

DIVISION OF ST. THOMAS AND ST. JOHN

Plaintiff,

vs.

TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., TOYOTA MOTOR SALES, U.S.A, INC., TOYOTA MOTOR CORPORATION, TOYOTA DE PUERTO RICO CORP., and LAMBERT-HILTON, INC., d/b/a TOYOTA OF ST. THOMAS,

Defendants.

CASE NO. ST-14-CV-543

Pending before the Court is Defendants' renewed motion for a protective order. For the following reasons, Defendants' motion will be granted in part and denied in part, and the parties will be ordered to meet and confer to attempt to narrow the scope of discovery.

On November 21, 2014, Peter Philip filed a Complaint alleging that Defendants designed, manufactured, distributed, and sold him a defective vehicle. Philip asserts that, while he was driving his 2006 Toyota Highlander on April 12, 2014, the vehicle suddenly and uncontrollably accelerated, struck a stone wall embankment, became airborne, and crashed into a residence. As a result of the collision, Philip's vehicle was substantially damaged and he suffered personal injuries. In the Complaint, Philip suggests that the unintended acceleration was caused by a defect in the vehicle's electronic throttle control ("ETC") system.

On July 28, 2016, and July 29, 2016, Philip deposed corporate officers of Toyota Motor Sales (“TMS”) and Toyota Motor Corporation (“TMC”) pursuant to V.I. Rule of Civil Procedure 30(b)(6).

However, the parties could not agree whether it was permissible to depose the Rule 30(b)(6) designees regarding (1) “other incidents” in which Toyota vehicles have crashed due to unintended acceleration, and (2) a March 19, 2014, Deferred Prosecution Agreement (“DPA”) between TMC and the Office of the Attorney General for the Southern District of New York. As a result, Defendants moved for protective relief seeking to bar Philip from deposing TMS and TMC’s Rule 30(b)(6) designees on those disputed issues.

STANDARD

V.I. Rule of Civil Procedure 26 establishes that, “Unless otherwise limited by court order, ... Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense. Information within this scope of discovery need not be admissible in evidence to be discoverable.”¹ However, a court “may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense”² relating to discovery requests.

ANALYSIS

Philip seeks to depose Defendants’ Rule 30(b)(6) designees concerning “any complaints made about lawsuits filed against TMS and TMC regarding unintended acceleration[,]. . . communications between TMS and TMC and other Defendants regarding unintended acceleration of Toyota vehicles[,]. . . incidents of unintended acceleration of Toyota vehicles and TMS and TMC’s response thereto.”

Defendants assert that Philip’s discovery requests are overbroad and burdensome. Defendants contend that the request to depose the Rule 30(b)(6) designees on their knowledge of complaints filed against TMS and TMC would encompass any claim against those defendants regardless of the time frame of those other incidents or the model of vehicle involved. To comply with these discovery requests, Defendants assert they would have to prepare their Rule 30(b)(6) designees to answer questions relating to

¹ V.I. R. Civ. P. 26(b)(1).

² V.I. R. Civ. P. 26(c)(1).

thousands of complaints concerning many Toyota models over an unlimited number of years.

In addition, Defendants argue that Philip's discovery requests are unwarranted because Philip has not presented any evidence to show how other Toyota vehicle models are substantially similar to Philip's 2006 Highlander. Defendants contend that the 2006 Toyota Highlander has an ETC system that is substantially different from the ETC systems in other Toyota vehicles and is even different from ETC systems in Toyota Highlanders of other years. Defendants note that they have produced information concerning nine other complaints involving unintended acceleration in 2006 Toyota Highlanders, and request that Philip's deposition questions concerning unintended acceleration be limited to these nine incidents. Similarly, Defendants argue that Philip's discovery requests relating to the DPA are irrelevant because the DPA does not involve incidents of unintended acceleration in 2006 Toyota Highlanders.

"With respect to issues of relevancy of discovery, discovery rules are to be accorded a broad and liberal treatment."³ Discovery requests are "relevant if there is any possibility that the information sought is relevant to any issue in the case and should ordinarily be allowed, unless it is clear that the information sought can have no possible bearing on the subject matter of the action."⁴ Stated differently, discovery requests "should be considered relevant if there is any possibility that the information sought may be relevant to the claim or defense of any party."⁵

Defendants' proposal to limit the scope of Philip's discovery inquiry to other incidents of unintended acceleration in 2006 Toyota Highlanders is unavailing. At this stage in the proceedings, it is unclear whether

³ *Upton v. McKerrow*, 1996 U.S. Dist. LEXIS 22978, 1996 WL 193807, at *3 (N.D. Ga. Feb. 20, 1996) (quotations and cites omitted). See also Fed. R. Civ. P. 26(b)(1) ("Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.").

