toyota Camry). (**Appendix I**).

Frances Hines

Signature

October 6, 2022

Date

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Frances Hines

Date: October
August 2022

FILED

NOT FOR PUBLICATION

JAN 17 2013

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCES HINES,

Plaintiff - Appellant,

v.

TOYOTA MOTOR SALES, U.S.A., INC.,

Defendant - Appellee.

No. 11-55919

D.C. No. 8:11-cv-00416-JVS-
FMO

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding

Submitted January 15, 2013**

Before: SILVERMAN, BEA, and NGUYEN, Circuit Judges.

Frances Hines appeals pro se from the district court's judgment dismissing her diversity action alleging personal injuries sustained in a motor vehicle accident.

We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

discretion a district court's dismissal for failure to comply with local rules, *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam), and we affirm.

The district court did not abuse its discretion by dismissing the action because Hines failed to oppose defendants' Federal Rules of Civil Procedure 12(b)(6) motion to dismiss. *See* C.D. Cal. Civ. R. 7-12 ("The failure to file any required document, or the failure to file within the deadline, may be deemed consent to the granting or denial of the motion."); *see also Jacobsen v. Filler*, 790 F.2d 1362, 1364-65 (9th Cir. 1986) (pro se litigants in the ordinary civil case are not excused from compliance with procedural rules).

AFFIRMED.

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 20 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FRANCES HINES,

Plaintiff - Appellant,

v.

TOYOTA MOTOR SALES, U.S.A., INC.,

Defendant - Appellee.

No. 11-55919

D.C. No. 8:11-cv-00416-JVS-
FMO

Central District of California,
Santa Ana

ORDER

Before: SILVERMAN, BEA, and NGUYEN, Circuit Judges.

Hines's petition for panel rehearing is denied.

No further filings will be entertained in this closed case.

Appendix A-I

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

9th Cir. Case No.11-55919
Originating Court Case No.:
D.D. No. 8:11 – cv 00416-JVS-FMO
US District Court for
Central California, Santa Ana

FRANCES HINES)
Appellant)
)
vs.)
)
TOYOTA MOTOR SALES)
USA, INC.)
Appellee(s))

PETITION FOR PANEL REHEARING

The Appellant hereby seeks a panel rehearing under Fed. R. App. R. 40; 9th Cir. R. 40-1 as the following grounds exist:

1. A material point of fact was overlooked in the decision. Plaintiff/Appellant did not have notice of the motion to dismiss that was filed by the Defendant/Appellee and therefore had no opportunity to oppose the Defendant/Appellee's motion in writing before the court made its decision.
2. Additionally, there is an apparent conflict with another decision of the court in that the court recently granted plaintiffs a large judgment who suffered personal injury when their car experienced a sudden unattended acceleration.

Frances Hines
23 Westminster Avenue
Boston, MA 02119

Frances Hines
Signature

January 29, 2013

Appendix A

April 20, 2013

United States District Court
Central District of California

Frances Hines
Plaintiff Appellant

Case No.: 11-55919

Toyota Motor Sales USA., INC.,
Defendant-Appellee

I would like to file a motion to amend the above reference case, Breach of Contract.
M.G.L. 93A.

June 4, 2005 I had an accident in my 2005 Toyota Camry. I filed a complaint in Suffolk Superior Court in Massachusetts on February 7, 2011. I would like to amend the above reference case to add **Breach of Contract** which falls within the six year period under the GLc. 260, &12 (the Mass. Fraudulent Concealment Statue). Thus, Toyota had a fiduciary duty of full disclosures, and that Toyota affirmatively concealed my cause of action and intended to deceive me. However the statue of limitations is not told under the Fraudulent Concealment Law.

The court in California did not handle Breach of Contract. They did personal injury.

Facts: Deceptive Practice

Toyota knew long before 2005 about problems with their vehicles and continued to sell defect vehicles. Toyota breached it duty of contract.

As a direct and proximate of Toyota's wrongful doing, Fraudulent concealment. I was sold a defect vehicle at full price. When I purchase the subject vehicle I was unaware of the hidden and potential defects.

For the above reasons I would like to file a motion to amend the above reference to add Breach of Contract.

Sincerely,

Frances Hines

Frances Hines-Pro-Se

Appendix B

Fraudulent Concealment; Commencement of Limitations:

If a person liable to a personal action fraudulently conceals the cause of such action from the knowledge of the person entitled to bring it, the period prior to the discovery of his cause of action by the person so entitled shall be excluded in determining the time limited for the commencement of the action.

Sending the letter in October, 2005 was an affirmative action on Toyota's part to conceal the defect and therefore my cause of action.

8. Do you have any other cases pending in this court?

Answer: No.

9. Have you filed any previous cases which have been decided by this court?
If so, give the name and docket number of each case.

Answer: No.

10. For prisoners, did you exhaust all administrative remedies for each claim prior to filing your complaint in the district court?

Answer: N/A

Frances Hines
23 Westminister Avenue
Boston, MA 02119

Frances Hines
Signature

October 28, 2011

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

9th Cir. Case No.11-55919
Originating Court Case No.:
D.D. No. 8:11 – cv 00416-JVS-FMO
US District Court for
Central California, Santa Ana

FRANCES HINES)
Appellant)
)
vs.)
)
TOYOTA MOTOR SALES)
USA, INC.)
Appellee(s))

APPELANT'S INFORMAL BRIEF

1. Jurisdiction

a. Timelines of Appeal:

- (i) Date of entry of judgment or order of originating court:
May 11, 2011
- (ii) Date of service of any motion made after judgment (other than for
fees and costs): *Corrected on June 23, 2011.*
- (iii) Date of entry of order deciding motion: *May 16, 2011*
- (iv) Date of notice of appeal filed: May 23, 2011
- (v) For prisoners, date you gave notice of appeal to prison authorities:
N/A

2. What are the facts of your case?

Answer: *In October 2004 I bought a brand New 2005 Toyota Camry. On June 4, 2005, I took the vehicle to the carwash. The vehicle was put into neutral. Once it came off the conveyer belt I entered in the vehicle and it did not move. Once I shifted the vehicle from neutral to drive with my foot on the brakes it accelerated into traffic at a high rate of speed. It felt like I did not have any brakes.*

The vehicle hit a median strip. The airbag deployed and I was knocked unconscious, the vehicle then hit a school building. I was taken by Ambulance to the Brigham and Women's Hospital, Boston, MA. I suffered a fractured leg, neck and a torn rotator cuff. I was in Brigham & Women's Hospital from June 4, 2005 until June 14, 2005. I was in Boston Center for Rehabilitative & Sub Acute Care until August 5, 2005. I was also treated by visiting nurses, Partners Home Care, Physical Therapist, and Occupational Therapist from August 5, 2005 to September 8, 2005. When I came home I had to use a wheelchair, walker, crutches and then a cane. Please see medical report for massive injuries sustained. I was unaware of the Camry SUA defect in 2005. I was out of work from June 2005 thru December 2005 as a result of this accident. I was non weight bearing for six (6) months.

I believe my accident was a direct result of a Toyota Camry SUA defect but there was no evidence to support it at that time. In fact, Toyota's engineer, Robert Landis, inspected my vehicle October 19, 2005 and said no defect.

Thus, my attorney pursued a claim against OJ Car Wash. The Suffolk Superior Court found OJ Car Wash was not negligent.

In 2009, information concerning defects in Toyota began appearing in newspapers, television, radio and on the internet. In 2010, while doing research on 2005 Toyota Accelerator Camry's crashed cars, I found evidence that 2005 Toyota had a defect. The results were about 132,000 crashed 2005 Camry's. I had no knowledge of Toyota's wrongful doing and fraudulent concealment until 2009 when it came out in the media. I would like the Court to toll the statute. When knowledge became available I have documents to that effect.

In fact, Toyota's engineer Robert Landis inspected my 2005 Toyota Camry on October 19, 2005 and concluded that it [the accident] was not the result of any type of defect with the vehicle. The car was not running. This created room for bias because when the vehicle accelerated it was running. I shifted from neutral to drive with my foot on the brakes immediately the car accelerated at a high rate of speed into traffic. See letter dated October 19, 2005. This report was sent to my Attorney. Also, my insurance

company which is Commerce Insurance surcharged me for being the cause of the accident. At that time there was no knowledge of Toyota Sudden Unintended Acceleration "SUA" defect.

Massachusetts General Laws Chapter 260. Limitations of Actions Section 12 Fraudulent concealment commencement of Limitations...states the discovery is toll until there is knowledge of the cause of action.

There was no knowledge of a Toyota Camry SUA Defect until October 2009.

Toyota argues on December 9, 2010, the Court denied Toyota's motion to dismiss the personal injury and wrongful death claims of plaintiffs Hae Chang and Tyrene Livingston on statute of limitations grounds because it was not apparent from the face of their pleadings that either plaintiff had actual suspicion or inquiry notice of wrongdoing before 2009. (ML 10-2151, Docket No. 542 at 14.) Toyota argues that unlike those complaints, Ms. Hines' Complaint is time-barred as a matter of law because her completion of a Vehicle Owner Questionnaire conclusively demonstrates that she cannot avail herself of the discovery rule. (Mot. Br. 3.)

The basis of my claim is that I had no knowledge until 2009, the same as Hae Chang and Tyrene Livingston, on statute of limitations grounds. Therefore I would like the statue to be toll until 2009 and give me a trial.

Toyota argues it is apparent from the Complaint that Ms. Hines had the requisite knowledge to trigger the running of the statute of limitations in July 2005. On July 25, 2005, Ms. Hines reported her accident and injuries to the United States Department of Transportation Auto Safety Hotline, as evidenced by a document entitled Vehicle Owner's Questionnaire to Report Vehicle Safety Defects. Ms. Hines attached the Questionnaire to her Complaint, thus incorporating its contents.

Toyota argues in reporting the incident to the Department of Transportation, Ms. Hines provided the same facts that she alleges in the Complaint. Ms. Hines' allegation that she did not know about the recall until 2009 is irrelevant because her completion of

the Questionnaire to Report Vehicle Safety Defects conclusively establishes that Ms. Hines suspected in July 2005 that a defect in her Camry caused her accident and injuries. Thus, she cannot invoke the delayed discovery rule. The Court therefore finds that her cause of action accrued by July 25, 2005, more than five years before she filed her Complaint.

Toyota argues that I had knowledge of a defect because I reported my accident and injuries to the "United States Department of Transportation Auto Safety Hotline. I reported my accident to the "United States Department of Transportation Auto Safety Hotline" because when I took Driver's Education in High School over 40 years ago. In the Driver's Education handbook by law you are required to report accidents to tell where they occur most so that NHTSA can try to prevent them, and on the vehicle owners questionnaire. I stated that the vehicle was inspected but nothing was found. (Defect) see enclosure .I filed a phone complaint with Toyota on August 4, 2005 with Sandra Estrada Reference# 200508042275." Again there was no evidence for me to pursue lawsuit. November 3, 2010. I mailed a certified demand letter to Toyota's Claim Manager Carol A. Hargrave. I am asking for compensation for my pain and suffering I sustained during my June 4, 2005 accident. It was denied. Please review her response letter dated December 1, 2010.

FACTS

Toyota has a slogan in the Bay State that they are the largest dealer on the planet. Just come on down. Toyota was negligent in designing, manufacturing, assembling, inspecting, and testing my vehicle. As a direct result of Toyota false representation and breeches in warrant, I have suffered permanent facial, leg, and thigh scarring.

As a direct and proximate result of Toyota's negligence, I have sustained damages which include, but are not limited to the following: physical pain and suffering, past and future; medical expenses, past and future, mental pain, suffering and anguish, loss of vehicle, loss of wages. I am disabled due to this accident, (walking disability). My medical expenses in 2005 were over \$235,000.00. My health care provider has placed a lien on any future claims. I suffered massive injuries, and I could occur more medical expenses, a knee replacement \$30,000.

When I purchased the subject vehicle, I was unaware of the vehicle's hidden and potential defects, of which Toyota knew or should have known regarding their sudden acceleration problems. Toyota breached its duty of reasonable care to myself by manufacturing and assembling the accelerator pedals of the vehicles in such a manner that they were easily to becoming stuck in a partially position slower return to the idle position thereby causing the vehicle to accelerate out of control causing injuries.

Toyota sold a defected vehicle to me. As a further direct result of Toyota's wrongful doing fraudulent concealment, I have loss wages and was left disabled.

As a direct and proximate of Toyota misconduct, acts I am seeking damages for personal injury, compensating and punitive damage, and pain and suffering in the amount to be calculated as outline in the original claim. My fervent prayer and desire is that the court will rule in my favor, due to Toyota fraudulent concealment and deception.

As a result of Toyota intentionally concealed and fail to disclose the truth about their "SUA" problem in their vehicle based on false sense of safety I purchase a detected vehicle and have suffer substantial pain and suffering which Toyota are liable.

February 7, 2011, I filed a law suit at Suffolk County Superior Court in Massachusetts against Toyota Motor Sales USA, Inc. C/o CT Corporation Boston, MA. March 17, 2011 the claim was Tag a long to California because "TMSU" is a citizen in California and for coordination with multidistrict liagation 8:10-2151(Docket NO 10). The case was dismissed May 11, 2011 on the basis of the statute ran out June 4, 2008.

My attorney pursued a claim against OJ Car Wash. The court's finding is the car wash was not negligent in 2010. I had no knowledge of Toyota's wrongful doing until 2009. That is the basis of my claim, according to M.G.L. C-360 S12. I would like the statute to be toll until October 2009. When knowledge came available thru media, television, radio, newspaper, research and internet.

On January 21, 2010, Toyota Motor Sales (TMS), USA Inc announced it would recall approximately 2.3 million vehicles to correct sticking accelerator pedals. The accelerator pedal may become harder to depress, slower to return in worse case, stuck in a partially depressed position.

I believe my accident was a direct result of a Toyota defect recall. Also to prove I had no knowledge of Toyota wrongful doing. In 2005 my insurance which is Commerce, surcharged me and blamed me for the accident. Toyota also wrote a letter to my attorney in 2005 stating there was no manufacturing defect found in my vehicle.

3. What did you ask the originating court to do (for example: award damages, give injunctive relief, etc.)?

Answer: *Seeking damages for pain and suffering in the amount of \$1,235,462.00.*

4. State the claim or claims you raised at the originating court.

Answer: *"I believe my accident was a direct result of a Toyota defect recall." There was a problem with the car because my foot was on the brakes and the car still accelerated at a high speed.*

Question

5. What issues are you raising on appeal? What do you think the originating court did wrong?

Answer: *Whether the District Court was wrong in dismissing my complaint because they claimed I knew or should have known that I had a case in 2005.*

6. Did you present all issues listed in No. 5 to the originating court:

Answer: *Yes.*

7. What law supports these issues on appeal?

Answer: *The Defendant's action in sending the letter dated October 19, 2005 stating, "Based on our inspection it has been determined it [the unfortunate incident] was not the result of any type of defect with the vehicle" falls within the Massachusetts G.L. c. 260§ 12 (fraudulent concealment statute).*

SUFFOLK, ss.

COMMONWEALTH OF MASSACHUSETTS

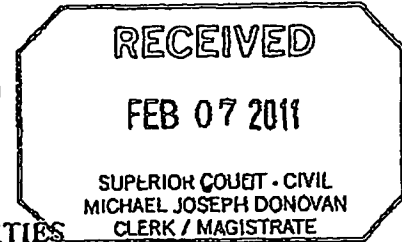
SUPERIOR COURT
CIVIL ACTION
NO.

Frances Hines
PLAINTIFF (PRINT NAME CLEARLY)

11 0476 F

vs
Toyota Motor USA
DEFENDANT(S) (PRINT NAME CLEARLY)
C/O CT Corporation

COMPLAINT



PARTIES

1. Plaintiff(s) reside(s) at 23 West Minster Avenue Roxbury
Street City or Town 02119
in the County of Suffolk

2. Defendant(s) reside(s) at 155 Federal Street Suite 700 Boston
Street City of Town 02111
in the County of Suffolk

FACTS

3. October 2004 I bought a brand new 2005 Toyota
Camry. On June 4, 2005, I went to D.J. Car Wash Columbia
Road, Dorchester, Ma to get my Camry Washed. I have been to
DJ car wash on numerous occasion in the past years. The
vehicle was put in neutral. Once it came off the ^{conveyor} belt I
entered in the vehicle and it did not move. I immediately put
my foot on the brakes, the vehicle still did not move. Once I shifted
continued →

Appendix C

Once I shifted the vehicle from neutral to drive with my foot still on the brakes it accelerated into traffic at a high rate of speed. It felt like I did not have any brakes. The vehicle hit a median strip. The air bag deployed and I was knocked unconscious, the vehicle then hit a school building. I was taken by Ambulance to Brigham & Women Hospital, Boston, Ma. I suffered a fractured leg, neck and torn rotator cuff. I was out of work from June 4, 2005 - December 8, 2005, see Enclosure

There was no knowledge of a Toyota Defect Recall until October 2009. Therefore the statute of limitation will run until October 2012. (3 years) see Enclosure

I believe my accident was a direct result of a Toyota defect recall. There was a problem with my car because my foot was on the brakes all the time and the car still accelerated at a high speed,

On Saturday January 29, 2011. I had my 2005 Towed from Essex Street Storage to a Boston Shop. The mechanic inspected my car and find a defect with the car. The Idle Control was stuck, which caused the car to accelerate with my foot on the brakes at a high speed. I sold the vehicle February 4, 2011.

I am disable due to an accident that occurred in my Toyota Camry on June 4, 2005. See Enclosure
Enclosed please find 86 complaints of other consumer out of 583 with vehicle speed control problem. Similar to my accident.

I have other documents I can furnish upon request,

Vin 4T
Ref case # 1710 20094

Sincerely,
Frances Hines

P.S. you can reach me at 617 427-9988

the vehicle from neutral to drive with my ^{Foot} still on the brakes
it accelerated into traffic at a high rate of speed. The brakes
was nonresponsive. I was taken to Brigham and Women Hospital.

4. Answer this question only if you are seeking a restraining order against the defendant(s):

Have there been any other Court proceedings, criminal or civil, involving you or your family members and the defendant or defendant's family members?

Yes _____

No _____

If Yes, describe the Court proceeding(s) and its/their status. _____

WHEREFORE, plaintiff demands that:

Seeking damages for Pain and Suffering in the
amount of \$1,235,462.00

SIGNED UNDER THE PENALTIES OF PERJURY.

DATE: 2/8/2011

Inance Hine

Signature of Plaintiff(s)

23 West Minster Avenue

Street Address

Roxbury, Ma 02119

City/Town

617 427-9988

Telephone

Placard Front



[REDACTED] 389

Expires:

06-02-27

**Disabled Persons
Parking Identification Placard**



Frances H

Placard Back



Important: Remove before driving vehicle

[REDACTED] 389

NON-TRANSFERABLE

06-02-27

WARNING

**Wrongful use by any
other person carries
60 day loss of license,
placard revocation, \$500
fine for 1st offense. \$50
fine for covering placard
number/date.**



HP-3553

10353

**For use in private passenger
vehicle only
Mass.gov/RMV**

Massachusetts

Appendix E

Section 12. Fraudulent concealment; commencement of limitations.

☒ Display Reference Line

Massachusetts General Laws

CHAPTER 260. LIMITATION OF ACTIONS.

Section 12. Fraudulent concealment; commencement of limitations.

Section 12. Fraudulent concealment; commencement of limitations.

Section 12. If a person liable to a personal action fraudulently conceals the cause of such action from the knowledge of the person entitled to bring it, the period prior to the discovery of his cause of action by the person so entitled shall be excluded in determining the time limited for the commencement of the action.

Appendix D

NHTSA CAMPAIGN ID Number: 10V035000

NHTSA Action Number: N/A

Component: EQUIPMENT:OTHER:LABELS

Summary:

GULF STATES TOYOTA IS RECALLING CERTAIN MODEL YEAR 2005-2010 VEHICLES FOR FAILING TO COMPLY WITH THE REQUIREMENTS OF FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 110, "TIRE SELECTION AND RIMS." THESE VEHICLES WERE SOLD BETWEEN SEPTEMBER 1, 2005 AND JUNE 2, 2008 WITHOUT THE REQUISITE LOAD CARRYING CAPACITY MODIFICATION LABELS.

Consequence:

THIS DOES NOT MEET THE STANDARD REQUIREMENTS.

Remedy:

DEALERS WILL MAIL TO CONSUMERS THE CORRECTED LABEL OR THE CUSTOMER WILL HAVE THE OPTION FOR DEALERS TO INSTALL THE LABEL FREE OF CHARGE. DEALERS WILL ALSO CORRECT THE OWNER'S MANUAL. THE SAFETY RECALL BEGAN ON MAY 27, 2010. OWNERS MAY CONTACT GULF STATES TOYOTA AT 713-580-3300.

Notes:

OWNERS MAY ALSO CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S VEHICLE SAFETY HOTLINE AT 1-888-327-4236 (TTY 1-800-424-9153), OR GO TO [HTTP://WWW.SAFERCAR.GOV](http://www.safercar.gov).

Make: TOYOTA

Model: CAMRY

Model Year: 2005

Manufacturer: SOUTHEAST TOYOTA DISTRIBUTORS, LLC

Mfr's Report Date: OCT 01, 2009

NHTSA CAMPAIGN ID Number: 10V036000

NHTSA Action Number: N/A

Component: EQUIPMENT:OTHER:LABELS

Summary:

SOUTHEAST TOYOTA IS RECALLING CERTAIN MODEL YEAR 2005-2011 PASSENGER VEHICLES FOR FAILING TO COMPLY WITH THE REQUIREMENTS OF FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 110, "TIRE SELECTION AND RIMS." THESE VEHICLES WERE SOLD BETWEEN SEPTEMBER 1, 2005 AND JUNE 2, 2008 WITHOUT THE REQUISITE LOAD CARRYING CAPACITY MODIFICATION LABELS.

Consequence:

A DRIVER MAY OVERLOAD A VEHICLE WHICH MAY INCREASE THE RISK OF A CRASH.

Appendix E

Web Images Videos Maps News Shopping Gmail more ▾

Web History | Search settings | Sign in

Google

2005 TOYOTA ACCELERATOR CAMRY CRASHED CARS

About 132,000 results

Advanced Search

Everything

Images

Videos

News

Shopping

More

Show search tools

Toyota Recall Updates

www.Toyota.com/Recall Stay Informed on All Recall Topics. See Updated Messages Toyota.com.

Showing results for **2005 TOYOTA ACCELERATOR CAMRY CRASH CARS**. Search instead for **2005 TOYOTA ACCELERATOR CAMRY CRASHED CARS** ✕

2005 Toyota Camry Accelerator Pedal Complaints

The vehicle crashed into several other parked vehicles and began to slow down ... 200 toyota camry gas pedal sticks while on at a constant rate of high speed From dead accelerator pedal has a lag before car will accelerate. ... www.aboutautomobile.com/Complaint/200... - Cached - Similar

Toyota recalls 3.8 million vehicles - Business - Autos - msnbc.com

Sep 29, 2009 ... Top image, 2005 Toyota Prius. Bottom image, 2007 Toyota Camry. ... to report the vehicle had no brakes and the accelerator was stuck. ... www.msnbc.msn.com/id/33077383/ns/busi... - Cached - Similar

Toyota Camry Recall Information - Toyota Recalls & Problems

Oct 26, 2010 ... JANUARY 2010 - Toyota is recalling certain model year 2005-2010 Av Toyota sold more than 34000 Camrys in December, making the the crash to rep vehicle had no brakes and the accelerator was stuck. ... www.lemonauto.com/complaints/toyota/t... - Cached - Similar

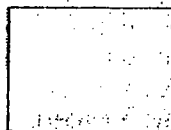
Toyota Camry Repair and Maintenance : RepairPal

2005 Toyota Camry le 2.4 bought brand new. It has 121000 miles on it now. ... I bought car back in July 1, of 2005 and have had it ever since. REGARDLESS OF ACCELERATOR PEDAL OPERATION, INCREASING THE RISK OF A CRASH. ... repairpal.com/cars/toyota/camry - Cached - Similar

2005 TOYOTA CAMRY PROBLEMS - Page #15

Read all complaints filed for the 2005 TOYOTA CAMRY by TOYOTA MOTOR CORPORATION - Page 15. ... SHE SHIFTED INTO REVERSE THE ACCELERATOR STUCK. THE CAR WENT BACKWARDS AND ... Source: NHTSA Website; Injuries: 2; Involved in crash: Yes ... www.arfc.org/complaints/2005/toyota/c... - Cached - Similar

Survivor recalls Camry crash over Pismo cliff



2 min - Feb 11, 2010
Uploaded by KSBTV

Almost three years ago, on February 25, 2007, Bulent Ezal and his wife the trip to Pismo Beach from his home in Bakersfield, looking for a ... www.youtube.com/watch?v=wcw221MEf6o

Toyota recalls 3.8M cars, including some Camry, Avalon, Prius ...

Sep 30, 2009 ... Yes, a 2007-10 Toyota Camry. Yes, a 2005-10 Toyota Avalon ... "A s open accelerator pedal may result in very high vehicle speeds and make it ... which co cause a crash, serious injury or death," Toyota spokesman Irv ... The recall concerns t following vehicles: 2007-10 Toyota Camry, 2005-10 ...

Appendix E

The Boston Globe

WEDNESDAY, FEBRUARY 9, 2011

US finds electronics weren't at fault in crashes

► TOYOTAS

Continued from Page A1

to have been caused by a relatively minor mechanical glitch.

"Maybe they just haven't found the right problem," said Colleen Krause of Keene, N.H., whose husband, Stephen, was killed in 2009 when his car collided with an out-of-control Toyota Highlander driven by Harvard professor Stephen Lagakos. Lagakos and his two passengers, his wife and mother, also died.

Added Krause: "At this point I'm beginning to doubt that we'll ever find closure."

Toyota came under scrutiny in late 2009, plagued by allegations that its vehicles could accelerate unexpectedly. It recalled millions of vehicles, saying that gas pedals could stick or floor mats might jam the accelerator. But others questioned whether the problems went deeper: Congress ordered a review to determine if Toyotas had a glitch in their electronic control systems.

The study, done with the help of NASA engineers, validated Toyota's claims.

"We enlisted the best and the brightest engineers to study Toyota's electronic systems, and the verdict is in," Transportation Secretary Ray LaHood said yesterday. "There is no electronic-based cause for unintended high-speed acceleration in Toyotas."

Toyota has already paid the US government a record \$48.8 million for its handling of the safety recalls, which critics say did not come quickly enough. A



KEVORK DJANSEZIAN/GETTY IMAGES

People at a Los Angeles Toyota dealership watched Secretary of Transportation Ray LaHood's press conference yesterday revealing the results of an investigation into Toyota crashes.

representative for the automaker said yesterday that the company hopes the government report will finally allay "unsupported speculation" about Toyota's electronic control systems.

"We believe this rigorous scientific analysis by some of America's foremost engineers should further reinforce confidence in the safety of Toyota and Lexus vehicles," Steve St. Angelo, Toyota's chief quality officer for North America, said in a statement.

NASA engineers tested nine vehicles involved in acceleration complaints and examined more than 280,000 lines of software code. To prevent future cases of unintended acceleration, transportation officials said yesterday that they will consider adopting new rules to require systems in

passenger vehicles that allow drivers to brake a car even if the accelerator is depressed, as well as event data recorders to allow investigators to better determine the cause of crashes.

Transportation officials said they also may research the reliability and security of electronic control systems, as well as look into the improving pedal placement and design in cars.

Joan Claybrook, who headed the National Highway Traffic Safety Administration during Jimmy Carter's presidency, said she questions whether the NASA-aided examination was as exhaustive as it could have been.

"I don't know that NASA has ever previously reviewed problems with industrial design before, or is aware of the top of the standards and the bottom of the

standards for these kinds of [software] codes," she said. The traffic agency's consideration of mandatory brake override systems "suggests that they know there's a problem," Claybrook added.

Although the government's study exonerates Toyota of any electronic issues, it will probably take several years for the company to recover its reputation, said Philip Gott, an auto industry analyst at IHS Global Insight, a Lexington forecasting firm. Even so, Gott said, customers "are already beginning to come back" and may now be more loyal to the brand because no electronic defect was found.

But families of those involved in fatal crashes suspected of being caused by sudden acceleration say they will continue to look for answers. That includes Leonard Rubin's son-in-law, Marvin Cohen, who says he cannot believe that Rubin's driving caused the parking lot accident that killed an elderly woman in Florida in 2004. Rubin, who has since died, was exiting a parking space when his Camry shot back, hitting the woman.

"We still believe that it was not Mr. Rubin's fault," Cohen said. "I still feel it was the Toyota."

Erin Ailworth can be reached at erailworth@globe.com.

VICTIM PROFILES

Read previous Globe coverage on local victims of possible unintended acceleration crashes at www.boston.com.

Appendix E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 11-416 JVS (FMOx)
8:10ML02151 JVS(FMOx)

Date May 11, 2011

Title Frances Hines v. Toyota Motor Sales USA, Inc.
IN RE: TOYOTA MOTOR CORP. UNINTENDED ACCELERATION MARKETING,
SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

Present: The James V. Selna
Honorable

Karla J. Tunis

Deputy Clerk

Sharon Seffens

Court Reporter

Attorneys Present for Defendants:

Attorneys Present for Plaintiffs:

Frances Hines, via telephone

Joel Smith

Proceedings: Defendants' Motion to Dismiss

Cause called and the parties make their appearances. The Court's tentative ruling is issued. The parties make their arguments. The Court GRANTS the defendants' motion and rules in accordance with the tentative ruling as follows:

Defendant Toyota Motor Sales USA, Inc. ("Toyota") moves to dismiss the Complaint of Plaintiff Frances Hines ("Ms. Hines") pursuant to Federal Rule of Civil Procedure 12(b)(6) on the grounds that her Complaint is time-barred by the applicable statute of limitations. Ms. Hines has not opposed the motion. The Court deems her failure to oppose the motion as consent to the granting of the motion. Local Rule 7-12. The Court also grants the motion on its merits.

I. Background

Ms. Hines filed her Complaint in Suffolk County Superior Court in Massachusetts on February 7, 2011. She amended her Complaint on February 9, 2011 to add "Inc." to Toyota's name, but did not include any other allegations in the amended filing. Accordingly, the relevant allegations are presented in the February 7, 2011 Complaint, to which the Court refers for purposes of this motion.

Toyota removed the action to the District Court for the District of Massachusetts

Appendix F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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8:10ML02151 JVS(FMOx)

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SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

on February 25, 2011. (Docket No. 1.) The action was transferred to this Court on March 17, 2011 for coordination with Multidistrict Litigation 8:10-2151. (Docket No. 10.)

Ms. Hines alleges that on June 4, 2005, she drove her 2005 Camry to the OJ Car Wash. After the car came off the car wash conveyor belt, she put her foot on the brake and shifted the vehicle from neutral to drive. While her foot was still on the brake, her vehicle accelerated into traffic at a high rate of speed, as if the car did not have brakes. The car hit a median strip and then a school building, causing Ms. Hines to sustain severe injuries.

On December 9, 2010, the Court denied Toyota's motion to dismiss the personal injury and wrongful death claims of Plaintiffs Hae Chang and Tyrene Livingston on statute of limitations grounds because it was not apparent from the face of their pleadings that either plaintiff had actual suspicion or inquiry notice of wrongdoing before 2009. (ML 10-2151, Docket No. 542 at 14.) Toyota argues that unlike those complaints, Ms. Hines' Complaint is time-barred as a matter of law because her completion of a Vehicle Owner Questionnaire conclusively demonstrates that she cannot avail herself of the discovery rule. (Mot. Br. 3.)

II. Legal Standard

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has "facial plausibility" if the plaintiff pleads facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, --- U.S. ----, 129 S. Ct. 1937, 1949 (May 18, 2009).

In resolving a Rule 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but "[t]hread-bare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. Nor must the Court "accept as true a legal conclusion couched as a factual allegation." Id. at 1949-50 (quoting Twombly, 550 U.S.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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at 555). Second, assuming the veracity of well-pleaded factual allegations, the Court must “determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 1950. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.” *Id.*

“An affirmative defense, such as the statute of limitations, may be adjudicated on a motion to dismiss only if ‘the facts that establish the defense [are] definitely ascertainable from the allegations of the complaint, the documents (if any) incorporated therein, matters of public record, and other matters of which the court may take judicial notice.’” *OrbusNeich Med. Co., Ltd., BVI v. Boston Scientific Corp.*, 694 F. Supp. 2d 106, 110 (D. Mass. 2010) (quoting *In re Colonial Mortg. Bankers Corp.*, 324 F.3d 12, 16 (1st Cir. 2003)).

III. Discussion

Toyota argues that Ms. Hines’ action is time-barred because the statute of limitations began running by July 2005, when she reported her accident and injuries to the Department of Transportation. (Mot. Br. 3.) In her Complaint, Ms. Hines alleges that her action is not time-barred because she did not know about the Toyota Defect Recall until October 2009.

Under Massachusetts law, the statute of limitations for personal injury actions is three years.¹ G.L. c. 260, §2A (“Except as otherwise provided, actions of tort, actions of contract to recover for personal injuries, and actions of replevin, shall be commenced only within three years next after the cause of action accrues.”). “Federal law determines the date on which the claim accrued.” *Rodriguez-Garcia v. Municipality of Caguas*, 354 F.3d 91, 96 (1st Cir. 2004) (citing *Rivera-Muriente v. Agosto-Alicea*, 959 F.2d 349, 353 (1st Cir. 1992)). “Under federal law, the limitations period begins to run when the

¹ Although Ms. Hines has not asserted particular causes of action against Toyota, she notes in her Complaint that the three year statute of limitations applies to her case.

UNITED STATES DISTRICT COURT
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plaintiff 'knows or has reason to know of the injury which is the basis for [her] claim.'" Id. (quoting Rodriguez Narvaez v. Nazario, 895 F.2d 38, 41 n.5 (1st Cir. 1990)).

It is apparent from the Complaint that Ms. Hines had the requisite knowledge to trigger the running of the statute of limitations in July 2005. On July 25, 2005, Ms. Hines reported her accident and injuries to the United States Department of Transportation Auto Safety Hotline, as evidenced by a document entitled Vehicle Owner's Questionnaire to Report Vehicle Safety Defects. Ms. Hines attached the Questionnaire to her Complaint, thus incorporating its contents. In reporting the incident to the Department of Transportation, Ms. Hines provided the same facts that she alleges in the Complaint. Ms. Hines' allegation that she did not know about the recall until 2009 is irrelevant because her completion of the Questionnaire to Report Vehicle Safety Defects conclusively establishes that Ms. Hines suspected in July 2005 that a defect in her Camry caused her accident and injuries. Thus, she cannot invoke the delayed discovery rule. The Court therefore finds that her cause of action accrued by July 25, 2005, more than five years before she filed her Complaint.

Furthermore, Ms. Hines has not alleged facts sufficient to equitably toll the statute of limitations. "Under the doctrine of fraudulent concealment, tolling of the statute of limitations may be warranted where the defendant 'engaged in fraud or deliberate concealment of material facts related to [its] wrongdoing' and the plaintiff consequently 'failed to discover these facts within the normal limitations period despite the exercise of due diligence.'" Cambridge Literary Properties, Ltd. v. W. Goebel Porzellanfabrik G.M.B.H. & Co., 448 F. Supp. 2d 244, 265 (D. Mass. 2006) (quoting Torres Ramirez v. Bermudez Garcia, 898 F.2d 224, 229 (1st Cir. 1990)). Equitable tolling "is a doctrine sparsely applied, and it cannot be used to rescue a plaintiff from his or her lack of diligence." Cao v. Puerto Rico, 525 F.3d 112, 115 (1st Cir. 2008) (citation omitted). "In the absence of a fiduciary duty of full disclosure, the period of limitations [is] not tolled under G.L. c. 260, § 12 (the Massachusetts fraudulent concealment statute), unless the defendant(s) concealed the existence of a cause of action through some affirmative act done with intent to deceive." White v. Peabody Constr. Co., Inc., 386 Mass. 121, 133 (1982). "Allegations of fraudulent concealment must also conform to the requirements of Fed. R. Civ. P. 9(b)," Miller v. Countrywide Bank, N.A., 571 F. Supp. 2d 251, 264 (D.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 11-416 JVS (FMOx)
8:10ML02151 JVS(FMOx)

Date May 11, 2011

Title Frances Hines v. Toyota Motor Sales USA, Inc.
IN RE: TOYOTA MOTOR CORP. UNINTENDED ACCELERATION MARKETING,
SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

Mass. 2008), meaning Ms. Hines would have to allege the circumstances constituting the fraud with particularity. Ms. Hines has not provided any facts, let alone facts alleged with particularity, suggesting that Toyota had a fiduciary duty of full disclosure or that Toyota affirmatively concealed her cause of action and intended to deceive her. Thus, the statute of limitations is not tolled under the doctrine of fraudulent concealment.

Accordingly, the Court finds that Ms. Hines' claims are time-barred by the three-year statute of limitations.

IV. Conclusion

For the foregoing reasons, the motion is GRANTED.

Initials of Preparer

00 : 20
kjt

company which is Commerce Insurance surcharged me for being the cause of the accident. At that time there was no knowledge of Toyota Sudden Unintended Acceleration "SUA" defect.

Massachusetts General Laws Chapter 260. Limitations of Actions Section 12 Fraudulent concealment commencement of Limitations....states the discovery is toll until there is knowledge of the cause of action.

There was no knowledge of a Toyota Camry SUA Defect until October 2009.

Toyota argues on December 9, 2010, the Court denied Toyota's motion to dismiss the personal injury and wrongful death claims of plaintiffs Hae Chang and Tyrene Livingston on statute of limitations grounds because it was not apparent from the face of their pleadings that either plaintiff had actual suspicion or inquiry notice of wrongdoing before 2009. (ML 10-2151, Docket No. 542 at 14.) Toyota argues that unlike those complaints, Ms. Hines' Complaint is time-barred as a matter of law because her completion of a Vehicle Owner Questionnaire conclusively demonstrates that she cannot avail herself of the discovery rule. (Mot. Br. 3.)

The basis of my claim is that I had no knowledge until 2009, the same as Hae Chang and Tyrene Livingston, on statute of limitations grounds. Therefore I would like the statue to be toll until 2009 and give me a trial.

Toyota argues it is apparent from the Complaint that Ms. Hines had the requisite knowledge to trigger the running of the statute of limitations in July 2005. On July 25, 2005, Ms. Hines reported her accident and injuries to the United States Department of Transportation Auto Safety Hotline, as evidenced by a document entitled Vehicle Owner's Questionnaire to Report Vehicle Safety Defects. Ms. Hines attached the Questionnaire to her Complaint, thus incorporating its contents.

Toyota argues in reporting the incident to the Department of Transportation, Ms. Hines provided the same facts that she alleges in the Complaint. Ms. Hines' allegation that she did not know about the recall until 2009 is irrelevant because her completion of

9th Cir. Case No. 11-55919

the Questionnaire to Report Vehicle Safety Defects conclusively establishes that Ms. Hines suspected in July 2005 that a defect in her Camry caused her accident and injuries. Thus, she cannot invoke the delayed discovery rule. The Court therefore finds that her cause of action accrued by July 25, 2005, more than five years before she filed her Complaint.

Toyota argues that I had knowledge of a defect because I reported my accident and injuries to the "United States Department of Transportation Auto Safety Hotline. I reported my accident to the "United States Department of Transportation Auto Safety Hotline" because when I took Driver's Education in High School over 40 years ago. In the Driver's Education handbook by law you are required to report accidents to tell where they occur most so that NHTSA can try to prevent them, and on the vehicle owners questionnaire. I stated that the vehicle was inspected but nothing was found. (Defect) see enclosure .I filed a phone complaint with Toyota on August 4, 2005 with Sandra Estrada Reference# 200508042275. Again there was no evidence for me to pursue lawsuit. November 3, 2010. I mailed a certified demand letter to Toyota's Claim Manager Carol A. Hargrave. I am asking for compensation for my pain and suffering I sustained during my June 4, 2005 accident. It was denied. Please review her response letter dated December 1, 2010.

FACTS

Toyota has a slogan in the Bay State that they are the largest dealer on the planet. Just come on down. Toyota was negligent in designing, manufacturing, assembling, inspecting, and testing my vehicle. As a direct result of Toyota false representation and breeches in warrant, I have suffered permanent facial, leg, and thigh scarring.

As a direct and proximate result of Toyota's negligence, I have sustained damages which include, but are not limited to the following: physical pain and suffering, past and future; medical expenses, past and future, mental pain, suffering and anguish, loss of vehicle, loss of wages. I am disabled due to this accident, (walking disability). My medical expenses in 2005 were over \$235,000.00. My health care provider has placed a lien on any future claims. I suffered massive injuries, and I could incur more medical expenses, a knee replacement \$30,000.

When I purchased the subject vehicle, I was unaware of the vehicle's hidden and potential defects, of which Toyota knew or should have known regarding their sudden acceleration problems. Toyota breached its duty of reasonable care to myself by manufacturing and assembling the accelerator pedals of the vehicles in such a manner that they were easily to becoming stuck in a partially position slower return to the idle position thereby causing the vehicle to accelerate out of control causing injuries.

Toyota sold a defected vehicle to me. As a further direct result of Toyota's wrongful doing fraudulent concealment, I have loss wages and was left disabled.

As a direct and proximate of Toyota misconduct, acts I am seeking damages for personal injury, compensating and punitive damage, and pain and suffering in the amount to be calculated as outline in the original claim. My fervent prayer and desire is that the court will rule in my favor, due to Toyota fraudulent concealment and deception.

As a result of Toyota intentionally concealed and fail to disclose the truth about their "SUA" problem in their vehicle based on false sense of safety I purchase a detected vehicle and have suffer substantial pain and suffering which Toyota are liable.

February 7, 2011, I filed a law suit at Suffolk County Superior Court in Massachusetts against Toyota Motor Sales USA, Inc. C/o CT Corporation Boston, MA. March 17, 2011 the claim was Tag a long to California because "TMSU" is a citizen in California and for coordination with multidistrict liagation 8:10-2151 (Docket NO 10). The case was dismissed May 11, 2011 on the basis of the statute ran out June 4, 2008.

My attorney pursued a claim against OJ Car Wash. The court's finding is the car wash was not negligent in 2010. I had no knowledge of Toyota's wrongful doing until 2009. That is the basis of my claim, according to M.G.L. C-360 S12. I would like the statute to be toll until October 2009. When knowledge came available thru media, television, radio, newspaper, research and internet.

On January 21, 2010, Toyota Motor Sales (TMS), USA Inc announced it would recall approximately 2.3 million vehicles to correct sticking accelerator pedals. The accelerator pedal may become harder to depress, slower to return in worse case, stuck in a partially depressed position.

I believe my accident was a direct result of a Toyota defect recall. Also to prove I had no knowledge of Toyota wrongful doing. In 2005 my insurance which is Commerce, surcharged me and blamed me for the accident. Toyota also wrote a letter to my attorney in 2005 stating there was no manufacturing defect found in my vehicle.

3. What did you ask the originating court to do (for example: award damages, give injunctive relief, etc.)?

Answer: *Seeking damages for pain and suffering in the amount of \$1,235,462.00.*

4. State the claim or claims you raised at the originating court.

Answer: *"I believe my accident was a direct result of a Toyota defect recall." There was a problem with the car because my foot was on the brakes and the car still accelerated at a high speed.*

5. What issues are you raising on appeal? What do you think the originating court did wrong?

Answer: *Whether the District Court was wrong in dismissing my complaint because they claimed I knew or should have known that I had a case in 2005.*

6. Did you present all issues listed in No. 5 to the originating court:

Answer: *Yes.*

7. What law supports these issues on appeal?

Answer: *The Defendant's action in sending the letter dated October 19, 2005 stating, "Based on our inspection it has been determined it [the unfortunate incident] was not the result of any type of defect with the vehicle" falls within the Massachusetts G.L. c. 260§ 12 (fraudulent concealment statute).*

Part I ADMINISTRATION OF THE GOVERNMENT

Title XV REGULATION OF TRADE

Chapter 93A REGULATION OF BUSINESS PRACTICES FOR CONSUMERS
PROTECTION

Section 1 DEFINITIONS

Section 1. The following words, as used in this chapter unless the text otherwise requires or a different meaning is specifically required, shall mean—

(a) "Person" shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(b) "Trade" and "commerce" shall include the advertising, the offering for sale, rent or lease, the sale, rent, lease or distribution of any services and any property, tangible or intangible, real, personal or mixed, any security as defined in subparagraph (k) of section four hundred and one of chapter one hundred and ten A and any contract of sale of a commodity for future delivery, and any other article, commodity, or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this commonwealth.

Appendix G

CIVIL ACTION COVER SHEET		TRIAL COURT OF MASSACHUSETTS SUPERIOR COURT DEPARTMENT COUNTY: _____	DOCKET NO. 11-11476F		
PLAINTIFF(S) Frances Hines		DEFENDANT(S) Toyota Motor USA C/D C.T. Corporation			
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE BROF		ATTORNEY (IF KNOWN) <div style="border: 2px solid black; padding: 10px; text-align: center; margin: 10px auto; width: 150px;"> RECEIVED FEB 07 2011 </div>			
(Origin code and track designation) SUPERIOR COURT - CIVIL MICHAEL JOSEPH DONOVAN CLERK / MAGISTRATE					
Place an x in one box only: <table style="width:100%; border: none;"> <tr> <td style="width: 50%; border: none;"> <input type="checkbox"/> 1. F01 Original Complaint <input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F) <input checked="" type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X) </td> <td style="width: 50%; border: none;"> <input type="checkbox"/> 4. F04 District Court Appeal (not for review) (X) <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/ Order (Mass.R.Civ.P. 60) (X) <input type="checkbox"/> 6. E10 Summary Process Appeal (X) </td> </tr> </table>				<input type="checkbox"/> 1. F01 Original Complaint <input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F) <input checked="" type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)	<input type="checkbox"/> 4. F04 District Court Appeal (not for review) (X) <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/ Order (Mass.R.Civ.P. 60) (X) <input type="checkbox"/> 6. E10 Summary Process Appeal (X)
<input type="checkbox"/> 1. F01 Original Complaint <input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F) <input checked="" type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)	<input type="checkbox"/> 4. F04 District Court Appeal (not for review) (X) <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/ Order (Mass.R.Civ.P. 60) (X) <input type="checkbox"/> 6. E10 Summary Process Appeal (X)				
TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)					
CODE NO. B03	TYPE OF ACTION (specify) Motor Vehicle Accident	TRACK F	IS THIS A JURY CASE? Yes/No		
The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.					
TORT CLAIMS (Attach additional sheets as necessary)					
A. Documented medical expenses to date:					
1. Total hospital expenses			\$ 235,462.48		
2. Total Doctor expenses			\$ _____		
3. Total chiropractic expenses			\$ _____		
4. Total physical therapy expenses			\$ _____		
5. Total other expenses (describe)			\$ _____		
Subtotal:			\$ _____		
B. Documented lost wages and compensation to date			\$ _____		
C. Documented property damages to date			\$ _____		
D. Reasonably anticipated future medical and hospital expenses --- Knee Replacement			\$ 30,000.		
E. Reasonably anticipated lost wages			\$ _____		
F. Other documented items of damages (describe)			\$ _____		
G. Brief description of plaintiff's injury, including nature and extent of injury (describe)			\$ _____		
Total \$					
CONTRACT CLAIMS (Attach additional sheets as necessary)					
Provide a detailed description of claim(s): See Enclosure					
			TOTAL \$ 1,235,462.48		
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT					
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods." Signature of Attorney of Record Frances Hines Date: 2-8-2011 A.O.S.C. 3-2007					

Appendix H

MEDICAL EXPENSES

Frances Hines incurred the following medical expenses to date:

Boston EMS 6/4/05	\$444.50
Fallon Ambulance 6/19/05-8/3/05	\$1,446.00
Brigham & Women's Hospital 6/4/05-8/22/08	\$171,695.01
Brigham & Women's Orthopedic Dept. 6/4/05-12/10/07	\$17,539.00
Brigham & Women's Radiology Dept. 6/4/05-12/10/07	\$3,176.00
Brigham & Women's Anesthesia Dept. 6/4/05-6/2/08	\$7,255.00
The Boston Center 6/14/05- 7/25/05	\$30,684.97
Partners Home Care 8/5/05-9/8/05	<u>\$3,322.00</u>
TOTAL MEDICAL EXPENSES TO DATE:	<u>\$235,562.48</u>

FUTURE MEDICAL EXPENSES

Ms. Hines' treating physician has recommended total knee replacement surgery. A fair estimate for the cost of total knee replacement surgery is \$30,000.00.

Appendix *BT*

Supporting Evidence (Recall and Defective Information, 2005 Toyota Camry)

Toyota Recall and Lawsuits

In 2010, Toyota Motor Corp. recalled millions of cars due to defects found in accelerator pedals and breaks for 2005 to 2010 models. The US government started its investigation on Toyota break problems when the manufacturer announced that there is a design defect in the 2010 Prius.

The class-action suit filed against Toyota was settled for \$1.1 billion for monetary compensation and upgrades for the 16 million owners of Toyota, Scion and Lexus vehicles, depending on the model and age of the vehicle.

Is Your Car Part of the Recall?

The following include the recalled models:

- RAV4
- Corolla
- Matrix
- Camry
- Highlander SUV
- Prius
- Tundra and Sequoia trucks
- Lexus GS300, RX 330,
- other Lexus models

Go to Toyota's safety recall look-up page and enter your Vehicle Identification Number (VIN) to know if your vehicle is included in the recall.

If you find that your vehicle is affected by Toyota's recall, or any other, contact your dealer as soon as possible.

Class Action Lawsuit Against Toyota

Toyota owners who filed lawsuits against the car manufacturer allege that Toyota has committed fraud and negligence in the design and manufacturing of their vehicles, especially the Electronic Throttle Control System ('ETCS-i' or 'ETCS') of some models. Accidents involving unintended acceleration are blamed on defective ERCS. The deadline for filing a claim for issues related to this was July 29, 2013, according to the Toyota Economic Loss Settlement Website.

The following is a list of cases related to Toyota vehicles:

Appendix I

Lawsuits:

- Baumkel v. Toyota Motor Corp., et al. (class-action complaint) — Detroit-area resident and 2007 Toyota Camry owner sues Toyota alleging legal claims under federal and state law.
- Dimitrios Biller v. Toyota Motor Corp., et al. (complaint) — Whistleblower lawsuit filed by ex-Toyota lawyer accusing the Japanese automaker and certain Toyota executives of engaging in an unlawful “conspiracy to conceal, withhold, and destroy evidence and information, and obstruct justice” in rollover lawsuits filed by plaintiffs against the car company.
- Gumble v. Toyota Motor Corp., et al. (class-action complaint) — A 2009 Camry owner’s class-action lawsuit seeking legal relief for herself and other Toyota owners.
- Heilbrunn, et al. v. Toyota Motor Corp. (class-action complaint) — Federal class-action lawsuit accused Toyota of breach of express and implied warranties, fraud, unjust enrichment, and breach of good faith and fair dealing.
- Kmetz v. Toyota Motor Sales USA, Inc., et al. (class-action complaint) — Lawsuit seeking class-action status for Toyota owners alleging unintended acceleration vehicle defects.
- Menssen v. Toyota Motor Sales, USA, et al. (class-action complaint) — Products liability, fraud, breach of warranty, and negligence lawsuit.
- Miller v. Toyota Motors Sales, USA, Inc., et al. (complaint) — Breach of warranty, negligence, and product liability lawsuit.
- Pena, et al. v. Toyota Motor Corp. (class-action complaint) — Lawsuit alleging Toyota Electronic Throttle Control System (‘ETCS-i’ and ‘ETCS’) defects involving link between the gas pedal and electronic acceleration, reportedly lacking a redundant mechanical linkage failsafe to prevent sudden, unintended acceleration.
- Saylor v. Toyota Motor Sales, U.S.A., Inc. (complaint) — Products liability and negligence lawsuit in a California state court against Toyota and Lexus car dealer over the deaths of 4 family members in a Lexus ES350 loaner vehicle that apparently accelerated to 120 mph before killing the car’s 4 occupants.
- Uno v. Toyota Motor Sales USA, Inc., et al. (complaint) — Wrongful death, product liability, and breach of warranty lawsuit.
- Viviano, et al. v. Toyota Motor Engineering and Manufacturing of North America, et al. (class-action complaint) — Federal class-action lawsuit alleging racketeering, fraud, product liability, negligence, Consumer Protection Act violations, and breach of warranty.