⁴ *EEOC v. Woodmen of World Life Ins. Soc'y*, 2007 U.S. Dist. LEXIS 7488, 2007 WL 649298, at *1 (D. Neb. 2007) (citations omitted).

⁵ *G.D v. Monarch Plastic Surgery*, 2007 U.S. Dist. LEXIS 5509 (D. Kan. 2007). See also *In re Toyota Motor Corp. Sec. Litig.*, 2012 U.S. Dist. LEXIS 124438, *18-19, 2012 WL 3791716 (C.D. Cal. 2012).

the ETC system in a 2006 Toyota Highlander differs significantly from the ETC systems in other Toyota models. Philip is entitled to utilize discovery to determine whether other incidents of unintended acceleration in Toyota vehicles are substantially similar to the incident involving Philip's vehicle.⁶ The Court will also permit Philip to examine Defendants' designees regarding the DPA so long as the deposition questions are narrowly tailored to Toyota vehicles with ETC system defects.

The holding in *In re Toyota Motor Corp. Sec. Litig.*,⁷ the case on which Philip chiefly relies to oppose Defendants' motion for a protective order, also suggests that the scope of discovery should be limited temporally. In that case, the court agreed that 2004 was a "threshold year for unintended acceleration issues at Toyota." The court concluded that "January 1, 2004 is an appropriate starting point for the production of relevant documents."⁸ Similarly, this Court determines that the discovery inquiry into other incidents of unintended acceleration caused by ETC system defects should not involve complaints or communications relating to Toyota vehicles that occurred prior to January 1, 2004.

Before conducting the depositions of Defendants' Rule 30 designees, the parties should meet and confer to discuss further limitations on the scope of discovery. At that time, Defendants may present evidence of ETC systems in various Toyota models showing their similarities to and differences from the ETC system in the 2006 Toyota Highlander. This evidence should help the parties narrow the subject matter that will be covered in the depositions. In addition, the Court notes that, as a matter of practicality, the scope

⁶ *In re Toyota Motor Corp. Sec. Litig.*, 2012 U.S. Dist. LEXIS 124438, *24-25 ("While defendants argue that the defects or conditions precipitating the recall and suspension of production of millions of Toyota vehicles in early 2010 were not related to prior NHTSA investigations, recalls, or to prior incidents of unintended acceleration (including those which may not have been reported to regulators), Plaintiff is entitled to test this claim through discovery. Moreover, Plaintiff is entitled to inquire as to whether the defects which led to the 2010 recall could have been (or were) discovered in connection with earlier investigations or reports of prior incidents of unintended acceleration").

⁷ 2012 U.S. Dist. LEXIS 124438.

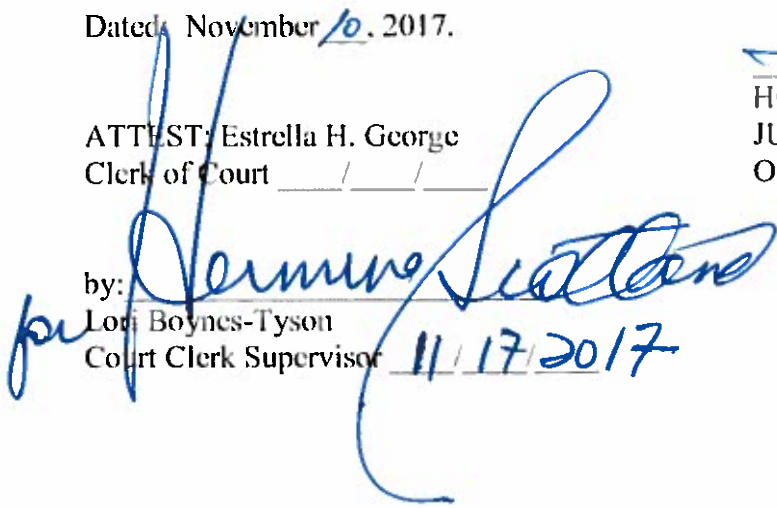
⁸ *Id.*, at *35.

of discovery will be limited by the reasonable time constraints of conducting a deposition. Given the sheer volume of incidents of unintended acceleration in Toyota vehicles, Philip cannot possibly examine Defendants' Rule 30(b)(6) designees on every complaint or internal corporate communication on unintended acceleration incidents occurring between January 1, 2004, until April 12, 2014, the date of the accident. Consequently, Philip should devise new parameters in an effort to limit the scope of his discovery inquiry to lessen Defendants' burden when preparing their Rule 30(b)(6) designees for their depositions.

An Order consistent with this Opinion shall follow.

Dated: November 10, 2017.

ATTEST: Estrella H. George
Clerk of Court ____/____/____

by: 
Lori Boynes-Tyson
Court Clerk Supervisor 11/17/2017


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS