

FILE START

LEVITEN, IRIS

2007-03-42039
CLAIM

C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index number:

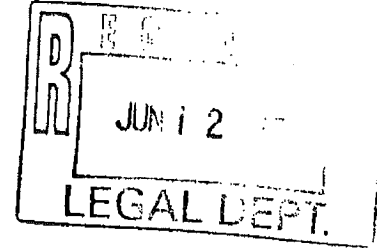
-----X
IRIS LEVITEN,

VERIFIED
COMPLAINT

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,



Defendants.
-----X

Plaintiff, complaining of the defendants, by
her attorneys, Gair, Gair, Conason, Steigman & Mackauf,
respectfully show to this Court and allege, upon information and
belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., is a corporation with its principal place of
business in a state other than New York.
The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., does business in the State of New York.
2. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., regularly does or solicits business, or
engages in any other persistent course of conduct, or
derives substantial revenue from goods used or services
rendered in the State of New York.

NEW YORK

JUN - 1 2002

NOT COMPARED
WITH COPY FILE

4. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.
5. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, is a corporation with its principal place of business in a state other than New York.
6. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, does business in the State of New York.
7. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.
8. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.
9. The defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

10. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., was in the business of manufacturing vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
11. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES, INC., was in the business of designing motor vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
12. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., was in the business of selling and distributing, for public use, motor vehicles, including a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
13. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., sold, to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
14. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., transported to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

15. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., distributed to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
16. At some time thereafter, the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, sold to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
17. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, transported to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
18. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, distributed to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
19. On December 29, 2006, the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, leased a Lexus sedan motor vehicle, model number ES 350, bearing license plate DWW7794 vehicle identification number JTHBJ46G272071246 to the

plaintiff, IRIS LEVITEN.

20. On February 18, 2007, the plaintiff, IRIS LEVITEN, was involved in an automobile accident while driving a Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794 and vehicle identification number JTHBJ46G272071246 near the eastbound ramp of the Northern State Parkway near Glen Cove Road.
21. The aforesaid occurrence was caused and contributed to by the negligence of the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794, identification number JTHBJ46G272071246.
22. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, some of these injuries are of a permanent and lasting nature.

23. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

24. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A SECOND CAUSE OF ACTION

25. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "24", inclusive, with the same force and effect as if more fully set forth herein at length.

26. The defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL ATOMIC INDUSTRIES, INC., their agents, servants and employees warranted and represented to the plaintiff, IRIS LEVITEN, that Lexus sedan motor vehicle, model number ES 350, bearing the New York license plate number DWW7794 and identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, serviced, maintained, labeled, distributed, sold and purchased.

27. In designing, manufacturing, assembling, inspecting,

testing, repairing, servicing, maintaining, labeling, distributing and selling the vehicle Lexus model number ES 350, bearing New York State license plate number DWW7794 and vehicle identification number number JTHBJ46G272071246, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL ATOMIC INDUSTRIES, INC., their agents, servants and employees knew that the aforesaid product would be used by the public and that such users would rely upon the warranties and representations that the said product was safe, proper, merchantable and fit for its intended uses.

28. On December 29, 20069, the plaintiff, IRIS LEVITEN, relied on the aforementioned warranties and expected that the aforementioned product was safe, proper, merchantable and fit for its intended uses.
29. The aforementioned product was unsafe, not merchantable and unfit for its intended uses.
30. By reason of the foregoing, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, their agents, servants and employees, violated and breached the aforementioned warranties, in that the product was not reasonably fit, not of merchantable quality, unsafe, defective and constituted unreasonably dangerous

instrumentalities as designed, manufactured, assembled, inspected, repaired, serviced, maintained, tested, labeled, sold and distributed.

31. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting nature.
32. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
33. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A THIRD CAUSE OF ACTION

34. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "33", with the same force and effect as if more fully set forth herein at length.
35. By reason of the foregoing, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, their agents, servants and employees are strictly

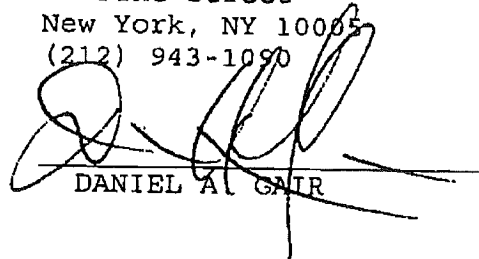
liable in tort to the plaintiff, IRIS LEVITEN, for the injuries sustained by her.

36. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting in nature.
37. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
38. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

W H E R E F O R E, plaintiff demands judgment against the defendants in the First, Second and Third Causes of Action against the defendants LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, together with the costs and disbursements of this action.

Dated: New York, New York
June 1, 2007

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiffs
Office & P.O. Address
80 Pine Street
New York, NY 10005
(212) 943-1090



DANIEL A. GAIR

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No: 34148/09
Date Purchased: 12/22/2009

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

RECEIVED
DEC 24 2009
LEGAL DEPT.

Plaintiff designates
QUEENS County as the
place of trial

Basis of venue:
defendants, STRICTLY AUTO
LEASING and JABRA AUTO
LEASING's, place of business

TOYOTA MOTOR CORPORATION, STRICTLY
AUTO LEASING, INC. and JABRA AUTO
LEASING, INC.,

Defendants.
-----X

SUMMONS

Defendants' address is
42-06 27th Street
Long Island City, NY 11101

COUNTY OF QUEENS

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York

December 21, 2009

Yours Truly,

KELNER & KELNER, ESQS.

Attorneys for Plaintiff MICHAEL DOUKAS
140 Broadway, 37th Floor
New York, New York 10005
212-425-0700

BY: Todd J. Strier
TODD J. STRIER

Defendants' Addresses:

SEE RIDER

2009 DEC 22 11 58 AM
CLERK OF COURT

Toyota Motor Corporation
1 Toyota-Cho
Toyota-Shi
Aichi-Ken
471-8571, Japan

Toyota Motor Corporation
1 Toyota-Cho
Toyota City
Aichi Prefecture 471-8571, Japan

Strictly Auto Leasing, Inc.
42-06 27th Street
Long Island City, NY 11101

Jabra Auto Leasing Inc.
42-10 27th Street
Long Island City, NY 11101

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No: 34148/09

-----X
MICHAEL DOUKAS,

Plaintiff,

VERIFIED COMPLAINT

-against-

TOYOTA MOTOR CORPORATION, STRICTLY
AUTO LEASING, INC. and JABRA AUTO
LEASING, INC.,

Defendants.
-----X

2009-07-22 11:00:32
COURT REPORTER
JULIA M. GARDNER

Plaintiff, complaining of the defendants, by his attorneys, Kelner & Kelner respectfully shows to this Court and allege, upon information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. The defendant, TOYOTA MOTOR CORPORATION, is a corporation with its principal place of business in the country other than USA.
2. The defendant, TOYOTA MOTOR CORPORATION, does business in the State of New York.
3. The defendant, TOYOTA MOTOR CORPORATION, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.
4. The defendant, TOYOTA MOTOR CORPORATION, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.
5. The defendant, STRICTLY AUTO LEASING, INC, is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

6. The defendant, JABRA AUTO LEASING, INC., is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

7. The defendant, TOYOTA MOTOR CORPORATION, was in the business of manufacturing vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.

8. The defendant, TOYOTA MOTOR CORPORATION, was in the business of designing motor vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.

9. The defendant, TOYOTA MOTOR CORPORATION, was in the business of selling and distributing, for public use, motor vehicles, including a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

10. At some time prior to December 12, 2006, the defendant, TOYOTA MOTOR CORPORATION, distributed to LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

11. On or about December 12, 2006, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., sold to ESTREE, INC., d/b/a LEXUS OF WESTPORT, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

12. At some time thereafter, ESTREE, INC., d/b/a LEXUS OF WESTPORT, sold to METRO AUTO LEASING INC., d/b/a THE AUTOMALL, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

13. At some time thereafter, ESTREE, INC., d/b/a LEXUS OF WESTPORT, sold to the defendant, STRICTLY AUTO LEASING, INC., a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

14. At some time thereafter, ESTREE, INC., d/b/a LEXUS OF WESTPORT, sold to JABRA AUTO LEASING INC., a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

15. On or about December 29, 2006, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, sold a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246 to Iris Leviten.

16. On or about December 29, 2006, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, leased a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246 to Iris Leviten.

17. On or about December 29, 2006, defendant, STRICTLY AUTO LEASING, INC., sold a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246 to Iris Leviten.

18. On or about December 29, 2006, defendant, STRICTLY AUTO LEASING, INC., leased a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246 to Iris Leviten.

19. On or about December 29, 2006, defendant, JABRA AUTO LEASING INC., sold a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246 to Iris Leviten.

20. On or about December 29, 2006, defendant, JABRA AUTO LEASING INC., leased a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246 to Iris Leviten.

21. On February 18, 2007, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246, operated by Iris Leviten, was involved in an automobile accident near the eastbound ramp of the Northern State Parkway near Glen Cove Road.

22. On February 18, 2007, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246, operated by Iris Leviten, was caused to collide with a 2002 Mack Truck owned by the New York City Department of Sanitation, bearing New York license plate number K36757 for the year 2007 (hereinafter referred to as the "DOS vehicle").

23. At all times hereinafter mentioned, plaintiff was a passenger in the DOS vehicle.

24. On February 18, 2007, at approximately 2:50 p.m., the ES 350 lexus sedan operated by Iris Leviten came into contact with the DOS vehicle in which plaintiff was a passenger.

25. On February 18, 2007, at approximately 2:50 p.m., the ES 350 lexus sedan operated by Iris Leviten vehicle struck the DOS vehicle in which plaintiff was a passenger.

26. The aforesaid occurrence was caused and contributed to by the negligence of the defendants, TOYOTA MOTOR CORPORATION, STRICTLY AUTO LEASING, INC., and JABRA AUTO LEASING INC., their agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution, preparation and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

27. Defendant, TOYOTA MOTOR CORPORATION, recalled several models, including the model 2007 ES350, which was owned by Iris Leviten and involved in the subject occurrence, for "the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position".

28. By reason of the foregoing, the plaintiff, MICHAEL DOUKAS, sustained injuries to his head, limbs and body, including cervical spine injuries requiring surgery and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, some of these injuries are of a permanent and lasting nature.

29. It is hereby alleged pursuant to CPLR §1603, that the foregoing cause of action is exempt from the operation of CPLR §1601, by reason of one or more of the exemptions provided in CPLR §1602.

30. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A SECOND CAUSE OF ACTION

31. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "30", inclusive, with the same force and effect as if more fully set forth herein at length.

32. The defendants, TOYOTA MOTOR CORPORATION, STRICTLY AUTO LEASING, INC., and JABRA AUTO LEASING INC., their agents, servants and employees warranted and represented to Iris Leviten that Lexus sedan motor vehicle, model number ES 350, bearing identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, serviced, maintained, labeled, distributed, sold and purchased.

33. In designing, manufacturing, assembling, inspecting, testing, repairing, servicing, maintaining, labeling, distributing and selling the vehicle Lexus model number ES 350, bearing vehicle identification number JTHBJ46G272071246, defendants, TOYOTA MOTOR CORPORATION, STRICTLY AUTO LEASING, INC., and JABRA AUTO LEASING INC., their agents, servants and employees knew that the aforesaid product would be used by the public and that such users would rely upon the warranties and representations that the said product was safe, proper, merchantable and fit for its intended uses.

34. That on December 29, 2006, Iris Leviten relied on the aforementioned warranties and expected that the aforementioned product was safe, proper, merchantable and fit for its intended uses.

35. The aforementioned ES 350 bearing vehicle identification number JTHBJ46G272071246 was unsafe, not merchantable and unfit for its intended uses.

36. By reason of the foregoing, the defendants, TOYOTA MOTOR CORPORATION, STRICTLY AUTO LEASING, INC., and JABRA AUTO LEASING INC., their agents, servants and employees violated and breached the aforementioned warranties, in that the product was not reasonably fit, not of merchantable quality, unsafe, defective and constituted unreasonably dangerous instrumentalities as designed, manufactured, assembled, inspected, repaired, serviced, maintained, tested, labeled, sold and distributed.

37. By reason of the foregoing, plaintiff, MICHAEL DOUKAS, sustained injuries to his head, limbs and body, including cervical spine injuries requiring surgery and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, some of these injuries are of a permanent and lasting nature.

38. It is hereby alleged pursuant to CPLR §1603, that the foregoing cause of action is exempt from the operation of CPLR §1601, by reason of one or more of the exemptions provided in CPLR §1602.

39. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A THIRD CAUSE OF ACTION

40. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "39", with the same force and effect as if more fully set forth herein at length.

41. By reason of the foregoing, defendants, TOYOTA MOTOR CORPORATION, STRICTLY AUTO LEASING, INC., and JABRA AUTO LEASING INC., their agents, servants and employees are strictly liable in tort to the plaintiff, MICHAEL DOUKAS, for the injuries sustained by him.

42. By reason of the foregoing, plaintiff, MICHAEL DOUKAS, sustained injuries to his head, limbs and body, including cervical spine injuries requiring surgery and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, some of these injuries are of a permanent and lasting nature.

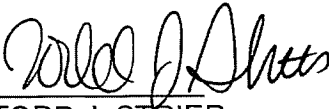
43. It is hereby alleged pursuant to CPLR §1603, that the foregoing cause of action is exempt from the operation of CPLR §1601, by reason of one or more of the exemptions provided in CPLR §1602.

44. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

WHEREFORE, plaintiff demands judgment against the defendants in the First, Second and Third Causes of Action against the defendants, TOYOTA MOTOR CORPORATION, STRICTLY AUTO LEASING, INC., and JABRA AUTO LEASING INC., together with the costs and disbursements of this action.

Dated: New York, New York
December 21, 2009

Yours, etc.
KELNER & KELNER

By 
TODD J. STRIER
Attorneys for Plaintiff
140 Broadway, 37th Floor
New York, NY 10005
(212) 425-0700

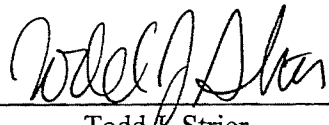
ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

The undersigned, an attorney admitted to practice law before the Courts of the State of New York, hereby affirms as true under the penalty of perjury that affirmant is an attorney for the plaintiffs in this action; that affirmant has read the foregoing **VERIFIED COMPLAINT** and knows the contents thereof; that same is true to affirmant's own knowledge, except as to those matter stated upon information and belief, and that those matters affirmant believes to be true. Affirmant further says that the reason this affirmation is made by affirmant and not by the plaintiffs is that the plaintiffs do not reside within the County where affirmant has his office.

The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are as follows: investigation made under affirmant's supervision and information and records in the case file.

Dated: New York, New York:
December 21, 2009



Todd V. Strier

Index No. 34148/2009

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

MICHAEL DOUKAS,

Plaintiff,

-against-

TOYOTA MOTOR CORPORATION, STRICTLY AUTO LEASING, INC. and
JABRA AUTO LEASING, INC.

Defendants.

SUMMONS & VERIFIED COMPLAINT

KELNER & KELNER, Esqs.

*Attorneys for Plaintiff
140 Broadway, 37th Floor
New York, New York 10005
212-425-0700*

SUPREME COURT OF THE STAT OF NEW YORK
COUNTY OF QUEENS

Index No: 34137/09
Date Purchased: 12-21-09

RECEIVED
DEC 29 2009
LEGAL DEPT.

IRIS LEVITEN,

Plaintiff,

-against-

TOYOTA MOTOR CORPORATION, STRICTLY
AUTO LEASING, INC., JABRA AUTO
LEASING, INC.,

Defendant.

Plaintiff designates
QUEENS County as the place
of trial
Basis of venue:
defendants, STRICTLY AUTO
LEASING and JABRA AUTO
LEASING's, place of
business

SUMMONS

Defendants' address is
4206 27th Street
Long Island City, NY 11101


COUNTY OF QUEENS

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action
and to serve a copy of your answer, or, if the complaint is not served
with this Summons, to serve a notice of appearance, on the Plaintiff's
Attorney(s) within 20 days after the service of this Summons,
exclusive of the day of service (or within 30 days after the service
is complete if this Summons is not personally delivered to you within
the State of New York); and in case of your failure to appear or
answer, judgment will be taken against you by default for the relief
demanded in the complaint.

Dated: New York, New York
December 21st, 2009

GAIR, GAIR, CONASON, STEIGMAN & MACKAUF
Attorney(s) for Plaintiff(s)
Office and Post Office Address
80 Pine Street
New York, New York 10005

BY: 
HOWARD S. HERSHENHORN

Defendants' Addresses:

SEE RIDER

2009 DEC 21 PM 3:52
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QUEENS COUNTY CLERK

Toyota Motor Corporation
1 Toyota-Cho
Toyota City
Aichi Prefecture 471-8571, Japan

Strictly Auto Leasing, Inc.
42-06 27th Street
Long Island City, NY 11101

Jabra Auto Leasing Inc.
42-10 27th Street
Long Island City, NY 10101

SUPREME COURT OF THE STAT OF NEW YORK
COUNTY OF QUEENS

Index No:

-----X
IRIS LEVITEN,

Plaintiff,

VERIFIED COMPLAINT

-against-

TOYOTA MOTOR CORPORATION, STRICTLY
AUTO LEASING, INC., JABRA AUTO LEASING,
INC.,

Defendant.

-----X

QUEENS COUNTY CLERK
RECEIVED
2009 DEC 21 PM 3:54

Plaintiff, complaining of the defendants, by her attorneys, Gair,
Gair, Conason, Steigman, Mackauf, Bloom & Rubinstein
respectfully shows to this Court and allege, upon information and
belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. The defendant, TOYOTA MOTOR CORPORATION, is a corporation with its principal place of business in the country other than USA.
2. The defendant, TOYOTA MOTOR CORPORATION, does business in the State of New York.
3. The defendant, TOYOTA MOTOR CORPORATION, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.
4. The defendant, TOYOTA MOTOR CORPORATION, expected or should

reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.

5. The defendant, STRICTLY AUTO LEASING, INC, is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.
6. The defendant, JABRA AUTO LEASING, INC., is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.
7. The defendant, TOYOTA MOTOR CORPORATION, was in the business of manufacturing vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
8. The defendant, TOYOTA MOTOR CORPORATION, was in the business of designing motor vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
9. The defendant, TOYOTA MOTOR CORPORATION, was in the business of selling and distributing, for public use, motor vehicles, including a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
10. At some time prior to December 12, 2006, the defendant, TOYOTA MOTOR CORPORATION, distributed to LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., a Lexus sedan motor vehicle,

model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

11. On December 12, 2006, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., sold to ESTREE, INC., d/b/a LEXUS OF WESTPORT, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
12. At some time thereafter, ESTREE, INC., d/b/a LEXUS OF WESTPORT, sold to METRO AUTO LEASING INC., d/b/a THE AUTOMALL, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
13. At some time thereafter, ESTREE, INC., d/b/a LEXUS OF WESTPORT, sold to the defendant, STRICTLY AUTO LEASING, INC., a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
14. At some time thereafter, ESTREE, INC., d/b/a LEXUS OF WESTPORT, sold to JABRA AUTO LEASING INC., a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
15. On December 29, 2006, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, sold a Lexus sedan motor vehicle, model number ES 350, bearing license plate DWW7794 vehicle identification number JTHBJ46G272071246 to the plaintiff, IRIS LEVITEN.
16. On December 29, 2006, the defendant, STRICTLY AUTO LEASING, INC., sold a Lexus sedan motor vehicle, model number ES 350, bearing license plate DWW7794 vehicle identification number

JTHBJ46G272071246 to the plaintiff, IRIS LEVITEN.

17. On December 29, 2006, the defendant, JABRA AUTO LEASING INC., sold a Lexus sedan motor vehicle, model number ES 350, bearing license plate DWW7794 vehicle identification number JTHBJ46G272071246 to the plaintiff, IRIS LEVITEN.
18. On February 18, 2007, the plaintiff, IRIS LEVITEN, was involved in an automobile accident while driving a Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794 and vehicle identification number JTHBJ46G272071246 near the eastbound ramp of the Northern State Parkway near Glen Cove Road.
19. The aforesaid occurrence was caused and contributed to by the negligence of the defendants, TOYOTA MOTOR CORPORATION, STRICTLY AUTO LEASING, INC., and JABRA AUTO LEASING INC., their agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794, identification number JTHBJ46G272071246.
20. The defendant, TOYOTA MOTOR CORPORATION, recalled several models, including the model 2007 ES350, which was owned by the plaintiff and involved in the subject occurrence, for "the potential for an unsecured or incompatible driver's

floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position".

21. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, some of these injuries are of a permanent and lasting nature.
22. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
23. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A SECOND CAUSE OF ACTION

24. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "23", inclusive, with the same force and effect as if more fully set forth herein at length.
25. The defendants, TOYOTA MOTOR CORPORATION, STRICTLY AUTO LEASING, INC., and JABRA AUTO LEASING INC., their agents, servants and employees warranted and represented to the plaintiff, IRIS LEVITEN, that Lexus sedan motor vehicle,

model number ES 350, bearing identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, serviced, maintained, labeled, distributed, sold and purchased.

26. In designing, manufacturing, assembling, inspecting, testing, repairing, servicing, maintaining, labeling, distributing and selling the vehicle Lexus model number ES 350, bearing vehicle identification number JTHBJ46G272071246, the defendants, TOYOTA MOTOR CORPORATION, STRICTLY AUTO LEASING, INC., and JABRA AUTO LEASING INC., their agents, servants and employees knew that the aforesaid product would be used by the public and that such users would rely upon the warranties and representations that the said product was safe, proper, merchantable and fit for its intended uses.
27. On December 29, 2006, the plaintiff, IRIS LEVITEN, relied on the aforementioned warranties and expected that the aforementioned product was safe, proper, merchantable and fit for its intended uses.
28. The defendant, TOYOTA MOTOR CORPORATION, recalled several models, including the model 2007 ES350, which was owned by the plaintiff and involved in the subject occurrence, for the potential for an unsecured or incompatible driver's

floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position".

29. The aforementioned product was unsafe, not merchantable and unfit for its intended uses.
30. By reason of the foregoing, the defendants, TOYOTA MOTOR CORPORATION, STRICTLY AUTO LEASING, INC., and JABRA AUTO LEASING INC., their agents, servants and employees violated and breached the aforementioned warranties, in that the product was not reasonably fit, not of merchantable quality, unsafe, defective and constituted unreasonably dangerous instrumentalities as designed, manufactured, assembled, inspected, repaired, serviced, maintained, tested, labeled, sold and distributed.
31. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting nature.
32. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
33. The amount of the plaintiff's injuries exceeds

jurisdictional limits of all lower courts.

AS AND FOR A THIRD CAUSE OF ACTION

34. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "31", with the same force and effect as if more fully set forth herein at length.
35. By reason of the foregoing, the defendants, TOYOTA MOTOR CORPORATION, STRICTLY AUTO LEASING, INC., and JABRA AUTO LEASING INC., their agents, servants and employees are strictly liable in tort to the plaintiff, IRIS LEVITEN, for the injuries sustained by her.
36. The defendant, TOYOTA MOTOR CORPORATION, recalled several models, including the model 2007 ES350, which was owned by the plaintiff and involved in the subject occurrence, for "the potential for an unsecured or incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get stuck in the wide open position".
37. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting in nature.

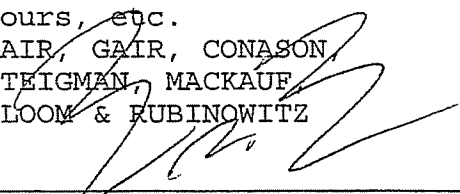
38. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
39. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

W H E R E F O R E, plaintiff demands judgment against the defendants in the First, Second and Third Causes of Action against the defendants, TOYOTA MOTOR CORPORATION, STRICTLY AUTO LEASING, INC., and JABRA AUTO LEASING INC., together with the costs and disbursements of this action.

Dated: New York, New York
December 21st, 2009

Yours, etc.
GAIR, GAIR, CONASON,
STEIGMAN, MACKAUF
BLOOM & RUBINOWITZ

By



HOWARD S. HERSHENHORN
Attorneys for Plaintiffs
Office & P.O. Address
80 Pine Street
New York, NY 10005
(212) 943-1090

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

Howard S. Hershenhorn, the undersigned attorney admitted to practice in the courts of the State of New York, states that affirmant is an associate of the firm of GAIR, GAIR, CONASON, STEIGMAN, MACKAUF, BLOOM & RUBINOWITZ, attorneys for the plaintiff in the within action; that affirmant has read the foregoing COMPLAINT and knows the contents thereof; that the same is true to affirmant's own knowledge except as to those matters therein stated to be alleged on information and belief, and that as to those matters, affirmant believes them to be true.

Affirmant further states that the reason this verification is made by affirmant and not by the plaintiff(s) is that the plaintiffs are not within the County wherein affirmant maintains his office.

The grounds of affirmant's belief as to all matters not stated upon affirmant's own knowledge are consultations had with the plaintiff(s) and investigation and data in affirmant's own possession.

The undersigned affirms that the following statements are true under the penalty of perjury.

Dated: New York, New York
December 21st, 2009



HOWARD S. HERSHENHORN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DiGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

Defendant(s).
-----X

Index No.:

07-117118

Date of Purchase:

12/26/07

Plaintiff designates

New York County

as the place of trial

The basis of the venue is

defendants, CITY OF NEW YORK

and NEW YORK CITY DEPARTMENT OF

SANITATION residence within New York

County

SUMMONS

Plaintiff resides at

2 Mehan Lane

Dix Hills, NY 11746

County of Suffolk

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Garden City, New York
December 10, 2007

Yours, etc.,

LAW OFFICES OF GARY S. ALWEISS

Attorneys for Plaintiff(s)

By:

THEODORE A. NAJMA, ESQ.

229 Seventh Street, Suite 300

Garden City, New York 11530

Tel.: (516) 746-6766

NEW YORK OFFICE
COUNTY CLERKS
DEC 26 2007
NOT COMPARED
WITH COURT FILE

Defendants' Addresses:

IRIS LEVITEN, 6 Wood Avenue, Alberston, NY 11507

ANTHONY DiGIROLAMO, 114 10th Street, Hicksville, NY 11801

NEW YORK CITY DEPARTMENT OF SANITATION, 125 Worth Street, New York, NY 10013

THE CITY OF NEW YORK, 100 Church Street, New York, NY 10007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

COMPLAINT

IRIS LEVITEN, ANTHONY DiGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

Index No.:

Defendants.
-----X

S I R (S):

PLEASE TAKE NOTICE, that plaintiff, MICHAEL DOUKAS, by and through plaintiff's attorneys, the Law Offices of Gary S. Alweiss, complaining of IRIS LEVITEN, ANTHONY DiGIROLAMO, NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK, the defendants herein, respectfully alleges as follows:

1. At all times hereinafter mentioned, plaintiff, MICHAEL DOUKAS, was and still is a resident of the County of Suffolk, State of New York.
2. Upon information and belief, at all times hereinafter mentioned, defendant, IRIS LEVITEN, was and still is a resident of the County of Nassau, State of New York.
3. Upon information and belief, at all times hereinafter mentioned, defendant, ANTHONY DiGIROLAMO, was and still is a resident of the County of Nassau, State of New York.
4. Upon information and belief, at all times hereinafter mentioned, the defendants, NEW YORK CITY DEPARTMENT OF SANITATION, was and still is a body corporate and politic constituting a public benefit corporation duly authorized and organized under the laws of

the State of New York.

5. Upon information and belief, at all times hereinafter mentioned, the defendants, THE CITY OF NEW YORK, was and still is a body corporate and politic constituting a public benefit corporation duly authorized and organized under the laws of the State of New York.

6. That plaintiff has served Notice of Claim upon The NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK within the specified statutory time period and manner. At least ninety (90) days have elapsed since Notice of Claim was presented to the NEW YORK CITY DEPARTMENT OF SANITATION and the CITY OF NEW YORK and the NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK have neglected or refused to make any adjustment of payment thereof. This action was commenced within one (1) year and ninety (90) days after the happening of the events upon which this claim is based.

7. Upon information and belief, at all times hereinafter mentioned, Glen Cove Road, and at or near the intersection of the Northern State Parkway, was and still is a public roadway located within the County of Nassau, State of New York.

8. Upon information and belief, at all times hereinafter mentioned, the plaintiff, MICHAEL DOUKAS, was a passenger in a 2002 Mac Truck bearing New York license plate number DWW 7794, which was being operated by the defendant, ANTHONY DiGIROLAMO, with the knowledge and consent of its owners, defendants, NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK.

9. Under the Laws of the State of New York, the defendants, NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK, as owners of the aforesaid

2002 Mac Truck, are liable for the negligence of the defendant driver, ANTHONY DiGIROLAMO, said liability being joint and several.

10. Upon information and belief, at all times hereinafter mentioned, defendant, IRIS LEVITEN, owned and operated a 2007 Lexus automobile bearing New York license plate number DWW7794.

11. On or about February 18, 2007, at approximately 2:50 p.m. on Glen Cove Road, at or near the intersection of Northern State Parkway, the defendants, IRIS LEVITEN and ANTHONY DiGIROLAMO, were operating the aforesaid vehicles in such a negligent, careless, and reckless manner causing the aforesaid automobiles to crash, and causing plaintiff to suffer serious personal injuries hereinafter set forth.

12. The defendant operators were negligent, careless, and reckless in the operation, management, maintenance, supervision, and control of said automobiles in that said defendants operated said automobiles at an excessive and unlawful rate of speed; in that said defendants failed to have proper control over the automobiles; in that said defendants failed to be reasonably alert and attentive; in that said defendants failed to anticipate the condition of the road and travel conditions in general; in that said defendant failed to make proper use of the braking and steering systems or that the same were defective; in that said defendants failed to heed to traffic conditions then and there existing; in that said defendants violated the rules, regulations, and ordinances, and statutes applicable thereto; and the said defendants were otherwise negligent and careless.

13. That the said accident and the injuries sustained by plaintiff resulting therefrom were caused solely by the negligence of the defendants, jointly and severally, without any

negligence on the part of the plaintiff contributing thereto.

14. That as a result of the aforesaid occurrence, plaintiff sustained serious personal injuries, and nervous shock, was rendered sick, sore and disabled and has remained so since said occurrence; plaintiff has suffered and continues to suffer mental anguish, required medical care and treatment, and upon information and belief, will continue to require additional medical care and treatment in the future; plaintiff has been incapacitated from attending to plaintiff's normal duties, and upon information and belief, plaintiff may continue to be so incapacitated in the future.

15. Plaintiff sustained serious injuries and basic economic loss as defined by § 5102 of the Insurance Law of the State of New York and has the right of recovery against the defendants herein for personal injuries, basic economic loss and non-economic loss pursuant to § 5104 of the Insurance Law of the State of New York.

16. Plaintiff has sustained a serious injury as defined in subdivision (d) of § 5102 of the Insurance Law of the State of New York which, upon information and belief, will result in future economic loss greater than the basic economic loss as defined in subdivision (a) of § 5102 of the Insurance Law of the State of New York.

17. The cause of action herein falls within one of the exceptions listed under C.P.L.R. §§ 1601 and 1602.

18. That by reason of the premises set forth above, the plaintiff, MICHAEL DOUKAS, has been damaged in a sum of money to be determined by the Court and jury which amount is in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this action.


WHEREFORE, plaintiff, MICHAEL DOUKAS, demands judgment, jointly and severally, against the defendants, IRIS LEVITEN, ANTHONY DiGIROLAMO, NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK, in a sum of money to be determined by the Court and jury which amount is in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this action; all together with interest, costs and disbursements of this action.

Dated: Garden City, New York
December 10, 2007

Yours, etc.,

LAW OFFICES OF GARY S. ALWEISS
Attorneys for Plaintiff(s)

By:


THEODORE A. NAIMA, ESQ.
229 Seventh Street, Suite 300
Garden City, New York 11530
Tel.: (516) 746-6766

Index No.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff(s),

-against-

IRIS LEVITEN, ANTHONY DiGIROLAMO, NEW YORK CITY DEPARTMENT OF
SANITATION and THE CITY OF NEW YORK,

Defendant(s).

NEW YORK COUNTY CLERK
DEC 2 2007
NOT COMPARED
WITH COPY FILE

SUMMONS & COMPLAINT

Law Offices of
GARY S. ALWEISS
Attorneys for Plaintiff
229 Seventh Street, Suite 300
Garden City, New York 11530
Tel.: (516) 746-6766

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

NOTICE OF ENTRY that the within is a (certified) true copy of a entered in the office of the clerk of the within named Court on 20

NOTICE OF SETTLEMENT that an Order of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court, at on 20, at M.

Dated:

Law Offices of
GARY S. ALWEISS
229 Seventh Street, Suite 300
Garden City, NY 11530

To:

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.
-----X

Index no. 117118/07
Date Filed:

TORT ACTION

Plaintiff designates NY
County as the place of trial

Basis of Venue is:
Defendant Sanitation
resides in NY County

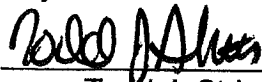
SUPPLEMENTAL SUMMONS

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York:
October 21, 2008

Yours, etc.
KELNER & KELNER, ESQS.
Attorneys for Plaintiff

By: 
Todd J. Strier
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

Defendants' Addresses:

IRIS LEVITEN, 6 Wood Avenue, Albertson, NY 11507
ANTHONY DIGIROLAMO, 114 10th Street, Hicksville, NY 11801
NYC DEPARTMENT OF SANITATION, 125 Worth Street, New York, NY 10013
THE CITY OF NEW YORK, 1 Centre Street, Municipal Building, New York, NY 10007
LEXUS, A DIVISION OF TOYOTA MOTOR SALES, 80 State Street, Albany, NY 122106
ESTREE, INC./ LEXUS OF WESTPORT, 1317 Post Road East, Westport, CT 06880
METRO AUTO LEASING / AUTOMALL, The Corporation, 350 Fifth Avenue, New York, NY 10118

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index no. 117118/07

-----X
MICHAEL DOUKAS,

Plaintiff,

**AMENDED VERIFIED
COMPLAINT**

- against -

IRIS LEVITEN, ANTHONY DiGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.
-----X

Plaintiff, by his attorneys, KELNER & KELNER, ESQS., as and for his
AMENDED VERIFIED COMPLAINT, allege the following, upon information and belief:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times herein mentioned, plaintiff, MICHAEL DOUKAS, was and still is a resident of the County of Suffolk, State of New York.
2. Upon information and belief, at all times herein mentioned, defendant IRIS LEVITEN (hereinafter referred to as defendant "LEVITEN"), was and still is a resident of the County of Nassau, State of New York.
3. Upon information and belief, at all times hereinafter mentioned, defendant, ANTHONY DiGIROLAMO, (hereinafter referred to as defendant "DiGIROLAMO"), was and still is a resident of the County of Nassau, State of New York.

4. At all times hereinafter mentioned, defendant, THE CITY OF NEW YORK, (hereinafter referred to as defendant "CITY"), was and still is a municipal corporation organized and existing under and by virtue of the laws of the State of New York.

5. That plaintiff duly served a Notice of Claim, in writing, upon defendant, CITY, within ninety (90) days after the within cause of action accrued.

6. On or about June 27, 2007, plaintiff herein duly submitted to a hearing pursuant to General Municipal Law 50-h.

7. More than thirty (30) days has elapsed since the service of said Notice of Claim upon defendant, and defendant CITY and its Comptroller have failed, neglected and refused to pay, settle, compromise or adjust the claims of the plaintiffs herein.

8. This action has been commenced within one year and ninety days after the within cause of action arose.

9. At all times herein mentioned, defendant CITY was the registered owner of a certain 2002 Mack Truck bearing New York license plate number K36757 for the year 2007 (hereinafter referred to as the "CITY vehicle").

10. At all times herein mentioned, defendant LEVITEN was the registered owner of a certain 2007 Lexus automobile bearing New York license plate number DWW7794 for the year 2007 (hereinafter referred to as the "LEVITEN vehicle").

11. At all times hereinafter mentioned, plaintiff was a passenger in the defendant CITY's vehicle.

12. At all times hereinafter mentioned, defendant DiGIROLAMO was the operator of the defendant CITY vehicle.

13. Upon information and belief, at all times hereinafter mentioned, defendant DiGIROLAMO operated the defendant CITY vehicle with the knowledge and consent of its owners, defendant CITY.

14. At all times herein mentioned, defendant DiGIROLAMO was an employee of the defendant CITY.

15. At all times herein mentioned, defendant DiGIROLAMO, was an employee of the defendant CITY's New York City Department of Sanitation.

16. On February 18, 2007, at approximately 2:50 p.m., defendant DiGIROLAMO operated the defendant CITY vehicle in the course of his employment with defendant CITY.

17. At all times herein mentioned, defendant DiGIROLAMO operated the defendant CITY vehicle with the knowledge, permission, and consent whether explicit or implied of defendant CITY.

18. Under the Laws of the State of New York, defendants CITY and SANITATION, as owners of the defendant CITY vehicle, are liable for the negligence of the defendant driver, DiGIROLAMO, said liability being joint and several.

19. At all times herein mentioned, defendant CITY managed the defendant CITY vehicle.

20. At all times herein mentioned, defendant CITY maintained the defendant CITY vehicle.

21. At all times herein mentioned, defendant CITY controlled the defendant CITY vehicle.

22. At all times herein mentioned, defendant CITY repaired the defendant CITY vehicle.

23. At all times herein mentioned, defendant CITY conducted periodic inspections of the defendant CITY vehicle.

24. At all times herein mentioned, plaintiff MICHAEL DOUKAS was employed by defendant CITY.

25. At all times herein mentioned, plaintiff MICHAEL DOUKAS was employed by defendant SANITATION.

26. At all times herein mentioned, plaintiff was employed as a sanitation worker by defendant CITY.

27. Upon information and belief, at all times hereinafter mentioned, Glen Cove Road, at or near the intersection of the Northern State Parkway, was and still is a public roadway located within the County of Nassau, State of New York. (Hereinafter referred to as the "accident site").

28. On February 18, 2007, at approximately 2:50 p.m., defendants LEVITEN and DIGIROLAMO were operating their aforesaid vehicles at the accident site.

29. On February 18, 2007, at approximately 2:50 p.m., defendant LEVITEN's vehicle came into contact with the vehicle operated by defendant DIGIROLAMO at the accident site.

30. On February 18, 2007, at approximately 2:50 p.m., defendant LEVITEN's vehicle struck the vehicle operated by defendant DIGIROLAMO at the accident site.

31. On February 18, 2007, at approximately 2:50 p.m., defendant LEVITEN was operating her aforesaid vehicle at the accident site, in a negligent, careless, and reckless manner causing the aforesaid vehicles to crash, and causing plaintiff DOUKAS to suffer serious injuries hereinafter set forth.

32. On February 18, 2007, at approximately 2:50 p.m., defendant DIGIROLAMO was operating his aforesaid vehicle at the accident site, in a negligent, careless, and reckless manner causing the aforesaid automobiles to crash, and causing plaintiff to suffer serious injuries hereinafter set forth.

33. Defendants LEVITEN and DIGIROLAMO were negligent, careless and reckless in the operation, management, maintenance, supervision, and control of their respective vehicles in that said defendants operated said vehicles at an excessive and unlawful rate of speed; in that said defendants failed to have proper control over the vehicles; in that said defendants failed to be reasonably alert and attentive; in that defendants failed to make proper use of the braking and steering systems or that the same were defective; in that said defendants failed to heed to traffic conditions then and there existing; in that said defendants violated the rules, regulations and ordinances, and statutes applicable thereto; and the said defendants were otherwise negligent and careless.

34. That the said accident and the injuries sustained by plaintiff resulting therefrom were caused solely by the negligence of the defendants, jointly and severally, without any negligence on the part of the plaintiff contributing thereto.

35. That as a result of the aforesaid occurrence, plaintiff sustained serious personal injuries, and nervous shock, was rendered sick, sore and disabled and has remained so since said occurrence; plaintiff has suffered and continues to suffer mental anguish, required medical care and treatment, and upon information and belief, will continue to require additional medical care and treatment in the future; plaintiff has been incapacitated from attending to plaintiff's normal duties and upon information and belief, plaintiff will be so incapacitated in the future.

36. Plaintiff sustained serious injuries and basic economic loss as defined by §5102 of the Insurance Law of the State of New York and has the right of recovery against the defendants herein for personal injuries, basic economic loss and non-economic loss pursuant to §5104 of the Insurance Law of the State of New York.

37. Plaintiff has sustained a serious injury as defined in subdivision (d) of §5102 of the Insurance Law of the State of New York which, upon information and belief, will result in future economic loss greater than the basic economic loss as defined in subdivision (a) of §5102 of the Insurance Law of the State of New York.

38. The cause of action herein falls within one of the exceptions listed under CPLR §1601 and 1602.

39. As a result of the foregoing, plaintiff has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter.

AS AND FOR A SECOND CAUSE OF ACTION

40. Plaintiff repeats, reiterates and re-alleges each of the paragraphs of the complaint numbered "1" through "39" with the same force and effect as if same were more fully set forth herein at length.

41. Defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., (hereinafter referred to as defendant "LEXUS") is a corporation with its principal place of business in a state other than New York.

42. Defendant, LEXUS, does business in the State of New York.

43. Defendant, LEXUS, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.

44. Defendant, LEXUS, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.

45. Defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT (hereinafter referred to as defendant "ESTREE"), is a corporation with its principal place of business in a state other than New York.

46. Defendant, ESTREE, does business in the State of New York.

47. Defendant, ESTREE, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.

48. Defendant, ESTREE, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.

49. Defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL (hereinafter referred to as defendant "METRO") is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

50. Defendant, LEXUS, was in the business of manufacturing vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.

51. Defendant, LEXUS, was in the business of designing motor vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.

52. Defendant, LEXUS, was in the business of selling and distributing, for public use, motor vehicles, including a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

53. On December 12, 2006, defendant, LEXUS, sold, to the defendant, ESTREE, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

54. On or about December 12, 2006, defendant, LEXUS, transported to defendant, ESTREE, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

55. On or after December 12, 2006, defendant, ESTREE, sold to the defendant, METRO, a Lexus sedan motor vehicle, model number ES 350, bearing

vehicle identification number JTHBJ46G272071246.

56. Defendant, ESTREE, transported to defendant, METRO, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number number JTHBJ46G272071246.

57. Defendant, ESTREE, distributed to defendant, METRO, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

58. On December 29, 2006, defendant, METRO, leased a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246 to defendant, LEVITEN.

59. On February 18, 2007, defendant, LEVITEN, was involved in an automobile accident while driving a Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794 and vehicle identification number JTHBJ46G272071246 at the accident site.

60. On February 18, 2007, defendant, LEVITEN, was involved in an automobile accident with defendant DiGIROLAMO while driving a Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794 and vehicle identification number JTHBJ46G272071246 at the accident site.

61. The aforesaid occurrence was caused and contributed to by the negligence of the defendants, LEXUS, ESTREE, and METRO, its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing New York

State license plate DWW7794, and vehicle identification number JTHBJ46G272071246.

62. By reason of the foregoing, plaintiff, MICHAEL DOUKAS, sustained injuries to his head, neck, back, limbs and body, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, some of these injuries are of a permanent and lasting nature.

63. It is hereby alleged pursuant to CPLR §1603, that the foregoing cause of action is exempt from the operation of CPLR §1601, by reason of one or more of the exemptions provided in CPLR §1602.

64. As a result of the foregoing, plaintiff has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter.

AS AND FOR A THIRD CAUSE OF ACTION

65. Plaintiff repeats, reiterates and re-alleges each of the paragraphs of the complaint numbered "1" through "64" with the same force and effect as if same were more fully set forth herein at length.

66. Defendants, LEXUS, ESTREE, METRO, their agents, servants and employees warranted and represented to the defendant, LEVITEN, that Lexus sedan motor vehicle, model number ES 350, bearing the New York license plate number DWW7794 and identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, serviced, maintained, labeled,

distributed, sold and purchased.

67. In designing, manufacturing, assembling, inspecting, testing, repairing, servicing, maintaining, labeling, distributing and selling the vehicle Lexus model number ES 350, bearing New York State license plate number DWW7794 and vehicle identification number JTHBJ46G272071246, defendants, LEXUS, ESTREE, METRO their agents, servants and employees knew that the aforesaid product would be used by the public and that such users would rely upon the warranties and representations that the said product was safe, proper, merchantable and fit for its intended uses.

68. On February 18, 2007, the defendant, LEVITEN, relied on the aforementioned warranties and expected that the LEVITEN vehicle was safe, proper, merchantable and fit for its intended uses.

69. The LEVITEN vehicle was unsafe, not merchantable and unfit for its intended uses.

70. The LEVITEN vehicle was unsafe, not merchantable and unfit for its intended uses and as a result contributed to the occurrence on February 18, 2007.

71. By reason of the foregoing, defendants, LEXUS, ESTREE, METRO their agents, servants and employees, violated and breached the aforementioned warranties, in that the LEVITEN vehicle was not reasonably fit, not of merchantable quality, unsafe, defective and constituted unreasonably dangerous instrumentalities as designed, manufactured, assembled, inspected, repaired, serviced, maintained, tested, labeled, prepped for sale, sold and distributed.

72. By reason of the foregoing, the plaintiff, MICHAEL DOUKAS, sustained injuries to his head, neck, back, limbs and body, and has been caused to suffer severe

physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting nature.

73. It is hereby alleged pursuant to CPLR §1603, that the foregoing cause of action is exempt from the operation of CPLR §1601, by reason of one or more of the exemptions provided in CPLR §1602.

74. As a result of the foregoing, plaintiff has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter.

AS AND FOR A FOURTH CAUSE OF ACTION

75. Plaintiff repeats, reiterates and re-alleges each of the paragraphs of the complaint numbered "1" through "74" with the same force and effect as if same were more fully set forth herein at length.

76. By reason of the foregoing, defendants, LEXUS, ESTREE, METRO, their agents, servants and employees are strictly liable in tort to plaintiff, MICHAEL DOUKAS, for the injuries sustained by him.

77. By reason of the foregoing, the plaintiff, MICHAEL DOUKAS, sustained injuries to his head, neck, back, limbs and body, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting in nature.

78. It is hereby alleged pursuant to CPLR §1603, that the foregoing cause of action is exempt from the operation of CPLR §1601, by reason of one or more of the exemptions provided in CPLR §1602.

79. As a result of the foregoing, plaintiff has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter.

WHEREFORE, plaintiff MICHAEL DOUKAS demands judgment against defendants on the FIRST CAUSE OF ACTION in an amount greater than the jurisdictional limits of any other courts which would otherwise have had jurisdiction of this action, and the SECOND, THIRD AND FOURTH CAUSE OF ACTION in an amount greater than the jurisdictional limits of any other courts which would otherwise have had jurisdiction of this action, together with the costs and disbursements of this action.

Dated: New York, N.Y.
October 21, 2008

Yours Truly,
KELNER & KELNER, ESQS.
Attorneys for Plaintiff

BY: 

Todd J. Strier, Esq.
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

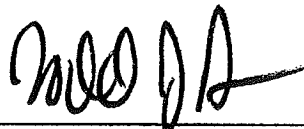
ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

The undersigned, an attorney admitted to practice law before the Courts of the State of New York, hereby affirms as true under the penalty of perjury that affirmant is an attorney for the plaintiffs in this action; that affirmant has read the foregoing **AMENDED VERIFIED COMPLAINT** and knows the contents thereof; that same is true to affirmant's own knowledge, except as to those matter stated upon information and belief, and that those matters affirmant believes to be true. Affirmant further says that the reason this affirmation is made by affirmant and not by the plaintiffs is that the plaintiffs do not reside within the County where affirmant has his office.

The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are as follows: investigation made under affirmant's supervision and information and records in the case file.

Dated: New York, New York:
October 21, 2008



Todd J. Strier

Index no. **117118/07**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF **NEW YORK**

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DiGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.

**SUPPLEMENTAL SUMMONS &
AMENDED VERIFIED COMPLAINT**

KELNER & KELNER, ESQS.

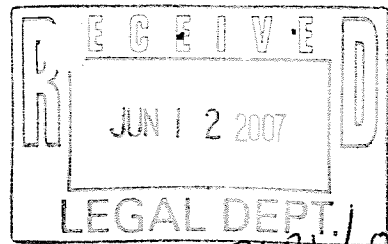
Attorneys for Plaintiff

Office and Post Office Address, Telephone

140 Broadway, 37th Floor

New York, New York 10005

(212) 425-0700



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.: 107681/07.
Date purchased 6/1/07.

IRIS LEVITEN,

Plaintiff,

Plaintiff(s) designate(s)
New York
County as place of trial

-against-

The place of venue is
Defendant's place of business

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

SUMMONS

Defendants.

Plaintiff resides at
6 Wood Ave., Albertson, NY 11507

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: June 1, 2007
New York, New York

GAIR, GAIR, CONASON, STEIGMAN & MACKAUF
Attorney(s) for Plaintiff(s)
Office and Post Office Address
80 Pine Street
New York, New York 10005

BY:

DANIEL A. GAIR

Defendants Addresses:

Metro Auto Leasing / Automall
The Corporation
350 Fifth Avenue
New York, New York 10118

Lexus, A Division of Toyota Motor
Sales The Prentice-Hall Corporation
Systems, Inc.
80 State Street
Albany, New York 122106

Estree / Lexus of Westport
1317 Post Road East
Westport, CT 06880

NOT COMPARED
WITH COPY FILE

JUN 11 2007

NEW YORK
COUNTY CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index number:

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IRIS LEVITEN,

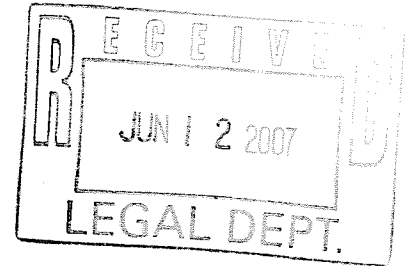
Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----x

VERIFIED
COMPLAINT



Plaintiff, complaining of the defendants, by
her attorneys, Gair, Gair, Conason, Steigman & Mackauf,
respectfully show to this Court and allege, upon information and
belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., is a corporation with its principal place of
business in a state other than New York.
The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., does business in the State of New York.
3. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., regularly does or solicits business, or
engages in any other persistent course of conduct, or
derives substantial revenue from goods used or services
rendered in the State of New York.

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NEW YORK

4. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.
5. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, is a corporation with its principal place of business in a state other than New York.
6. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, does business in the State of New York.
7. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.
8. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.
9. The defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

10. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., was in the business of manufacturing vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
11. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES, INC., was in the business of designing motor vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
12. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., was in the business of selling and distributing, for public use, motor vehicles, including a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
13. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., sold, to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
14. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., transported to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

15. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., distributed to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
16. At some time thereafter, the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, sold to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
17. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, transported to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
18. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, distributed to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
19. On December 29, 2006, the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, leased a Lexus sedan motor vehicle, model number ES 350, bearing license plate DWW7794 vehicle identification number JTHBJ46G272071246 to the

plaintiff, IRIS LEVITEN.

20. On February 18, 2007, the plaintiff, IRIS LEVITEN, was involved in an automobile accident while driving a Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794 and vehicle identification number JTHBJ46G272071246 near the eastbound ramp of the Northern State Parkway near Glen Cove Road.
21. The aforesaid occurrence was caused and contributed to by the negligence of the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794, identification number JTHBJ46G272071246.
22. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, some of these injuries are of a permanent and lasting nature.

23. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

24. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A SECOND CAUSE OF ACTION

25. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "24", inclusive, with the same force and effect as if more fully set forth herein at length.

26. The defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL ATOMIC INDUSTRIES, INC., their agents, servants and employees warranted and represented to the plaintiff, IRIS LEVITEN, that Lexus sedan motor vehicle, model number ES 350, bearing the New York license plate number DWW7794 and identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, serviced, maintained, labeled, distributed, sold and purchased.

27. In designing, manufacturing, assembling, inspecting,

testing, repairing, servicing, maintaining, labeling, distributing and selling the vehicle Lexus model number ES 350, bearing New York State license plate number DWW7794 and vehicle identification number number JTHBJ46G272071246, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL ATOMIC INDUSTRIES, INC., their agents, servants and employees knew that the aforesaid product would be used by the public and that such users would rely upon the warranties and representations that the said product was safe, proper, merchantable and fit for its intended uses.

28. On December 29, 20069, the plaintiff, IRIS LEVITEN, relied on the aforementioned warranties and expected that the aforementioned product was safe, proper, merchantable and fit for its intended uses.
29. The aforementioned product was unsafe, not merchantable and unfit for its intended uses.
30. By reason of the foregoing, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, their agents, servants and employees, violated and breached the aforementioned warranties, in that the product was not reasonably fit, not of merchantable quality, unsafe, defective and constituted unreasonably dangerous

instrumentalities as designed, manufactured, assembled, inspected, repaired, serviced, maintained, tested, labeled, sold and distributed.

31. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting nature.
32. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
33. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A THIRD CAUSE OF ACTION

34. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "33", with the same force and effect as if more fully set forth herein at length.
35. By reason of the foregoing, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, their agents, servants and employees are strictly

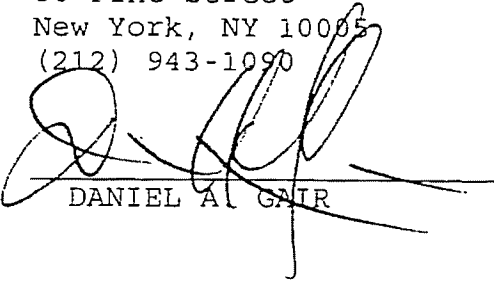
liable in tort to the plaintiff, IRIS LEVITEN, for the injuries sustained by her.

36. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting in nature.
37. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
38. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

W H E R E F O R E, plaintiff demands judgment against the defendants in the First, Second and Third Causes of Action against the defendants LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, together with the costs and disbursements of this action.

Dated: New York, New York
June 1, 2007

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiffs
Office & P.O. Address
80 Pine Street
New York, NY 10005
(212) 943-1090



DANIEL A. GAIR

Sir : Please take notice that the within is a
(certified) true copy of a
duly entered in the office of the clerk of the within named
court on 20
Dated,

Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for

80 Pine Street, 34th Floor
New York, New York 10005-1768

To:
Attorney for

Sir : Please take notice that an order

of which the within is a true copy will be presented for
settlement to the Hon.

one of the judges of the within named Court, at

on the day of 20
at M.

Dated,

Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for

80 Pine Street, 34th Floor
New York, New York 10005-1768

To

Attorney for

Index Number:
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA,
INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT and
METRO AUTO LEASING, INC., d/b/a THE AUTOMALL

Defendants.

SUMMONS AND VERIFIED COMPLAINT

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for Plaintiff(s)

80 Pine Street, 34th Floor
New York, New York 10005-1768
212.943.1090

To :

Attorney for:

Service of a copy of the within

is hereby admitted.

Dated,

Attorney for

From: Origin: ARGA (800) 690 2802
Mary Drummond
Corporation Service Company
2711 Centerville Road
Suite 400
Wilmington, DE 19808



Ship Date: 12/06/07
Actual Wgt: 1 LB
System#: 108202/FXRS0766
Account#: S 322544685

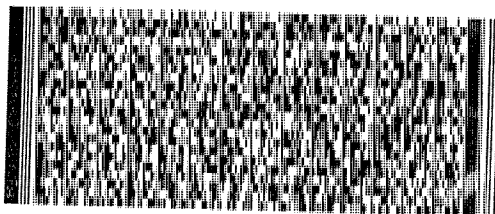
REF:



Delivery Address Bar Code

SHIP TO: (310) 468 4093 **BILL THIRD PARTY**
Toyota Motor Sales, U.S.A., Inc.
Eric Taira
19001 S. Western Ave.

Torrance, CA 90501



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Convention, typically to US\$9.07 per pound. See the current FedEx Service Guide or the FedEx International Air Waybill for details.

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Go to **fedex.com**, or call 1.800.GoFedEx 1.800.463.3339 for U.S. domestic shipments, 1.800.247.4747 for international shipments. Call your local FedEx office if you are outside the U.S.

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TOY-RQ-05E-00000728

Writers Direct Telephone (310) 468-5638
Writers Direct Fax (310) 381-5017

Toyota Motor Sales, U.S.A., Inc.
19001 South Western Avenue
Torrance, CA 90501
310 468-4000
310 468-7808 Fax

August 15, 2007

HOWARD S HERSHENHORN ESQ
GAIR GAIR CONASON STEIGMAN & MACKAUF
80 PINE ST
NEW YORK NY 10005-1768

Re: Your Client: [REDACTED]
Date of Loss: February 18, 2007
Vehicle: 2007 Lexus ES 350
VIN: JTHBJ46G272 [REDACTED]

Dear Mr. Hershenhorn:

Thank you for providing us with the photographs of [REDACTED] injuries and her vehicle, as well as the medical records related to her claim. Toyota Motor Sales, USA, Inc. ("TMS") has had a chance to review these documents.

From our previous conversations, you said that your office had photographic evidence that the floor mat of [REDACTED] vehicle was the cause of this accident. You pointed to the recent NHTSA investigation involving the floor mats of certain Lexus ES 350 vehicles and the Lexus advisory letter regarding this issue and attributed that as the cause.

As you may be aware, the NHTSA investigation (and the advisory letter) focused on the placing of a rubber "All Weather" floor mat on top of the carpeted floor mat instead of replacing the carpeted mat with the rubber one in the ES 350 vehicles. From the pictures you provided, particularly nos. 2-9, 2-10, 2-11, 2-12, 2-13, 2-14, 2-19, 2-20, 2-21, 2-22, 2-23, 2-24, 2-28, 2-29 and 2-30, there is no evidence that there was an All Weather floor mat in the [REDACTED] vehicle on the driver's floor. The pictures indicate that only the carpeted mat was installed at the time. Lexus vehicles are equipped with floor mat anchors, which hold the floor mats in place.

Based on the above, we do not see that this accident was the result of any manufacturing or design defect, nor was it related to the NHTSA investigation, and we must respectfully decline your claim.

Thank you for your attention and understanding.

Very truly yours,



Troy H. Higa
Claims Administrator
Legal Department

2007 Lexus ES 350 All Weather Floor Mat

Dear Lexus Customer:

Lexus is dedicated to the "Pursuit of Perfection."

As part of our constant efforts to provide you with the best in customer satisfaction and vehicle quality, Lexus would like to inform you of a product usage caution regarding the placement of more than one floor mat in the driver's seating position of your ES 350 vehicle.

To help protect the interior of your ES 350, your vehicle is factory-equipped with genuine Lexus Carpeted Floor Mats. **As an option**, you may have also purchased genuine Lexus All Weather Floor Mats (floor mats constructed from heavy duty rubber).

What is the concern?

In recent months, the National Highway Traffic Safety Administration (NHTSA) has received consumer concerns regarding the Lexus All Weather Floor Mat (floor mat constructed from heavy duty rubber) slipping forward and interfering with the movement of the accelerator pedal. It was possible in these cases that the Lexus All Weather Floor Mat was placed on top of the Carpeted Floor Mat, and therefore the All Weather Floor Mat was not properly secured to the floor by the two plastic retention hooks protruding from the vehicle floor. ***The ES 350 driver's seating position is designed to accommodate only one floor mat.***

As our customer, your safety and satisfaction are very important to us and we apologize for any inconvenience this may have caused you.

What should you do?

In order to address this possible condition, Lexus is providing the following information to consumers:

- Never use more than one floor mat at a time in the driver's seating position.
- Please confirm the floor mat is properly placed on the vehicle carpet. If the floor mat slips and interferes with the movement of the pedals during driving, it may cause an accident.
- Confirm the driver's floor mat is secured using the hooks provided on the floor. *(Please refer to the attachment enclosed with this letter or your Owner's Manual for a diagram)*
- A Caution Label is enclosed with this owner letter for installation on the back of your All Weather Floor Mat. If you do not own Lexus All Weather Floor Mats (or any other rubberized floor mats), please insert the Caution Label in your Owner's Manual for possible future use.

We sincerely apologize for this inconvenience, and if you prefer, your local Lexus dealer will be more than happy to assist you in verifying the installation condition of your driver's seating position floor mat. If you choose to have the Lexus dealer inspect your vehicle, **please present this notice and the enclosed Caution Label to the dealer at the time of your appointment.**

What if you have other questions?

Please contact any Lexus dealer or call the Lexus Customer Assistance Center at 1-800-255-3987 Monday through Friday, 5:00 am to 6:00 pm and Saturday, 7:00 am through 4:00 pm Pacific Standard Time.

We have sent this notice in the interest of your continued satisfaction with our products, and we sincerely regret any inconvenience this condition may have caused you.

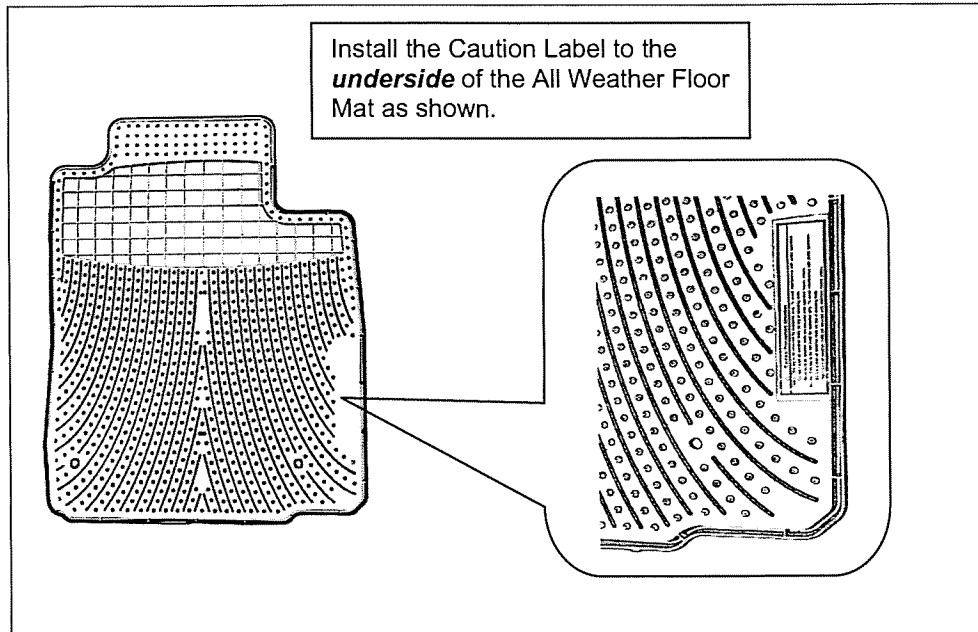
Thank you for driving a Lexus.

Sincerely,

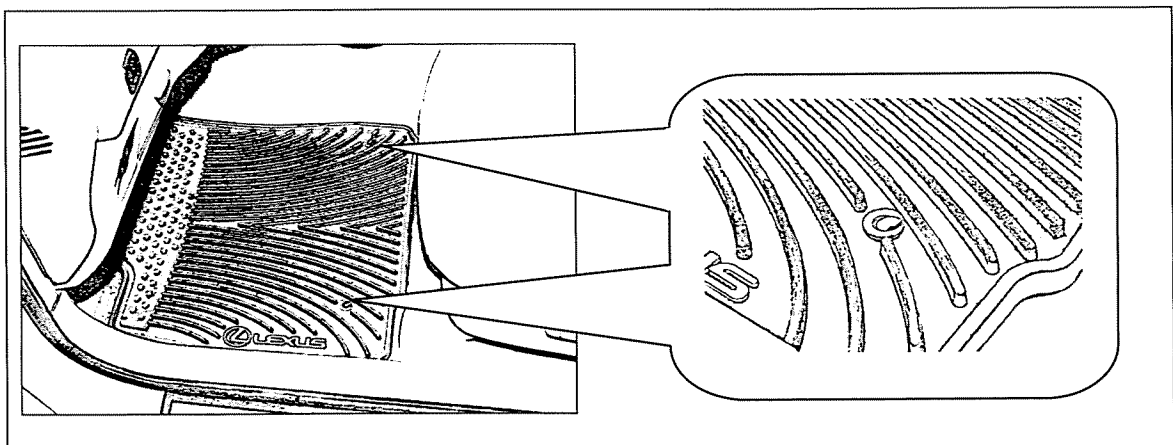
Lexus Division,
TOYOTA MOTOR SALES, U.S.A., INC.

Caution Label Installation Instructions
(If your vehicle has the Lexus All Weather Floor Mat)

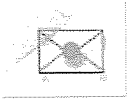
1. Remove the Driver's side Lexus All Weather Floor Mat from the vehicle.
2. Wipe the area where the Caution label will be affixed with a clean, dry cloth to remove any dust or dirt.
3. Affix the Caution Label at the indicated location while smoothing out any air bubbles in the new label.
 - Caution label installation location, see illustration below.



4. If the Carpet Floor Mat has been placed underneath, please remove it. (The ES 350 driver's side seating position is designed to accommodate only one floor mat at a time.)
5. Position the All Weather Floor Mat on the floor and secure the floor mat to the two hooks as shown.



If you prefer, your local Lexus dealer will be more than happy to assist you in installing the label. If you choose to have the Lexus dealer affix the Caution label, **please present this notice, the enclosed Caution Label, and the All Weather Floor Mat to the dealer at the time of your appointment.**



Troy Higa/TMS/Toyota
06/19/2007 01:27 PM

To lward@arfdlaw.com
cc
bcc
Subject Leviten vs. TMS

Hi Levern,

My contact info is below. Thanks for your help on this. I'll wait to hear if your investigator was able to get any police photos. Otherwise, I'll keep yo uupdated with anything I find out.

Thanks.

Troy H. Higa
Claims Administrator
direct line: 310-468-5638
direct fax: 310-381-5017

June 18, 2007

Toyota Motor Sales, U.S.A., Inc.
19001 South Western Avenue
Torrance, CA 90501
310 468-4000

VIA UPS OVERNIGHT MAIL

Jay A. Rappaport, Esq.
Aaronson Rappaport Feinstein & Deutsch, LLP
757 Third Avenue
New York, NY 10017

Re: [REDACTED] v. **Lexus, A Division of Toyota Motor Sales, USA, Inc., Estree, Inc., d/b/a Lexus of Westport, and Metro Auto Leasing, Inc., d/b/a The Automall**

TMS Case No. : 2007-03-42039 (ATM)

TMS Vendor No. : 0090713062

Dear Jay:

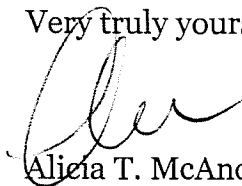
Enclosed are the Summons and Verified Complaint in this new matter which were served on Toyota Motor Sales, U.S.A., Inc. ("TMS") on June 8, 2007. Also enclosed is a copy of our entire claim file. Although TMS attempted to obtain additional information regarding the incident to evaluate whether or not to settle the claim, the additional information was never provided to TMS. Rather, the plaintiff simply proceeded to file suit.

As an initial matter, can you please obtain a 90 day extension within which to respond to the Complaint? During this initial 90 day period, I have asked our claims administrator, Troy Higa to gather information to evaluate this claim and attempt to settle it, if appropriate. If, on the other hand, we cannot settle the matter or decide to deny the claim, we will let you know so that you can proceed to protect the interests of TMS in this litigation.

Please confirm in writing that you have secured a 90 day extension within which to respond to the Complaint and provide us with the new due date for the response so that we may calendar it as well. Please check with us as to the status of negotiating the claim, before filing any responsive pleading on behalf of TMS.

Thank you very much for your assistance in this matter.

Very truly yours,



Alicia T. McAndrews
Managing Counsel

Encl.: Noted
cc: Troy Higa
Melissa D. Maddela (file)

Writers Direct Telephone (310) 468-5638
Writers Direct Fax (310) 381-5017

Toyota Motor Sales, U.S.A., Inc.
19001 South Western Avenue
Torrance, CA 90501
(310) 468-4000

April 16, 2007

HOWARD S HERSHENHORN
GAIR GAIR CONASON STEIGMAN & MACKAUF
80 PINE ST
NEW YORK NY 10005-1768

Re: Your Client: [REDACTED]
Date of Loss: February 18, 2007
Vehicle: 2007 Lexus ES 350
VIN: JTHBJ46G272 [REDACTED]

Dear Mr. Hershenhorn:

Thank you for speaking with me today regarding this case and providing me with some background into [REDACTED] claim.

As we discussed, please accept this request for additional documentation related to this claim, to include the following, if available:

1. A copy of the repair estimate;
2. Clear color photographs (or color laser prints) of the damage (please do not submit back and white photocopies);
3. Clear color photographs (or color laser prints) showing the problem with the floor mat;
4. A copy of the complete traffic accident report; and
5. Any medical records to date.

As soon as the requested information is received, we will be in contact with you to further discuss this case.

Please contact me if you should have any questions or require additional information at this time.

Very truly yours,



Troy H. Higa
Claims Administrator
Legal Department

**GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF**

HARRY A. GAIR (1919-1975)
ROBERT L. CONASON
SEYMOUR BOYERS
ERNEST R. STEIGMAN
STEPHEN H. MACKAUF
JEROME I. KATZ
JEFFREY B. BLOOM
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DIANA M.A. CARNEMOLLA
CHRISTOPHER L. SALLAY*
LYNNE KURTZ-CITRIN
KATHERINE A. HAWKINS, M.D.
PETER J. SAGHIR

COUNSELORS AT LAW
80 PINE STREET
NEW YORK, N.Y. 10005-1768
TEL (212) 943-1090
FAX (212) 425-7513
EMAIL mail@gairgair.com

NEW JERSEY ADDRESS
ONE GATEWAY CENTER
SUITE 2600
NEWARK, N.J. 07102
TEL (973) 645-0581
FAX (973) 645-9475

HERMAN SCHMERTZ
APPELLATE COUNSEL

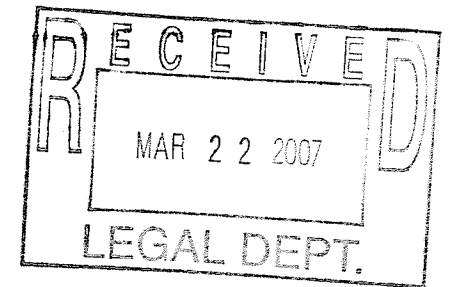
HARRIET E. GAIR
HERBERT H. HIRSCHHORN
OF COUNSEL

*MEMBER OF N.Y. & N.J. BARS

March 20, 2007

Mr. Larry Walder
Alladin Auto Body
8613 Ditmas Avenue
Brooklyn, New York 11236

Re: [REDACTED]
Lexus 2007 GS 350
Vin #: JTHBJ46G272 [REDACTED]



Dear Larry;

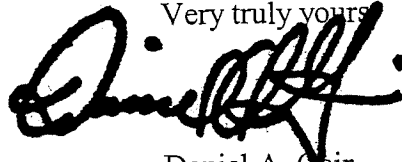
Please be advised that we represent [REDACTED] who sustained serious personal injuries in an automobile accident which occurred on February 18, 2007, near the east bound ramp of the Northern State Parkway and Glen Cove Road, in the town of North Hempstead, New York. Ms. Leviten was driving a 2007 Lexus model ES 350, vin # JTHBJ46G272 [REDACTED]. It is our understanding that [REDACTED] vehicle is currently being stored at Nuzzi Brothers, at 77 Jericho Turnpike, New Hyde Park. The vehicle is insured by Geico, located at 750 Woodbury Road, Woodbury, New York, 11797, claim [REDACTED]. Letters have been written to both Geico and Nuzzi Brothers putting them on notice concerning the need to secure and preserve the vehicle pending further instructions. Letters have also been written to Lexus, the dealership and the leasing company.

Please be advised that Geico representatives have inspected the vehicle and deemed it a total loss. We need to safely transfer the vehicle to a facility making sure to preserve the integrity of the vehicle. We request that arrangements be made to tow the vehicle from Nuzzi Brothers to Alladin Auto Body located at 8613 Ditmas Street, Brooklyn, New York. This letter is intended to hereby authorize that transfer. The claims adjustor handling the arrangements and payment to Nuzzi Brothers for towing and storage fees through March 20, 2007, is Drew

**GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF**

Infantino at (646) 721- 0251. Please be sure to advise us of the person who will be towing the vehicle from Nuzzi Brothers. All expenses for towing and storage until March 20, 2007, will be paid by Geico.

Very truly yours



Daniel A. Cair

DAG:Jf

cc: Lexus Corporate Headquarters
19001 South Western Avenue
Torrance , CA. 90501
Attention: Legal Department

Estree, Inc., d/b/a Lexus of Westport
1317 Post Road East
Westport, CT 06880

Metro Auto Leasing
42-06 27th Street
Long Island City, NY, 11101

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (8/04)
DMV COPY

#185 32107
ms (AR)
#0724151467-0101-035

Local Code
3-818-07

AMENDED REPORT

1	Accident Date Month Day Year 2 18 2007	Day of Week Su	Military Time 1450	No. of Vehicles 2	No. Injured 3	No. Killed 0	Not Investigated in Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/>
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2	VEHICLE 1 Driver License ID Number State of Lic. NY	VEHICLE 2 Driver License ID Number State of Lic. NY
3	Driver Name - exactly as printed on license Address (include Number & Street) City or Town ALBERTSON State NY Zip Code	Driver Name - exactly as printed on license Address (include Number & Street) City or Town HICKSVILLE State NY Zip Code

4	Date of Birth Month Day Year Sex Unlicensed No. of Occupants Public Property Damaged	Date of Birth Month Day Year Sex Unlicensed No. of Occupants Public Property Damaged
5	Wants exactly as printed on registration Address (include Number & Street)	Wants exactly as printed on registration Address (include Number & Street)
6	City or Town State Zip Code	City or Town State Zip Code

7	Plate Number State of Reg. Vehicle Year & Make Vehicle Type Ins. Code	Plate Number State of Reg. Vehicle Year & Make Vehicle Type Ins. Code
8	Ticket/Arrest Number(s) Violation Section(s)	Ticket/Arrest Number(s) Violation Section(s)

9	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 94 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 94 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.	Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.
10	VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes	VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes	ACCIDENT DIAGRAM Rear End Left Turn Right Angle Right Turn Head On Subsequent (arrow direction) Left Turn Right Turn Sideswipe (opposite direction)
11	Vehicle Towed: By NYSDM To NEW YORK PARK	Vehicle Towed: By NYSDM To NEW HYDE PARK	Cost of repairs to any one vehicle will be more than \$1000. <input type="checkbox"/> Unknown/Unable to Determine <input type="checkbox"/> Yes <input type="checkbox"/> No

12	Reference Marker	Coordinates (if available) Latitude/Northing: Longitude/Easting:	Place Where Accident Occurred: County ALBANY City/Village/Town of NORTH HAMPSTEAD Road on which accident occurred GLEN LAKE RD CABLE PARK at 1) intersecting street NORTHMAN STATE EAST SECOND STAMP or 2) _____ of _____ (Milepost, Nearest intersecting Route Number or Street Name)
----	------------------	--	---

Accident Description/Officer's Notes: *MAN and WIFE WERE IN A BELIEVED 3 IN VEHICLES WERE TOWED FROM SCENE BY AUTHORITY OF OFFICERS, WITNESS*

ALERT	9	10	11	12	13	14	15	16	17	18	BY	TO	Names of all involved	Date of Death Only
A	1	1	A	1	61	F	11	9	6	9999	2905			
B	2	1	4	1	57	M	12	12	6	9999	2905			
C	2	3	4	1	46	M	12	12	12	9999	2905			
D														
E														
F														

Officer's Rank and Signature: <i>PO WILLIAM</i>	Badge/ID No. 250	NCIC No. 6890	Precinct/Post Troop/Zone 3	Station/Beat/Sector 313	Reviewing Officer: <i>[Signature]</i>	Date/Time Reviewed: <i>7/21/07 0941</i>
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**GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF**

HARRY A. GAIR (1919-1975)
ROBERT L. CONASON
SEYMOUR BOYERS
ERNEST R. STEIGMAN
STEPHEN H. MACKAUF
JEROME I. KATZ
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PETER J. SAGHIR

COUNSELORS AT LAW
80 PINE STREET
NEW YORK, N.Y. 10005-1768
TEL (212) 943-1090
FAX (212) 425-7513
EMAIL mail@gairgair.com

NEW JERSEY ADDRESS
ONE GATEWAY CENTER
SUITE 2600
NEWARK, N.J. 07102
TEL (973) 645-0581
FAX (973) 645-9475

HERMAN SCHMERTZ
APPELLATE COUNSEL

HARRIET E. GAIR
HERBERT H. HIRSCHHORN

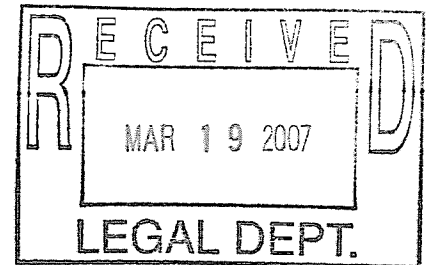
OF COUNSEL

*MEMBER OF N.Y. & N.J. BARS

March 14, 2007

VIA CERTIFIED MAIL

Lexus Corporate Headquarters
19001 South Western Avenue
Torrance, CA. 90501
Attention: Legal Department



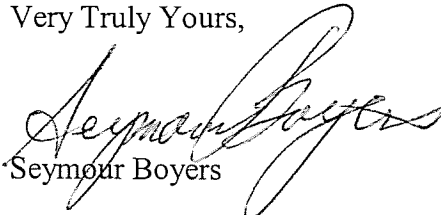
Re: [REDACTED]
Lexus 2007 GS 350
Vin #: JTHBJ46G272 [REDACTED]

To Whom it May Concern:

Please be advised that we represent [REDACTED] who sustained serious personal injuries in an automobile accident which occurred on February 18, 2007, while driving the above vehicle.

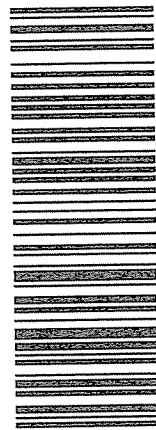
We are writing to inform you that we believe that the accident was the result of negligence of one or more of the above named entities. This letter is to advise you that the vehicle will be made available for inspection by you or your chosen representatives. While we have taken measures to permanently secure the vehicle it is not currently under our possession and control. As such, should you wish to inspect the subject vehicle please call the undersigned as soon as possible to arrange an inspection.

Very Truly Yours,


Seymour Boyers

**GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF**
80 PINE STREET
NEW YORK, N.Y. 10005-1768

CERTIFIED MAIL™



7002 3150 0003 3795 2777

TOYOTA INSPECTED

VIA CERTIFIED MAIL

Lexus Corporate Headq,
19001 South Western Avenue
Torrance, CA. 90501
Attention: Legal Department

Route: HQ11
Location: HQ11
Sender: HQ11

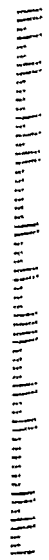
03/19/07 09:42
1 of 1
031907094207



PS METER
6233690

U.S. POSTAGE

95018105 0031





Customer

[Redacted]

Albertson, NY [Redacted]

[Redacted]





Vehicle Information

VIN: JTHBJ46G272 [Redacted]

Year: 2007

Make: Lexus

Model: ES350

Dealer: Lexus Of Westport (60604)

- [Prod Summary](#)
- [Svc History](#)
- [Equipment](#)
- [Vehicle Details](#)
- [Ownership](#)
- [Customer List](#)
- [New Search](#)

List of Owners

Owner	Purchase Date	Disposal Date
[Redacted]	01/02/2007	N/A

Vehicle Ownership Information

Gen Ownership Info	Assoc Parties
<p>DOFU: 01/02/2007</p> <p>Orig. Selling Dlr.: <u>Lexus Of Westport (60604)</u></p> <p>Fleet: No</p> <p>Purchase Mileage: 10</p> <p>Selling Dealer: <u>Lexus Of Westport (60604)</u></p>	<p>Primary Driver: [Redacted]</p>

Customer Profile Application guidelines.



Vehicle Identification Number Search

Enter a 17 Digit VIN below to search for applicable information:

VIN:

Service Campaign

No INFORMATION found for VIN: **JTHBJ46G272**

Vehicle Information

Division: LEXUS **Model:** ES350 **Grade:** NONE **Model Year:** 2007

Drive Type: 2WD **Body Type:** 4Dr. Sedan **Engine Family:** 2GR **Transmission:** 6AT

Date of First Use: 01/02/2007 **Line Off Date:** 11/03/2006 **Plant Code:** N - TMC PLANT - JAPAN

VIN: JTH-BJ46G-272

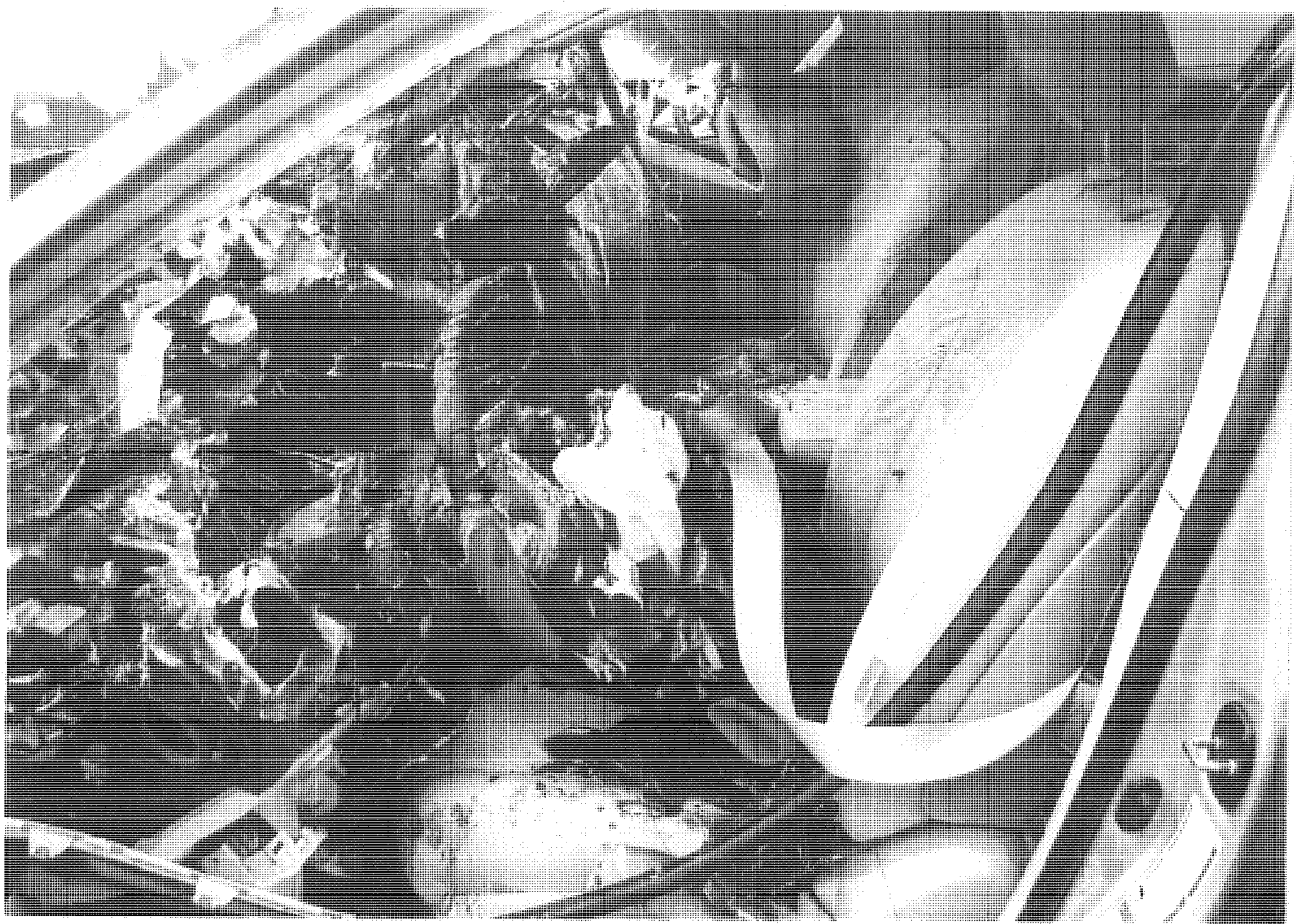
Exterior Color: 04T1, GOLDEN ALMOND METALLIC **Interior Color:** **05, CASHMERE
Interior Trim Color: **, * **Interior Fabric:** *, *

Accessories:

BE : Rear Seat Side Airbags **FS** : Full Size Spare Tire **GN** : Cargo Net **HL** : High Intensity Discharge Headlamps w/AFS
LM : Trunk Mat **NV** : Navigation System Includes: **PA** : Intuitive Parking Assist **PT** : Premium Plus Package Includes:
WL : Wheel Locks **WU** : Wood & Leather Steering Wheel













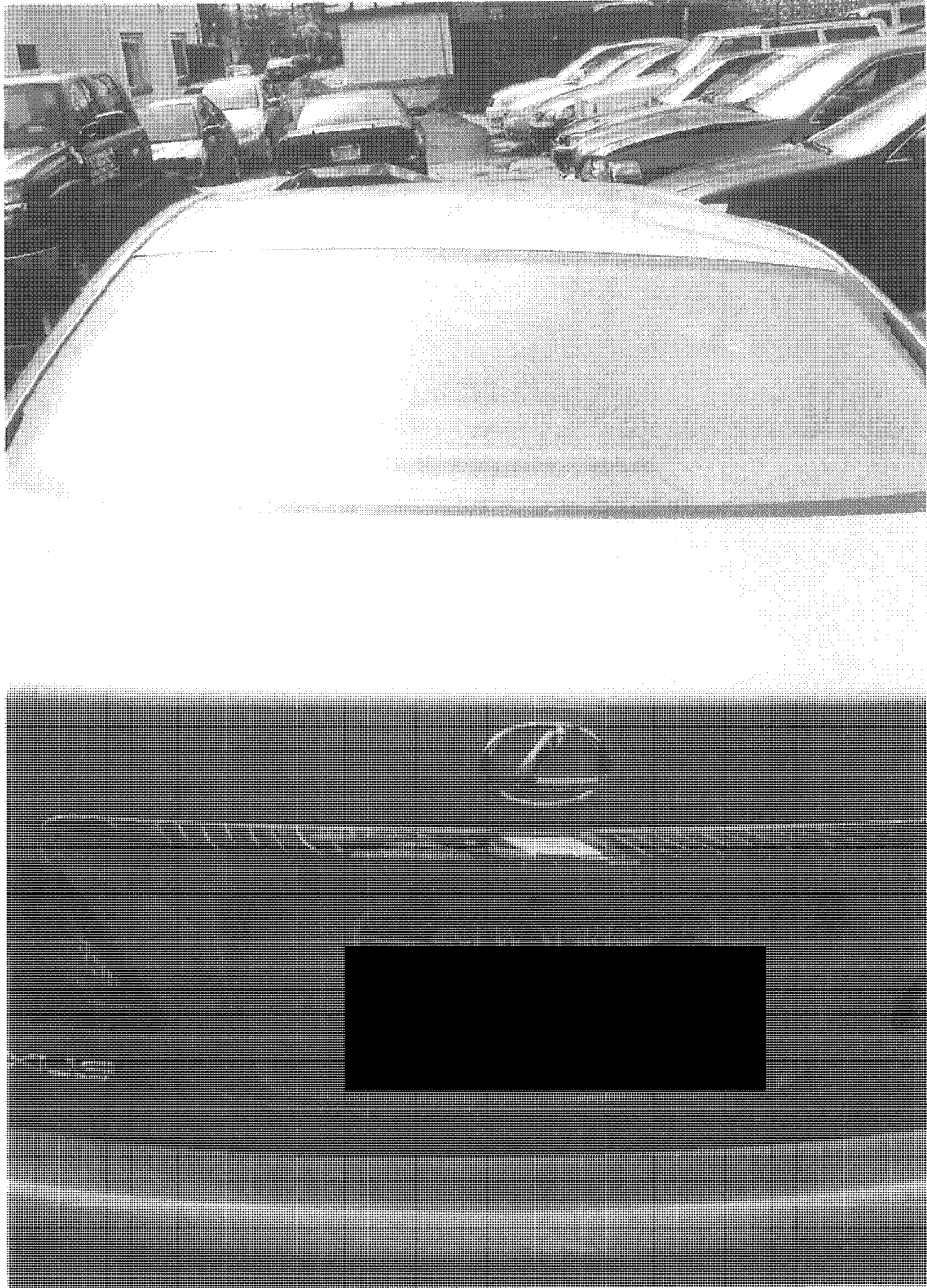




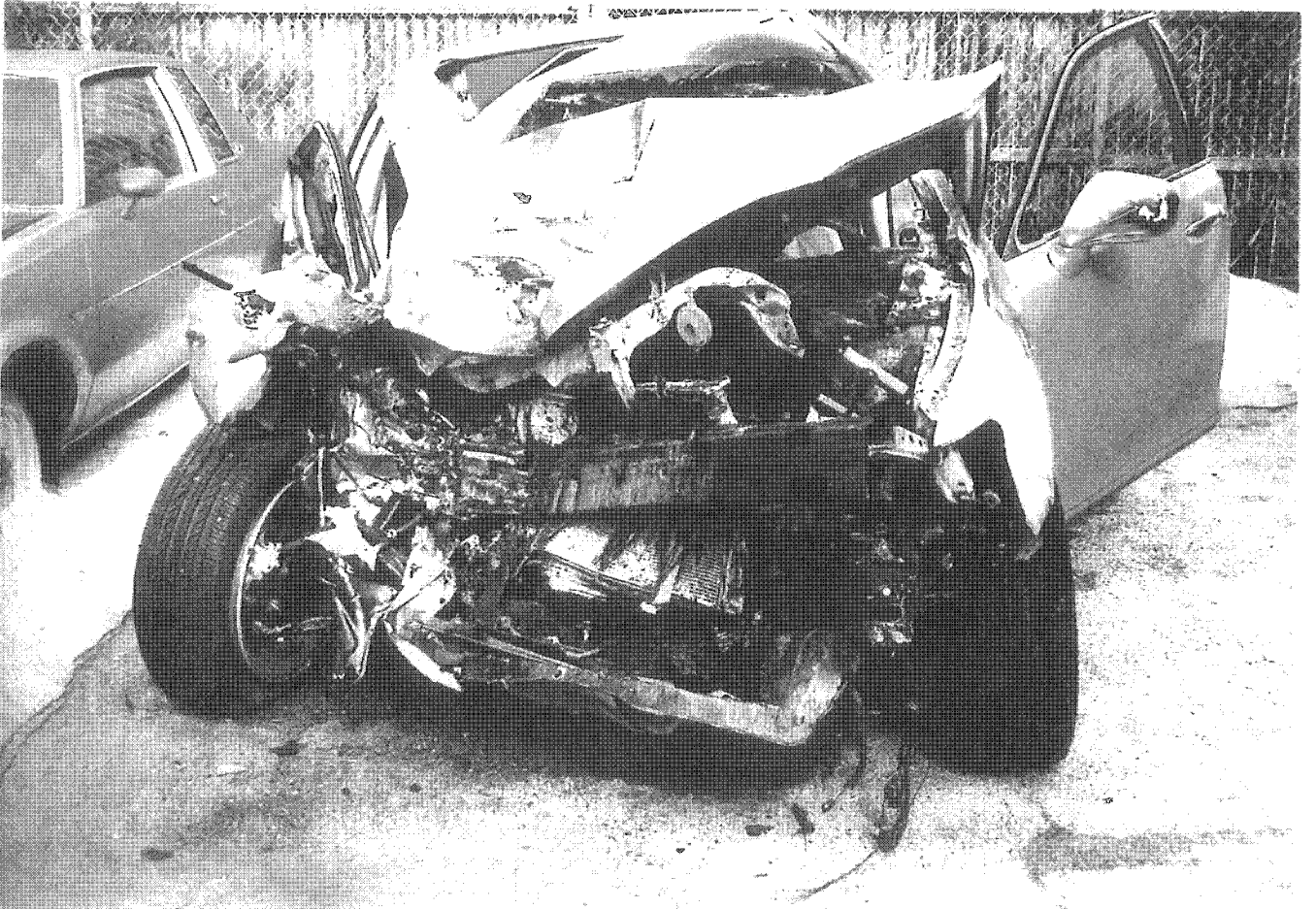
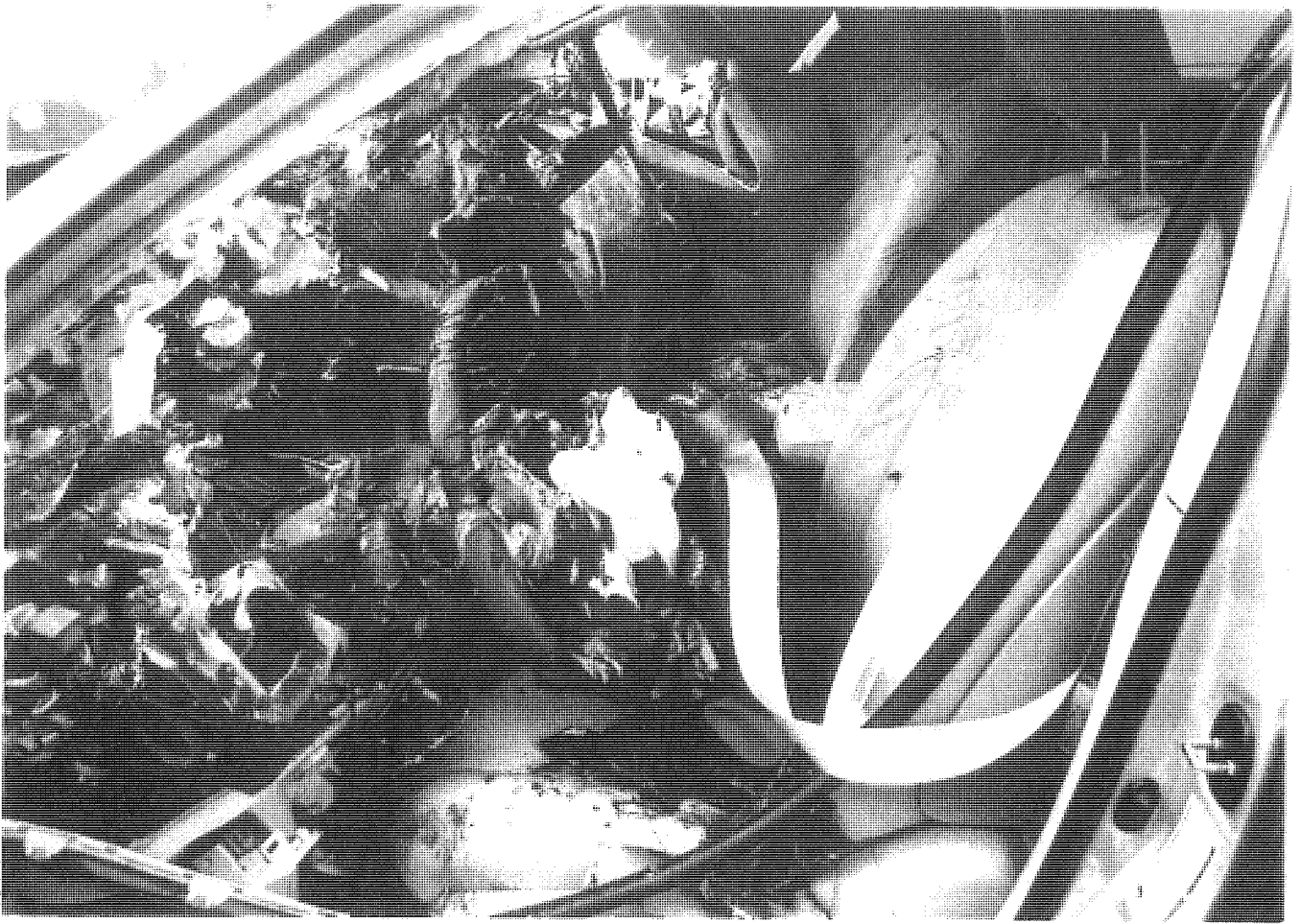






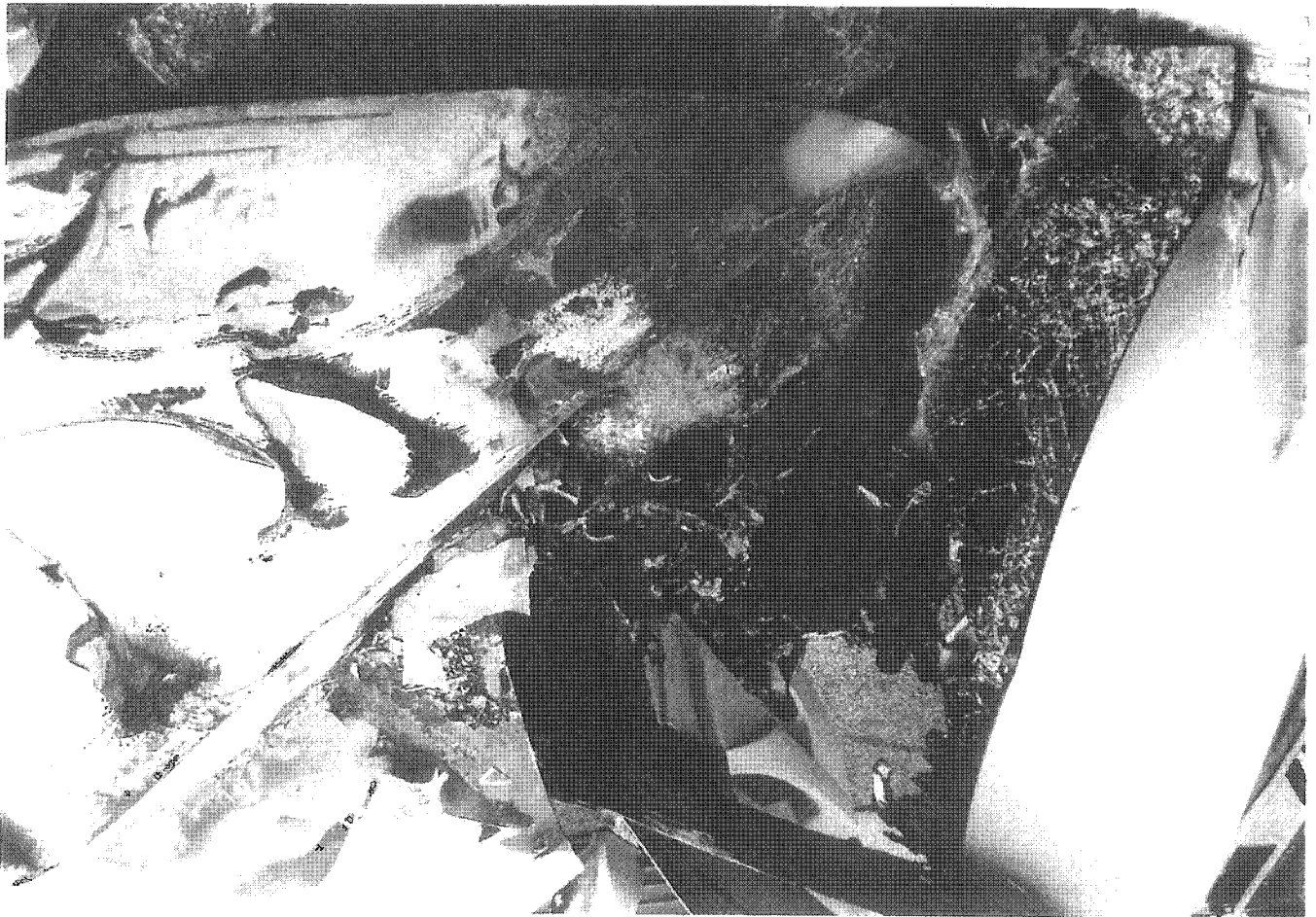


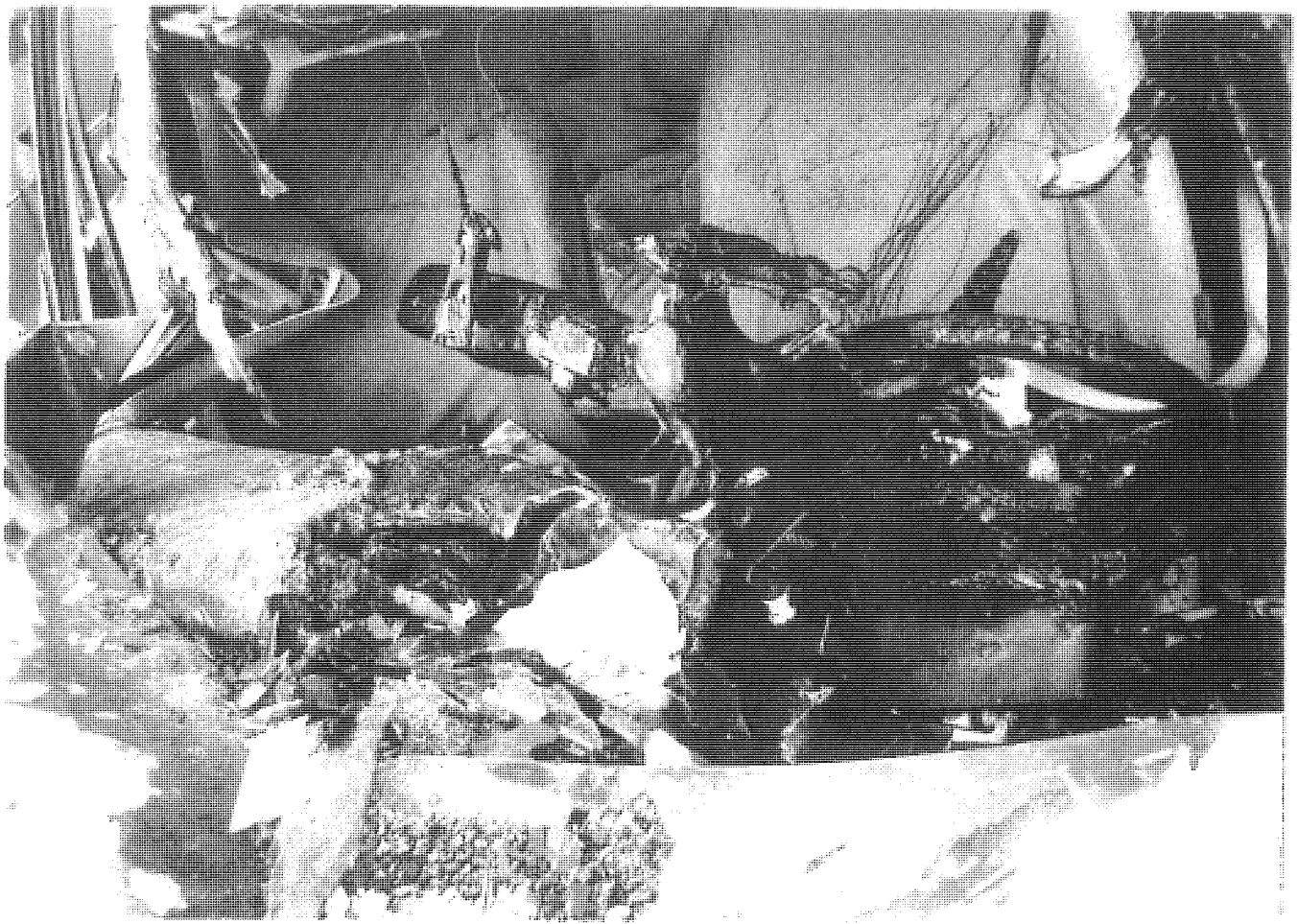




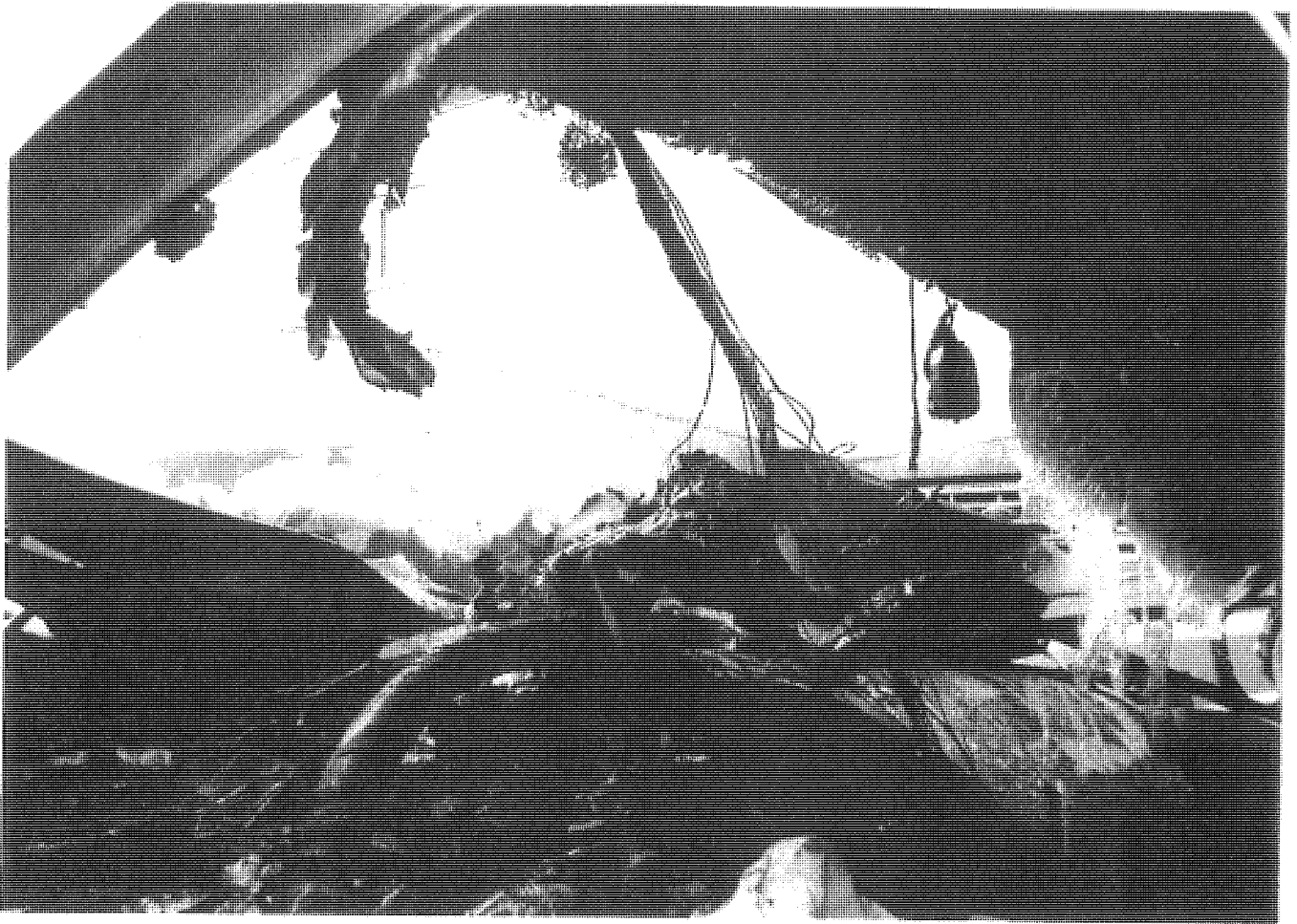












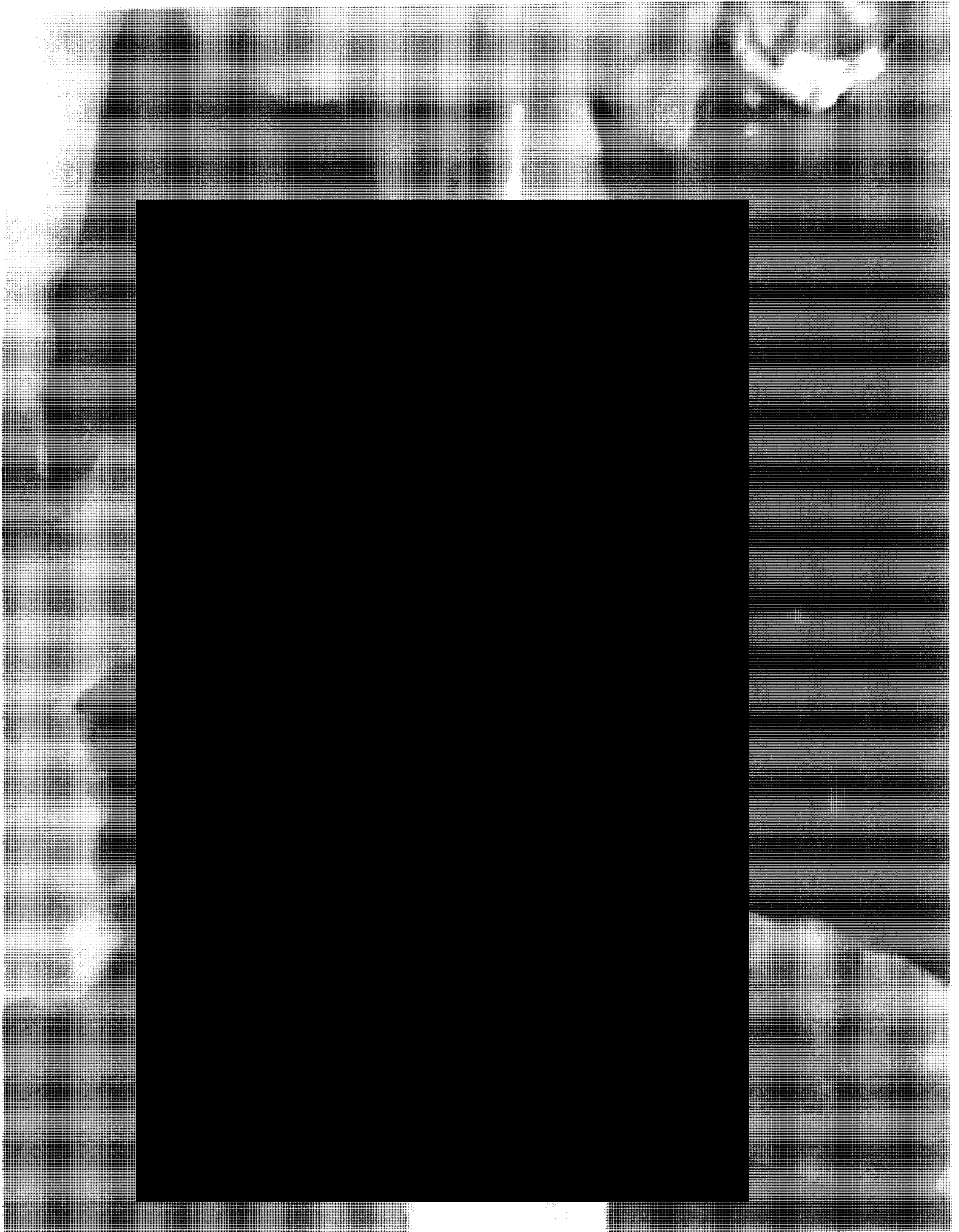


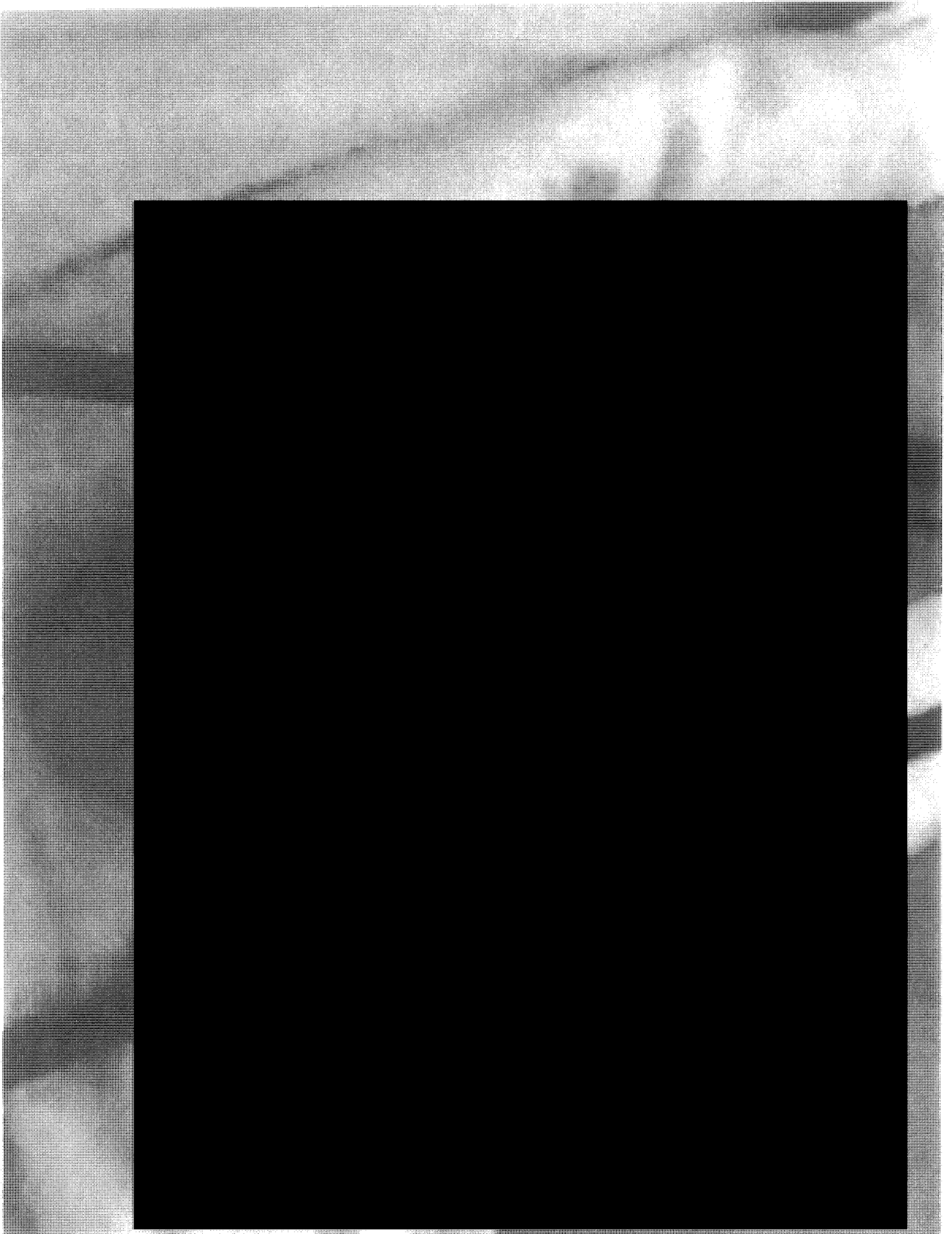


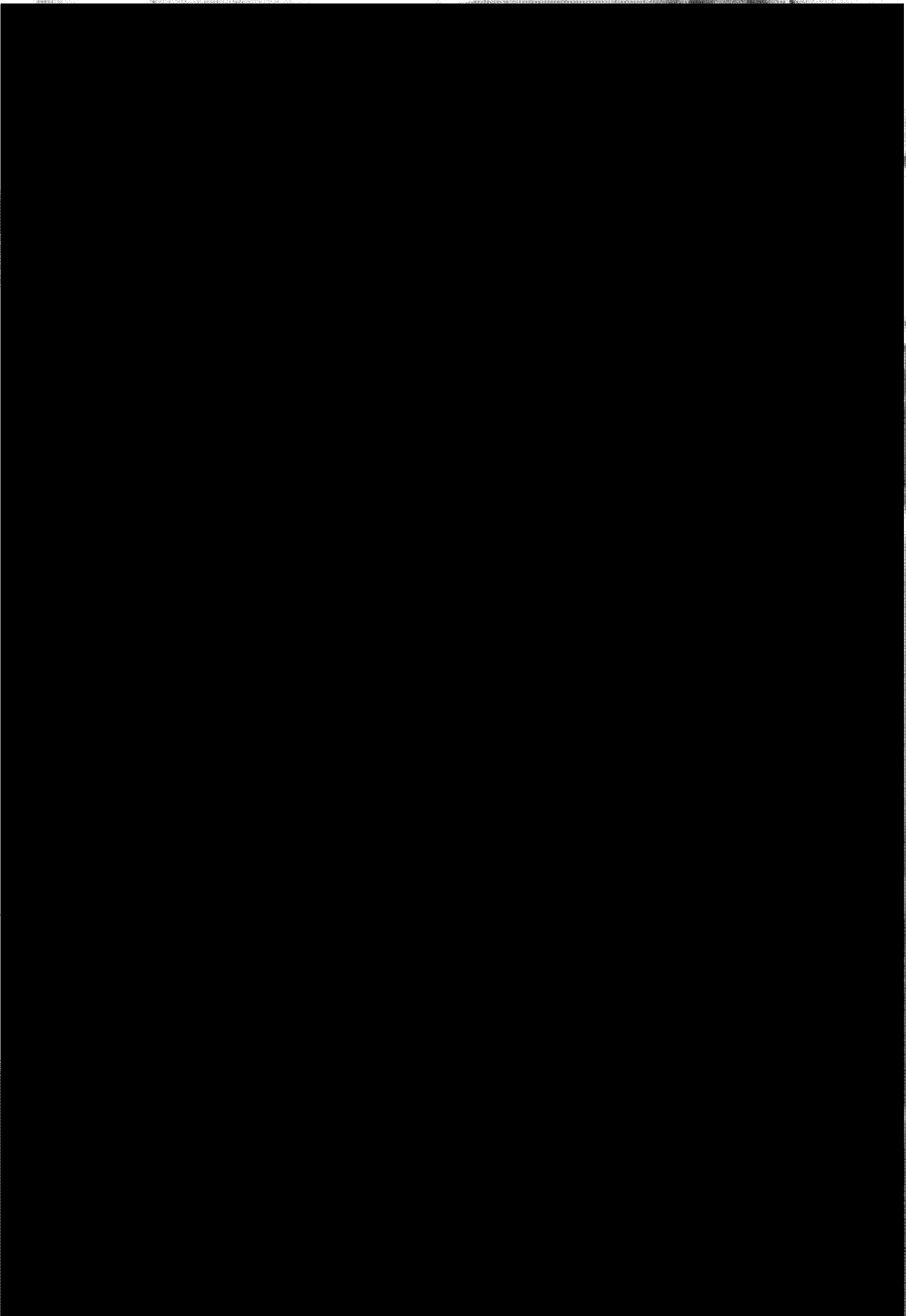


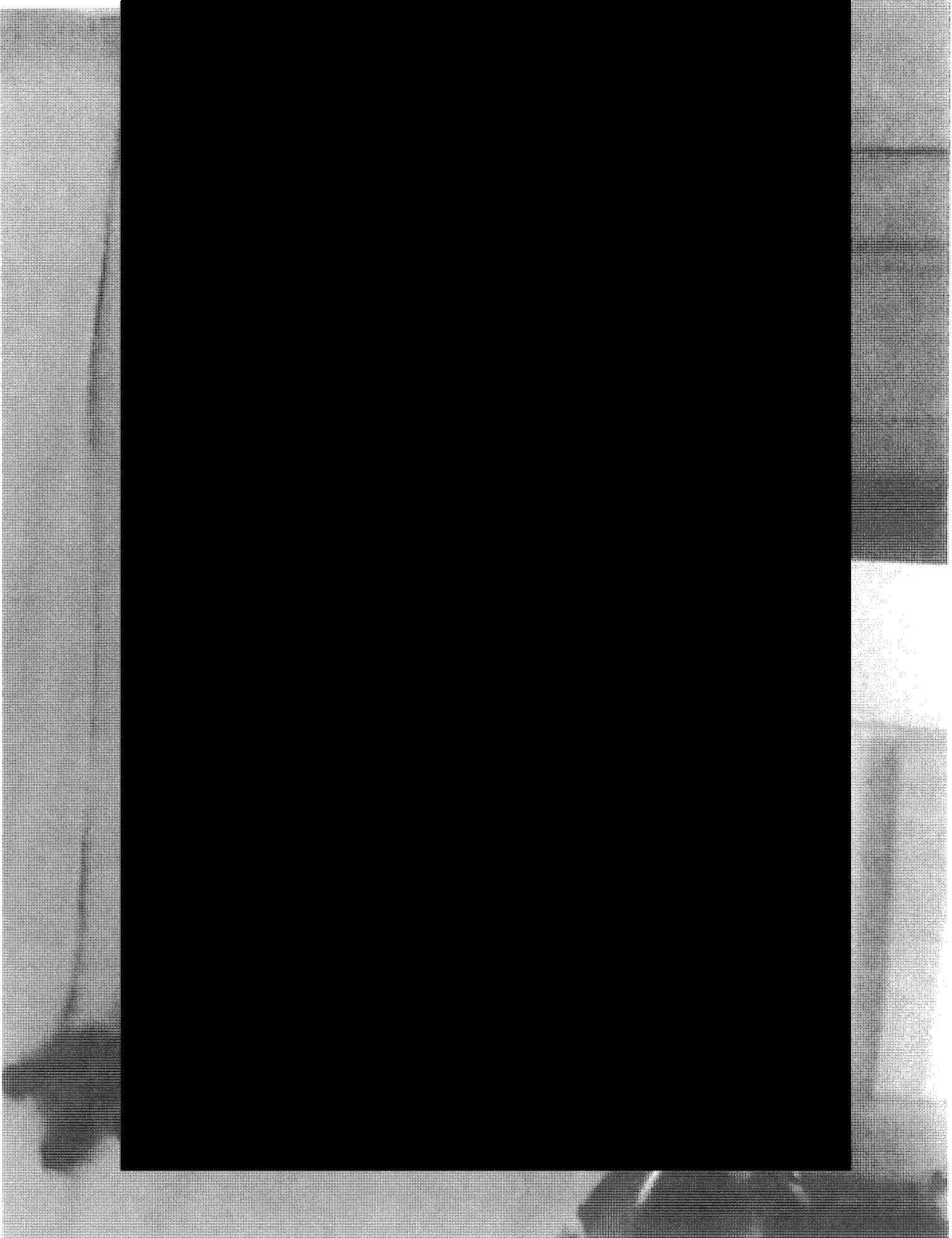


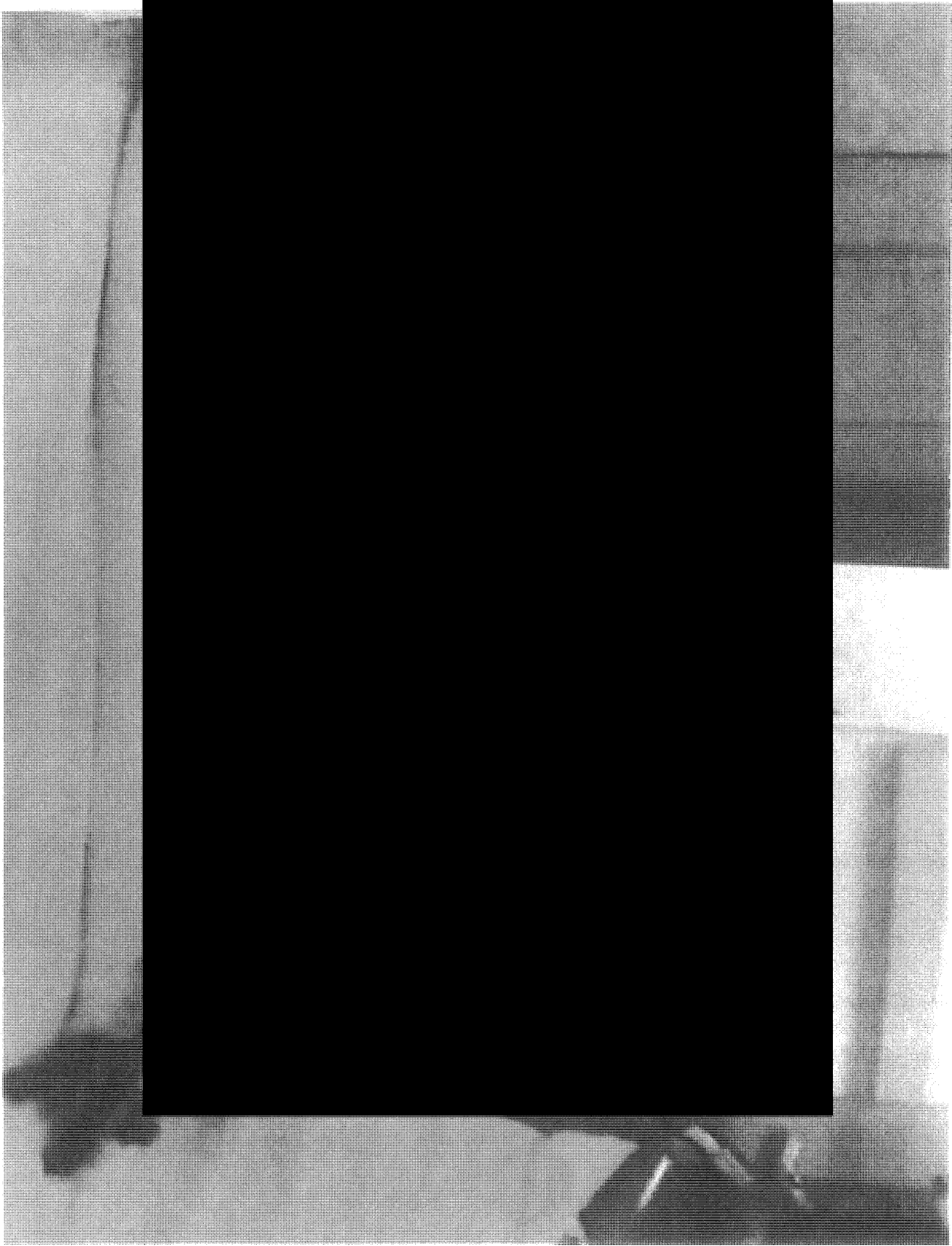


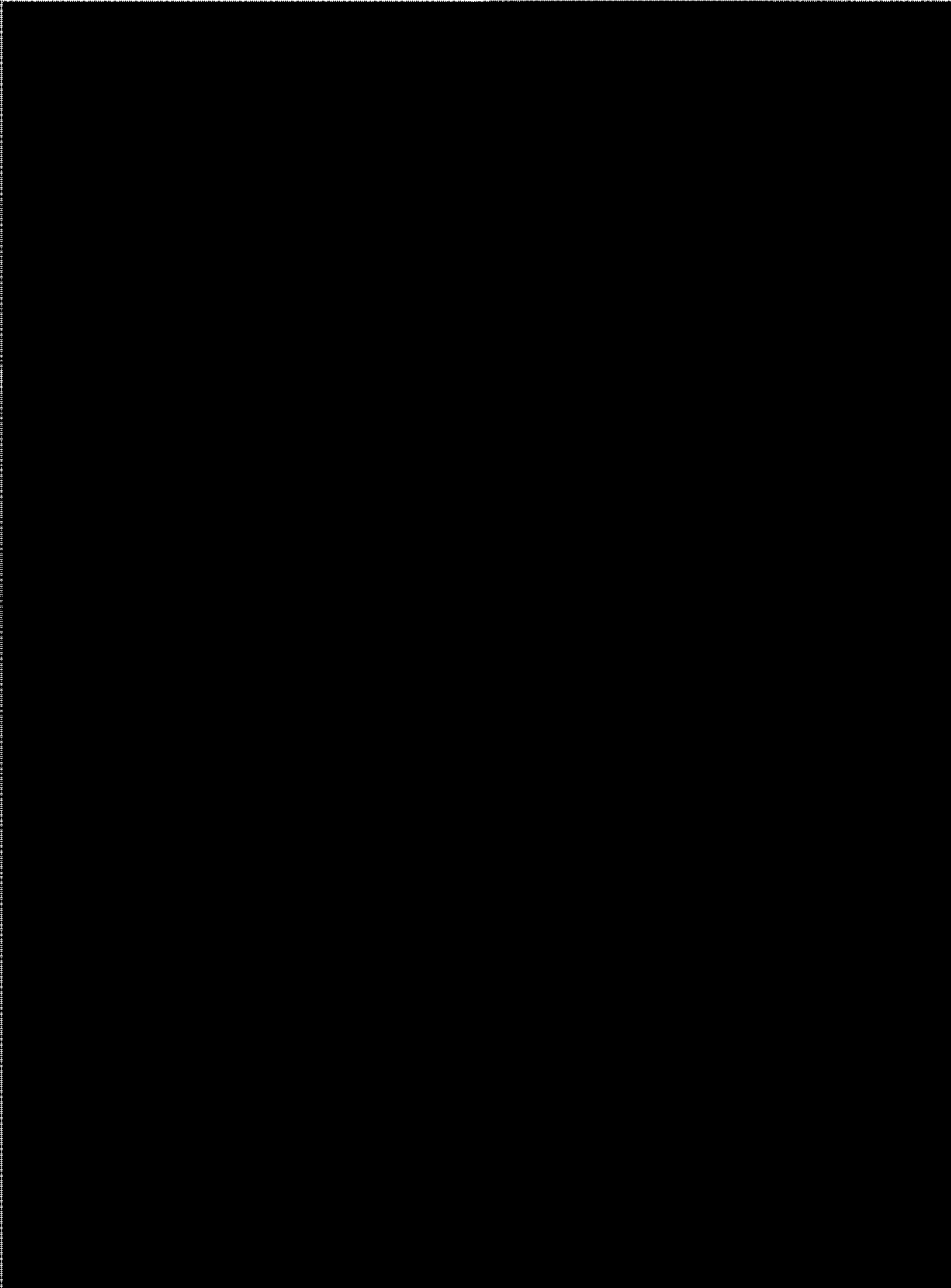


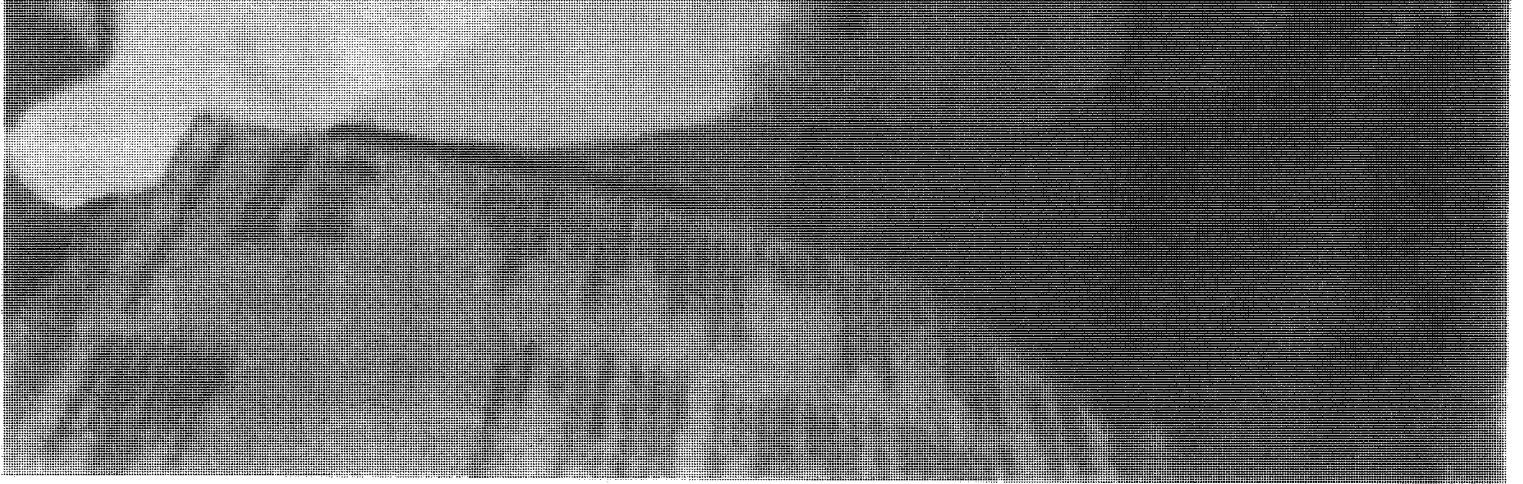
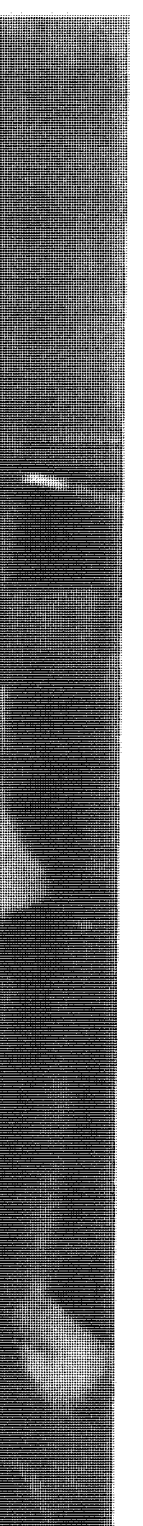
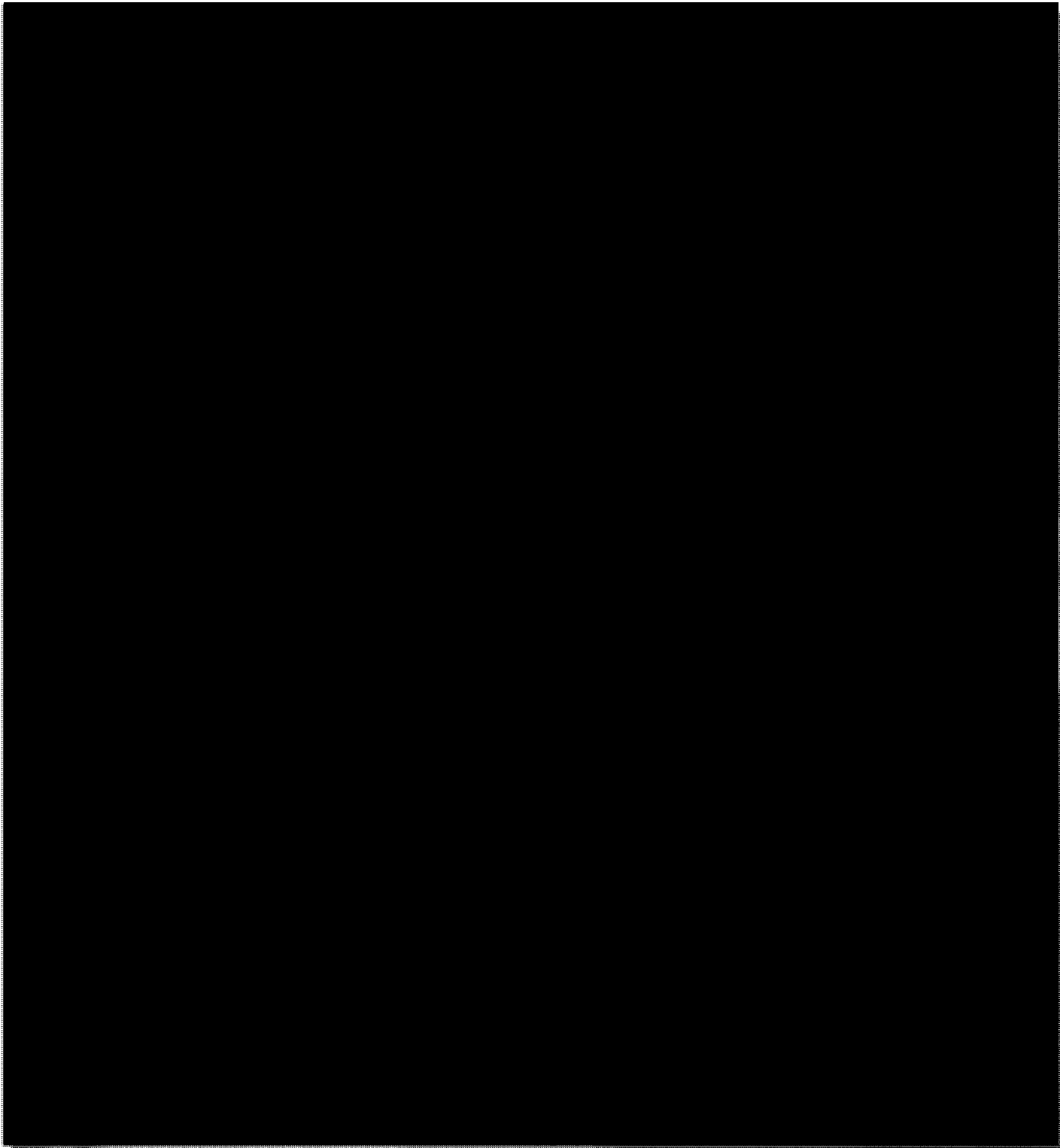


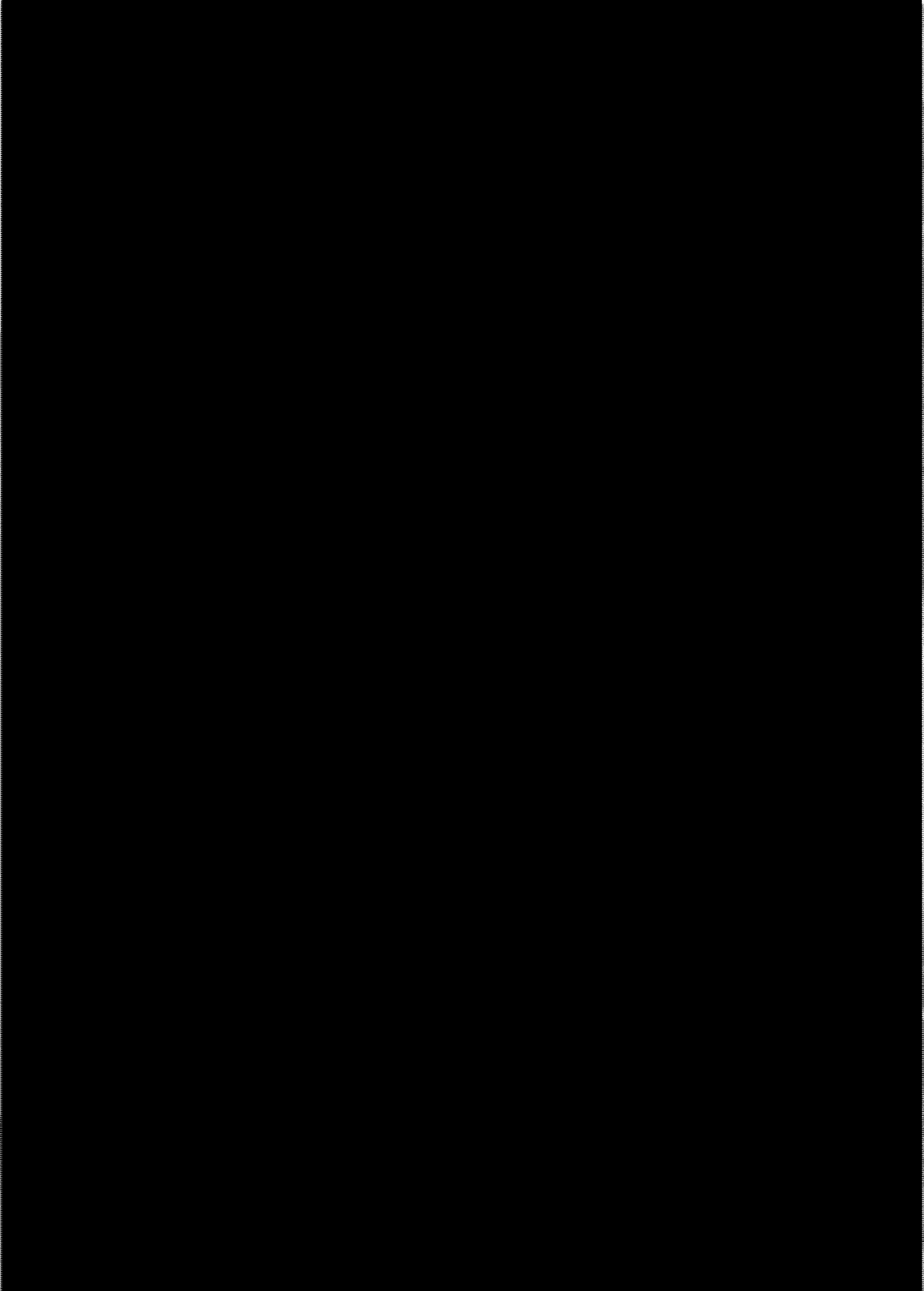


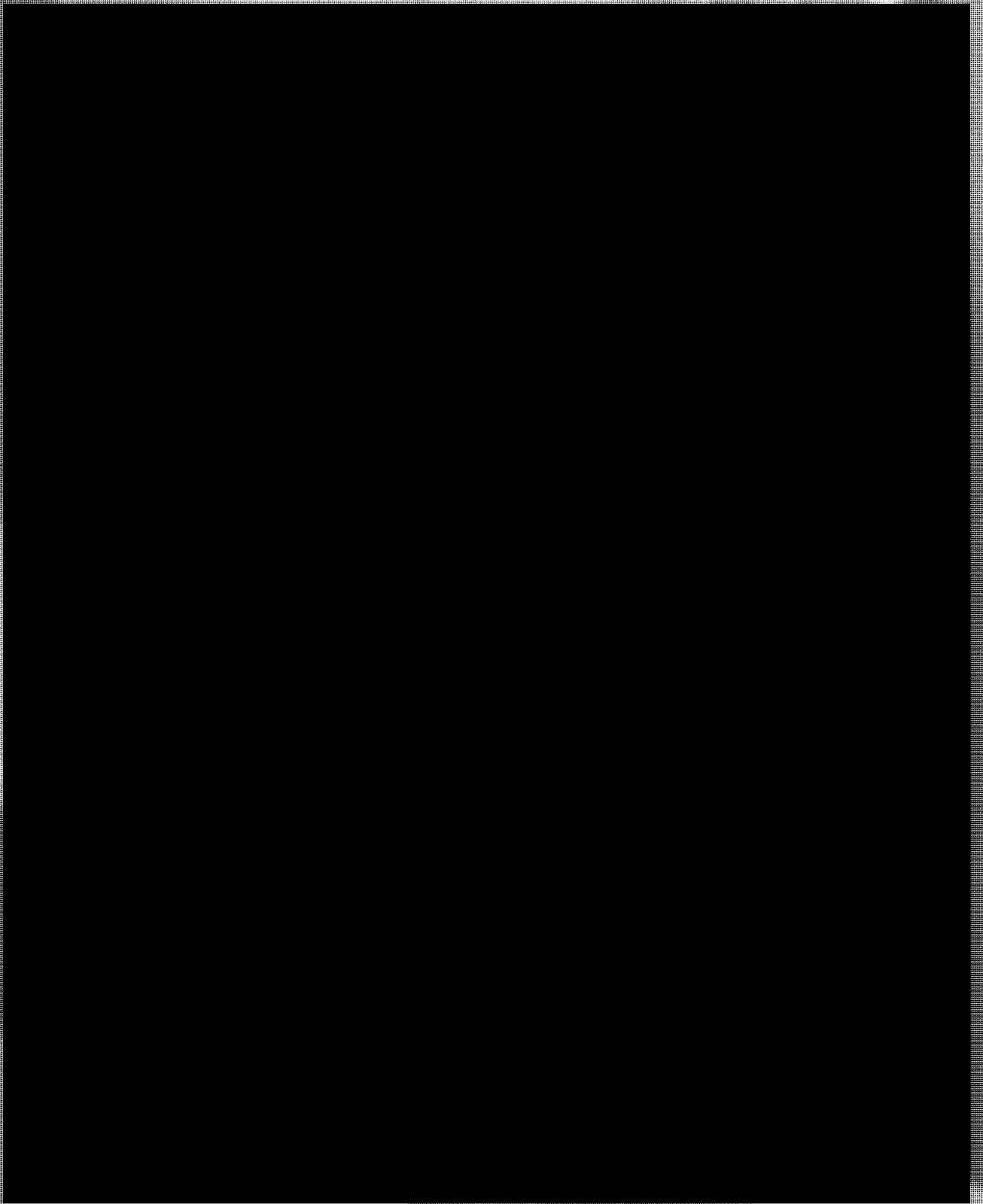


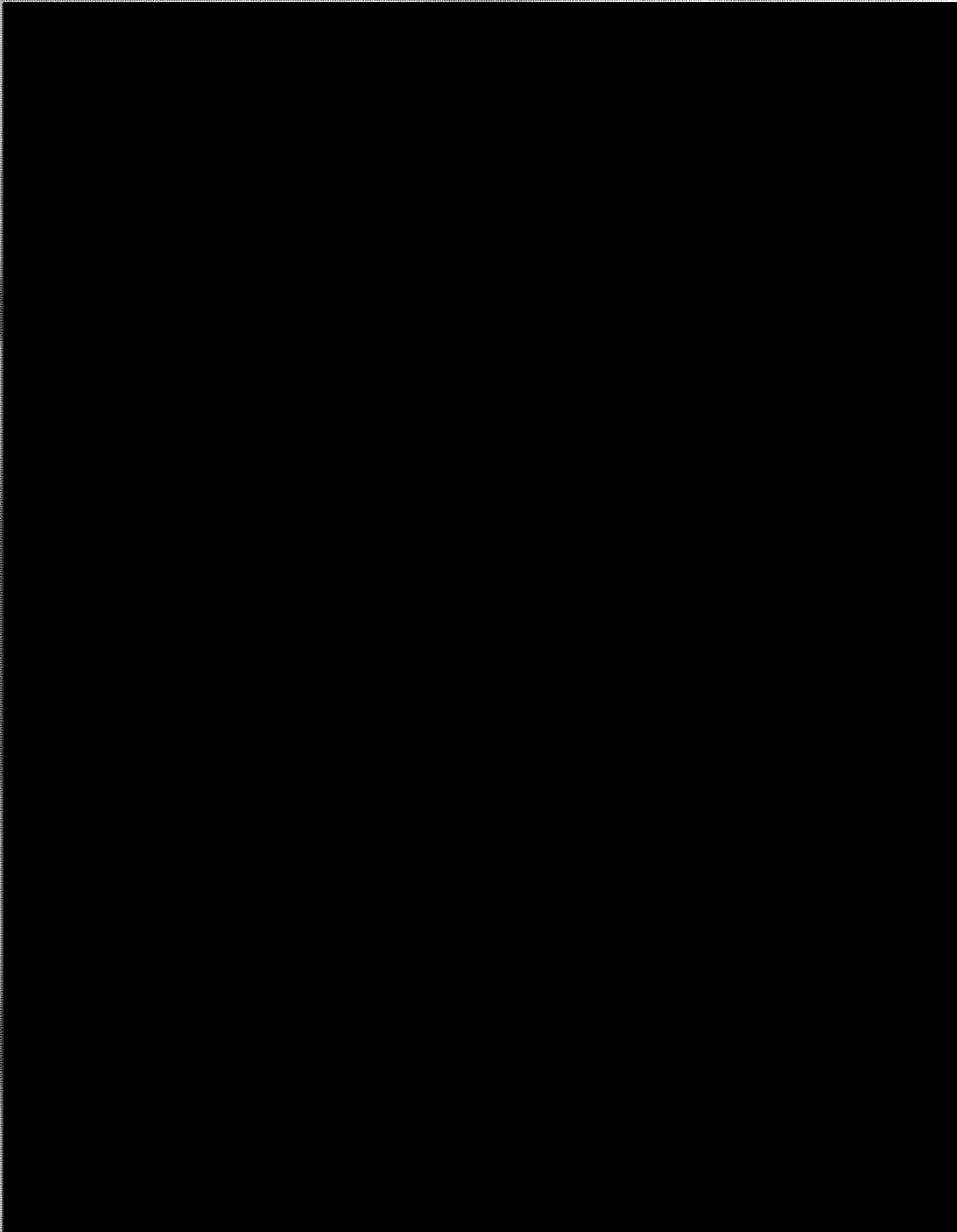


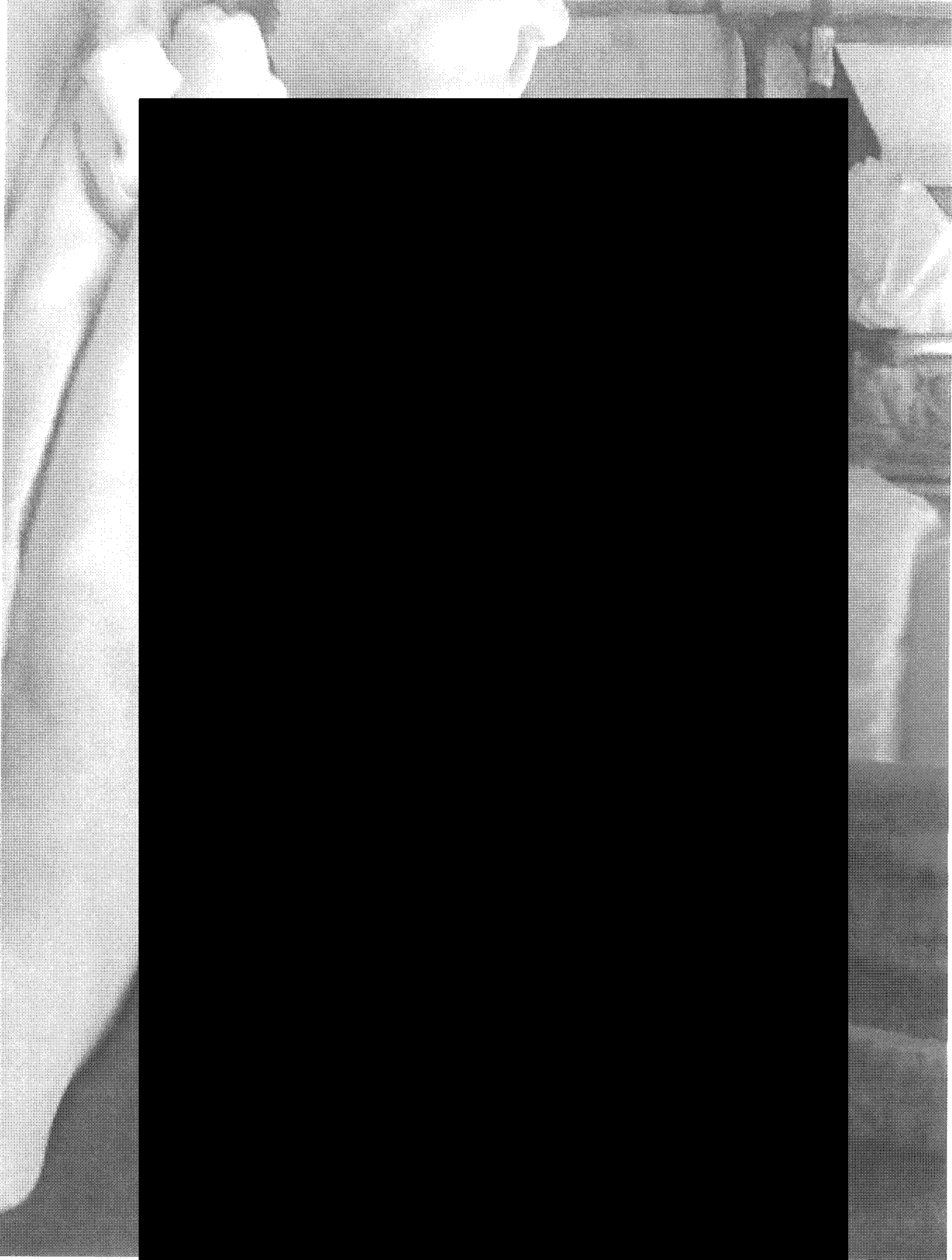


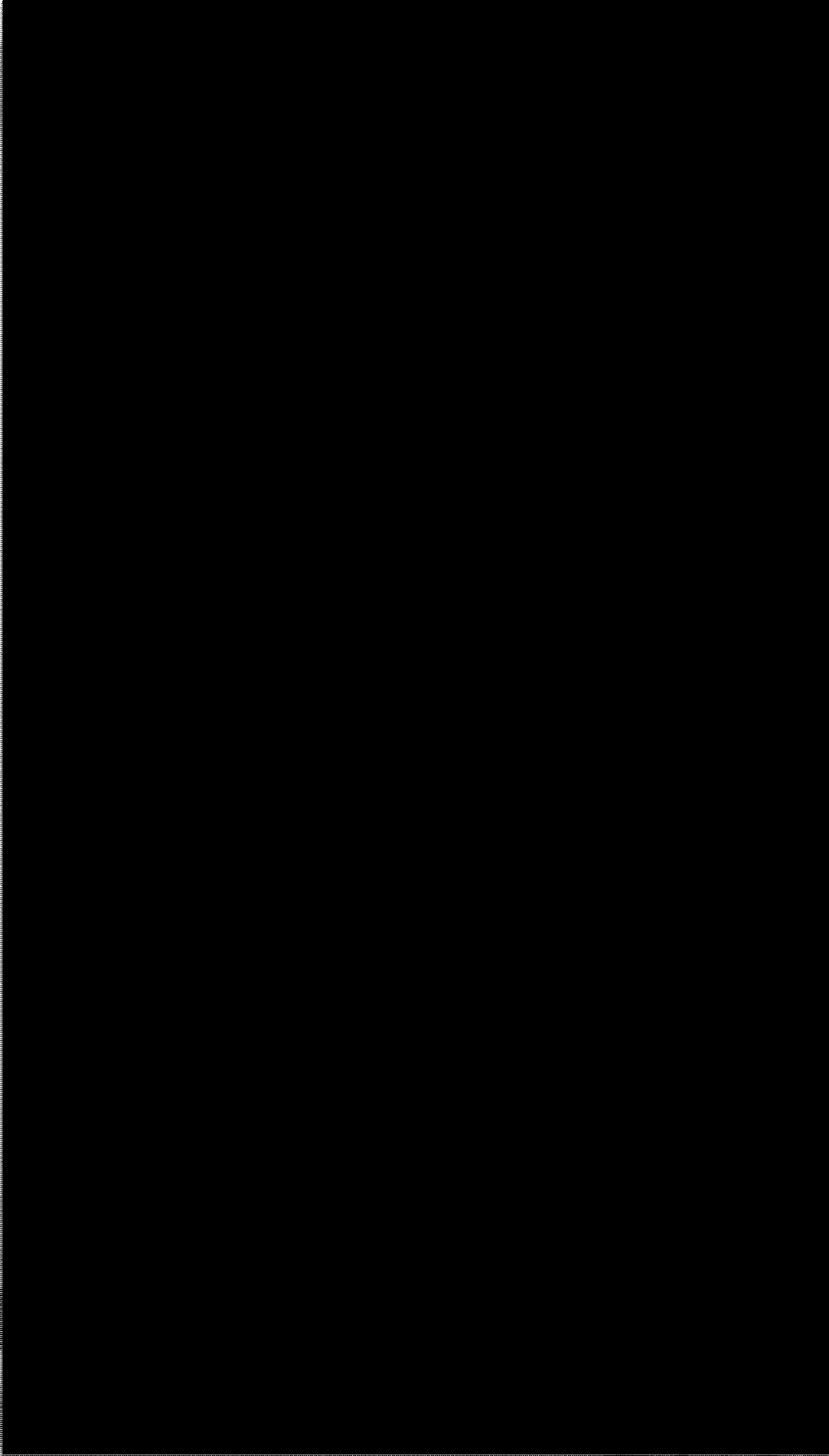


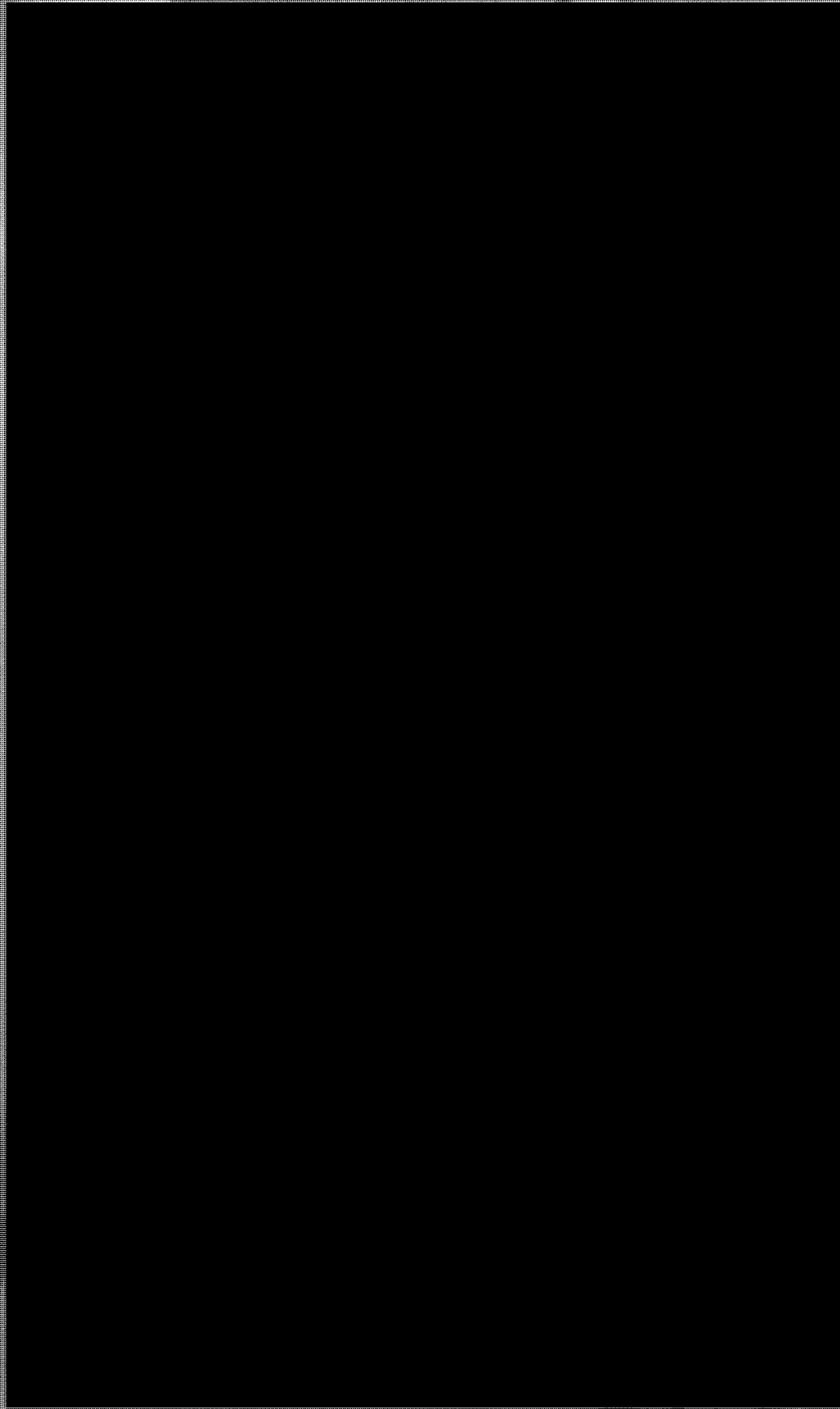


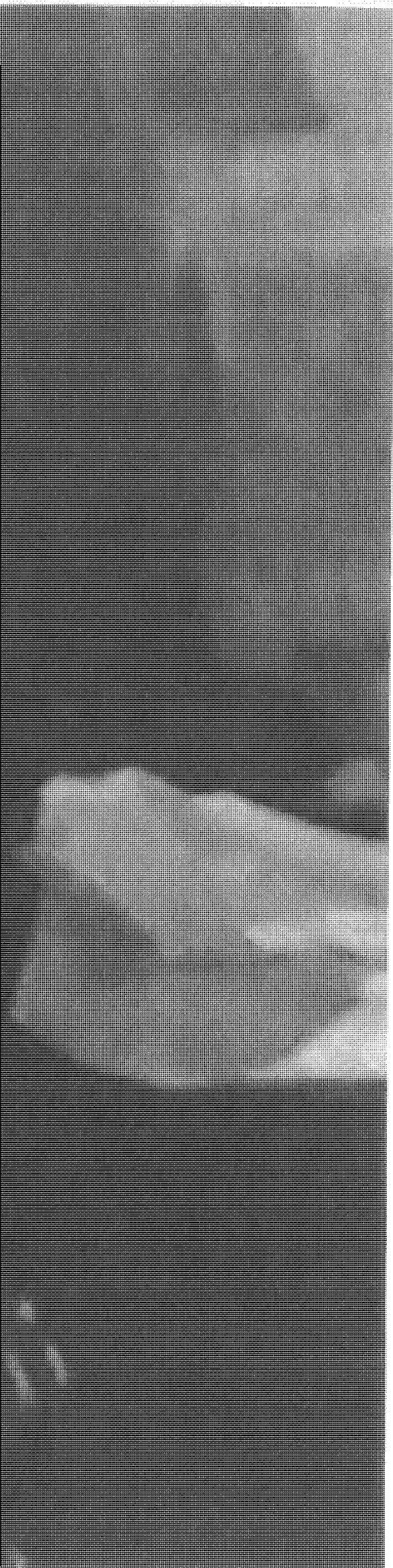
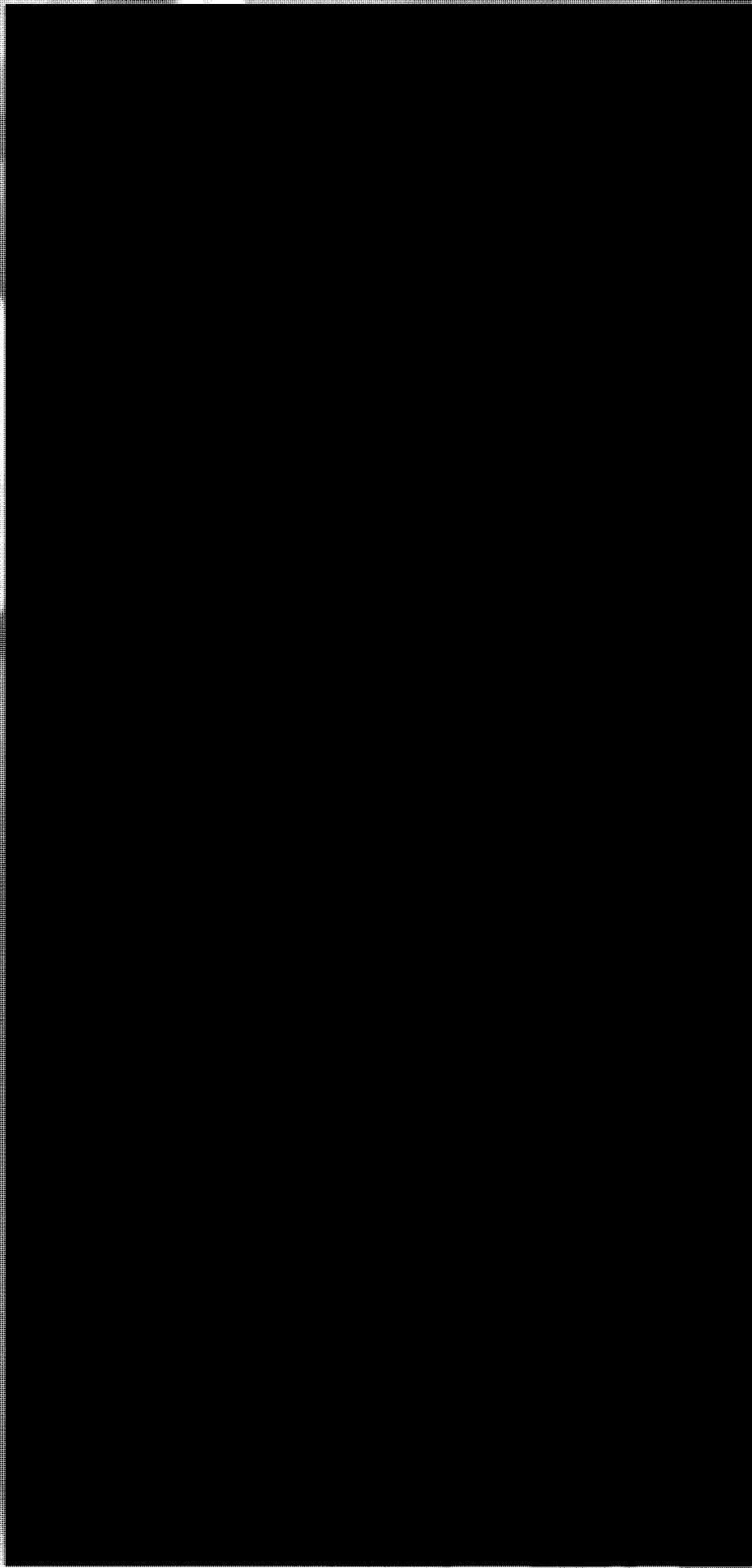


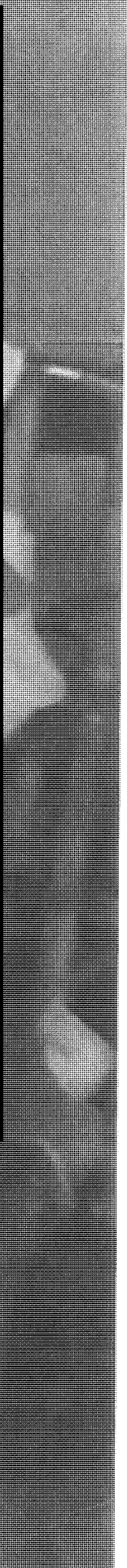
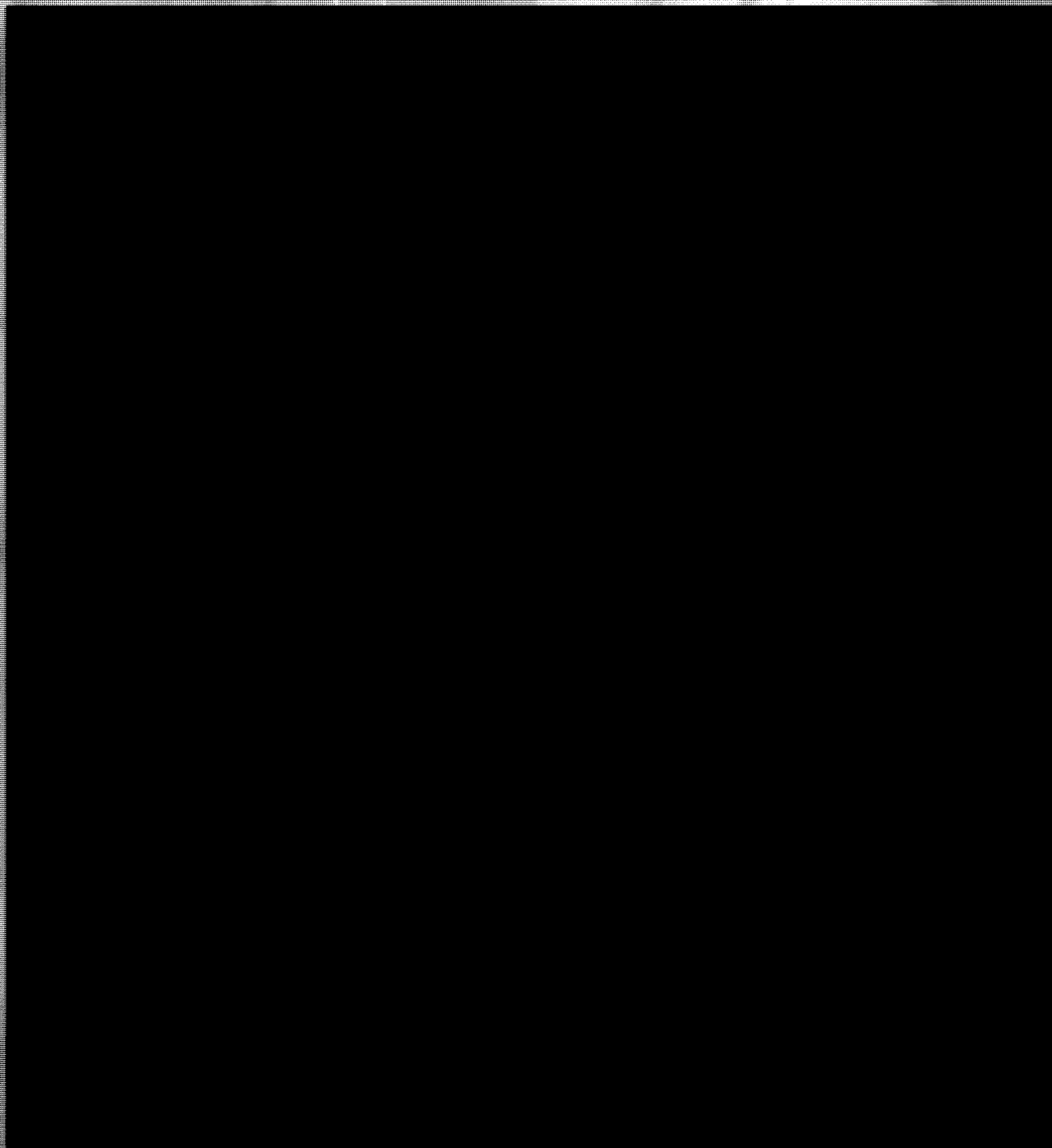












— LEVITEN, IRIS

MEDICAL RPT'S

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
D/B/A THE AUTOMALL,

Defendants.
-----X

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

Defendants.
-----X

ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.
-----X

C O U N S E L O R S :

PLEASE TAKE NOTICE, that pursuant to Article 31 of the CPLR, defendants LEXUS,
A DIVISION OF TOYOTA MOTOR SALES U.S.A. INC. and TOYOTA MOTOR NORTH
AMERICA, INC., are hereby required to produce for supplemental discovery, inspection and

**SUPPLEMENTAL
NOTICE FOR DISCOVERY
AND INSPECTION**

Index No.: 107681/07

Action No.: 1

Index No.: 117118/07

Action No.: 2

Index No.: 102331/08

Action No.: 3

photocopying, at the offices of CONNORS & CONNORS, P.C., 766 Castleton Avenue, Staten Island, New York.

1. All subpoenas, demands, communications, or request for records or data from any State or Federal Government or legislative entity for material related to unintended accelerations of Lexus automobiles.
2. Material supplied by the Toyota defendants in response to such request.
3. Any documents showing whether the accelerator pedal and mechanism on the subject automobile was made in whole or in part by a firm known as STS.
4. Any documents concerning any claims that unintended accelerations of the model of car involved in this accident was caused by or affected by any electronic module or part.

PLEASE TAKE FURTHER NOTICE, that the within demand is a continuing demand. In the event that any of the above items are obtained after service of this demand, they are to be furnished to the undersigned pursuant to this demand.

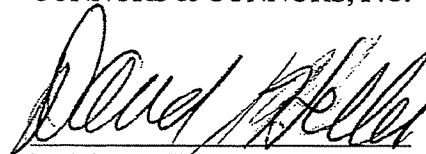
PLEASE TAKE FURTHER NOTICE, that upon your failure to produce the aforesaid documents at the time and place required in this notice, the defendants will oppose any attempts by the plaintiff to place this case on the trial calendar of this court and appropriate motions for relief will be made to this court.

PLEASE TAKE FURTHER NOTICE, that in lieu of producing the items demanded herein, you may serve and submit to the undersigned true and conformed copies of the items demanded herein within twenty (20) days after receipt of this notice.

Dated: Staten Island, New York
February 8, 2010

Yours, etc.

CONNORS & CONNORS, P.C.



DAVID S. HELLER
Attorneys for Defendant
IRIS LEVITEN
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700
File No. DGE23865B

TO: KELNER & KELNER, ESQS.
Attorneys for Plaintiff
MICHAEL DOUKAS - Action #2
140 Broadway- 37th Floor
New York, NY 10005
(212) 425-0700

AHMUTY, DEMERS & MCMANUS, ESQS.
Attorneys for Defendant, ESTREE, INC., D/B/A LEXUS OF WESTPORT - Action #1
200 I.U. Willets Road
Albertson, NY 11507

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant, TOYOTA MOTOR SALES, U.S.A., INC.,
S/H/A LEXUS, A DIVISION OF TOYOTA MOTORS SALES, U.S.A., INC.
10 Bank Street - Suite 1061
White Plains, New York 10606
(914) 949-2909

LAW OFFICES OF GARY S. ALWEISS
Attorney for Plaintiff
229 Seventh Street, Suite 300
Garden City, New York 11530
(516) 746-1047

MICHAEL CORDOZO, ESQ.
Attorney for Defendants
ANTHONY DIGIROLAMO, NEW YORK CITY DEPARTMENT
OF SANITATION AND THE CITY OF NEW YORK - Action #2
100 Church Street
New York, NY 10007
(212) 788-0303

GAIR, GAIR, CONASON, STEGMAN & MACKAUF
Attorneys for Plaintiff
IRIS LEVITEN - Action # 1
80 Pine Street
New York, NY 10005

ARRONSON, RAPPAPORT, FEINSTEIN & DEUTSCH, ESQS.
Attorneys for Defendant
TOYOTA MOTOR SALES, USA, INC. - Action #1
757 Third Avenue
New York, NY 10017

STEIN, RISO & MANTEL
Attorneys for Defendant
METRO AUTO LEASING, INC. - Action #1
405 Lexington Avenue
New York, NY 10174

Index 107681 Year 2007 RI No. Hon.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
D/B/A THE AUTOMALL,

(And action #2 and action #3)

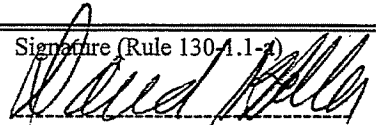
SUPPLEMENTAL NOTICE FOR DISCOVERY AND INSPECTION

CONNORS & CONNORS, P.C.

Attorneys for Defendant, Iris Leviten
Office and Post Office Address, Telephone
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700 PHONE
(718) 442-1717 FAX

To

Signature (Rule 130.1.1-f)



Print name beneath

Attorney(s) for

DAVID S. HELLER

Service of a copy of the within

is hereby admitted,

Dated,

Attorney(s) for

Please take notice

NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order
settlement to the HON.
of the within named court, at

of which the within is a true copy will be presented for
one of the judges

on

at

M

Dated,

Yours, etc.

CONNORS & CONNORS, P.C.

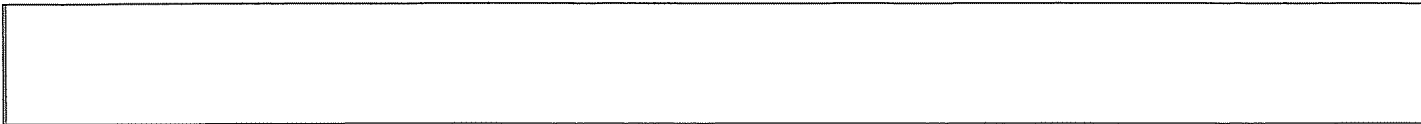
Attorneys for

To

Office and Post Office Address

Attorney(s) for

766 CASTLETON AVENUE
STATEN ISLAND, NEW YORK 10310



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
D/B/A THE AUTOMALL,

Defendants.
-----X

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

Defendants.
-----X

ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.
-----X

C O U N S E L O R S :

PLEASE TAKE NOTICE that pursuant to Article 31 of the C.P.L.R., defendants
LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC., D/B/A THE AUTOMALL, are hereby required
to produce for discovery, inspection and photocopying, at the offices of CONNORS & CONNORS, P.C.,

**SUPPLEMENTAL
NOTICE FOR DISCOVERY
AND INSPECTION**

Index No.: 107681/07

Action No.: 1

Index No.: 117118/07

Action No.: 2

Index No.: 102331/08

Action No.: 3

766 Castleton Avenue, Staten Island, New York, within twenty (20) days after receipt of this notice, the following:

1. In addition to the documents previously requested with regard to recalls of their automobiles, this defendant also requests that co-defendants produce all documents, including complaints, formal or otherwise, referred to Toyota by the National Highway Traffic Safety Administration, and/or received directly from Toyota, reports of incidents or accidents, and any other documents upon which Toyota based its recall of 2005-2010 Toyota Avalons, and 2007 through 2010 Toyota Camrys and Lexus ES350s for the purpose of reconfiguring the floor surface beneath the accelerator pedal, or for any other purpose related to unintentional acceleration.

2. This request also includes any documents supporting concerning or related to the recall by Toyota for the purpose of installing any brake override feature, and recalls of the 2007 to 2010 Camry sedan and Tundra pickup trucks, from 2005 to 2010 Avalon sedan and Tacoma pickup, the 2004 to 2009 Prius Hybrid and the 2007 to 2010 Lexus ES350, and 2006 to 2010 IS250 and IS350.

3. The defendant is also requested to produce all pleadings, and/o discovery exchanged in any class action suits concerning unintended accelerations of its above described products, including but not limited to a class action suit filed on November 5, 2009 in Los Angeles by attorney David Wright.

PLEASE TAKE FURTHER NOTICE, that the within demand is a continuing demand. In the event that any of the above items are obtained after service of this demand, they are to be furnished to the undersigned pursuant to this demand. This specifically includes further documents concerning Toyota's investigation in problems concerning floor mats, the recall of same, and any investigation into this problem.

PLEASE TAKE FURTHER NOTICE, that upon your failure to produce the aforesaid documents at the time and place required in this notice, the defendants will oppose any attempts by the

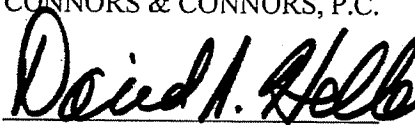
plaintiff to place this case on the trial calendar of this court and appropriate motions for relief will be made to this court.

PLEASE TAKE FURTHER NOTICE, that in lieu of producing the items herein, you may serve and submit to the undersigned true and conformed copies of the items demand herein within twenty (20) days after receipt of this notice.

Dated: Staten Island, New York
December 10, 2009

Yours, etc.

CONNORS & CONNORS, P.C.



DAVID S. HELLER
Attorneys for Defendant
IRIS LEVITEN
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700
File No. DGE23865B

TO: AHMUTY, DEMERS & MCMANUS, ESQS.
Attorneys for Defendant, ESTREE, INC., D/B/A LEXUS OF WESTPORT - Action #1
200 I.U. Willets Road
Albertson, NY 11507

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant, TOYOTA MOTOR SALES, U.S.A., INC.,
S/H/A LEXUS, A DIVISION OF TOYOTA MOTORS SALES, U.S.A., INC.
10 Bank Street - Suite 1061
White Plains, New York 10606
(914) 949-2909

ARRONSON, RAPPAPORT, FEINSTEIN & DEUTSCH, ESQS.
Attorneys for Defendant
TOYOTA MOTOR SALES, USA, INC. - Action #1
757 Third Avenue
New York, NY 10017

STEIN, RISO & MANTEL
Attorneys for Defendant
METRO AUTO LEASING, INC. - Action #1
405 Lexington Avenue
New York, NY 10174

Index 107681 Year 2007 RJI No. Hon.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
D/B/A THE AUTOMALL,

Defendants.

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, et al
And Other Parties Involved

Defendants.

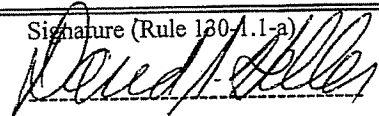
SUPPLEMENTAL NOTICE FOR DISCOVERY and INSPECTION

CONNORS & CONNORS, P.C.

*Attorneys for Defendant, Iris Leviten
Office and Post Office Address, Telephone
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700 PHONE
(718) 442-1717 FAX*

To

Signature (Rule 130.1.1-a)



Print name beneath

DAVID S. HELLER

Attorney(s) for

Service of a copy of the within

is hereby admitted,

Dated,

Attorney(s) for

Please take notice

NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for
settlement to the HON. one of the judges

of the within named court, at
on

at M

Dated,

Yours, etc.

CONNORS & CONNORS, P.C.

Attorneys for

Office and Post Office Address

766 CASTLETON AVENUE

STATEN ISLAND, NEW YORK 10310

To

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.
-----X

Index No.: 107681/07

**NOTICE FOR DISCOVERY
AND INSPECTION**

Action #1

Index No.: 117118/07

Action #2

Index No.: 102331/08

Action #3

PLEASE TAKE NOTICE, that the undersigned hereby demands that the defendant,
TOYOTA MOTOR SALES USA, INC., produce at the office of the undersigned within twenty days
(20) hereof at 9:30 a.m. the following:

DEFINITIONS

For the purpose of the following Requests for Production, the following definitions apply:

“Product in question” and “the product” refer to the carpet floor mats that were manufactured by Toyota Motor Sales, Inc., for the 2007 Lexus model ES 350 with Vehicle Identification Number JTHBJ46G272071246 that is regarding the subject of this litigation.

1. Any and all brochures and literature printed, distributed or circulated by defendant containing photographs, diagrams or descriptions of the product.
2. Any and all instruction for assembly, construction or use pertaining to the product.
3. Any and all documents or writings prepared for accompaniment with the product in question containing warnings of any dangers to which ultimate users of the product may be exposed or containing any instructions for use.
4. Any and all documents containing any sketches, schematics, blueprints or design specifications of the product.
5. Any applicable safety standards or codes governing the design and/or manufacture of said product.
6. Any documents or records reflecting other reported similar incidents involving products of the same design as the product in question.
7. Results of any testing for product or safety inspection of the product in question.
8. Results of any testing for product safety or safety inspection of the group of products in which the product in question was included at the time of manufacturing or marketing.
9. Any brochure, sales list, or other document or thing which reflects any optional equipment or any optional design configuration available to the purchasers of the product.
10. All photographs made by you of the product in question either before or after the plaintiff's accident.

11. All documents reflecting ownership of the product at the time of the occurrence in question.

12. Any and all expert's reports which have been prepared in connection with this lawsuit or the incident giving rise to this lawsuit, if the expert is expected to or may testify in this case as an expert. If any such expert has not prepared a report, request is hereby made that one be prepared and furnished to counsel.

13. Any and all expert reports that were or will be relied upon in whole or in part by any testifying expert in this case.

14. Any and all work papers, notes and documents in the file of any expert witness who is expected to testify, or in the file of any expert witness who has a written report which is or will be relied upon in whole or in part by a testifying expert.

15. Any and all insurance agreements or policies under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment which may be rendered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

16. Any and all insurance policies, whether basis, umbrella or excess, which may pay any judgment in this case or provide any defense in this case.

17. Copies of any and all statements previously made by plaintiff concerning the subject matter of this lawsuit, including any written statement signed or otherwise adopted or approved by the plaintiff hereto and any stenographic, mechanical, electrical or other type of recording or any transcription thereof made by plaintiff hereto and contemporaneously recorded.

18. Any and all settlement agreements, wherein you have arrived at a settlement or agreement between you and any other person, whether or not a party to this lawsuit, regarding or pertaining to the incident made the basis of this lawsuit or any damages resulting therefrom.

19. Any police report or other report of investigation of any governmental agency or private organization relating to the occurrence in question.

20. Any and all brochures, manuals, arts lists, instructions, written materials, advertising materials, or other documents in your possession relating to the product in question.

21. Any photograph, videotape, movie or any other photographic reproduction in your client's or your possession which were taken by you or by any other individual which relates in any way to the scene of the accident made the subject of this lawsuit, the product or similar model to the product involved in this lawsuit, or any component part of the aforementioned product.

22. Any documents, pamphlets, brochures or operating manuals reflecting the safety features of the product in question.

22. A copy of all written instructions and sales literature which would have accompanied the product at the time of sale.

23. A copy of all warning labels, placards, or other thing which accompanied the product at the time of the sale of the vehicle.

24. Copy of the Operator's Manual for the subject vehicle.

25. A copy of any service manual relating to the product.

26. A copy of any photographs, films, videotapes or other thin relating to any testing of the product in question with respect to its design or performance that is in any way relevant to the occurrence in question or the manner in which the occurrence in question is alleged to have occurred.

27. Any written or recorded statements of the plaintiff or his/her representatives regarding the occurrence in question or the damages resulting therefrom.

28. Any and all diagrams, schematics, blueprints, maps or models displaying the instrumentalities made the basis of this lawsuit, the area where the incident made the basis of this lawsuit occurred or in any other manner pertaining to the incident made the basis of this lawsuit and injuries or damages resulting therefrom.

29. Any documents, reports or other written records pertaining to any investigation pertaining to the incident which made the basis of this lawsuit that is not privileged at law.

30. Any documents, reports or other written records pertaining to any investigation pertaining to the similar incident that have made the basis of other lawsuits.

31. Any and all documents containing warnings of any danger to which the user of the product may be exposed.

32. Any and all patents employed in the design and construction of said product.

33. Curriculum vitae with any other documents in your possession pertaining to the credentials and qualifications of any and all experts to be called by defendant.

34. Any and all photographs that defendant has of the product in question following the occurrence made the basis of this lawsuit.

35. Copies of warranties given to the purchasers of the product in question.

36. Copies of all advertising, promotional and descriptive literature for products that were designed subsequent to the time this product was placed on the market, that were designed to improve, change or take the place of the original product which is the subject of this litigation.

37. Any documents, photographs, or other physical evidence which shall be used or offered at trial.

38. Copies of any trade journals or similar publications that have discussed, criticized or analyzed the product in question.

39. Equipment list showing the product as equipped.

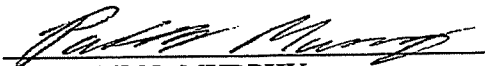
PLEASE TAKE FURTHER NOTICE, that the within demand is a continuing demand.

In the event that any of the above items are obtained after service of this demand, they are to be furnished to the undersigned pursuant to this demand. This specifically includes further documents concerning Toyota's investigation in problems concerning floor mats, the recall of same, and any investigation into this problem.

PLEASE TAKE FURTHER NOTICE, that upon your failure to produce the aforesaid documents at the time and place required in this notice, the defendants will oppose any attempts by the plaintiff to place this case on the trial calendar of this court and appropriate motions for relief will be made to this court.

PLEASE TAKE FURTHER NOTICE, that in lieu of producing the items herein, you may serve and submit to the undersigned true and conformed copies of the items demand herein within twenty (20) days after receipt of this notice.

Dated: Albertson, New York
November 4, 2009


PATRICK N. MURPHY
AHMUTY, DEMERS & McMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, NY 11507
(516) 294-5433
Our File No.: YCW 0962N7 JAE

TO:

Todd J. Strier, Esq.
Kelner & Kelner, Esqs.
Attorneys for the Plaintiff
MICHAEL DOUKAS
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

Connors & Connors, P.C.
Attorneys for Defendant in Action No. 2
IRIS LEVITEN
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700

Michael Cardozo, Esq.
Attorneys for Defendants in Action No. 2
CITY OF NEW YORK and ANTHONY DiGIROLAMO
100 Church Street, 4th Floor
New York, New York 10007
File No.: 2008-001345

Gair Gair Conason Steigman & Mackauf
Attorneys for Plaintiff in Action No. 1

IRIS LEVITEN

80 Pine Street

New York, New York 10005

(212) 943-1090

Stein Riso Mantel, LLP

Attorneys for Defendant in Action No. 1

METRO AUTO LEASING, INC.

d/b/a **THE AUTO MALL**

405 Lexington Avenue

New York, New York 10174

(212) 599-1515

Eckert Seamans Cherin & Mellott, LLC

Attorneys for Defendant in Action No. 1

TOYOTA MOTOR SALES, USA, INC.

s/h/a **LEXUS A DIVISION OF TOYOTA**

MOTOR SALES, USA, INC.

10 Bank Street, Suite 1061

White Plains, New York 106060

(914) 949-2909

Richard Janowitz, Esq.

Attorney for Defendant in Action No. 2 and No. 3

ANTHONY DIGIROLAMO

229 7th Street, Suite 304

Garden City, New York 11530

(646) 522-4141

Index No. 107681/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

=====
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC. d/b/a
LEXUS OF WESTPORT and METRO AUTO LEASING, INC. d/b/a THE AUTOMALL

Defendants.

=====
NOTICE FOR DISCOVERY AND INSPECTION
=====

AHMUTY, DEMERS & McMANUS, ESQS.

Attorneys for Defendant

ESTREE, INC. d/b/a LEXUS OF WESTPORT

200 I.U. Willets Road

Albertson, New York 11507

(516) 294-5433

Our File No.: YCW0962N7 JAE

To:

Attorney(s) for

=====

Service of a copy of the within

is hereby admitted.

Dated:

Attorneys for

=====

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.

-----X

Index No.: 107681/07

**NOTICE FOR DISCOVERY
AND INSPECTION**

Action #1

Index No.: 117118/07

Action #2

Index No.: 102331/08

Action #3

1. Any and all testing and inspections conducted by Toyota Motor Sales USA, Inc. with regard to unintended acceleration by Toyota's Lexus vehicle from 2006 to the present.
2. Any letter generated by or received by Toyota Motor Sales, Inc., and any inspections of any or all new, used, or loaner fleet vehicle.
3. Any press report, including any press report issued by Toyota Motor Sales USA from 2006 to the present urging or requesting any auto maker, dealer, vehicle owner, independent service firm, or car wash industry to assure that the floor mats in Toyota vehicles are proper for the vehicle and/or correctly installed.
4. Any email, document, investigation, internal memorandum, reports, descriptions of any kind arising out of, or concerning unintended acceleration of the Lexus E350 vehicle from 2006 to the present.
5. Any statement issued by a Toyota Motor Sales USA, Inc. person, or any steps of any sort taken by Toyota Motor Sales USA, or any other Toyota entity, to alert the public, its dealerships, or any business entities to inspect any Toyota Automotive products, including but not limited to the Lexus ES 350, for any problem concerning floor mat and/or engagement of the accelerator by floor mats.
6. The safety advisory issued by Toyota involving driver's side floor mats and all documentation that such advisory was based on.
7. Any correspondence in any form between Toyota and the National Highway Traffic Safety Administration concerning floor mats in Toyota/Lexus cars from 2006 to the present.
8. The terms of the recall of approximately 3.8 million Toyota vehicles reports on or about September 30, 2009 for problems involving floor mats.
9. Any legal papers served on or by Toyota concerning any claim by any person involved in, or arising out of unintended acceleration of a Toyota/Lexus vehicle, including a 2007-2009 Lexus ES 350.


PLEASE TAKE FURTHER NOTICE, that the within demand is a continuing demand.

In the event that any of the above items are obtained after service of this demand, they are to be furnished to the undersigned pursuant to this demand. This specifically includes further documents concerning Toyota's investigation in problems concerning floor mats, the recall of same, and any investigation into this problem.

PLEASE TAKE FURTHER NOTICE, that upon your failure to produce the aforesaid documents at the time and place required in this notice, the defendants will oppose any attempts by the plaintiff to place this case on the trial calendar of this court and appropriate motions for relief will be made to this court.

PLEASE TAKE FURTHER NOTICE, that in lieu of producing the items herein, you may serve and submit to the undersigned true and conformed copies of the items demand herein within twenty (20) days after receipt of this notice.

Dated: Albertson, New York
October 16, 2009


PATRICK MURPHY, ESQ.
AHMUTY, DEMERS & McMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, NY 11507
(516) 294-5433
Our File No.: YCW 0962N7 JAE

TO:

Todd J. Strier, Esq.
Kelner & Kelner, Esqs.
Attorneys for the Plaintiff
MICHAEL DOUKAS
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

Connors & Connors, P.C.
Attorneys for Defendant in Action No. 2
IRIS LEVITEN
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Staten Island, New York 10310
(718) 442-1700

Michael Cardozo, Esq.
Attorneys for Defendants in Action No. 2
CITY OF NEW YORK and ANTHONY DIGIROLAMO
100 Church Street, 4th Floor
New York, New York 10007
File No.: 2008-001345

Gair Gair Conason Steigman & Mackauf
Attorneys for Plaintiff in Action No. 1

IRIS LEVITEN

80 Pine Street
New York, New York 10005
(212) 943-1090

Stein Riso Mantel, LLP

Attorneys for Defendant in Action No. 1

METRO AUTO LEASING, INC.

d/b/a **THE AUTO MALL**

405 Lexington Avenue
New York, New York 10174
(212) 599-1515

Eckert Seamans Cherin & Mellott, LLC

Attorneys for Defendant in Action No. 1

TOYOTA MOTOR SALES, USA, INC.

s/h/a **LEXUS A DIVISION OF TOYOTA
MOTOR SALES, USA, INC.**

10 Bank Street, Suite 1061
White Plains, New York 106060
(914) 949-2909

Richard Janowitz, Esq.

Attorney for Defendant in Action No. 2 and No. 3

ANTHONY DIGIROLAMO

229 7th Street, Suite 304
Garden City, New York 11530
(646) 522-4141

Index No. 107681/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

=====
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC. d/b/a
LEXUS OF WESTPORT and METRO AUTO LEASING, INC. d/b/a THE AUTOMALL

Defendants.
=====

NOTICE FOR DISCOVERY AND INSPECTION

=====
AHMUTY, DEMERS & McMANUS, ESQS.

Attorneys for Defendant

ESTREE, INC. d/b/a LEXUS OF WESTPORT

200 I.U. Willets Road

Albertson, New York 11507

(516) 294-5433

Our File No.: YCW 0962N7 JAE

=====
To:

Attorney(s) for ESTREE, INC. d/b/a LEXUS OF WESTPORT

=====
*Service of a copy of the within NOTICE FOR DISCOVERY AND INSPECTION is hereby
admitted.*

Dated: October 16, 2009
=====

T

TOYOTA DISCOVERY TRANSMITTAL

To: Alicia T. McAndrews	From: Steven R. Kramer
Case Name: Leviten/Doukas	Date: April 6, 2009

RECEIVED
 APR 06 2009
LEGAL DEPT.

NAME OF TOYOTA ENTITY SERVED: TMS

TYPE OF DISCOVERY

<input type="checkbox"/> INTERROGATORIES – SET NO. VERIFICATION NEEDED? Yes <input type="checkbox"/> No <input type="checkbox"/>	DATED:	DUE DATE:
--	---------------	------------------

<input checked="" type="checkbox"/> REQUEST FOR PRODUCTION - SET NO. I VERIFICATION NEEDED? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	DATED: 3/19/09	DUE DATE: 4/14/09
---	-----------------------	--------------------------

<input type="checkbox"/> REQUEST FOR ADMISSION – SET NO. VERIFICATION NEEDED? Yes <input type="checkbox"/> No <input type="checkbox"/>	DATED:	DUE DATE:
--	---------------	------------------

<input type="checkbox"/> RULE AUTOMATIC DISCLOSURE VERIFICATION NEEDED? Yes <input type="checkbox"/> No <input type="checkbox"/>	DATED:
	DUE DATE FOR WRITTEN RESPONSES:
	DUE DATE FOR DOCS:

<input type="checkbox"/> DEPOSITION NOTICE DOCS REQUESTED? Yes <input type="checkbox"/> No <input type="checkbox"/>	DATED:	DUE DATE FOR DOCS, IF ANY:
---	---------------	-----------------------------------

MOTION TO COMPEL:

OTHER:

COMMENTS: The demand does not seek any technical documents from TMS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.
-----X

Index no. 107681/07

Action #1

**COMBINED NOTICE
AND DEMANDS**

Index no. 117118/07

Action #2

LD no. 2008-001345

C O U N S E L O R S :

PLEASE TAKE NOTICE, that pursuant to the pertinent statutory and case law, you are required to serve upon the plaintiff MICHAEL DOUKAS within twenty (20) days of after the receipt of this Combined Notice and Demands, the following items:

NOTICE FOR DISCOVERY AND INSPECTION

1. True, legible and complete copies, if any, of all repair or maintenance records for the defendants' motor vehicles for a period of one (1) year prior to the date of this occurrence, including repairs or maintenance or replacement of braking and steering mechanisms and component parts, tires, suspension systems, turn signal lamps, electrical connections and indicators and component parts, steering linkage and component parts.

If no such records exist, then submit a sworn statement to that effect.

2. True, legible and complete copies, if any, of all repair or maintenance records for the defendants' motor vehicles for repairs performed as a result of this occurrence. *If no such records exist, then submit a sworn statement to that effect.*

3. True, legible and complete copy, if any, of all New York State Department of Motor Vehicles **Form MV-104**, in your possession or in the possession of your client(s), relating to this occurrence. *If no such reports exist, then submit a sworn statement to that effect.*

4. True, legible and complete copies, if any, of all written accident or incident reports relating to this occurrence prepared in the ordinary course of business. *If no such report exists, then submit a sworn statement to that effect.*

5. If the defendants' operators possessed a cellular phone(s) installed in the vehicles which were involved in the subject accident, or a cellular phone which was on the person of the defendants' or in the defendants' vehicles at the time of the accident, and said cellular phone(s), as applicable, was operational on the date of the accident, then demand is hereby made for the cellular phone billing records for the date of this occurrence. *If no such phone or records existed, then submit a sworn statement to that effect.*

DEMAND FOR PHOTOGRAPHS & VIDEOS

Pursuant to *Reese v. Long Island Railroad*, 46 Misc.2d 5, 46 AD 581; *Murdick v. Bush*, 254 NYS2d 54 and *Hayward v. Willard Mountain, Inc.*, 266 NYS2d 475, provide all photographs of the plaintiff, the scene of the occurrence, the instrumentality, or the condition or conditions described in the pleadings herein, ALL INSPECTIONS or bearing on any fact or on either the issue of liability or damages herein. *If no such photographs exist, please so state in reply.*

DEMAND FOR NAME(S) & ADDRESS(ES) OF ANY WITNESS(ES)

Pursuant to the decision in *Zayas v. Morales*, 45 AD2d 610, 360 NYS2d 279, kindly provide the name(s) and address(es) of any witness(es) to the occurrence or event that resulted in the instant litigation, or to any fact bearing on the issue of liability or damages herein, including, but not limited to, surveillance or observations made of the plaintiff at any time prior to the trial of this action. *If no such persons are known to defendants, please so state in reply.*

DEMAND FOR ANY STATEMENT(S)

Pursuant to CPLR §3101(e), all statements of plaintiff(s), signed or unsigned, recorded on tape electronically, magnetically or otherwise, made by any defendant in this action, taken by or on behalf of or in the possession of your client(s). *If no such statements or recordings exist, please so state in reply.*

DEMAND FOR ANY STATEMENT(S) FROM CO-DEFENDANTS

Full statement(s) signed or unsigned, recorded on tape electronically or electro-magnetically or otherwise, made by each defendant in this action, taken by or on behalf of or in the possession of your client(s). *If no such statements or recordings exist, please so state in reply.*

DEMAND FOR SURVEILLANCE INFORMATION

Pursuant to CPLR §3101(i), all films, photographs, video tapes or audio tapes, including transcripts or memoranda thereof, involving the plaintiff, or any other document, record or thing resulting from or relating to any surveillance conducted of the plaintiff herein, including out-takes, at any time up to the trial of this action by or on behalf of or in the possession of the defendants, their attorneys, insurers, agents, servants or employees, regardless of whether or not said defendants intend to use same upon the trial of this action. *If there was no such surveillance and there are no such records, please so state in reply.*

DEMAND FOR EXPERT WITNESS INFORMATION

- a. Pursuant to CPLR §3101(d), the name and address of each expert witness whom you expect to call at the trial of this action;
- b. The name and address of the company, firm or other legal entity by whom and/or with which each such expert is employed or associated;
- c. A detailed statement of the subject matter upon which each of such experts is expected to testify;
- d. The substance of the facts and opinions upon which each such expert is expected to testify;
- e. The full qualifications of each such expert witness including a copy of the resume and/or curriculum vitae;
- f. A summary of the grounds for each opinion as to which each of such experts is expected to testify;
- g. If any of such experts intends to rely upon, refer to or introduce into evidence any portion of any technical standard or learned treatise or journal or article, you are hereby required to identify the same, including, in the case of standards, the issuing body and the standard number, and in the case of treatises, the author, title, publication date, publisher and page reference within the treatise, and in the case of journals or articles, the title of the publication, volume number, page number, publication date and publisher.

DEMAND FOR INSURANCE AGREEMENTS

- a. Pursuant to CPLR §3101(f), the defendants shall provide true, legible and complete copies, if any, of each and every primary, contributing or excess insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment;
- b. True, legible and complete copies, if any, of each and every insurance

agreement in which the insurer is obligated to defend this action;

c. If there are no applicable contributing or excess insurance policies, the defendant(s) shall submit a personal affidavit to this effect.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR §3101(h), each and every one of the foregoing demands for disclosure are continuing and require prompt amendment or supplementation upon obtaining information that the response was incorrect or incomplete when made, or that the response, though correct and complete when made, no longer is correct and complete, or at any time that additional information becomes available to the defendants or their attorneys, or where there is a change in circumstances warranting further disclosure, all up to the time of trial.

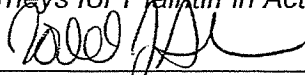
PLEASE TAKE FURTHER NOTICE, that upon the failure of the defendants or their attorneys, to comply fully with the demands contained herein and to make full and timely disclosure as required by law, objection will be made at time of trial or prior thereto to any attempt to introduce material not previously disclosed, and appropriate sanctions will be sought in accordance with applicable provisions of law.

PLEASE TAKE FURTHER NOTICE, that you are required to identify each document being withheld from disclosure in the manner set forth in CPLR §3122(b).

Dated: New York, New York:
March 19, 2009

Yours, etc.

KELNER & KELNER, ESQS.
Attorneys for Plaintiff in Action #2

By: 

Todd J. Strier
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

TO: **MICHAEL A. CARDOZO, ESQ.**
Corporation Counsel
Attorney for Defendants in Action #2
ANTHONY DIGIROLAMO, NEW YORK
CITY DEPARTMENT OF SANITATION &
THE CITY OF NEW YORK
100 Church Street, 4th Floor
New York, New York 10007
(212) 788-0303
LD no. 2008-001345

CONNORS & CONNORS, P.C.
Attorneys for Defendant Iris Leviten Action #2
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700

GAIR GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff in Action #1
IRIS LEVITEN
80 Pine Street
New York, New York 10005
(212) 943-1090

AHMUTY, DEMERS & McMANUS
Attorneys for Defendant in Actions #1 & 2
ESTREE, INC., d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, New York 11507
(516) 294-5433
File No. YCW0962N7JAE

STEIN RISO MANTEL, LLP
Attorneys for Defendant in Actions #1 & 2
METRO AUTO LEASING, INC., d/b/a
THE AUTO MALL
405 Lexington Avenue
New York, New York 10174
(212) 599-1515

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant in Actions #1 & 2
TOYOTA MOTOR SALES, USA INC.
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, USA, INC.
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909

Index no. 117118/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

Index no. 107681/07

Action #1

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.

Index no. 117118/07

Action #2

LD no. 2008-001345

COMBINED NOTICE AND DEMANDS

KELNER & KELNER, ESQS.
Attorney for Plaintiff in Action #2
Office and Post Office Address, Telephone
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

TOYOTA DISCOVERY TRANSMITTAL

To: Alicia T. McAndrews

From: Steven R. Kramer

Case Name: Leviten

Date: November 12, 2008

RECEIVED
 NOV 12 2008
 LEGAL DEPT.

NAME OF TOYOTA ENTITY SERVED: TMS

TYPE OF DISCOVERY

INTERROGATORIES – SET NO.
 VERIFICATION NEEDED? Yes No

DATED:

DUE DATE:

REQUEST FOR PRODUCTION - SET NO. I
 VERIFICATION NEEDED? Yes No

DATED: 11/06/08

DUE DATE: 12/2/08

REQUEST FOR ADMISSION – SET NO.
 VERIFICATION NEEDED? Yes No

DATED:

DUE DATE:

RULE AUTOMATIC DISCLOSURE
 VERIFICATION NEEDED? Yes No

DATED:

DUE DATE FOR
WRITTEN RESPONSES:

DUE DATE FOR DOCS:

DEPOSITION NOTICE
 DOCS REQUESTED? Yes No

DATED:

DUE DATE FOR DOCS,
IF ANY:

MOTION TO COMPEL:

OTHER:

COMMENTS: The demand does not seek any technical documents from TMS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants..

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.

Index No.: 108013/07

**NOTICE FOR DISCOVERY
AND INSPECTION**

Action #1

Index No.: 117118/07

Action #2


Index No.: 102331/08

Action #3

PLEASE TAKE NOTICE, that the undersigned hereby demands that all parties produce at the office of the undersigned within twenty days (20) hereof at 9:30 a.m. the following:


1. Copies of any accident report or incident report with regard to this matter.
2. Copies of any photographs depicting the vehicles involved in the accident while at the accident scene or at any time thereafter.
3. Copies of any photographs depicting the accident scene.
4. Copies of any reports regarding investigation into the accident.
5. Copies of any transcripts from DMV hearings with regard to the accident.
6. Copies of any City reports, investigations, or similar documents with regard to the accident.

Dated: Albertson, New York
November 6, 2008



THOMAS G. CHOJNACKI, ESQ.
AHMUTY, DEMERS & McMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, NY 11507
(516) 294-5433
Our File No.: YCW 0962N7 JAE

TO:


Diana M.A. Carnemolla, Esq.
Gair, Gair, Conason,
Steigman & Mackauf
Attorneys for Plaintiff
IRIS LEVITEN (Action #1)
80 Pine Street, 34th Floor
New York, New York 10005
T: (212) 943-1090
F: (212) 425-7513

Steven R. Kramer, Esq.
Eckert Seamans Cherin & Mellott
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.
s/h/a "LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, U.S.A., INC."
10 Bank Street, Suite 1061
White Plains, New York 10606
T: (914) 949-2909
F: (914) 949-5424

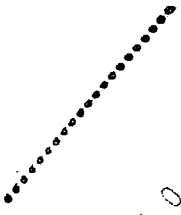
Stein Rison & Mantel, LLP
Attorneys for Defendant
METRO AUTO LEASING, INC.
d/b/a **THE AUTOMALL** (*Action #1*)
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
T: (212) 599-1515
F: (212) 599-6155

Connors & Connors, P.C.
Attorneys for Defendant
ESTREE, INC. d/b/a
LEXUS OF WESTPORT (*Action #1*)
and **IRIS LEVITEN** (*Action #3*)
766 Castleton Avenue
Staten Island, New York 10310
T: (718) 442-1700
F: (718) 442-1717

Kelner & Kelner, Esqs.
Attorneys for Plaintiff
MICHAEL DOUKAS (*Action #2*)
140 Broadway, 37th Floor
New York, New York 10005
T: (212) 425-0700
F: (212) 425-0007

Michael Cardozo, Esq.
Corporation Counsel
Attorneys for Defendants
ANTHONY DIGIROLOMO,
NYC DEPT OF SANITATION and
THE CITY OF NEW YORK (*Action #2*)
100 Church Street
New York, New York 10007
T: (212) 788-0303
F: (212) 788-0367

Richard Janowitz, Esq.
Attorney for Defendant
ANTHONY DIGIROLOMO (*Action #3*)
229 Seventh Avenue, Suite 304
Garden City, New York 11530



NOV 10 2009

Received

PINNACLE PROTECTIVE SERVICES, INC.
PRIVATE INVESTIGATIONS & RESEARCH

9 Ilana Lane
New City, New York 10956
USA

Phone 877.THE.NYPI
Fax 845.362.3997

LICENSED IN
N.Y. & NJ

AARONSON RAPPAPORT FEINSTEIN DEUTSCH
757 THIRD AVENUE
NEW YORK, NY 10017
ATTN: LeVern Ward

Re [REDACTED] v. Toyota
File # 5300.003
TMS 2007-03-420039

July 2, 2007

ASSIGNMENT: DMV DRIVERS HISTORY & VEHICLE OWNER

DMV - DRIVER HISTORY

TODAY'S DATE: 7/02/2007 TIME: 15:04:52

*RECORD EXPANSION FOR: [REDACTED]

[REDACTED] CLIENT ID#: [REDACTED]
[REDACTED] DOB: [REDACTED] SEX: F
[REDACTED] HEIGHT: 5-0 EYE COLOR: BROWN
ALBERTSON NY [REDACTED] COUNTY: NASS
MI #: [REDACTED]

LICENSE CLASS: *D* STATUS: VALID EXPIRATION: 07/22/2011

***** ACTIVITY *****

ACCIDENT PREVENTION COURSE COMPLETED ON: 02/25/2004
POINT REDUCTION ELIGIBLE FOR VIOLATIONS OCCURRING FROM 08/25/2002 -
02/25/2004

N/A - NON 19-A DRIVER OR COURSE PRIOR TO 01/01/94
ACCIDENT PREVENTION COURSE COMPLETED ON: 02/26/2004
POINT REDUCTION ELIGIBLE FOR VIOLATIONS OCCURRING FROM 08/26/2002 -
02/26/2004

N/A - NON 19-A DRIVER OR COURSE PRIOR TO 01/01/94

***** ACCIDENTS *****

ACCIDENT DATE: 02/18/2007 INJURY & PROP DAM COUNTY: NASS CASE #: 32-120165
POLICE REPORT FILED

ACCIDENT DATE: 02/22/2005 PROPERTY DAMAGE COUNTY: NASS CASE #: 31-430686
MOTORIST REPORT FILED

ACCIDENT DATE: 06/16/2004 PROPERTY DAMAGE COUNTY: NASS CASE #: 31-232473
MOTORIST REPORT FILED

*** END OF RECORD ***

Looks like she may still own it. She surrendered the plates in May 07, after the 02/18/2007 accident. A *REBUILT SALVAGED* Title was issued to her on 06/14/07. She has not re-registered it in NY. She may have sold it out of state, but I've not found it yet. SEARCHING

DMV VEHICLE OWNERSHIP

*** REGISTRATION RECORD EXPANSION *** TODAY'S DATE IS 07/02/07
PLATE: [REDACTED] TYPE: PASSENGER REGISTRANT INFORMATION:
VIN#: JTHBJ46G272 [REDACTED] DOB: [REDACTED]
07 LEXUS TAN 4DSD WEIGHT:003481 SEX: F
FUEL: GAS CYL: 06 [REDACTED] COUNTY: NASS
EXPIRES: 01/23/09 VALID: 01/24/07 ALBERTSON NY ZIP: [REDACTED]
INS: MI#: [REDACTED]

----- PREVIOUS VEHICLES/PLATES/INSURANCE INFO ASSOCIATED WITH THIS RECORD -----

VOLUNTARY PLATE SURRENDER ON: 05/07/07

VOLUNTARY PLATE SURRENDER ON: 05/03/07

----- REGISTRATION

ACTIVITIES -----

REG SUSPENDED ON: 05/03/07 FOR 008 DAYS - REASON: INSURANCE LAPSE
COMPLIANCE DATE: 05/03/07 CLEARED ON: 05/12/07

REG SUSPENDED ON: 05/03/07 FOR 000 DAYS - REASON: INSURANCE LAPSE
COMPLIANCE DATE: 06/09/07 CLEARED ON: 05/03/07

VEHICLE IDENTIFICATION NUMBER RECORD EXPANSION TODAY'S DATE IS 07/02/07

VIN#: JTHBJ46G272 [REDACTED] *REBUILT SALVAGED* CURRENT OWNER
07 LEXUS TAN 4DSD WGT: 003481 [REDACTED]
000031 ACTUAL MILEAGE
FUEL: GAS CYL: 06

[REDACTED] ALBERTSON NY [REDACTED]

ORIG DOC ISSUED: 06/14/07 LAST DOC ISSUED: 06/14/07

***** LIENS

JPMORGAN;CHASE DATE LIEN PROCESSED: 01/23/07
BANK;NA
1111 POLARIS PKWY COLUMBUS OH 43240

***** PRIOR OWNERS

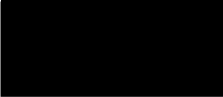
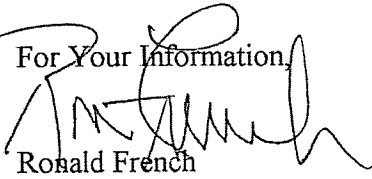


PLATE: [REDACTED] TYPE: PASSENGER
ALBERTSON NY [REDACTED]

For Your Information,

Ronald French

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (6/04)
DMV COPY

Local Codes
-3-818-07

AMENDED REPORT

19
19

1	Accident Date Month: 2, Day: 18, Year: 2007	Day of Week Su	Military Time 1450	No. of Vehicles 2	No. Injured 3	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	20 18
---	--	-------------------	-----------------------	----------------------	------------------	-----------------	--	-------------------------------------	--	----------

2	VEHICLE 1 - Driver License ID Number Driver Name - exactly as printed on license Address (Include Number & Street) City or Town: ALBERTSON, State: NY, Zip Code: [redacted]	State of Lic. NY	VEHICLE 2 - Driver License ID Number Driver Name - exactly as printed on license Address (Include Number & Street) City or Town: HICKSVILLE, State: NY, Zip Code: [redacted]	State of Lic. NY	21
---	--	------------------	---	------------------	----

3	Date of Birth, Sex, Unlicensed, No. of Occupants, Public Property Damaged	Date of Birth, Sex, Unlicensed, No. of Occupants, Public Property Damaged	22
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4	Name - exactly as printed on registration Address (Include Number & Street) City or Town, State, Zip Code	Name - exactly as printed on registration Address (Include Number & Street) City or Town, State, Zip Code	23 24
---	---	---	----------

5	Ticket/Arrest Number(s) Violation Section(s)	Ticket/Arrest Number(s) Violation Section(s)	25
---	---	---	----

6	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.	Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.	25 26
---	--	--	--	----------

7	VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact: 3, 3 Box 2 - Most Damage: 4, 5, 2	VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact: 1, 2 Box 2 - Most Damage: 12, 12	VEHICLE DAMAGE CODING: 1-13. SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER	ACCIDENT DIAGRAM 9. Cost of repairs to any one vehicle will be more than \$1000. <input type="checkbox"/> Unknown/Unable to Determine <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	27 28
---	---	--	--	---	----------

8	Reference Marker	Coordinates (if available) Latitude/Northing: Longitude/Easting:	Place Where Accident Occurred: County MASSACHUSETTS, City/Village/Town of NORTH HAMPSTEAD Road on which accident occurred GLEN COVE RD CARLE PLACE at 1) intersecting street NORTHEN STATE EAST BOUND RAMP or 2) _____ of _____ (Milepost, Nearest intersecting Route Number or Street Name)	29
---	------------------	--	---	----

ALL INVOLVED	8	9	10	11	12	13	14	15	16	17	BY	TO	18	Name of all involved	Date of Death Only
A	1	1	A	1	61	F	11	9	6	9999		2905		[redacted]	
B	2	1	4	1	57	M	12	12	6	9999		2905		[redacted]	
C	2	3	4	1	46	M	12	12	6	9999		2905		[redacted]	
D															
E															
F															

Officer's Rank and Signature Print Name in Full: PO KELLERMAN	Badge/ID No.: 250	NCIC No.: 00220	Precinct/Post Troop/Zone: 3	Station/Beat Sector: 313	Reviewing Officer: [Signature]	Date/Time Reviewed: 2/22/07 0947
--	-------------------	-----------------	-----------------------------	--------------------------	--------------------------------	----------------------------------

- PEDESTRIAN/BICYCLIST/OTHER PEDESTRIAN LOCATION**
1. Pedestrian/Bicyclist/Other Pedestrian at Intersection
 2. Pedestrian/Bicyclist/Other Pedestrian Not at Intersection
- PEDESTRIAN/BICYCLIST/OTHER PEDESTRIAN ACTION**
1. Crossing, With Signal
 2. Crossing, Against Signal
 3. Crossing, No Signal, Marked Crosswalk
 4. Crossing, No Signal or Crosswalk
 5. Riding/Walking/Skating Along Highway With Traffic
 6. Riding/Walking/Skating Along Highway Against Traffic
 7. Emerging from In Front of/Behind Parked Vehicle
 8. Going to/From Stopped School Bus
 9. Getting On/Off Vehicle Other Than School Bus
 11. Working in Roadway
 12. Playing in Roadway
 13. Other Actions in Roadway*
 14. Not in Roadway (Indicate)*

- TRAFFIC CONTROL**
1. None
 2. Traffic Signal
 3. Stop Sign
 4. Flashing Light
 5. Yield Sign
 6. Officer/Guard
 7. No Passing Zone
 8. RR Crossing Sign
 9. RR Crossing Flashing Light
 10. RR Crossing Gates
 11. Stopped School Bus-Red Lights Flashing
 12. Construction Work Area
 13. Maintenance Work Area
 14. Utility Work Area
 15. Police/Fire Emergency
 16. School Zone
 20. Other*

- LIGHT CONDITIONS**
1. Daylight
 2. Dawn
 3. Dusk
 4. Dark-Road Lighted
 5. Dark-Road Unlighted

- ROADWAY CHARACTER**
1. Straight and Level
 2. Straight and Grade
 3. Straight at Hillcrest
 4. Curve and Level
 5. Curve and Grade
 6. Curve at Hillcrest

- ROADWAY SURFACE CONDITION**
1. Dry
 2. Wet
 3. Muddy
 4. Snow/Ice
 5. Slush
 6. Flooded
 0. Other*

- WEATHER**
1. Clear
 2. Cloudy
 3. Rain
 4. Snow
 5. Sleet/Hail/Freezing Rain
 6. Fog/Smog/Smoke
 0. Other*

- WHICH VEHICLE OCCUPIED**
1. Vehicle No. 1
 2. Vehicle No. 2
 - A. All-Terrain Vehicle (ATV)
 - B. Bicyclist
 - C. In-Line Skater
 - O. Other*
 - P. Pedestrian
 - S. Snowmobile

- POSITION IN/ON VEHICLE**
1. Driver
 - 2-7. Passengers
 8. Riding/Hanging on Outside

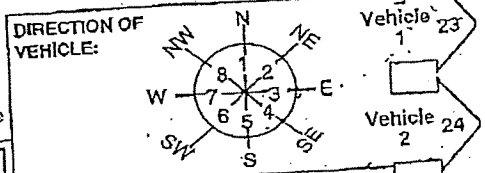
- SAFETY EQUIPMENT USED**
1. None
 2. Lap Belt
 3. Harness
 4. Lap Belt/Harness
 5. Child Restraint Only
 6. Helmet (Motorcycle Only)
 7. Air Bag Deployed
 8. Air Bag Deployed/Lap Belt
 9. Air Bag Deployed/Harness
 - A. Air Bag Deployed/Lap Belt/Harness
 - B. Air Bag Deployed/Child Restraint

EJECTION FROM VEHICLE

1. Not Ejected
2. Partially Ejected
3. Ejected

AGE	SEX
M/F	

- APPARENT CONTRIBUTING FACTORS**
- Human**
2. Alcohol Involvement
 3. Backing Unsafely
 4. Driver Inattention/Distracted*
 5. Driver Inexperience*
 6. Drugs (Illegal)
 7. Failure to Yield Right-of-Way
 21. Fatigued/Drowsy
 8. Fell Asleep
 9. Following Too Closely
 10. Illness
 11. Lost Consciousness
 12. Passenger Distraction
 13. Passing or Lane Usage Improper
 14. Pedestrian/Bicyclist/Other Pedestrian Error/Confusion
 15. Physical Disability
 16. Prescription Medication
 17. Traffic Control Disregarded
 18. Turning Improperly
 19. Unsafe Speed
 20. Unsafe Lane Changing
 22. Cell Phone (hand-held)
 23. Cell Phone (hands-free)
 24. Other Electronic Device*
 25. Outside Car Distraction*
 26. Reaction to Other Uninvolved Vehicle
 28. Aggressive Driving/Road Rage
- Vehicular**
41. Accelerator Defective
 42. Brakes Defective
 43. Headlights Defective
 44. Other Lighting Defects
 45. Oversized Vehicle
 46. Steering Failure
 47. Tire Failure/Inadequate
 48. Tow Hitch Defective
 49. Windshield/Runaway Vehicle
 50. Driverless/Runaway Vehicle
 60. Other Vehicular-
- Environmental**
61. Animal's Action
 62. Glare
 63. Lane Marking Improper/Inadequate
 64. Obstruction/Debris
 65. Pavement Defective
 66. Pavement Slippery
 67. Shoulders Defective/Improper
 68. Traffic Control Device Improper/Non-Working
 69. View Obstructed/Limited



**New York State
Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (7/01)**

*EXPLAIN IN ACCIDENT DESCRIPTION
If a question DOES NOT APPLY, enter a dash (-).
If an answer is UNKNOWN, enter an "X".

- LOCATION OF MOST SEVERE PHYSICAL COMPLAINT**
1. Head
 2. Face
 3. Eye
 4. Neck
 5. Chest
 6. Back
 7. Shoulder-Upper Arm
 8. Elbow-Lower Arm-Hand
 9. Abdomen - Pelvis
 10. Hip-Upper Leg
 11. Knee-Lower Leg-Foot
 12. Entire Body

- TYPE OF PHYSICAL COMPLAINT**
1. Amputation
 2. Concussion
 3. Internal
 4. Minor Bleeding
 5. Severe Bleeding
 6. Minor Burn
 7. Moderate Burn
 8. Severe Burn
 9. Fracture - Dislocation
 10. Contusion - Bruise
 11. Abrasion
 12. Complaint of Pain
 13. Nona Visible
 14. Whiplash

- VICTIM'S PHYSICAL AND EMOTIONAL STATUS**
1. Apparent Death
 2. Unconscious
 3. Semiconscious
 4. Incoherent
 5. Shock
 6. Conscious

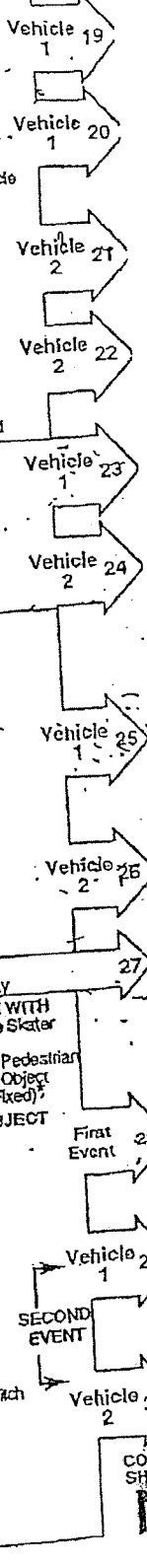
- PRE-ACCIDENT VEHICLE ACTION**
1. Going Straight Ahead
 2. Making Right Turn
 16. Making Right Turn on Red
 3. Making Left Turn
 17. Making Left Turn on Red
 4. Making U Turn
 5. Starting from Parking
 6. Starting in Traffic
 7. Slowing or Stopping
 8. Stopped in Traffic
 9. Entering Parked Position
 10. Parked
 11. Avoiding Object in Roadway
 12. Changing Lanes
 13. Passing
 14. Merging
 15. Backing
 18. Police Pursuit
 20. Other*

- LOCATION OF FIRST EVENT**
1. On Roadway
 2. Off Roadway

- TYPE OF ACCIDENT - COLLISION WITH**
1. Other Motor Vehicle
 2. Pedestrian
 3. Bicyclist
 4. Animal
 5. Railroad Train
 6. In-Line Skater
 7. Deer
 8. Other Pedestrian
 10. Other Object (Not Fixed)*

- COLLISION WITH FIXED OBJECT**
11. Light Support/Utility Pole
 12. Guide Rail-Not At End
 25. Guide Rail-End
 13. Crash Cushion
 14. Sign Post
 15. Tree
 16. Building/Wall
 17. Curbing
 18. Fence
 19. Bridge Structure
 20. Culvert/Head Wall
 21. Median-Not At End
 26. Median-End
 27. Barrier
 22. Snow Embankment
 23. Earth Embankment/Rock Cut/Ditch
 24. Fire Hydrant
 30. Other Fixed Object*

- NO COLLISION**
31. Overturned
 32. Fire/Explosion
 33. Submersion
 34. Ran Off Roadway Only
 40. Other*



COVER SHEET
N

CASE: LEVITEN, IRIS
SET: A
DESCRIPTION: ACCIDENT SITE PHOTOS
PROVIDED BY PLAINTIFF'S COUNSEL
PHOTOS: 8

PHOTO LOG

Case Title: Leviten vs. Toyota
Loss Date: 02/18/07
L/Location: Glen Cove Road / Northern State P'kwy
Nassau County, NY
Log Prep: June 24th, 2007

PHOTO #1

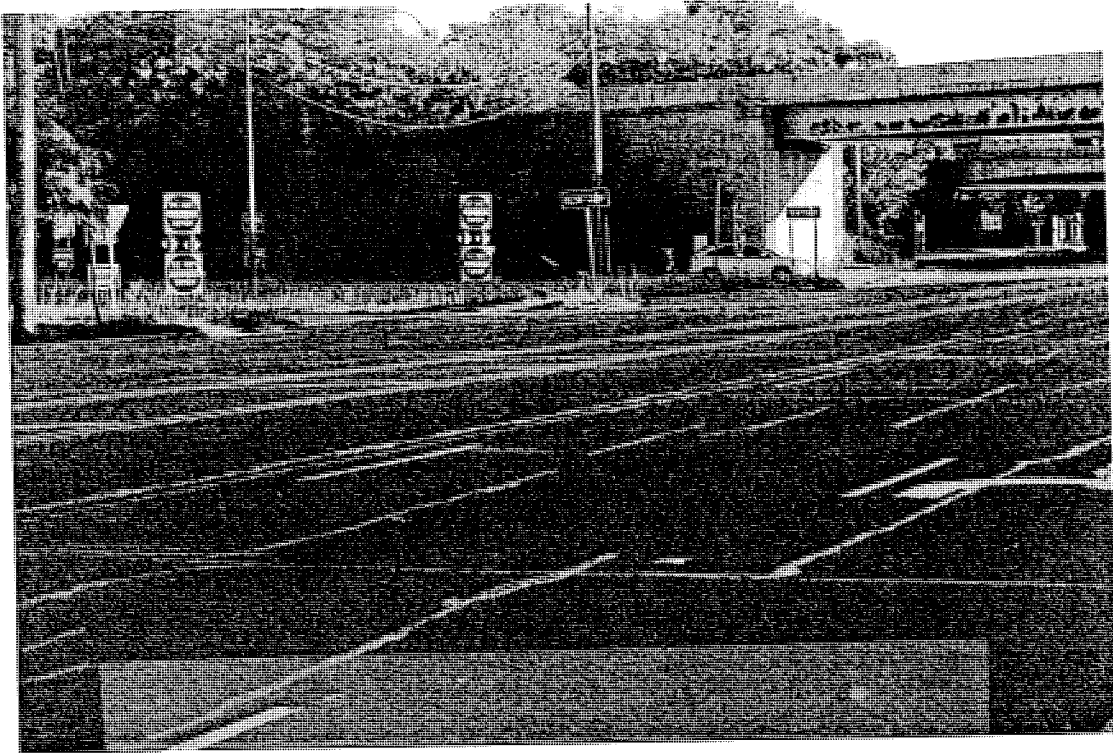


Camera is positioned on Glen Cove Road and is facing north. Claimant's vehicle was exiting Northern State Parkway on to Glen Cove Road south from exit ramp shown at left of photo (see red arrow).

PHOTO LOG

Case Title: Leviten vs. Toyota
Loss Date: 02/18/07
L/Location: Glen Cove Road / Northern State P'kwy
Nassau County, NY
Log Prep: June 24th, 2007

PHOTO #2



Similar to Photo #1. Camera is still positioned on Glen Cove Road and is now facing at a northwest angle. Camera position is the approximate position of the sanitation vehicle at the time of collision..

PHOTO LOG

Case Title: Leviten vs. Toyota
Loss Date: 02/18/07
L/Location: Glen Cove Road / Northern State P'kwy
Nassau County, NY
Log Prep: June 24th, 2007

PHOTO #3



Camera is positioned on Glen Cove Road and is now facing at west. Ramp shown is the exit ramp form Northern State Parkway on to Glen Cove Road. Claimant's vehicle was traveling toward camera immediately prior to becoming involved in the subject accident after entering on to Glen Cove Road.

PHOTO LOG

Case Title: Leviten vs. Toyota
Loss Date: 02/18/07
L/Location: Glen Cove Road / Northern State P'kwy
Nassau County, NY
Log Prep: June 24th, 2007

PHOTO #4

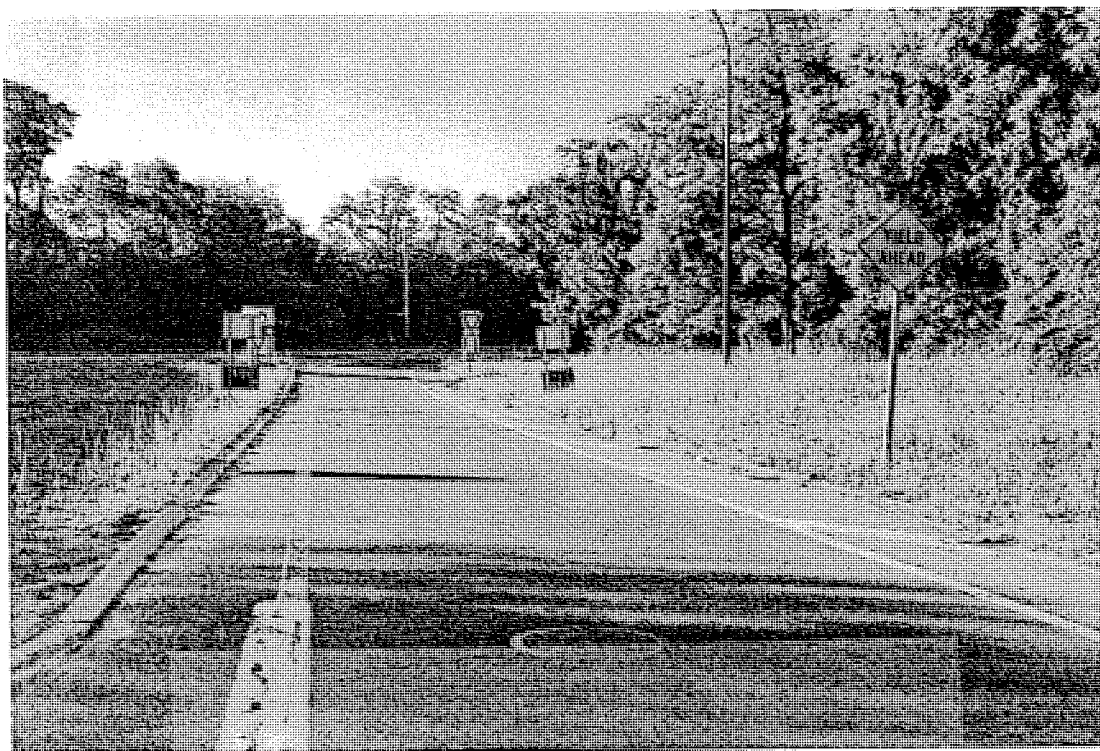


Closer angle view of Photo #3. Camera is still positioned on Glen Cove Road and is facing at west. Ramp shown is the exit ramp form Northern State Parkway on to Glen Cove Road. Claimant's vehicle was traveling toward camera immediately prior to becoming involved in the subject accident after entering on to Glen Cove Road.

PHOTO LOG

Case Title: Leviten vs. Toyota
Loss Date: 02/18/07
L/Location: Glen Cove Road / Northern State P'kwy
Nassau County, NY
Log Prep: June 24th, 2007

PHOTO #5



Camera now facing east and is positioned on Northern State Parkway exit ramp leading to Glen Cove Road. Claimant's vehicle was traveling away from camera immediately prior to entering on to Glen Cove Road and becoming involved in the subject accident.

PHOTO LOG

Case Title: Leviten vs. Toyota
Loss Date: 02/18/07
L/Location: Glen Cove Road / Northern State P'kwy
Nassau County, NY
Log Prep: June 24th, 2007

PHOTO #6



Closer angle view of Photo #5. Glen Cove Road is cross roadway that is shown. Vehicles using this exit ramp must merge on to Glen Cove Road southbound, after yielding the right of way to traffic coming from left..

PHOTO LOG

Case Title: Leviten vs. Toyota
Loss Date: 02/18/07
L/Location: Glen Cove Road / Northern State P'kwy
Nassau County, NY
Log Prep: June 24th, 2007

PHOTO #7



Camera is now positioned on Glen Cove Road and is now facing south. Police Report Witness Andre Beadle witnessed the subject accident from this position. Claimant's vehicle entered on to Glen Cove Road from eastbound Northern State Parkway exit ramp shown at the right of photo (at one way sign).

PHOTO LOG

Case Title: Leviten vs. Toyota
Loss Date: 02/18/07
L/Location: Glen Cove Road / Northern State P'kwy
Nassau County, NY
Log Prep: June 24th, 2007

PHOTO #8



Similar to Photo #7. Camera is positioned on Glen Cove Road facing south. Police Report Witness Andre Beadle witnessed the subject accident from this position. Claimant's vehicle entered on to Glen Cove Road from eastbound Northern State Parkway exit ramp shown at the right of photo (at one way sign).

June 25th, 2007
Leviten vs. Toyota

POLICE INTERVIEW:

P.O. Kellerman
Shield # 250
3rd Precinct - N.C.P.D.
516 573-6300

The above named police officer prepared subject police accident report. We attempted to reach Officer Kellerman, to conduct his interview, but he was presently on vacation. Officer Kellerman is expected to return to duty after July 4th, 2007, at which time we will make a follow up attempt to reach him and conduct his interview.

Note: Nassau County Police Officers will often times refuse to submit to informal interviews in connection with their official duties.

WITNESS INTERVIEW:

A search of public proprietary and governmental data bases was conducted with the following results:

ANDREW BEADLE
135 POST AVE APT 6C
WESTBURY, NY 11590-3147

On 6/22/07 Inv Labadie visited 135 Post Avenue, Westbury, New York , apt 6c There was no answer at apartment door and a message was left.

:

Andrew Beadle
516 375-0223
516 322-2171

Mr. Beadle is listed as a witness on the subject police accident report. On 06/23/07, the undersigned received a telephone call from Mr. Beadle to conduct his interview. The following is a summary of the pertinent information that Mr. Beadle had to offer.

Mr. Beadle claims that just prior to the occurrence of the subject accident he was driving in his personal vehicle, traveling southbound along Glen Cove Road. The overhead signal for north / south Glen Cove Road traffic at this time was green. At a point when his vehicle was positioned just a few feet north of the Northern State Parkway eastbound exit ramp (located to his right) he observed the claimant's vehicle traveling down the exit ramp. At the same time, he also observed a sanitation truck traveling north on Glen Cove Road.

WITNESS INTERVIEW (continued):

Mr. Beadle described the claimant's vehicle as traveling at what appeared to be a high rate of speed, as the vehicle proceeded along the down hill exit ramp. He further described the claimant's vehicle as appearing to be partially airborne at one point, while not making any apparent attempt to stop or slow down before entering on to Glen Cove Road.

Mr. Beadle described the claimant's vehicle as having passed directly in front of his vehicle as it proceeded to enter the southbound Glen Cove Road roadway, while continuing to travel at a fast rate of speed. Once on Glen Cove Road, the claimant's vehicle began moving to the left, toward the center of the roadway, eventually crossing over the center dividing lines into the lanes of oncoming traffic. The vehicle eventually collided with the sanitation truck that had been traveling in the opposite direction (northbound) on Glen Cove Road.

Of particular importance, Mr. Beadle noted that shortly after colliding with the sanitation truck, the subject Lexus caught fire. Noticing that the female driver of the Lexus was trapped inside her vehicle Mr. Beadle, along with some other Good Samaritans who had stopped to help, pulled her out of the vehicle bringing her to safety at the side of the roadway.

The female driver, who was conscious at the time, appeared to have sustained some serious injuries to her lower extremities. She was particularly concerned that her handbag that was still inside the vehicle. Mr. Beadle saw to it that the handbag was retrieved from the vehicle and given to the claimant. This entire episode took place prior to the arrival of the police.

Mr. Beadle noted that at no time during his brief dealings with the female driver (Claimant) did she make any comment or provide any information with regard to what caused her to loose control of her vehicle and become involved in the subject accident.

Mr. Beadle lastly noted that a short time after the accident he received a call from an attorney (or possible investigator) who claimed to be calling him on behalf of the female driving the Lexus. During his telephone interview, the attorney with whom he spoke advised him that the female lost control of her vehicle as the result of a brake failure. Mr. Beadle could not recall if the interviewing attorney recorded his statement or merely informally interviewed him.

Note: Mr. Beadle advised that he would consider providing a signed or recorded statement (if requested) to document the information provided via his informal interview. Please **advise** if attempts should be made to obtain Mr. Beadle's signed or recorded statement.

Page #4 of 4
June 25th, 2007
Leviten vs. Toyota

PENDING INVESTIGATION:

- Interview P.O. Kellerman – N.C.P.D.
- Obtain S/S from NPW Andrew Beadle – if required.

ENCLOSURES:

- Copy of Police Accident Report (2 pages, inc. cover page).
- Accident Scene Photo Log (8 photos)

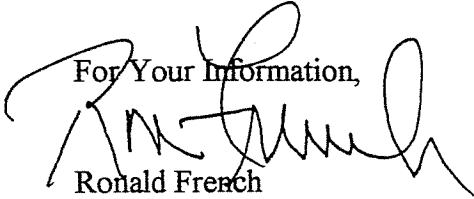
For Your Information,

Ronald French

PHOTO LOG

Case Title: Leviten vs. Toyota
Loss Date: 02/18/07
L/Location: Glen Cove Road / Northern State P'kwy
Nassau County, NY
Log Prep: June 24th, 2007

PHOTO #1

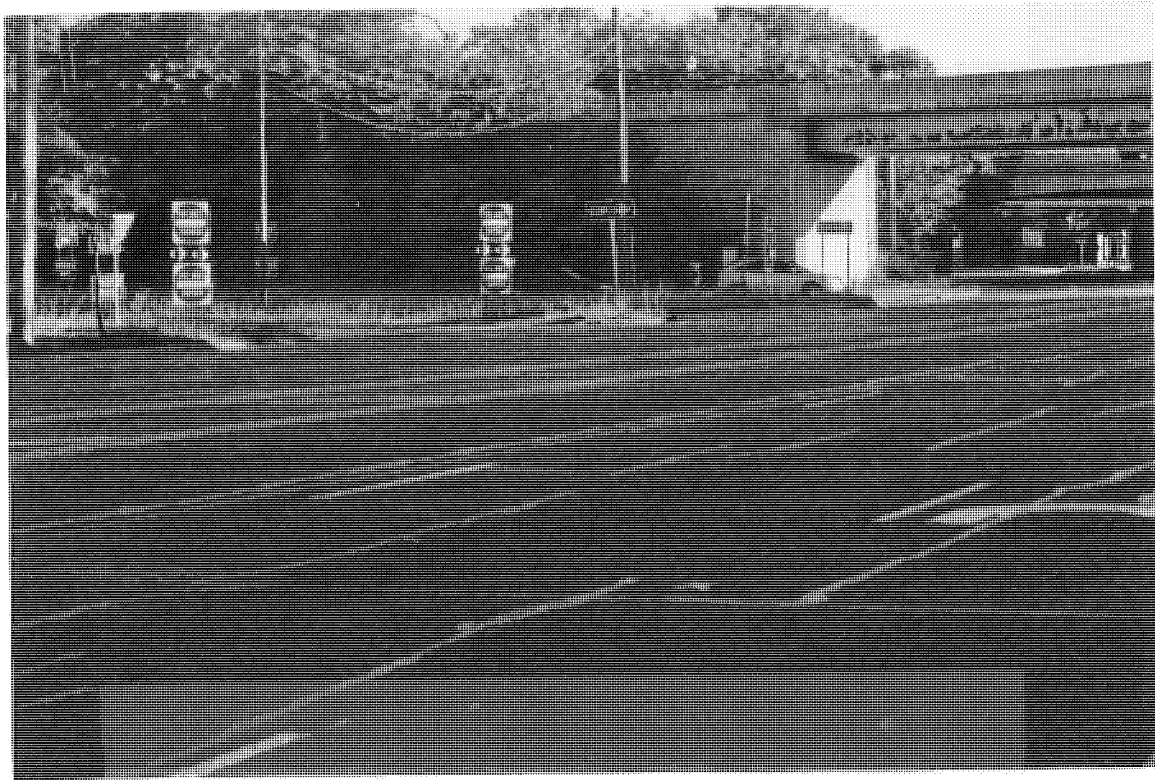


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PHOTO LOG

Case Title: Leviten vs. Toyota
Loss Date: 02/18/07
L/Location: Glen Cove Road / Northern State P'kwy
Nassau County, NY
Log Prep: June 24th, 2007

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PHOTO #3

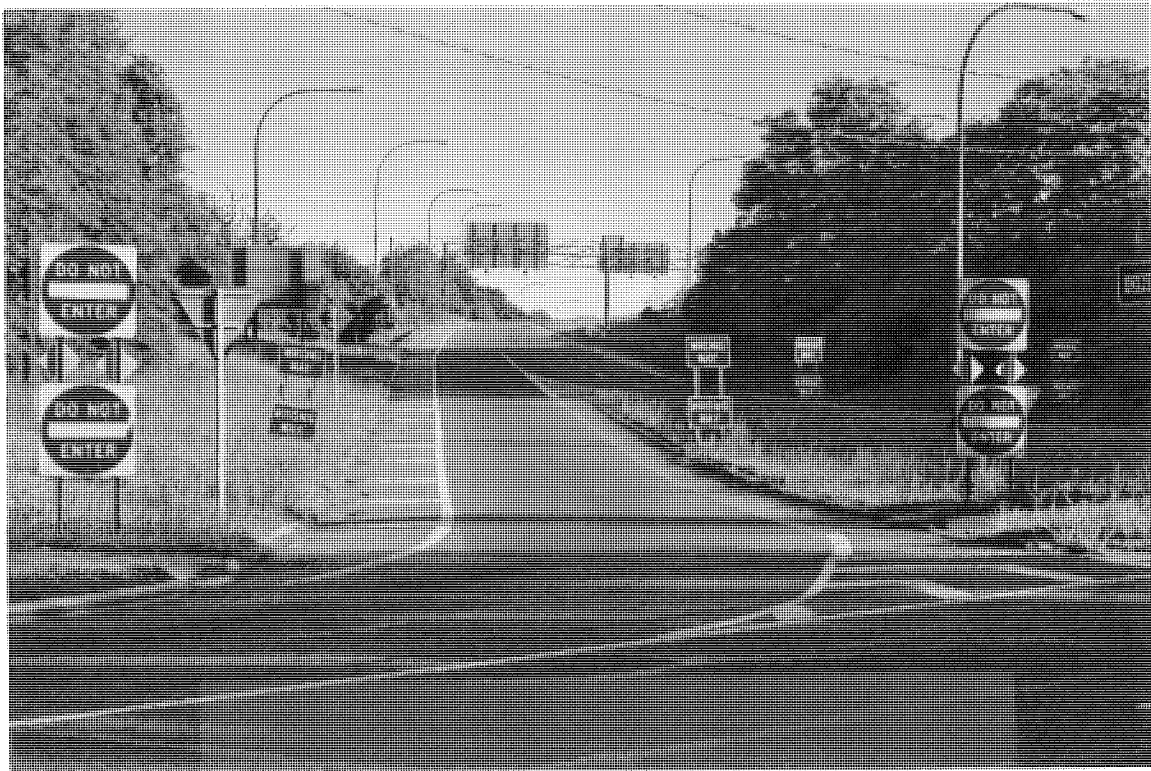


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Nassau County, NY
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PHOTO #4



Closer angle view of Photo #3. Camera is still positioned on Glen Cove Road and is facing at west. Ramp shown is the exit ramp form Northern State Parkway on to Glen Cove Road. Claimant's vehicle was traveling toward camera immediately prior to becoming involved in the subject accident after entering on to Glen Cove Road.

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PHOTO #5



Camera now facing east and is positioned on Northern State Parkway exit ramp leading to Glen Cove Road. Claimant's vehicle was traveling away from camera immediately prior to entering on to Glen Cove Road and becoming involved in the subject accident.

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PHOTO #6



Closer angle view of Photo #5. Glen Cove Road is cross roadway that is shown. Vehicles using this exit ramp must merge on to Glen Cove Road southbound, after yielding the right of way to traffic coming from left..

PHOTO LOG

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Log Prep: June 24th, 2007

PHOTO #7

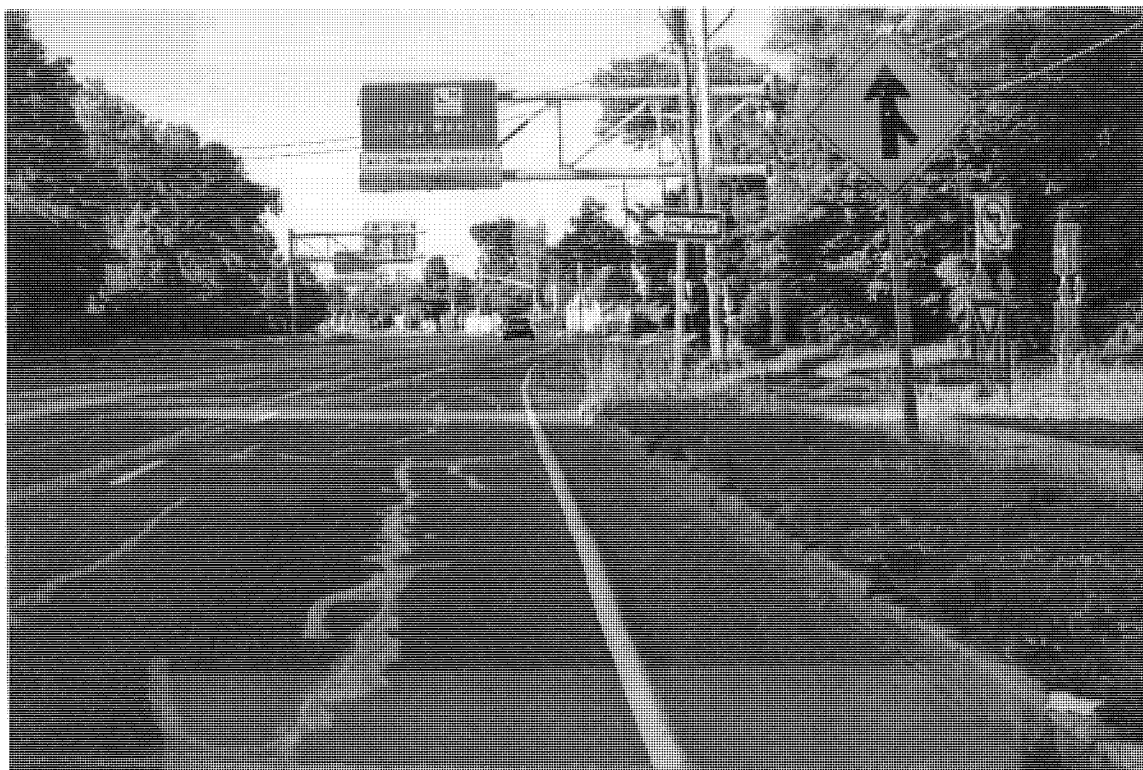


Camera is now positioned on Glen Cove Road and is now facing south. Police Report Witness Andre Beadle witnessed the subject accident from this position. Claimant's vehicle entered on to Glen Cove Road from eastbound Northern State Parkway exit ramp shown at the right of photo (at one way sign).

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Similar to Photo #7. Camera is positioned on Glen Cove Road facing south. Police Report Witness Andre Beadle witnessed the subject accident from this position. Claimant's vehicle entered on to Glen Cove Road from eastbound Northern State Parkway exit ramp shown at the right of photo (at one way sign).

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (6/04)

Local Codes
3-818-07

AMENDED REPORT DMV COPY

19
19

1 Accident Date: Month 2, Day 18, Year 2007. Day of Week: Su. Military Time: 1450. No. of Vehicles: 2. No. Injured: 3. No. Killed: 0. Not Investigated at Scene: . Left Scene: . Police Photos: Yes No. Accident Reconstructed: .

2 VEHICLE 1 - Driver License ID Number: [Redacted]. State of Lic.: NY. Driver Name: [Redacted]. Address: [Redacted]. City: ALBANY. State: NY. Zip Code: [Redacted]. VEHICLE 2 - Driver License ID Number: [Redacted]. State of Lic.: NY. Driver Name: [Redacted]. Address: [Redacted]. City: ALBANY. State: NY. Zip Code: [Redacted].

3 Date of Birth: [Redacted]. Sex: F. Unlicensed: . No. of Occupants: 1. Property Damaged: . Name: SAME AS DRIVER. Date of Birth: [Redacted]. Sex: M. Unlicensed: . No. of Occupants: 2. Public Property Damaged: . Address: [Redacted].

4 City or Town: [Redacted]. State: NY. Zip Code: [Redacted]. City or Town: [Redacted]. State: NY. Zip Code: [Redacted].

5 State of Reg.: NY. Vehicle Year & Make: 2007 Lexus. Vehicle Type: 4d sed. Ins. Code: 148. State of Reg.: NY. Vehicle Year & Make: 2002 MACK. Vehicle Type: S1. Ins. Code: X. Ticker/Arrest Number(s): [Redacted]. Violation Section(s): [Redacted].

6 Check if involved vehicle is: more than 95 inches wide; more than 34 feet long; operated with an overweight permit; operated with an overdimension permit. VEHICLE 1 DAMAGE CODES: Box 1 - Point of Impact: 3 3; Box 2 - Most Damage: 3 4 5 2. VEHICLE 2 DAMAGE CODES: Box 1 - Point of Impact: 1 2; Box 2 - Most Damage: 12 12. Enter up to three more Damage Codes: 3 2 3. Accident Diagram: [Diagram showing vehicle positions and directions]

7 Vehicle By: NUZZI. Towed: To New Hyde Park. Vehicle By: NUZZI. Towed: To New Hyde Park. VEHICLE DAMAGE CODING: 1-13. SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED. 15. TRAILER 18. NO DAMAGE. 16. OVERTURNED 19. OTHER. Cost of repairs to any one vehicle will be more than \$1000. Unknown/Unable to Determine Yes No.

8 Reference Marker: [Redacted]. Coordinates (if available): Latitude/Northing: [Redacted]. Longitude/Easting: [Redacted]. Place Where Accident Occurred: County: MASSACHUSETTS. City/Village/Town: North Amherst. Road on which accident occurred: Glen Cove Rd. CARLE PLACE. at 1) intersecting street: NORTHAM STATE EAST BOUND Ramp. (Route Number or Street Name). or 2) [Redacted]. (Milepost, Nearest intersecting Route Number or Street Name).

9 Accident Description/Officer's Notes: m1 and m2 were in a collision with a truck. FROM SCENE BY AUTHORITY OF OFFICERS, WITNESS [Redacted].

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08/11/05 BY [Redacted]

	8	9	10	11	12	13	14	15	16	17	BY	TO	18	Date of Death Only
A	1	1	A	1	61	F	U	9	6	9997			2905	
B	2	1	4	1	57	M	12	12	6	9999			2905	
C	2	3	4	1	46	M	12	12	6	9999			2905	
D														
E														
F														

Officer's Rank and Signature: PO Kelleman. Badge/ID No.: 250. NCIC No.: 0220. Precinct/Post Troop/Zone: 3. Station/Beat/Sector: 313. Reviewing Officer: [Signature]. Date/Time Reviewed: 4/22/07 0947.

PEDESTRIAN/BICYCLIST/OTHER PEDESTRIAN LOCATION

1. Pedestrian/Bicyclist/Other Pedestrian at Intersection
2. Pedestrian/Bicyclist/Other Pedestrian Not at Intersection

PEDESTRIAN/BICYCLIST/OTHER PEDESTRIAN ACTION

1. Crossing, With Signal
2. Crossing, Against Signal
3. Crossing, No Signal, Marked Crosswalk
4. Crossing, No Signal or Crosswalk
5. Riding/Walking/Skating Along Highway With Traffic
6. Riding/Walking/Skating Along Highway Against Traffic
7. Emerging from in Front of/Behind Parked Vehicle
8. Going to/from Stopped School Bus
9. Getting On/Off Vehicle Other Than School Bus
11. Working in Roadway
12. Playing in Roadway
13. Other Actions in Roadway*
14. Not in Roadway (Indicate)*

TRAFFIC CONTROL

- | | |
|-------------------------------|--|
| 1. None | 10. RR Crossing Gates |
| 2. Traffic Signal | 11. Stopped School Bus-
Red Lights Flashing |
| 3. Stop Sign | 12. Construction Work Area |
| 4. Flashing Light | 13. Maintenance Work Area |
| 5. Yield Sign | 14. Utility Work Area |
| 6. Officer/Guard | 15. Police/Fire Emergency |
| 7. No Passing Zone* | 16. School Zone |
| 8. RR Crossing Sign | 20. Other* |
| 9. RR Crossing Flashing Light | |

LIGHT CONDITIONS

1. Daylight
2. Dawn
3. Dusk
4. Dark-Road Lighted
5. Dark-Road Unlighted

ROADWAY CHARACTER

1. Straight and Level
2. Straight and Grade
3. Straight at Hillcrest
4. Curve and Level
5. Curve and Grade
6. Curve at Hillcrest

ROADWAY SURFACE CONDITION

- | | |
|----------|-------------|
| 1. Dry | 4. Snow/Ice |
| 2. Wet | 5. Slush |
| 3. Muddy | 6. Flooded |
| | 0. Other* |

WEATHER

1. Clear
2. Cloudy
3. Rain
4. Snow
5. Sleet/Hail/Freezing Rain
6. Fog/Smog/Smoke
0. Other*

WHICH VEHICLE OCCUPIED

- | | | |
|------------------|------------------------------|----------------|
| 1. Vehicle No. 1 | A. All-Terrain Vehicle (ATV) | O. Other* |
| 2. Vehicle No. 2 | B. Bicyclist | P. Pedestrian |
| | I. In-Line Skater | S. Snowmobiler |

POSITION IN/ON VEHICLE

1. Driver
- 2-7. Passengers
8. Riding/Hanging on Outside

SAFETY EQUIPMENT USED

1. None
2. Lap Belt
3. Harness
4. Lap Belt/Harness
5. Child Restraint Only
6. Helmet (Motorcycle Only)
7. Air Bag Deployed
8. Air Bag Deployed/Lap Belt
9. Air Bag Deployed/Harness
- A. Air Bag Deployed/Lap Belt/Harness
- B. Air Bag Deployed/Child Restraint

EJECTION FROM VEHICLE

1. Not Ejected
2. Partially Ejected
3. Ejected

AGE

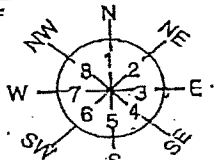
SEX
M/F

APPARENT CONTRIBUTING FACTORS

- Human
2. Alcohol Involvement
 3. Backing Unsafely
 4. Driver Inattention/Distracted*
 5. Driver Inexperience*
 6. Drugs (Illegal)
 7. Failure to Yield Right-of-Way
 27. Failure to Keep Right
 21. Fatigued/Drowsy
 8. Fell Asleep
 9. Following Too Closely
 10. Illness
 11. Lost Consciousness
 12. Passenger Distraction
 13. Passing or Lane Usage Improper
 14. Pedestrian/Bicyclist/Other Pedestrian Error/Confusion
 15. Physical Disability
 16. Prescription Medication
 17. Traffic Control Disregarded
 18. Turning Improperly
 19. Unsafe Speed
 20. Unsafe Lane Changing
 22. Cell Phone (hand-held)
 23. Cell Phone (hands-free)
 24. Other Electronic Device*
 25. Outside Car Distraction*
 26. Reaction to Other Uninvolved Vehicle
 28. Aggressive Driving/Road Rage

- Vehicular
41. Accelerator Defective
 42. Brakes Defective
 43. Headlights Defective
 44. Other Lighting Defects
 45. Oversized Vehicle
 46. Steering Failure
 47. Tire Failure/Inadequate
 48. Tow Hitch Defective
 49. Windshield Inadequate
 50. Driverless/Runaway Vehicle
 60. Other Vehicular*
- Environmental
61. Animal's Action
 62. Glare
 63. Lane Marking Improper/Inadequate
 64. Obstruction/Debris
 65. Pavement Defective
 66. Pavement Slippery
 67. Shoulders Defective/Improper
 68. Traffic Control Device Improper/Non-Working
 69. View Obstructed/Limited

DIRECTION OF VEHICLE:



PRE-ACCIDENT VEHICLE ACTION

1. Going Straight Ahead
2. Making Right Turn
16. Making Right Turn on Red
3. Making Left Turn
17. Making Left Turn on Red
4. Making U Turn
5. Starting from Parking
6. Starting in Traffic
7. Slowing or Stopping
8. Stopped in Traffic
9. Entering Parked Position
10. Parked
11. Avoiding Object in Roadway
12. Changing Lanes
13. Passing
14. Merging
15. Backing
18. Police Pursuit
20. Other*

LOCATION OF FIRST EVENT

1. On Roadway
2. Off Roadway

TYPE OF ACCIDENT - COLLISION WITH

- | | |
|------------------------|-------------------------------|
| 1. Other Motor Vehicle | 6. In-Line Skater |
| 2. Pedestrian | 7. Deer |
| 3. Bicyclist | 8. Other Pedestrian |
| 4. Animal | 10. Other Object (Not Fixed)* |
| 5. Railroad Train | |

COLLISION WITH FIXED OBJECT

11. Light Support/Utility Pole
 12. Guide Rail-Not At End
 25. Guide Rail-End
 13. Crash Cushion
 14. Sign Post
 15. Tree
 16. Building/Wall
 17. Curbing
 18. Fence
 19. Bridge Structure
 20. Culvert/Head Wall
 21. Median-Not At End
 28. Median-End
 27. Barrier
 22. Snow Embankment
 23. Earth Embankment/Rock Cut/Ditch
 24. Fire Hydrant
 30. Other Fixed Object*
- NO COLLISION
31. Overturned
 32. Fire/Explosion
 33. Submersion
 34. Ran Off Roadway Only
 40. Other*

New York State Department of Motor Vehicles POLICE ACCIDENT REPORT MV-104A (7/01)

*EXPLAIN IN ACCIDENT DESCRIPTION
If a question DOES NOT APPLY, enter a dash (-).
If an answer is UNKNOWN, enter an "X".

LOCATION OF MOST SEVERE PHYSICAL COMPLAINT

1. Head
2. Face
3. Eye
4. Neck
5. Chest
6. Back
7. Shoulder-Upper Arm
8. Elbow-Lower Arm-Hand
9. Abdomen - Pelvis
10. Hip-Upper Leg
11. Knee-Lower Leg-Foot
12. Entire Body

TYPE OF PHYSICAL COMPLAINT

1. Amputation
2. Concussion
3. Internal
4. Minor Bleeding
5. Severe Bleeding
6. Minor Burn
7. Moderate Burn
8. Severe Burn
9. Fracture - Dislocation
10. Contusion - Bruise
11. Abrasion
12. Complaint of Pain
13. None Visible
14. Whiplash

VICTIM'S PHYSICAL AND EMOTIONAL STATUS

1. Apparent Death
2. Unconscious
3. Semiconscious
4. Incoherent
5. Shock
6. Conscious

INJURED TAKEN

17 BY _____ TO 18 _____

Vehicle 19

Vehicle 20

Vehicle 21

Vehicle 22

Vehicle 23

Vehicle 24

Vehicle 25

Vehicle 26

Vehicle 27

First Event 28

Vehicle 29

Vehicle 30

COVER SHEET N

CASE: LEVITEN , IRIS
SET: F
DESCRIPTION: VEHICLE INSPECTION PHOTOS
BY PLAINTIFF'S EXPERT, MR. CAMBARDELLA
PHOTOS: 153

C. Bruce Gambardella, P. E.

Consultant Automotive Engineer

199 McNamara Road
Spring Valley, NY 10977

(845) 354-0585

(845) 354-0595

FAX: (845) 354-0859

Email: cbgpe@optonline.net

PHOTOGRAPHS

Re: Iris L. Leviten 2007 Lexus ES350

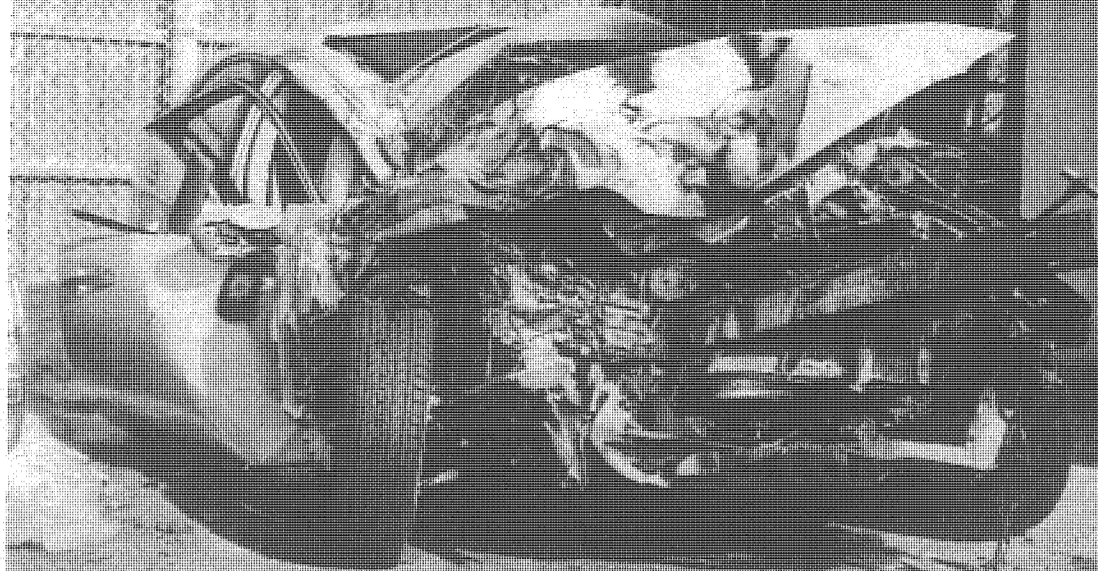
Inspection of subject Lexus ES350

March 1, 2007

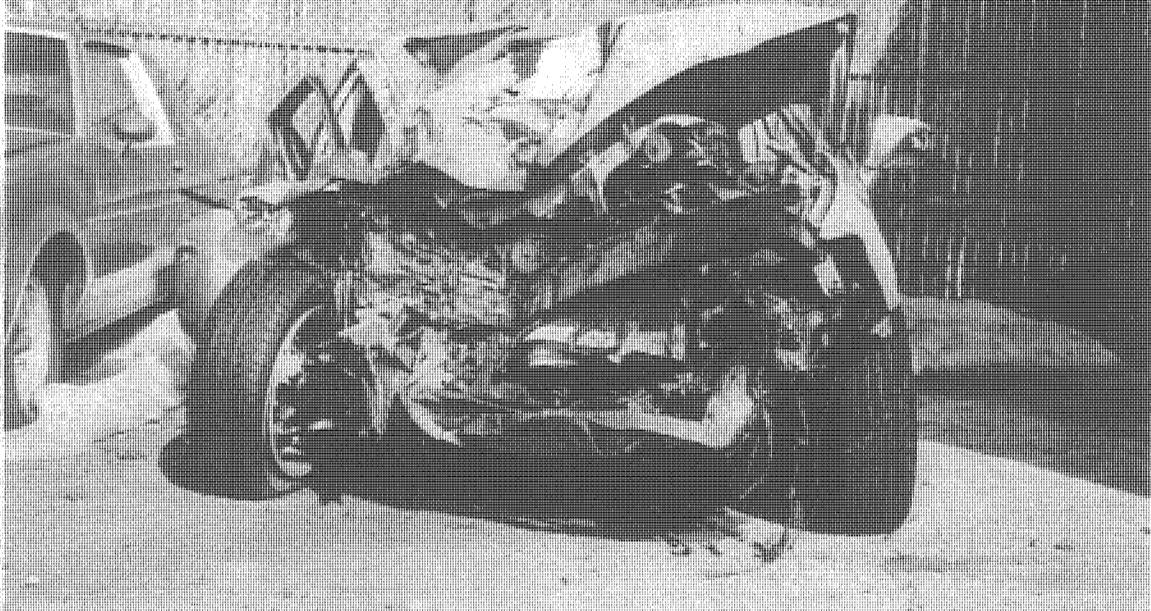
ROLL #1

- 1-1. Vehicle as presented. Right front.
- 1-2. Front.
- 1-3. Left front.
- 1-4. Thru 1-9. View of left side.
- 1-10. Thru 1-11. Left rear view.
- 1-12. VIN tag.
- 1-13. Right front view.
- 1-14. Thru 22. View from right rear.
- 1-23. Material inside vehicle.
- 1-24. View looking inside vehicle.
- 1-25. Right front "A" pillar deformation.
- 1-26. Right front wheel assembly condition.
- 1-27. Rotor condition.
- 1-28. Right front rotor condition with mirror used to illuminate rotor.
- 1-29. Left front rotor condition.
- 1-30. Closeup of rotor condition with mirror used to illuminate rotor.
- 1-31. Mirror on pocket transit used to illuminate rotor.
- 1-32. Photo of pocket transit.
- 1-33. Left rear wheel assembly.
- 1-34. Thru 1-35. Left rear rotor condition
- 1-36. Right rear wheel assembly.

1-1



1-2



1-3

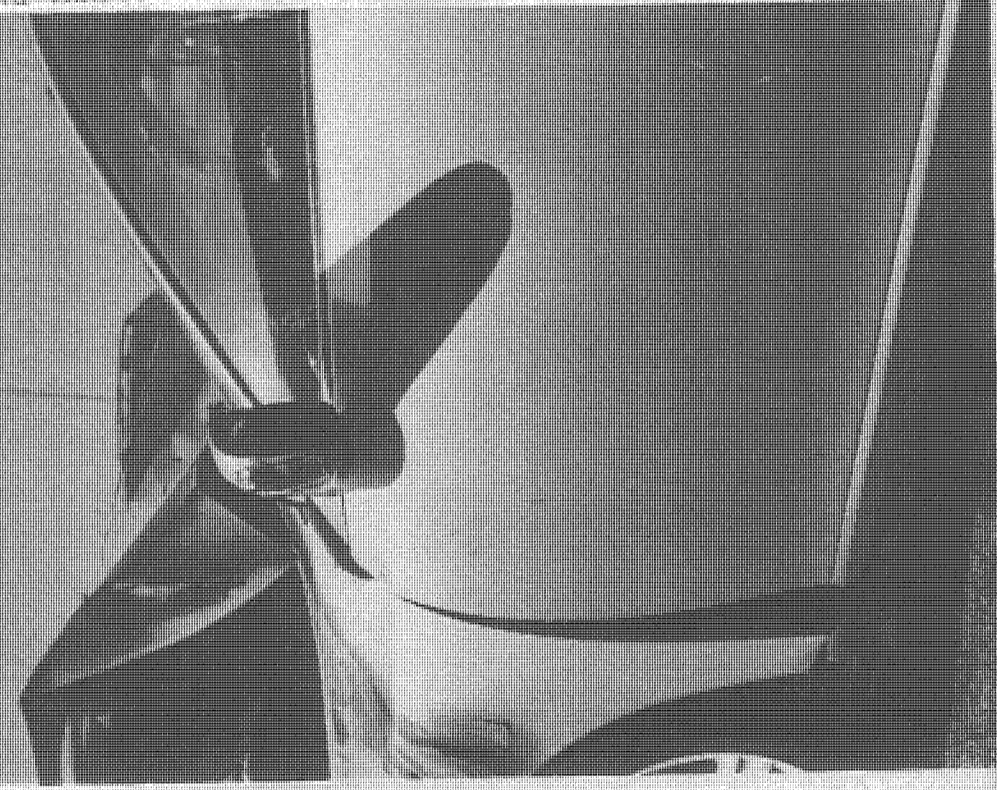


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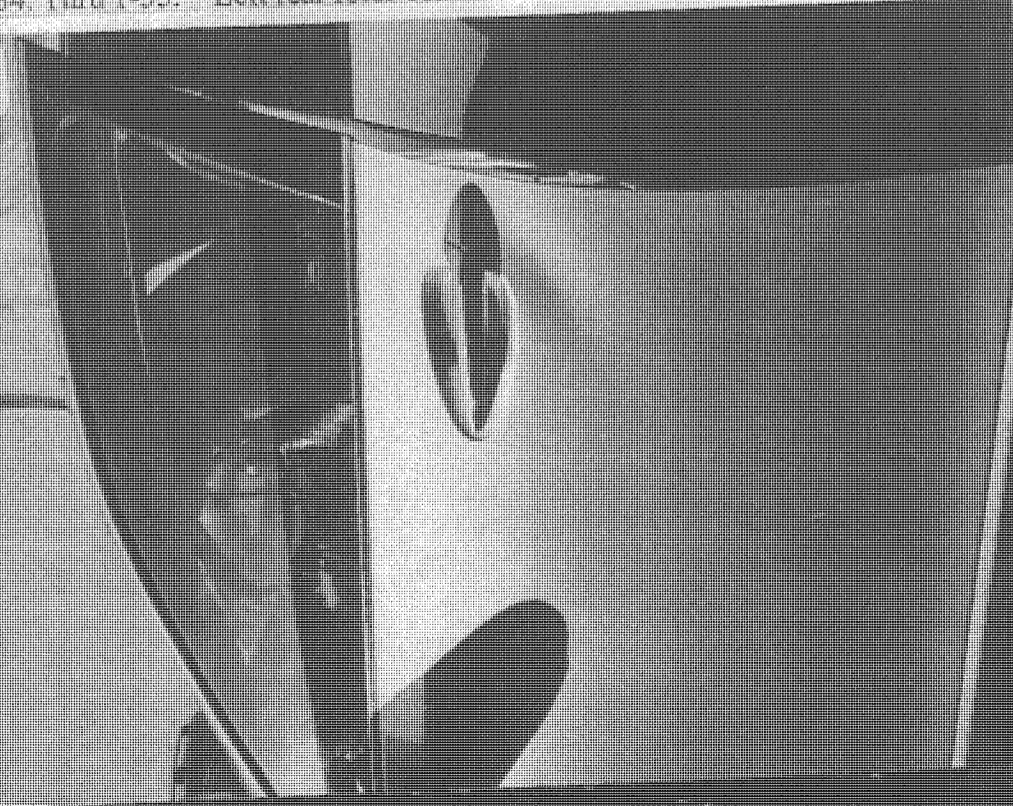
1-4. Thru 1-33. View from right rear

1-5

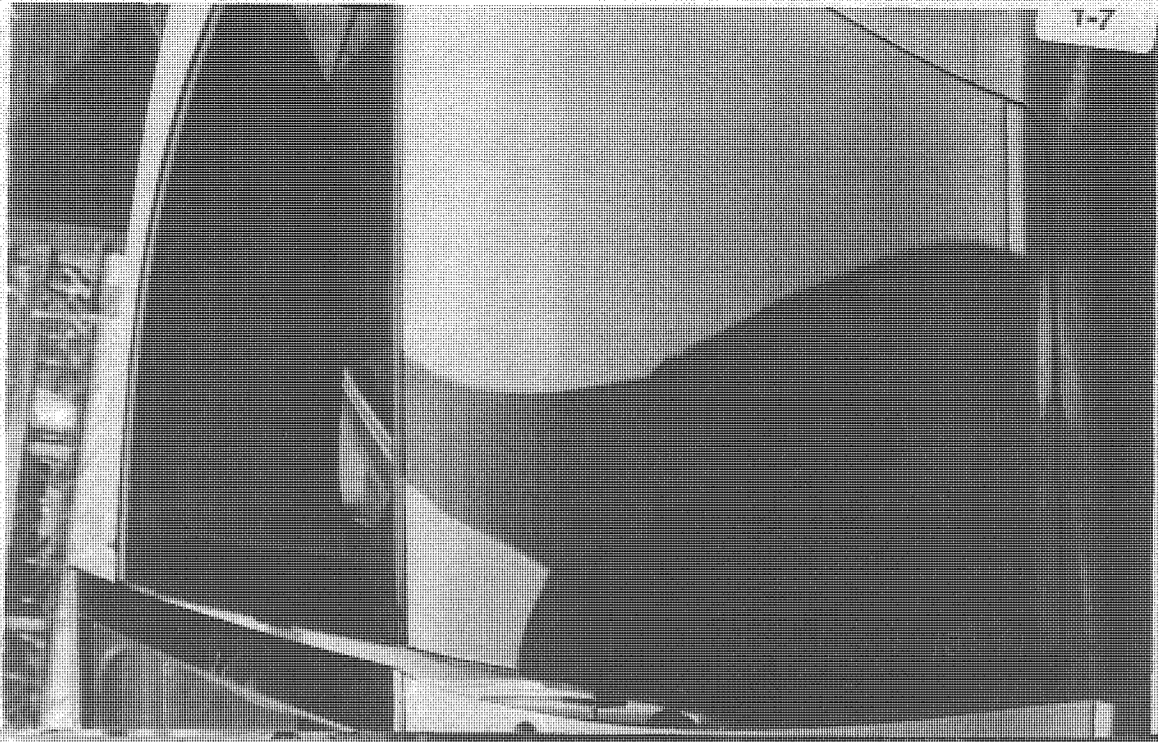


1-34. Thru 1-35. Left rear rotor condition

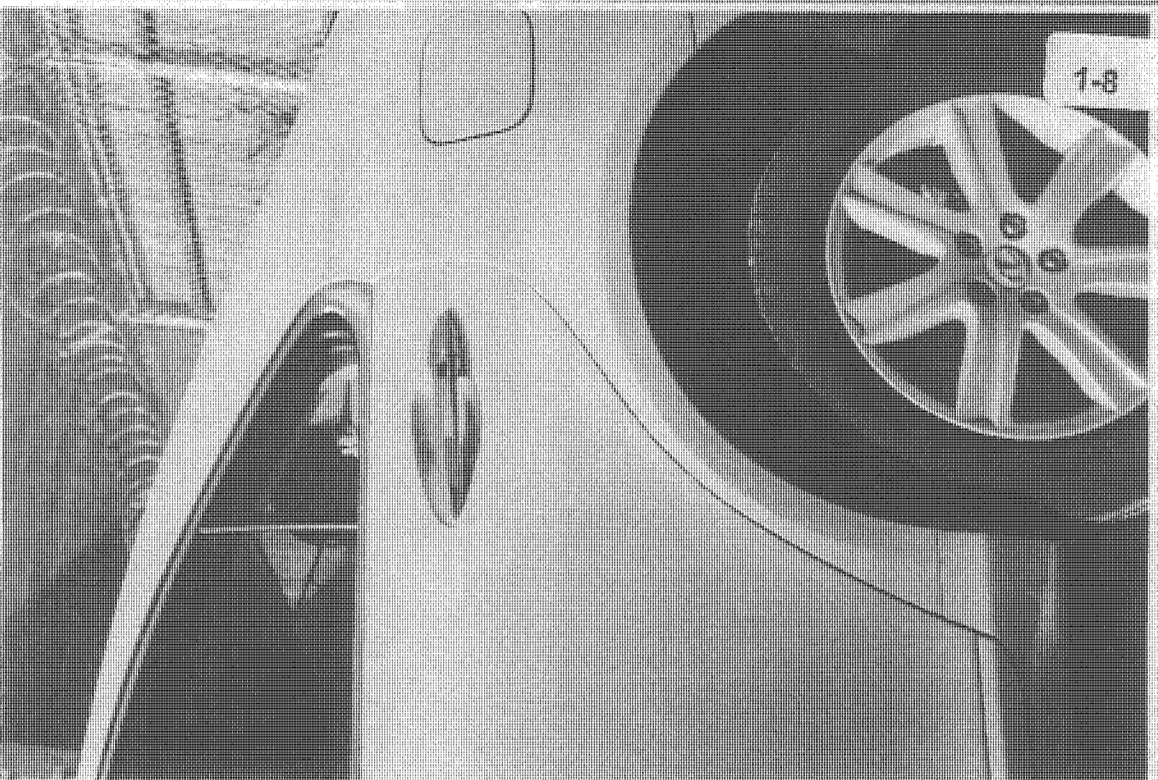
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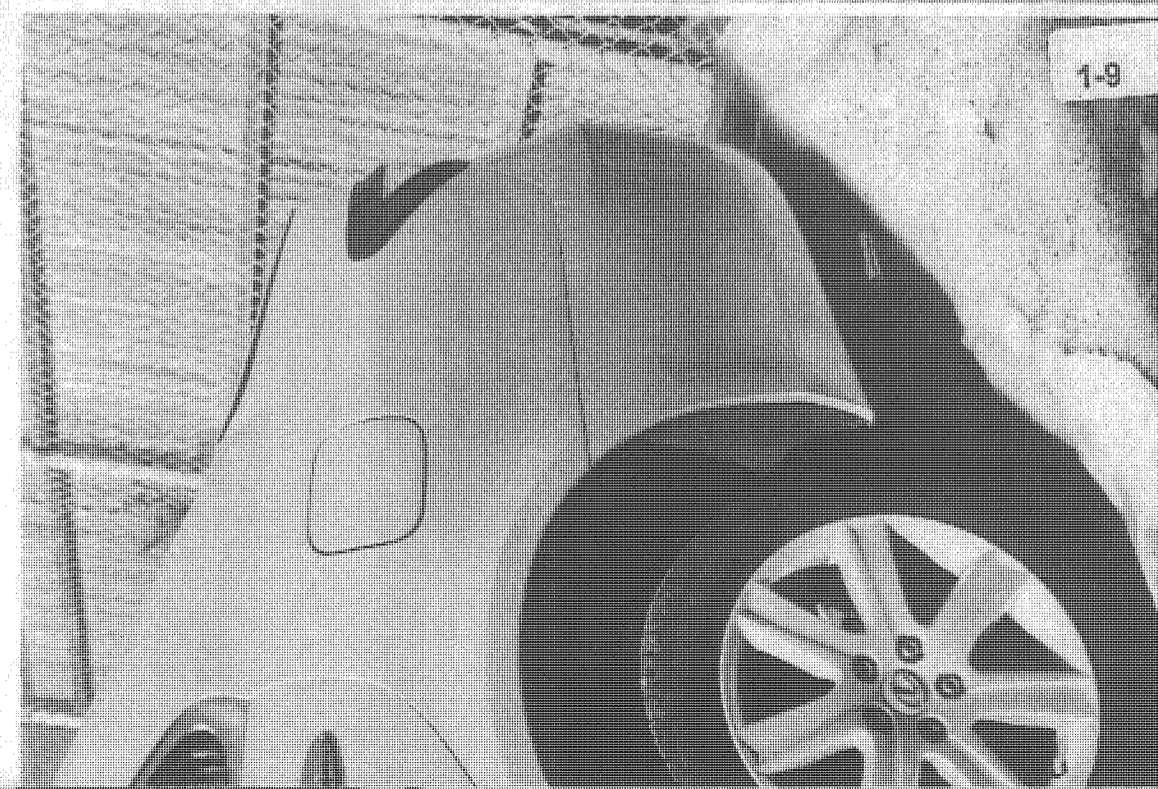
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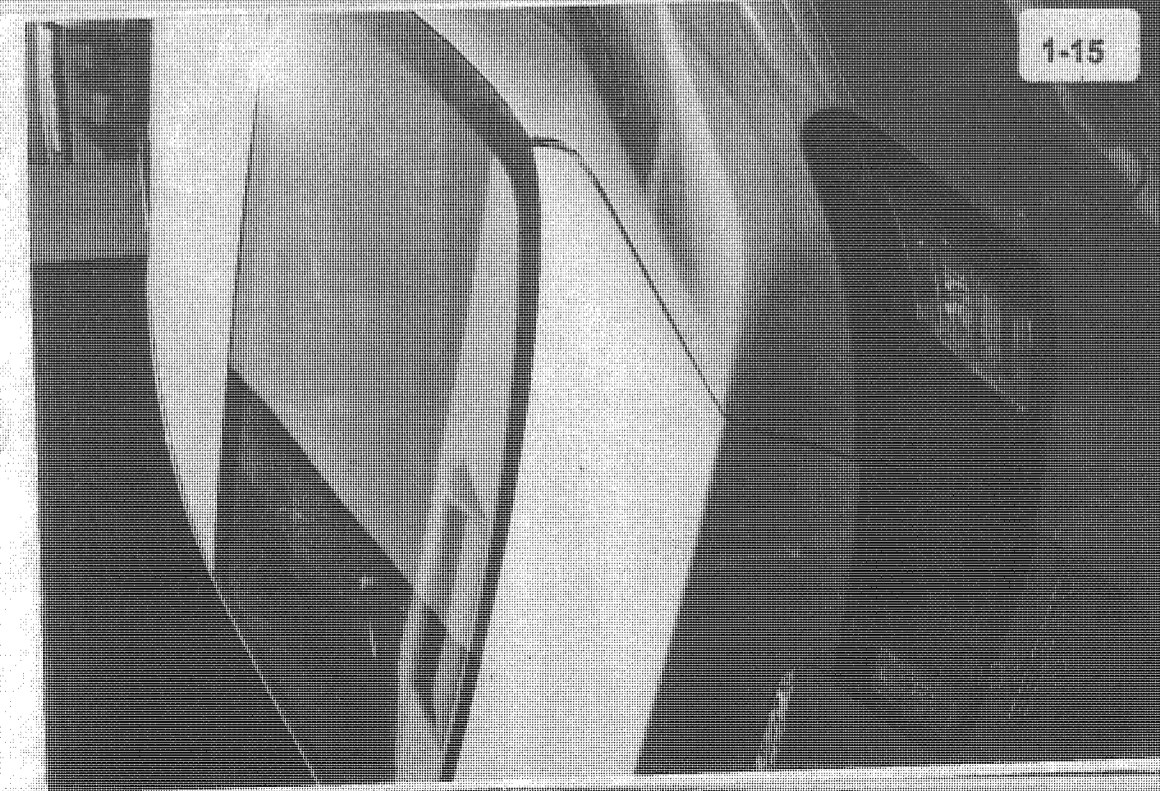


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1-12

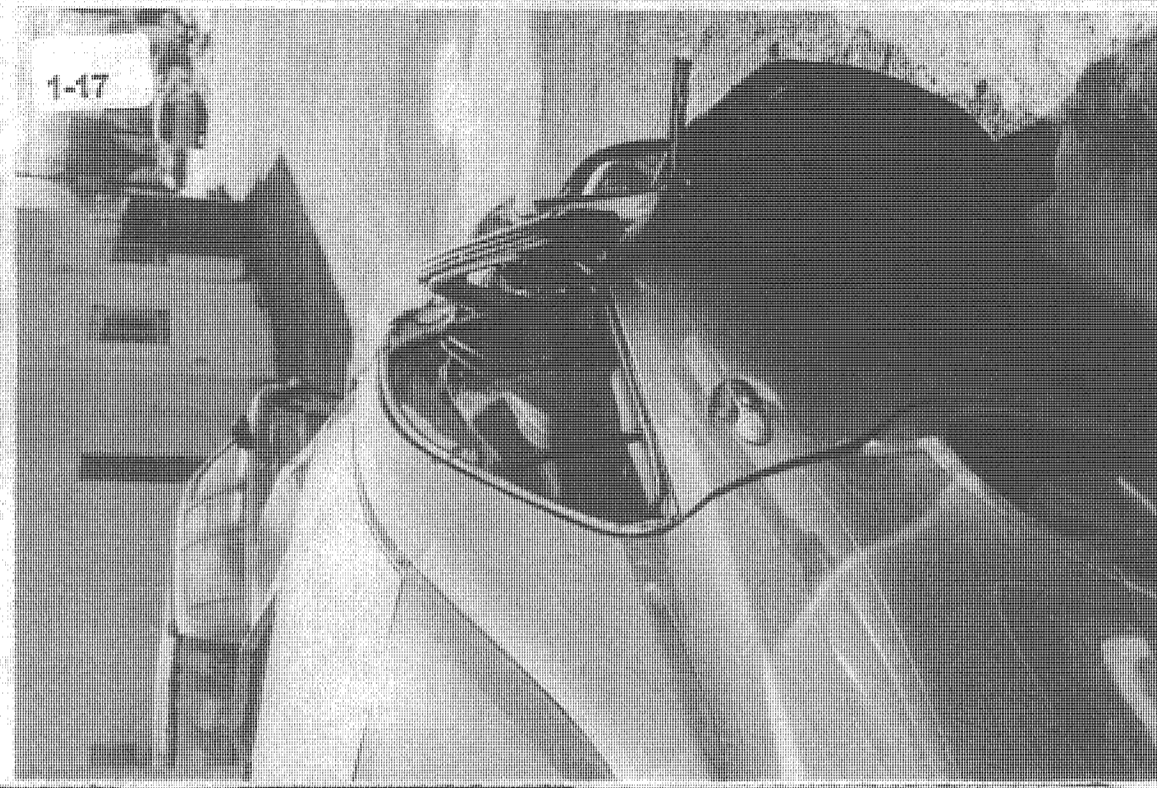




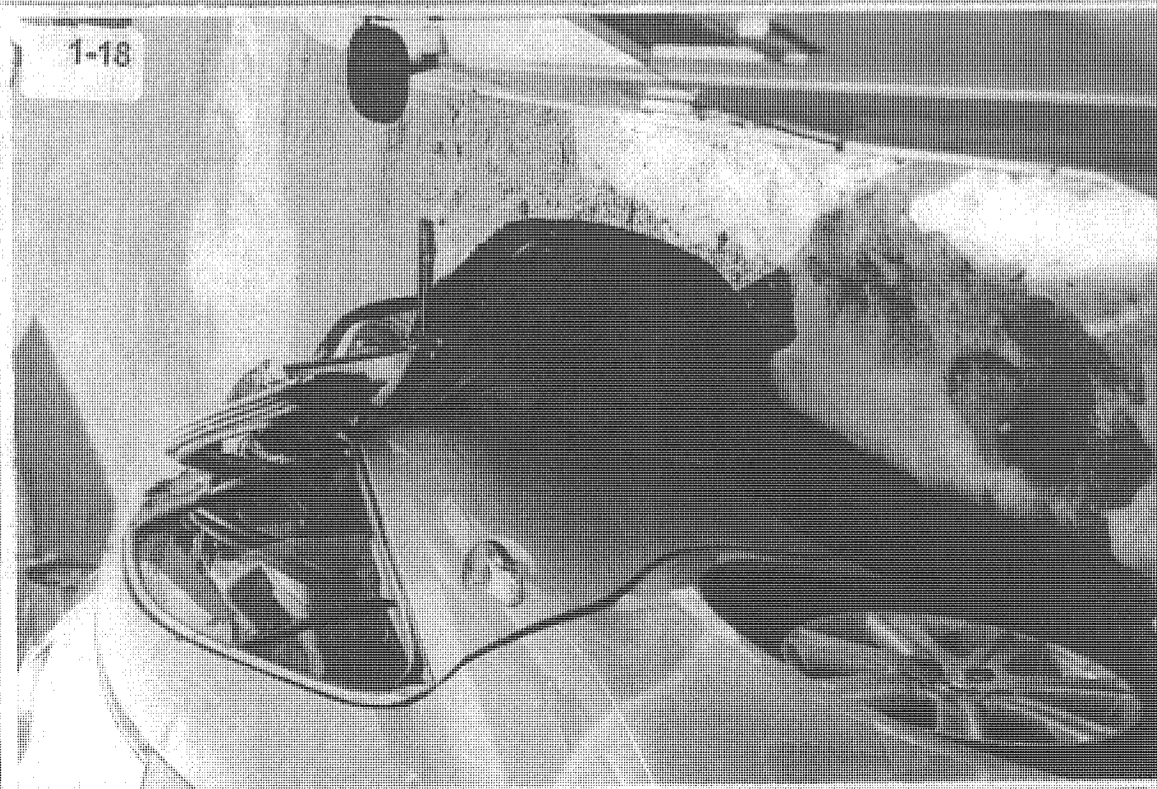
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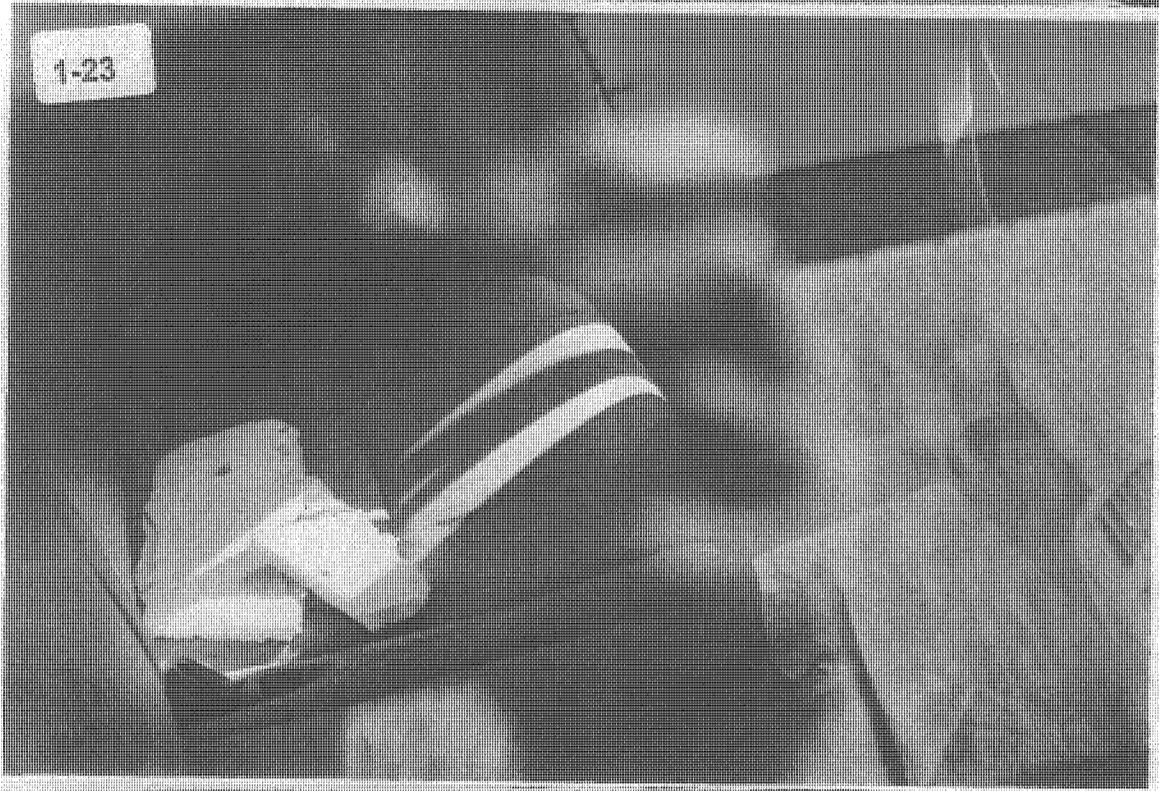
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TOYOTA

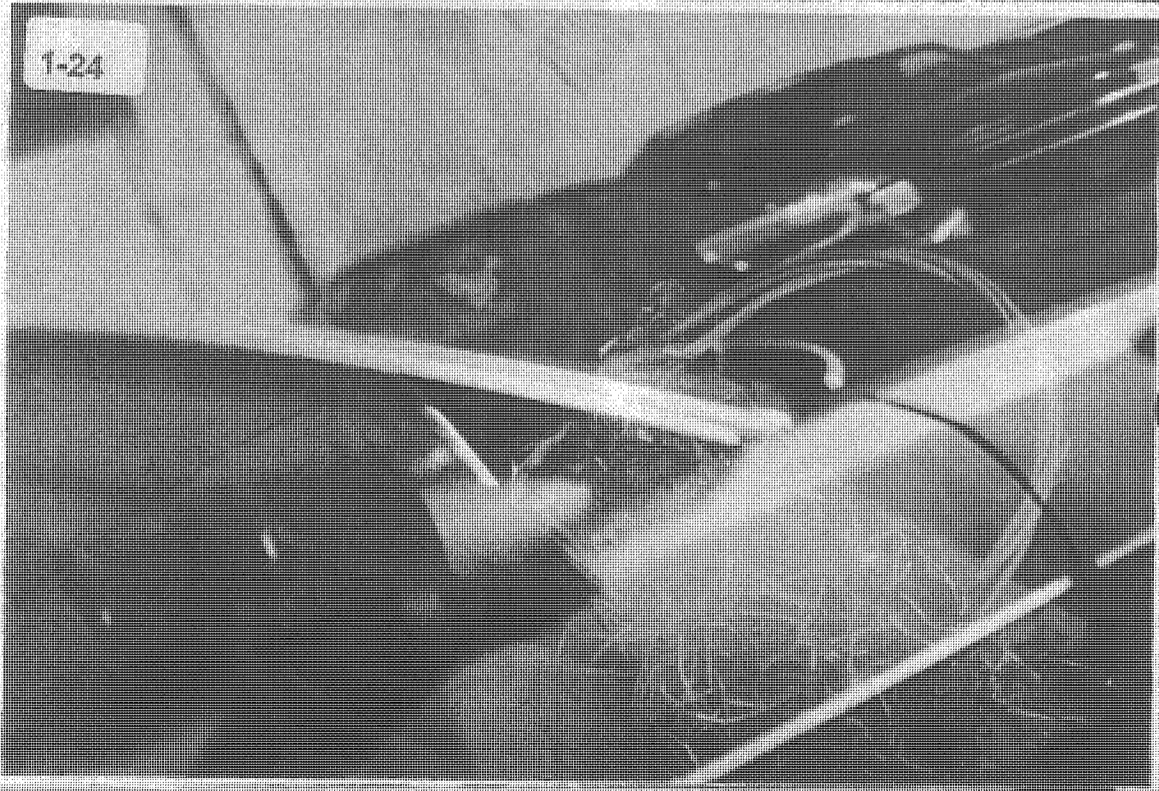
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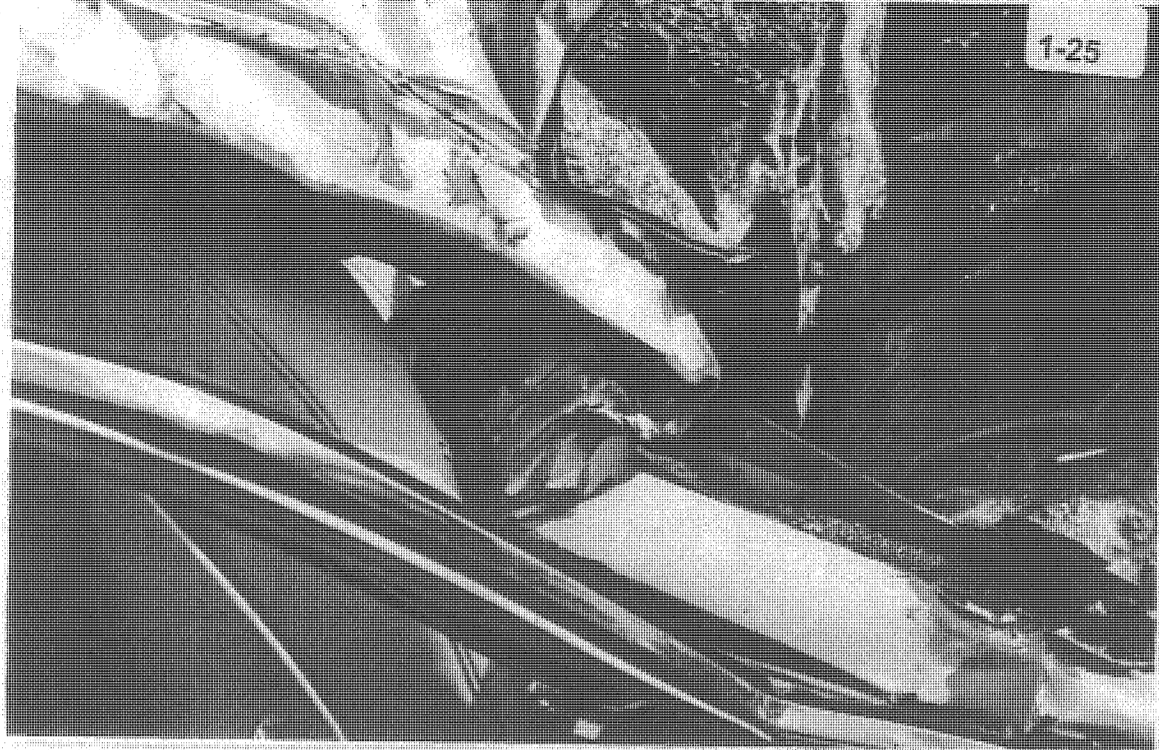
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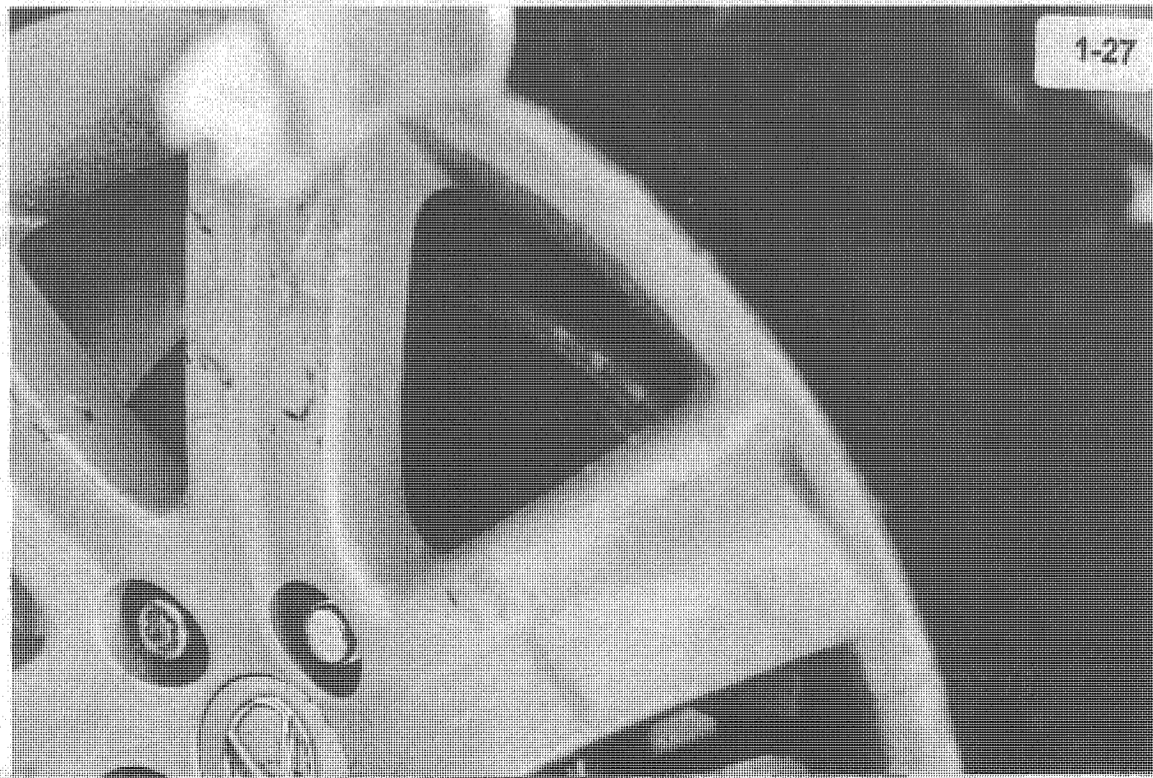
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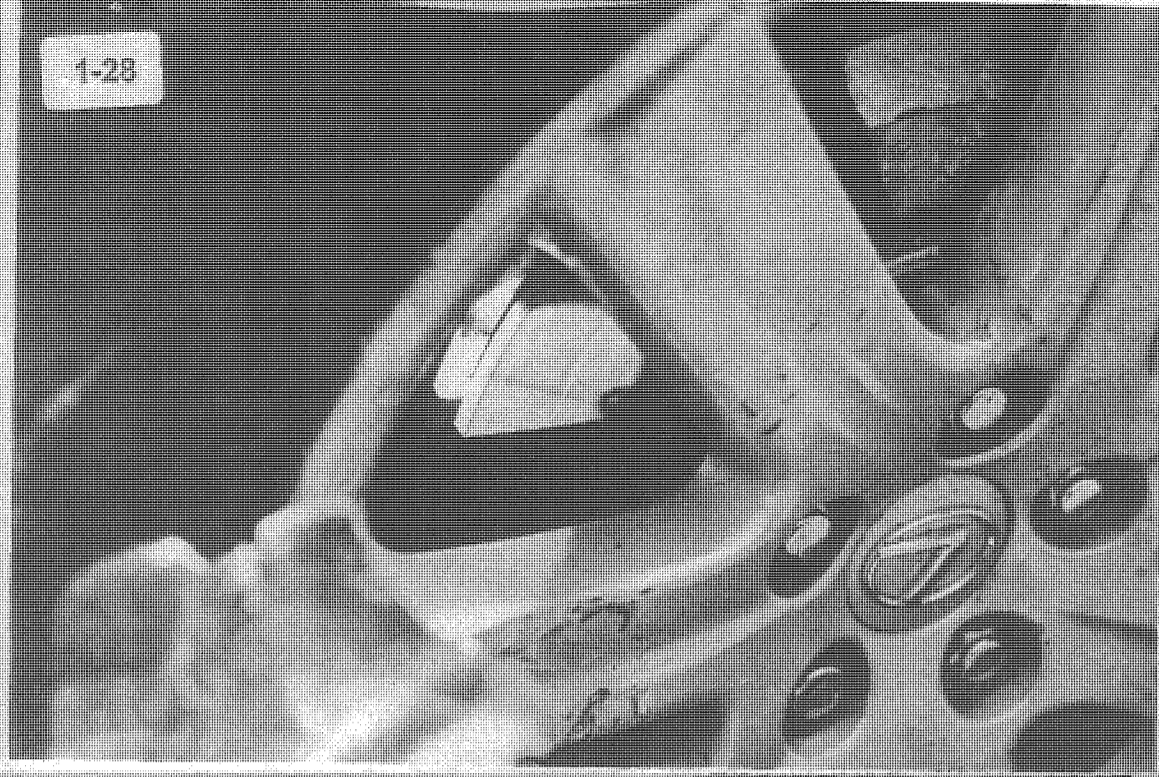
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1-27



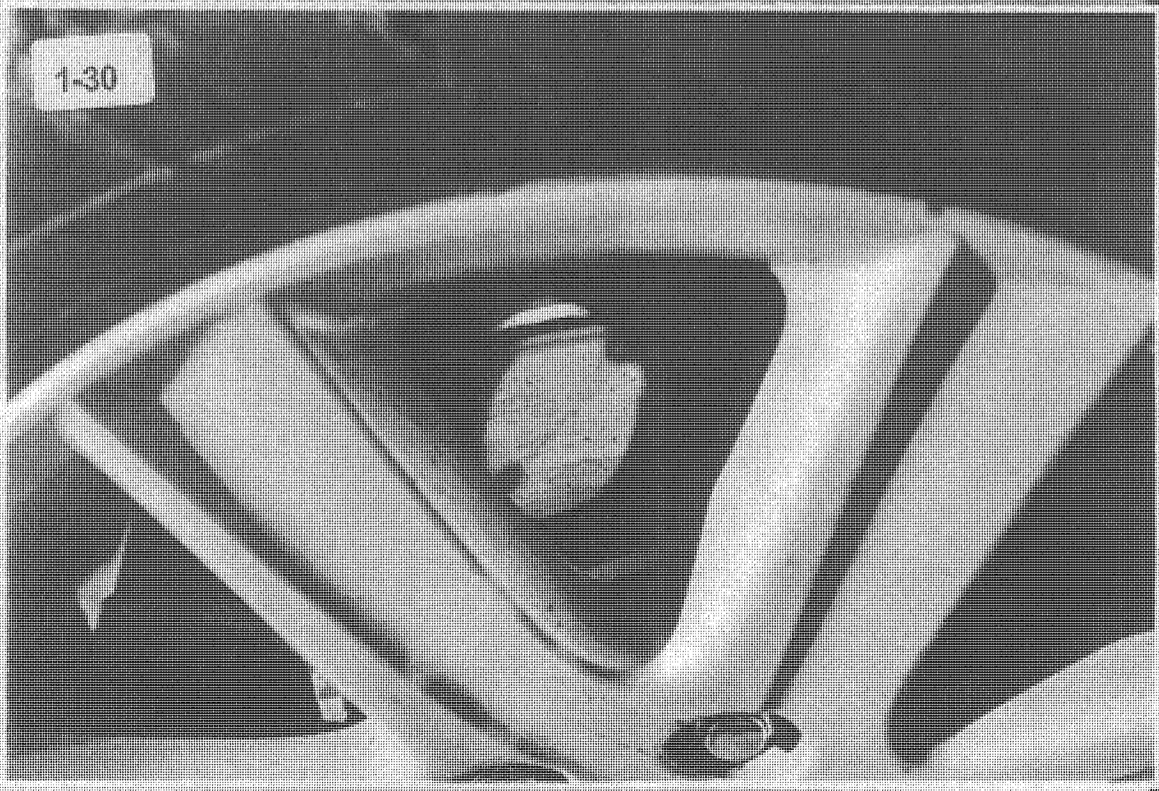
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1-29



1-30





1-31

2-2



1-32

3



1-33

1-34



1-35



1-36

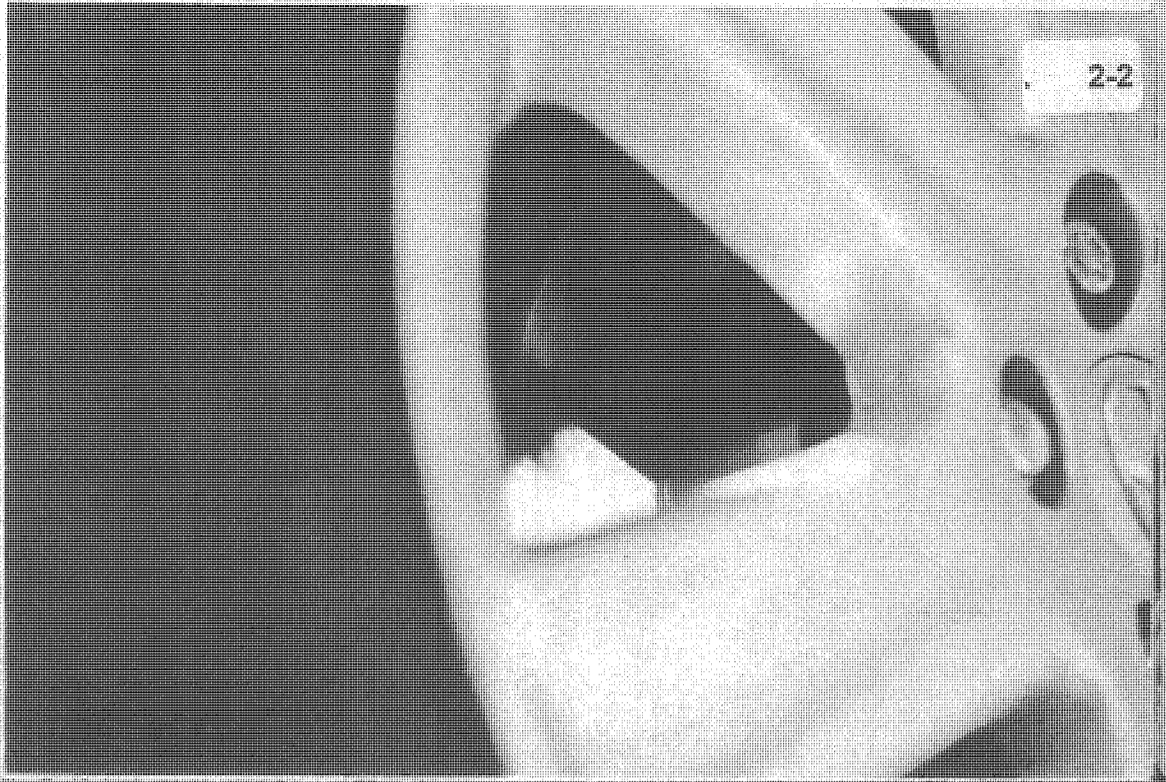


ROLL #2

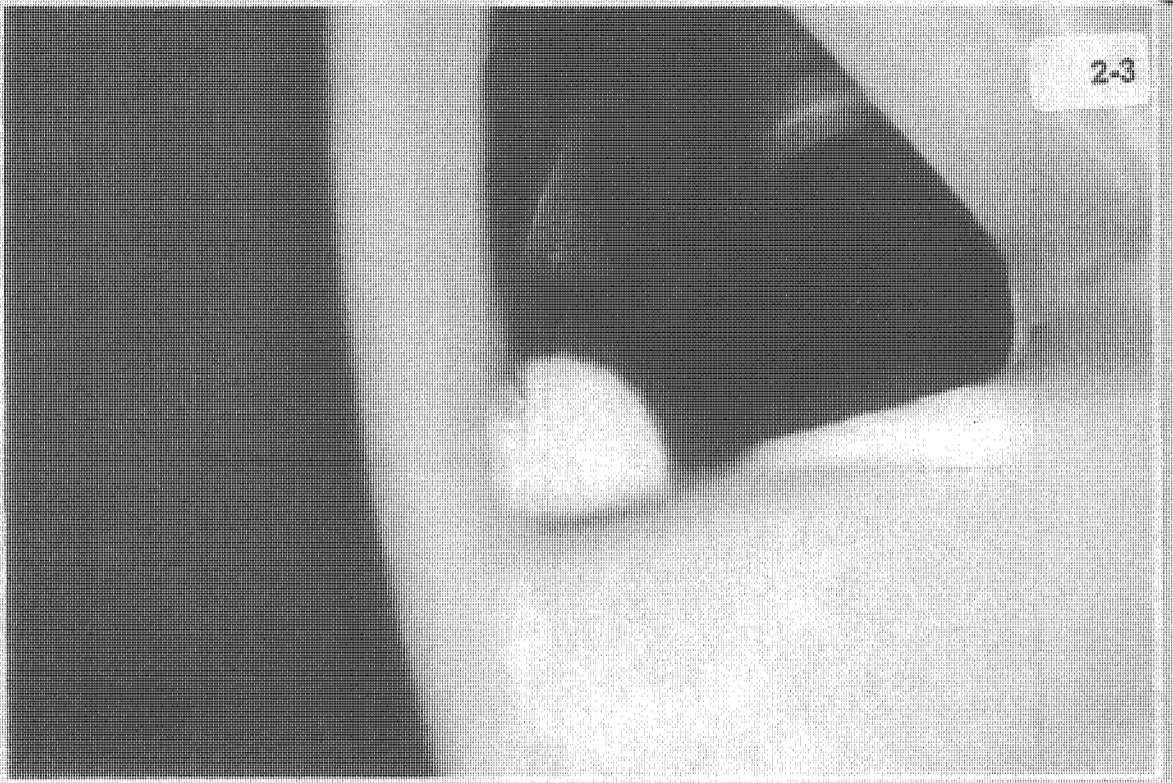
- 2-2. thru 2-3. Rotor condition.
- 2-4. Interior condition.
- 2-5. thru 2-6. Debris on floor. Note: undisturbed.
- 2-7. SRS label.
- 2-8. Tire label.
- 2-9. Manufacturer's information label.
- 2-10. Brake pedal.
- 2-11. Thru 2-13. Brake pedal. Note gas pedal arm under floor mat.
- 2-14. Factory covering still on floor mat.
- 2-15. Markings on floor mat plastic photographed.
- 2-16. Thru 2-19. Debris in driver's seat area.
- 2-20. Thru 2-25. Additional photos of floor mat and gas pedal arm under floor mat.
- 2-26. Thru 2-28. Engine bay.
- 2-29. Additional photo of gas pedal under floor mat. Note Photos 2-29 thru 2-31. Photos taken prior to vehicle being covered.
- 2-30. Same photo but debris dropped down into field of view.
- 2-31. Condition of floor mat. Note burn debris on top of floor mat.
- 2-32. Thru 2-33. Photographs of vehicle just prior to covering.
- 2-34. View from right front.
- 2-35. Thru 2-37. View from right rear.

2-3

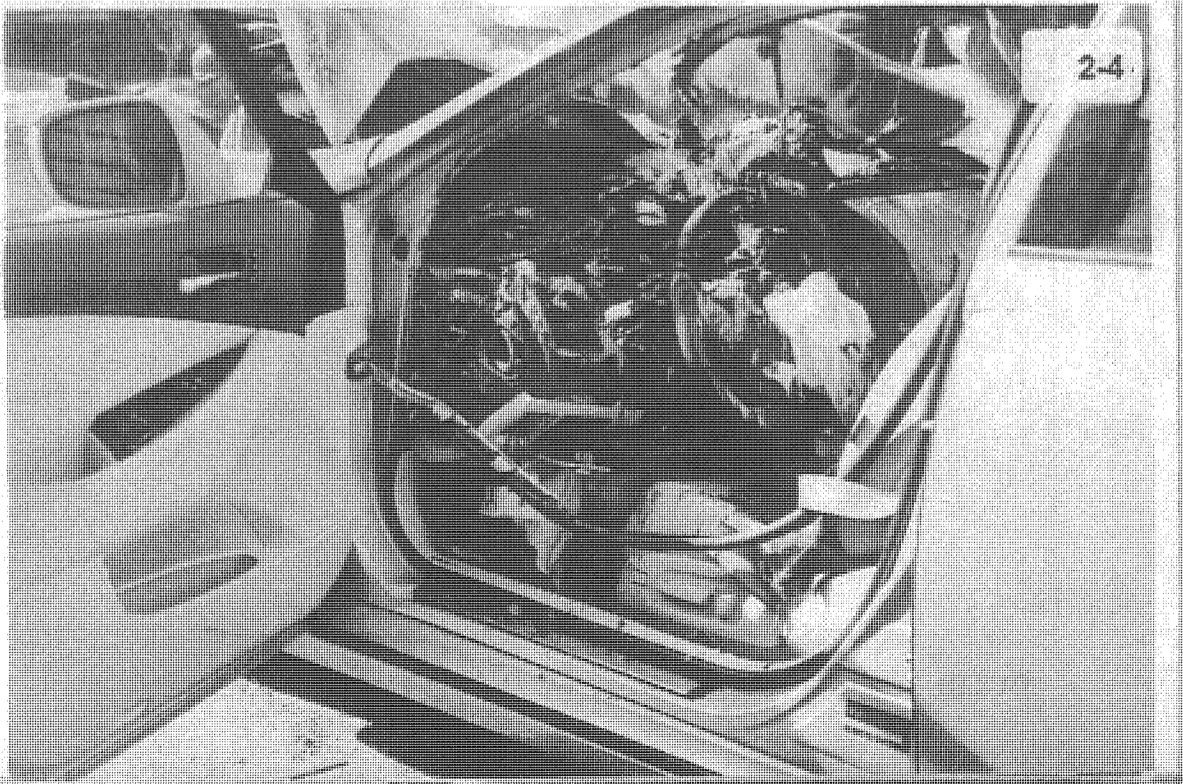
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2-2

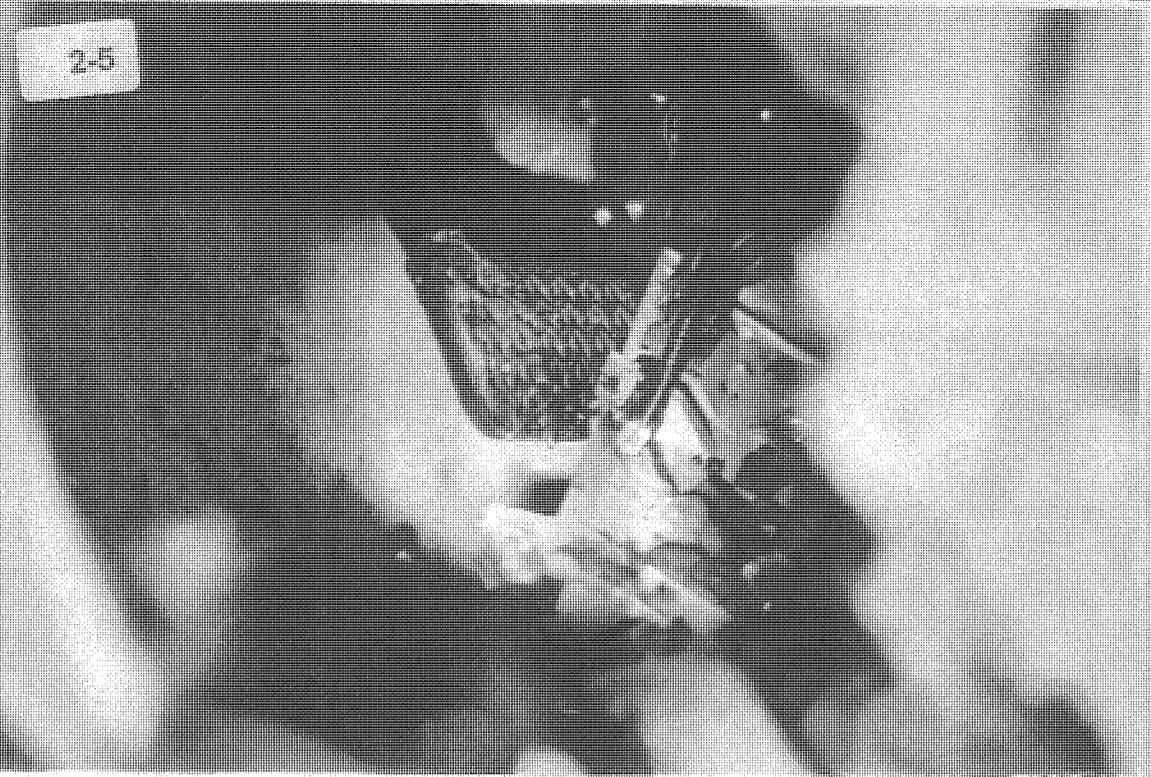


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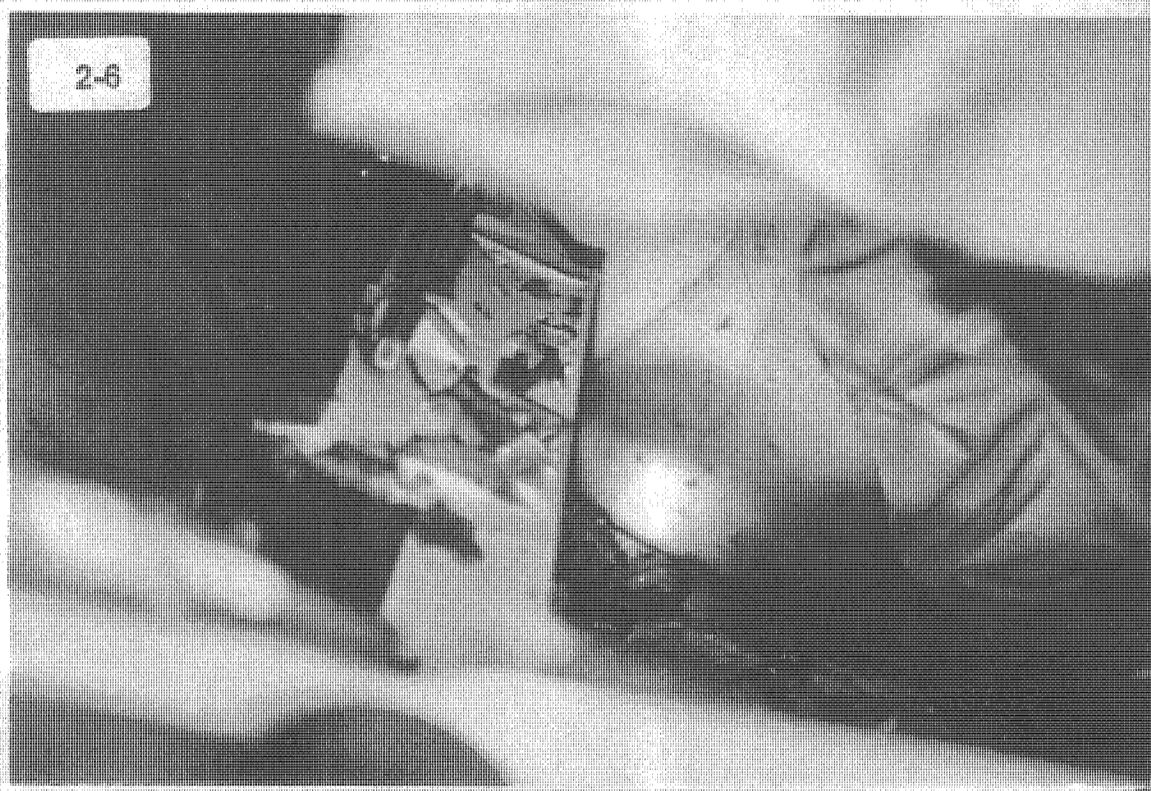


2-4

2-5



2-6



2-7



SEATING CAPACITY: TOTAL 5 FROM 2 REAR 1 The combined weight of occupants and cargo should never exceed 1430 kg (3150 lb).			NOMBRE DE PLACES ASSIÉES: TOTAL 5 DANS 2 ARRIÈRE 1 Le poids total des occupants et des chargements ne doit jamais être supérieur à 1430 kg (3150 lb).		
TIRE	SIZE	COLD TIRE PRESSURE	PNEUS	DIMENSION	PRESSION DE MONTAGE À FROID
FRONT	P215/55R17	210kPa, 30PSI	AVANT	P215/55R17	210kPa, 30PSI
REAR	P215/55R17	210kPa, 30PSI	ARRIÈRE	P215/55R17	210kPa, 30PSI
SPARE	P215/55R17	210kPa, 30PSI	SECOURS	P215/55R17	210kPa, 30PSI

CAUTION
ATTENTION
3

This vehicle may include mercury-containing devices installed by the manufacturer:

- HID Headlamps
- Navigation or Info. Display
- Back-lit Instruments

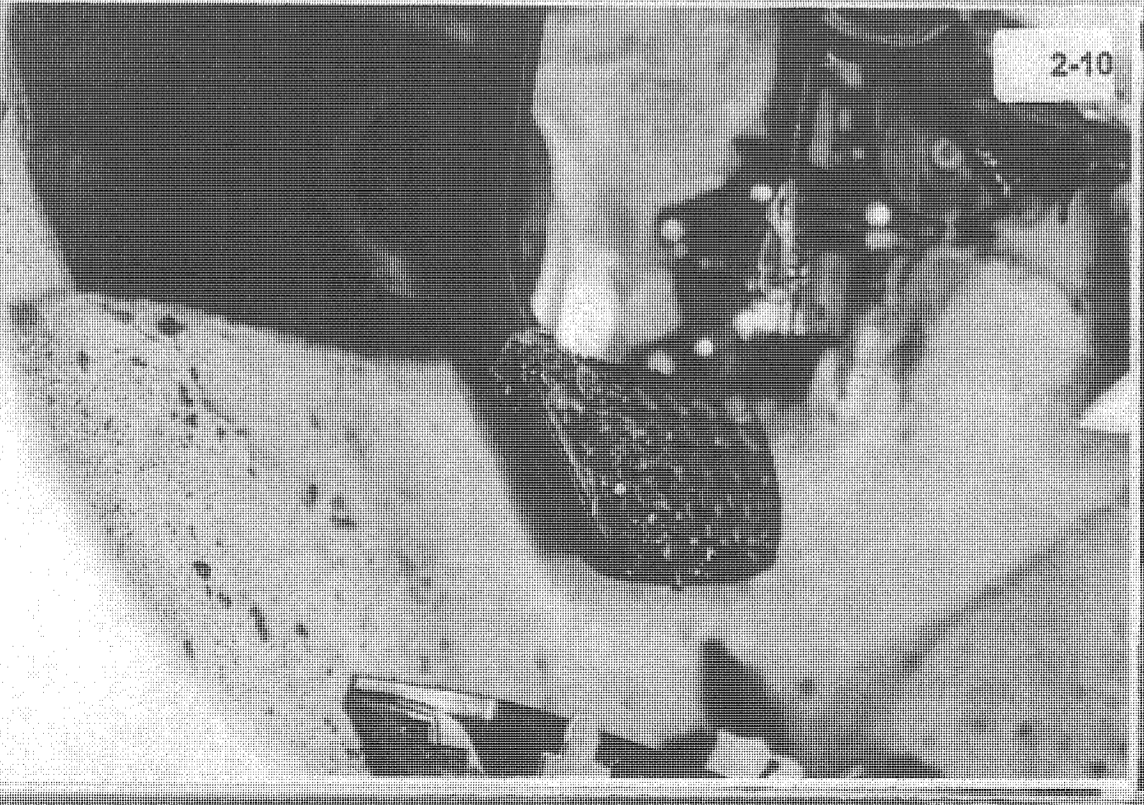
Remove Devices Before Vehicle Disposal. Upon Removal of Devices, Please Reuse, Recycle, or Dispose as Hazardous Waste.

16-1018-012 00505-URCrv

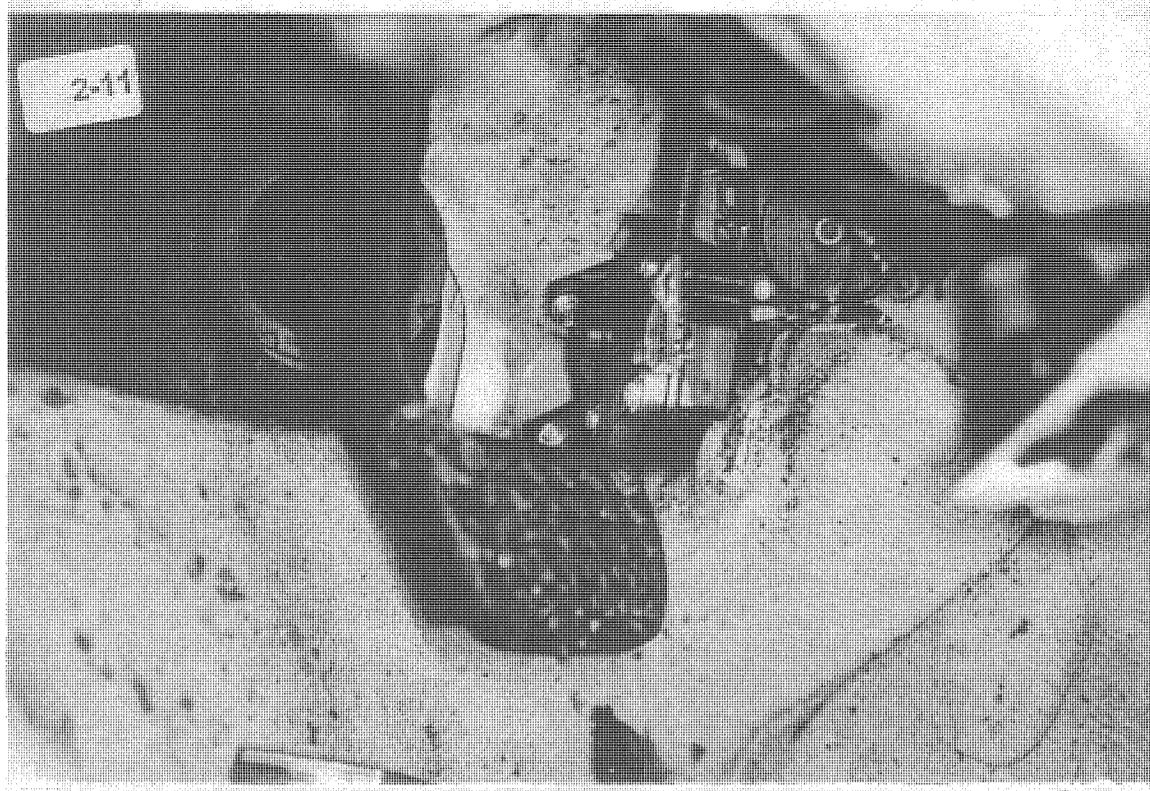
Le véhicule peut contenir des dispositifs contenant du mercure installés par le fabricant :

- Lampes à décharge à haute intensité (HID)
- Affichage de navigation ou d'informations
- Instruments à rétroéclairage

Retirez les dispositifs avant l'élimination du véhicule. Après avoir retiré les dispositifs, veuillez les réutiliser, les recycler ou les éliminer comme des déchets dangereux.



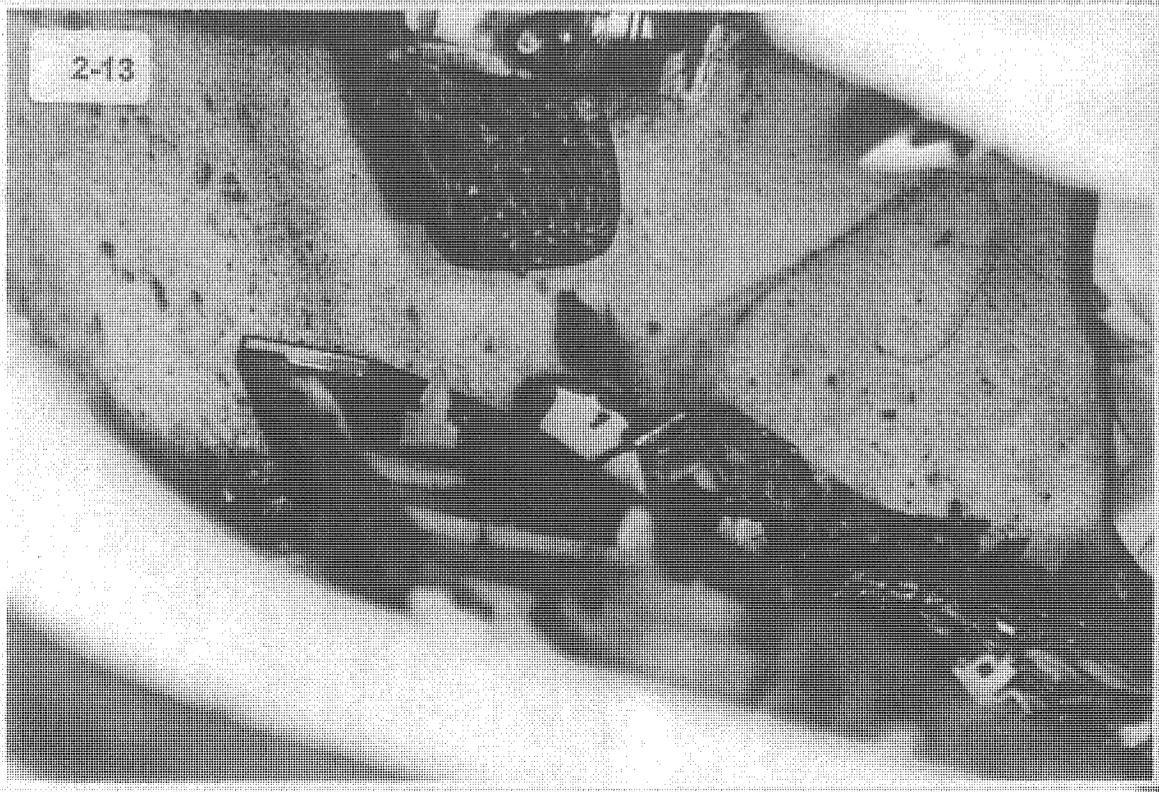
2-11



2-12



2-13



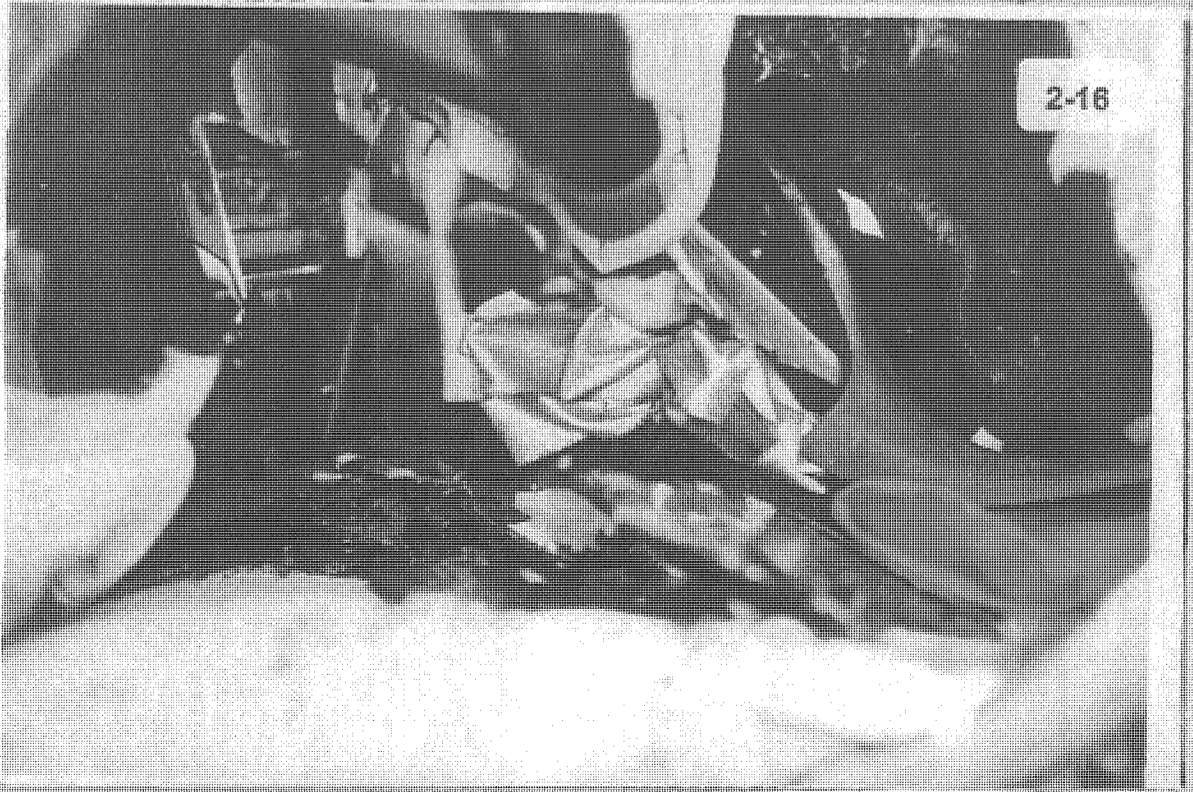
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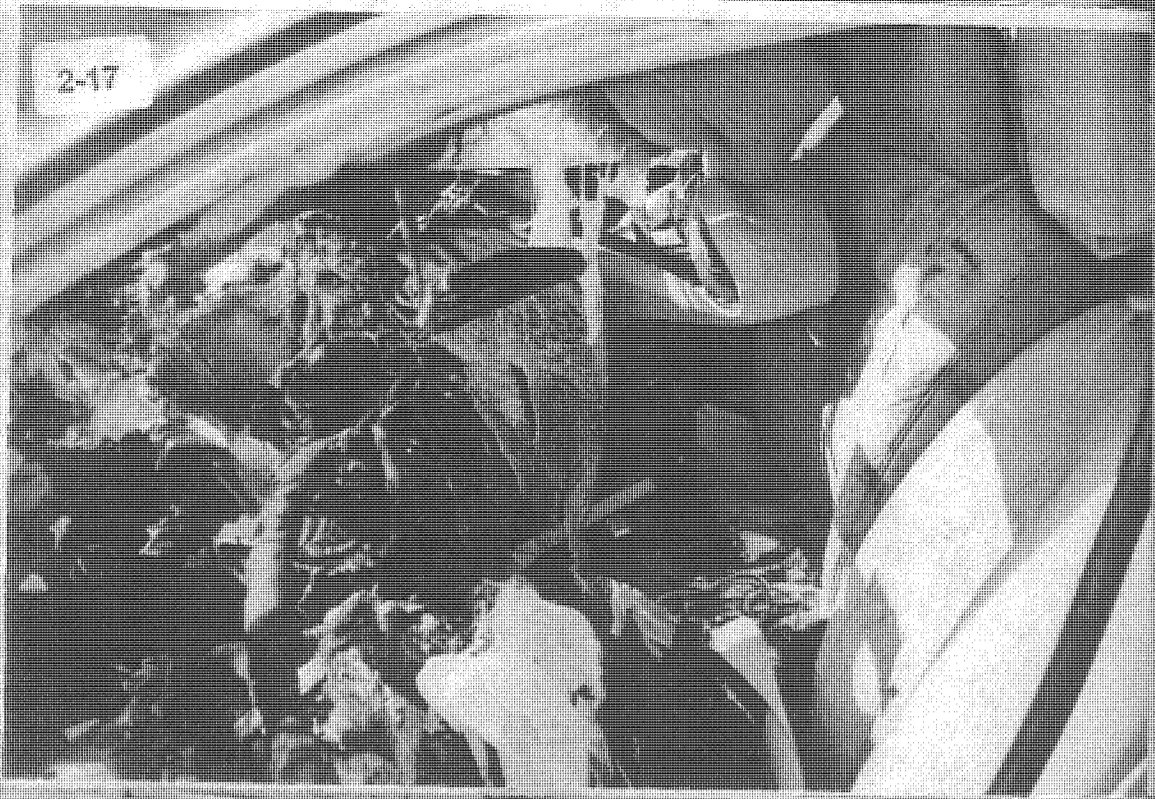
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2-16



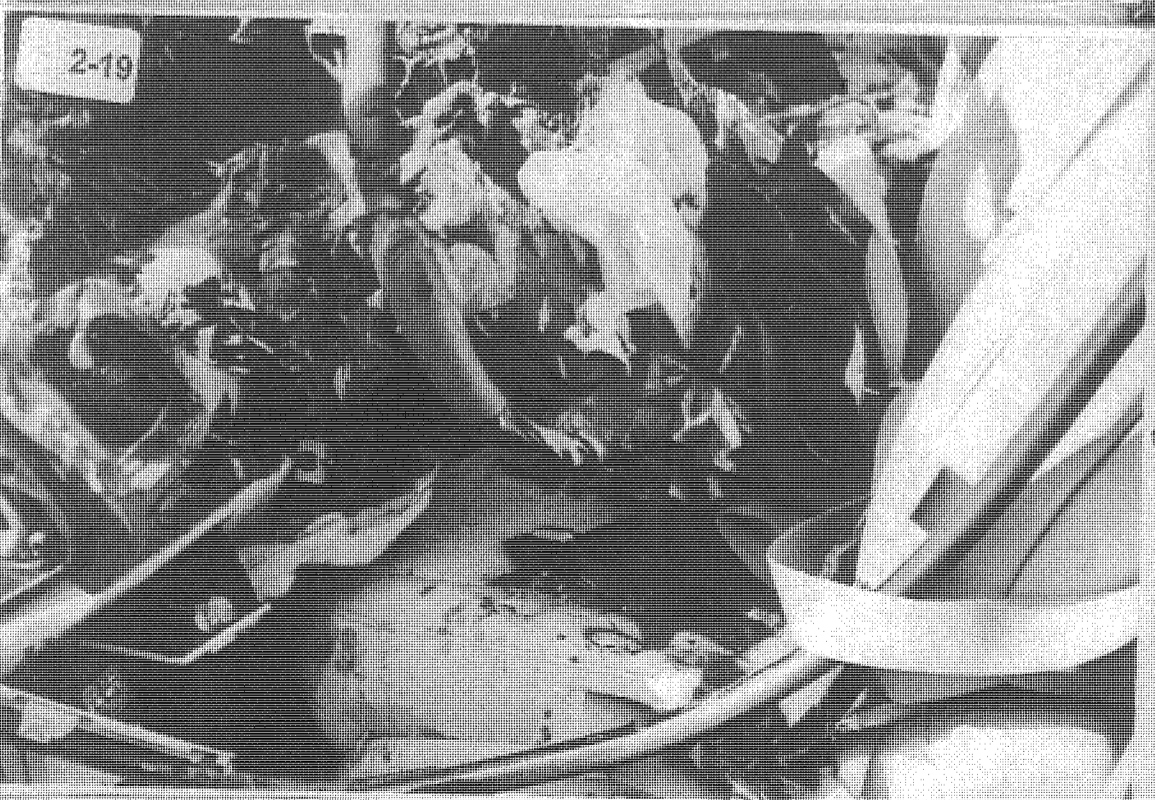
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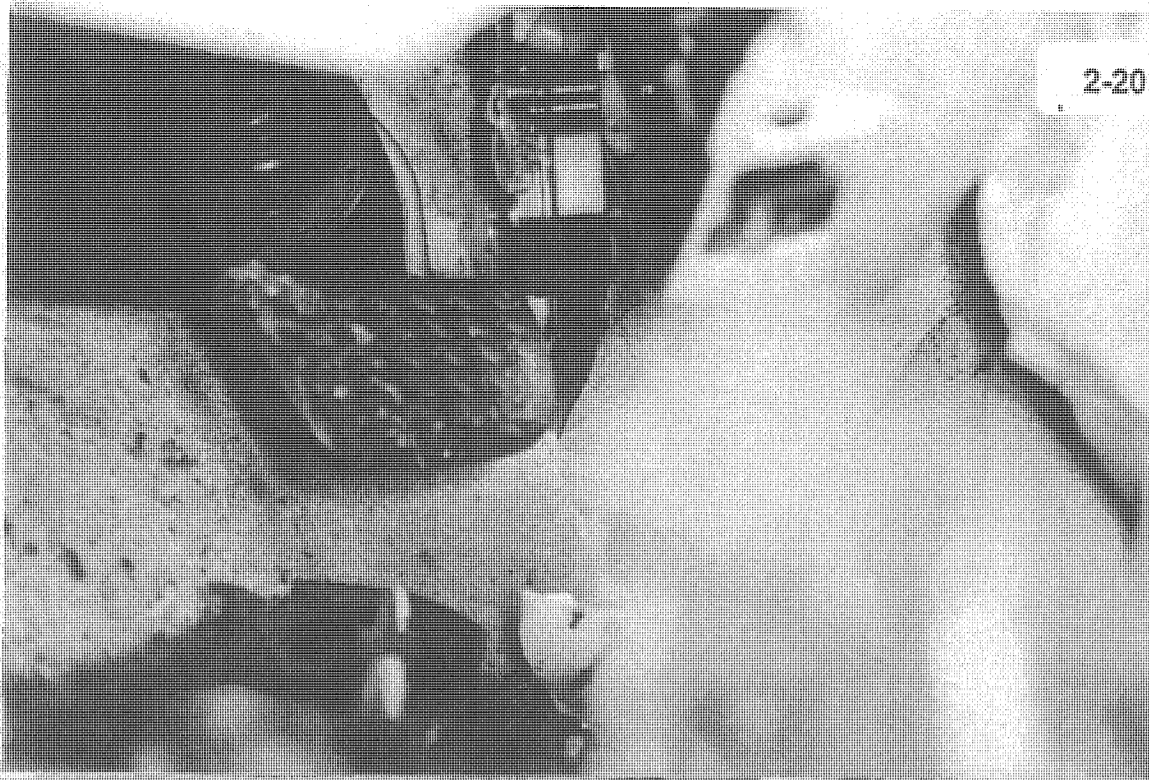
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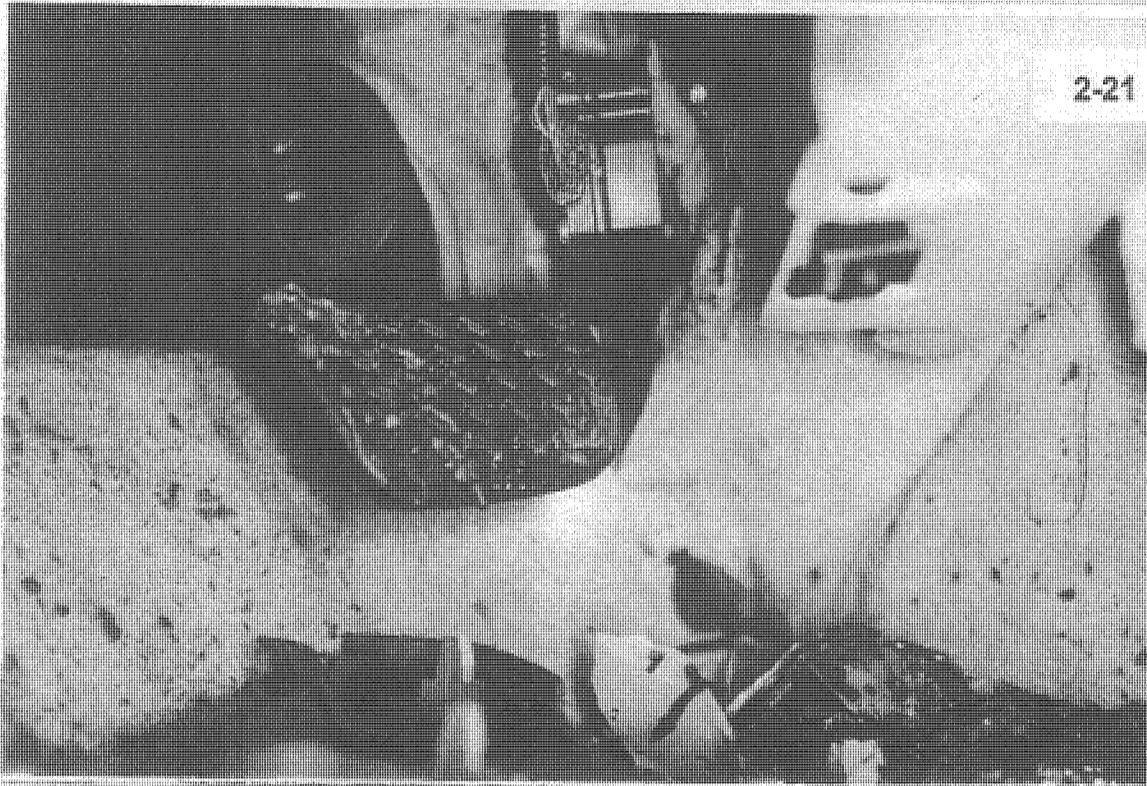
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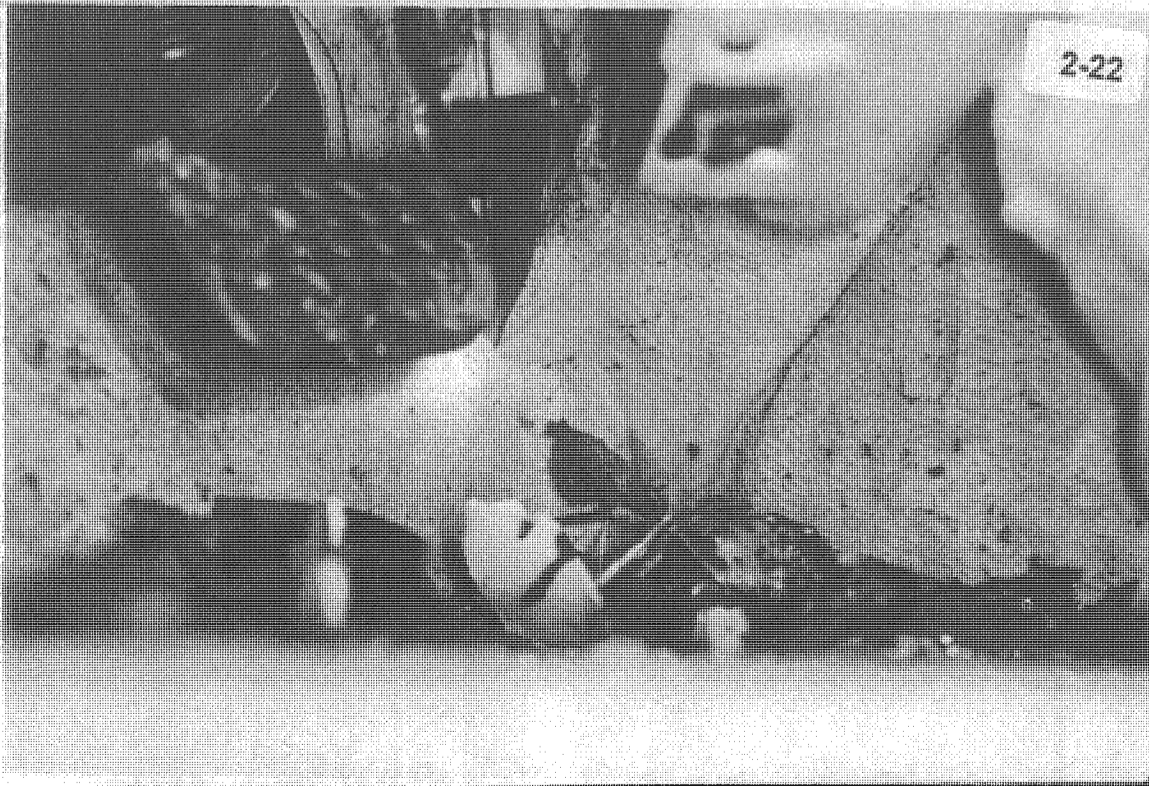
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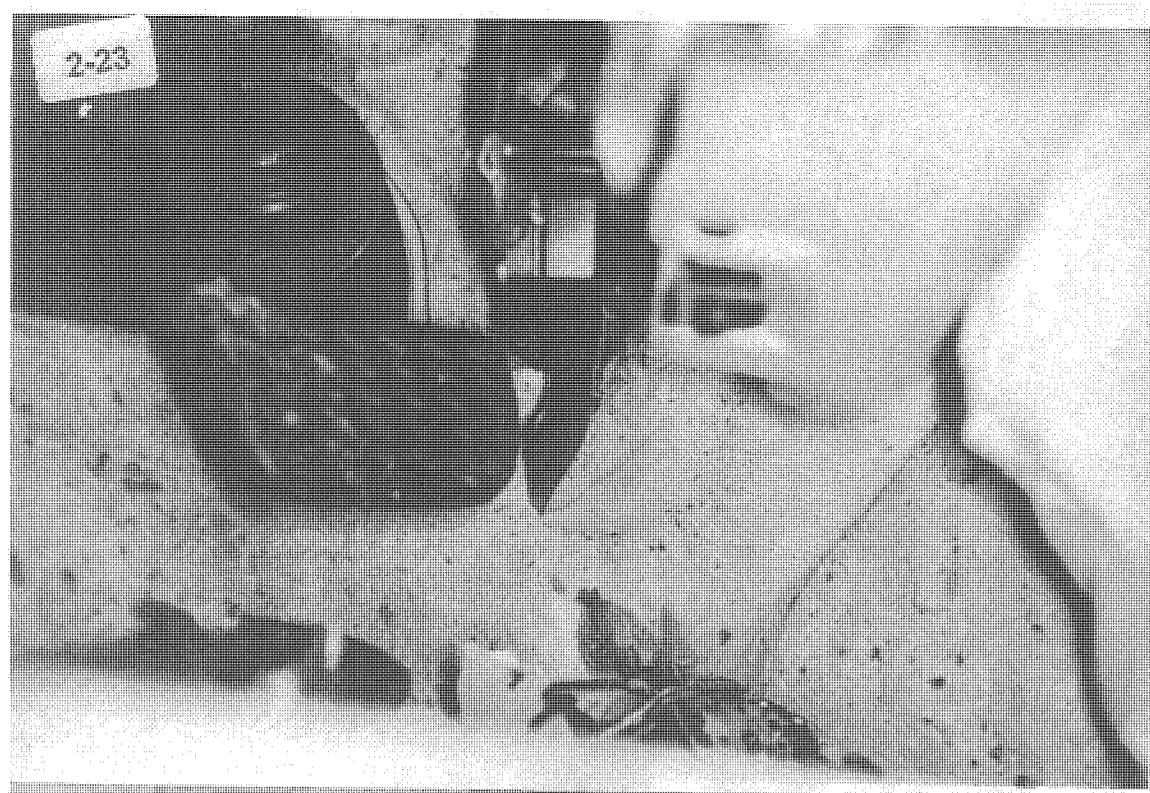
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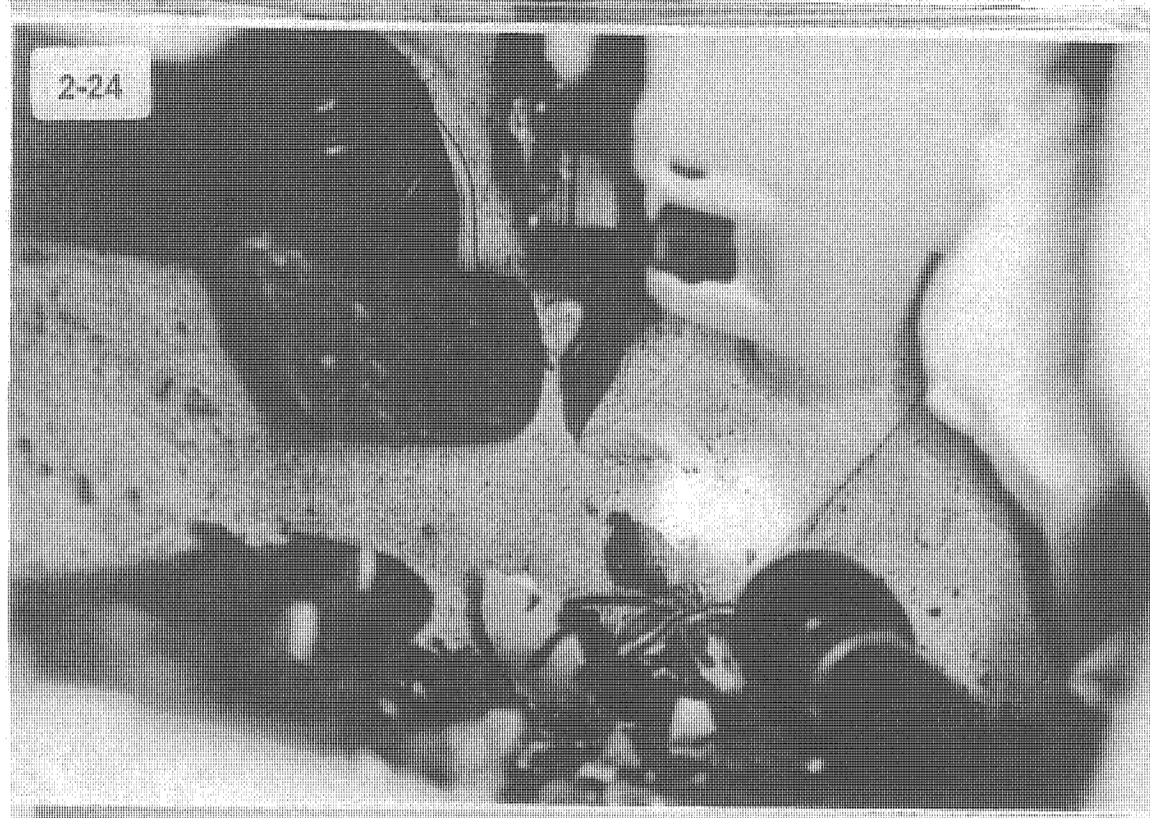
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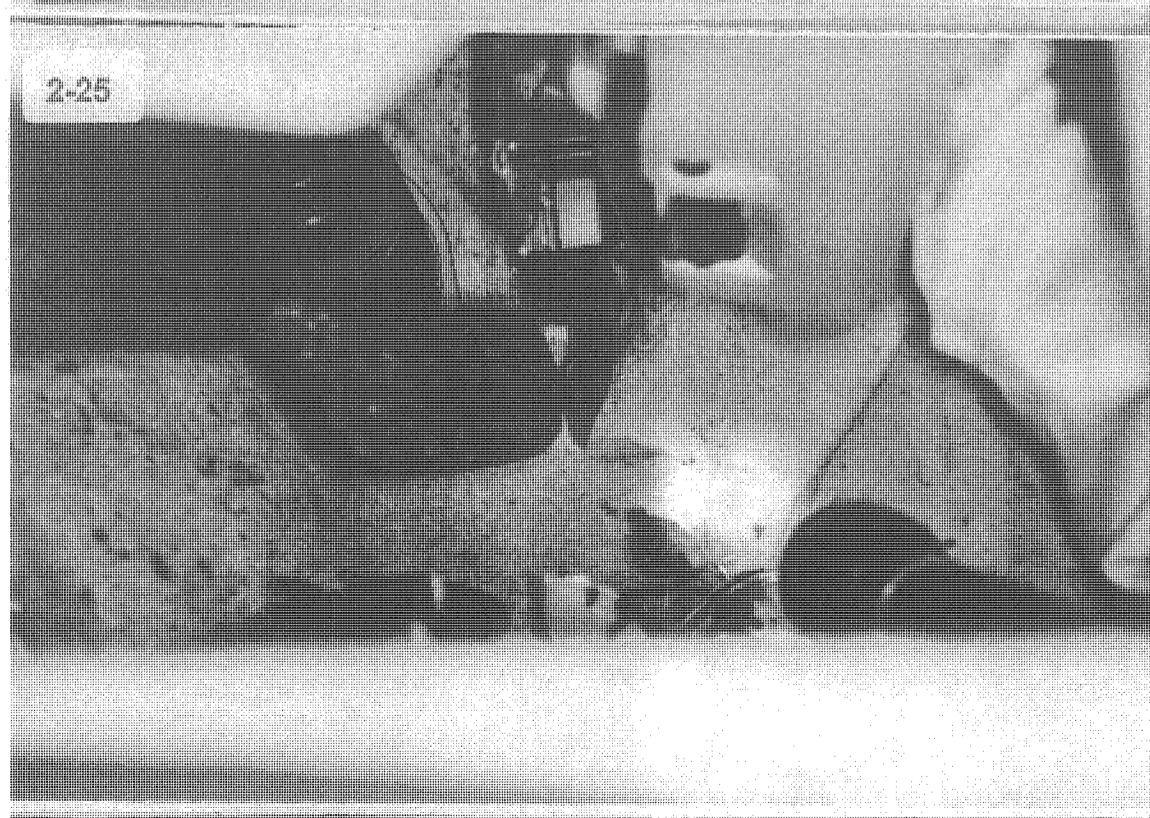
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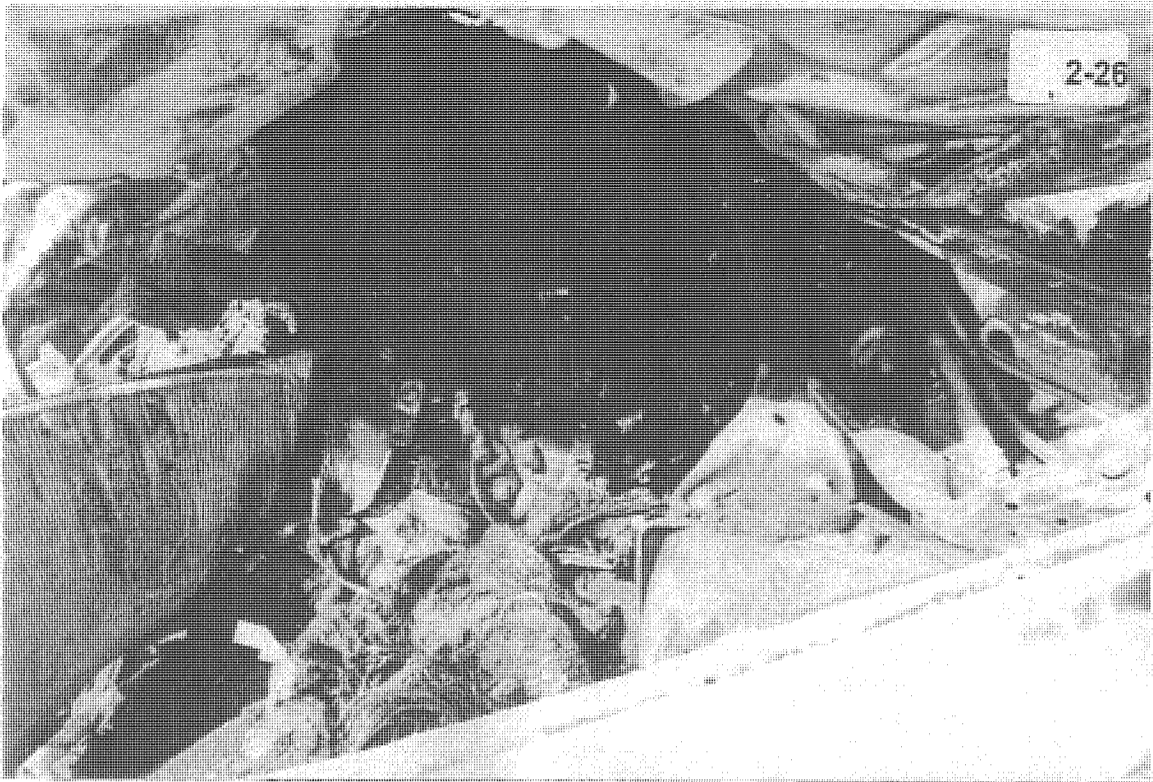
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2-25



2-26



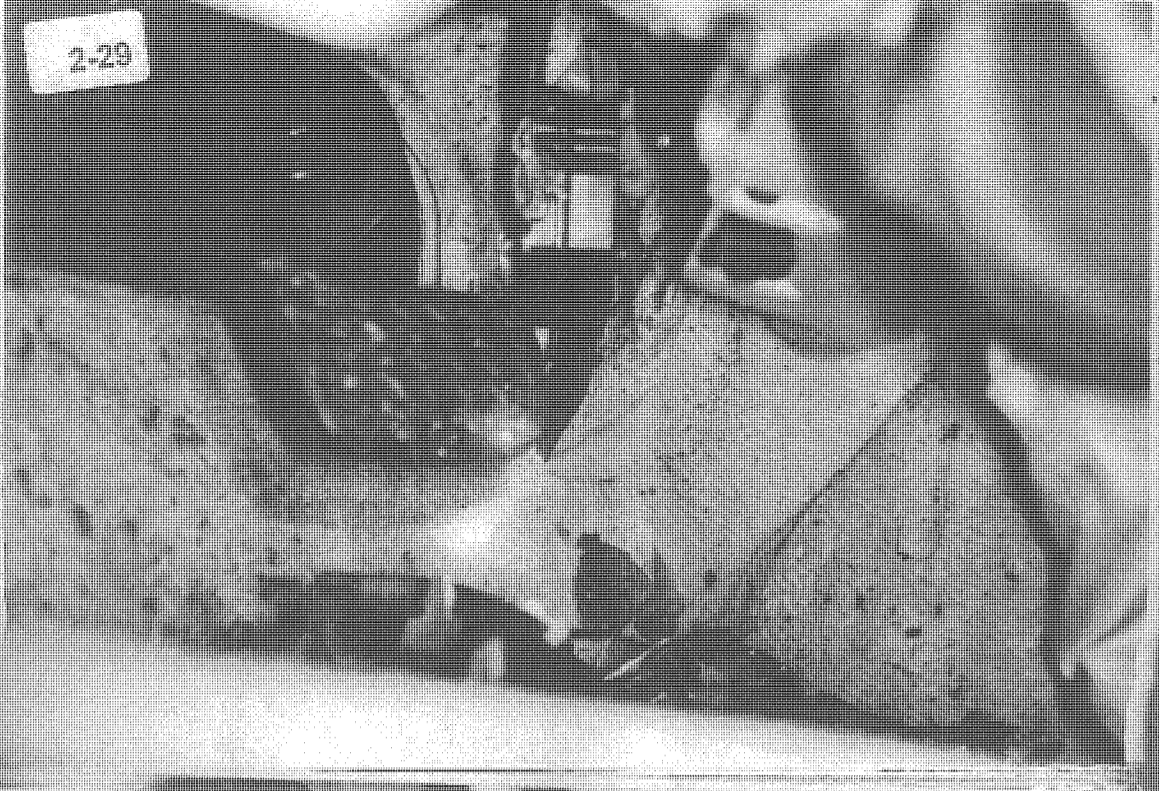
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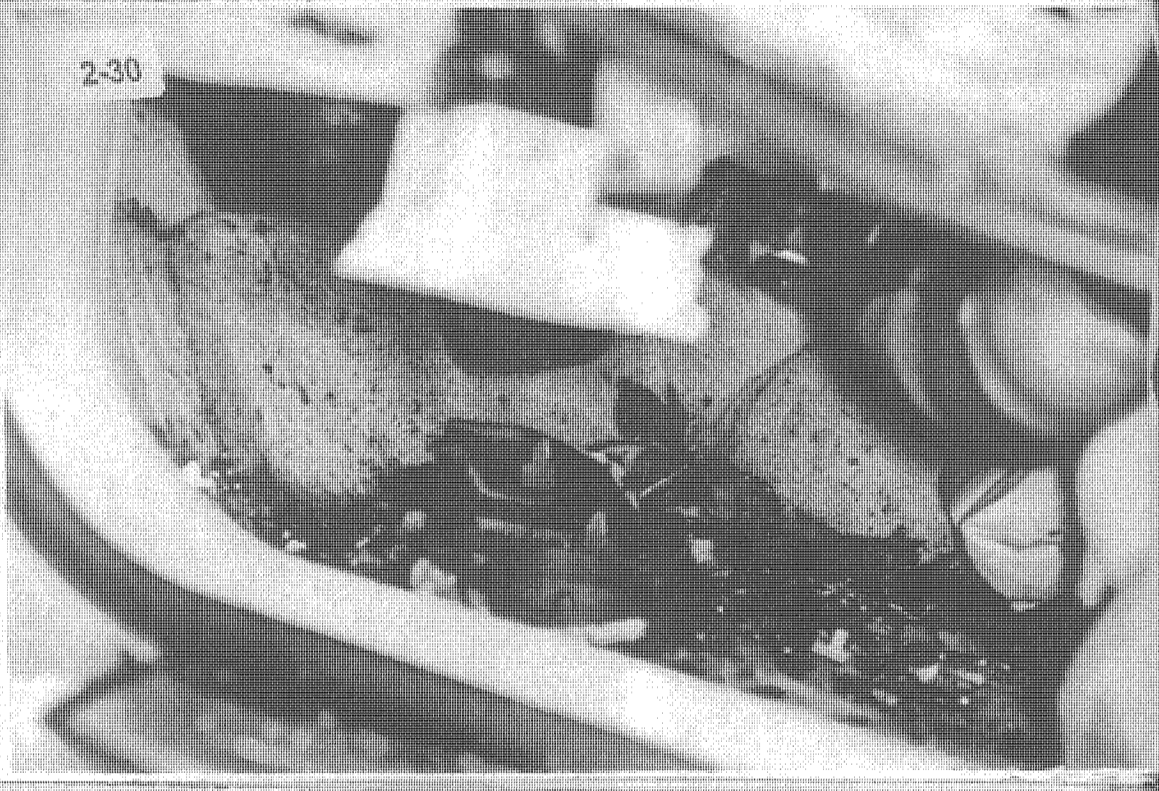
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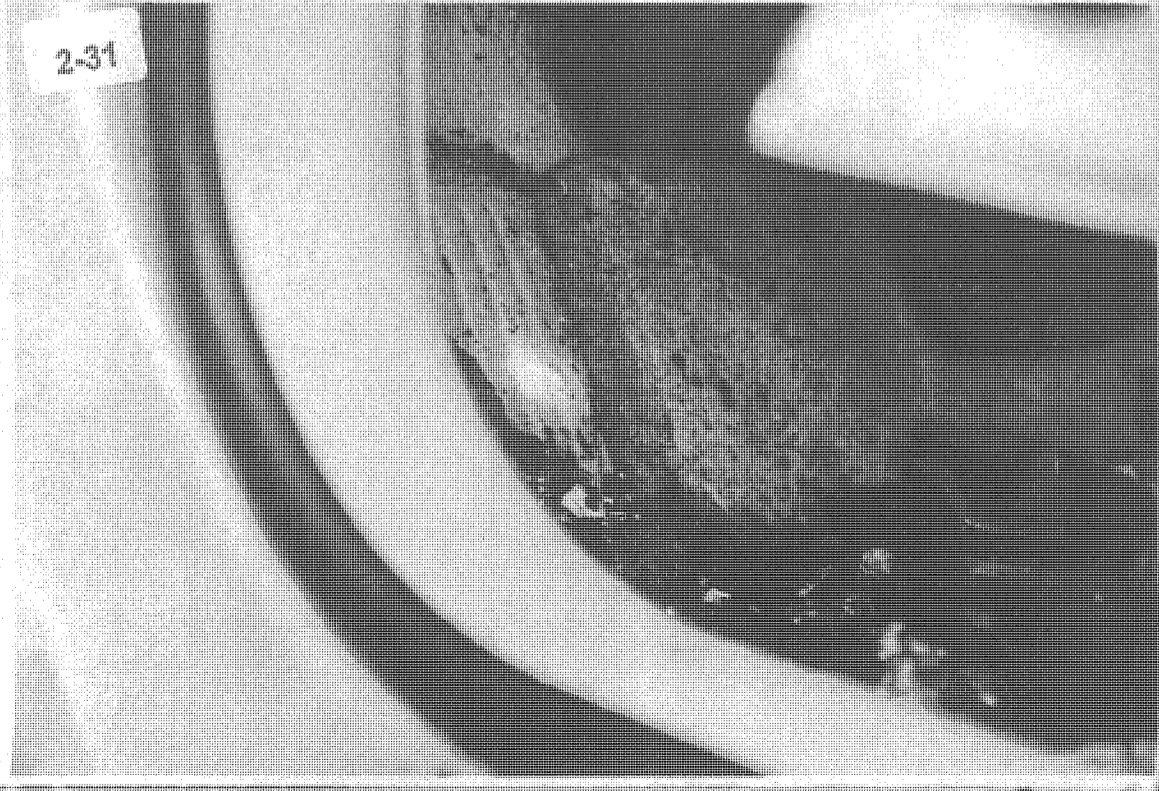
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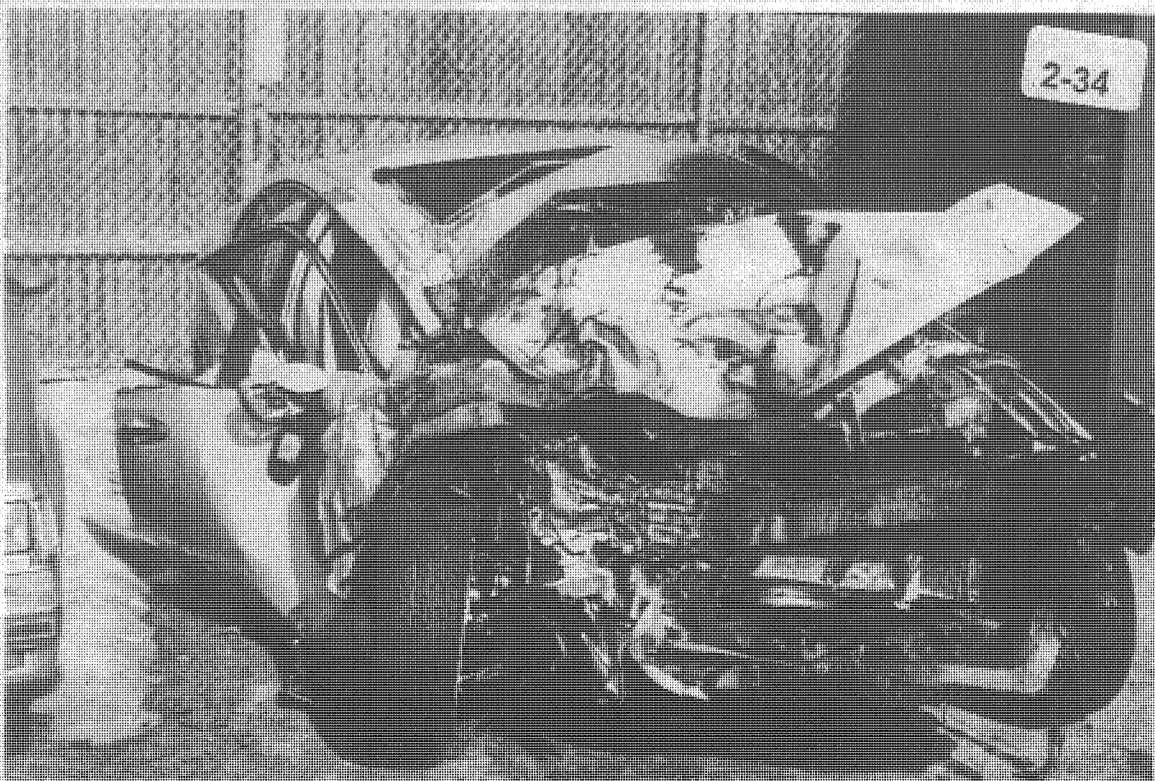


2-30



2-31





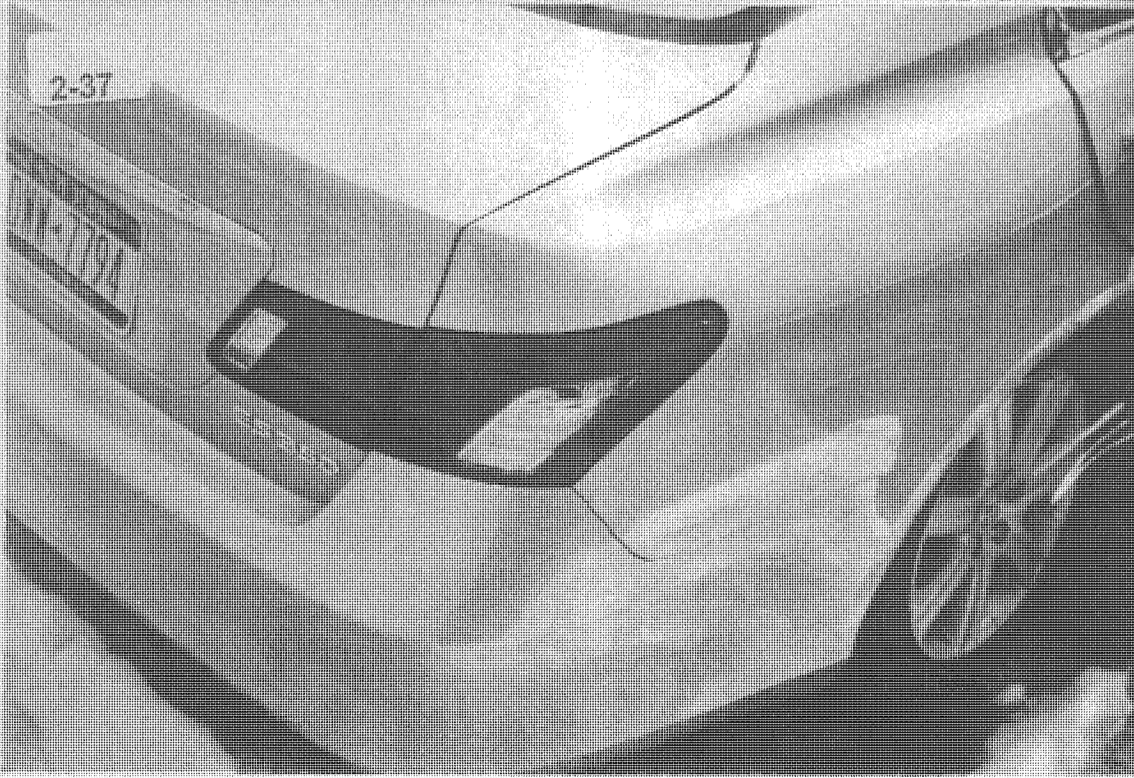
2-35



2-36



2-37



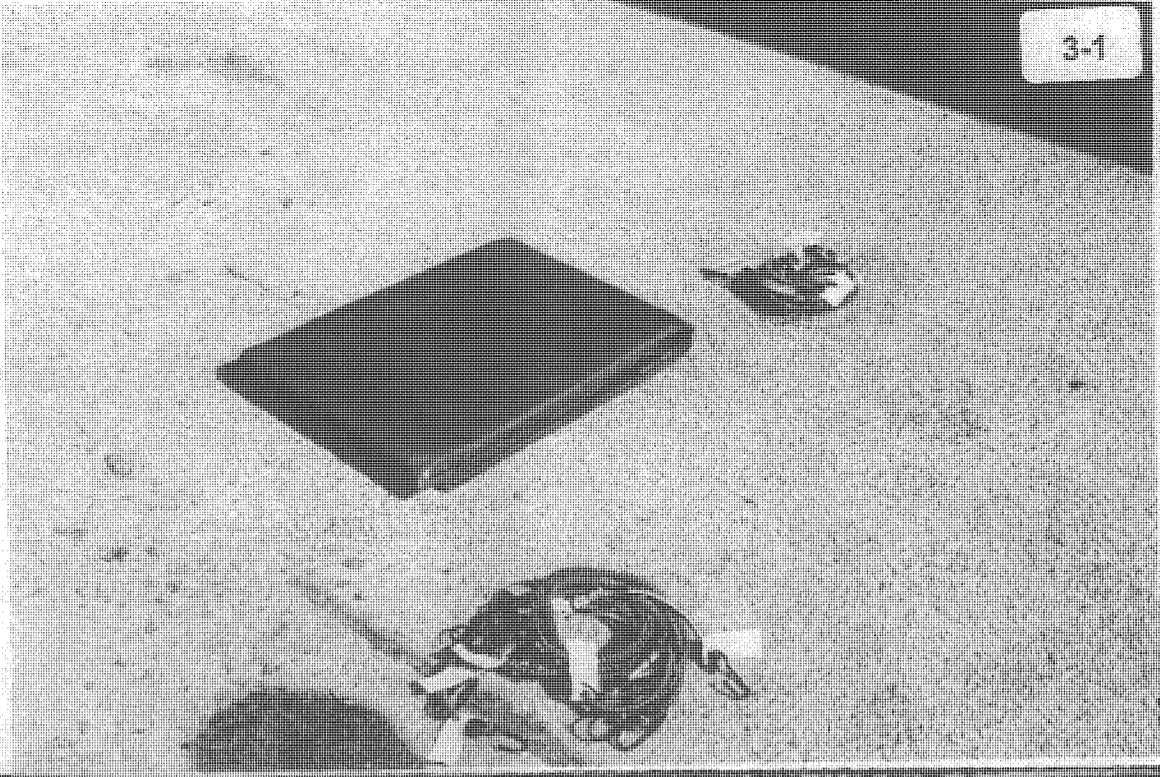
ROLL #3

- 3-1. Tarp and bungee cords to be used to cover vehicle.
- 3-2. Vehicle covered. Right front.
- 3-3. Left front.
- 3-4. Thru 3-5 Left rear.
- 3-6. Thru 3-9. Right rear.
- 3-10. Preliminary inspection complete.

2

3

3-1



3-2



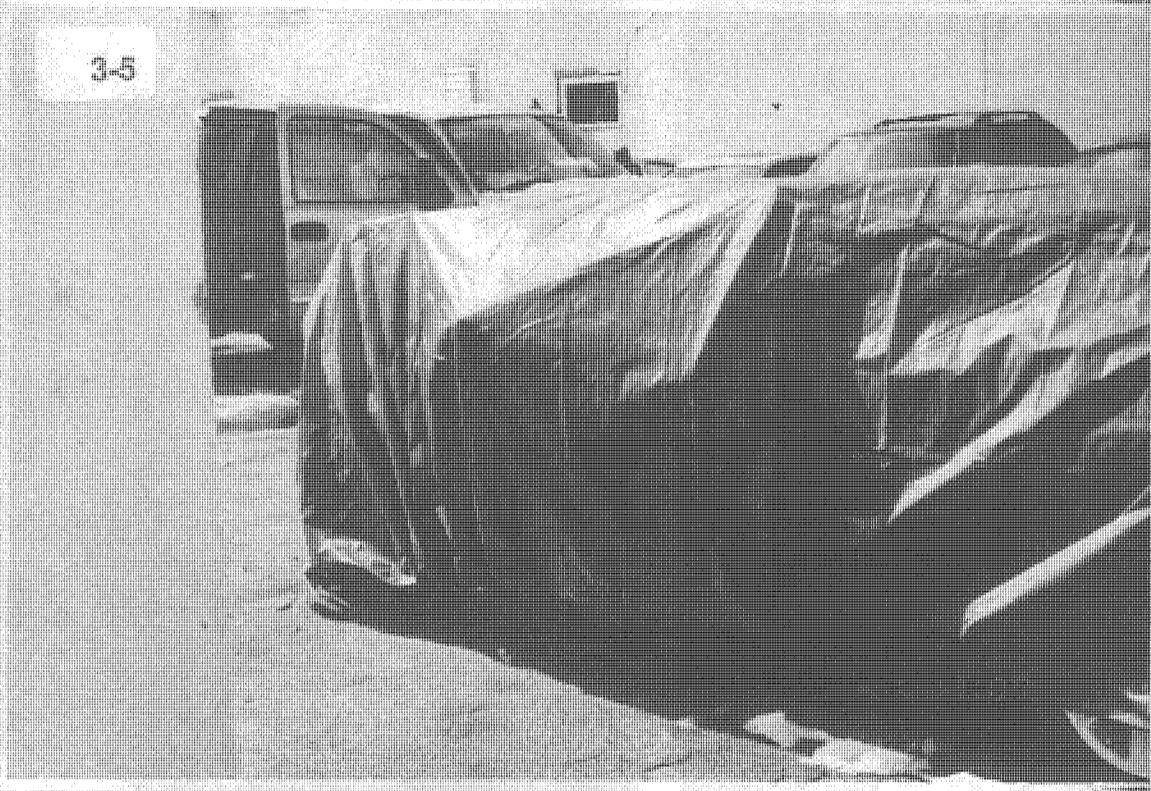
3-3



3-4



3-5



3-6



3-7

3-8

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3-10



C. Bruce Gambardella, P. E.

Consultant Automotive Engineer

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(845) 354-0595
FAX: (845) 354-0859
Email: cbgpc@optonline.net

PHOTOGRAPHS

Re: Iris L. Leviten 2007 Lexus ES350

Inspection of a 2007 Lexus ES 350

March 8, 2007

4


ROLL #1

- 1-2. VIN tag.
- 1-3. VIN label.
- 1-4. Tire label.
- 1-5. SRS label.
- 1-6. Information label re Mercury.
- 1-7. Interior.
- 1-8. Driver's mat. Note: retained by retention clip.
- 1-9. Closeup of retention clip.
- 1-10. Retention clip in holder in floor.
- 1-11. Retention clip on inboard side of floor mat.
- 1-12. Retention clip in receptacle in floor.
- 1-13. Odometer. 27 miles.
- 1-14. Thru 1-15. Instrument cluster.
- 1-16. Navigation system.
- 1-17. Stereo.
- 1-18. Interior.
- 1-19. View of foot box and pedals.
- 1-20. Front.
- 1-21. Left front.
- 1-22. Left side.
- 1-23. Left rear.
- 1-24. Back.
- 1-25. Right rear.
- 1-26. Right side.
- 1-27. Right front.
- 1-28. Right front tire assembly.
- 1-29. Thru 1-31. Tire information.
- 1-32. Thru 1-33. Condition of rotor, right front.
- 1-34. Front with scale.
- 1-35. Left side with scale.
- 1-36. Back with scale.
- 1-37. Right side with scale.

1-2

1-3

MFD. BY: TOYOTA MOTOR CORPORATION 12/06
 GVWR 4680 LB GAWR FR 2668 LB RR 2359 LB
 THIS VEHICLE CONFORMS TO ALL APPLICABLE
 FEDERAL MOTOR VEHICLE SAFETY, BUMPER AND
 THEFT PREVENTION STANDARDS IN EFFECT ON
 THE DATE OF MANUFACTURE SHOWN ABOVE
 JTEH420572026265 PASS. CAR



C/TR:077A E05 GSV40 SETOKA
 A/TM:01A/U66CE MADE IN JAPAN 009 A

14

SBS SIDE AIRBAG



LOADING CAPACITY TOTAL 5
 FRONT 2 REAR 3
 The combined weight of occupants
 and cargo should never exceed 410 kg or 900 lbs.

NOVRE DE PLACES ASSISES TOTAL 5
 AVANT 2 ARRIERE 3
 Le poids total des occupants et du chargement ne
 doit jamais être supérieur à 410 kg ou 900 lb.

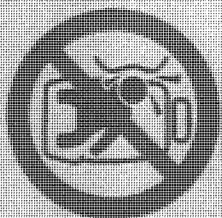
TIRE	SIZE	COLD TIRE PRESSURE	PNEUS	DIMENSION	PRESION DE CONFORT A FROID
FRONT	P215/55R17	210kPa, 30PSI	AVANT	P215/55R17	210kPa, 30PSI
REAR	P215/55R17	210kPa, 30PSI	ARRIERE	P215/55R17	210kPa, 30PSI
SPARE	P215/55R17	210kPa, 30PSI	SECOURS	P215/55R17	210kPa, 30PSI

6U

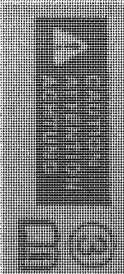
DO NOT LEAN AGAINST THE
 TOOLS TO AVOID FOOT LOCKS
 WHICH CAN BECOME UNUSUAL
 WITH THE SIDE AIRBAG
 INFLATER.

SEE OWNER'S MANUAL
 FOR DETAILS.

DO NOT ALLOW CHILDREN
 OR OTHER PASSENGERS
 TO LEAN AGAINST THE
 TOOLS TO AVOID FOOT LOCKS
 WHICH CAN BECOME UNUSUAL
 WITH THE SIDE AIRBAG
 INFLATER.



SRS SIDE AIRBAG



SEE THE
 OWNER'S MANUAL
 FOR DETAILS

TIRE	SIZE
FRONT	P215/55R17
REAR	P215/55R17
SPARE	P215/55R17

1-11. Retention clip on inboard side of floor mat.

This vehicle may include
 mercury-containing devices
 installed by the manufacturer.

- HID Headlamps
- Navigation or info. Display
- Back-lit Instruments

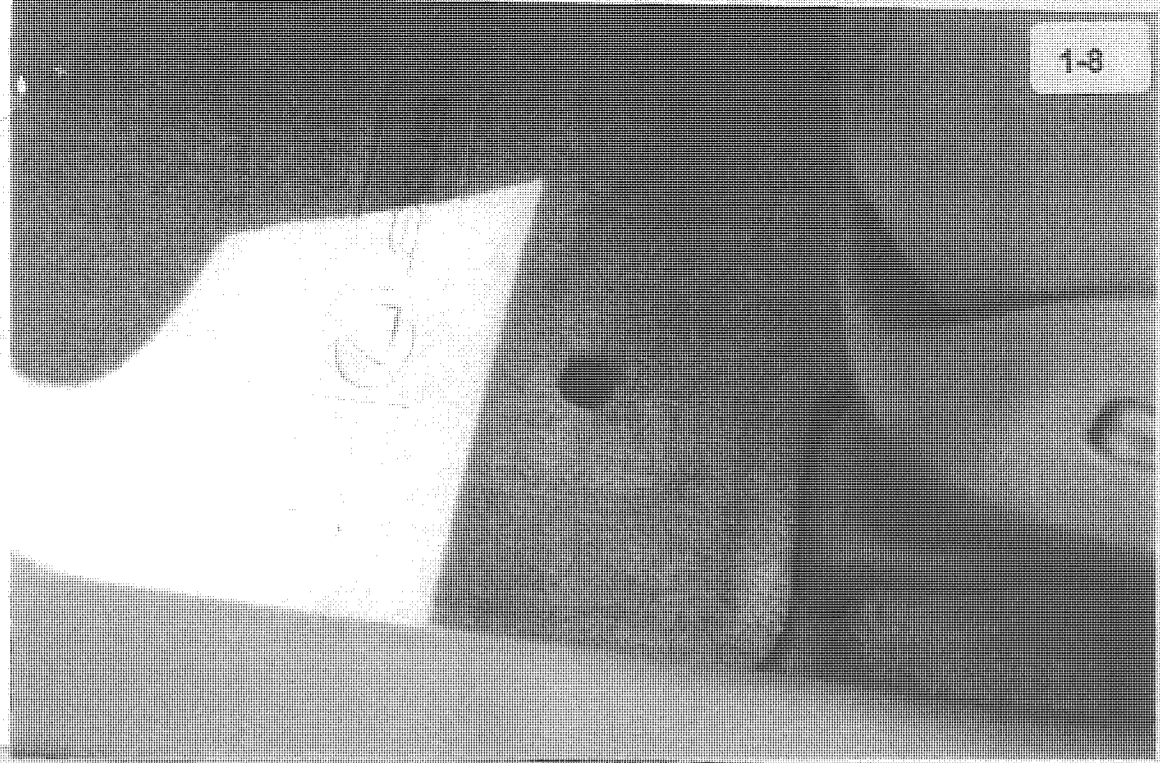
Remove Devices Before Vehicle
 Disposal. Upon Removal of
 Devices, Please Reuse, Recycle,
 or Dispose as Hazardous Waste.

20-1005-012 0000-MAC00

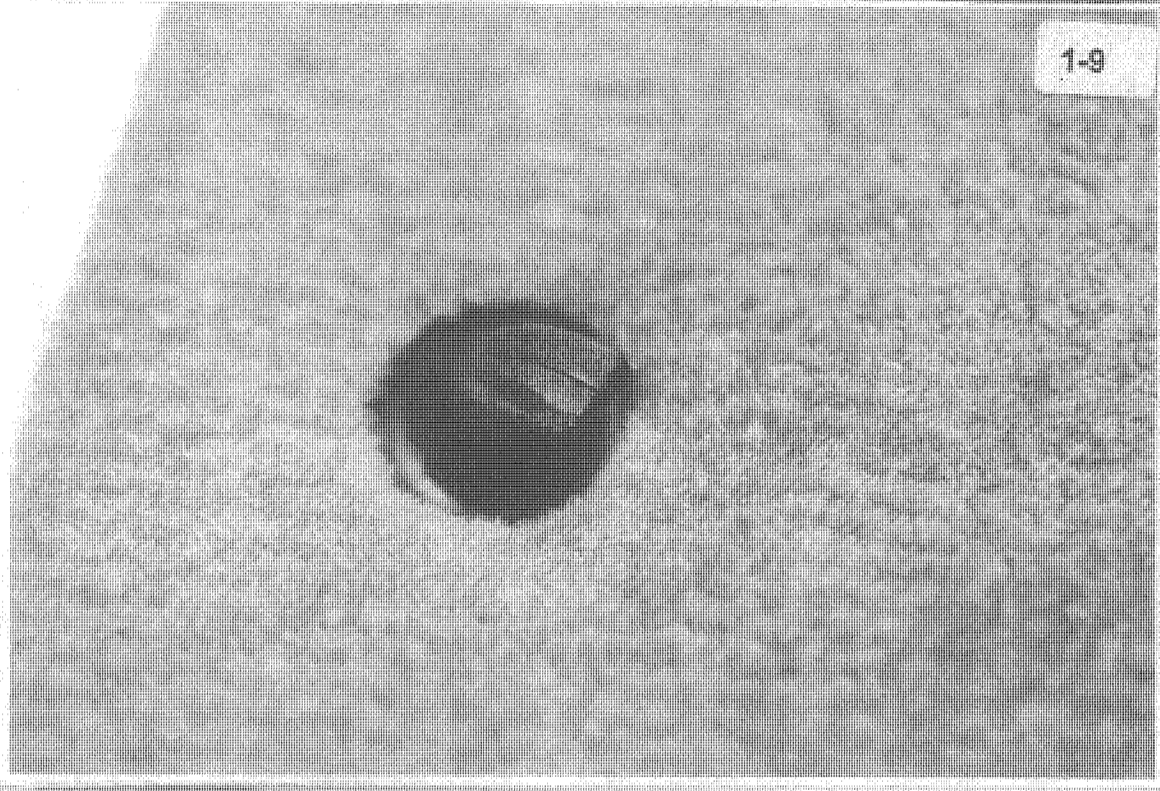
1-26. Right side.



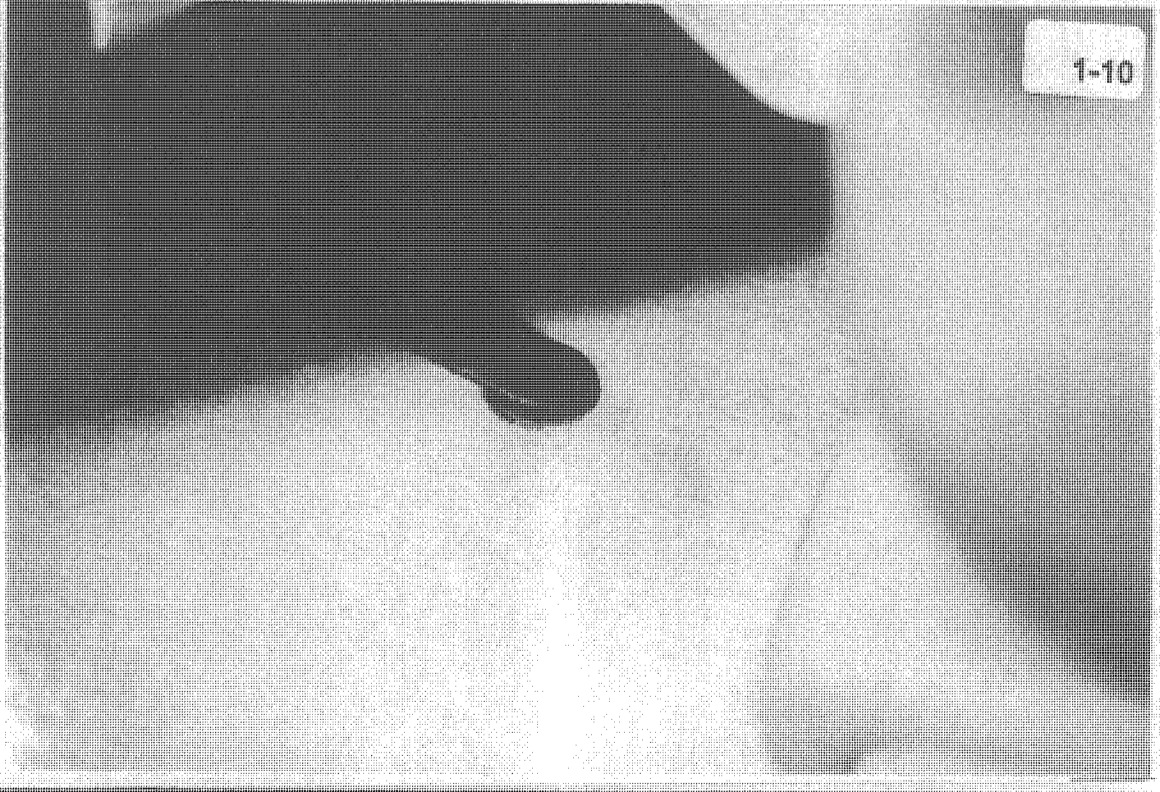
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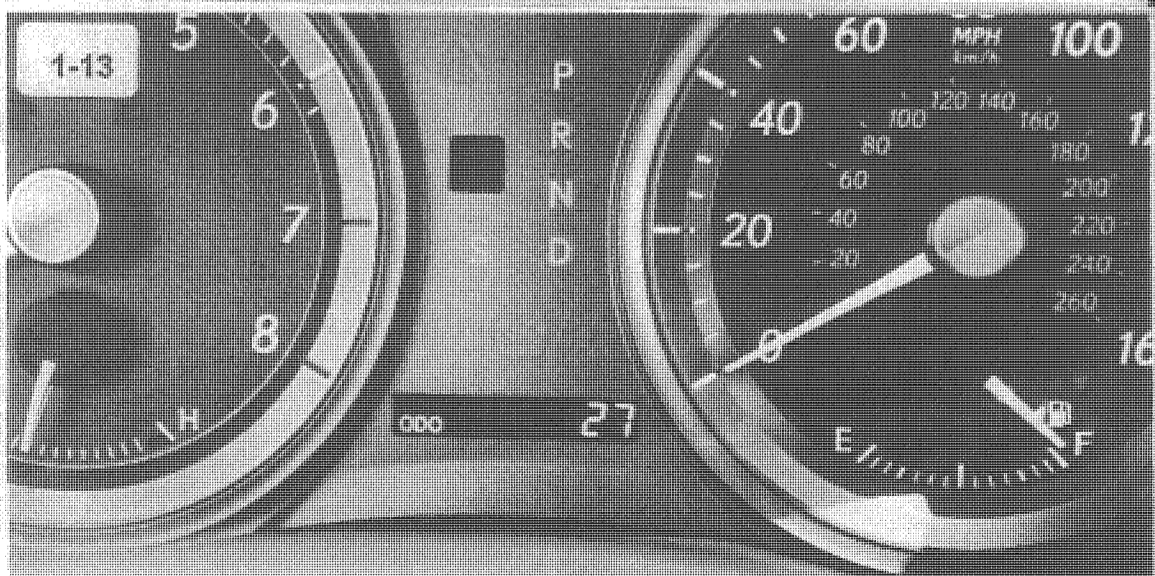
1-11

1-11. Retention clip on inboard side of floor mat.

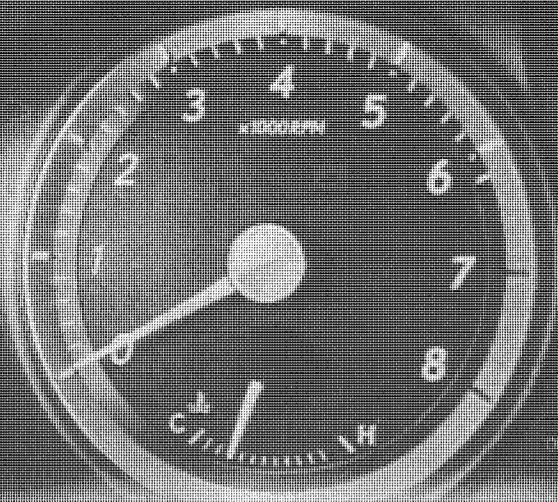
1-12

1-12. Right side.

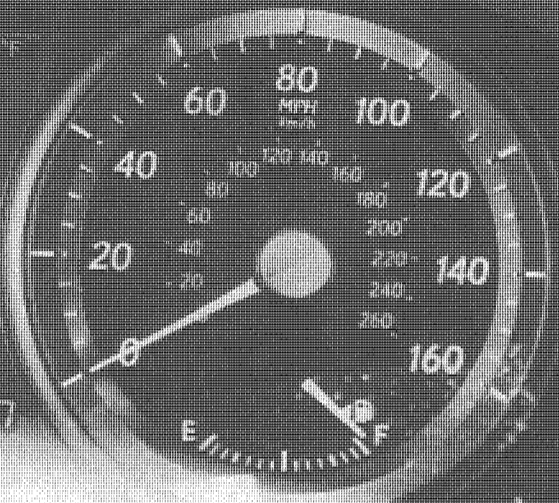
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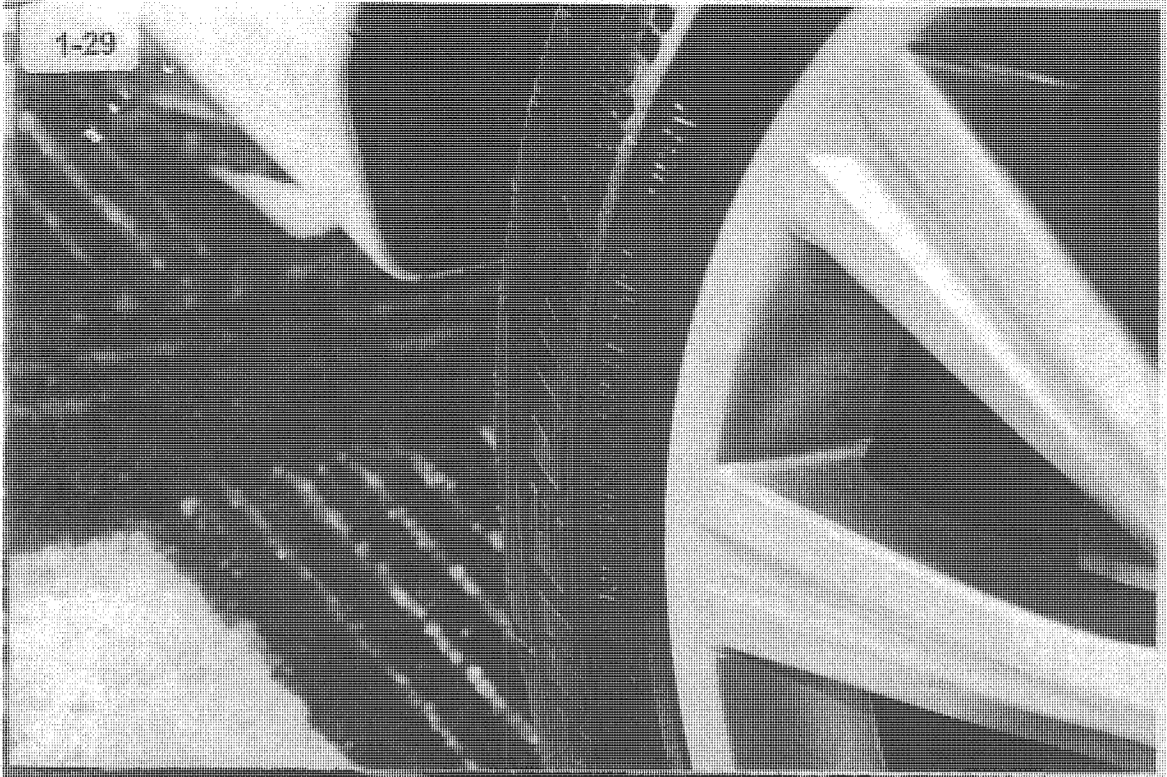
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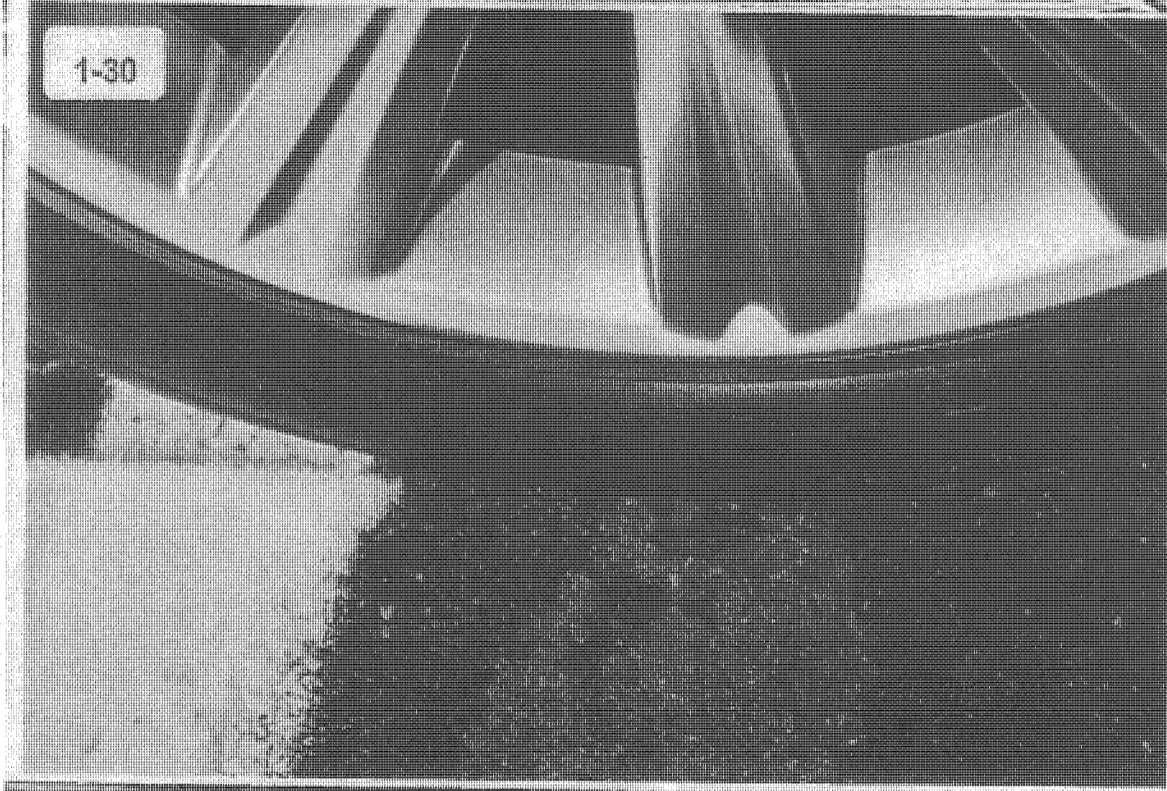
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1-29



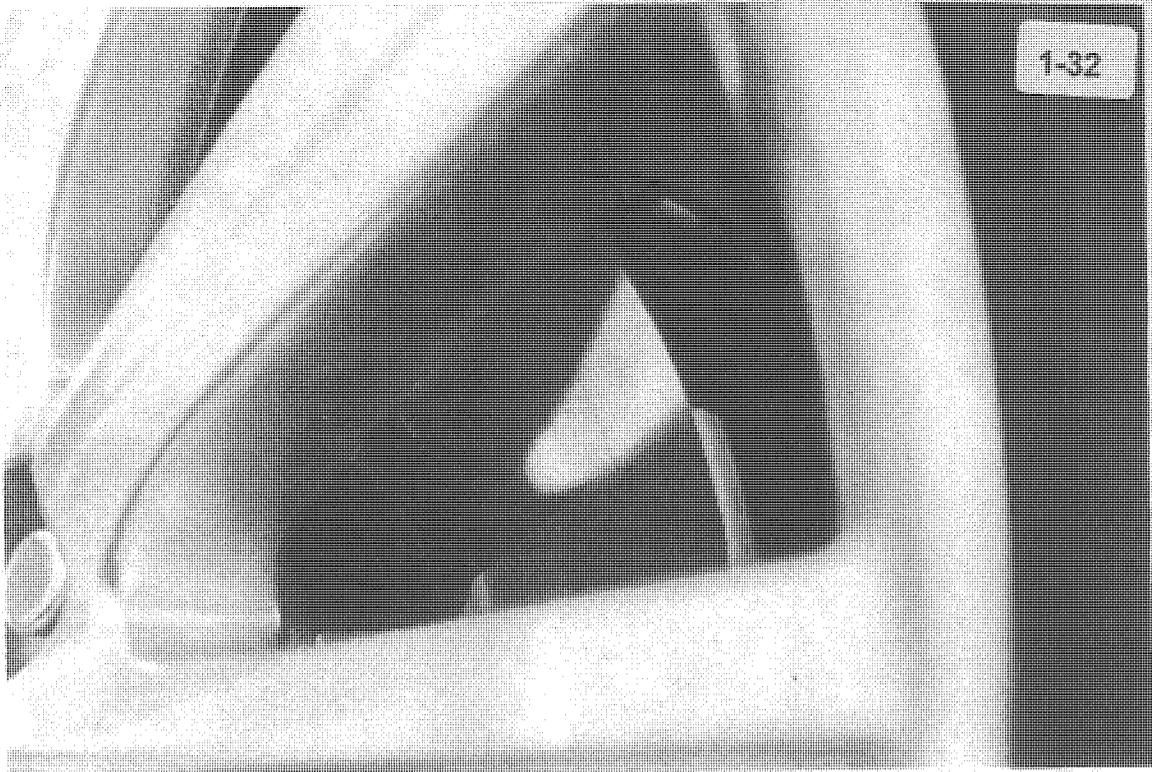
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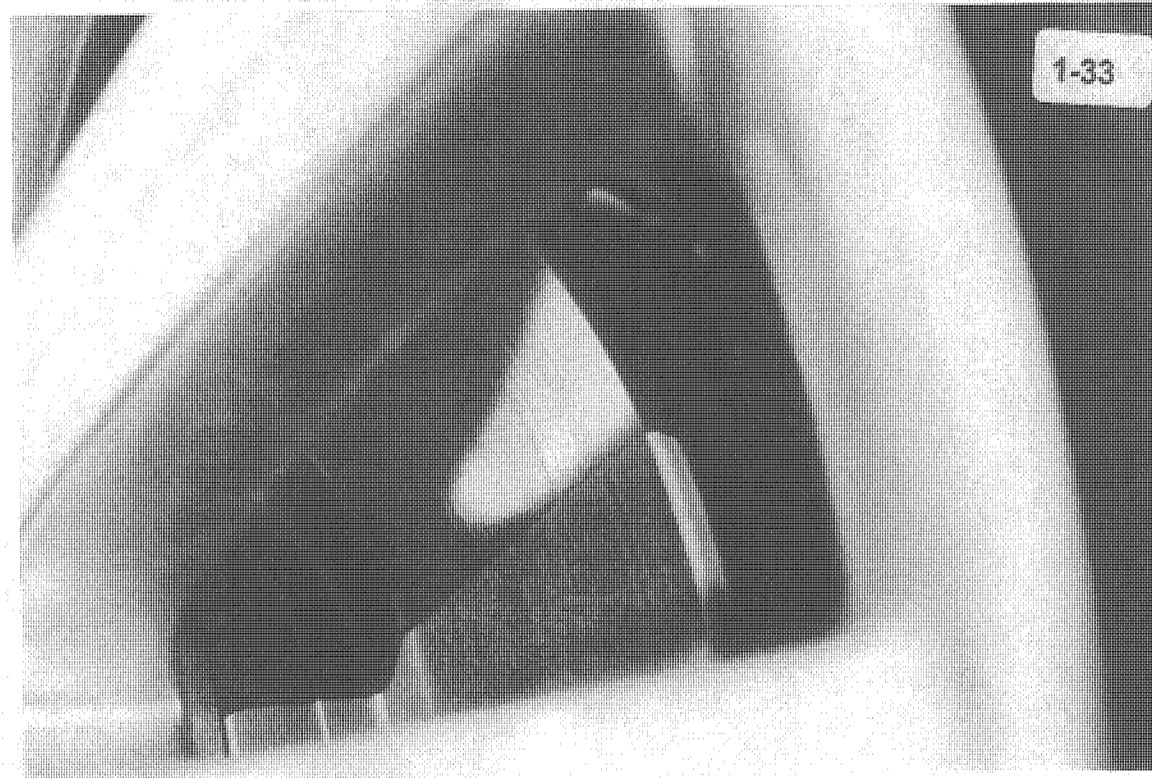
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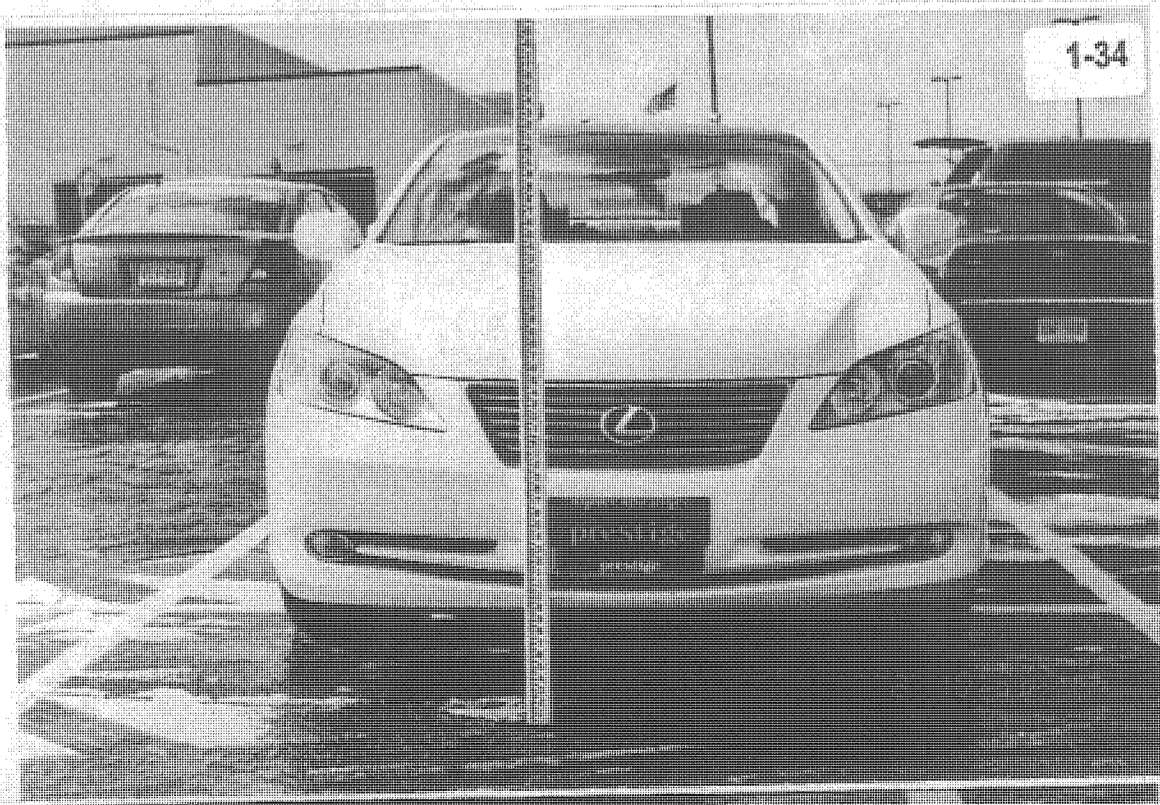
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1-33



1-34



1-35



1-36



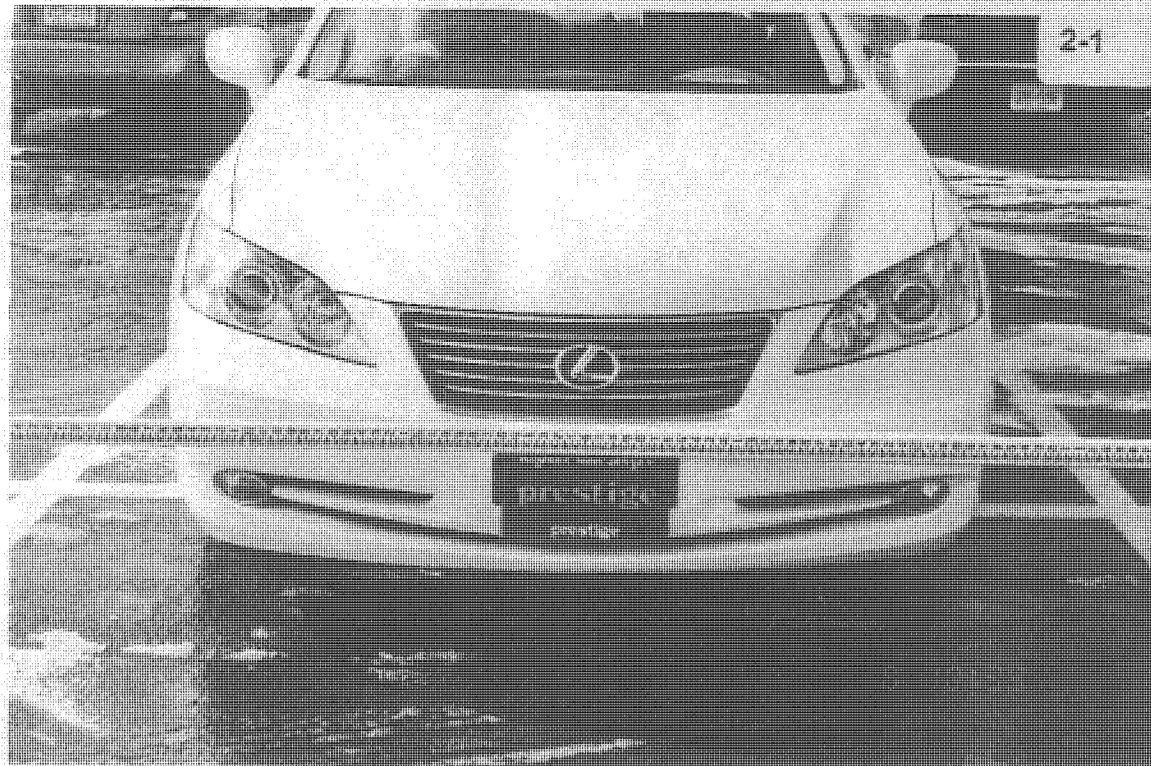
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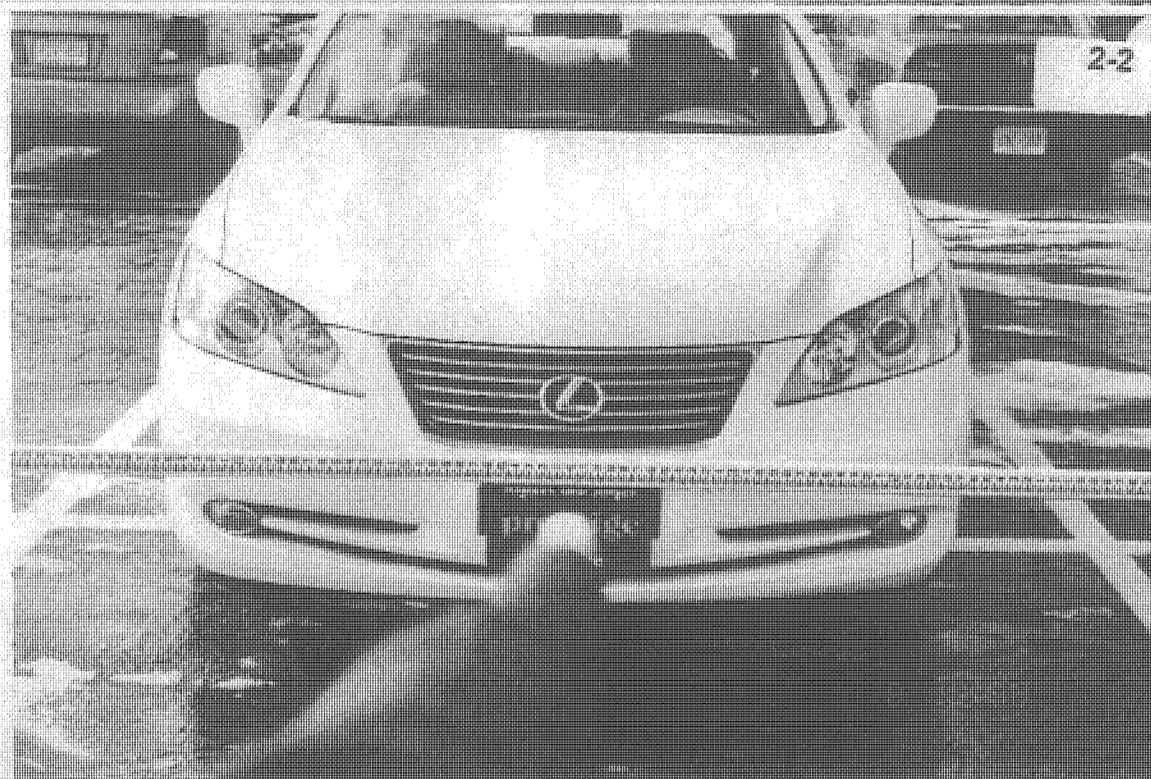
ROLL #2

- 2-1. Front with scale. Scale aligned at 4' mark on scale at approximate centerline of vehicle.
- 2-2. Scale alignment pointed out.
- 2-3. Thru 2-5. Front with scale.
- 2-6. Thru 2-8. Oblique photos with scale.
- 2-9. Back with scale. Scale aligned at 4' mark on scale at approximate centerline of vehicle.
- 2-10. Scale alignment pointed out.
- 2-11. Thru 2-13. Back with scale.
- 2-14. Scale alignment. Scale aligned at 4' mark on scale at approximate centerline of left front axle.
- 2-15. Scale alignment pointed out.
- 2-16. Thru 2-20. Left side with scale.
- 2-21. Scale alignment. Scale aligned at 4' mark on scale at approximate centerline of right front axle.
- 2-22. Scale alignment pointed out.
- 2-23. Thru 2-26. Right side with scale.
- 2-27. Thru 2-33. Foot box with stadia rod. Various views.
- 2-34. Spacing between parking brake and floor mat.
- 2-35. Thru 2-36. Spacing between accelerator pedal and floor mat.

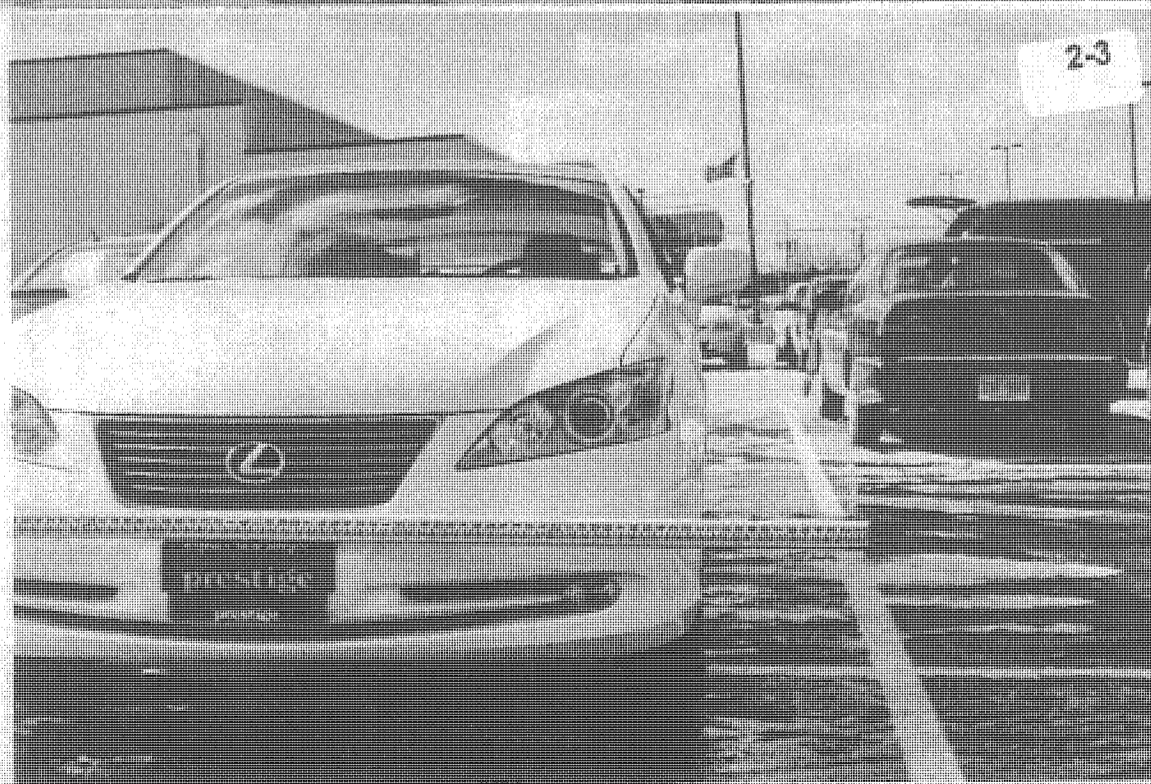
2-1



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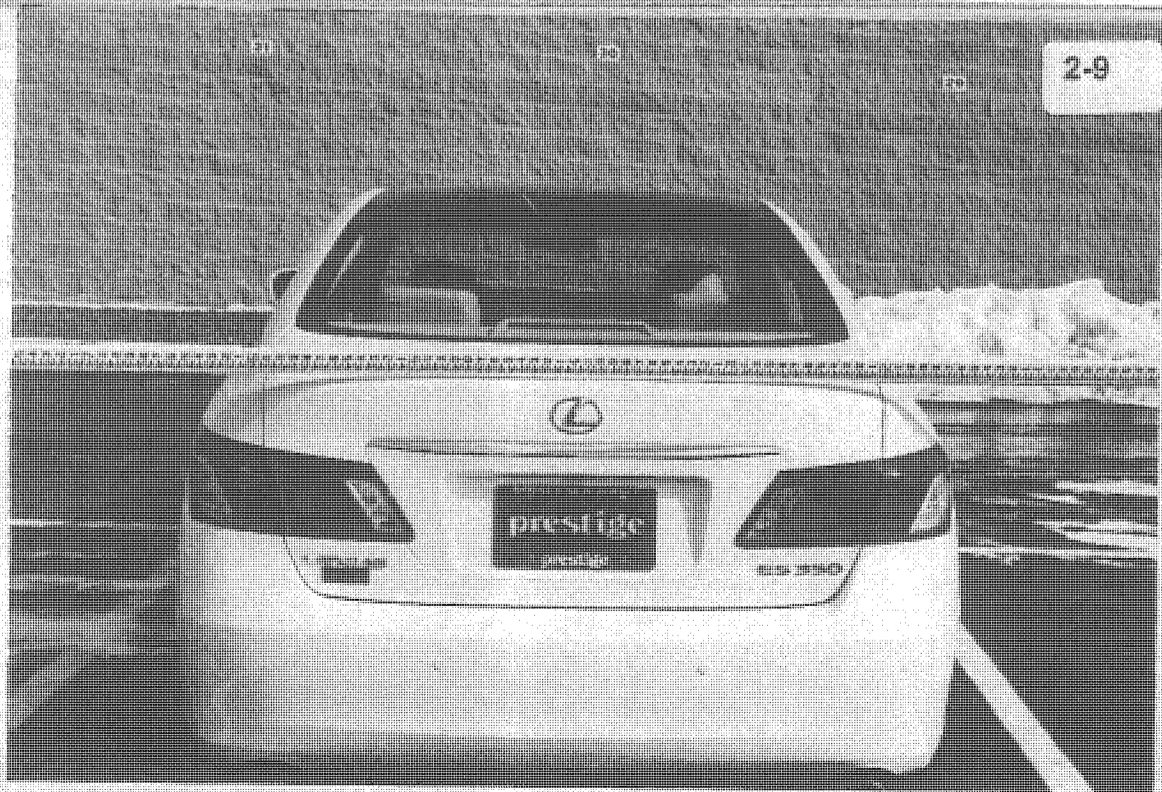
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2-20



2-21



2-22

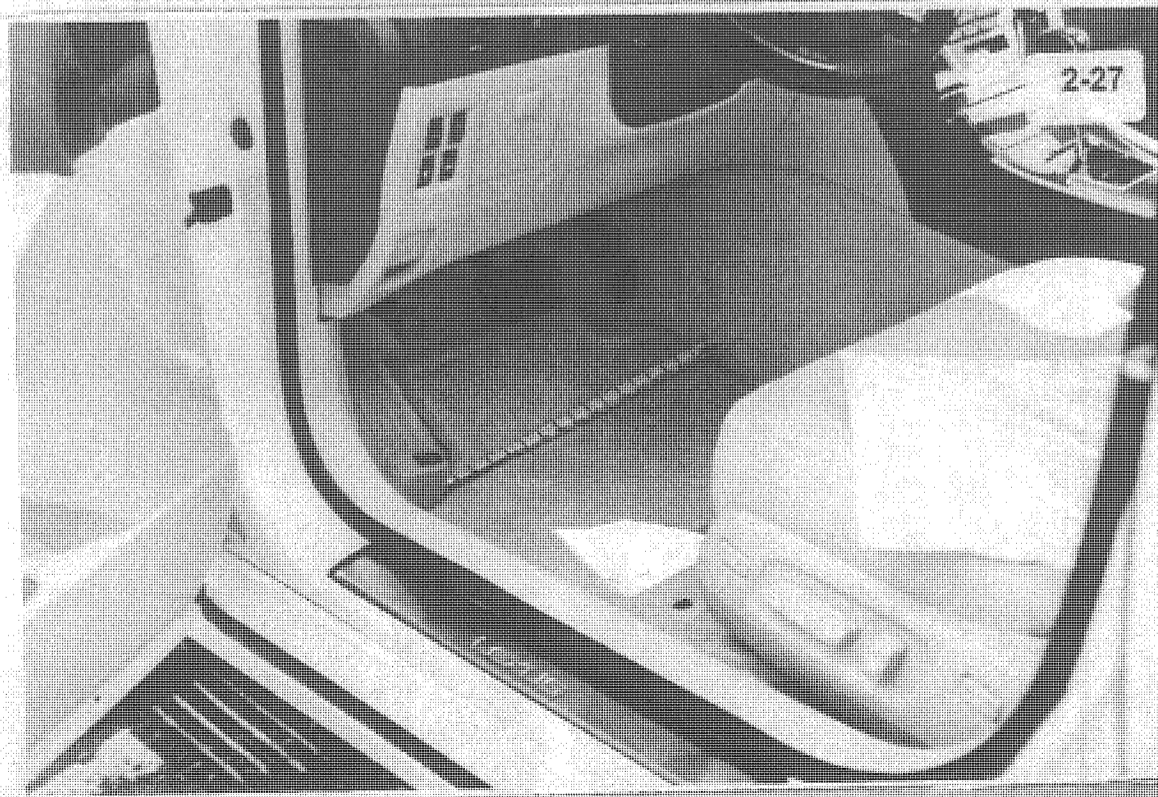


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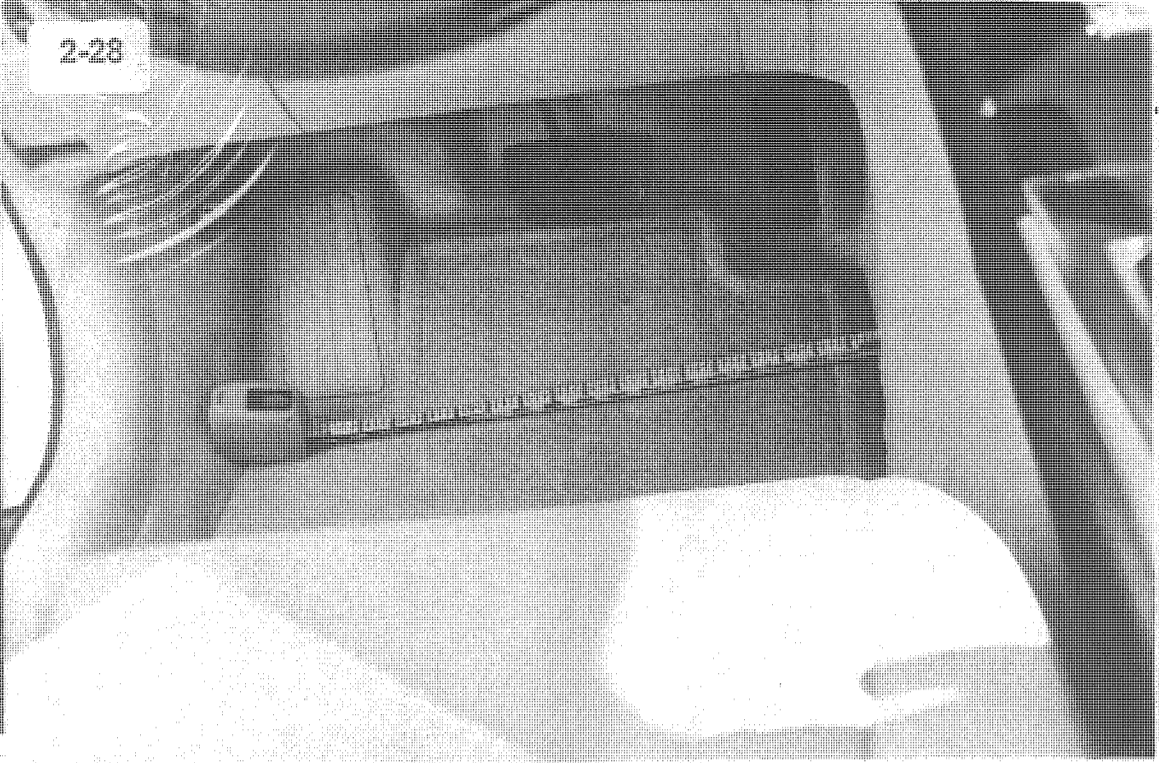


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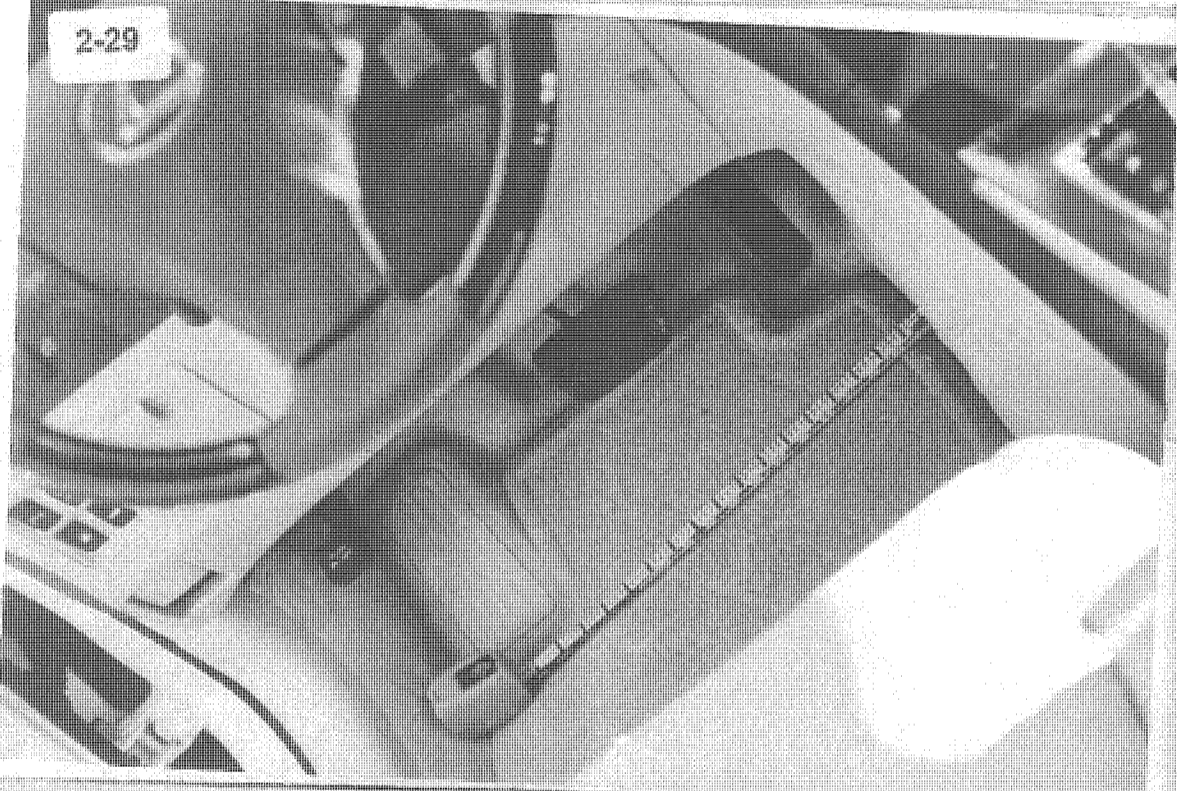




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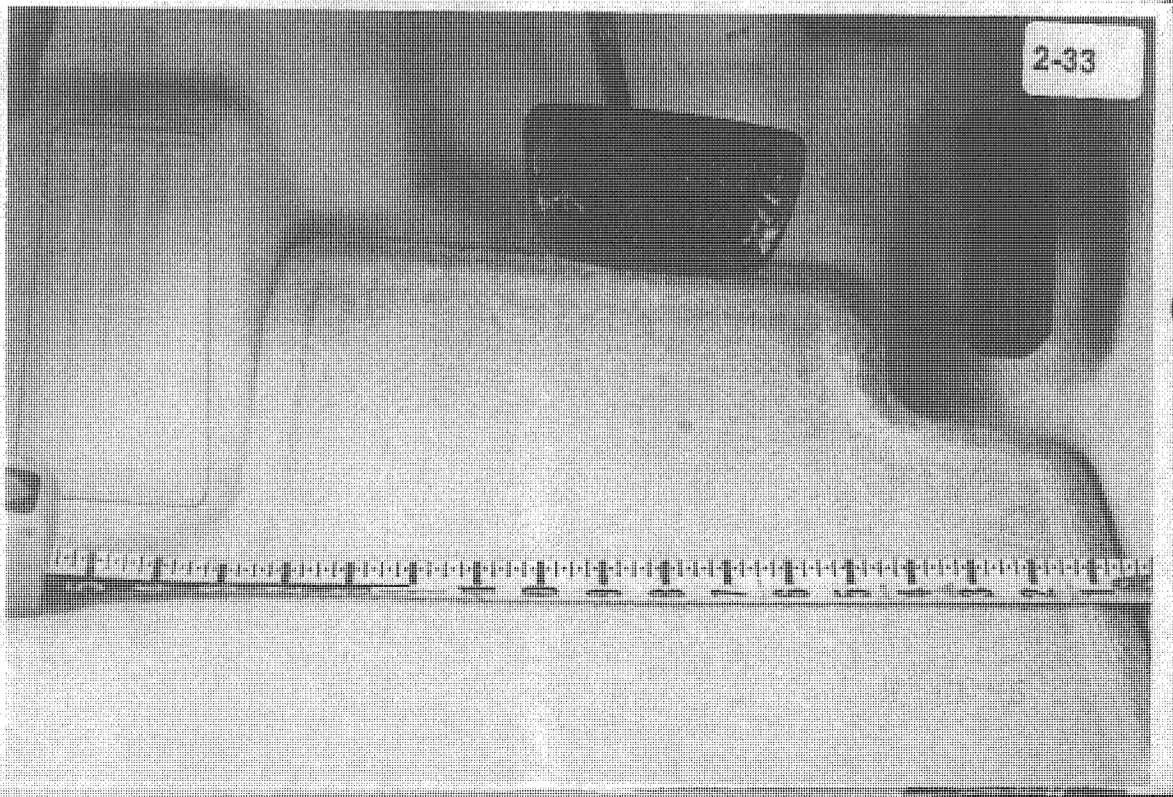
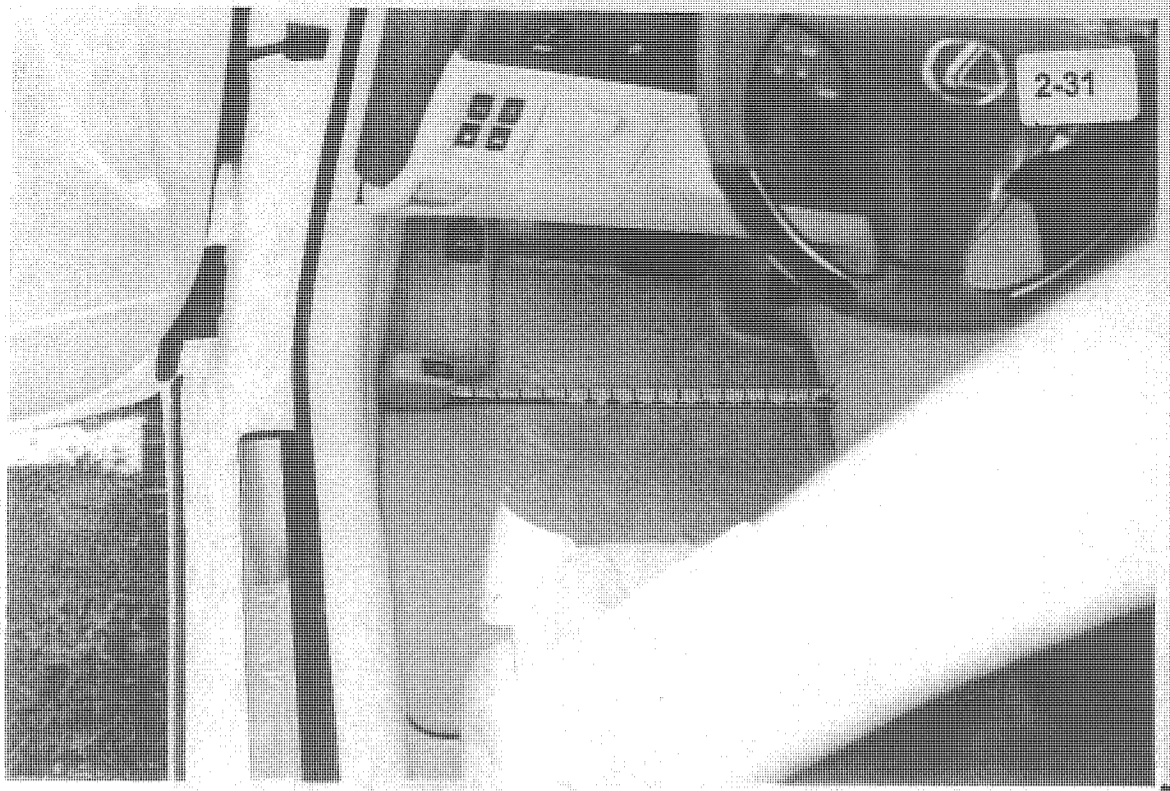


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2-34

6 5 4 3 2 1

2-35

6 5 4 3 2 1

2-36

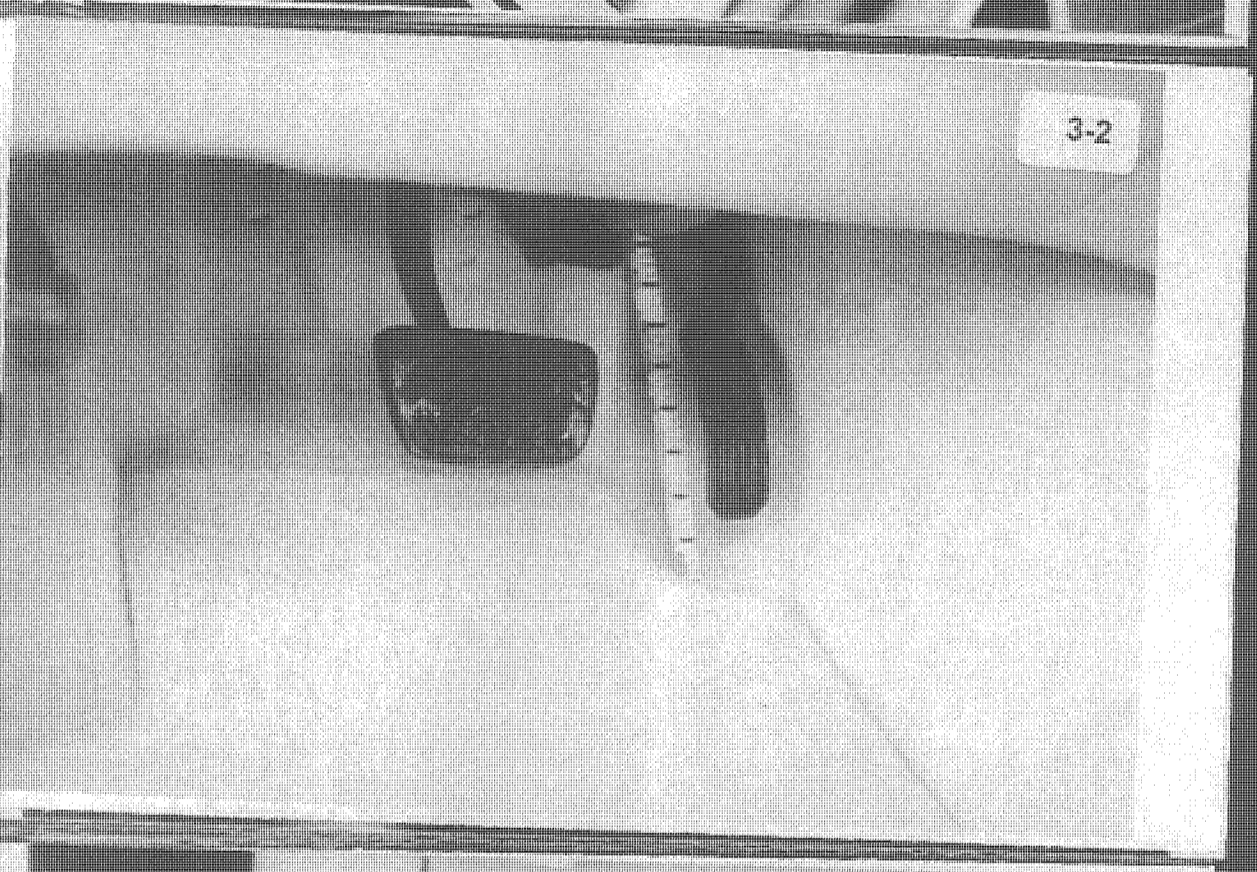
6 5 4 3 2 1

ROLL #3

- 3-1. Foot box with scale.
- 3-2. Pedals with scale.
- 3-3. Operator controls.
- 3-4. Thru 3-5. Engine bay.
- 3-6. VIN number stamped in fire wall.
- 3-7. Thru 3-8. Throttle body. No cables. Fly by wire.
- 3-9. Engine bay.
- 3-10. Protective mat replaced in
- 3-11. Thru 3-12. Vehicle returned to storage location.



3-1



3-2

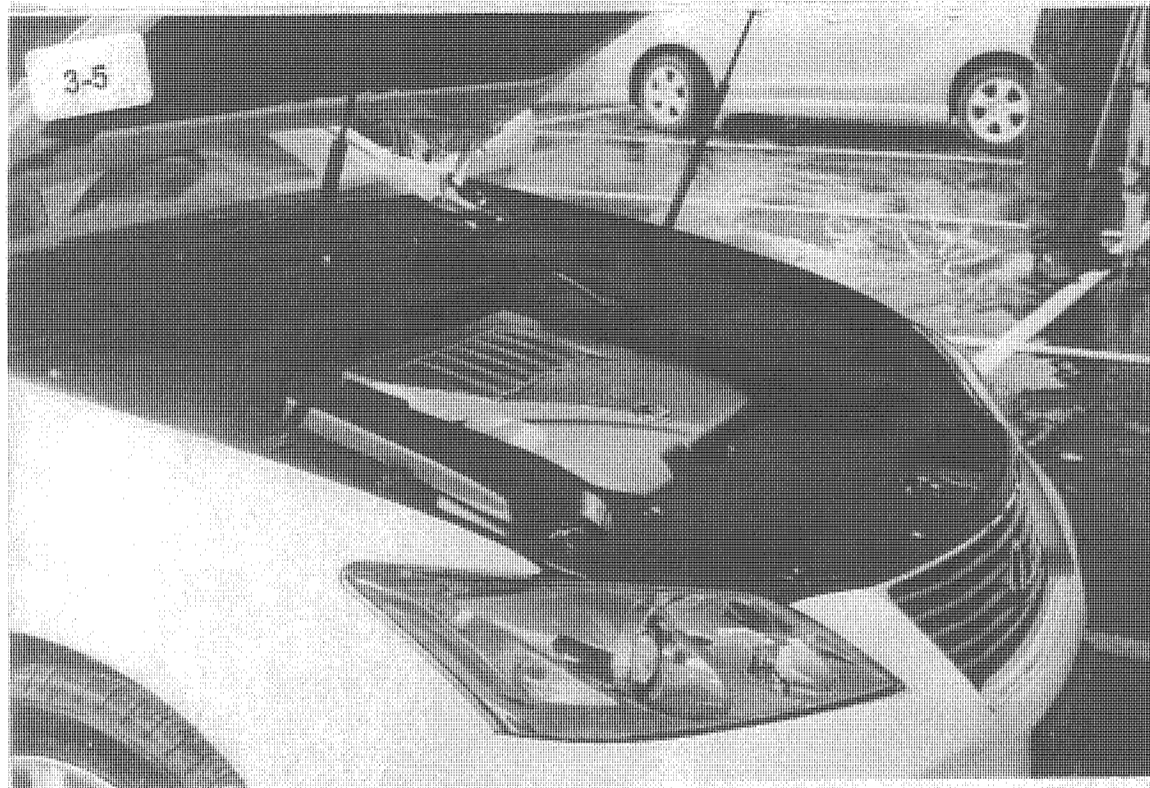


3-3

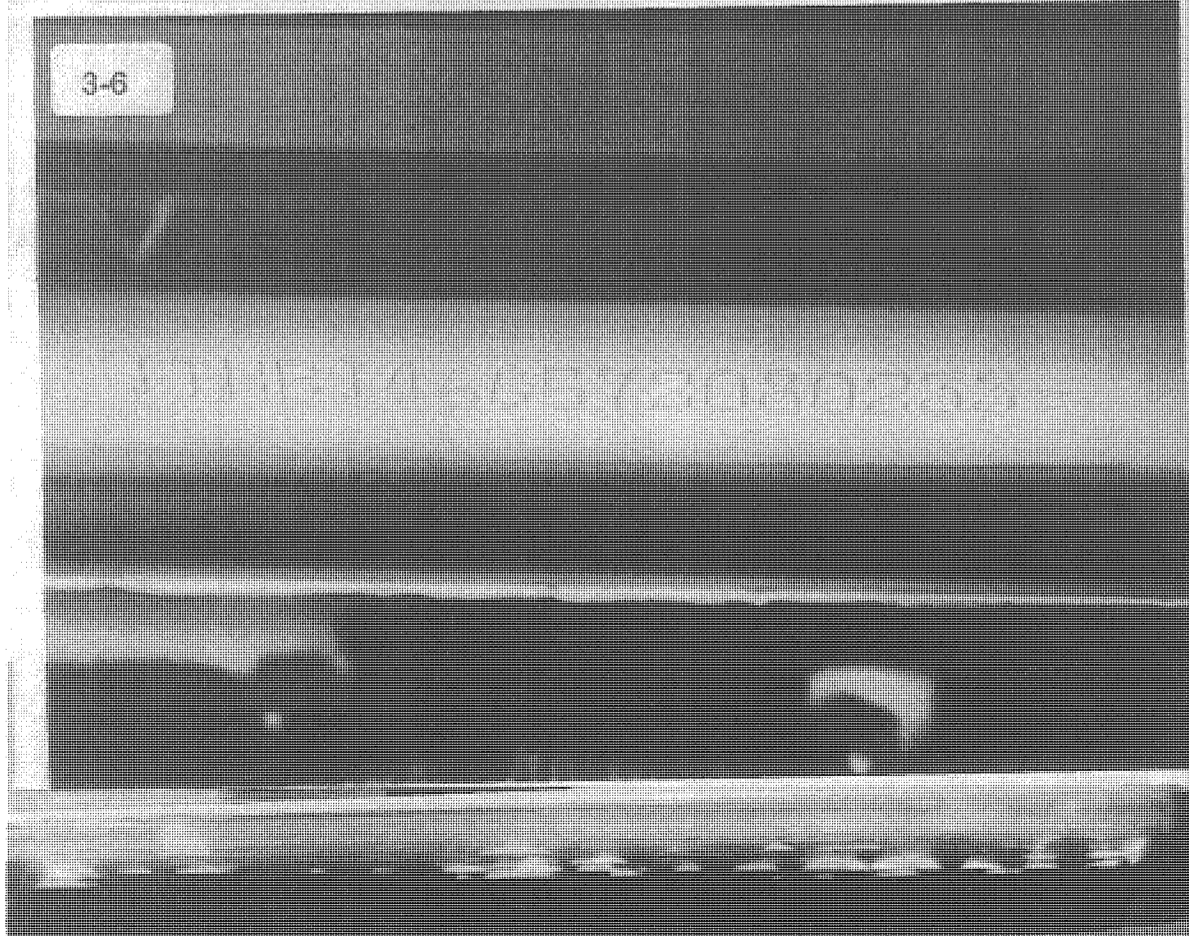
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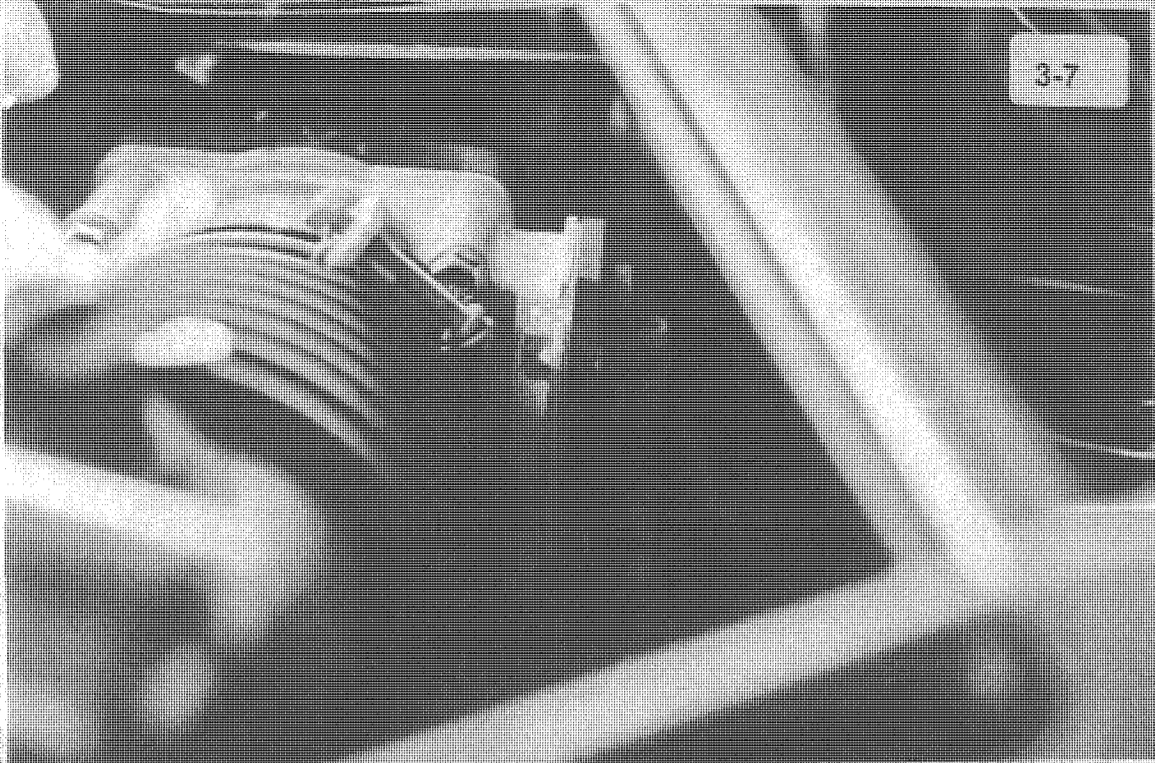
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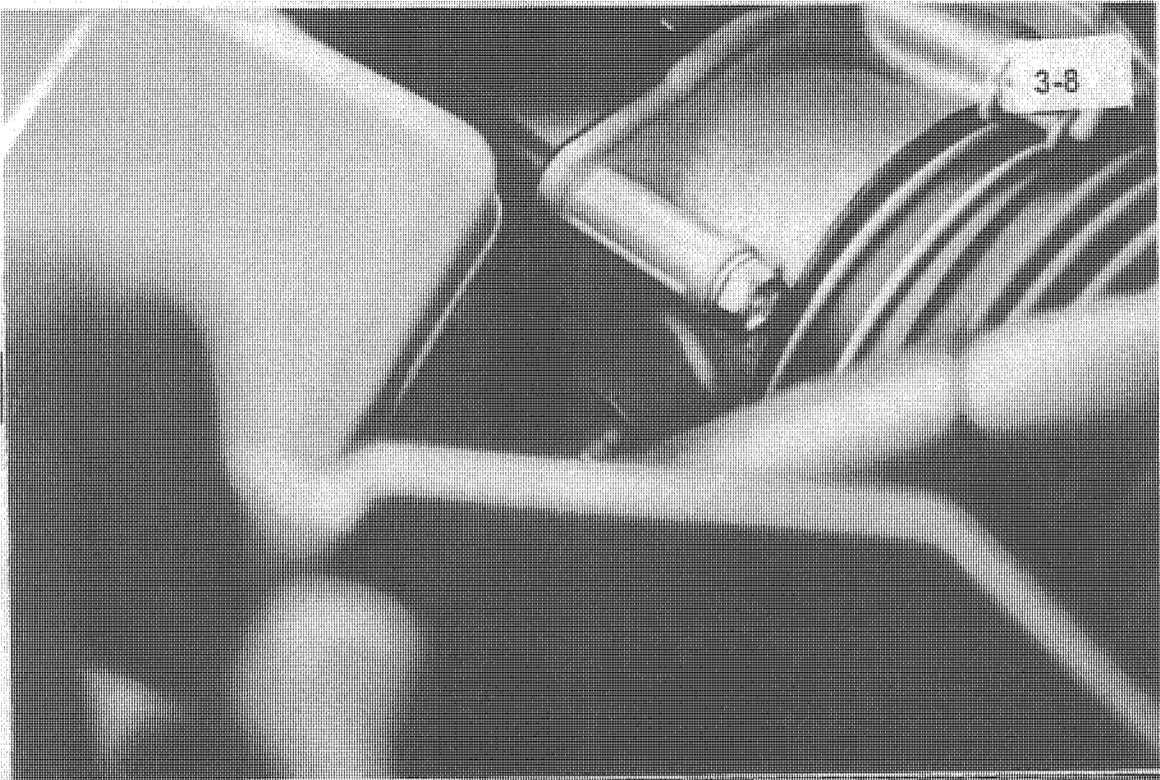
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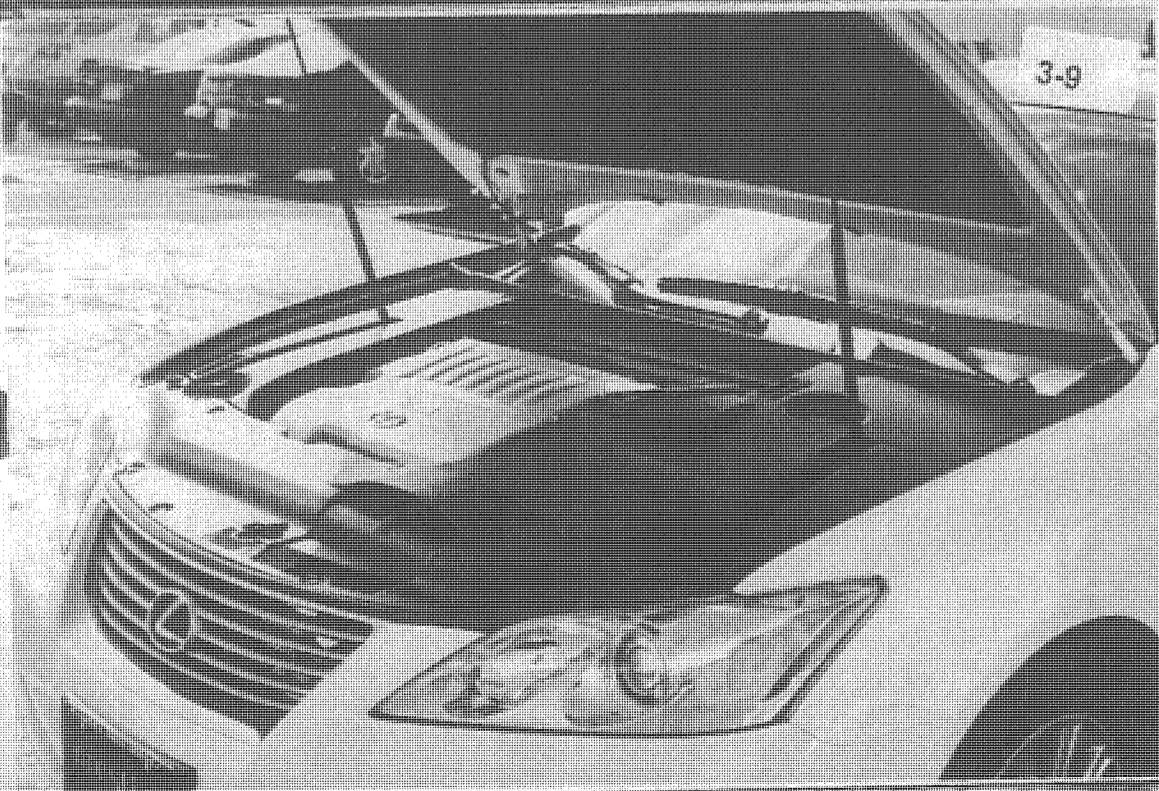
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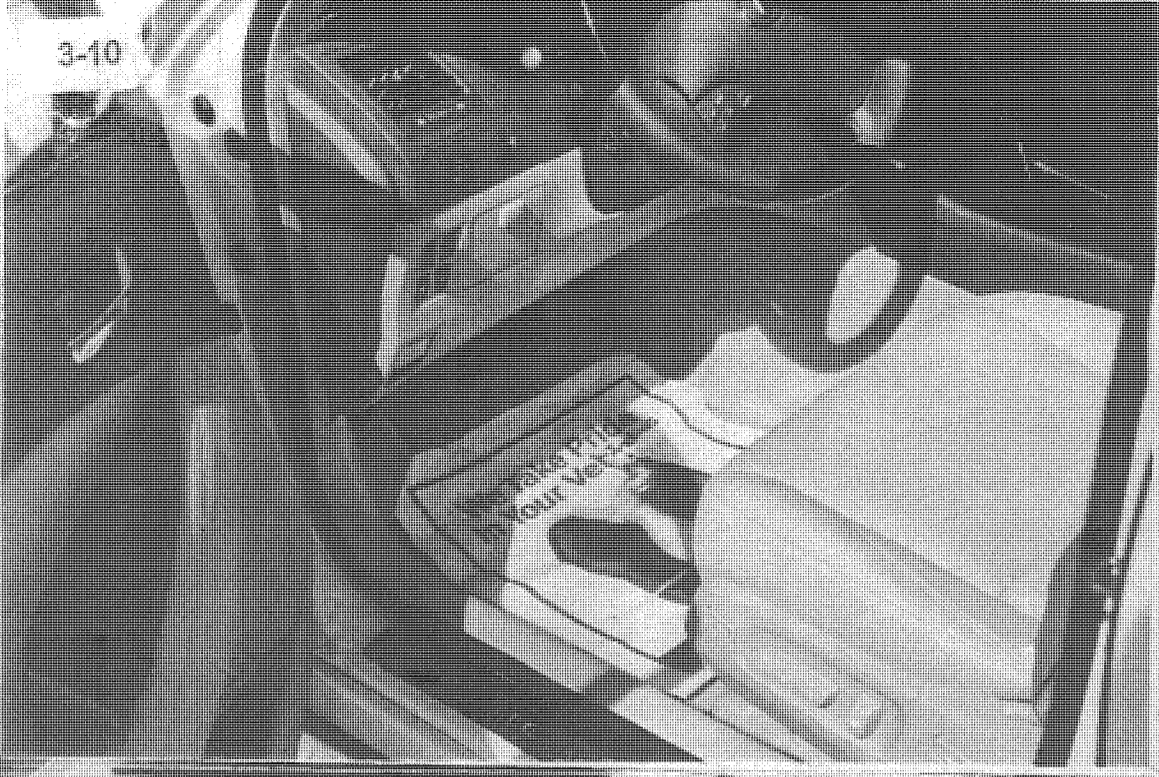
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3-12



ROLL #1

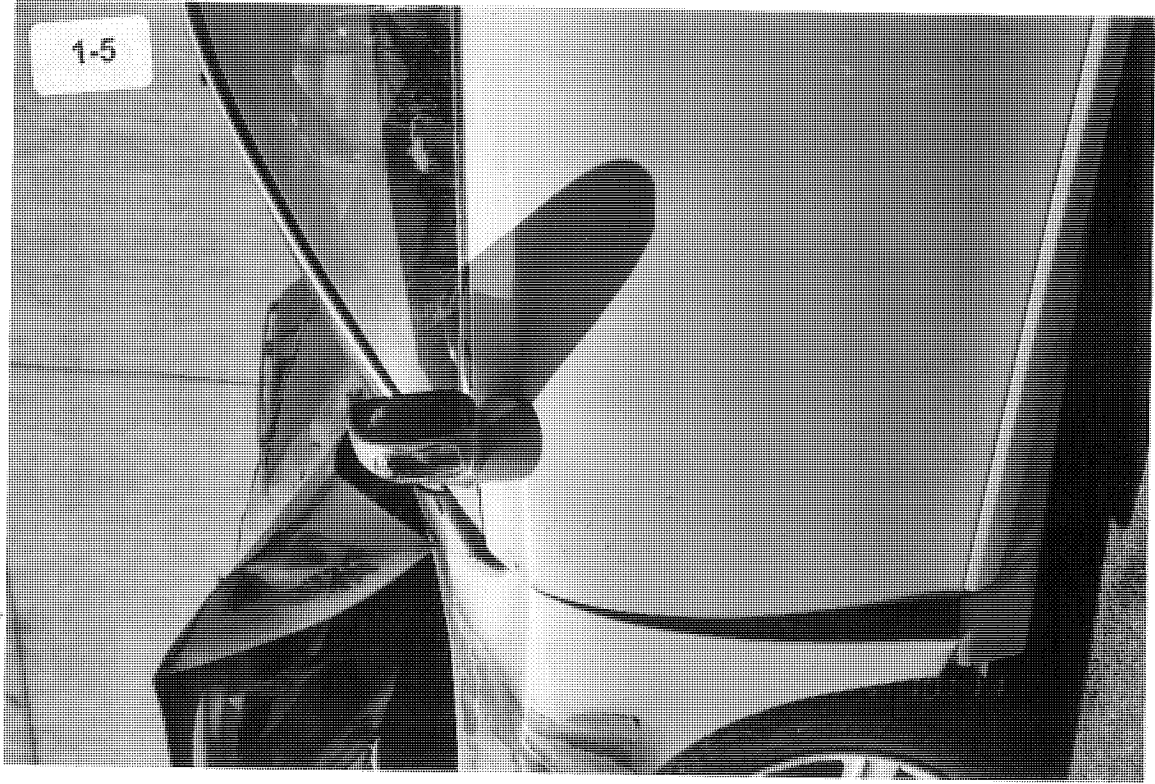
- 1-1. Vehicle as presented. Right front.
- 1-2. Front.
- 1-3. Left front.
- 1-4. Thru 1-9. View of left side.
- 1-10. Thru 1-11. Left rear view.
- 1-12. VIN tag.
- 1-13. Right front view.
- 1-14. Thru 22. View from right rear.
- 1-23. Material inside vehicle.
- 1-24. View looking inside vehicle.
- 1-25. Right front "A" pillar deformation.
- 1-26. Right front wheel assembly condition.
- 1-27. Rotor condition.
- 1-28. Right front rotor condition with mirror used to illuminate rotor.
- 1-29. Left front rotor condition.
- 1-30. Closeup of rotor condition with mirror used to illuminate rotor.
- 1-31. Mirror on pocket transit used to illuminate rotor.
- 1-32. Photo of pocket transit.
- 1-33. Left rear wheel assembly.
- 1-34. Thru 1-35. Left rear rotor condition
- 1-36. Right rear wheel assembly.

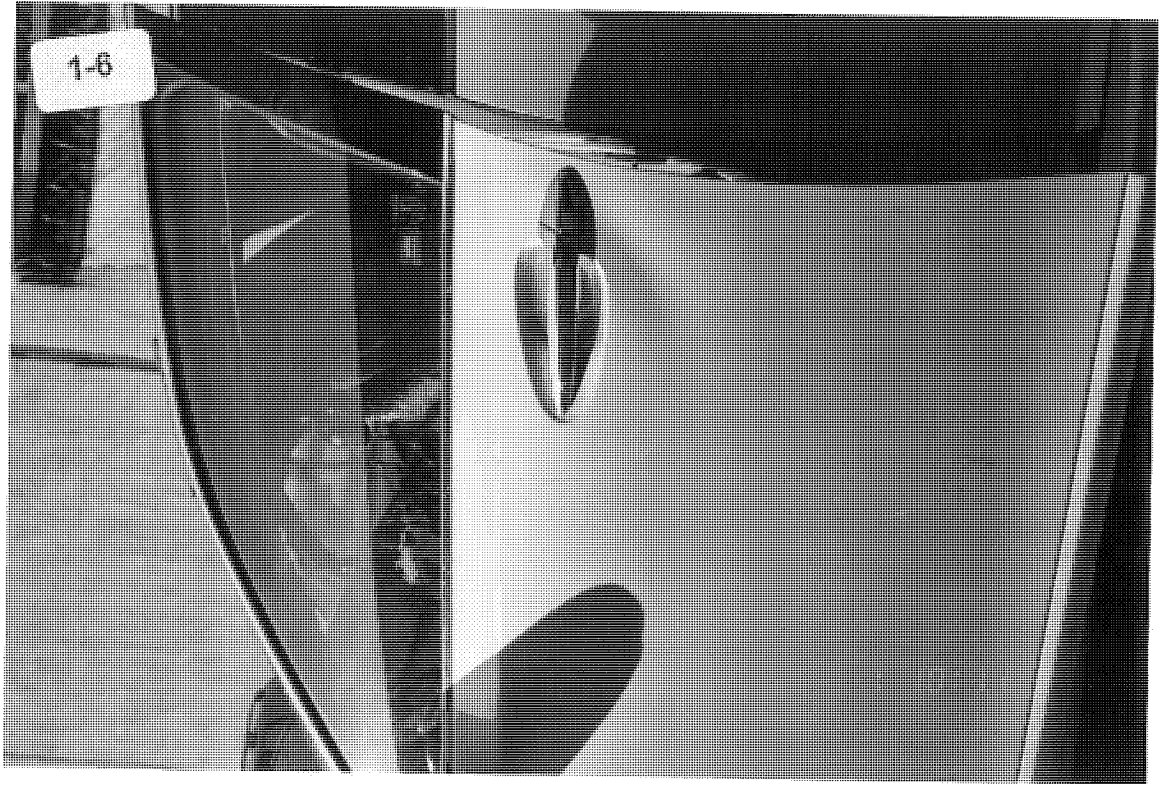


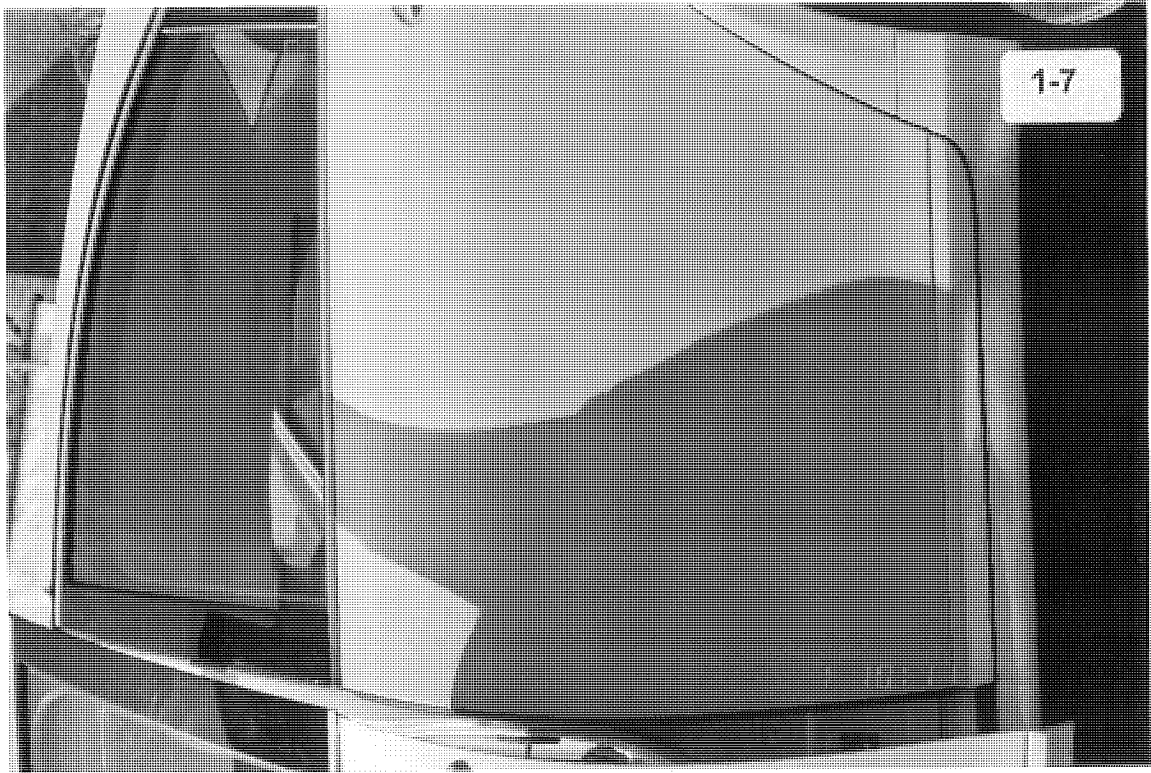




































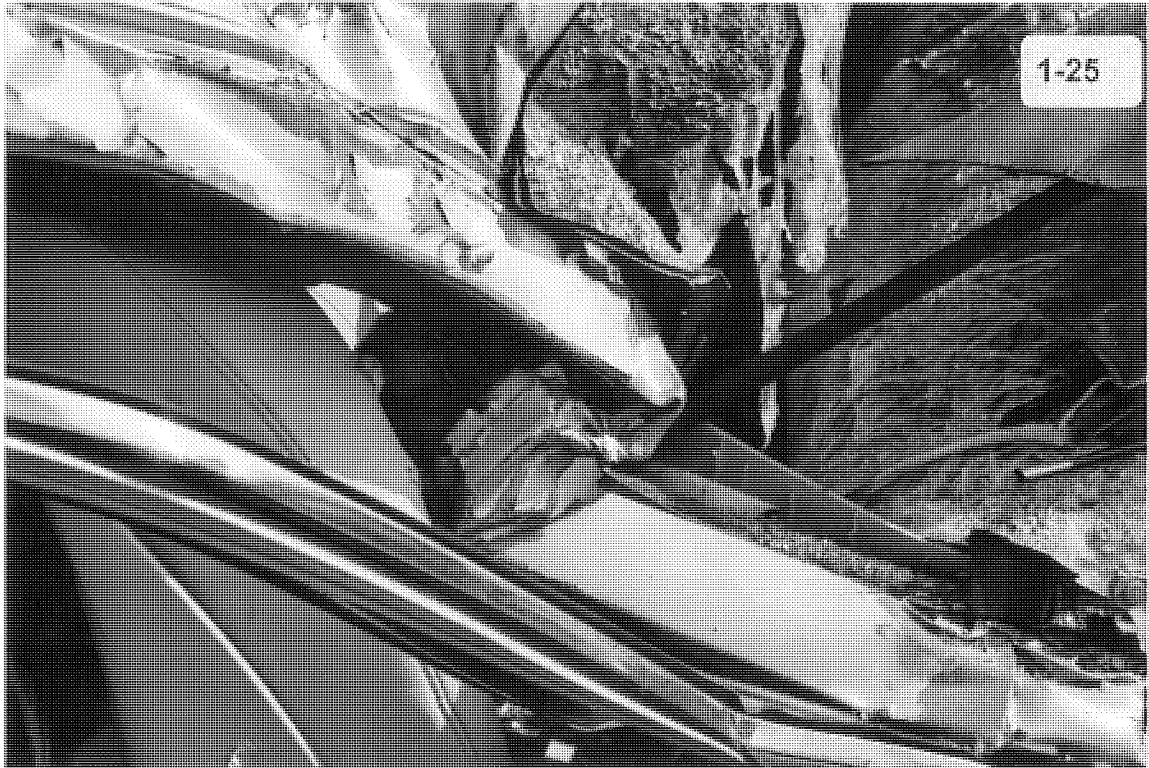




























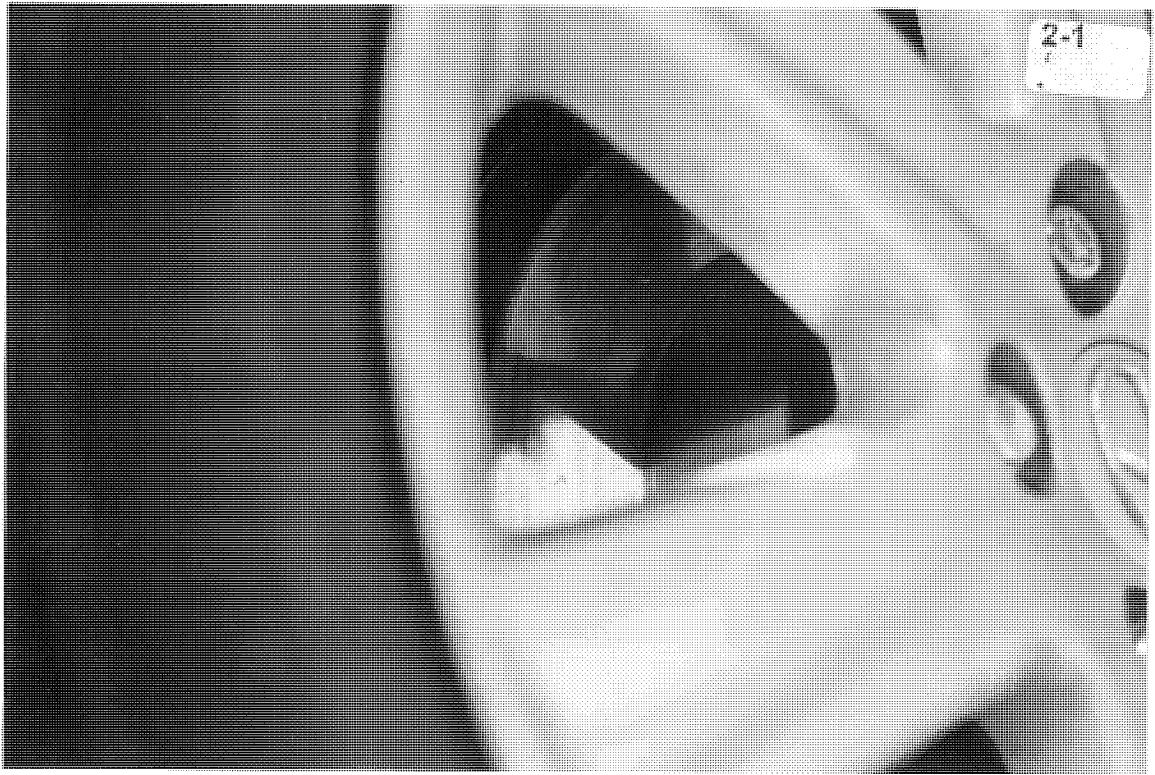


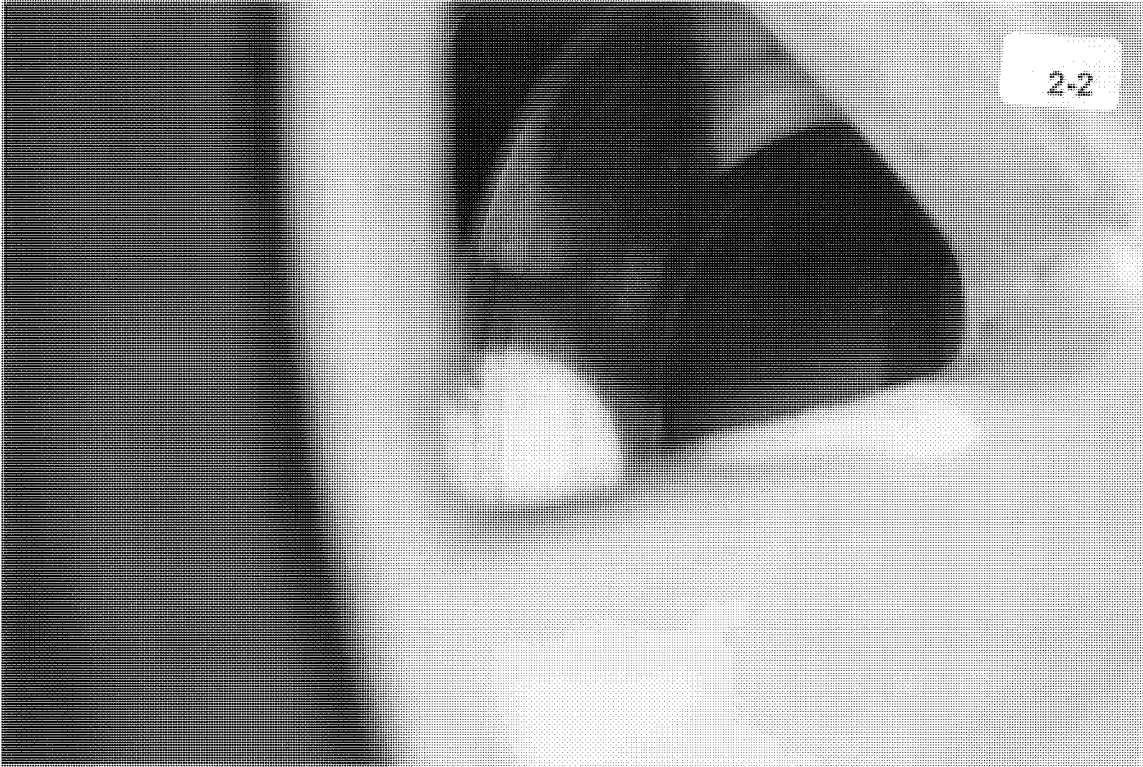




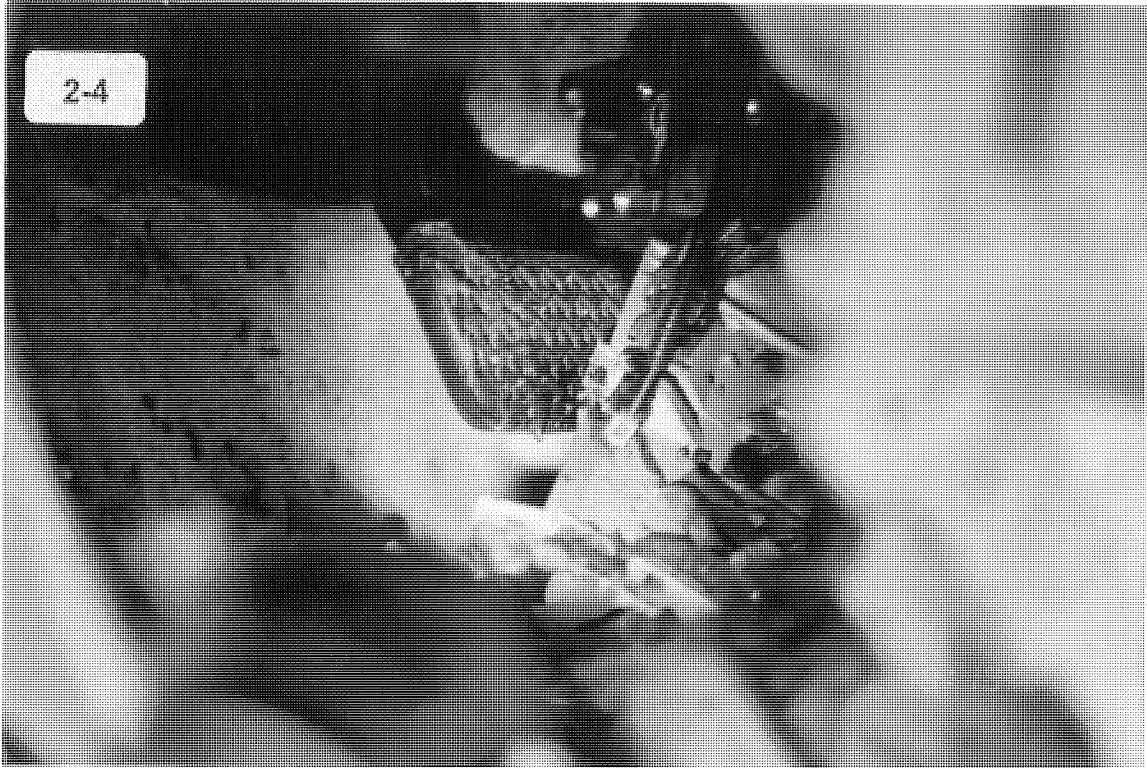
ROLL #2

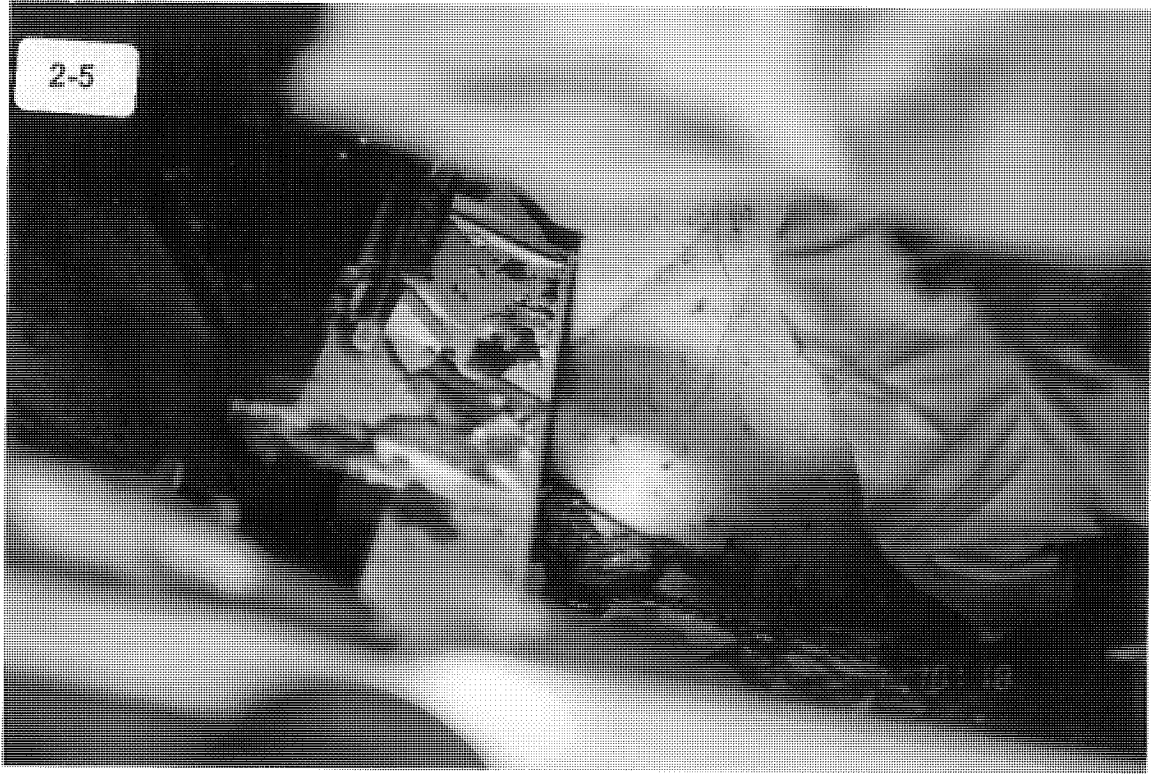
- 2-2. thru 2-3. Rotor condition.
- 2-4. Interior condition.
- 2-5. thru 2-6. Debris on floor. Note: undisturbed.
- 2-7. SRS label.
- 2-8. Tire label.
- 2-9. Manufacturer's information label.
- 2-10. Brake pedal.
- 2-11. Thru 2-13. Brake pedal. Note gas pedal arm under floor mat.
- 2-14. Factory covering still on floor mat.
- 2-15. Markings on floor mat plastic photographed.
- 2-16. Thru 2-19. Debris in driver's seat area.
- 2-20. Thru 2-25. Additional photos of floor mat and gas pedal arm under floor mat.
- 2-26. Thru 2-28. Engine bay.
- 2-29. Additional photo of gas pedal under floor mat.
Note Photos 2-29 thru 2-31. Photos taken prior to vehicle being covered.
- 2-30. Same photo but debris dropped down into field of view.
- 2-31. Condition of floor mat. Note burn debris on top of floor mat.
- 2-32. Thru 2-33. Photographs of vehicle just prior to covering.
- 2-34. View from right front.
- 2-35. Thru 2-37. View from right rear.











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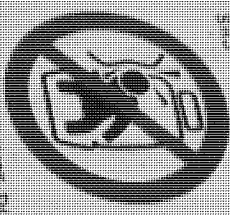
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MARCH

**PLEASE READ CAREFULLY THE
INSTRUCTIONS CONCERNING
THE AIRBAGS AND SEATBELTS
BEFORE DRIVING. ALWAYS
WEAR YOUR SEATBELT AND
PLEASE DO NOT DRINK AND
DRIVE. ALWAYS DRIVE
SLOWLY AND CAREFULLY.
FOR DETAILS,
SEE OWNER'S MANUAL.
SEMPRE LEGGERE ATTENTAMENTE
LE ISTRUZIONI CONCERNENTI
GLI AIRBAGS E LE CINGHIE DI
SICUREZZA PRIMA DI GUIDARE
LA VOSTRA VEICOLA. SEMPRE
INDOSSARE LA CINGHIA DI
SICUREZZA E NON BEVERE
E GUIDARE. SEMPRE GUIDARE
LENTAMENTE E CON
CURE. PER INFORMAZIONI
AGGIUNTE, LEGGERE IL
MANUALE DELL'UTILE.**

**PLEASE READ CAREFULLY THE
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**PLEASE READ CAREFULLY THE
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SLOWLY AND CAREFULLY.
FOR DETAILS,
SEE OWNER'S MANUAL.**



SIDE SIDE AIRBAGS



TYPE	50
FRONT P225	
REAR P225	
SPARE P225	

2-7



TYPE	SIZE	COLD TIRE PRESSURE	PNEUMS	DIMENSION	PRESSION DE GONFLAGE À FROID
FRONT	P215/55R17	210kPa, 30PSI	AVANT	P215/55R17	210kPa, 30PSI
REAR	P215/55R17	210kPa, 30PSI	ARRIÈRE	P215/55R17	210kPa, 30PSI
SPARE	P215/55R17	210kPa, 30PSI	SECOURS	P215/55R17	210kPa, 30PSI

6 U
30PSI

This vehicle may include mercury-containing devices installed by the manufacturer.

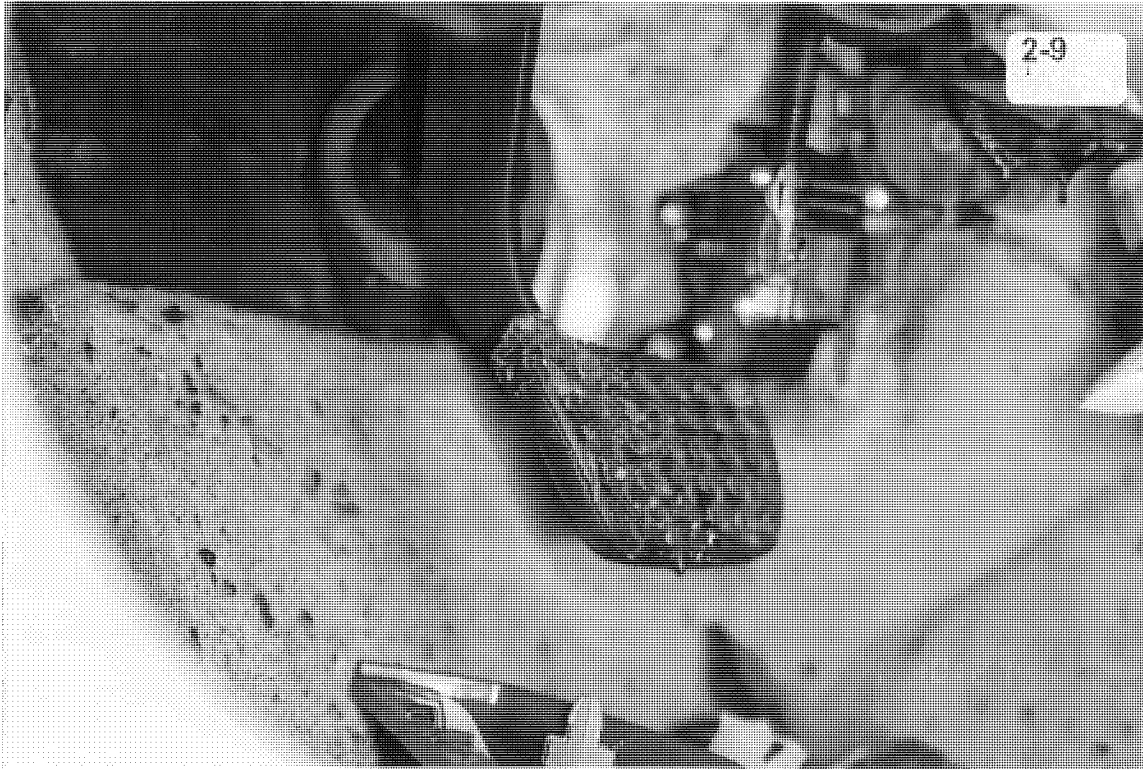
- HID Headlamps
- Navigation or Info. Display
- Back-lit Instruments

Remove Devices Before Vehicle Disposal. Upon Removal of Devices, Please Reuse, Recycle, or Dispose as Hazardous Waste.

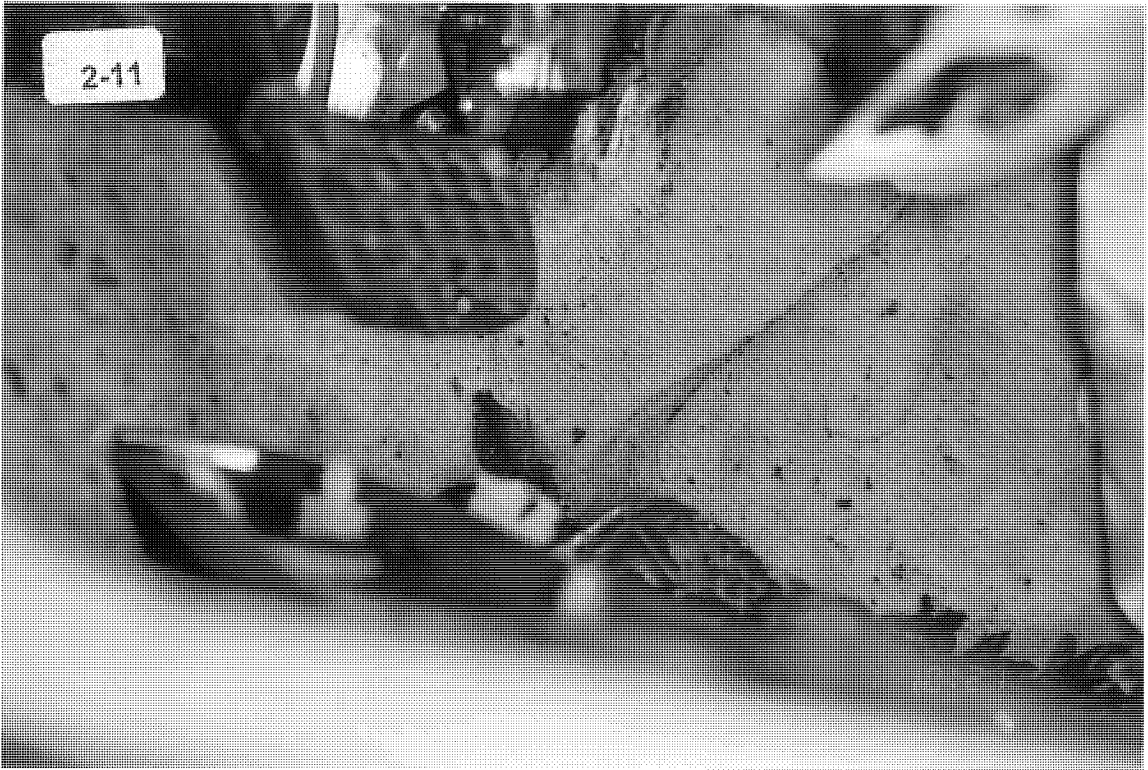
02-PUB-012

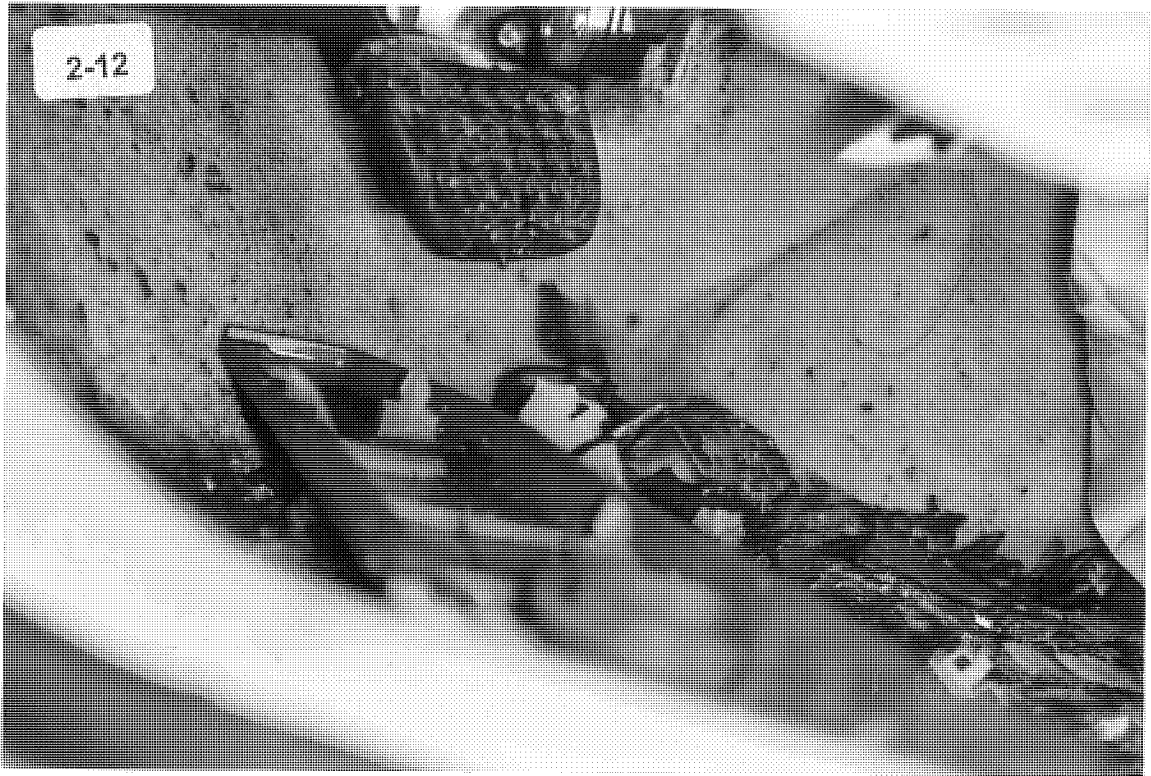
00505-MRCRY

VEHICULOVA MERKURINI
SODIUM HID ŽARNE
LA POKRITJE I INFORMACIJSKI
POKROVI IZ VARNOSTI. NE
ODVAJAJTE IZ VOZILA. POUŽI-
VAJTE IZNOVNO, RECICLAJTE
ILI ODRIBITE KAO OPASNO
ODBAVNO. NE
ODVAJAJTE IZ VOZILA. POUŽI-
VAJTE IZNOVNO, RECICLAJTE
ILI ODRIBITE KAO OPASNO
ODBAVNO. NE
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ILI ODRIBITE KAO OPASNO
ODBAVNO. NE



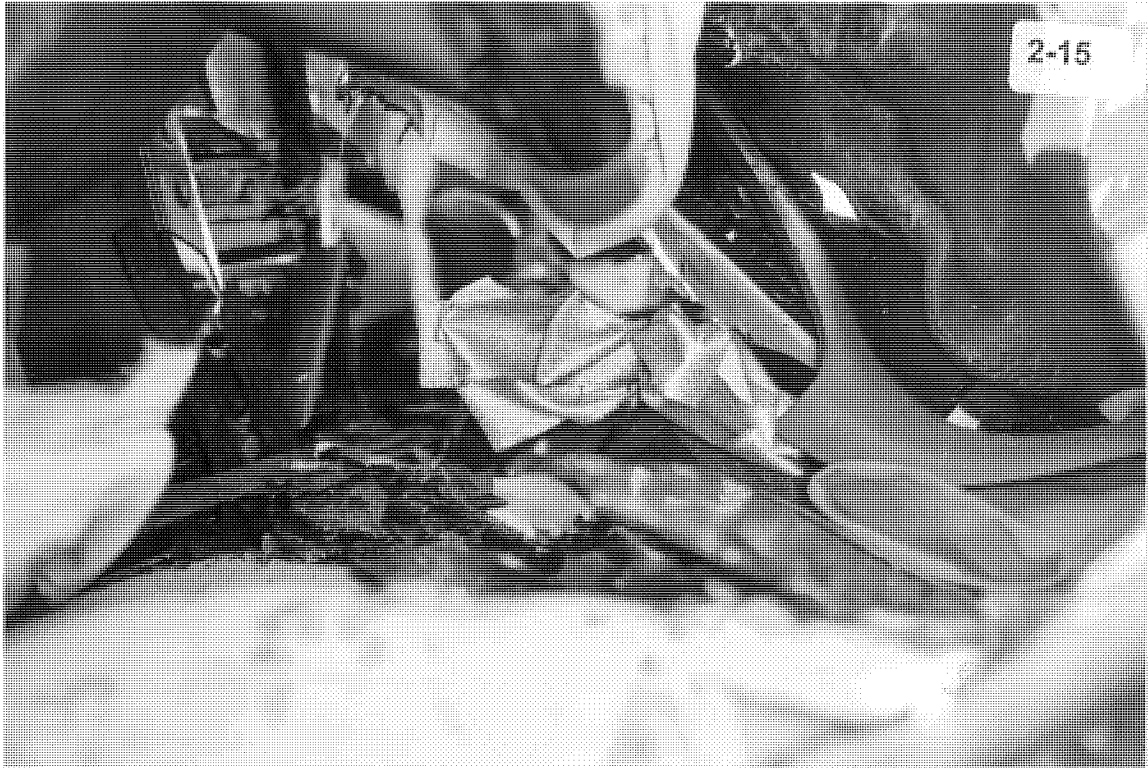








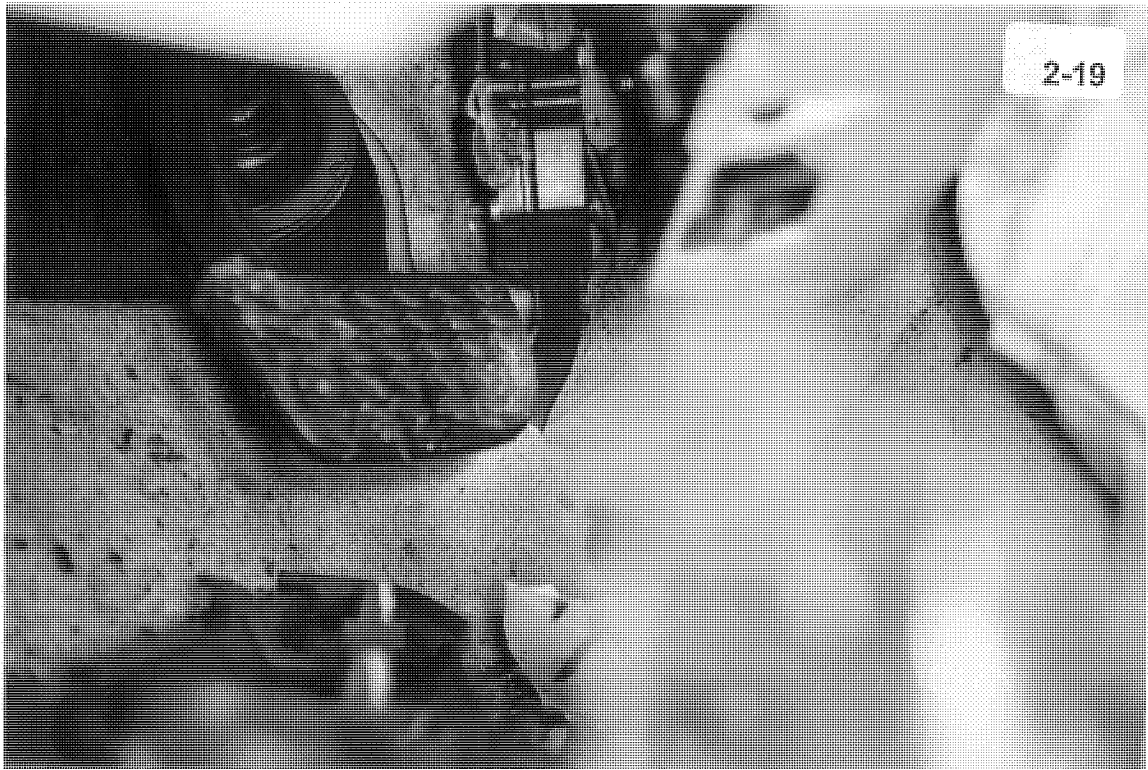


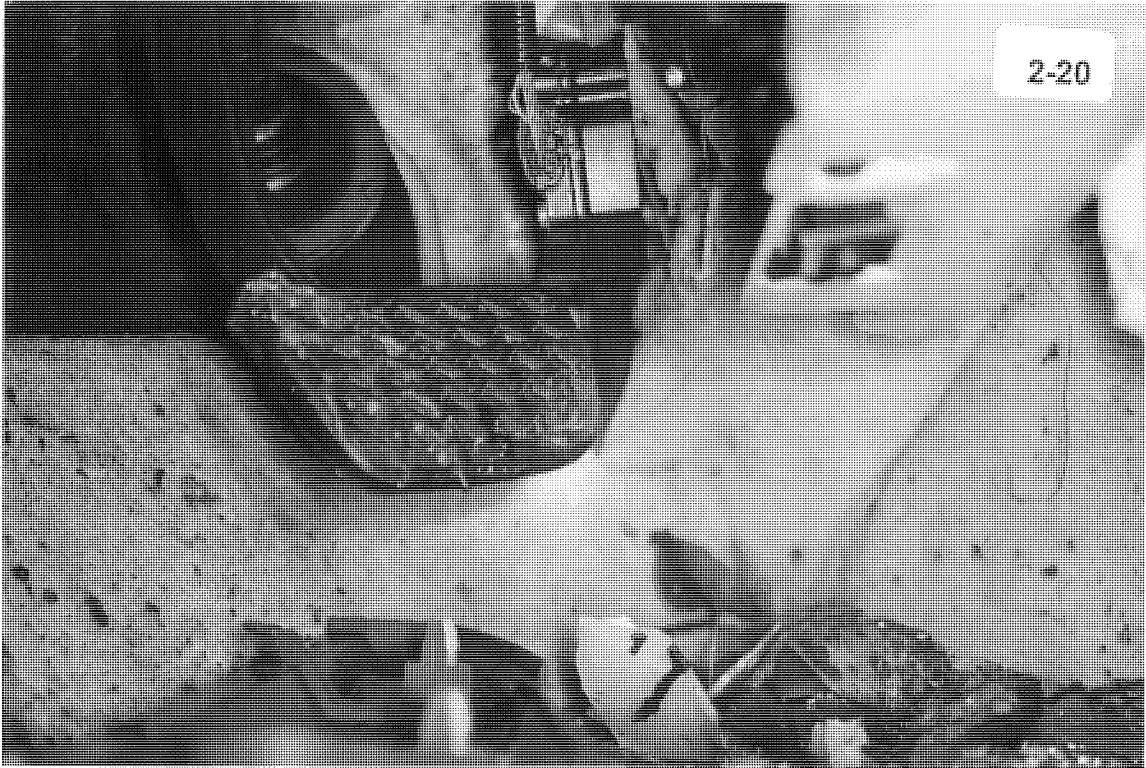


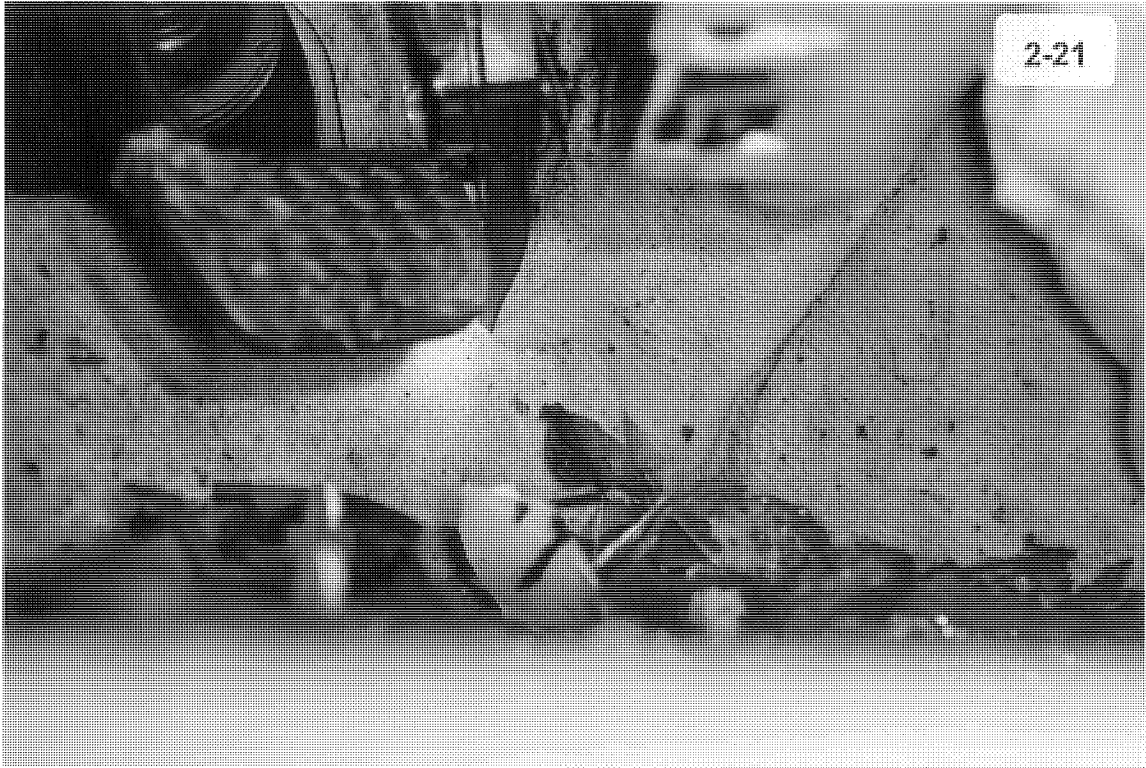


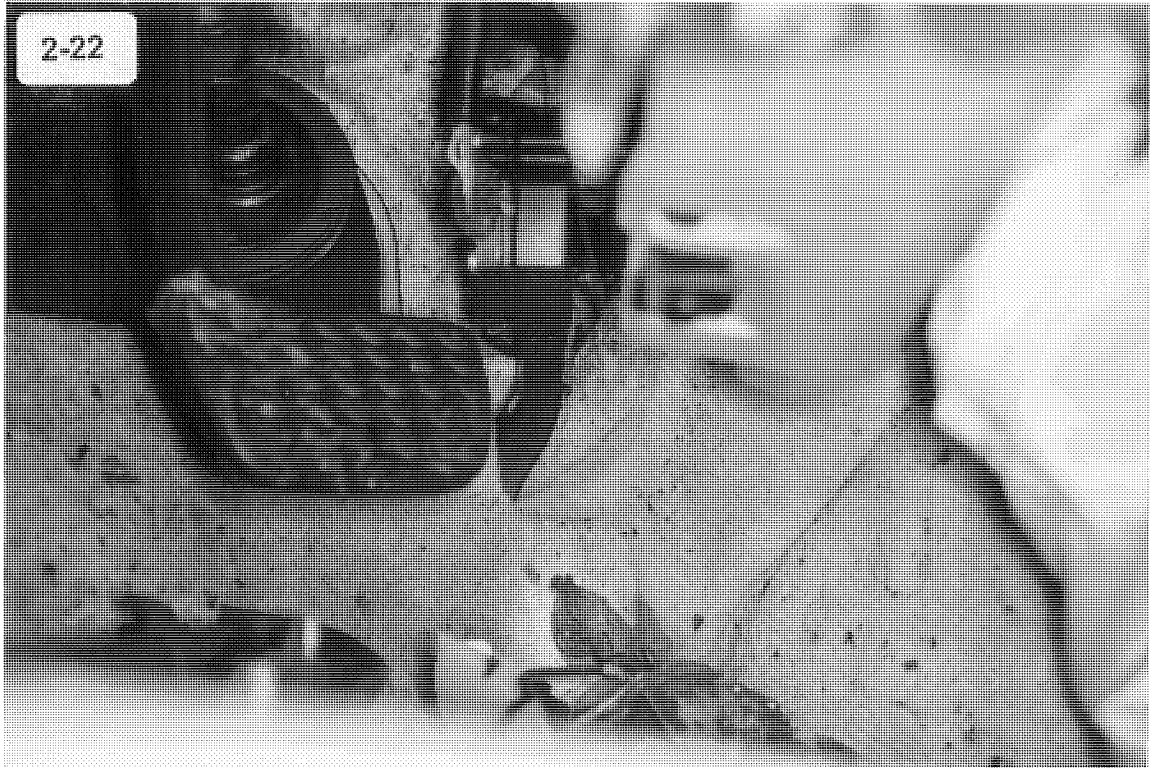


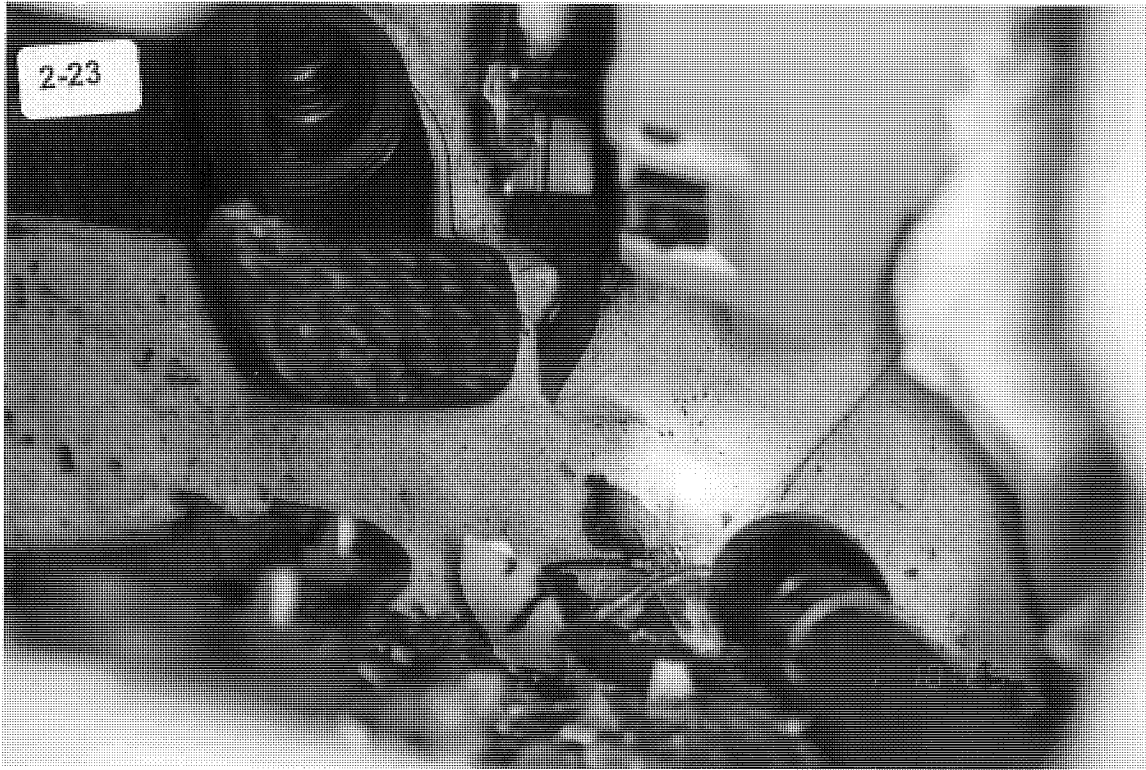


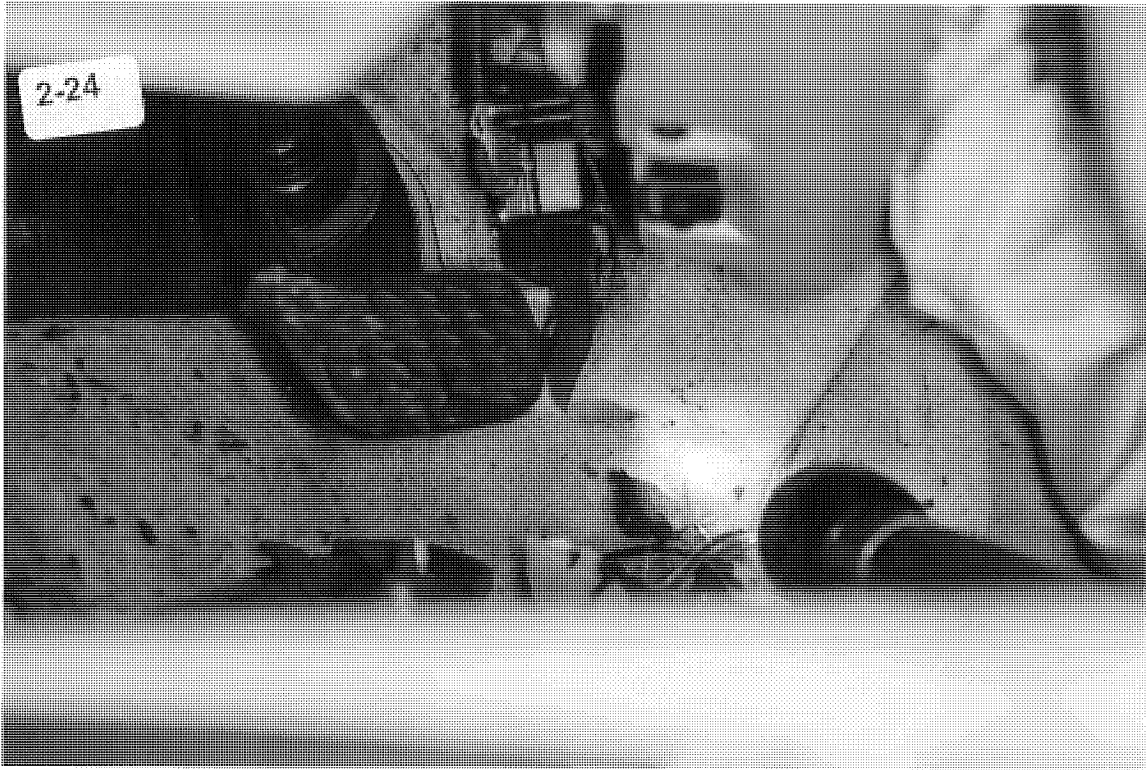








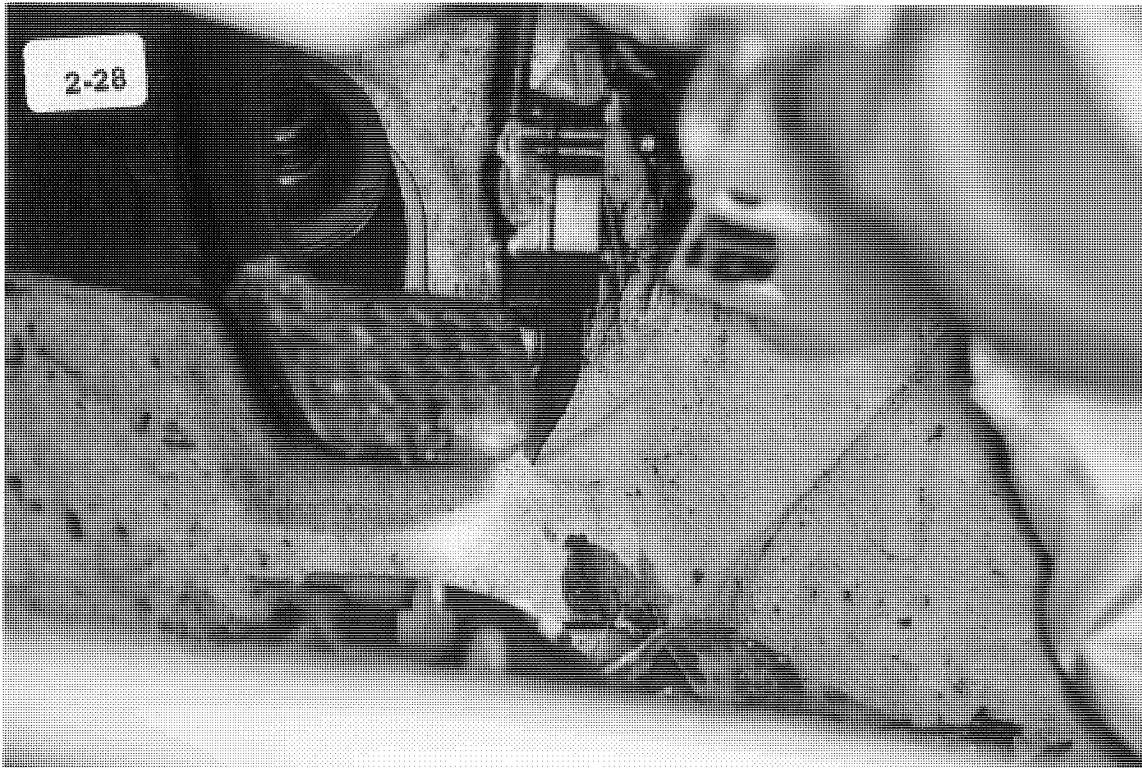


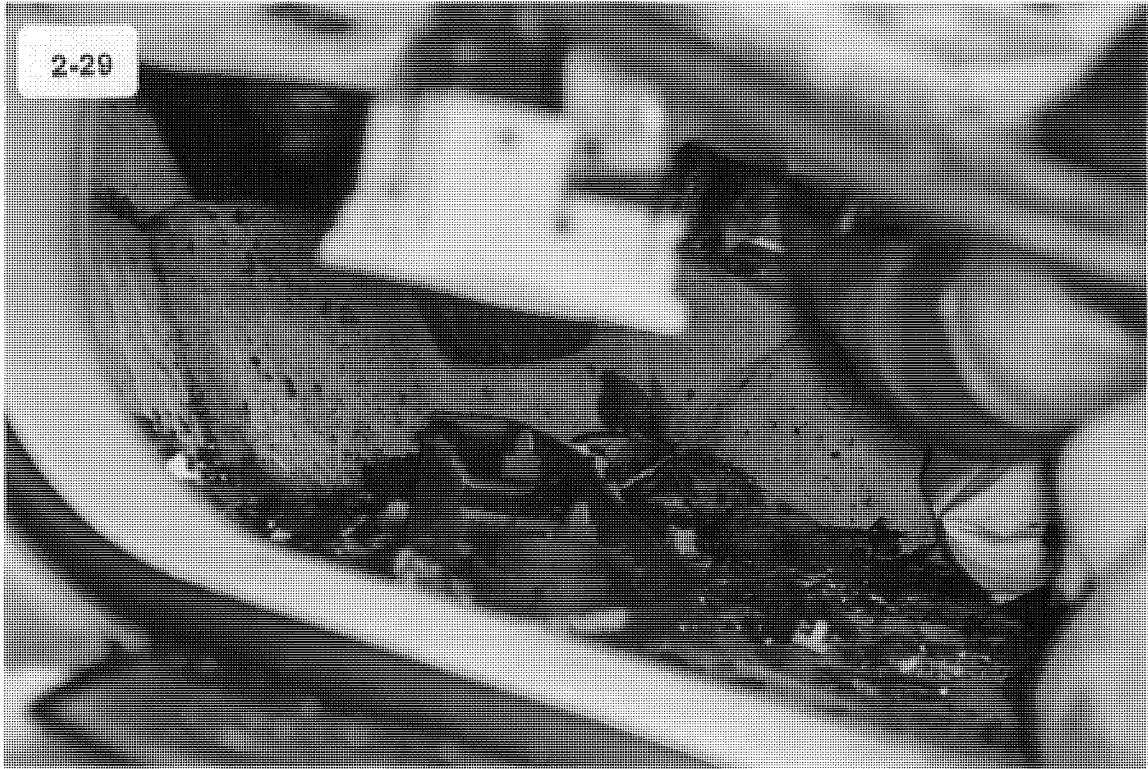


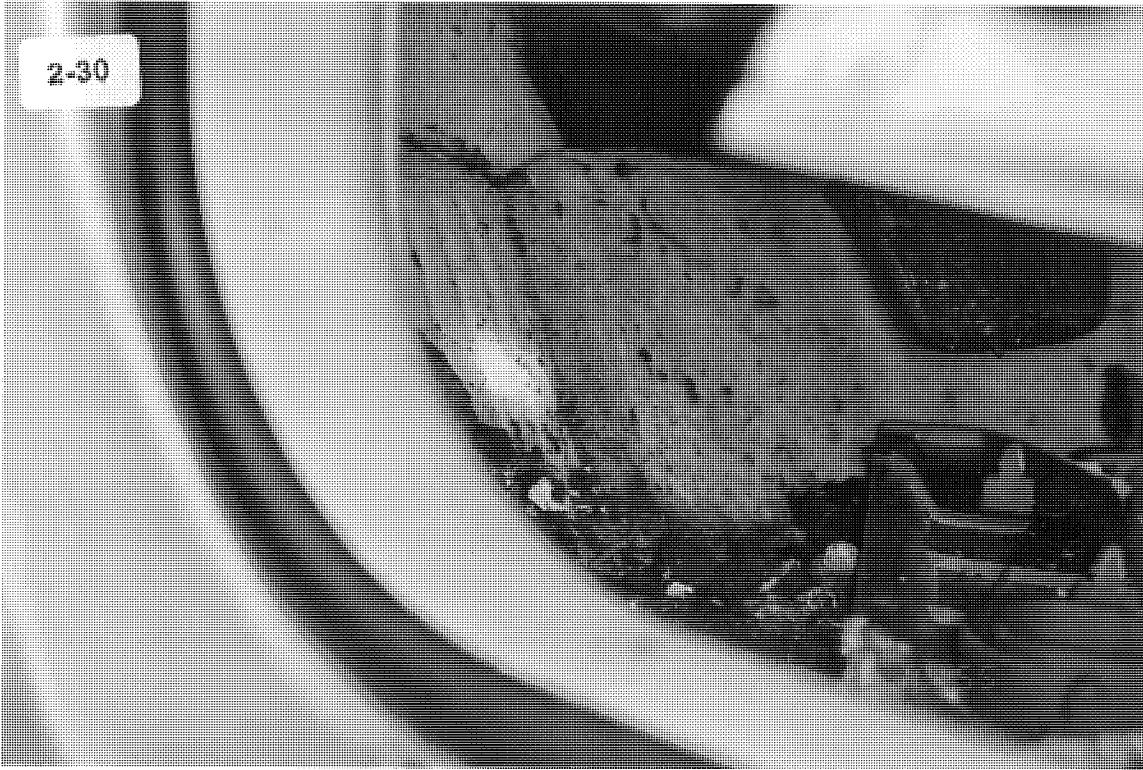
























ROLL #3

- 3-1. Tarp and bungie cords to be used to cover vehicle.
- 3-2. Vehicle covered. Right front.
- 3-3. Left front.
- 3-4. Thru 3-5 Left rear.
- 3-6. Thru 3-9. Right rear.
- 3-10. Preliminary inspection complete.





















CASE: LEVITEN, IRIS
SET: H
DESCRIPTION: BLACK AND WHITE
PHOTOCOPIES OF SUBJECT VEHICLE
PHOTOS: 15

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
D/B/A THE AUTOMALL,

Defendant.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.

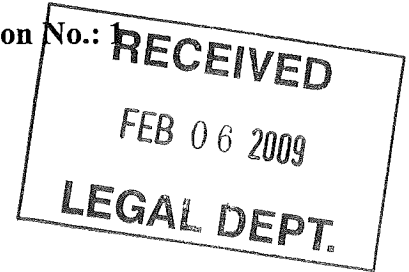
-----X
COUNSELORS:

The defendant, Iris Leviten, responding to the Notice of Discovery and Inspection of

**RESPONSE TO NOTICE FOR
DISCOVERY AND INSPECTION**

Index No.: 107681/07

Action No.:



Index No.: 117118/07

Action No.: 2

Index No.: 102331/08

Action No.: 3

2008 2 6 AM

defendant, Estree, dated November 6, 2008, states as follows on information and belief:

1. Accident report: The defendant Leviten completed no accident report with regard to this case other than those which may be public records.
2. Pictures of vehicles involved: This defendant does have pictures of the vehicle involved. These are annexed hereto as **Exhibit A**.
3. Pictures of the accident scene: This defendant has pictures of the scene of the accident, copies of which are annexed hereto as **Exhibit B**.
4. Copies of any reports regarding investigation into the accident: This defendant has no non-privileged investigative reports.
5. Transcripts of DMV Hearings: This defendant has no transcripts of any DMV Hearings.
6. Copies of City report: This defendant objects to this demand as being both vague and ambiguous. However, notwithstanding the objection there is a police accident report. It is of public record. That fact notwithstanding, is annexed hereto as **Exhibit C**.

Responding defendant herein reserves the right to supplement this response if, and when, additional information becomes available.

Dated: Staten Island, New York
January 20, 2009

Yours, etc.,

CONNORS & CONNORS, P.C.



DAVID S. HELLER
Attorneys for Defendant
IRIS LEVITEN
766 Castleton Avenue
Staten Island, NY 10310
(718) 442-1700
File No.: DGE 23865

TO: Ahmuty, Demers & McManus, Esqs.
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Eckert Seamans Cherin & Mellott, LLC
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s/h/a Lexus, A Division of Toyota
Motors Sales, U.S.A., Inc.
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White Plains, New York 10606
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of Sanitation and The City of New York - Action #2
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(212) 788-0303

Gair, Gair, Conason, Stegman & Mackauf
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Iris Leviten - Action # 1
80 Pine Street
New York, NY 10005

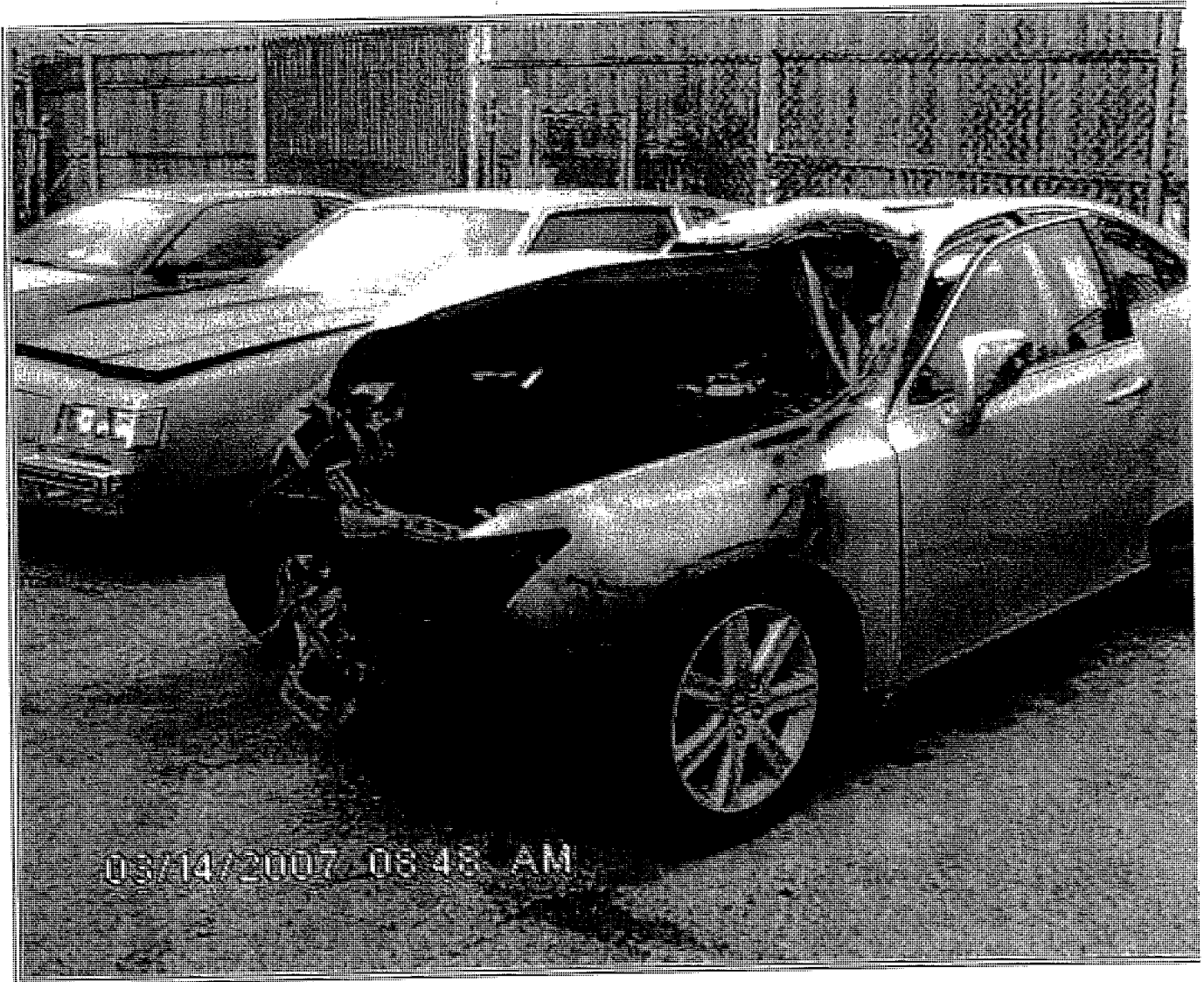
Arronson, Rappaport, Feinstein & Deutsch, Esqs.
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757 Third Avenue
New York , NY 10017

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Anthony Digirolomo - Action # 3
229 Seventh Street, Suite 304
Garden City, NY 11530

Stein, Riso & Mantel
Attorneys for Defendant
Metro Auto Leasing, Inc. - Action #1
405 Lexington Avenue
New York, NY 10174

m Number 0244514670101035-01-00

19340



Estimate Photo 02 for Claim Number 0244514670101035-01-00

1670



Estimate Photo 03 for Claim Number 0244514670101035-01-00

Photo date:14/03/2007 08:19:14:00 Size:37229

Description:

Insured:LEVITEN, IRIS

Policy Number:2020513137



m Number 0244514670101035-01-00

38320



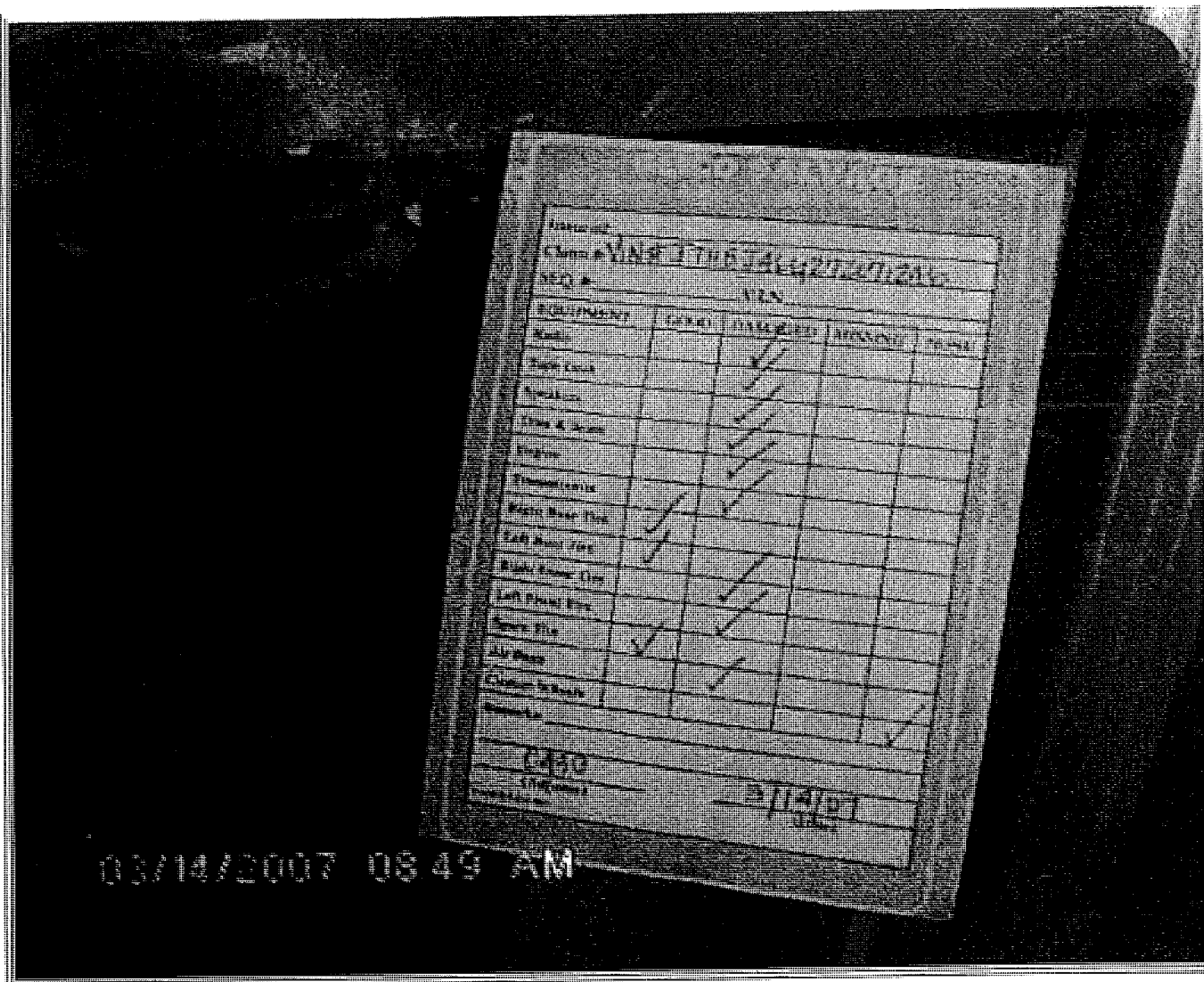
1 Number 0244514670101035-01-00

511



Claim Number 0244514670101035-01-00

1942



m Number 0244514670101035-01-00

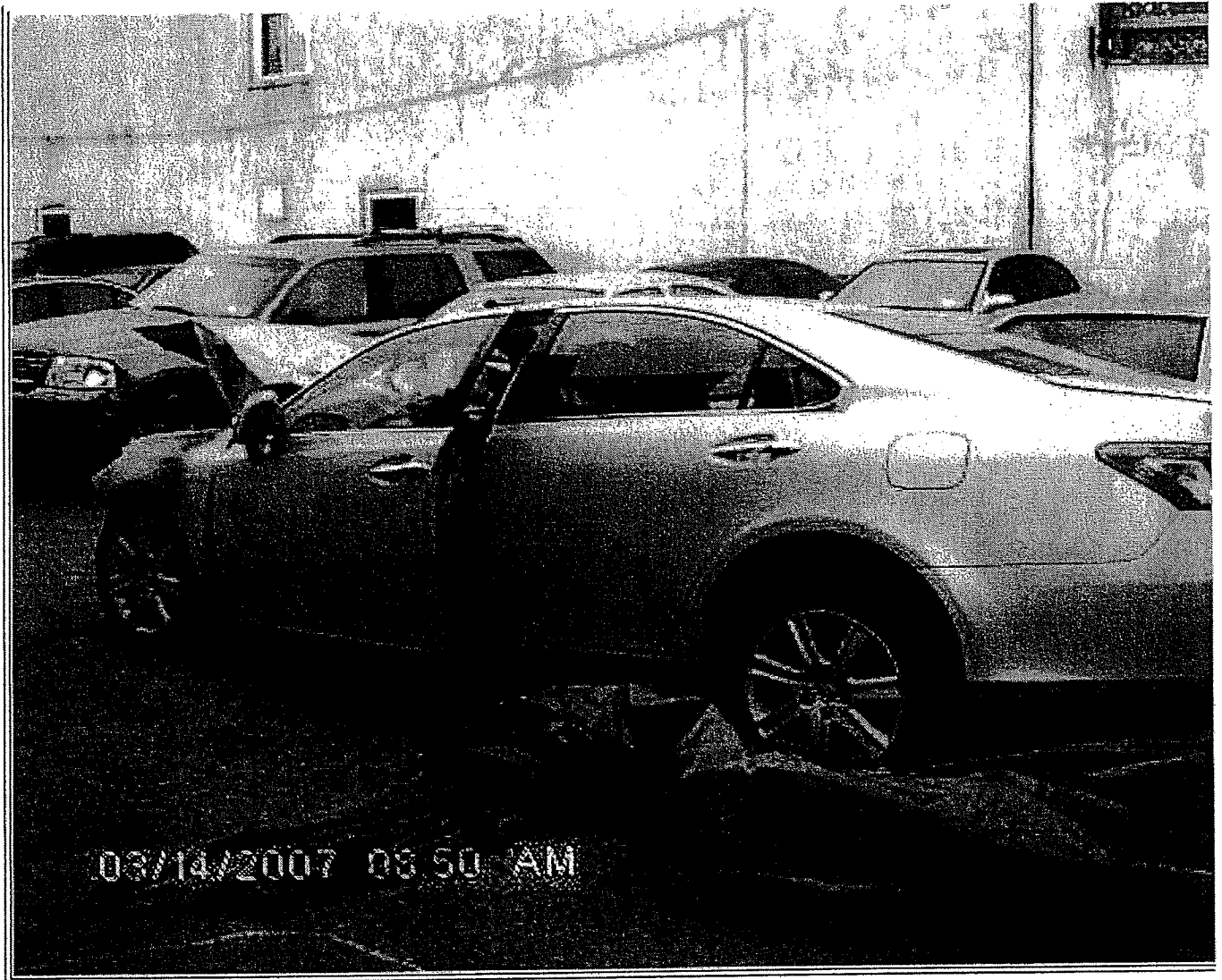
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||



n Number 0244514670101035-01-00

1630



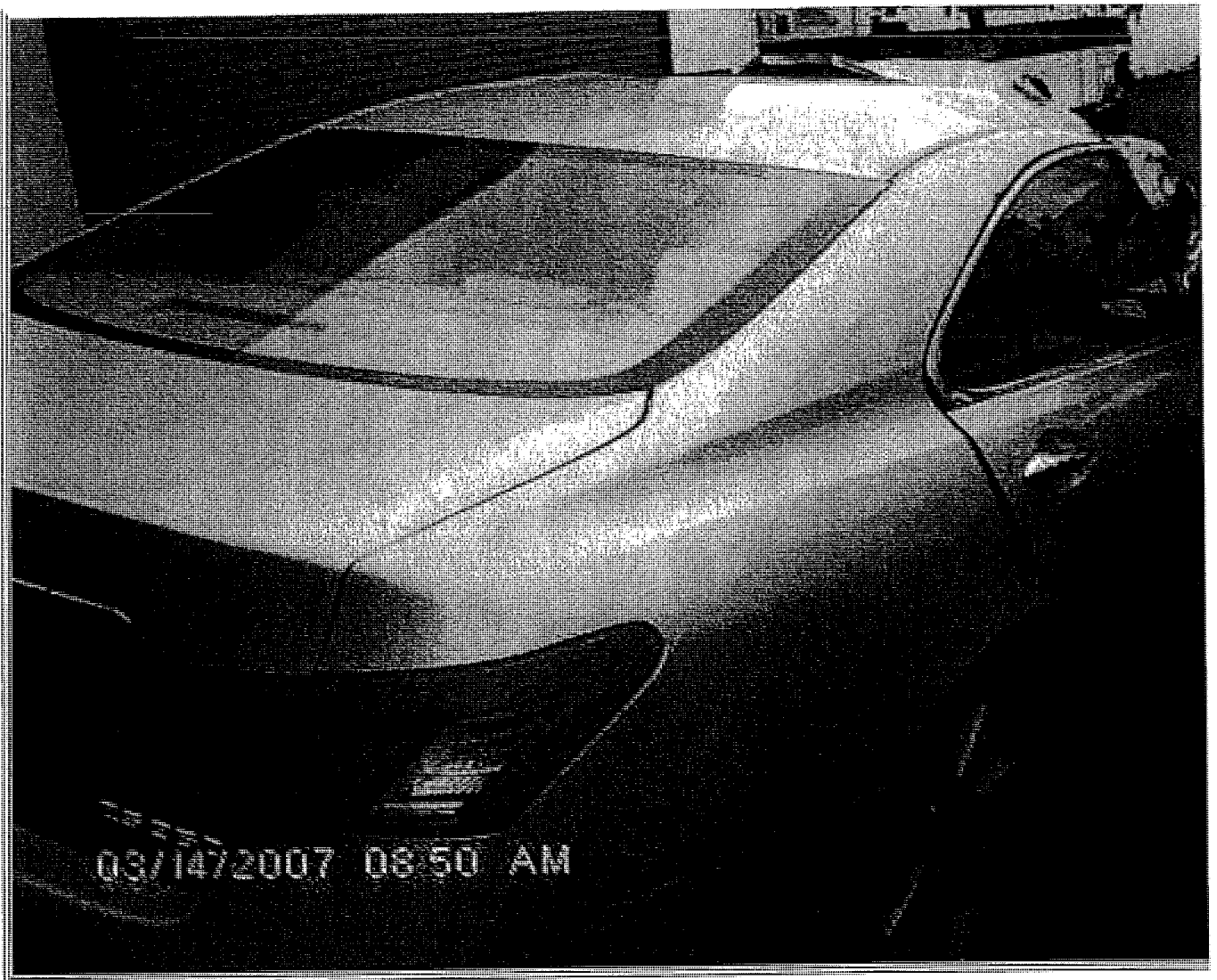
Claim Number 0244514670101035-01-00

27796



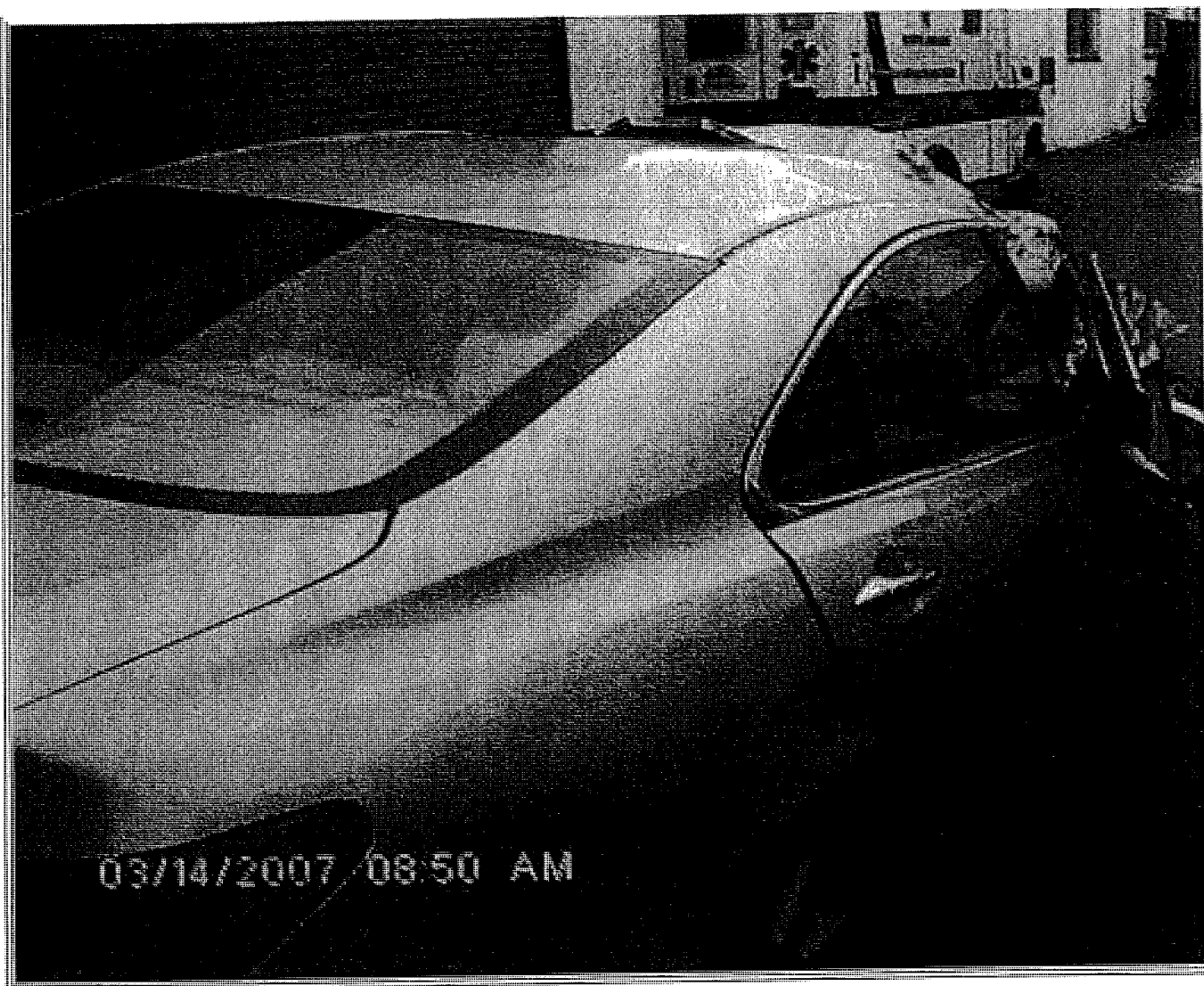
Number 0244514670101035-01-00

175



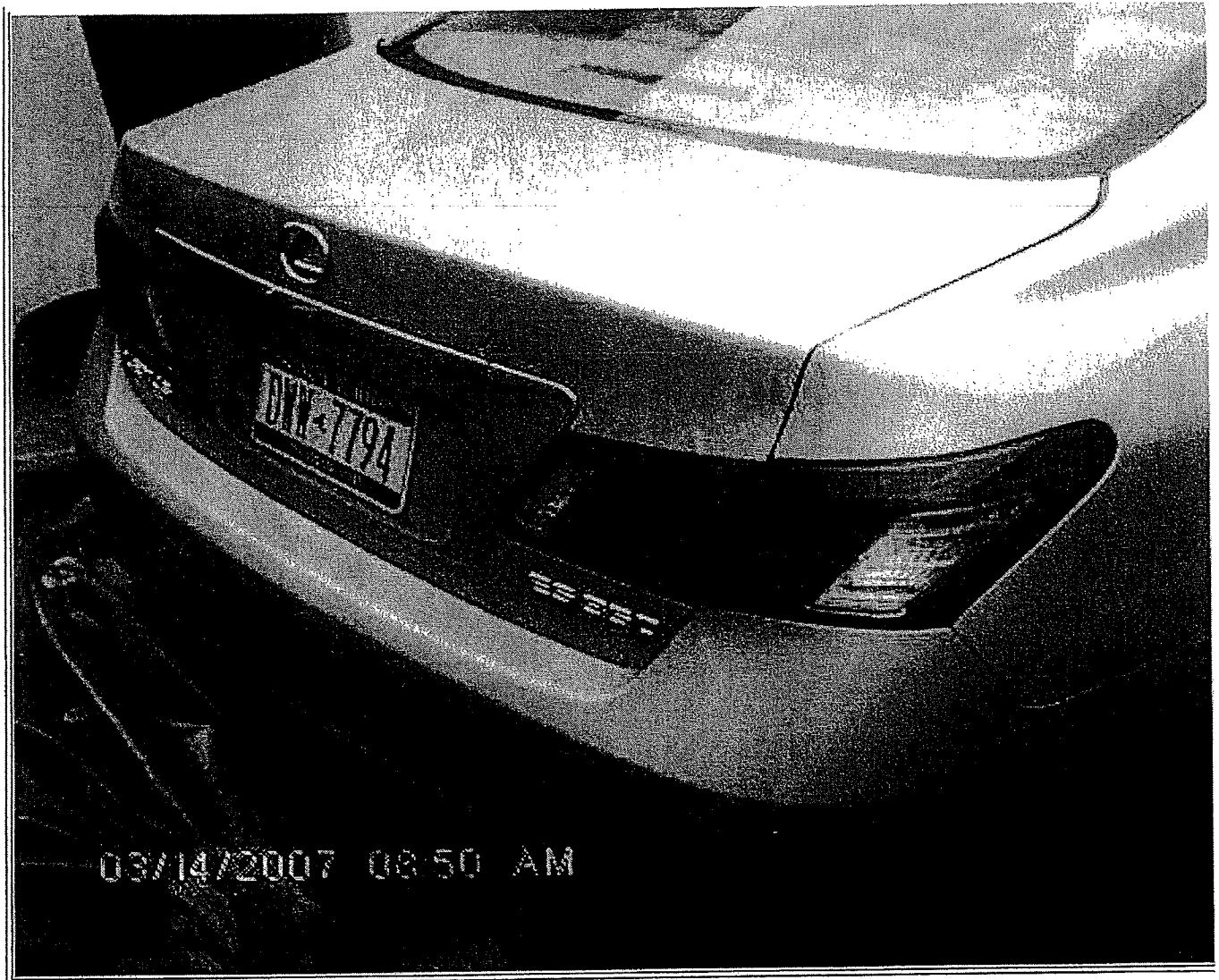
Number 0244514670101035-01-00

522



1 Number 0244514670101035-01-00

825



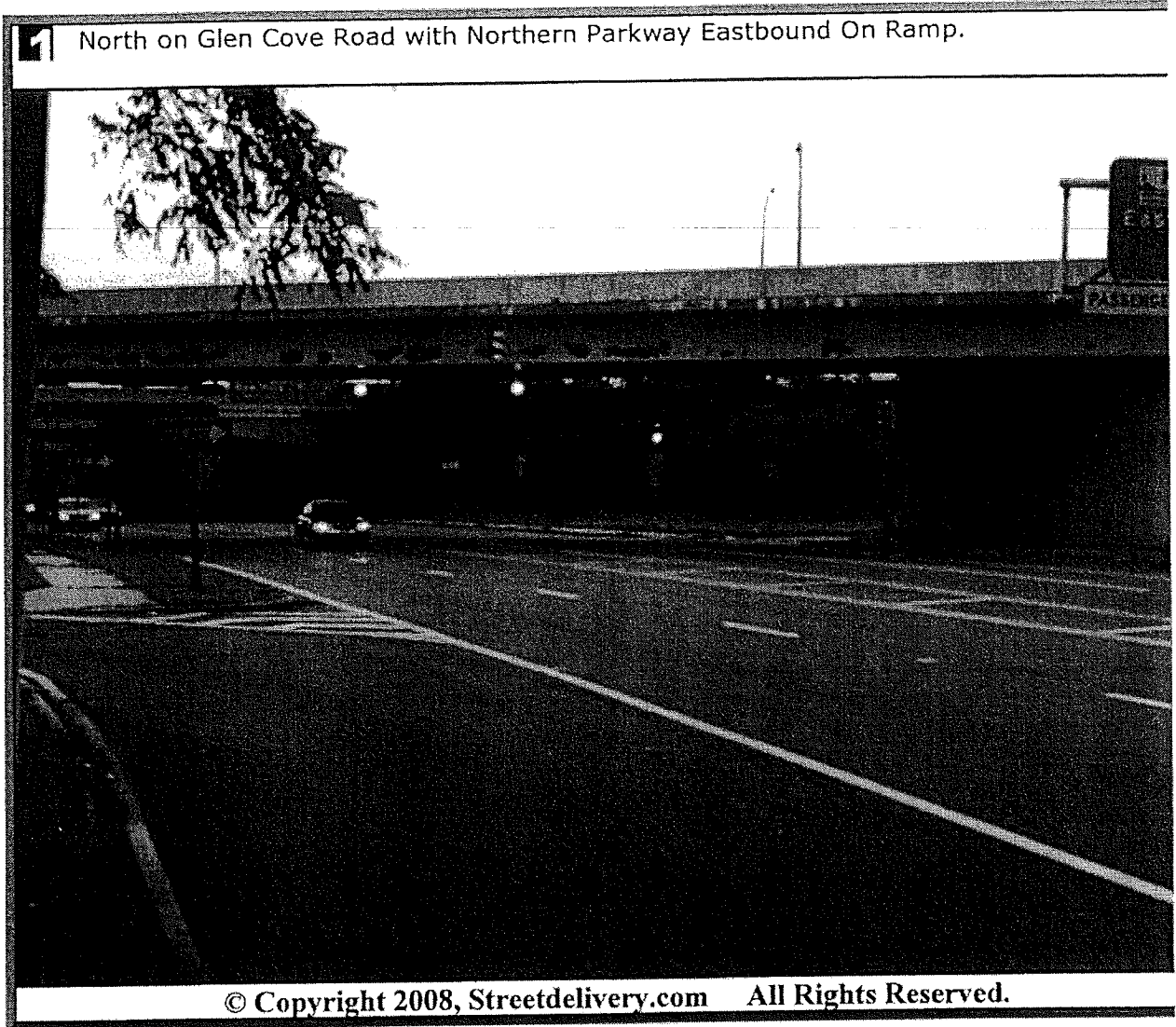
Number 0244514670101035-01-00

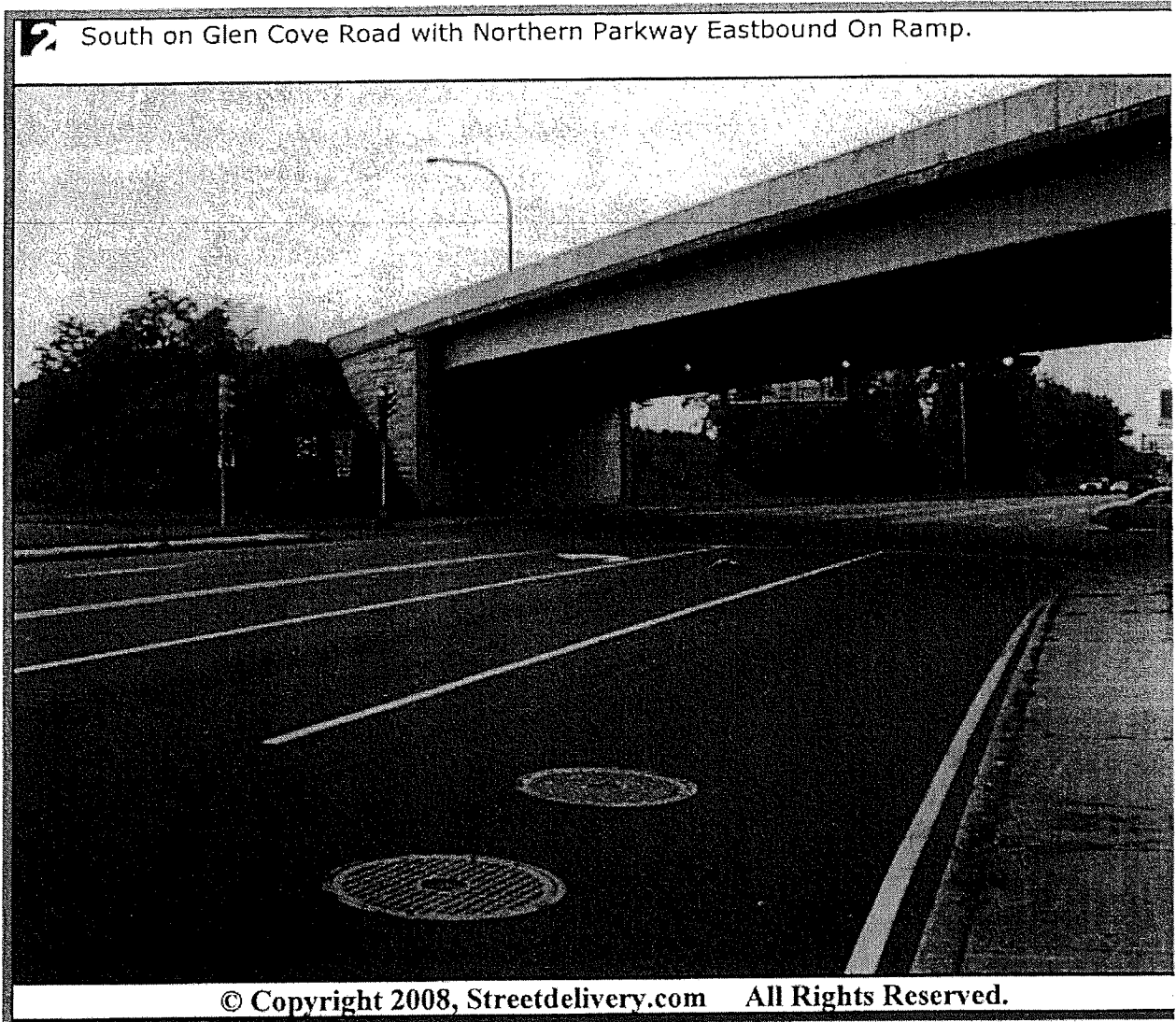
488



Number 0244514670101035-01-00

4435





2-000 UT

MV-104A (6/04) 818
DMV COPY

AMENDED REPORT

1	Accident Date Month: 2, Day: 18, Year: 2007	Day of Week: Su	Alibi Time: 1450	No. of Vehicles: 2	No. Injured: 3	No. Killed: 0	Not Investigated in Series <input type="checkbox"/>	Accident Reconstructed <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Action Photos <input type="checkbox"/>	20
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2	VEHICLE 1 - Driver License ID Number: 793 706 540 Driver Name: LEVITEN, IRIS L Address: SIX WOOD AVE City: ALBANY, State: NY, Zip: 11507	VEHICLE 2 - Driver License ID Number: 946 352 306 Driver Name: DISIROLANO, ANTHONY Address: 114 Tenth ST City: ALBANY, State: NY, Zip: 11507	21
---	--	--	----

3	Date of Birth: 7/22/45, Sex: F, Unlicensed: <input type="checkbox"/> , No. of Occupants: 1, Public Property Damaged: <input type="checkbox"/>	Date of Birth: 2/5/56, Sex: M, Unlicensed: <input type="checkbox"/> , No. of Occupants: 2, Public Property Damaged: <input type="checkbox"/>	22
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4	Name: SAME AS DRIVER, Address: SIX WOOD AVE, City: ALBANY, State: NY, Zip: 11507	Name: DR. P. SANTOPIANO, Address: 125 WORTH ST, City: ALBANY, State: NY, Zip: 11507	23
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5	Plate Number: DWN 7744, State: NY, Vehicle Year & Make: 2007 LEAS 4052, Ins. Code: 140	Plate Number: K36 751, State: NY, Vehicle Year & Make: 2002 MCR 01, Ins. Code: X	24
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6	Check if involved vehicle is: <input type="checkbox"/> more than 80 inches wide; <input type="checkbox"/> more than 84 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.	Check if involved vehicle is: <input type="checkbox"/> more than 80 inches wide; <input type="checkbox"/> more than 84 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.	Circle the diagram below that describes the accident, or draw your own diagram in space 28. Number the vehicles.	25
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7	VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact: 3, 3 Box 2 - Most Damage: 3, 3	VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact: 1, 2 Box 2 - Most Damage: 12, 12	ACCIDENT DIAGRAM	26
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8	Vehicle 1: By NUZZI, Towed to New Hyde Park	Vehicle 2: By NUZZI, Towed to New Hyde Park	Cost of repairs to any one vehicle will be more than \$3000. <input type="checkbox"/> Unknown/Unable to Determine <input type="checkbox"/> Yes <input type="checkbox"/> No	27
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9	Reference Marker	Coordinates (if available) Latitude/Northing: Longitude/Easting:	Place Where Accident Occurred: County: ALBANY, City/Village/Town: NORTH HAMPSTEAD Road on which accident occurred: GRAN CONE RD, CARLE PAIS at 1) intersecting street: NORTHERN STATE HWY, BURD RD or 2) _____ ON OS _____ Foot Mile _____ DE DW of _____ (Alleged, Name of Intersecting Road Number or Street Name)	28
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Accident Description/Officer's Notes: *Both vehicles were towed from scene by Authority of Officers. Witness Andrew Beadle 516 375-0223*

9	10	11	12	13	14	15	16	17	18	19	20
A	1	A	1	61	F	4	9	6	9929	2905	LEVITEN, IRIS, L
B	2	4	1	57	M	12	12	6	9929	2905	DISIROLANO, ANTHONY
C	3	7	1	46	M	12	12	6	9929	2905	DAWKAS, MICHAEL
D											
E											
F											

Officer's Name and Signature: <i>PO McEllen</i>	Badge No.: 250	NIC No.: 0000	precinct/Post/Troop/Zone: 3	Station/Beat/Sector: 313	Reporting Officer: <i>J. Shaw</i>	Date/Time Reported: 2/18/07 0941
---	----------------	---------------	-----------------------------	--------------------------	-----------------------------------	----------------------------------

Index 117118 Year 2007 RJI No. Hon.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW YORK CITY
DEPARTMENT OF SANITATION and THE CITY OF NEW YORK,

Defendants.

RESPONSE TO NOTICE FOR DISCOVERY AND INSPECTION

CONNORS & CONNORS, P.C.

Attorneys for Defendant, Iris Leviten
Office and Post Office Address, Telephone
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700 PHONE
(718) 442-1717 FAX

To

Signature (Rule 130-7.1.a)

Print name beneath

DAVID S. HELLER

Attorney(s) for

Service of a copy of the within

is hereby admitted,

Dated,

Attorney(s) for

Please take notice

NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order
settlement to the HON.
of the within named court, at
on

of which the within is a true copy will be presented for
one of the judges

at M

Dated,

Yours, etc.

CONNORS & CONNORS, P.C.

Attorneys for

To

Attorney(s) for

Office and Post Office Address
766 CASTLETON AVENUE
STATEN ISLAND, NEW YORK 10310

Steven R. Kramer
Direct Dial: 914-949-3760
skramer@eckertseamans.com

May 21, 2009

Government Employees Insurance Company
750 Woodbury Road
Woodbury, NY 11797

Re: Iris L. Leviten
Claim # 0244514670101035
ESCM File No.: 292107.00040

Dear Sir/Madam:

We are in receipt of the property damage file for the above-referenced claim. However, we note that photographs 14 and 15 are missing from the file. Please provide our office with color copies of these photographs as soon as possible.

Thank you for your anticipated cooperation.

Very truly yours,



Steven R. Kramer

SRK/el

Photo 1 from Estimate for Claim no 0244514670101035-01

Photo date: 03/14/2007 08:19:13:00. **Size:** 39340

Description:

Insured: LEVITEN, IRIS. **Policy_no:** 2020513137.

Claimant: .

Vehicle: 6, LEXU, ES 330. **VIN:** JTHBJ46G272071246.

Loss date: 02/18/07. **Estimator:** Drew Infantino



Photo 2 from Estimate for Claim no 0244514670101035-01

Photo date: 03/14/2007 08:19:13:00. **Size:** 39670

Description:

Insured: LEVITEN, IRIS. **Policy_no:** 2020513137.

Claimant: .

Vehicle: 6, LEXU, ES 330. **VIN:** JTHBJ46G272071246.

Loss date: 02/18/07. **Estimator:** Drew Infantino



Photo 3 from Estimate for Claim no 0244514670101035-01

Photo date: 03/14/2007 08:19:14:00. **Size:** 37229

Description:

Insured: LEVITEN, IRIS. **Policy_no:** 2020513137.

Claimant: .

Vehicle: 6, LEXU, ES 330. **VIN:** JTHBJ46G272071246.

Loss date: 02/18/07. **Estimator:** Drew Infantino



Photo 4 from Estimate for Claim no 0244514670101035-01

Photo date: 03/14/2007 08:19:14:00. **Size:** 38320

Description:

Insured: LEVITEN, IRIS. **Policy_no:** 2020513137.

Claimant: .

Vehicle: 6, LEXU, ES 330. **VIN:** JTHBJ46G272071246.

Loss date: 02/18/07. **Estimator:** Drew Infantino



Photo 5 from Estimate for Claim no 0244514670101035-01

Photo date: 03/14/2007 08:19:14:00. **Size:** 43511

Description:

Insured: LEVITEN, IRIS. **Policy_no:** 2020513137.

Claimant: .

Vehicle: 6, LEXU, ES 330. **VIN:** JTHBJ46G272071246.

Loss date: 02/18/07. **Estimator:** Drew Infantino

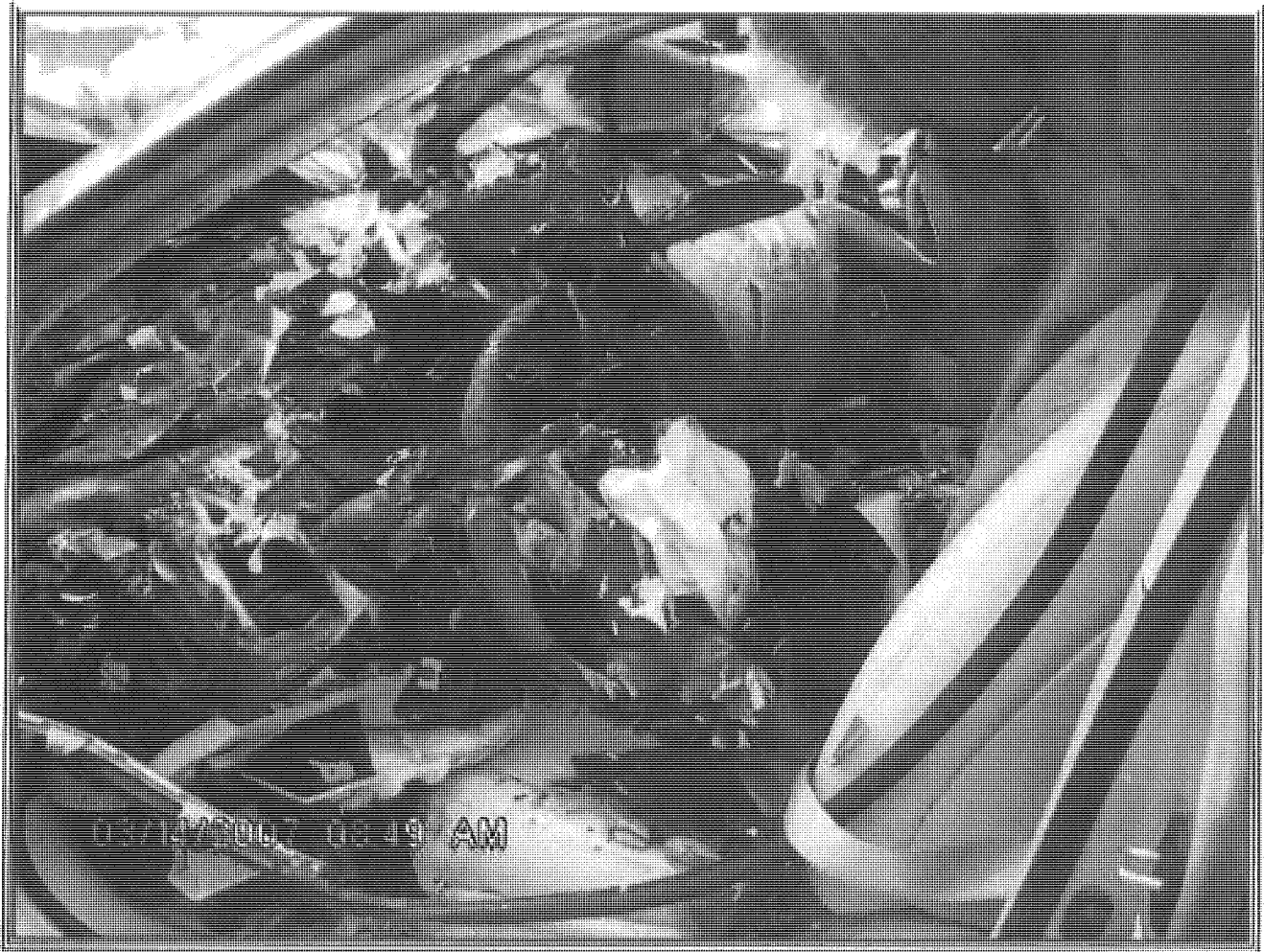


Photo 6 from Estimate for Claim no 0244514670101035-01

Photo date: 03/14/2007 08:19:14:00. **Size:** 25942

Description:

Insured: LEVITEN, IRIS. **Policy_no:** 2020513137.

Claimant: .

Vehicle: 6, LEXU, ES 330. **VIN:** JTHBJ46G272071246.

Loss date: 02/18/07. **Estimator:** Drew Infantino

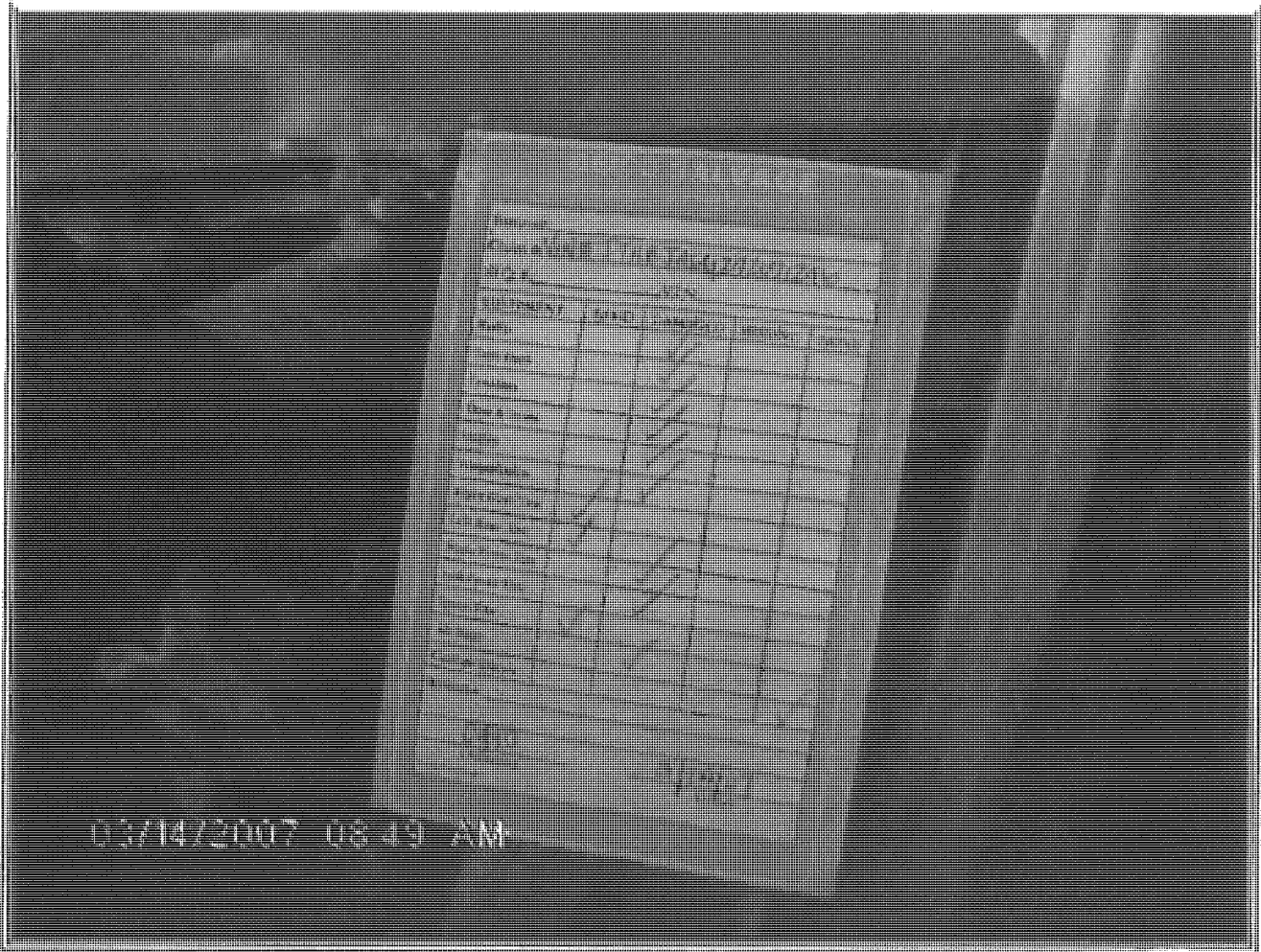


Photo 7 from Estimate for Claim no 0244514670101035-01

Photo date: 03/14/2007 08:19:14:00. **Size:** 25038

Description:

Insured: LEVITEN, IRIS. **Policy_no:** 2020513137.

Claimant: .

Vehicle: 6, LEXU, ES 330. **VIN:** JTHBJ46G272071246.

Loss date: 02/18/07. **Estimator:** Drew Infantino



Photo 8 from Estimate for Claim no 0244514670101035-01

Photo date: 03/14/2007 08:19:14:00. **Size:** 31630

Description:

Insured: LEVITEN, IRIS. **Policy_no:** 2020513137.

Claimant: .

Vehicle: 6, LEXU, ES 330. **VIN:** JTHBJ46G272071246.

Loss date: 02/18/07. **Estimator:** Drew Infantino

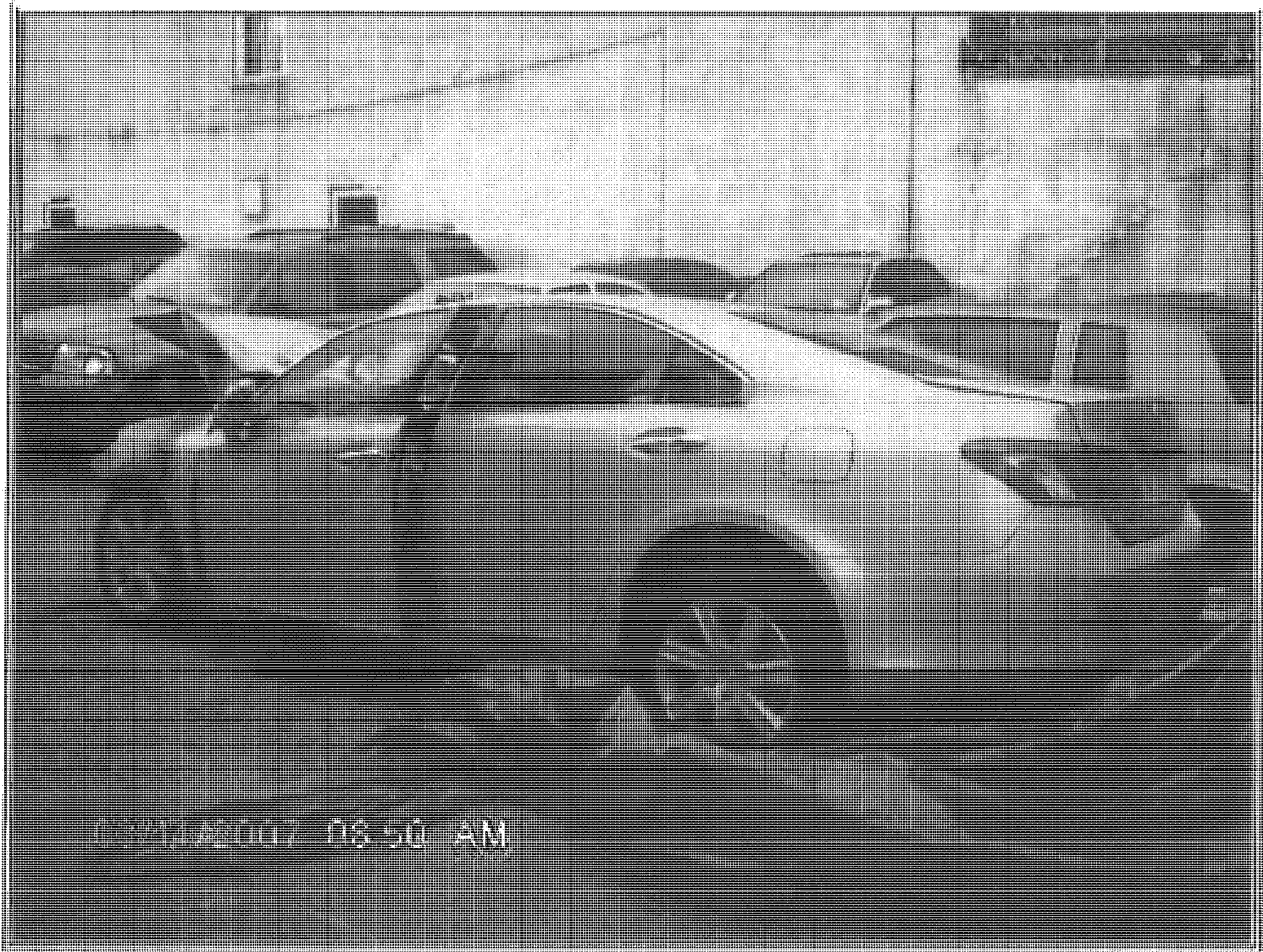


Photo 9 from Estimate for Claim no 0244514670101035-01

Photo date: 03/14/2007 08:19:14:00. **Size:** 27796

Description:

Insured: LEVITEN, IRIS. **Policy_no:** 2020513137.

Claimant: .

Vehicle: 6, LEXU, ES 330. **VIN:** JTHBJ46G272071246.

Loss date: 02/18/07. **Estimator:** Drew Infantino



Photo 10 from Estimate for Claim no 0244514670101035-01

Photo date: 03/14/2007 08:19:14:00. **Size:** 24975

Description:

Insured: LEVITEN, IRIS. **Policy_no:** 2020513137.

Claimant: .

Vehicle: 6, LEXU, ES 330. **VIN:** JTHBJ46G272071246.

Loss date: 02/18/07. **Estimator:** Drew Infantino

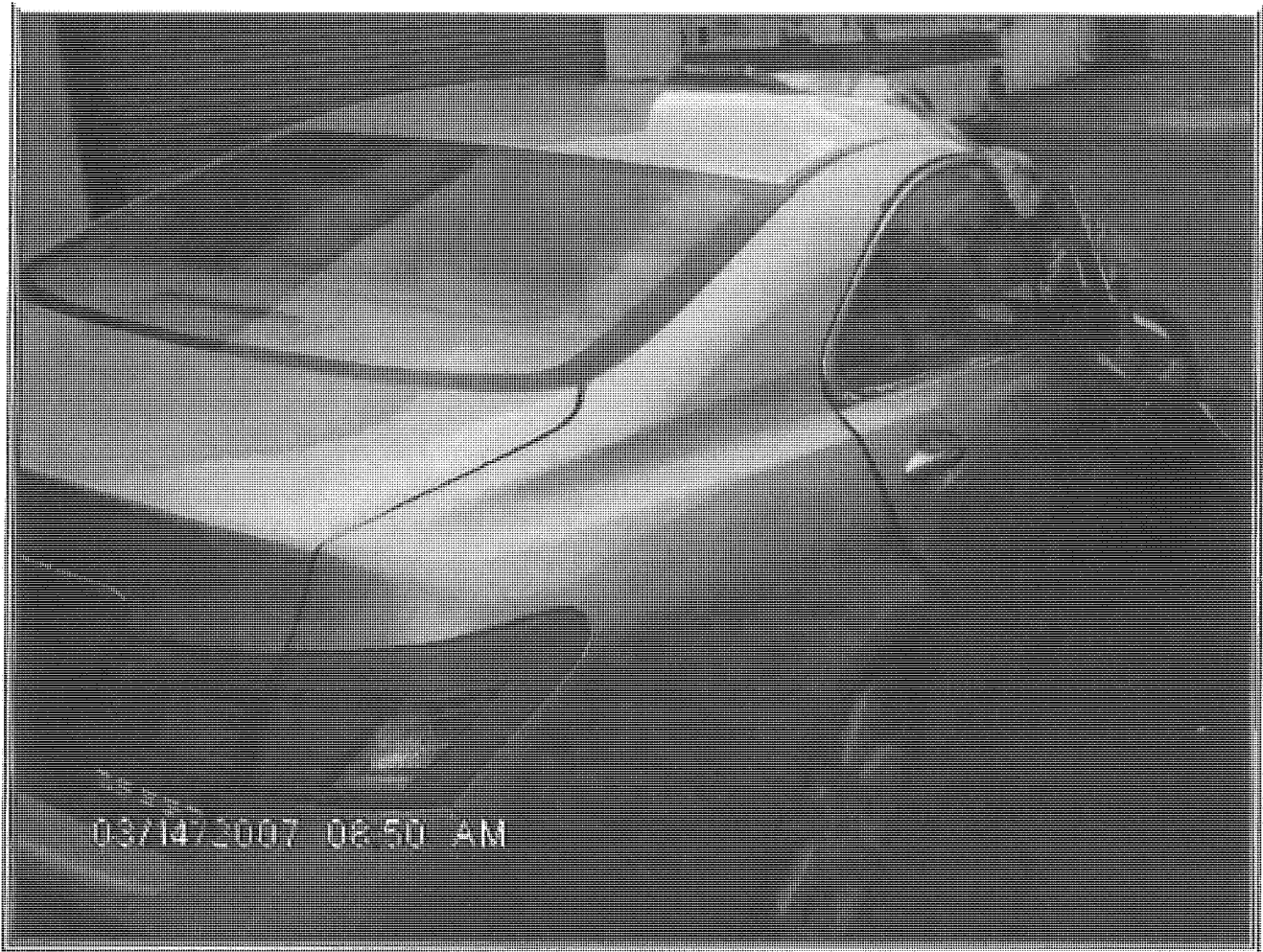


Photo 11 from Estimate for Claim no 0244514670101035-01

Photo date: 03/14/2007 08:19:14:00. **Size:** 24622

Description:

Insured: LEVITEN, IRIS. **Policy_no:** 2020513137.

Claimant: .

Vehicle: 6, LEXU, ES 330. **VIN:** JTHBJ46G272071246.

Loss date: 02/18/07. **Estimator:** Drew Infantino

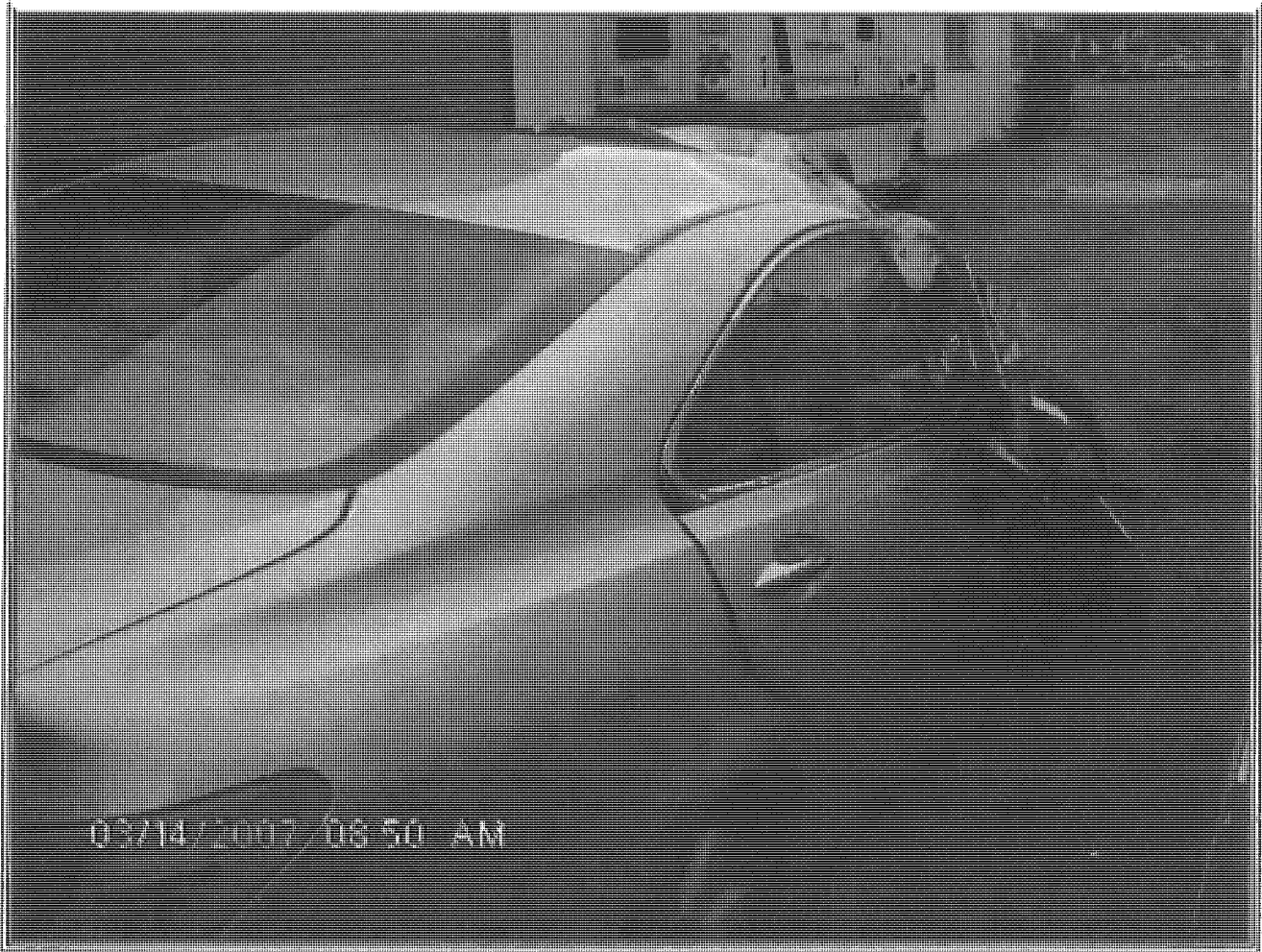


Photo 12 from Estimate for Claim no 0244514670101035-01

Photo date: 03/14/2007 08:19:14:00. **Size:** 25825

Description:

Insured: LEVITEN, IRIS. **Policy_no:** 2020513137.

Claimant: .

Vehicle: 6, LEXU, ES 330. **VIN:** JTHBJ46G272071246.

Loss date: 02/18/07. **Estimator:** Drew Infantino

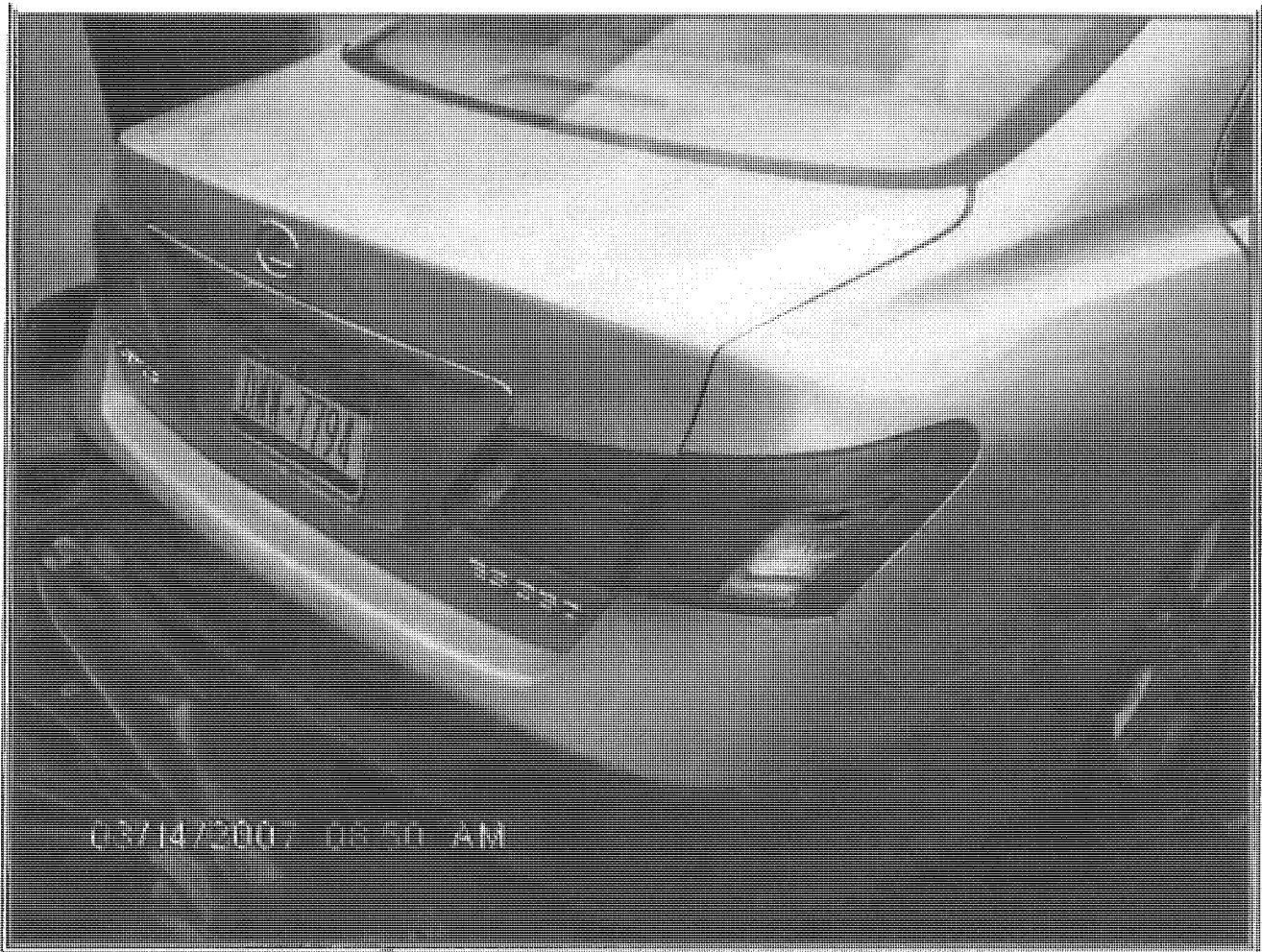


Photo 13 from Estimate for Claim no 0244514670101035-01

Photo date: 03/14/2007 08:19:14:00. **Size:** 41488

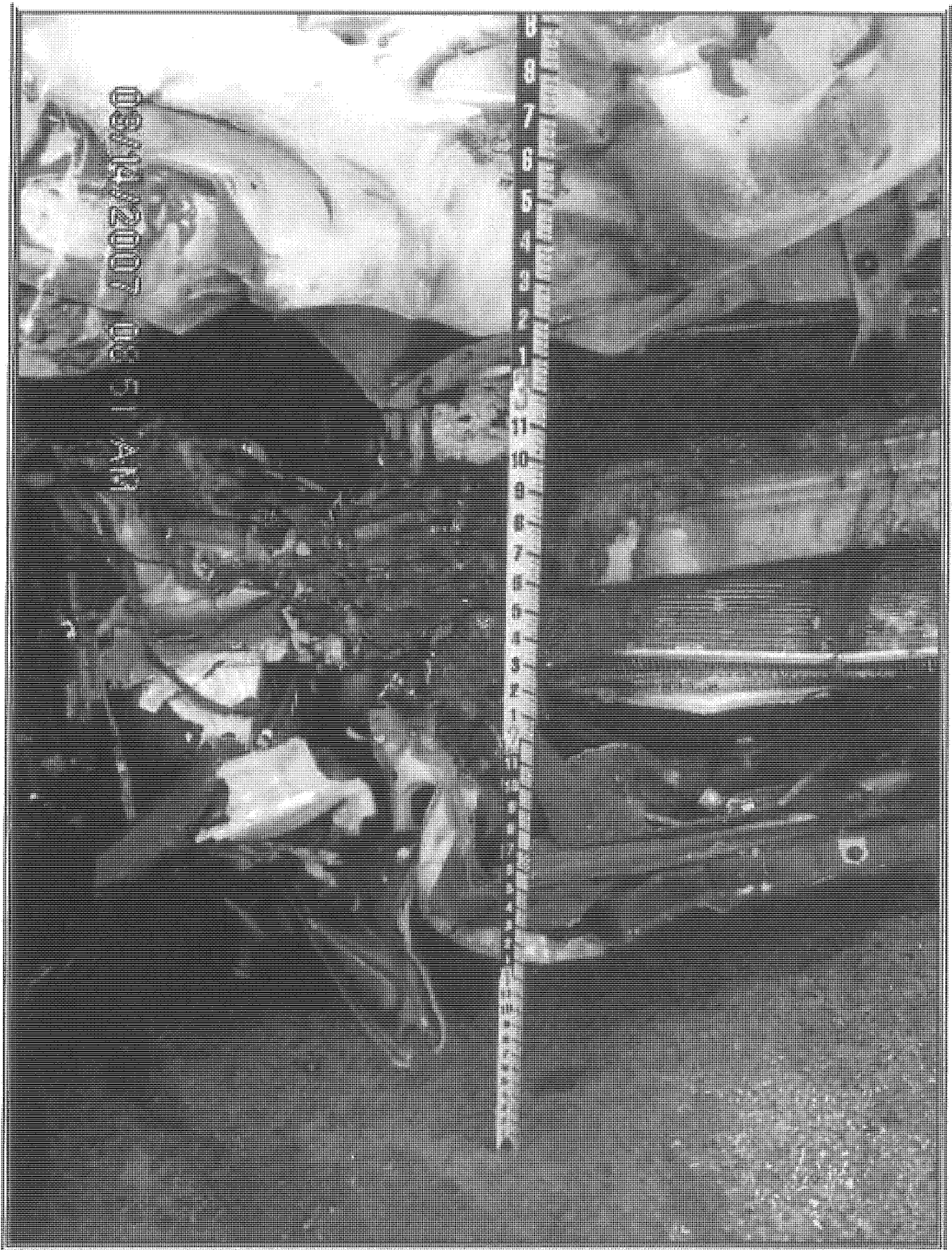
Description:

Insured: LEVITEN, IRIS. **Policy_no:** 2020513137.

Claimant: .

Vehicle: 6, LEXU, ES 330. **VIN:** JTHBJ46G272071246.

Loss date: 02/18/07. **Estimator:** Drew Infantino



New York State Department of Motor Vehicles
JLICE ACCIDENT REPORT
MV-104A (6/04)

Local Codes
3-818-07

AMENDED REPORT **DMV COPY**

1	Accident Date Month: 2 Day: 18 Year: 2007	Day of Week SU	Military Time 1450	No. of Vehicles 2	No. Injured 3	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
---	---	--------------------------	------------------------------	-----------------------------	-------------------------	------------------------	--	-------------------------------------	---

2	VEHICLE 1 Driver License ID Number: 793 706 540 Driver Name: LEVITEN, IRIS L Address: SIX WOOD AVE ALBERTSON NY 11507	VEHICLE 2 Driver License ID Number: 946 352 386 Driver Name: DiStefano, Anthony Address: 114 Tenth St HICKSVILLE NY 11001
---	---	---

3	Date of Birth: 7/22/45 Sex: F Unlicensed: <input type="checkbox"/> No. of Occupants: 1 Public Property Damaged: <input type="checkbox"/>	Date of Birth: 2/5/86 Sex: M Unlicensed: <input type="checkbox"/> No. of Occupants: 2 Public Property Damaged: <input type="checkbox"/>
4	Name: SAME AS DRIVER Address: 125 WURTH ST NY 11013	Name: DR. DiStefano Address: 125 WURTH ST NY 11013

5	Plate Number: DWW 7744 State of Reg: NY Vehicle Year & Make: 2007 Lexus Vehicle Type: 4dscd Ins. Code: 140	Plate Number: K 36 757 State of Reg: NY Vehicle Year & Make: 2002 MICK Vehicle Type: SI Ins. Code: X
---	---	---

6	Check if involved vehicle is: <input type="checkbox"/> more than 25 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated w/ an overweight permit; <input type="checkbox"/> operated with an overdimension permit.	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.
---	--	--

7	VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact: 3 3 Box 2 - Most Damage: 3 4 5 2	VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact: 1 2 Box 2 - Most Damage: 12 12 Enter up to three more Damage Codes: 7 2 3
---	--	---

8	Vehicle By: MUZZI Towed: To North Hyde Park	Vehicle By: MUZZI Towed: To North Hyde Park
---	---	---

9	Reference Marker	Coordinates (if available) Latitude/Northing: Longitude/Easting:	Place Where Accident Occurred: County: MASSACHUSETTS City/Village/Town: NORTH HAMPSHIRE Road or which accident occurred: GLAN COVE RD CARLE PLACE at 1) intersecting street: NORTHEN STATE EAST BOUND RAMP or 2) 0 N 0 S 0 E 0 W of 0 (Milepost, Nearest Intersecting Route Number or Street Name)
---	------------------	--	--

Accident Description/Officer's Notes: **MUZZI and MUZZI were in a collision. Both vehicles were towed from scene by Authority of Operators. WITNESS Andrew Beadle 516 375-0223**

8	9	10	11	12	13	14	15	16	17	BY	TD	18	Names of all involved	Date of Death Only
A	1	1	A	1	61	F	11	9	6	9997	2905		LEVITEN, IRIS L	
B	2	1	4	1	51	M	12	12	6	9999	2905		DiStefano, Anthony	
C	2	3	4	1	46	M	12	12	6	9999	2905		DAWKINS, WILLIAM E L	
D														
E														
F														

Officer's Rank and Signature: PO Kollerman	Badge/ID No: 152	NCIC No: 025-U	Precinct/Post Troop/Zone: 3	Station/Beat Sector: 313	Reviewing Officer: [Signature]	Date/Time Reviewed: 7/22/07 094
---	-------------------------	-----------------------	------------------------------------	---------------------------------	---------------------------------------	--

ECKERT SEAMANS

Eckert Seamans Cherin & Mellou, L.L.C.
10 Barik Street
Suite 1061
White Plains, NY 10606

Dge 2.3865

TEL 914 949 2909
FAX 914 949 5424
www.eckertseaman.com

Steven R. Kramer
Direct Dial: 914-949-3760
skramer@eckertseaman.com

September 08, 2008

Diana M.A. Carnemolla, Esq.
GAIR GAIR CONASON STEIGMAN & MACKAUF
80 Pine Street
New York, New York 10005

Re: *Leviten v. Lexus, et al.*
Supreme Court of the State of New York
New York County – Index No.: 107681/07
ESCM File No.: 292107.00040

Dear Ms. Carnemolla:

We are writing to schedule an inspection of the subject vehicle being stored by your law firm.

As we discussed previously, we propose to perform a non-destructive inspection consisting of photographing/videotaping the vehicle and moving "debris" off the driver's floor mat. We do not intend, at this time, to perform any destructive testing such removing the driver's seat.

Our discovery motion and defendant's cross-motion for similar relief are returnable on September 12 and 30, 2008, respectively. We think that it makes sense to conduct the inspection before the motions are heard.

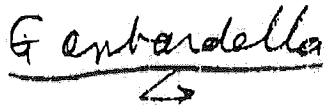
Please call me so we can discuss the vehicle inspection.

Very truly yours,


Steven R. Kramer

SRK/ed
Enclosures

cc: All Counsel on attached service list





Gair - heslenton call 943/1080 } spoke to Ala Milshteyn

WHITE PLAINS, NY PITTSBURGH, PA HARRISBURG, PA PHILADELPHIA, PA BOSTON, MA WASHINGTON, DC
WILMINGTON, DE MORGANTOWN, WV SOUTHPOINTE, PA

(V0011064.1)

TOY-RQ-05E-00001794

Diana M.A. Carnemolla, Esq.
Gair Gair Conason Steigman & Mackauf
September 08, 2008
Page 2

Service List

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GEICO
CCC VALUESCOPE™
 Claim Services

Market Report

Report Reference Number: 37359040
 Claim reference: 0244514670101035-01
 Loss Incident Date: 02/18/2007
 Appraiser: INFANTINO, ANDREW
 Insured: Iren Leviten

Adjuster: Infantino, Andrew
 GEICO C-code: C43002
 Claim Submitted Date: 03/26/2007
 Owner: Iren Leviten

Introduction

GEICO has conducted an inspection of your 2007 Lexus Es 350 4 Door Sedan located in Albertson, NY. The inspection information was used to conduct research in your local market to determine the local market value of your vehicle.

The local market value for your vehicle was defined by the ZIP code 11507 -- Albertson, NY .

The recommended settlement amount based on the loss vehicle description provided by GEICO is \$ 34,650.00.

<u>Vehicle Valuation Summary</u>	Provides the market valuation summary
<u>Vehicle Valuation Allowances</u>	Describes factors affecting the value of the vehicle
<u>Vehicle Description</u>	Describes the components of the vehicle
<u>Vehicle Condition</u>	Details the vehicle's pre-accident condition and Appraiser inspection recap
<u>Local Market Comparable Vehicles Detail</u>	Presents the comparable vehicles located in your market
<u>VINguard™ Vehicle Identification</u>	Details the vehicle configuration information
<u>VINguard™ Vehicle History Information</u>	Provides the results of vehicle history research
<u>Experian AutoCheckSM Vehicle History Report</u>	Provides the results of an Experian AutoCheck database search
<u>Valuation Methodology</u>	Describes the method used to evaluate the loss vehicle
<u>Local Market Definition</u>	Details the local market basis for this valuation
<u>Vehicle Appraisal and Valuation Notes</u>	Lists detailed log notes for this file

Claim reference: 0244514670101035-01

Report Reference Number: 37359040

Vehicle Valuation Summary

2007 Lexus Es 350 4 Door Sedan - Albertson, NY

VIN: JTHBJ46G272071246

Local Market Value		\$ 36,150.00
Actual Cash Value		\$ 36,150.00
Pre Tax Amount		\$ 36,150.00
Vehicular Sales Tax	_____ %	\$ _____
License/fees (if applicable)		\$ _____
Salvage		- 1,000.00
Value Before Deductible		\$ 35,150.00
Deductible		- 500.00
Adjusted Vehicle Value		\$ 34,650.00

The Local Market Value is derived from comparable vehicle(s) available or recently sold in the marketplace at the time of valuation.

Vehicle Valuation Allowances

Compared to the typical vehicle in this local market, your vehicle's value was affected by these factors:

Options
 Leather Seats LS Reported

These allowances illustrate factors that influence the settlement amount when compared to a typical vehicle. The typical vehicle is a vehicle of the same year, make, and model as the loss vehicle, including average mileage, and all standard and predominant equipment

In cases where a standard or predominant option is superceded by a replacement or upgrade, a corresponding addition will appear for the option to reflect this.

The vehicle valuation allowances also reflect proper deductions for all standard or predominant equipment not present on the loss vehicle.

These allowances are illustrative only. The actual Local Market Value is calculated entirely from the comparable vehicles contained in this report with adjustments to reflect the loss vehicle configuration.

Claim reference: 0244514670101035-01

Report Reference Number: 37359040

Vehicle Description

2007 Lexus Es 350 4 Door Sedan - Albertson, NY

Below are the components for your vehicle, provided to CCC by GEICO, included in this local market valuation:

Component		Loss Vehicle Information
Odometer		Unknown
Equipment		
<u>Transmission</u>		
Automatic Transmission	AT	Standard
Overdrive	OD	Standard
Traction Control	TX	Standard
<u>Power</u>		
Power Steering	PS	Standard
Power Brakes	PB	Standard
Power Windows	PW	Standard
Power Locks	PL	Standard
Power Driver Seat	SP	Standard
Power Passenger Seat	PC	Standard
Power Mirrors	PM	Standard
Power Trunk/Tailgate	PT	Standard
<u>Decor/Convenience</u>		
Air Conditioning	AC	Standard
Rear Defogger	RD	Standard
Tilt Wheel	TW	Standard
Cruise Control	CC	Standard
Leather Seats	LS	Reported
Bucket Seats	BS	Standard
4-Wheel Disc Brakes	DB	Standard
Telescopic Wheel	TL	Standard
Dual Mirrors	DM	Standard
Fog Lamps	FL	Standard
Keyless Entry	KE	Standard
Theft Deterrent/Alarm	TD	Standard
Wood Interior Trim	WT	Standard
<u>Radio</u>		
AM Radio	AM	Standard
FM Radio	FM	Standard
Stereo	ST	Standard
Search/Seek	SE	Reported
CD Changer/Stacker	SK	Standard
Steering Wheel Touch Control	TQ	Standard
<u>Roof</u>		
Electric Glass Roof	EG	Standard
<u>Other</u>		
Aluminum/Alloy Wheels	AW	Standard
Intermittent Wipers	IW	Standard

Metallic Paint	MP	Reported
Air Bag	AG	Standard
Passenger Air Bag	RG	Standard
Front Side Impact Air Bags	XG	Standard
Anti-Lock Brakes (4)	AB	Standard
Console/Storage	CN	Standard

Claim reference: 0244514670101035-01

Report Reference Number: 37359040

VINGuard™ Vehicle Identification

VIN: JTHBJ46G272071246

Every vehicle sold in the United States is required to have a manufacturer assigned Vehicle Identification Number (VIN). This number provides the exact specifications of the vehicle. Decoding the VIN identifies the exact vehicle for which the local market value will be determined.

	Insurer Description	VINGuard Analysis
Year	2007	2007
Make	Lexus	Lexus
Model	Es 350	Es 350
Model Number	BJ46G	BJ46G
Body Style	4 Door Sedan	4 Door Sedan
Engine	6-3.5L-FI	6-3.5L-FI
Transmission	Automatic Transmission Overdrive	
Restraints	Air Bags (Driver+Pass.)	Air Bags(Dr.+Pass.+Side)
Curb Weight		3,580
Odometer	Unknown	

This vehicle was assembled in JAPAN

VINGuard™ is a database used to decode completely and accurately all manufacturer assigned Vehicle Identification Numbers.

VINGuard™ Vehicle History Information

Using the VIN for this vehicle, VINGuard™ detected discrepancies or prior history requiring additional research. Please review the information detailed below.

VINGuard™ Messages: VINGuard has decoded this VIN without any errors.

ISO Vehicle History:

Number of times reported to ISO: 1
 ISO's file number: H0127796496

Activity Reported: Property & Casualty
 Loss date: 02/18/2007
 Insurance company: GEICO
 Phone: (800) 848-6502

Claim ref: 0244514670101035

Point of Impact:

Collision History Information:

Collision incident reported by GEICO on 03/21/2007.

Claim # 0244514670101035-01 in Breesport, NY

Repair estimate: \$37,461 Miles: UNKNOWN

Damage Location: Front.

Claim reference: 0244514670101035-01

Report Reference Number: 37359040

AutoCheck Vehicle History Report



Report Run Date: 03/26/2007

Key	= No Problem Found	= Problem Found	= Information Found
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Title Check



This Vehicle Checks Out. AutoCheck's results for this 2007 Lexus Es 350 (JTHBJ46G272071246) show no significant title events. When found, events often indicate automotive damage or warnings associated with the vehicle.

Problems Checked	Results Found
Abandoned	No Abandoned Record Found
Damaged	No Damaged Record Found
Fire Damage	No Fire Damage Record Found
Grey Market	No Grey Market Record Found
Hail Damage	No Hail Damage Record Found
Insurance Loss	No Insurance Loss Record Found
Junk	No Junk Record Found
Rebuilt	No Rebuilt Record Found
Salvage	No Salvage Record Found

Problem Check



This Vehicle Checks Out. AutoCheck's database for this 2007 Lexus Es 350 (JTHBJ46G272071246) show no historical events that indicate a significant automotive problem. These problems can indicate past previous car damage, theft, or other significant problems.

Problems Checked	Results Found
NHTSA Crash Test Vehicle	No NHTSA Crash Test Vehicle Record Found
Frame Damage	No Frame Damage Record Found
Major Damage Incident	No Major Damage Incident Record Found
Manufacturer Buyback/Lemon	No Manufacturer Buyback/Lemon Record Found
Odometer Problem	No Odometer Problem Record Found
Recycled	No Recycled Record Found
Salvage Auction	No Salvage Auction Record Found
Water Damage	No Water Damage Record Found

Odometer Check



This Vehicle Checks Out. For this 2007 Lexus Es 350 (JTHBJ46G272071246) no indication of odometer

rollback or tampering was found. AutoCheck determines odometer rollbacks by searching for records that indicate odometer readings less than a previously reported value. Other odometer events can report events of tampering, or possible odometer breakage.

Date Reported Odometer Reading

Vehicle Information



This Vehicle Checks Out. AutoCheck shows a clean record for this 2007 Lexus Es 350 (JTHBJ46G272071246) For some cars, past vehicle information may give an indication of excessive wear and tear, such as police cars or taxi use

Problems Checked	Results Found
Accident	<input checked="" type="checkbox"/> No Accident Record Found
Corrected Title	<input checked="" type="checkbox"/> No Corrected Title Record Found
Driver Education	<input checked="" type="checkbox"/> No Driver Education Record Found
Duplicate Title	<input checked="" type="checkbox"/> No Duplicate Title Record Found
Emissions Safety Inspection	<input checked="" type="checkbox"/> No Emissions Safety Inspection Record Found
Fire Damage Incident	<input checked="" type="checkbox"/> No Fire Damage Incident Record Found
Lease	<input checked="" type="checkbox"/> No Lease Record Found
Lien	<input checked="" type="checkbox"/> No Lien Record Found
Livery Use	<input checked="" type="checkbox"/> No Livery Use Record Found
Government Use	<input checked="" type="checkbox"/> No Government Use Record Found
Police Use	<input checked="" type="checkbox"/> No Police Use Record Found
Fleet	<input checked="" type="checkbox"/> No Fleet Record Found
Rental	<input checked="" type="checkbox"/> No Rental Record Found
Fleet and/or Lease	<input checked="" type="checkbox"/> No Fleet and/or Lease Record Found
Fleet and/or Rental	<input checked="" type="checkbox"/> No Fleet and/or Rental Record Found
Repossessed	<input checked="" type="checkbox"/> No Repossessed Record Found
Taxi use	<input checked="" type="checkbox"/> No Taxi use Record Found
Theft	<input checked="" type="checkbox"/> No Theft Record Found

Full History

Below are the historical events for this vehicle listed in chronological order

Report Run Date: 03/26/2007

Event Date	Event Location	Odometer Reading	Data Source	Event Detail
2007-01-24	ALBERTSON NY		Motor Vehicle Dept.	REGISTRATION EVENT/RENEWAL

AUTOCHECK TERMS AND CONDITIONS:

Experian's Reports are compiled from multiple sources. It is not always possible for Experian to obtain complete discrepancy information on all vehicles; therefore, there may be other title brands, odometer readings or discrepancies that apply to a vehicle that are not reflected on that vehicle's Report. Experian searches data from additional sources where possible, but all discrepancies may not be reflected on the Report.

These Reports are based on information supplied to Experian by external sources believed to be reliable, BUT NO RESPONSIBILITY IS ASSUMED BY EXPERIAN OR ITS AGENTS FOR ERRORS, INACCURACIES OR OMISSIONS. THE REPORTS ARE PROVIDED STRICTLY ON AN "AS IS WHERE IS" BASIS, AND EXPERIAN FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THIS REPORT.

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Experian shall not be liable for any delay or failure to provide an accurate report if and to the extent which such delay or failure is caused by events beyond the reasonable control of Experian, including, without limitation, "acts of God", terrorism, or public enemies, labor disputes, equipment malfunctions, material or component shortages, supplier failures, embargoes, rationing, acts of local, state or national governments, or public agencies, utility or communication failures or delays, fire, earthquakes, flood, epidemics, riots and strikes

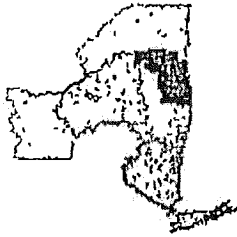
These terms and the relationship between you and Experian shall be governed by the laws of the State of Illinois (USA) without regard to its conflict of law provisions. You and Experian agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Cook, Illinois

Claim reference: 0244514670101035-01

Report Reference Number: 37359040

Local Market Definition

The local market value for your 2007 Lexus Es 350 4 Door Sedan was defined by the ZIP code 11507 -- Albertson, NY . If required, the search area may have been expanded for additional information. Details of the specific markets searched follow.



Nassau County

The state of New York is composed of 12 distinct local markets. The following 10 local markets were used in the preparation of this vehicle market report.

Nassau County NY - Primary local market vehicle database

In this market, CCC maintains a database of 3,477 inspected dealer vehicles located at 29 dealerships, and 9,667 dealer advertised, and 4,355 privately advertised vehicles taken from 16 local papers or magazines.



New York City

New York City NY - Secondary local market vehicle database

In this market, CCC maintains a database of 2,444 inspected dealer vehicles located at 19 dealerships, and 17,708 dealer advertised, and 2,858 privately advertised vehicles taken from 33 local papers or magazines.

Suffolk County NY - Third local market vehicle database

In this market, CCC maintains a database of 718 inspected dealer vehicles located at 5 dealerships, and 11,542 dealer advertised, and 325 privately advertised vehicles taken from 6 local papers or magazines.



Suffolk County

Other markets searched - Hudson Valley, Albany, Binghamton, Glens Falls, Syracuse, Rochester and Buffalo

In these markets, CCC maintains a database of 13,785 inspected dealer vehicles located at 93 dealerships and 75,373 vehicles taken from 132 local newspapers or magazines.

From these 10 local markets, comparable vehicles were selected based on the year, make, model, body style and engine configuration of your vehicle. Adjustments were made to the value of each comparable vehicle to compensate for differences in year, model, body style, engine configuration, packages, options, and mileage.

For your vehicle's CCC Valuescope Market Report, CCC identified 1 inspected dealer vehicle as comparable to your vehicle, and used their values to determine the Local Market Value.



Vehicles are determined to be comparable to the loss vehicle based on:

- Nearness to the loss vehicle's primary garage location
- Similarity of model, equipment, and odometer
- Precision of the data (inspected versus advertised)

Claim reference: 0244514670101035-01

Report Reference Number: 37359040

Valuation Methodology

This CCC Valuescope Market Report was prepared for GEICO by CCC Information Services Inc. CCC has been preparing market value reports for the insurance industry since 1981. CCC physically inspects vehicles for sale at vehicle dealerships in the local markets, and subscribes to local newspapers and automotive publications in these markets. CCC maintains vehicle databases containing these inspected dealership vehicles along with the dealer and private party advertised vehicle information.

When GEICO requests a CCC Valuescope Market Report from CCC, they provide CCC the VIN (Vehicle Identification Number) of the loss vehicle. Decoding this VIN identifies the exact vehicle for which the local market value will be done. See the **VINGuard™ Vehicle Identification** section.

GEICO also provides CCC the vehicle owner's ZIP code. This identifies the local market that will be used to determine the market value. See the **Local Market Definition** section.

Finally, GEICO provides CCC with the configuration of the loss vehicle including equipment, odometer, condition, maintenance, etc. This information is the starting point for determining the local market value.

The Local Market Value is the value of the loss vehicle, and includes condition, mileage, packages, and all equipment. The method used to determine the **Local Market Value** on current year vehicles involves finding new vehicles for sale at the time of the valuation. Adjustments are made for differences in equipment and mileage. After the Adjusted Value for each comparable vehicle is calculated (see the **Local Market Comparable Vehicles Section**), the **Local Market Value** is determined.

Comparable vehicles used in the determination of the vehicle value are not intended to be replacement vehicles, but are reflective of the local market value.

Claim reference: 0244514670101035-01

Report Reference Number: 37359040

Vehicle Condition

GEICO uses Condition Inspection Guidelines to determine the condition of key components of the loss vehicle. These guidelines are specific to geographic location, year, and vehicle type. The guidelines describe physical characteristics for each of the vehicle components. Based on these guidelines, GEICO has determined the condition of the vehicle prior to the loss.

Component	Condition	Value Impact	Inspection Notes
Mechanical	Dealer retail	\$0	NO DAMAGE SEEN <u>Inspection Guidelines</u> Engine : Very clean. No seepage evident. No dirt or grease covered areas. Oil translucent. Transmission : Fluid has red translucent color. No seepage evident.
Tires	Dealer retail	\$0	9-32 ALL AROUND <u>Inspection Guidelines</u> Front Tires : 8-10/32" of original tread. 69% to 90% of new. Normal wear patterns evident. Rear Tires : 8-10/32" of original tread. 69% to 90% of new. Normal wear patterns evident.
Paint	Dealer retail	\$0	NO DAMAGE SEEN <u>Inspection Guidelines</u> Minimal surface chipping or scratching. No fading apparent.
Body	Dealer retail	\$0	NO DAMAGE SEEN <u>Inspection Guidelines</u> Sheet Metal : No dents. Small/numerous dings. No rust evident Trim : Components intact, minimal wear apparent. No significant peeling, fading or rust.
Glass	Dealer retail	\$0	NO DAMAGE SEEN <u>Inspection Guidelines</u> No scratches, pitting or chips. Seals are intact and watertight.
Interior	Dealer retail	\$0	NO DAMAGE SEEN <u>Inspection Guidelines</u> Carpets . Clean. No tears, holes or burn marks. Dashboard : No significant wear. Components intact. Headliner : Clean. No tears, sagging or fading. Seats : Clean. No tears, holes or burn marks.
Total Adjustments:		\$0	

- The Condition Inspection Guidelines provide information based on vehicle age, vehicle type, and geographic location. Your vehicle has been identified as being located in the Northeast region as a newer passenger car.
- The Condition Inspection Guidelines, and all dollar adjustments, are determined by surveys, inspections, and interviews with dealerships across the United States.

Claim reference: 0244514670101035-01

Report Reference Number: 37359040

Local Market Comparable Vehicles Detail

The local market comparable vehicles are compared to the loss vehicle, and adjustments are made for differences in equipment, odometer, model, etc. The **Adjusted Value** represents the price of the comparable configured exactly as the loss vehicle.

Loss Vehicle	New Comparable 1
2007 Lexus	2007 Lexus
Es 350	Es 350
4 Door Sedan	4 Door Sedan
Automatic Transmission	Automatic Transmission
Overdrive	Overdrive
6-3.5L-FI	6-3.5L
Radio: AM/FM Stereo Seek CD Changer/Stacker	AM/FM Stereo Seek CD Changer/Stacker
Anti-Lock Brakes (4)	Anti-Lock Brakes (4)
Air Conditioning	Air Conditioning
Air Bag	Air Bag
Aluminum/Alloy Wheels	Aluminum/Alloy Wheels
Cruise Control	Cruise Control
Electric Glass Roof	Electric Glass Roof
Fog Lamps	Fog Lamps
Keyless Entry	Keyless Entry
Power Passenger Seat	Power Passenger Seat
Power Locks	Power Locks
Power Windows	Power Windows
Rear Defogger	Rear Defogger
Passenger Air Bag	Passenger Air Bag
Power Driver Seat	Power Driver Seat
Theft Deterrent/Alarm	Theft Deterrent/Alarm
Telescopic Wheel	Telescopic Wheel
Steering Wheel Touch Controls	Steering Wheel Touch Controls
Tilt Wheel	Tilt Wheel
Traction Control	Traction Control
Front Side Impact Air Bags	Front Side Impact Air Bags
Leather Seats	Leather Seats
	Privacy Glass
	Heated Seats (2)*
Unknown miles	*New* miles
	Take Price \$36,801
Adjustments	
Options	-640
Adjusted Value	<u>\$36,161</u>
Location	Lexus of Manhattan
Contact	Michael Pecorella
Telephone	212-977-4400
Stock ID	Stock: WHITE
	Verified 3/15/2007

• Distance from Albertson | 18 Miles- New York

- **List Price** is the sticker price of the vehicle. **Take Price** is the amount for which the vehicle can be purchased as defined by the contact at each dealership.
- The baseline is defined as the condition of the typical vehicle on the road. **Baseline Adjustments** are made when a comparable vehicle's condition varies from that of a typical vehicle.
- All dollar adjustments are determined by surveys, inspections, and interviews with dealerships across the United States.
- Note that some comparable vehicles that were recently available in the local market may no longer be available.
- Option adjustments are made in comparison to the typical vehicle. Typical options that are not present are enclosed in parentheses. Items followed by an asterisk (*) indicate non-typical options that add value to the vehicle.

Claim reference: 0244514670101035-01

Report Reference Number: 37359040

Vehicle Appraisal and Valuation Notes

NO REBATES

Notice: This valuation has been prepared in accordance with New York State Insurance Department Regulation No. 64, Section 216.7.

Any deductions made for unrelated damage or excessive wear were calculated based on the effect that these factors have on the overall market value of this specific vehicle.

(C) Copyright 2007 CCC Information Services Inc. All Rights Reserved.

Various aspects of our Market Report are covered by one or more pending patent applications.

The trade names and/or trademarks used herein are owned by their respective trademark owners.

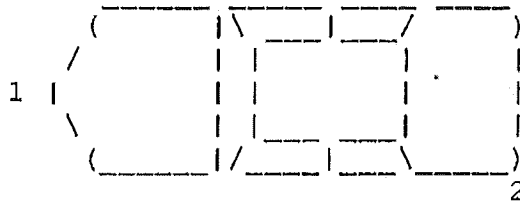
Adjuster: ABIW EXT: 4038 FCC: 04,
Appraiser: Clarke, Peter

Claim #: 0244514670101035-01
Policy #: 2020513137

Insured: LEVITEN, IRIS
Owner: LEVITEN, IRIS
Address: 6 WOOD AVE
ALBERTSON, NY 11507-1612

Loss Type: Collision
Evening: (516) 248-4098
Business: (516) 662-9404

Vehicle: 2006 LEXU ES 330 6-3.3L-FI 4D SED
VIN: JTHBJ46G272071246 Odometer: UNK Color: GOLD License: DWW7794 NY
Driveable: NO Primary Impact Point: 12. Front
Secondary Impact Point: 7. Left Rear



Place of Inspection:
NUZZI BROTHERS AUTO COLLISION
77 JERICHO TURNPIKE
NEW HYDE PARK, NY 11040

<u>ESTIMATE TO REPAIR</u>		<u>TOTAL LOSS VALUATION</u>	
Estimate	\$ 34,486.94	Vehicle Valuation	\$ 36,150.00
Pre-Tax Subtotal	\$ 34,486.94	Pre-Tax Subtotal	\$ 36,150.00
Tax	2,974.50	Tax	3,117.94
After-Tax Subtotal	\$ 37,461.44	After-Tax Subtotal	\$ 39,267.94
Betterment	0.00		
Deductible	500.00	Deductible	500.00
Appearance Allowance	0.00		
0% Negligence	0.00	0% Negligence	0.00
Calculated Net Loss	\$ 36,961.44	Calculated Loss	\$ 38,767.94
		Less Salvage	0.00
Qual Recy Parts Not Included		Calculated Net Loss	\$ 38,767.94
Qual Repl Parts Included			
Opt OEM Parts Not Included		Valuation Request #	
Recond Parts Included			

SETTLEMENT

Settlement Type: TOTAL LOSS
Negotiated Settlement: \$38,767.94 on with
Settlement Outstanding: \$38,767.94

03/27/2007 at 06:23 AM

CLAIM SUMMARY

0244514670101035-0

Owner: LEVITEN, IRIS
2006 LEXU ES 330 6-3.3L-FI 4D SED

Claim #: 0244514670101035-01

=====

SALVAGE

Buyer: IRIS LEVITEN
Address: 6 WOOD AVE
ALBERTSON, NY 11507-1612

Evening: (516)248-4098
Business: (516)662-9404

Accepted Bid Amount \$ 0.00
Net Salvage Value \$ 0.00

Date Accepted: 03/21/2007
Date Vehicle Picked Up:
Date Payment Received:

Rejected Bid Amount \$ 1,000.00 by IAA - BIDFAST

03/27/2007 at 06:23 AM

CLAIM SUMMARY

0244514670101035-01

Owner: LEVITEN, IRIS
2006 LEXU ES 330 6-3.3L-FI 4D SED

Claim #: 0244514670101035-01

=====

COMMENTS

*****AD*****

Inspected 01 ph veh, PC 2.
Vehicle T/L. (SEE CLAIM SUMMARY NOTES)
Woodbury Office Settling Claim.
Pd T&S thru 3/20/07.
Called in HOLD P/U. REMOVE SALVAGE
VALUE ONCE VEH IS P/U. CLAIM SUM NOTES
Advised owner that vehicle will be picked up and
to remove plates with personal items.
CCC Evaluation #37322184
MET#0703737 ON 3/15/07
Keys NOT AVAIL. (KEYS WERE IN VEH AT TIME
OF ACCIDENT/FIRE).

***** AD *****

DRAFT AUTHORITY
Total loss
Total Estimate: \$37,461.44
2007 LEXUS ES350
01 COLL
TOTAL ACV : \$36,150.00
TOW & STORAGE: 1,242.67
TOTAL CLAIM: \$37,392.67
LTHR WAS ADDED WHICH ADDED PREMIUM
SPORTS PACKAGE. APROX. \$2,000 PACKAGE.

NO DATABASE FOR 2007 LEXUS ES350. WROTE
VEHICLE USED DATABASE FOR 2006 ES330. RAN
VALUE UNDER CORRECT VEHICLE BY CALLING
IT IN TO CCC.

FILE TOOK AWHILE TO CLOSE TO GET AHOLD OF
ATTY'S OFFICE AND TRYING TO GET RECORD OF
MILEAGE FROM PH OR ATTY. NEITHER OF WHICH
COULD PROVIDE PROOF OF MILEAGE. RAN MILEAGE
AS UNKNOWN. LAWYER'S OFFICE IS ALSO RETAINING
VEHICLE AT A SHOP OF THEIR CHOICE SO THEY CAN
HAVE VEHICLE INVESTIGATED FOR LAWSUIT AGAINST
LEXUS. SUGGESTED BRINGING VEHICLE TO IAA AND
SECURING IT FROM FURTHER DAMAGE OR SALE. ATTY
REFUSED. NOTIFIED ATTY THAT ANY OTHER CHARGES PAST
3/20 WILL BE COVERED BY PH OR ATTY'S OFFICE. SENT
OUT A NOTIFICATION OF STORAGE TO PH. TOLD ATTY'S
OFFICE THAT I WOULD DEDUCTING A \$1000 SALVAGE BID
UNTIL WE CAN PICK UP VEHICLE. IT IS A LEASE VEHICLE
AND NEEDS TO BE RETURNED TO LEXUS. ONCE THEIR
INVESTIGATION IS COMPLETED, ATTY IS TO CALL TO
HAVE VEHICLE P/U AND THEN SALVAGE BID WILL BE
REMOVED FROM EVALUATION.

Owner: LEVITEN, IRIS

Claim #: 0244514670101035-01

2006 LEXU ES 330 6-3.3L-FI 4D SED

=====

EVENTS

02/18/2007 Loss occurred
02/19/2007 Loss reported
03/13/2007 12:00 AM Date Assigned = 03/13/2007.
03/13/2007 06:27 PM Assignment Retrieved.
03/14/2007 08:16 AM Recycled Part request error: NO RECYCLED PARTS AVAILABLE.
03/14/2007 08:16 AM Recycled Part data files added to the workfile.
03/14/2007 08:16 AM Workfile was created.
03/14/2007 08:20 AM Date Total Loss Inspected by Adjuster
03/14/2007 08:21 AM Date Vehicle Owner Contacted on Collision Estimate
03/17/2007 02:54 PM First preliminary estimate line written.
03/19/2007 01:04 PM Accepted Bid from IAA - POOL.
03/19/2007 03:14 PM Vehicle options were changed after starting the estimate.
03/19/2007 03:15 PM Vehicle options were changed after starting the estimate.
03/19/2007 08:35 PM Valuation reponse was added to workfile.
03/21/2007 Salvage offer accepted
03/21/2007 07:58 AM NOTIFICATION OF STORAGE printed, locked and attached to v
03/21/2007 07:59 AM GEICO-GRAM (BLANK) printed, locked and attached to workfi
03/21/2007 08:06 AM Accepted Bid from IRIS LEVITEN.
03/21/2007 08:19 AM Workfile state changed from assigned to inspected.
03/21/2007 08:19 AM Estimate of Record created. Total loss threshold reached
03/21/2007 08:20 AM Estimate of Record was first printed.
03/21/2007 08:24 AM Estimate report file was created.
03/21/2007 08:24 AM Image workfile was created.
03/21/2007 08:24 AM Workfile data copy was placed in Out Box.
03/21/2007 08:24 AM Claim Summary file was created.
03/21/2007 10:16 AM Workfile was placed in Out Box.
03/21/2007 10:31 AM Claim Summary file was created.
03/21/2007 10:31 AM Workfile was placed in Out Box.
03/26/2007 07:00 PM Valuation reponse was added to workfile.
03/26/2007 07:01 PM Claim Summary file was created.
03/26/2007 07:05 PM Claim Summary file was created.
03/26/2007 07:20 PM Claim Summary file was created.
03/26/2007 07:22 PM Workfile was placed in Out Box.

PTR
 CCC VALUESCOPE
 Claim Services

GEICO
 Market Report

Report Reference Number: 37630230
 Claim reference: 0244514670101035-01
 Loss Incident Date: 02/18/2007
 Insured: Iren Leviten

Adjuster: Infantino, Andrew
 GEICO C-code: C43002
 Date Submitted: 05/18/2007
 Owner: Iren Leviten
 Appraiser: INFANTINO, ANDREW

Introduction

GEICO has conducted an inspection of your 2007 Lexus Es 350 4 door Sedan located in Albertson, NY. The inspection information was then used to conduct research in your local market to determine the market value of your vehicle.

The local market value of your vehicle was defined by the Zip code 11507 -- Albertson, NY

The recommended settlement amount based on the loss vehicle description provided by GEICO is \$42,053.85

Section Title: ===== Vehicle Valuation Summary VINGuard Vehicle Identification VINGuard VIN Vehicle History Local Market Definition Valuation Methodology Vehicle Condition Comparable Vehicles Detail Vehicle Model Information NHTSA Vehicle Recall Appraisal and Valuation Notes <input type="checkbox"/>	Section Contents: ===== Market Valuation with components Vehicle configuration information Vehicle history research Local market basis Method used to evaluate the vehicle Vehicle's pre-accident condition Comparable vehicles located in market Characteristics of the loss vehicle type NHTSA recall notices Log notes for this file
--	--

Valuation request: 37630230 (continued) 2007 LEXU ES 350

===== Vehicle Valuation Summary =====

	LOCAL MARKET VALUE
Local Market Value	\$ 40,175.00
Salvage	- 1,000.00
Pre-tax amount	\$ 39,175.00
Vehicular Sales Tax 8.625%	+ 3,378.85
License/fees (if applicable)	
Value before deductible	\$ 42,553.85
DEDUCTIBLE	- 500.00
Adjusted vehicle valuation amount	\$ 42,053.85

Automated sales tax calculation based on applicable state, county and municipal tax rates.

===== Vehicle Valuation Allowances =====

Compared to the typical vehicle in the marketplace your vehicle's value was affected by these factors:

Premium PKG
 Odometer 500
 LS - Leather Seats
 SH - Heated Seats (2)
 NV - Navigation System

These allowances illustrate factors that influence the settlement amount when compared to a typical vehicle. The typical vehicle is a vehicle of the same year, make, and model as the loss vehicle, including average mileage, and all standard and predominant equipment.

In cases where a standard or predominant option is superceded by a replacement or upgrade, a corresponding addition will appear for the option to reflect this.

The vehicle valuation allowances also reflect proper deductions for all standard or predominant equipment not present on the loss vehicle.

These allowances are illustrative only. The actual Local Market Value is calculated entirely from comparable vehicles with adjustments to reflect the loss vehicle configuration.

Package options are options included with that package.

===== Vehicle Description =====

DESCRIPTION OPTION

□□Valuation request: 37630230 (continued) 2007 LEXU ES 350

===== Vehicle Description (continued) =====

Premium PKG
 Odometer 500
 Vehicle equipment:
 Std AT - Automatic Transmission
 Std OD - Overdrive
 Std TX - Traction Control
 Std PS - Power Steering
 Std PB - Power Brakes
 Std PW - Power Windows
 Std PL - Power Locks
 Std SP - Power Driver Seat
 Std PC - Power Passenger Seat
 Std PM - Power Mirrors
 Std PT - Power Trunk/Tailgate
 Std AC - Air Conditioning
 Std RD - Rear Defogger
 Std TW - Tilt Wheel
 Std CC - Cruise Control
 Rptd LS - Leather Seats
 Std BS - Bucket Seats
 Rptd SH - Heated Seats (2)
 Std DB - 4-Wheel Disc Brakes
 Std TL - Telescopic Wheel
 Std DM - Dual Mirrors
 Std FL - Fog Lamps
 Std KE - Keyless Entry
 Std TD - Theft Deterrent/Alarm

Std WT - Wood Interior Trim
 Std AM - AM Radio
 Std FM - FM Radio
 Std ST - Stereo
 Rptd SE - Search/Seek
 Std SK - CD Changer/Stacker
 Std TQ - Steering Wheel Touch Control
 Std EG - Electric Glass Roof
 Std AW - Aluminum/Alloy Wheels
 Std IW - Intermittent Wipers
 Rptd MP - Metallic Paint
 Std AG - Air Bag
 Std RG - Passenger Air Bag
 Std XG - Front Side Impact Air Bags
 Rptd ZG - Rear Side Impact Air Bags
 Std AB - Anti-Lock Brakes (4)
 Rptd NV - Navigation System
 Std CN - Console/Storage

00

Valuation request: 37630230 (continued) 2007 LEXU ES 350

===== VINguard Vehicle Identification =====

VIN: JTHBJ46G272071246

	Insurer Description	VINGuard Analysis
Year	2007	2007
Make	Lexus	Lexus
Model	Es 350 BJ46G	Es 350 BJ46G
Body style	4d Sed	4d Sed
Engine	6-3.5l-Fi	6-3.5l-Fi
Trans	Automatic Transmission Overdrive	
Restraints	AIR BAGS (DRIVER+PASS.)	Air Bags (Dr.+Pass.+Side)
Curb Weight		3,580
Odometer	500	

This vehicle was assembled in JAPAN

===== VINguard VIN Vehicle History =====

VINGuard has decoded this VIN without any errors.

 * WARNING - VINguard has detected prior event(s) in this vehicle's history. *
 * Please review the information detailed below. *

Previous Total Loss History:

Duplicate VIN 37359040--29583 previously submitted by GEICO
 (516) 223-7390 on 03/26/2007 Claim ref# 0244514670101035-01
 in Merrick, NY

ISO Vehicle History:

Number of times reported to ISO: 1 ISO's file number: H0129686795
 Activity reported: Property & Casualty 02/18/2007
 Insurance company: GEICO Phone: (800) 848-6502
 Claim number: 0244514670101035

Collision History Information:
 Collision incident reported by GEICO
 on 03/21/2007 Claim # 0244514670101035-01 in Breesport, NY
 Repair estimate: \$37,461 Miles: UNKNOWN Damage Location: Front

Valuation request: 37630230 (continued) 2007 LEXU ES 350

=====
 ===== AutoCheck Vehicle History Report =====

AutoCheck Vehicle History Report

Experian Automotive

Report Run Date: 05/21/2007

 Key: | N = No Problem Found | Y = Problem Found | I = Information Found

TITLE CHECK

THIS VEHICLE CHECKS OUT. AutoCheck database for this 2007 LEXUS ES 350 (JTHBJ46G272071246) shows no historical events that indicate a significant automotive problem. These problems can indicate past automotive damage or warnings associated with the vehicle title.

Problems Checked	Results Found
Abandoned	N No Abandoned Record(s) Found
Damaged	N No Damaged Record(s) Found
Fire Damage	N No Fire Damage Record Found
Grey Market	N No Grey Market Record Found
Hail Damage	N No Hail Damage Record Found
Insurance Loss	N No Insurance Loss Record Found
Junk	N No Junk Record(s) Found
Rebuilt	N No Rebuilt Record(s) Found
Salvage	N No Salvage Record(s) Found

PROBLEM CHECK

THIS VEHICLE CHECKS OUT. AutoCheck database for this 2007 LEXUS ES 350 (JTHBJ46G272071246) shows no historical events that indicate a significant automotive problem. These problems can indicate past automotive damage or warnings associated with the vehicle title.

Problems Checked	Results Found
NHTSA Crash Test Vehicle	N No NHTSA Crash Test Vehicle Record(s) Found
Frame Damage	N No Frame Damage Record(s) Found
Major Damage Incident	N No Major Damage Record(s) Found
Manufacturer buyback/lemon	N No Manufacturer Buyback/lemon Record(s) Found
Odometer Problem	N No Odometer Problem Record(s) Found
Recycled	N No Recycled Record(s) Found
Salvage Auction	N No Salvage Auction Record(s) Found
Water Damage	N No Water Damage Record(s) Found

Valuation request: 37630230 (continued) 2007 LEXU ES 350
 ===== AutoCheck Vehicle History Report (continued) =====

ODOMETER CHECK THIS VEHICLE CHECKS OUT. For this 2007 LEXUS ES 350 (JTHBJ46G272071246) no indication of odometer rollback or tampering was found. AutoCheck determines odometer rollbacks by searching for records that indicate odometer readings less than a previously reported value. Other odometer events can report events of tampering, or possible odometer breakage.

Date Reported	Odometer Reading
2007-01-24	
2007-02-18	
2007-02-18	
2007-03-06	31

VEHICLE INFORMATION

INFORMATION FOUND. AutoCheck found additional information on this vehicle. These records will provide more history for this 2007 LEXUS ES 350 (JTHBJ46G272071246).

Problems Checked	Results Found
Accident	Y Accident Record(s) Found
Corrected Title	N No Corrected Title Record(s) Found
Driver Education	N No Driver Education Record(s) Found
Duplicate Title	N No Duplicate Title Record(s) Found
Emissions Safety Inspection	N No Emissions Safety Inspection Record(s) Found
Fire Damage	N No Fire Damage Record(s) Found
Lease	N No Lease Record(s) Found
Lien	Y Lien Record(s) Found
Livery Use	N No Livery Use Record(s) Found
Government Use	N No Government Use Record(s) Found
Police Use	N No Police Use Record(s) Found
Fleet	N No Fleet Record(s) Found
Rental	N No Rental Record(s) Found
Fleet and/or Lease	N No Fleet and/or Lease Record(s) Found
Fleet and/or Rental	N No Fleet and/or Rental Record(s) Found
Repossessed	N No Repossessed Record(s) Found
Taxi Use	N No Taxi Use Record(s) Found
Theft	N No Theft Record(s) Found

FULL HISTORY

Below are the historical events for this vehicle listed in chronological order.

Report Run Date: 05/21/2007

Event Date	Event Location	Odometer Reading	Data Source	Event Detail
------------	----------------	------------------	-------------	--------------

☐ Valuation request: 37630230 (continued) 2007 LEXU ES 350

===== AutoCheck Vehicle History Report (continued) =====

2007-01-24	ALBERTSON, NY	00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2007-02-18	NASSAU CO, NY	00000000	State Agency	COLLISION WITH ANOTHER VEHICLE
2007-02-18	NY	00000000	Police Report	ACCIDENT REPORTED
2007-03-06	ALBERTSON, NY	31	Motor Vehicle Dept	TITLE

AutoCheck Vehicle History Report Terms and Conditions:

Experian's Reports are compiled from multiple sources. It is not always possible for Experian to obtain complete discrepancy information on all vehicles; therefore, there may be other title brands, odometer readings or discrepancies that apply to a vehicle that are not reflected on that vehicle's Report. Experian searches data from additional sources where possible, but all discrepancies may not be reflected on the Report.

These Reports are based on information supplied to Experian by external sources believed to be reliable, BUT NO RESPONSIBILITY IS ASSUMED BY EXPERIAN OR ITS AGENTS FOR ERRORS, INACCURACIES OR OMISSIONS. THE REPORTS ARE PROVIDED STRICTLY ON AN 'AS IS WHERE IS' BASIS, AND EXPERIAN FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THIS REPORT.

YOU AGREE TO INDEMNIFY EXPERIAN FOR ANY CLAIMS OR LOSSES, INCLUDING COSTS, EXPENSES AND ATTORNEYS FEES, INCURRED BY EXPERIAN ARISING DIRECTLY OR INDIRECTLY FROM YOUR IMPROPER OR UNAUTHORIZED USE OF AUTOCHECK VEHICLE HISTORY REPORTS.

Experian shall not be liable for any delay or failure to provide an accurate report if and to the extent which such delay or failure is caused by events beyond the reasonable control of Experian, including, without limitation, 'acts of God', terrorism, or public enemies, labor disputes, equipment malfunctions, material or component shortages, supplier failures, embargoes, rationing, acts of local, state or national governments, or public agencies, utility or communication failures or delays, fire, earthquakes, flood, epidemics, riots and strikes.

These terms and the relationship between you and Experian shall be governed by the laws of the State of Illinois (USA) without regard to its conflict of laws provisions. You and Experian agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Cook, Illinois.

==== Local Market Definition =====
 The local market value for your 2007 Lexus Es 350 4 Door Sedan was defined by ZIP code 11507 -- Albertson, NY. Adjacent markets were also searched as secondary sources to locate comparable vehicles. Details of the specific markets searched follow.

□□

Valuation request: 37630230 (continued) 2007 LEXU ES 350

==== Local Market Definition (continued) =====
 The state of New York is composed of 13 distinct local markets. The following 10 zones were used in the preparation of this CCC Valuescope Market Report.

Nassau County, NY - Primary local market vehicle database.

In this market, CCC maintains a database of 3,522 inspected dealer vehicles located at 28 dealerships, and 15,867 dealer advertised, and 3,316 privately advertised vehicles taken from 17 local papers or magazines.

New York City, NY - Secondary local market vehicle database.

In this market, CCC maintains a database of 2,343 inspected dealer vehicles located at 18 dealerships, and 26,189 dealer advertised, and 3,280 privately advertised vehicles taken from 28 local papers or magazines.

Suffolk County, NY - Third local market vehicle database.

In this market, CCC maintains a database of 773 inspected dealer vehicles located at 5 dealerships, and 9,162 dealer advertised, and 221 privately advertised vehicles taken from 8 local papers or magazines.

Other markets searched - Hudson Valley, Albany, Binghamton, Glens Falls, Syracuse Rochester Buffalo

In these markets, CCC maintains a database of 13,807 inspected dealer vehicles located at 90 dealerships, and 84,783 advertised vehicles taken from 124 local newspapers or magazines.

From these 10 local markets, comparable vehicles were selected based on the year, make, model, body style, and engine configuration of your vehicle. Adjustments were made to the value of each comparable vehicle to compensate for differences in year, model, body style, engine configuration, packages, options, and mileage.

For your vehicle's CCC Valuescope Market Report, CCC identified 1 inspected dealer vehicle as comparable to your vehicle, and used their values to determine the Local Market Value.

Vehicles are determined to be comparable to the loss vehicle based on:

- * Nearness to the loss vehicle's primary garage location
- * Similarity of model, equipment, and odometer
- * Precision of the data (inspected versus advertised)

===== Valuation Methodology =====

This CCC Valuescope Market Report was prepared for GEICO by CCC Information Services Inc. CCC has been preparing market reports for the insurance industry since 1981. CCC physically inspects vehicles for sale at vehicle dealerships in the local markets, and subscribes to local newspapers and automotive publications in these markets. CCC maintains vehicle databases containing these inspected dealership vehicles along with the dealer and

□□Valuation request: 37630230 (continued) 2007 LEXU ES 350

===== Valuation Methodology (continued) =====
private party advertised vehicle information.

When GEICO requests a CCC Valuescope Market Report from CCC, they provide CCC the VIN (Vehicle Identification Number) of the loss vehicle. Decoding this VIN identifies the exact vehicle for which the local market value will be done. See the VINGuard Vehicle Identification section.

GEICO also provides CCC the vehicle owner's Zip code. This identifies the local market that will be used to determine the market value. See the Local Market Definition section.

Finally, GEICO provides CCC with the configuration of the loss vehicle including equipment, odometer, condition, maintenance, etc. This information is the starting point for determining the local market value.

The Local Market Value is the value of the loss vehicle, and includes condition, mileage, packages, and all equipment. The method used to determine the Local Market Value on current year vehicles involves finding new vehicles for sale at the time of the valuation. After the Adjusted Value for each comparable vehicle is calculated, the Local Market Value is determined.

===== Vehicle Condition =====

GEICO uses Condition Inspection Guidelines to determine the condition of key components of the loss vehicle. These guidelines are specific to geographic location, year, and vehicle type. The guidelines describe physical characteristics for each of the vehicle components. Based on these guidelines, GEICO determined the condition of the vehicle prior to the loss.

Category	Condition	Adjustments
-----	-----	-----
Mechanical	Dealer retail	\$0
Engine	: Very clean. No seepage evident. No dirt or grease covered areas. Oil translucent.	
Transmission	: Fluid has red translucent color. No seepage evident.	

Appraiser comment: NO DAMAGE SEEN

Tires	Dealer retail	\$0
Front Tires	: 8-10/32" of original tread. 69% to 90% of new. Normal wear patterns evident.	
Rear Tires	: 8-10/32" of original tread. 69% to 90% of new. Normal wear patterns evident.	

Appraiser comment: 9-32 ALL AROUND

Valuation request: 37630230 (continued) 2007 LEXU ES 350

Category	Condition	Adjustments
-----	-----	-----
Paint	Dealer retail	\$0
Minimal surface chipping or scratching.	No fading apparent.	

Appraiser comment: NO DAMAGE SEEN

Body	Dealer retail	\$0
Sheet Metal	: No dents. Small/numerous dings. No rust evident.	
Trim	: Components intact, minimal wear apparent. No significant peeling, fading or rust.	

Appraiser comment: NO DAMAGE SEEN

Glass	Dealer retail	\$0
No scratches, pitting or chips.	Seals are intact and watertight.	

Appraiser comment: NO DAMAGE SEEN

Interior	Dealer retail	\$0
Carpets	: Clean. No tears, holes or burn marks.	
Dashboard	: No significant wear. Components intact.	

Headliner : Clean. No tears, sagging or fading.
 Seats : Clean. No tears, holes or burn marks.

Appraiser comment: NO DAMAGE SEEN

Total Adjustments: =====
\$0

-
- * The Condition Inspection Guidelines provide information based on vehicle age, vehicle type, and geographic location. Your vehicle has been identified as being located in the Northeast region as a newer passenger car.
 - * The Condition Inspection Guidelines, and all dollar adjustments, are determined by surveys, inspections, and interviews with dealerships across the United States.
-

☐☐Valuation request: 37630230 (continued) 2007 LEXU ES 350

===== Comparable Vehicles Detail =====

The local market comparable vehicles are compared to the loss vehicle, and adjustments are made for differences in equipment, odometer, model, etc. The Price, Asking Price, Take Price or List Price displayed below (as applicable) may differ from the advertised price where CCC obtains different price information from the seller. The Adjusted Value represents the price of the comparable configured exactly as the loss vehicle.

Loss Vehicle	New
2007 Lexus	|2007 Lexus
Es 350	|Es 350
4d Sed	|4d Sed
6-3.5l-Fi	|6
Auto Trans-OD	|Auto Trans-OD
Premium	|Premium
AM/FM Stereo Seek	|AM/FM Stereo Seek
With Cd Changer	|With Cd Changer
Anti-Lock Brakes	|Anti-Lock Brakes
(4)	| (4)
Air Conditioning	|Air Conditioning
Air Bag	|Air Bag
Aluminum/Alloy	|Aluminum/Alloy
Wheels	| Wheels
Cruise Control	|Cruise Control
Electric Glass Roof	|Electric Glass Roof
Fog Lamps	|Fog Lamps
Keyless Entry	|Keyless Entry
Power Passenger	|Power Passenger
Seat	| Seat
Power Locks	|Power Locks
Power Windows	|Power Windows
Rear Defogger	|Rear Defogger
Passenger Air Bag	|Passenger Air Bag
Power Driver Seat	|Power Driver Seat
Theft	|Theft

Deterrent/Alarm	|	Deterrent/Alarm
Telescopic Wheel	|	Telescopic Wheel
Steering Wheel	|	Steering Wheel
Touch Controls	|	Touch Controls
Tilt Wheel	|	Tilt Wheel
Traction Control	|	Traction Control
Front Side Impact	|	Front Side Impact
Air Bags	|	Air Bags
Leather Seats	|	Leather Seats
Heated Seats (2)	|	Heated Seats (2)
Navigation System	|	
Miles: 500	|	*new*

Valuation request: 37630230 (continued) 2007 LEXU ES 350

=====
 ===== Comparable Vehicles Detail (continued) =====
 =====

Loss Vehicle	|	New
-----+-----		
	|	Verified 3/15/2007
Location:	|	New York
Distance From:Albertson	|	18
Dealer:	|	Lexus Of Manhattan
Contact Person:	|	Michael Pecorella
Phone Number:	|	212/977-4400
	|	Stock# White
	|	Take \$ 36,801

Adjustments

Model/Year	|	+ 3,548
Mileage	|	- 170
		=====
Adjusted Value	|	\$ 40,179

- * List Price is the sticker price of the vehicle. Take Price is the amount for which the vehicle can be purchased as defined by the contact at each dealer.
- * Option adjustments are made in comparison to the typical vehicle. Typical vehicle options that are not present are enclosed in parentheses.
- * The baseline is defined as the condition of the typical vehicle on the road. Baseline adjustments are made when a comparable vehicle condition varies from that of a typical vehicle.
- * All dollar adjustments are determined by surveys, inspections, and interviews with dealerships across the United States.
- * Note that some comparable vehicles that were recently available in the local market may no longer be available.
- * The Price, Asking Price, Take Price or List Price displayed above (as applicable) may differ from the advertised price where CCC obtains different price information from the seller.

=====
 ===== Appraisal and Valuation Notes =====
 Included in our backup are similar models to the loss vehicle.
 =====

Proper adjustments were made for this valuation.
\$3548 MODEL ADJUSTMENT REPRESENTS DIFFERENCE IN PREMIUM
PACKAGE ON COMPARABLE VEHICLE \$3820 AND PREMIUM PACKAGE
PLUS ON LOSS VEHICLE \$7368

□□

Valuation request: 37630230 (continued) 2007 LEXU ES 350

Notice: This valuation has been prepared in accordance with New York State
Insurance Department Regulation No. 64, Section 216.7.

Any deductions made for unrelated damage or excessive wear were calculated
based on the effect that these factors have on the overall market value of
this specific vehicle.

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Various aspects of our Market Report are covered by one or more pending patent
applications.

The trade names and/or trademarks used herein are owned by their respective
trademark owners.

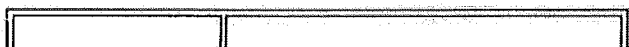
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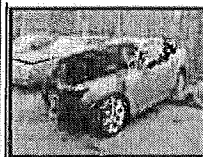
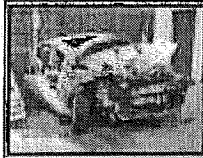




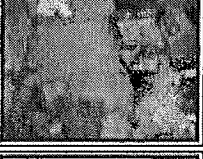




Details from Estimate for Claim no 0244514670101035-01-E01

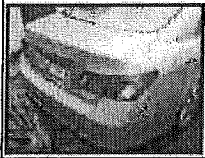
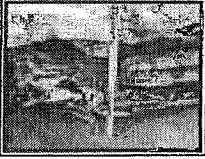
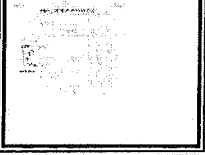
Claim summary

Number of photos	14
Folder status	
Company name	GEICO Direct
Address 1	Claim status call 800-848-6502
Address 2	153 Sunrise Highway
City, State, ZIP	Merrick, NY 11566-
Phone	(646)721-0251--
Estimate length	53460
License	DWW7794 NY
Costs	PARTS 24525.94 BODY LABOR 132.5 HRS @\$ 44.00/HR 5830.00 PAINT LABOR 36.5 HRS @\$ 44.00/HR 1606.00 FRAME LABOR 7.0 HRS @\$ 44.00/HR 308.00 PAINT SUPPLIES 36.5 HRS @\$ 24.00/HR 876.00 SUBLET/MISC. 197.00 OTHER CHARGES 1144.00 SUBTOTAL \$34486.94 SALES TAX \$33342.94 @ 8.6250% 2875.83 TOTAL LOSS \$ 1144.00 @ 8.6250% 98.67 TOTAL COST OF REPAIRS \$37461.44 TOTAL ADJUSTMENTS \$ 500.00 NET COST OF REPAIRS \$36961.44
Estimate header	0244514670101035-01 IGE007451
Style	6, LEXU, ES 330
Insured	LEVITEN, IRIS
Loss date	02/18/07
Claim number	0244514670101035-01
Policy number	2020513137
Claim rep	ABIW EXT: 4038 FCC: 04
Shop name	NUZZI BROTHERS AUTO COLLISION
VIN	JTHBJ46G272071246
Ins co.	GEICO
Ins is owner	Y
Estimator	Drew Infantino

Estimate Photos:



	Photo: PHOTO1 Date: 03/14/2007 08:19:13:00 Size: 39340
	Photo: PHOTO2 Date: 03/14/2007 08:19:13:00 Size: 39670
	Photo: PHOTO3 Date: 03/14/2007 08:19:14:00 Size: 37229
	Photo: PHOTO4 Date: 03/14/2007 08:19:14:00 Size: 38320
	Photo: PHOTO5 Date: 03/14/2007 08:19:14:00 Size: 43511
	Photo: PHOTO6 Date: 03/14/2007 08:19:14:00 Size: 25942
	Photo: PHOTO7 Date: 03/14/2007 08:19:14:00 Size: 25038
	Photo: PHOTO8 Date: 03/14/2007 08:19:14:00 Size: 31630
	Photo: PHOTO9 Date: 03/14/2007 08:19:14:00 Size: 27796
	Photo: PHOTO10 Date: 03/14/2007 08:19:14:00 Size: 24975
	Photo: PHOTO11 Date: 03/14/2007 08:19:14:00 Size: 24622

	Photo: PHOTO12 Date: 03/14/2007 08:19:14:00 Size: 25825
	Photo: PHOTO13 Date: 03/14/2007 08:19:14:00 Size: 41488
	Photo: PHOTO14 Date: 03/21/2007 08:08:35:00 Size: 184435

End of estimate data

**GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF**

ROBERT L. CONASON
SEYMOUR BOYERS
ERNEST R. STEIGMAN
STEPHEN H. MACKAUF
JEROME I. KATZ
JEFFREY B. BLOOM
ANTHONY H. GAIR
BEN B. RUBINOWITZ
HOWARD S. HERSHENHORN*
RICHARD M. STEIGMAN
MARY NICHOLLS
RHONDA E. KAY
CHRISTOPHER L. SALLAY*

WARREN J. WILLINGER
DANIEL A. GAIR
DIANA M.A. CARNEMOLLA*
LYNNE KURTZ-CITRIN
KATHERINE A. HAWKINS, M.D., J.D.
PETER J. SAGHIR

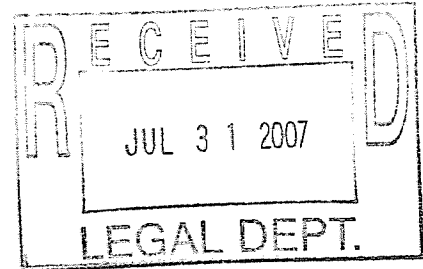
COUNSELORS AT LAW
80 PINE STREET
NEW YORK, N.Y. 10005-1768
TEL (212) 943-1090
FAX (212) 425-7513
EMAIL mail@gairgair.com

NEW JERSEY ADDRESS
ONE GATEWAY CENTER
SUITE 2600
NEWARK, N.J. 07102
TEL (973) 645-0581
FAX (973) 645-9475

HARRY A. GAIR (1894-1975)
HARRIET E. GAIR (1905-2006)

*MEMBER OF N.Y. & N.J. BARS

July 30, 2007



VIA FEDERAL EXPRESS

Mr. Troy Hija
Toyota Motor Sales, HQ11
19001 South Western Avenue
Torrance, CA 90505

Re: Iris Leviten

Dear Mr. Hija:

Enclosed please find the following:

Police Report;
Photographs of Iris Leviten;
Photographs of the automobile; and
Rehabilitation records from Amsterdam Nursing Home.

Please let me know when you would like to schedule the inspection. We should do this as soon as possible. We are still awaiting the initial hospital records and will send those when we receive them. We have not enclosed the Lexus advisory letter as you obviously have it.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Hershenhorn".

Howard S. Hershenhorn

HSH:jf
Enclosure

TOY-RQ-05E-00001829

Leviten - Invest.

PINNACLE PROTECTIVE SERVICES, INC.
PRIVATE INVESTIGATIONS & RESEARCH

RECEIVED
SEP 17 2007
LEGAL DEPT.

9 Hana Lane
New City, New York 10956
USA

Phone 877.THE.NYPI
Fax 845.362.3997

LICENSED IN
N.Y. & NJ

AARONSON RAPPAPORT FEINSTEIN DEUTSCH
757 THIRD AVENUE
NEW YORK, NY 10017
ATTN: LeVern Ward

Re: Leviten v. Toyota
File # 5300.003
TMS 2007-03-420039

August 31, 2007

ASSIGNMENT: Obtain Old Police Accident Report

August 28, 2007

POLICE ACCIDENT REPORT:

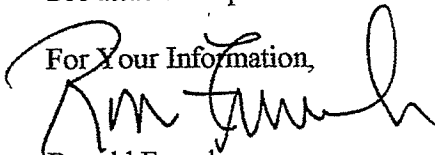
Inv Christiansen traveled to DMV in Albany, New York and obtained the following reports:

2/22/05 Report of Motor Vehicle Accident. No Police Accident Report found.

6/16/04 Report of a Motor Vehicle Accident No Police Accident Report found.

See attached reports

For Your Information,


Ronald French

Local Codes
3-818-07

New York State Department of Motor Vehicles POLICE ACCIDENT REPORT

MV-104A (6/04)

DMV COPY

AMENDED REPORT

1	Accident Date Month: 2, Day: 18, Year: 2007	Day of Week Su	Military Time 1450	No. of Vehicles 2	No. Injured 3	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
---	--	-------------------	-----------------------	----------------------	------------------	-----------------	--	-------------------------------------	---

2	VEHICLE 1 - Driver License ID Number: 793 706 540 Driver Name: LEVITEN, IRIS L Address: SIX WOOD AVE City: ALBERTSON, State: NY, Zip: 11507	VEHICLE 2 - Driver License ID Number: 946 352 386 Driver Name: DiSilvamo, Anthony Address: 114 Tenth ST City: HICKSVILLE, State: NY, Zip: 11801
---	---	---

3	Date of Birth: 7/22/45, Sex: F, No. of Occupants: 1, Public Property Damaged: <input type="checkbox"/>	Date of Birth: 2/5/56, Sex: M, No. of Occupants: 2, Public Property Damaged: <input type="checkbox"/>
4	Name: SAME AS DRIVER, Address: [blank], City: [blank], State: NY, Zip: [blank]	Name: Dept. of Sanitation, Address: 125 WURTH ST, City: NY, State: NY, Zip: 10013

5	Plate Number: DWV 7794, State of Reg: NY, Vehicle Year & Make: 2007 Lexus 4dr sed, Ins. Code: 148	Plate Number: K 36 757, State of Reg: NY, Vehicle Year & Make: 2002 MACK, Ins. Code: X
---	---	--

6	VEHICLE DAMAGE CODING: Box 1 - Point of Impact: 3, Box 2 - Most Damage: 3	VEHICLE DAMAGE CODING: Box 1 - Point of Impact: 1, Box 2 - Most Damage: 12	ACCIDENT DIAGRAM: [Diagram showing vehicle positions and impact points]
---	---	--	---

VEHICLE DAMAGE CODING:
 1-13. SEE DIAGRAM ON RIGHT.
 14. UNDERCARRIAGE 17. DEMOLISHED
 15. TRAILER 18. NO DAMAGE
 16. OVERTURNED 19. OTHER

Place Where Accident Occurred:
 County: WASSAEN
 Road on which accident occurred: Glenn Cove Rd CARLE PALE
 at 1) intersecting street: NORTHERN STATE EAST BOUND RAMP
 or 2) _____

Accident Description/Officer's Notes: MV1 and MV2 were in a collision. Both vehicles were towed from scene by Authority of officers. WITNESS Andrew Beable 516 375-0223

BY	TO	Names of all involved	Date of Death Only
1	2	LEVITEN, IRIS L	
2	3	DiSilvamo, Anthony	
3	4	Donkats, U. UCHITEL	

Officer's Rank and Signature: [Signature]
 Badge/ID No.: [blank]
 NCIC No.: [blank]
 Precinct/Post Troop/Zone: [blank]
 Station/Beat Sector: [blank]
 Reviewing Officer: [Signature]
 Date/Time Reviewed: [blank]

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (6/04)

Local Codes
3-818-07

AMENDED REPORT DMV COPY

19
19

1	Accident Date	Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/>
	Month: 2, Day: 18, Year: 2007	Su	1450	2	3	0	Accident Reconstructed <input type="checkbox"/>	<input type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

20
18

2	VEHICLE 1				VEHICLE 2				BICYCLIST				PEDESTRIAN				OTHER PEDESTRIAN			
	793 706 540				946 352 386															
Driver Name - exactly as printed on license: LEVITEN, IRIS L				Driver Name - exactly as printed on license: DiSiciliano, Anthony																
Address (Include Number & Street): SIX WOOD AVE				Address (Include Number & Street): 114 Tenth ST																
City or Town: ALBERTSON				City or Town: HICKSVILLE																

21
22

3	Date of Birth	Sex	Unlicensed	No. of Occupants	Public Property Damaged	Date of Birth	Sex	Unlicensed	No. of Occupants	Public Property Damaged					
	Month: 7, Day: 22, Year: 45	F	<input type="checkbox"/>	1	<input type="checkbox"/>	Month: 2, Day: 5, Year: 56	M	<input type="checkbox"/>	2	<input type="checkbox"/>					
Name - exactly as printed on registration: SAME AS DRIVER				Name - exactly as printed on registration: Dept. of Sanitation											
Address (Include Number & Street):				Address (Include Number & Street): 125 WURTH ST											
City or Town:				City or Town:											

23
24

4	Plate Number	State of Reg.	Vehicle Year & Make	Vehicle Type	Ins. Code	Plate Number	State of Reg.	Vehicle Year & Make	Vehicle Type	Ins. Code
	DWW 7794	NY	2007 Lexus	4dscd	148	K 36 757	NY	2002 MACK	Di	X
5	Ticket/Arrest Number(s)					Ticket/Arrest Number(s)				
	Violation Section(s)					Violation Section(s)				

25
26

6	Check if involved vehicle is:					Check if involved vehicle is:					Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.				
	<input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.					<input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.									
7	VEHICLE 1 DAMAGE CODES					VEHICLE 2 DAMAGE CODES					ACCIDENT DIAGRAM				
	Box 1 - Point of Impact: 3 3 Box 2 - Most Damage: 3 3 Enter up to three more Damage Codes: 3 4 5 2					Box 1 - Point of Impact: 1 2 Box 2 - Most Damage: 12 12 Enter up to three more Damage Codes: 3 4 3					1. Sideswipe (same direction) 2. Sideswipe (opposite direction) 3. Left Turn 4. Right Turn 5. Right Turn 6. Right Turn 7. Head On 8. Head On				

27
28

8	Vehicle	By	Towed	Vehicle	By	Towed
	By NUZZI	To NEW HYDE PARK	By NUZZI	To NEW HYDE PARK		
VEHICLE DAMAGE CODING:						
1-13. SEE DIAGRAM ON RIGHT.						
14. UNDERCARRIAGE 17. DEMOLISHED						
15. TRAILER 18. NO DAMAGE						
16. OVERTURNED 19. OTHER						
9. Cost of repairs to any one vehicle will be more than \$1000. <input type="checkbox"/> Unknown/Unable to Determine <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No						

29

Reference Marker	Coordinates (if available)	Place Where Accident Occurred:
	Latitude/Northing:	County: <u>WASTEN</u> City <input type="checkbox"/> Village <input type="checkbox"/> Town of <u>NORTH HAMPSHIRE</u>
	Longitude/Easting:	Road on which accident occurred: <u>GLEN LAKE RD CARLE PLACE</u>
		at 1) intersecting street: <u>NORTHERN STATE EAST BOUND RAMP</u>
		or 2) _____ of _____

30

Accident Description/Officer's Notes: MV and MV2 were in a collision. Both vehicles were towed from scene by Authority of officers. WITNESS Andrew Beadle 516 375-0223

USE COVER SHEET

	8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only
A	1	1	A	1	61	F	11	9	6	9997	2905			LEVITEN, IRIS, L	
B	2	1	4	1	51	M	12	12	6	9999	2905			DiSiciliano, Anthony	
C	2	3	4		16	M	2	2	6	9999	2905			DOUKAS, WILLIAMEL	
D															
E															
F															

Officer's Rank and Signature: <u>[Signature]</u>	Badge/ID No. <u>252</u>	NCIC No. <u>02900</u>	Precinct/Post Troop/Zone <u>3</u>	Station/Beat Sector <u>313</u>	Reviewing Officer <u>[Signature]</u>	Date/Time Reviewed <u>7/26/04</u>
--	-------------------------	-----------------------	-----------------------------------	--------------------------------	--------------------------------------	-----------------------------------

New York State Department of Motor Vehicles
REPORT OF MOTOR VEHICLE ACCIDENT
BEFORE COMPLETING THIS FORM,
READ THE INSTRUCTIONS IN SECTION A ON PAGE 2

DMV
USE 31 430 686-248 295

DO NOT FORGET
ACCIDENT DATE Page of RUSH - DRIVER OF VEHICLE 1 - LICENSE SUSPENDED FOR FAILURE TO REPORT

Accident Date: 02/22/05
Day of Week: TU
Time: 2:00 PM
No. of Vehicles: 2
No. Injured: 0
No. Killed: 0
Left Scene:
Did police investigate accident at scene? Yes No
If "Yes", Name of Police Agency:

VEHICLE 1
Vehicle 1 License ID No. 793 706 540 NY
VEHICLE 2
Vehicle 2 License ID No. 234 758 339 NY

Driver Name - exactly as printed on license
VEHICLE 1: LEVITEN, IRIS L.
VEHICLE 2: JABLONSKI ROMAN

Address (Include Number & Street)
VEHICLE 1: SIX WOOD AVENUE
VEHICLE 2: 65 NASSAU BLVD.

City or Town State Zip Code
VEHICLE 1: ALBERTSON NY 11507
VEHICLE 2: WEST HEMPSTEAD NY 11552

Date of Birth Sex Unlicensed No. of Occup. Public Property Damaged State of Lic.
VEHICLE 1: 07/22/45 F 1 NY
VEHICLE 2: 12/09/55 M 2 NY

Name - exactly as printed on registration Date of Birth
VEHICLE 1: DRIVER 07/22/45
VEHICLE 2: DRIVER 1/1

Address (Include Number & Street) Apt. No. City or Town State Zip Code

Plate Number State of Reg. Vehicle Year & Make Vehicle Type Ins. Code
VEHICLE 1: B657ZE NY '94 LEXUS 4DSD 148
VEHICLE 2: X244UF NY '98 CHRYS SUBN 075

Estimated Cost of Repairs - Vehicle 1
 \$1000 or less \$1401-\$1600 \$1001-\$1200 \$1601-\$1800 \$1201-\$1400 Over \$1800
Estimated Cost of Repairs - Vehicle 2
 \$1000 or less \$1401-\$1600 \$1001-\$1200 \$1601-\$1800 Over \$1800

Describe damage to vehicle 1: Passenger side - rear
Describe damage to vehicle 2: Damage in front
ACCIDENT DIAGRAM: Circle one of the 9 diagrams (numbered 0-8) if it describes the accident. Or draw your own diagram below in space #9.
Number the vehicles. Your vehicle is No. 1
Diagram 0: Left Turn
Diagram 1: Rear End
Diagram 2: Overtaking
Diagram 3: Left Turn
Diagram 4: Right Angle
Diagram 5: Right Turn
Diagram 6: Right Turn
Diagram 7: Head On
Diagram 8: Sideswipe
Hand-drawn diagram #9 shows a car (1) on Roslyn Rd. heading North, and another car (2) on Northern Parkway Exit Ramp heading West, crossing paths.

Reference Marker New York County of Occurrence: NASSAU
Route No. or Street Name: ROSLYN ROAD
Nearest Intersecting Route/Street: Northern STATE PARKWAY EXIT RAMP
City: Town Village
Miles Feet At Intersection With

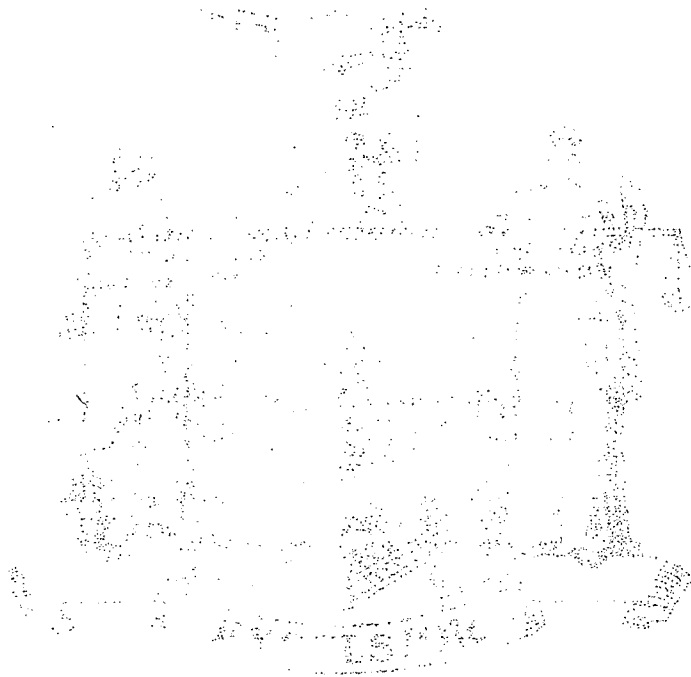
ALL PERSONS INVOLVED (see instruction 6 on page 2):

Name and Address	8. In Veh. No.	10. Safety Equip. Used	11. Position in Vehicle	12. Age	13. Sex	Describe Injuries	K	A	B	C	Date of Death
IRIS LEVITEN, 6 WOOD AVE	1	4	1	59	F						
ROMAN JABLONSKI, 65 NASSAU BLVD	2		1	49	M						
MARTA DALINA	2		2	22	F						

How did the accident happen? Vehicle 1 going straight on Roslyn Rd. North, passing by green/yellow light when Veh. 2 jumps at me AND I swerve to avoid contact. Vehicle 2 hits my passenger side in rear, after leaving his red light.

Identify Damaged Property Other Than Vehicle(s)
Name of Insurance Company That Issued Policy: GEICO
Policy Number: 2020 51 31 37
Name and Address of Policy Holder: IRIS L. LEVITEN, 6 WOOD AVE, ALBERTSON NY 11507
Policy Period From: 10/03/04 To: 04/07/05

If Vehicle was Operated Under Permit (ICC, USDOT or NYSDOT), give No. Name and Address of Permit Holder and State
Is Form SR-23 (Fleet Coverage) on File with DMV? Yes No If Self-Insured, give Certificate No.
Date: _____ Signature of Driver (or Representative) of Vehicle 1: Iris Leviten
Print Name of Driver (or Representative) of Vehicle 1: IRIS LEVITEN
 Injury Death



This is to certify that this document is a true and complete copy of a record on file in the New York State Department of Motor Vehicles, Albany, New York.

David J. Swarts

COMMISSIONER OF MOTOR VEHICLES



STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
6 EMPIRE STATE PLAZA
ALBANY, NY 12228

CERTIFICATION OF FINDINGS OF AN ACCIDENT RECORD SEARCH

Date: 08/27/2007

Date of Accident: 02/22/2005

Case #: 31430686

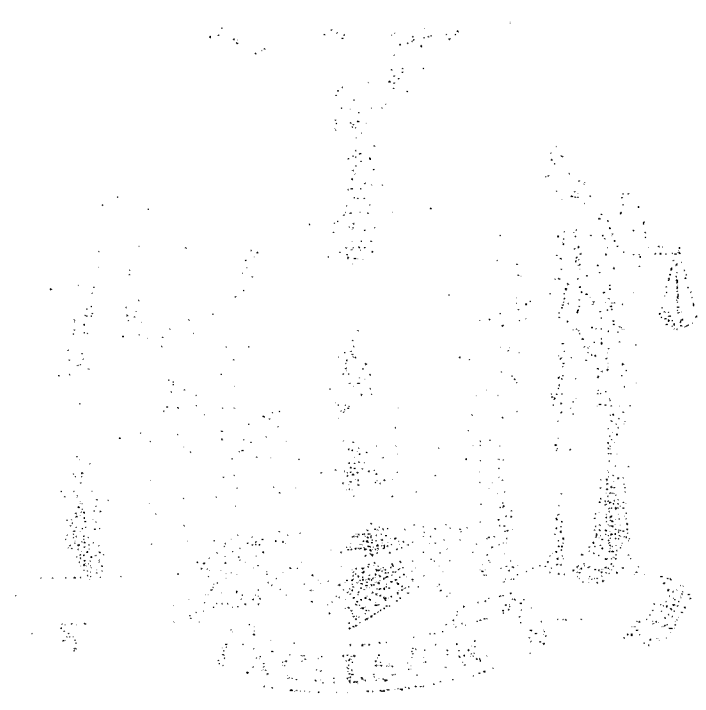
This is in response to your request for copies of a motor vehicle accident report. I certify that I have legal custody of the files, papers and records of the Department of Motor Vehicles, and that I have had these files, papers and records diligently searched. However:

1. No police report on file at this time.

CDC Manager

CERTIFIED DOCUMENT CENTER

Processed By: PM



This is to certify that this document is a true and complete copy of a record on file in the New York State Department of Motor Vehicles, Albany, New York.

David J. Sweet

COMMISSIONER OF MOTOR VEHICLES



STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
6 EMPIRE STATE PLAZA
ALBANY, NY 12228

CERTIFICATION OF FINDINGS OF AN ACCIDENT RECORD SEARCH

Date: 08/27/2007

Date of Accident: 06/16/2004

Case #: 31232473

This is in response to your request for copies of a motor vehicle accident report. I certify that I have legal custody of the files, papers and records of the Department of Motor Vehicles, and that I have had these files, papers and records diligently searched. However:

1. No police report on file at this time.

CDC Manager

CERTIFIED DOCUMENT CENTER

Processed By: PM



This is to certify that this document is a true and complete copy of a record on file in the New York State Department of Motor Vehicles, Albany, New York.

David J. Walcott

COMMISSIONER OF MOTOR VEHICLES

FOLD → ← HERE

New York State Department of Motor Vehicles
REPORT OF MOTOR VEHICLE ACCIDENT
www.nysdmv.com

31 232 473-248 299

Use only for accidents that happen in New York State

BEFORE COMPLETING THIS FORM, READ THE INSTRUCTIONS IN SECTION A ON PAGE 2

DO NOT FORGET ACCIDENT DATE Page of RUSH - DRIVER OF VEHICLE 1 - LICENSE SUSPENDED FOR FAILURE TO REPORT

Accident Date: 06/16/04, Day of Week: WED., Time: 2:?? PM, Number of Vehicles: 2, Number Injured: 0, Number Killed: 0, Did police investigate: Yes

DRIVER OF VEHICLE 1 VEHICLE 2 PEDESTRIAN BICYCLIST OTHER PEDESTRIAN

DRIVER: Driver License ID Number 793 706 540, State of License N.Y., Driver Name LEVITEN, IRIS L., Address SIX WOOD AVE., ALBERTSON, N.Y. 11507

REGISTRANT: Name exactly as printed on registration LEVITEN, IRIS L., Date of Birth 07/22/45, Sex F, Address SIX WOOD AVE., ALBERTSON, N.Y. 11507

Plate Number B65 7ZE, State of Reg. NY, Vehicle Year & Make '94 LEX. 4DSD 173

VEHICLE DAMAGE: Describe damage to vehicle 1: Vehicle #2 came along driver's side of vehicle #1 and side swiped vehicle #1 from rear to front. W of vehicle on left side of vehicle #1. ACCIDENT DIAGRAM: LEFT LANE SIDESWIPE

ACCIDENT LOCATION: Place Where Accident Occurred in New York State: County NASSAU, Road on which accident occurred SOUTHERN STATE PARKWAY

ALL INVOLVED: Names of All Persons Involved: TINA HOWARD (DRIVER), RITA LANE (PASSENGER), IRIS LEVITEN (DRIVER 2,3)

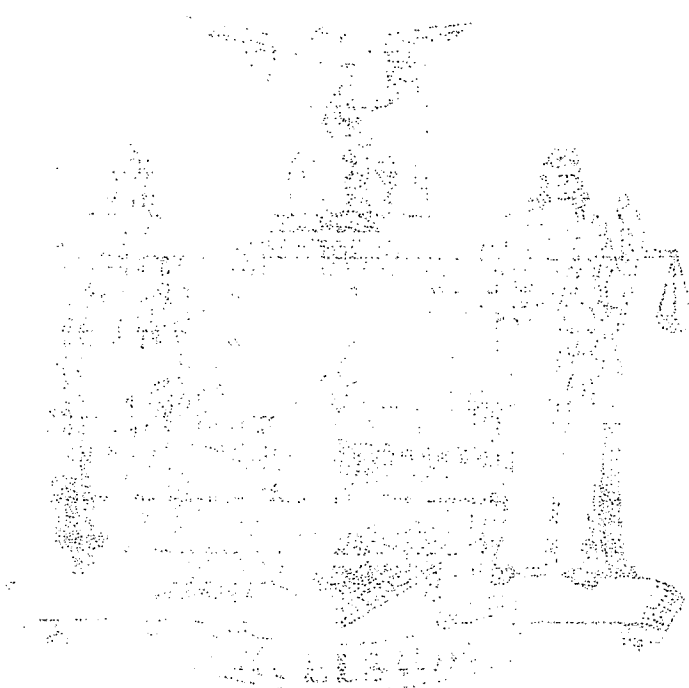
INSURANCE: Name of Insurance Company: GEICO, Policy Number 1U513130, Policy Period 4/07/04 To 10/7/04

Date: 6-21-04, Print Name of Driver: IRIS L. LEVITEN, Signature of Driver: [Signature]

* A representative may sign for the driver if the driver is unable to sign because of injury or death. If you are signing as the driver's representative, check the box that describes why the driver cannot sign.

An accident report is not considered complete and filed unless it is signed, and if not signed may result in the suspension of your driver's license.

2.1
14.2
1.3
1.4
1.5
1.6
1.7
23.5
24.5
1.25
26
20.1
1.27
1.28
29
30



This is to certify that this document is a true and complete copy of a record on file in the New York State Department of Motor Vehicles, Albany, New York.

David J. Tufts

COMMISSIONER OF MOTOR VEHICLES

File: Leviten
Invest.

PINNACLE PROTECTIVE SERVICES, INC.
PRIVATE INVESTIGATIONS & RESEARCH

9 Ilana Lane
New City, New York 10956
USA

Phone 877.THE.NYPI
Fax 845.362.3997

LICENSED IN
N.Y. & NJ

AARONSON RAPPAPORT FEINSTEIN DEUTSCH
757 THIRD AVENUE
NEW YORK, NY 10017
ATTN: LeVern Ward

Re: Leviten v. Toyota
File # 5300.003
TMS 2007-03-420039

August 31, 2007

ASSIGNMENT: Obtain Old Police Accident Report

August 28, 2007

POLICE ACCIDENT REPORT:

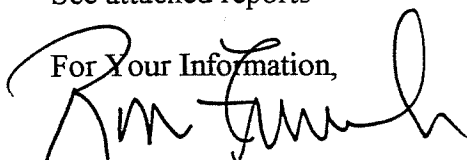
Inv Christiansen traveled to DMV in Albany, New York and obtained the following reports:

2/22/05 Report of Motor Vehicle Accident. No Police Accident Report found.

6/16/04 Report of a Motor Vehicle Accident No Police Accident Report found.

See attached reports

For Your Information,



Ronald French

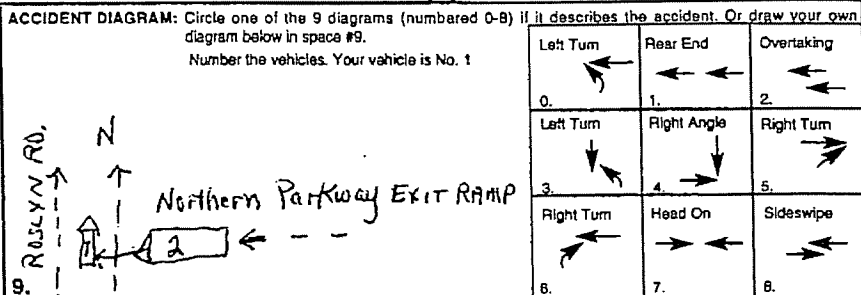
New York State Department of Motor Vehicles
REPORT OF MOTOR VEHICLE ACCIDENT
BEFORE COMPLETING THIS FORM,
READ THE INSTRUCTIONS IN SECTION A ON PAGE 2

DMV USE 31 430 686-248 295

DO NOT FORGET ACCIDENT DATE Page of RUSH - DRIVER OF VEHICLE 1 - LICENSE SUSPENDED FOR FAILURE TO REPORT

Accident Date Month Day Year 02 22 05	Day of Week TU	Time <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	No. of Vehicles 2	No. Injured 0	No. Killed 0	Left Scene <input type="checkbox"/>	Did police investigate accident at scene? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If "Yes", Name of Police Agency	
VEHICLE 1 Vehicle 1 License ID No. 793 706 540 NY Driver Name-exactly as printed on license LEVITEN, IRIS L. Address (Include Number & Street) SIX WOOD AVENUE City or Town ALBERTSON State NY Zip Code 11507 Date of Birth 07/22/45 Sex F Unlicensed <input type="checkbox"/> No. of Occup. 1 Public Property Damaged <input type="checkbox"/> State of Lic. NY Name-exactly as printed on registration DRIVER Date of Birth 07/22/45 Address (Include Number & Street) City or Town State Zip Code					VEHICLE 2 <input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN Vehicle 2 License ID No. 234 758 339 NY Driver Name-exactly as printed on license JABLONSKI ROMAN Address (Include Number & Street) 65 NASSAU BLVD. City or Town WEST HEMPSTEAD State NY Zip Code 11552 Date of Birth 12/09/55 Sex M Unlicensed <input type="checkbox"/> No. of Occup. 2 Public Property Damaged <input type="checkbox"/> State of Lic. NY Name-exactly as printed on registration DRIVER Date of Birth / / Address (Include Number & Street) City or Town State Zip Code				
Plate Number B657ZE State of Reg. NY Vehicle Year & Make '94 LEXUS Vehicle Type 4DSD Ins. Code 148 Estimated Cost of Repairs - Vehicle 1 <input type="checkbox"/> \$1000 or less <input type="checkbox"/> \$1401-\$1600 <input type="checkbox"/> \$1001-\$1200 <input checked="" type="checkbox"/> \$1601-\$1800 <input type="checkbox"/> Over \$1800	ACIDENT DIAGRAM: Circle one of the 9 diagrams (numbered 0-8) if it describes the accident. Or draw your own diagram below in space #9. Number the vehicles. Your vehicle is No. 1					Plate Number X244UF State of Reg. NY Vehicle Year & Make '98 CHRYS Vehicle Type SUBN Ins. Code 075 Estimated Cost of Repairs - Vehicle 2 <input type="checkbox"/> \$1000 or less <input type="checkbox"/> \$1401-\$1600 <input type="checkbox"/> \$1001-\$1200 <input type="checkbox"/> \$1601-\$1800 <input type="checkbox"/> Over \$1800			

Describe damage to vehicle 1
PASSENGER SIDE - REAR
quarter panel, moulding
TYRE ETC.



Describe damage to vehicle 2
DAMAGE IN FRONT

Reference Marker

New York County of Occurrence NASSAU

Route No. or Street Name ROSLYN ROAD

Nearest Intersecting Route/Street Northern STATE PARKWAY EXIT RAMP

Miles Feet At Intersection With

City Town Village

ALL PERSONS INVOLVED (see instruction 6 on page 2):

Name and Address	B. In Veh. No.	10. Safety Equip. Used	11. Position in Vehicle	12. Age	13. Sex	Describe Injuries	K	A	B	C	Date of Death
IRIS LEVITEN, 6 WOOD AVE	1	4	1	59	F						
ROMAN JABLONSKI, 65 NASSAU BLVD	2		1	49	M						
MARTA DALINA	2		2	22	F						

How did the accident happen? Vehicle 1 going straight on Roslyn Rd, North, passing by green/yellow light when Veh. 2 jumps at me, AND I swerve to avoid contact. Vehicle 2 hits my passenger side in rear, after leaving his red light.

Identify Damaged Property Other Than Vehicle(s)

Name of Insurance Company That Issued Policy GEICO Policy Number 2020 51 31 37

Name and Address of Policy Holder IRIS L. LEVITEN, 6 WOOD AV, ALBERTSON NY 11507 Policy Period From 10/07/04 to 04/07/05

If Vehicle was Operated Under Permit (ICC, USDOT or NYSDOT), give No. Name and Address of Permit Holder and State

Is Form SR-23 (Fleet Coverage) on File with DMV? Yes No If Self-Insured, give Certificate No. and State

Date _____ A representative may sign for the driver if the driver is unable to sign because of injury or death. If you are signing as the driver's representative, check the box that describes why the driver cannot sign.
 Injury Death

Signature of Driver (or Representative) of Vehicle 1 *Iris Leviten*
Print Name of Driver (or Representative) of Vehicle 1

1
2
2
4
5
6
7
7
9
17
11



This is to certify that this document is a true and complete copy of a record on file in the New York State Department of Motor Vehicles, Albany, New York.

David J. Swarts

COMMISSIONER OF MOTOR VEHICLES



STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
6 EMPIRE STATE PLAZA
ALBANY, NY 12228

CERTIFICATION OF FINDINGS OF AN ACCIDENT RECORD SEARCH

Date: 08/27/2007

Date of Accident: 02/22/2005

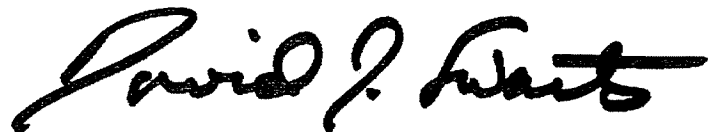
Case #: 31430686

This is in response to your request for copies of a motor vehicle accident report. I certify that I have legal custody of the files, papers and records of the Department of Motor Vehicles, and that I have had these files, papers and records diligently searched. However:

1. No police report on file at this time.

CDC Manager
CERTIFIED DOCUMENT CENTER
Processed By: PM

This is to certify that this document is a true and complete copy of a record on file in the New York State Department of Motor Vehicles, Albany, New York.

A handwritten signature in black ink, reading "David J. Sweet". The signature is written in a cursive style with a prominent initial "D".

COMMISSIONER OF MOTOR VEHICLES



STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
6 EMPIRE STATE PLAZA
ALBANY, NY 12228

CERTIFICATION OF FINDINGS OF AN ACCIDENT RECORD SEARCH

Date: 08/27/2007

Date of Accident: 06/16/2004

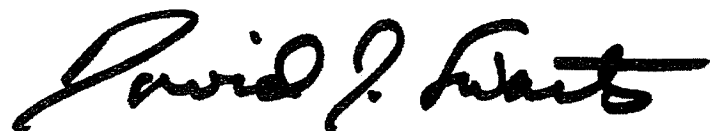
Case #: 31232473

This is in response to your request for copies of a motor vehicle accident report. I certify that I have legal custody of the files, papers and records of the Department of Motor Vehicles, and that I have had these files, papers and records diligently searched. However:

1. No police report on file at this time.

CDC Manager
CERTIFIED DOCUMENT CENTER
Processed By: PM

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A handwritten signature in black ink, reading "David J. Swarts". The signature is written in a cursive style with a large, prominent initial "D".

COMMISSIONER OF MOTOR VEHICLES

FOLD → ← HERE

New York State Department of Motor Vehicles
REPORT OF MOTOR VEHICLE ACCIDENT
www.nysdmv.com

31 232 473-248 299

Use only for accidents that happen in New York State

BEFORE COMPLETING THIS FORM, READ THE INSTRUCTIONS IN SECTION A ON PAGE 2

DO NOT FORGET ACCIDENT DATE ↓ Page 1 of 1 RUSH - DRIVER OF VEHICLE 1 - LICENSE SUSPENDED FOR FAILURE TO REPORT

Accident Date: Month 06 Day 16 Year 04 Day of Week WED. Time 2? AM PM Number of Vehicles 2 Number Injured 0 Number Killed 0 Did police investigate accident at scene? Yes No If "Yes", Name of Police Agency or Precinct & Accident Number

DRIVER

DRIVER OF VEHICLE 1
 Driver License ID Number 793 706 540 State of License N.Y.
 Driver Name—exactly as printed on license (Last, First, M.I.) LEVITEN, IRIS L.
 Address (Include Number & Street) SIX WOOD AVE. Apt. Number PVT.
 City or Town ALBERTSON State N.Y. Zip Code 11507

VEHICLE 2 PEDESTRIAN BICYCLIST OTHER PEDESTRIAN
 Driver License ID Number 249 761 080 State of License N.Y.
 Name—exactly as printed on license (Last, First, M.I.) HOWARD, TINA
 Address (Include Number & Street) 86-02 208th Street Apt. Number 2C
 City or Town QUEENS VILLAGE State N.Y. Zip Code 11427

REGISTRANT

REGISTRANT OF VEHICLE 1
 Name—exactly as printed on registration LEVITEN, IRIS L. Date of Birth Month 07 Day 22 Year 45 Sex F Number of People in Vehicle 1 Public Property Damaged
 Address (Include Number & Street) SIX WOOD AVE. Apt. Number PVT.
 City or Town ALBERTSON State N.Y. Zip Code 11507

REGISTRANT OF VEHICLE 2
 Name—exactly as printed on registration HOWARD, MYLES Date of Birth Month 12 Day 05 Year 47 Sex F Number of People in Vehicle 2 Public Property Damaged
 Address (Include Number & Street) 86-02 208th STREET Apt. Number 2C
 City or Town QUEENS VILLAGE State N.Y. Zip Code 11427

VEHICLE DAMAGE

Estimated Cost of Repairs - Vehicle 1 \$1,001-\$1,500 \$1,501-\$2,500 Over \$2,500
 Estimated Cost of Repairs - Vehicle 2 \$1,001-\$1,500 \$1,501-\$2,500 Over \$2,500

Describe damage to vehicle 1: Vehicle #2 came along driver's side of vehicle #1 and sideswiped Veh.#1 from rear to front. W- of vehicle on left side of Veh.#1.

ACCIDENT DIAGRAM: Circle one of the 9 diagrams (numbered 0-8) if it describes the accident, or draw your own diagram below in space #9. Number the vehicles. Your vehicle is #1.

Diagram 9: SIDESWIPE

Describe damage to vehicle 2: NONE

ACCIDENT LOCATION

Place Where Accident Occurred in New York State:
 County NASSAU City Village Town of _____ Permanent Landmark _____
 Road on which accident occurred SOUTHERN STATE PARKWAY (Route Number or Street Name)
 at 1) intersecting street _____ (Route Number or Street Name)
 or 2) _____ Feet _____ Miles N S E W of _____ (Milepost, Nearest intersecting Route Number or Street Name)
 How did the accident happen? _____

ALL INVOLVED

Names of All Persons Involved	8. Which Veh. Occupied	9. Position in/on Vehicle	10. Safety Equip. Used	12. Age	13. Sex	16. Injury A B C	Describe Injuries	If Deceased, Enter Date of Death
<u>TINA HOWARD</u>	<u>2</u>	<u>DRIVER</u>		<u>57</u>	<u>F</u>		<u>NONE</u>	
<u>RITA LANE</u>	<u>2</u>	<u>PASSENGER</u>					<u>NONE</u>	
<u>IRIS LEVITEN</u>	<u>1</u>	<u>DRIVER</u>	<u>2,3</u>	<u>58</u>	<u>F</u>		<u>NONE</u>	

INSURANCE

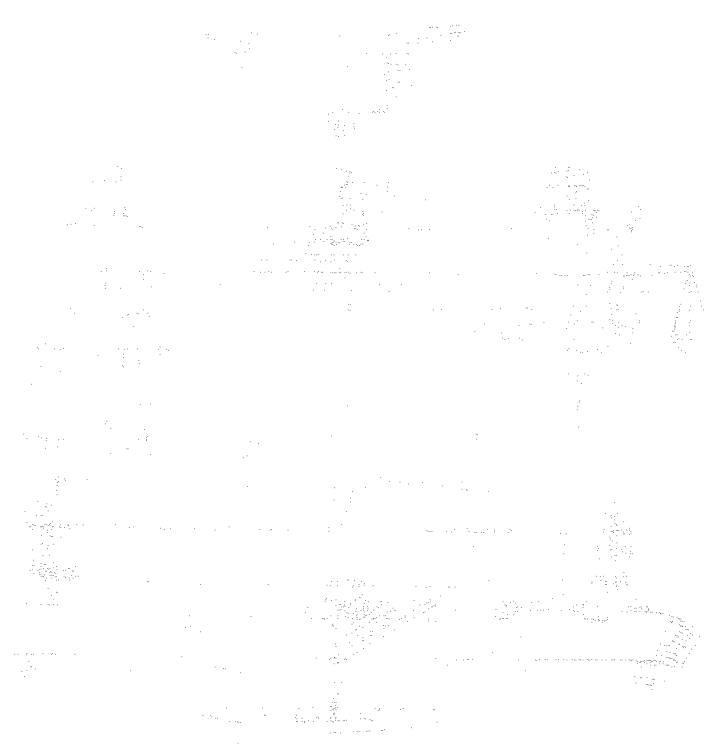
Identify Damaged Property Other Than Vehicle(s) _____ VIN JT8JS47E8R0056951
 Name of Insurance Company That Issued Policy For Vehicle 1 GEICO Policy Number 1U513130
 Name and Address of Policy Holder IRIS L. LEVITEN, SIX WOOD AVE, ALBERTSON, N.Y. Policy Period From 4/07/04 To 10/7/04
 If Vehicle was Operated Under Permit (ICC, USDOT or NYSDOT), give No. _____ Name and Address of Permit Holder _____ and State _____
 If Self-Insured, give Certificate No. _____

Date 6-21-04 Print Name of Driver (or Representative*) of Vehicle 1 IRIS L. LEVITEN Signature of Driver (or Representative*) of Vehicle 1

* A representative may sign for the driver if the driver is unable to sign because of injury or death. If you are signing as the driver's representative, check the box that describes why the driver cannot sign. Injury Death

An accident report is not considered complete and filed unless it is signed, and if not signed may result in the suspension of your driver's license.

2.1
14.2
1.3
1.4
1.5
1.6
1.7
23.3
24.3
1.25
26.20.1
1.27
1.28
29
30



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David J. Swarts

COMMISSIONER OF MOTOR VEHICLES

TOY-RQ-05E-00001849

VD07110

MAIN VEHICLE INQUIRY

08/16/07

M100WC51

14:30:02

PAGE 1

MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 1A URN:

ETA Dealer Delivery Window: 12/14/2006 - 12/18/2006

Vessel Name.....: GRNCOVE V159

ETA Date.....: 12/09/06

Japan Invoice No.: 1Y59640

ETD Date.....: 11/10/06

Dist Invoice No.:

Last Dist Debit Invoice Date.:

Dlr Invoice No...: 6644096

Last Dist Credit Invoice Date:

Port Veh Loc.....: 13X 54

Last Dist Release Date.....: 12/06/06

Pending Reversal.:

Last Label Date.....: 12/08/06

Prev Dist Credit.: NO

Last Actual Wholesale Date...: 12/12/06

No. of Dlr Credit:

Last Dealer Credit Date.....:

Truckload Shipmt.: ARRIVED

RDR Submitted Date.....: 01/02/07

Port Inst Std Opt: INSTALLED

Last Reversal Date.....:

Port PDS Complete: NO

Last Actual Retail Date.....: 01/02/07

Locked in Spread.: AUTHORIZED

Received Into System.....: 12/13/06

Cal/High Ind.....:

Last Trade Wholesale Date....: 12/12/06

Whsl at Tender...:

Fleet Discount Type...: NOT CALCULATED

Case No.: 8418VDC Railhead:

TMS Fleet Discount.....: 0.00

Pre-Sell Ind.....:

TMD Fleet Discount.....: 0.00

Key Number.....: 43222

Hold Status.....:

LAST PAGE

VD07110

MAIN VEHICLE INQUIRY

08/16/07

M100WC51

14:30:03

PAGE 1

MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 01 URN:

** RETAILED AND TENDERED AT NY PORT ON 12/12/06

Model No...: 9000A	Inventory Catg....: H (6)
Serial No...: 72071246	Allocation No.....: 112
Check Code.: 1	URN: J16N046792
VDS.....: BJ46G	Current Dealer....: 330-60604
VIN.....: JTHBJ46G272071246	Wholesale Dealer...: 330-60604
Model Year.: 2007	Previous Dealer...: 00330
Color Ext...: 04T1 - ALMOD	Label Group No....: 342A22
Int...: LA05 - IVORY	Dlr Invoice Date...: 12/12/06
Vessel No...: 172	Retail Date.....: 01/02/07
Fleet Ind...: NON-FLEET	Date of First Use..:
Engine No...: 2GR-A111612 (J)	Curr&Orig Pt/Plant: NY / NY
Order No...: 3944362	Damage Indicator...: NO DAMAGE
Order Info.: 6 11 44 EAS P	No. of Retail Rev..:
Ed No.: 244454	Port Mod Ind.....:
Comp Car Type/Stat:	
Accy: BE FS HL NV PA PT WU LM+WL+GN+	

PF-1: Next Serial Number

VD07110 MAIN VEHICLE INQUIRY
(CONTINUED)

08/16/07 M100WC51
14:30:03 PAGE 2

MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 01 URN:

ETA Dealer Delivery Window: 12/14/2006 - 12/18/2006

Vessel Name.....: GRNCOVE V159	ETA Date.....: 12/09/06
Japan Invoice No.: 1Y59640	ETD Date.....: 11/10/06
Dist Invoice No.:	Last Dist Debit Invoice Date.:
Dlr Invoice No....: 6644096	Last Dist Credit Invoice Date:
Port Veh Loc.....: 13X 54	Last Dist Release Date.....: 12/06/06
Pending Reversal.:	Last Label Date.....: 12/08/06
Prev Dist Credit.: NO	Last Actual Wholesale Date...: 12/12/06
No. of Dlr Credit:	Last Dealer Credit Date.....:
Truckload Shipmt.: ARRIVED	RDR Submitted Date.....: 01/02/07
Port Inst Std Opt: INSTALLED	Last Reversal Date.....:
Port PDS Complete: NO	Last Actual Retail Date.....: 01/02/07
Locked in Spread.: AUTHORIZED	Received Into System.....: 12/13/06
Cal/High Ind.....:	Last Trade Wholesale Date....: 12/12/06
Whsl at Tender....:	Fleet Discount Type..: NOT CALCULATED
Case No..: 8418VDC Railhead:	TMS Fleet Discount.....: 0.00
Pre-Sell Ind.....:	TMD Fleet Discount.....: 0.00
Key Number.....: 43222	Hold Status.....:

LAST PAGE

VD07110

PREALLOCATION INQUIRY

08/16/07

M100WC51

14:30:04

PAGE 1

MOD/SER:

/

VIN: JTHBJ46G272071246 INQ TYPE: 02 URN:

Current Category.....: H

Current Pool.....: 60604

Previous Pool.....: 00330

Current Allocation No.: 112

Previous Allocation No: 112

Comments.....:

Activity-Date.....: 11/21/06

VD07110

DISTRIBUTOR INVOICE INQUIRY

08/16/07

M100WC51

14:30:04

PAGE 1

MOD/SER: /

VIN: JTHBJ46G272071246 INQ TYPE: 03 URN:

LIST COMPLETE--NO DATA

VD07110

DEALER INVOICE INQUIRY

08/16/07 M100WC51

14:30:05 PAGE 1

MOD/SER: /

VIN: JTHBJ46G272071246 INQ TYPE: 04 URN:

Invoice No: 6644096

Invoice Date: 12/12/06

Dealer: 330-60604

Bank Code: 26

Draft No: Y346013

Comments:

Inv Amt: 36625.00

LAST PAGE

VD07110

MONRONEY LABEL GROUP

08/16/07 M100WC51

14:30:05 PAGE 1

MOD/SER: /

VIN: JTHBJ46G272071246 INQ TYPE: 05 URN:

Group No: 342A22 Dealer Sold: 330-60604 Dealer Ship: 330-60604
Carrier: 010369676 Deviation No: Load No: BB12 Port Pickup: NO

Comments : ARE NOT AVAILABLE

Group Est. Date: 12/08/06

QA Date....: 12/12/06

In-process Date: 12/08/06

Arrive Date: 12/14/06

Tendered Date..: 12/12/06

Paid Date...: 00/00/00

Shipped Date...: 12/13/06

LAST PAGE - THIS IS THE CURRENT GROUP

VD07110

RETAIL SALE INQUIRY

08/16/07

M100WC51

14:30:06

PAGE 1

MOD/SER: /

VIN: JTHBJ46G272071246 INQ TYPE: 06 URN:

RDR Submitted Date:	01/02/07	Type of Sale:	NEW
Retail Date:	01/02/07	Demo Extension:	NO
Dealer Sold By:	330-60604	Flt Ind at Sale:	NON-FLEET
Salesperson Name:	SALLUHI	Sales Mile:	00010
Salesperson:	770678613	Fleet Acct Id:	00000
Lease Company Name:		Customer Prefix:	3-MS.
Customer Name:	LEVITENŞIRIS	Number of Retails:	1
Customer Address:	6 WOOD AVENUE	USA Check Code:	1
Customer City:	ALBERTSON		
State/Zip Code:	NY 11507-		
Customer Phone No:	516 248-4098		
Type Sale Code:	01 RETAIL - INDIVIDUAL		
Factura Number:			

LAST PAGE

VD07110

RAILCAR & TRUCKAWAY INQUIRY

08/16/07

M100WC51

14:30:06

PAGE 1

MOD/SER:

/

VIN: JTHBJ46G272071246 INQ TYPE: 07 URN:

LIST COMPLETE--NO DATA

VD07110

RN BED INQUIRY

08/16/07

M100WC51

14:30:07

PAGE 1

MOD/SER: /

VIN: JTHBJ46G272071246 INQ TYPE: 08 URN:

LIST COMPLETE--NO DATA

VD07110

COMPANY CAR INQUIRY

08/16/07

M100WC51

14:30:07

PAGE 1

MOD/SER:

/

VIN: JTHBJ46G272071246 INQ TYPE: 09 URN:

LIST COMPLETE--NO DATA

VD07110

DAMAGE VEHICLE INQUIRY

08/16/07

M100WC51

14:30:08

PAGE 1

MOD/SER:

/

VIN: JTHBJ46G272071246 INQ TYPE: 10 URN:

LIST COMPLETE--NO DATA

VD07110

PORT MOD INQUIRY

08/16/07

M100WC51

14:30:08

PAGE 1

MOD/SER:

/

VIN: JTHBJ46G272071246 INQ TYPE: 11 URN:

LIST COMPLETE--NO DATA

VD07110

INCENTIVE INQUIRY

08/16/07

M100WC51

14:30:09

PAGE 1

MOD/SER:

/

VIN: JTHBJ46G272071246 INQ TYPE: 12 URN:

THIS TRANSACTION IS CURRENTLY NOT ACTIVE

VD07110

TRANSACTION AUDIT INQUIRY

08/16/07

M100WC51

14:30:09

PAGE 1

MOD/SER: /

VIN: JTHBJ46G272071246 INQ TYPE: 13 URN:

Tran Type	Activity Date	Last Update	Detail
37	11/21/06	15:13:46	Assigned dlr: 60604 Sugg dlr: 60604 Alloc no: 112 Turndown dlr: Dlr preference: GMP ind.:
65	11/06/06	22:15:03	ORIG FACTORY OPTIONS: BE FS HL NV PA PT WU
66	11/06/06	22:15:03	ORIG ORDER PORT: NY ORIG COLORS: EXT: 04T1 INT: LA05
67	11/06/06	22:15:03	FIRST ETA PROCESSED
68	11/06/06	22:15:03	ACTUAL YARD IN DATE: 11/05/06

Tran Type	Activity Date	Last Update	Detail
-----	-----	-----	-----
71	11/06/06	22:15:03	PROCON - UNIQUE REF NUMBER: J16N046792 APPROVAL DATE: 10/23/06
72	11/06/06	22:15:03	PROCON - EST LINE-OFF DATE: 11/03/06

LAST PAGE

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
 DISTRIBUTOR 14:30:15 PAGE 1
 MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 14 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
 Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK

	Distributor Base Price:	\$ 28085.00
REAR SEAT SIDE AIRBAGS	.....	200.00
FULL SIZE SPARE	.....	164.00
HID HEADLAMPS WITH AFS	.....	652.00
NAVIGATION SYSTEM PACKAGE	.....	2230.00
INTUITIVE PARKING ASSIST	.....	400.00
PREMIUM PLUS PACKAGE	.....	2058.00
WOOD & LEATHER STEERING WHEEL	...	264.00
TRUNK MAT	.....	23.35
WHEEL LOCKS	.....	10.84
CARGO NET	.....	9.12

Inland Freight & Handling:

Total: \$ 34096.31

STANDARD SPECS TO FOLLOW

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) DISTRIBUTOR 14:30:17 PAGE 2
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 14 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
Distributor Base Price: \$ 28085.00

- # PERFORMANCE FEATURES
- * 3.5 Liter 272HP Four Cam 24-Valve V6 Engine
All-Aluminum Engine Construction & Dual VVTi
- * 6-Speed Automatic Transmission w/Sequential Shi
- * Front Wheel Drive
- * Dual Exhaust with Seamless Chrome Tips
- * 4-Wheel Independent MacPherson Strut-Type
Suspension with Gas Pressurized Shock Absorbers
Front and Rear Stabilizer Bar
- * 4-Wheel Power Assisted Ventilated Front/Solid
Rear Disc Brakes
- * 17" Aluminum Alloy 7-Spoke Wheels

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) DISTRIBUTOR 14:30:18 PAGE 3
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 14 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
Distributor Base Price: \$ 28085.00

- * 215/55R17 All-Season Tires
- # SAFETY FEATURES
- * Dual Front Airbags, Dual Front Knee Airbags, Fr
Seat-Mounted Side Impact Airbags, Fr & Rr Side
Curtain Airbags, Supplemental Restraint Sys (SR
3-Point Safety Belts for All Seating Positions
- * Fr & Rr Outboard Seat Belt Pretensioners with
Force Limiters
- * Vehicle Stability Control (VSC) with TRAC
- * 4-Wheel Anti-Lock Braking System (ABS) with
Electronic Brakeforce Distribution (EBD)
- * Energy Managing Crumple Zones, Side Door Beams

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) DISTRIBUTOR 14:30:19 PAGE 4
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 14 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
Distributor Base Price: \$ 28085.00

- * Theft-Deterrent System w/ Engine Immobilizer
- * Projector-Bulb Headlamps w/ Integrated Foglamps
Daytime Running Lights (DRL)
- * Variable Intermittent Wipers with Mist Control
- * Tire Pressure Monitor System
- * Tool Kit and First Aid Kit
- # LUXURY AND CONVENIENCE FEATURES
- * SmartAccess with Push Button Start/Stop
- * 10-Way Power Adjustable Driver & Passenger Seat
includes 2-way Power Lumbar
- * Electrochromic Auto-Dimming Interior Mirror
- * Heated Outside Mirrors

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) DISTRIBUTOR 14:30:20 PAGE 5
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 14 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
Distributor Base Price: \$ 28085.00

- * One-Touch Open/Close Pwr Tilt-and-Slide Moonroo
- * Automatic Dual Zone Climate Control
- * Automatic On/Off Headlamps
- * Lexus Premium Audio System w/In-Dash 6-Disc CD
Player Automatic Sound Levelizer (ASL) & MP3
Player Connectivity (miniplug) & 8-Speakers
- * Power Front and Rear Windows with Auto One-
Touch Up/Down and Pinch Protection
- * Power Door Locks with Anti-Lock Out
- * Power Tilt/Telescoping Steering Wheel w/Audio &
Display Functions & Column-Mounted Cruise Contr
- * Key FOB-Integrated Multi-Function Remote Entry

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) DISTRIBUTOR 14:30:20 PAGE 6
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 14 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
Distributor Base Price: \$ 28085.00

- * Rear Glass Imprinted Antenna w/FM Diversity Sys
- * Front Cup Holders with Adjustable Holder Ring
- * Rear Arm Rest with Cup Holders
- * Heavy-Duty Rear Window Defogger with Timer
- * Scheduled Maintenance Indicator Light
- * Lexus Personalized Settings
- * LED Interior Lighting
- * Carpeted Floor Mats

LAST PAGE

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
 RETAIL 14:30:24 PAGE 1
 MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 16 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
 Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK

	Retail Base Price:	\$ 33170.00
REAR SEAT SIDE AIRBAGS	.....	250.00
FULL SIZE SPARE	.....	205.00
HID HEADLAMPS WITH AFS	.....	815.00
NAVIGATION SYSTEM PACKAGE	.....	2650.00
INTUITIVE PARKING ASSIST	.....	500.00
PREMIUM PLUS PACKAGE	.....	2480.00
WOOD & LEATHER STEERING WHEEL	... ..	330.00
TRUNK MAT	.....	69.00
WHEEL LOCKS	.....	69.00
CARGO NET	.....	59.00

Inland Freight & Handling: 715.00

Total: \$ 41312.00

STANDARD SPECS TO FOLLOW

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) RETAIL 14:30:25 PAGE 2
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 16 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
Retail Base Price: \$ 33170.00

PERFORMANCE FEATURES

- * 3.5 Liter 272HP Four Cam 24-Valve V6 Engine
All-Aluminum Engine Construction & Dual VVTi
- * 6-Speed Automatic Transmission w/Sequential Shi
- * Front Wheel Drive
- * Dual Exhaust with Seamless Chrome Tips
- * 4-Wheel Independent MacPherson Strut-Type
Suspension with Gas Pressurized Shock Absorbers
Front and Rear Stabilizer Bar
- * 4-Wheel Power Assisted Ventilated Front/Solid
Rear Disc Brakes
- * 17" Aluminum Alloy 7-Spoke Wheels

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) RETAIL 14:30:26 PAGE 3
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 16 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
Retail Base Price: \$ 33170.00

- * 215/55R17 All-Season Tires
- # SAFETY FEATURES
- * Dual Front Airbags, Dual Front Knee Airbags, Fr
Seat-Mounted Side Impact Airbags, Fr & Rr Side
Curtain Airbags, Supplemental Restraint Sys (SR
3-Point Safety Belts for All Seating Positions
- * Fr & Rr Outboard Seat Belt Pretensioners with
Force Limiters
- * Vehicle Stability Control (VSC) with TRAC
- * 4-Wheel Anti-Lock Braking System (ABS) with
Electronic Brakeforce Distribution (EBD)
- * Energy Managing Crumple Zones, Side Door Beams

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) RETAIL 14:30:27 PAGE 4
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 16 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
Retail Base Price: \$ 33170.00

- * Theft-Deterrent System w/ Engine Immobilizer
- * Projector-Bulb Headlamps w/ Integrated Foglamps
Daytime Running Lights (DRL)
- * Variable Intermittent Wipers with Mist Control
- * Tire Pressure Monitor System
- * Tool Kit and First Aid Kit
- # LUXURY AND CONVENIENCE FEATURES
- * SmartAccess with Push Button Start/Stop
- * 10-Way Power Adjustable Driver & Passenger Seat
includes 2-way Power Lumbar
- * Electrochromic Auto-Dimming Interior Mirror
- * Heated Outside Mirrors

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) RETAIL 14:30:28 PAGE 5
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 16 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
Retail Base Price: \$ 33170.00

- * One-Touch Open/Close Pwr Tilt-and-Slide Moonroo
- * Automatic Dual Zone Climate Control
- * Automatic On/Off Headlamps
- * Lexus Premium Audio System w/In-Dash 6-Disc CD
Player Automatic Sound Levelizer (ASL) & MP3
Player Connectivity (miniplug) & 8-Speakers
- * Power Front and Rear Windows with Auto One-
Touch Up/Down and Pinch Protection
- * Power Door Locks with Anti-Lock Out
- * Power Tilt/Telescoping Steering Wheel w/Audio &
Display Functions & Column-Mounted Cruise Contr
- * Key FOB-Integrated Multi-Function Remote Entry

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) RETAIL 14:30:29 PAGE 6
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 16 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
Retail Base Price: \$ 33170.00

- * Rear Glass Imprinted Antenna w/FM Diversity Sys
- * Front Cup Holders with Adjustable Holder Ring
- * Rear Arm Rest with Cup Holders
- * Heavy-Duty Rear Window Defogger with Timer
- * Scheduled Maintenance Indicator Light
- * Lexus Personalized Settings
- * LED Interior Lighting
- * Carpeted Floor Mats

LAST PAGE

VD07110

PORT VEHICLE INQUIRY

08/16/07 M100WC51

14:30:32 PAGE 1

MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 18 URN:

** RETAILED AND TENDERED AT NY PORT ON 12/12/06

Model Number...: 9000A	Inventory Category.: H (6)
Check Code....: 1	Vin Number.....: JTHBJ46G272071246
Color Exterior: 04T1 - ALMOD	Curr Port/Orig Port: NY / NY
Port Location.: 13X 54	Dealer Sold.....: 330-60604
Vessel Number.: 172	Dealer Ship.....: 330-60604
Case Number...: 8418	Previous Group.....:
Current Group.: 342A22	Railcar Position...:
Ret. To Pt Dte:	Railcar Number.....:
Group Est Date: 12/08/06	Carrier Number.....: 010369676
In-Proc Date..: 12/08/06	Key Number.....: 43222
QA Date.....: 12/12/06	Pre-Wholesale.....:
Tender Date...: 12/12/06	Bill of Lading.....:
Ship Date.....: 12/13/06	Damage Indicator...: NO DAMAGE
Railed Date...:	Port Mod Indicator.:
Rail Rec Date.:	Hold Indicator.....:

ACCE: BE FS HL NV PA PT WU LM+WL+GN+

PF-1: Next Serial Number

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
F.O.B. 14:30:35 PAGE 1
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 19 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK

	F.O.B. Base Price:	\$ 23497.90
REAR SEAT SIDE AIRBAGS	.....	171.45
FULL SIZE SPARE	.....	146.50
HID HEADLAMPS WITH AFS	.....	558.91
NAVIGATION SYSTEM PACKAGE	.....	1993.04
INTUITIVE PARKING ASSIST	.....	342.89
PREMIUM PLUS PACKAGE	.....	1776.37
WOOD & LEATHER STEERING WHEEL	...	226.31
TRUNK MAT	.....
WHEEL LOCKS	.....
CARGO NET	.....

Inland Freight & Handling:

Total: \$ 28713.37

STANDARD SPECS TO FOLLOW

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) F.O.B. 14:30:37 PAGE 2
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 19 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
F.O.B. Base Price: \$ 23497.90

PERFORMANCE FEATURES

- * 3.5 Liter 272HP Four Cam 24-Valve V6 Engine
All-Aluminum Engine Construction & Dual VVTi
- * 6-Speed Automatic Transmission w/Sequential Shi
- * Front Wheel Drive
- * Dual Exhaust with Seamless Chrome Tips
- * 4-Wheel Independent MacPherson Strut-Type
Suspension with Gas Pressurized Shock Absorbers
Front and Rear Stabilizer Bar
- * 4-Wheel Power Assisted Ventilated Front/Solid
Rear Disc Brakes
- * 17" Aluminum Alloy 7-Spoke Wheels

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) F.O.B. 14:30:38 PAGE 3
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 19 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
F.O.B. Base Price: \$ 23497.90

- * 215/55R17 All-Season Tires
- # SAFETY FEATURES
- * Dual Front Airbags, Dual Front Knee Airbags, Fr
Seat-Mounted Side Impact Airbags, Fr & Rr Side
Curtain Airbags, Supplemental Restraint Sys (SR
3-Point Safety Belts for All Seating Positions
- * Fr & Rr Outboard Seat Belt Pretensioners with
Force Limiters
- * Vehicle Stability Control (VSC) with TRAC
- * 4-Wheel Anti-Lock Braking System (ABS) with
Electronic Brakeforce Distribution (EBD)
- * Energy Managing Crumple Zones, Side Door Beams

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) F.O.B. 14:30:39 PAGE 4
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 19 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
F.O.B. Base Price: \$ 23497.90

- * Theft-Deterrent System w/ Engine Immobilizer
- * Projector-Bulb Headlamps w/ Integrated Foglamps
Daytime Running Lights (DRL)
- * Variable Intermittent Wipers with Mist Control
- * Tire Pressure Monitor System
- * Tool Kit and First Aid Kit
- # LUXURY AND CONVENIENCE FEATURES
- * SmartAccess with Push Button Start/Stop
- * 10-Way Power Adjustable Driver & Passenger Seat
includes 2-way Power Lumbar
- * Electrochromic Auto-Dimming Interior Mirror
- * Heated Outside Mirrors

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) F.O.B. 14:30:40 PAGE 5
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 19 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
F.O.B. Base Price: \$ 23497.90

- * One-Touch Open/Close Pwr Tilt-and-Slide Moonroo
- * Automatic Dual Zone Climate Control
- * Automatic On/Off Headlamps
- * Lexus Premium Audio System w/In-Dash 6-Disc CD
Player Automatic Sound Levelizer (ASL) & MP3
Player Connectivity (miniplug) & 8-Speakers
- * Power Front and Rear Windows with Auto One-
Touch Up/Down and Pinch Protection
- * Power Door Locks with Anti-Lock Out
- * Power Tilt/Telescoping Steering Wheel w/Audio &
Display Functions & Column-Mounted Cruise Contr
- * Key FOB-Integrated Multi-Function Remote Entry

VD07110 SIMULATED MONRONEY LABEL 08/16/07 M100WC51
(CONTINUED) F.O.B. 14:30:41 PAGE 6
MOD/SER: / VIN: JTHBJ46G272071246 INQ TYPE: 19 URN:

Model No: 9000A Description: ES350 4-DR SEDAN Model Year: 2007
Engine No: 2GR-A111612 Color: ALMOD|IVORY Port of Entry: NEWARK
F.O.B. Base Price: \$ 23497.90

- * Rear Glass Imprinted Antenna w/FM Diversity Sys
- * Front Cup Holders with Adjustable Holder Ring
- * Rear Arm Rest with Cup Holders
- * Heavy-Duty Rear Window Defogger with Timer
- * Scheduled Maintenance Indicator Light
- * Lexus Personalized Settings
- * LED Interior Lighting
- * Carpeted Floor Mats

LAST PAGE

VD07110

EXPORT VEHICLE INQUIRY

08/16/07

M100WC51

14:30:44

PAGE 1

MOD/SER:

/

VIN: JTHBJ46G272071246 INQ TYPE: 20 URN:

THIS IS NOT AN EXPORT VEHICLE

VD07110

PROCESSING SCHEDULE INQUIRY

08/16/07

M100WC51

14:30:48

PAGE 1

MOD/SER: /

VIN: JTHBJ46G272071246 INQ TYPE: 21 URN:

Sold to Dealer :

Ship to Dealer:

ACTIVITY DATE	ACTIVITY TIME	DATE SCHED.	SIMUL NUMBER	SIMULATION STATUS	TENDER TARGET	HOT/PREF	TOYOTA LOAD #	MODEL TYPE	CURR PORT	SIMP
12/11/06	03:45:07	12/12/06	420	SCHEDULED		H			NY	1
12/11/06	03:16:45	12/12/06	420	ROUTED	12:00				NY	
12/08/06	08:10:28	12/12/06	420	ROUTED	12:00				NY	
12/08/06	08:02:18	12/12/06	420	FROZEN		H		E	NY	
12/07/06	03:46:00	12/12/06	420	SCHEDULED		H			NY	1
12/06/06	03:45:55		000	REJECTED					NY	

EXCLUDED BY MODEL RANGE, YEAR, VESSEL OR INBOUND SOURCE

LAST PAGE. PREF CODES: H-HOT, M-MUST GO, P-PREFERRED, S-SYS PREF, X-SYS HOT

VD07110

NVS VEHICLE DLR ETA INQUIRY

08/16/07

M100WC51

14:30:52

PAGE 1

MOD/SER: /

VIN: JTHBJ46G272071246 INQ TYPE: 22 URN:

ETA DEALER DELIVERY WINDOW: 12/14/2006 - 12/18/2006

VIN.....: JTHBJ46G272071246

Reason Comment ...:

Original DLR ETA date :12/17/2006

Original VDC.....:NY

Revised DLR ETA date..:12/14/2006

Dealer sold.....:330-60604

Rail Car No: -

Dealer ship.....:330-60604

Railed Date.....:

CURRENT EVENT.....: DELIVERED

VIN SERIAL : JTHBJ46G272071246

MODEL :9000 RETL DEALER :60604 LEXUS OF WESTPORT
RETL DATE :. MILEAGE :. TRANS:6
PROD DATE:611 SHIPMENT DTE:.
ENGINE:2GRA111612 A/C:1
DEMO:0 FLEET:0

-----WARRANTY REPAIR HISTORY-----

*DATE OF REPAIR : 12/17/06 SERVICING DLR : 60604 LEXUS OF WESTPORT
CLAIM # :912566 RO# : TOTAL: \$239.48
DFU : . REPAIR MILES : 0
OFF :N/A OPCODE : PRE-DE
SPECIAL SERVICE CAMPAIGN INFO :.

CONDITION/CAUSE/REMEDY CCRJ FROM T-CODES-

ENGINE AREA INSPECT DONE

WS02010/WAA912 SERVICE SERIAL MASTER INQUIRY 06/14/07 TCP30030
 SERIAL NUMBER : JTHBJ46G2 - 72071246 10:38:45 PAGE 1
 DEALER SELL 60604 RETAIL DATE 01/02/07 RETAIL MILES 0
 INVOICE DATE 12/12/06 DATE FIRST USE 01/02/07 MODEL 9000A
 EXT WARRANTY DEMO DAMAGE NO
 WARRANTY STATUS V AIR COND FAC TRANS TYPE 6SPD-SEQ
 P.O.E. 33 COLOR 04T1 ENGINE 2GR-A111612
 PRODUCTION DATE 611 BED MFG BED SERIAL
 SURVEY SENT SHIPMENT DATE 11/09/06 FOREIGN SOLD NO
 ACCESSORIES
 BE FS HL NV PA PT WU LM + WL + GN +
 AC

* CLAIM COMPLETE *

CLAIM NO 912566 REFERENCE NO TYPE CLASS 63
 SERVICING DEALER 60604 REPAIR DATE 12/17/06 REPAIR MILES 0
 DATE FIRST USE 00/00/00 RECEIPT DATE 12/17/06 R/O NUMBER
 EDITS BYPASSED OPERATION CODE 001013 COMB CODES
 AUTH NUMBER SSC NUMBER SUBLET AMT 39.48
 T1 CODE FAILED PART
 T2-T3 CODES -
 REQUESTED AMT 239.48 PAID DATE 12/17/06 PAID AMOUNT 239.48

PF2:ACSY PF4:RPH PF5:CLMHST PF6:PREV PG PF8:NEXT PG PF10:PREV MENU PF11:LOGOFF

WS0215/WAA915

SERVICE SERIAL MASTER INQUIRY
REPLACEMENT PART HISTORY

06/14/07 TCP30030

SERIAL NUMBER : JTHBJ46G2 - 72071246

DLR	CLAIM	NUMBER	DATE	PAID	DATE	PART NUMBER	DESCRIPTION
-----	-------	--------	------	------	------	-------------	-------------

NO REPLACEMENT PART HISTORY FOUND

PF6: PREV PAGE

PF8: NEXT PAGE

PF10: PREV MENU

PF11: LOGOFF

WS0210/WAA914

SERVICE SERIAL MASTER INQUIRY
CLAIM HISTORY

06/14/07 TCP30030

SERIAL NUMBER : JTHBJ46G2 - 72071246

		-----REPAIR ORDER-----					
DEALER CLAIM	NUMBER	DATE	MILES	OFF	OPCODE	AMOUNT	DB
60604	912566	12/17/2006	000000		001013	239.48	V

BOTTOM OF LIST NO MORE CLAIMS

PF6: PREV PAGE PF8: NEXT PAGE PF10: PREV MENU PF11: LOGOFF

LEXUS, A DIVISION OF
 TOYOTA MOTORS SALES USA
 19001 S. WESTERN AVE.
 TORRANCE CALIF. USA



MEMORANDUM INVOICE

INVOICE NO: 6644096
 INVOICE DATE: 12/12/06
 PORT/PLANT: NEWARK
 DEALER CODE: 60604

43222

PAID FOR BY:
 JPMORGAN CHASE BANK
 P.O. BOX 4911
 SYRACUSE, NY 13221

SOLD TO:
 ESTREE, INC.
 DBA LEXUS OF WESTPORT
 1317 POST ROAD EAST
 WESTPORT, CT 06880

MODEL	DESCRIPTION	YEAR	SERIAL NO.	C/C	ENGINE NO.	MSRP	DEALER INVOICE	
9000A	ES350 4-DR SEDAN	2007	JTHBJ46G272071246	1	2GRA111612			
COLOR EXT/INT 4T1 GOLDEN ALMOND METALL / LA05 IVORY LEA						BASE VEHICLE PRICE >	33,170.00	29,410.00
FACTORY INSTALLED EQUIPMENT								
BE	- REAR SEAT SIDE AIRBAGS					250.00	200.00	
FS	- FULL SIZE SPARE					205.00	164.00	
HL	- HID HEADLAMPS WITH AFS					815.00	652.00	
NV	- NAVIGATION SYSTEM PACKAGE					2,650.00	2,230.00	
PA	- INTUITIVE PARKING ASSIST					500.00	400.00	
PT	- PREMIUM PLUS PACKAGE					2,480.00	2,058.00	
WU	- WOOD & LEATHER STEERING WHEEL					330.00	264.00	
LM	- TRUNK MAT					69.00	41.00	
WL	- WHEEL LOCKS					69.00	41.00	
GN	- CARGO NET					59.00	35.00	
* DUE TO THE EXTENSIVE LIST OF STANDARD EQUIPMENT FOR THIS SERIES, PLEASE REFER TO THE LEXUS PRODUCT STANDARD EQUIPMENT ADDENDUM FOR THIS SERIES.								
* THIS INVOICE DOES NOT REFLECT THE DEALER'S ULTIMATE VEHICLE COST IN VIEW OF \$ 663.00 RESERVE AND \$ 331.00 WHOLESALE FINANCE RESERVE WHICH ARE RETURNED TO DEALER AND ANY REBATE, ALLOWANCE AND INCENTIVE, WHICH ARE PAID TO THE DEALER.								
TOTAL F.I.E. >						7,427.00	6,085.00	
TOTAL MODEL AND F.I.E. >						40,597.00	35,495.00	
OTHER CHARGES >								
DELIVERY, PROCESSING AND HANDLING FEE >						715.00	715.00	
SUB TOTAL >						41,312.00	36,210.00	
LDA >							415.00	
TOTAL INVOICE >						41,312.00	36,625.00	
TITLE AND OWNERSHIP PASSES TO DEALER UPON PAYMENT OF SAID GOODS AND ALL RISK OF LOSS OR DAMAGE PASSES TO DEALER UPON DELIVERY OF GOODS TO DEALER								

ORIGINAL

00-15589

BATCH TAPE VEHICLE INQUIRY

DATE: 06/13/07

VEHICLE

VIN: JTHBJ46G272071246 MODEL YR.: 2007
 MODEL/SERIAL: 9000A-72071246
 ENGINE: 2GRA111612 BED SERIAL: 000000
 COLOR: 04T1/LA05 ORDER NO: 3944362
 ACCESSORIES: BE AFS AHL ANV APA APT AWU ALM BWL B
 AREA REC. 0 CURR. 332
 DEALER REC. 60604 CURR. 60604
 DLR INV: Y346013 DATE 12/12/06
 PORT REC: 33 SHIP: NY
 SHIP NAME: GRNCOVE V159 SHIP NO. 172
 E.T.A.: 12/09/06 A.T.A.: 12/06/06
 ED. NO. DISTR NO. 6644096
 1ST USE: / / INV. DATE: 12/12/06

CUSTOMER

NAME: LEVITEN\$IRIS
 ADDRESS: 6 WOOD AVENUE
 CITY/STATE/ZIP: ALBERTSON, NY. 11507
 PHONE: (516) 248-4098
 RETAILED: RETAIL DATE: 01/02/07

MATCH TO REQUEST: 001

7/12/07
 Isis Leviten
 VIN #: JTHBJ46G272071246

02/16/2007	0266823	<u>Rallye</u> <u>Lexus</u> <u>(63105)</u>	443	\$0.00	Technicain Reports Wipers Frozen With Ice Removed Ice And Found Wipers To Be Ope ~|~Customer States Check Wipers Dont Work ~|~ ~|~443 Removed Ice From Wipers, Found Frozen Technicain Reports Wipers(000199) Frozen With Ice Removed Ice And Found Wipers To Be Ope	No claims for this Service Operation
					Technicain Reports Rear Defroster Is Operating Properly And As Designed ~|~Customer Requests Check Rear Defroster For Proper Operation ~|~ ~|~443 Defroster Working As Designed Technicain Reports Rear(000199) Defroster Is Operating Properly And As Designed	No claims for this Service Operation
01/05/2007	0091885	<u>Lexus Of</u> <u>Westport</u> <u>(60604)</u>	14	\$75.00	New Car Clean 1.5 ~|~New Car Clean 1.5 New Car Clean 1.5(000989)	No claims for this Service Operation
12/20/2006	0090409	<u>Lexus Of</u> <u>Westport</u> <u>(60604)</u>	14	\$230.00	Pre-Delivery Service For Usa Ins ~|~Pre-Delivery Service For Usa Ins ~|~Pdi Pre-Delivery Service For Usa(001013) Ins	No claims for this Service Operation
					Vin Etch ~|~Vin Etch Vin Etch(000989)	No claims for this Service Operation

Customer Profile Application - Microsoft Internet Explorer provided by Toyota Motor Sales, U.S.A., Inc.

File Edit View Favorites Tools Help

Back Forward Stop Home Search Favorites

Address http://customerprofile/customerprofile/veh/fransect.asp?veh_own_event=50114180_32076800&vehNHU=JTHB1466272071246&customer_id=42323

Customer

Mrs. ESTE LEVITEN

8 Wood Ave
Albany, NY 11507-1612

clayco@eastonline.net

(P) 516-248-8098
(B) 718-570-3943

Vehicle Information

VIN: JTHB1466272071246
Year: 2007
Make: Lexus
Model: ES350
Dealer: Lexus Of Westport (60004)

[Print Summary](#) [View History](#) [Equipment](#) [Vehicle Details](#) [Characteristics](#) [Customer List](#) [New Search](#)

List of Owners

Owner	Purchase Date	Disposal Date
Mrs. ESTE LEVITEN	01/02/2007	N/A

Vehicle Ownership Information

Gen Ownership Info	Assoc. Parties
DOQP: 01/02/2007 Orig. Selling Div.: Lexus Of Westport (60004) Fleet: No Purchase Mileage: 10 Selling Dealer: Lexus Of Westport (60004)	Primary Owner: Mrs. ESTE LEVITEN

Customer Profile Application 06/01/06

Done Local intranet



Via Overnight Mail
April 12, 2007

To: Dealer Principal / Service Manager
Subject: 2007 Lexus ES 350 All Weather Floor Mats

As part of our constant efforts to provide our customers with the best in customer satisfaction and vehicle quality, Lexus will be informing them of a product usage caution regarding the placement of more than one floor mat in the driver's seating position of ES 350 vehicles.

In recent months, the National Highway Traffic Safety Administration (NHTSA) has received consumer concerns regarding the Lexus All Weather Floor Mat (floor mat constructed from heavy duty rubber) slipping forward and interfering with the movement of the accelerator pedal. It was possible in these cases that the Lexus All Weather Floor Mat was placed on top of the Carpeted Floor Mat, and therefore the All Weather Floor Mat was not properly secured to the floor by the two plastic retention hooks protruding from the vehicle floor. ***The ES 350 driver's seating position is designed to accommodate only one floor mat.***

Customer Mailing

In order to address this possible condition, Lexus has decided to contact certain 2007 ES 350 customers via First Class Mail to remind them of the following product usage cautions regarding the placement of more than one floor mat in the driver's seating position of their ES 350 vehicle. Additionally, a caution label will be enclosed with the notification letter for installation on the Lexus All Weather Floor Mat if the customer has purchased this accessory. The letter will request the following of the customer:

- Never use more than one floor mat at a time in the driver's seating position.
- Confirm the floor mat is properly placed on the vehicle carpet. If the floor mat slips and interferes with the movement of the pedals during driving, it may cause an accident.
- Confirm the driver's floor mat is secured using the hooks provided on the floor. (*Reference the attachment enclosed with the owner letter or Owner's Manual for a diagram*)
- Install the enclosed Caution Label on the back of the All Weather Floor Mat. If the customer does not own Lexus All Weather Floor Mats (or any other rubberized floor mats), they will be asked to insert the Caution Label in the Owner's Manual for possible future use.

The customer notification will advise these owners on the procedure to check and confirm the proper placement of Lexus All Weather Floor Mats in their vehicle. However, some owners may feel more comfortable having their dealership check and confirm proper placement for them. In these limited cases, your dealership should check and confirm proper placement of the mats and install the caution label for the customer.

What Should Dealership Associates Do?

The customer notification will advise these owners on the procedure to check and confirm the proper placement of Lexus All Weather Floor Mats in their vehicle. However, some owners may feel more comfortable having your dealership check and confirm proper placement for them. **In these limited cases**, your dealership should check and confirm proper placement of the mats and install the caution label for the customer. A copy of the customer notification letter is enclosed for your reference.

Warranty Reimbursement

To expedite the processing of claims Lexus will be taking advantage of the Customer Support Program claim processing system. Please file any claims using the 'SC' claim type. A reimbursement operation code to be used for vehicle inspection and label installation *when specifically requested by a customer who owns a genuine Lexus All Weather Floor Mat* will be provided later this month. Please refrain from filing any claims until *late April, 2007*.

Operation Code	Description	Flat Rate Time
TBD	Assist the customer with confirming proper All Weather Floor Mat placement and installing the Caution Label onto the Lexus All Weather Floor Mat	0.2 Hr./Veh.

Note: This is a labor only operation. Lexus Warranty will not reimburse dealers for any other expense.

Please review this notification with your staff to assure that all relevant personnel have been briefed regarding this subject.

Thank you for your cooperation.

Lexus
A Division of Toyota Motor Sales, U.S.A., Inc.

Enclosure

Cc: Customer Satisfaction Manager
General Manager
Parts Manager



Via Overnight Mail
April 11, 2007

To: Area General Managers
From: Nancy Fein - Vice President Lexus Customer Services
Subject: 2007 Lexus ES 350 All Weather Floor Mats

As part of our constant efforts to provide our customers with the best in customer satisfaction and vehicle quality, Lexus will be informing them of a product usage caution regarding the placement of more than one floor mat in the driver's seating position of ES 350 vehicles.

In recent months, the National Highway Traffic Safety Administration (NHTSA) has received consumer concerns regarding the Lexus All Weather Floor Mat (floor mat constructed from heavy duty rubber) slipping forward and interfering with the movement of the accelerator pedal. It was possible in these cases that the Lexus All Weather Floor Mat was placed on top of the Carpeted Floor Mat, and therefore the All Weather Floor Mat was not properly secured to the floor by the two plastic retention hooks protruding from the vehicle floor. ***The ES 350 driver's seating position is designed to accommodate only one floor mat.***

In order to address this possible condition, Lexus has decided to contact certain 2007 ES 350 customers via First Class Mail to remind them of the following product usage cautions regarding the placement of more than one floor mat in the driver's seating position of their ES 350 vehicle. Additionally, a caution label will be enclosed with the notification letter for installation on the Lexus All Weather Floor Mat if the customer has purchased this accessory. The letter will request the following of the customer:

- Never use more than one floor mat at a time in the driver's seating position.
- Confirm the floor mat is properly placed on the vehicle carpet. If the floor mat slips and interferes with the movement of the pedals during driving, it may cause an accident.
- Confirm the driver's floor mat is secured using the hooks provided on the floor. (*Reference the attachment enclosed with the owner letter or Owner's Manual for a diagram*)
- Install the enclosed Caution Label on the back of the All Weather Floor Mat. If the customer does not own Lexus All Weather Floor Mats (or any other rubberized floor mats), they will be asked to insert the Caution Label in the Owner's Manual for possible future use.

The customer notification will advise these owners on the procedure to check and confirm the proper placement of Lexus All Weather Floor Mats in their vehicle. However, some owners may feel more comfortable having their dealership check and confirm proper placement for them. In these limited cases, your dealerships should check and confirm proper placement of the mats and install the caution label for the customer.

Dealer notifications will be sent via Next Day UPS service to the attention of the service manager on Thursday, April 12. Owner notifications will be begin in late April, 2007.

A copy of the customer notification letter, the dealer notification and a Lexus Q&A is enclosed for your reference.

Warranty Reimbursement

To expedite the processing of claims Lexus will be taking advantage of the Customer Support Program claim processing system. Dealers should file any claims using the 'SC' claim type. A reimbursement operation code to be used for vehicle inspection and label installation *when specifically requested by a customer* will be provided later this month. Dealers should refrain from filing any claims until *late April, 2007*.

Operation Code	Description	Flat Rate Time
TBD	Assist the customer with confirming proper mat placement and installing the Caution Label onto the Lexus All Weather Floor Mat	0.2 Hr./Veh.

Note: This is a labor only operation. Lexus Warranty will not reimburse dealers for any other expense.

Please review this notification with your staff to assure that all relevant personnel have been briefed regarding this subject.

Thank you for your cooperation.

Enclosures

cc: Area Assistant General Managers
Area Customer Satisfaction Managers
Area Customer Service Operations Managers
Area Training Managers
District Service and Parts Managers
District Technical Managers
Field Technical Specialists

J. Alfonso	R. Daly	M. Kaminski	D. Pettitt
E. Bastien	A. DeCarr	J. Lang	R. Pflughaupt
J. Beseda	T. Devany	J. Lentz	K. Rigberg
R. Broughman	R. Dufresne	J. Marcotti	G. Rush
J. Colon	D. Esmond	E. Matsuda	G. Soga
G. Bryan	N. Fein	I. Miller	E. Taira
W. Burns	F. Fontanella	T. Minyon	K. Yamamoto
A. Cabito	Y. Funo	G. Morino	D. Zellers
D. Camden	J. Hanson	T. Nagashino	
B. Carter	J. Hollis	D. Ogilvie	
J. Chernus	D. Illingworth	K. Ohara	

CUSTOMER #:8259503
CARSBYTEL
CARSBYTEL
42-06 27TH STREET
LONG IS CITY, NY 11101-4122
HOME:
BUS:

91885

WORKORDER

PAGE 1



LEXUS OF WESTPORT
1317 Post Road East
WESTPORT, CT. 06880

COLOR	YEAR	MAKE/MODEL	SERVICE ADVISOR: 566 SAVONGDY, VILAVONG			
ALMOND	07	LEXUS ES350	VIN	LICENSE	MILEAGE IN/OUT	TAG
DEL DATE	PROD DATE	WARR EXP	PROMISED	PO NO	RATE	PAYMENT
30DEC2006						14/
R.O. OPENED	READY	OPTIONS: STK:271157 DLR:60604 ENG:3.5 Liter DOHC		VAR	CASH	INV. DATE
05JAN2007 08:15						

VEHICLE SERVICE HISTORY

RO#	S/A	MILEAGE	OP CODE	TECH	TYPE	DESCRIPTION
					CLSD DIE	
					INCC	NEW CAR CLEAN 1.5

STRAIGHT TIME (HRS)	PLAT RATE PRICE	R.O. NO. 91885	TIME	PO# 85350
1	15	12071246		ON 7mm

EXCLUSION OF WARRANTIES

Any warranties on the parts and accessories sold hereby are made by the manufacturer. The undersigned purchaser understands and agrees that dealer makes no warranties of any kind, express or implied, and disclaims all warranties, including warranties of merchantability or fitness for a particular purpose, with regard to the parts and/or accessories purchased; and that in no event shall dealer be liable for incidental or consequential damages or commercial losses arising out of such purchase. The undersigned purchaser further agrees that the warranties excluded by dealer, include, but are not limited to any warranties that such parts and/or accessories are of merchantable quality or that they will enable any vehicle or any of its systems to perform with reasonable safety, efficiency, or comfort.

AUTHORIZATION FOR REPAIRS

I hereby authorize the repair work herein set forth to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in vehicle in case of fire, theft or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I hereby grant you and/or your employees permission to operate the vehicle herein described on streets, highways or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is acknowledged on above vehicle to secure the amount of repairs thereto. The dealership is

PRELIMINARY ESTIMATE \$

AUTHORIZED BY X

REVISED ESTIMATE (1)	DATE	TIME	BY
REVISED ESTIMATE (2)			
REVISED ESTIMATE (3)			

I HEREBY ACKNOWLEDGE THAT I WAS NOTIFIED & GAVE ORAL APPROVAL OF THE ABOVE REVISED ESTIMATES

X

CUSTOMER SIGNATURE

8259503

91885

CARSBYTEL
CARSBYTEL
42-06 27TH STREET
LONG IS CITY, NY 11101-4122
HOME: EUS:

ACCOUNTING

LEXUS OF WESTPORT
1317 POST
WESTPORT, CT 06890

PAGE 1

SERVICE ADVISOR: 566 VILAVONG SAVONGDY

COLOR	YEAR	MAKE/MODEL	VIN	LICENSE	MILEAGE IN / OUT	TAG
ALMOND	07	LEXUS ES350	JTHBJ46G272071246		14/14	
DEL DATE	PROD DATE	WARR EXP	PROMISED	PO NO	RATE	PAYMENT
30DEC2006						
R.O. OPENED	READY	OPTIONS:	STK:271157	DLR:60604	ENG:3.5 Liter DOHC	
08:15 05JAN07	08:20 05JAN07					05JAN2007
LINE OPCODE	TECH TYPE	A/HRS	S/HRS	COST	SALE	COMP
A NEW CAR CLEAN 1.5						
N NEW CAR CLEAN 1.5						
775 ENCC	1.50	1.00	1800	7500	75.00	75.00

THANK YOU FOR CHOOSING LEXUS OF WESTPORT

YOU MAY RECEIVE A SURVEY FROM LEXUS USA
PLEASE TAKE THE TIME TO COMPLETE THE SURVEY
IT IS VERY IMPORTANT TO US THAT YOU WOULD
DEFINITELY RECOMMEND OUR SERVICE TO A FRIEND!

ACCOUNT	SALE	COST	CONTROL	ACCOUNT	SALE	COST	CONTROL
431	7500	1800		2320	7500	*****	

COST, SALE, & COMP TOTALS 1800 7500 0

I BEHALF OF SERVICING DEALER, I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREON IS ACCURATE UNLESS OTHERWISE INDICATED. SERVICES DESCRIBED WERE PERFORMED AT NO CHARGE TO CUSTOMER UNLESS THERE WAS NO INDICATION FROM THE APPEARANCE OF THE VEHICLE OR OTHERWISE THAT ANY PART REPAIRED OR REPLACED WAS DEFECTIVE OR OTHERWISE CONNECTED IN ANY WAY WITH ANY ACCIDENT, NEGLIGENCE OR MISUSE. RECORDS SUPPORTING THIS INFORMATION ARE AVAILABLE FOR (1) YEARS FROM THE DATE OF PAYMENT AND (2) YEARS FROM THE DATE OF SERVICE. CUSTOMER INSPECTION BY AN UNAFFILIATED REPRESENTATIVE.

SIG: _____ (DATE) _____
DEALER, GENERAL MANAGER OR AUTHORIZED PERSON

STATEMENT OF DISCLAIMER
The factory warranty constitutes all of the warranties with respect to the sale of the item/items. The Seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

CUSTOMER SIGNATURE _____

DESCRIPTION	TOTALS
LABOR AMOUNT	0.00
PARTS AMOUNT	0.00
GAS, OIL, LUBE	0.00
SUBLET AMOUNT	0.00
MISC. CHARGES	0.00
TOTAL CHARGES	0.00
LESS INSURANCE	0.00
SALES TAX	0.00
PLEASE PAY THIS AMOUNT	0.00

CUSTOMER #:

90409

WORKORDER

LEXUS OF WESTPORT
1317 Post Road East
WESTPORT, CT. 06880

HOME:

BUS:

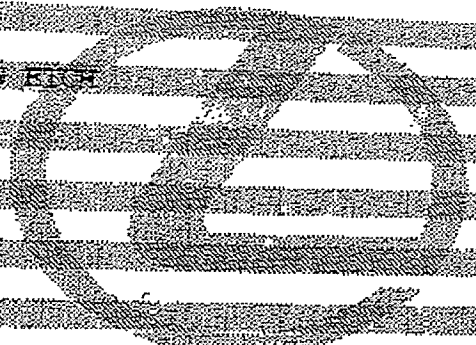
PAGE 1

SERVICE ADVISOR: 915 DEVLIN, JODY

COLOR	YEAR	MAKE/MODEL	VIN	LICENSE	MILEAGE IN/OUT	TAG
	07	LEXUS ES350	JTHBJ46G272071246		1/14	
DEL DATE	PROD DATE	WARRANTY	PROMISED	PO NO	RATE	PAYMENT
R.O. OPENED	READY	OPTIONS: STK:271157 DLR:60604 ENG:3.5 Liter DOHC		VAR	CASH	INV. DATE
14DEC2006 16:12						

VEHICLE SERVICE HISTORY

RO#	S/A	MILEAGE	OP CODE	TRCN	TYPE	DESCRIPTION
# A	PDI				WPDI	PRE-DELIVERY SERVICE FOR USA INS



EXCLUSION OF WARRANTIES

Any warranties on the parts and accessories sold hereby are made by the manufacturer. The undersigned purchaser understands and agrees that dealer makes no warranties of any kind, express or implied, and disclaims all warranties, including warranties of merchantability or fitness for a particular purpose, with regard to the parts and/or accessories purchased; and that in no event shall dealer be liable for incidental or consequential damages or commercial losses arising out of such purchase. The undersigned purchaser further agrees that the warranties excluded by dealer, include, but are not limited to any warranties that such parts and/or accessories are of merchantable quality or that they will enable any vehicle or any of its systems to perform with reasonable safety, efficiency, or comfort.

AUTHORIZATION FOR REPAIRS

I hereby authorize the repair work herein set forth to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in vehicle in case of fire, theft or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I hereby grant you and/or your employees permission to operate the vehicle herein described on streets, highways or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto. The dealership is not responsible for damages from freezing due to lack of antifreeze.

PRELIMINARY ESTIMATE 0

AUTHORIZED BY X

REVISED ESTIMATE (1)	DATE	TIME	BY
REVISED ESTIMATE (2)			
REVISED ESTIMATE (3)			

I HEREBY ACKNOWLEDGE THAT I WAS NOTIFIED & GAVE ORAL APPROVAL OF THE ABOVE REVISED ESTIMATES:

X _____

SERVICE COPY

90409

ACCOUNTING

LEXUS OF WESTPORT

1317 Post Road East
WESTPORT, CT. 06880

HOME:

BUS:

PAGE 1

SERVICE ADVISOR: 915 JODY DEVLIN

COLOR	YEAR	MAKE/MODEL	VIN	LICENSE	MILEAGE IN / OUT	TAG
ALMOND	07	LEXUS ES350	JTTHEJ46G272071246			
DEL. DATE	PROD. DATE	WARR. EXP.	PROMISED	PO NO.	RATE	PAYMENT
						1/14
R.O. OPENED	READY	OPTIONS:	STK: ^	DLR: 60E04	ENG: 3.3	Liter DOHC
16:12 14DEC06	09:23 18DEC06					18DEC2005

LINE	OPCODE	TECH	TYPE	A/HRS	S/HRS	COST	SALE	COMP	LIST	NET	TOTAL
A											
PRE-DELIVERY SERVICE FOR USA INS											
CAUSE: PDI											
PDI PRE-DELIVERY SERVICE FOR USA INS											
				290	WPDI	2.00	2.00	3000	20000		
				FC:	PART#:	COUNT:				200.00	200.00
				CLAIM	TYPE:	PD					
				AUTH	CODE:						
B				VIN	ETCH			3000	20000		
				V	VIN	ETCH					
				290	INC	0.30	0.30	450	3000		

THANK YOU FOR CHOOSING LEXUS OF WESTPORT

 YOU MAY RECEIVE A SURVEY FROM LEXUS USA
 PLEASE TAKE THE TIME TO COMPLETE THE SURVEY
 IT IS VERY IMPORTANT TO US THAT YOU WOULD
 DEFINITELY RECOMMEND OUR SERVICE TO A FRIEND

CCOUNT	SALE	COST	CONTROL	ACCOUNT	SALE	COST	CONTROL
440	20000	3000	71246	4430	3000	450	
210	20000	*****	71246	2320	3000	*****	

COST, SALE, & COMP TOTALS 3450 23000 0

ON BEHALF OF SERVICING DEALER, I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREON IS ACCURATE UNLESS OTHERWISE INDICATED. SERVICES DESCRIBED WERE PERFORMED AT NO CHARGE TO OWNER. THERE WAS NO INDICATION FROM THE APPEARANCE OF THE VEHICLE OR OTHERWISE, THAT ANY PART REPAIRED OR REPLACED UNDER THIS CLAIM HAD BEEN CONNECTED IN ANY WAY WITH ANY ACCIDENT, NEGLIGENCE OR MISUSE. RECORDS SUPPORTING THIS CLAIM ARE AVAILABLE FOR (1) YEAR FROM THE DATE OF PAYMENT NOTIFICATION AT THE SERVICING DEALER FOR INSPECTION BY MANUFACTURER'S REPRESENTATIVE.

STATEMENT OF DISCLAIMER
 The factory warranty conditions all of the warranties with respect to the sale of this equipment. The Seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assures nor authorizes any other person to assume for it any liability in connection with the sale of this item.

DESCRIPTION	TOTALS
LABOR AMOUNT	0.00
PARTS AMOUNT	0.00
GAS, OIL, LUBE	0.00
SUCLT AMOUNT	0.00
M.S.C. CHARGES	0.00
TOTAL CHARGES	0.00
LESS INSURANCE	0.00
SALES TAX	0.00
PLEASE PAY THIS AMOUNT	0.00

(SIGNED) DEALER, GENERAL MANAGER OR AUTHORIZED PERSON (DATE)

CUSTOMER SIGNATURE

SERVICE FILE COPY

DEC-29-2006 13 From:

To: 93366299

LEXUS, A DIVISION OF
TOYOTA MOTORS SALES USA
19001 S. WESTERN AVE.
TORRANCE CALIF. USA

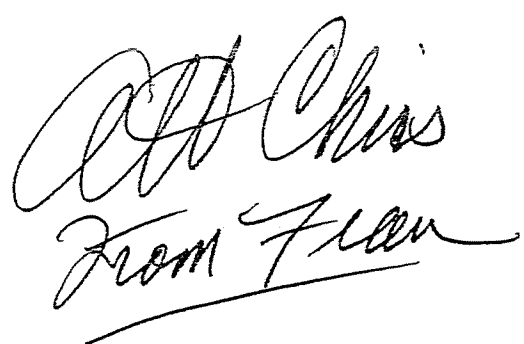


MEMORANDUM INVOICE
INVOICE NO: 6644096
INVOICE DATE: 12/12/2006
PORT/PLANT: NEWARK
DEALER CODE: 60604

PAID FOR BY:
JPMORGAN CHASE BANK
P.O. BOX 4911
SYRACUSE, NY 13221

SOLD TO:
ESTREE, INC.
DBA LEXUS OF WESTPORT
1317 POST ROAD EAST
WESTPORT, CT 06880

271157

MODEL	DESCRIPTION	YEAR	SERIAL NO.	C/C	ENGINE NO.	MSRP
9000A	ES350 4-DR SEDAN	2007	JTHB48G272071246	1	2GRA111812	
COLOR EXT/INT						
4T1 GOLDEN ALMOND METALL / LA05 IVORY LEA						
FACTORY INSTALLED EQUIPMENT						
BE - REAR SEAT SIDE AIRBAGS						250.00
FS - FULL SIZE SPARE						205.00
HL - HID HEADLAMPS WITH AFS						815.00
NV - NAVIGATION SYSTEM PACKAGE						2,550.00
PA - INTUITIVE PARKING ASSIST						500.00
PT - PREMIUM PLUS PACKAGE						2,490.00
WU - WOOD & LEATHER STEERING WHEEL						330.00
LM - TRUNK MAT						69.00
WL - WHEEL LOCKS						69.00
GN - CARGO NET						59.00
BASE VEHICLE PRICE >						33,170.00
<p style="text-align: center;">  DEC 15 2006 DEC 14 2006 </p>						
<p>* DUE TO THE EXTENSIVE LIST OF STANDARD EQUIPMENT FOR THIS SERIES, PLEASE REFER TO THE LEXUS PRODUCT STANDARD EQUIPMENT ADDENDUM FOR THIS SERIES. * THIS INVOICE DOES NOT REFLECT THE DEALER'S ULTIMATE VEHICLE COST IN VIEW OF \$ 663.00 RESERVE AND \$ 331.00 WHOLESALE FINANCE RESERVE WHICH ARE RETURNED TO DEALER AND ANY REBATE, ALLOWANCE AND INCENTIVE, WHICH ARE PAID TO THE DEALER.</p>						
TOTAL F.I.E. >						7,427.00
TOTAL MODEL AND F.I.E. >						40,597.00
OTHER CHARGES >						
DELIVERY, PROCESSING AND HANDLING FEE >						715.00
SUB TOTAL >						41,312.00
LDA >						
TOTAL INVOICE >						41,312.00

TITLE AND OWNERSHIP PASSES TO DEALER UPON PAYMENT OF SAID GOODS AND ALL RISK OF LOSS OR DAMAGE PASSES TO DEALER UPON DELIVERY OF GOODS TO DEALER.



ESTREE, INC.

dba LEXUS OF WESTPORT

37405

NEW CAR SHOWROOM
1317 Post Road East
WESTPORT, CT. 06880
(203) 255-1531

PAINT & SERVICE CENTER
80 Old Kings Hwy. Cut-Off
FAIRFIELD, CT. 06430
(203) 579-4555

PRE-OWNED SHOWROOM
187 Old Kings Hwy. Cut-Off
FAIRFIELD, CT. 06430
(203) 336-6292

RETAIL PURCHASE ORDER FOR MOTOR VEHICLE

Date 12/29/06 Stock No. 271157
Salesperson Fleet
Home Phone 7 Business Phone

Purchaser's Name CarsBuyTel Home Phone

Address 42-06 27th St. LIC NY City NY State NY Zip 11011

NEW RENTAL VEHICLE
 USED DEMONSTRATOR

Ident. No. JTHBJ46G-272071246 (YEAR & MAKE) (MODEL) (TYPE) (COLOR) (TRIM)
S.S. NO. Delivered On Or About

FILL OUT THIS SECTION IF USED CAR OR TRUCK IS TO BE TRADED IN AS PART PAYMENT AND DO NOT WARRANT THE TITLE THERETO TO BE FREE AND CLEAR EXCEPT FOR THE UNPAID BALANCE AS SHOWN AND TO THE BEST OF MY KNOWLEDGE. I, THE UNDERSIGNED, STATE THAT THE MILEAGE AS SHOWN ON THE ODOMETER IS THE ACTUAL MILEAGE WHICH THE CAR HAS DRIVEN.

MILEAGE new
Make & Year Used Cyl. Body Type Color Title No.

Balance Owed \$ Net Allowance \$
To Whom Owed

The appraisal on the trade-in vehicle described above expires 15 days from the date of this order

NO INSURANCE IS INCLUDED IN THIS ORDER

OTHER CHARGES: Enter My Order for insurance as follows:
CREDIT INSURANCE AGREEMENT: The purchase of Accident & Health & Credit Life Insurance is voluntary and not required for credit.

Credit Life Accident & Health \$

BUYER'S SIGNATURE Cash
My Ins. Co. is
My Ins. Pol. No. is

"AS IS" THIS VEHICLE IS SOLD "AS IS". THIS MEANS THAT YOU WILL LOSE YOUR IMPLIED WARRANTIES. YOU WILL HAVE TO PAY FOR ANY REPAIRS NEEDED AFTER SALE. IF WE HAVE MADE ANY PROMISES TO YOU, THE LAW SAYS, WE MUST KEEP THEM, EVEN IF WE SELL "AS IS". TO PROTECT YOURSELF, ASK US TO PUT ALL PROMISES INTO WRITING.

LIEN
Payment Schedule, will be to THE DEALER CONVEYANCE FEE IS NOT PAYABLE TO THE STATE OF CT.
NUMBER OF PAYMENTS AMOUNT OF EACH PAYMENT WHEN PAYMENTS ARE DUE
MONTHLY BEGINNING
DUE ON
1 FINAL \$

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. A.P.R. %
FINANCE CHARGE The dollar amount the credit will cost you. \$
Amount Financed The amount of credit provided to you or on your behalf. \$

Total of Payments The amount you will have paid after you have made all the payments as scheduled. \$
Total Sale Price The total cost of your purchase on credit, including your down-payment of \$ is \$

DRIVER'S LIC. NO.

THE MILEAGE AS SHOWN ON THE ODOMETER OF THE MOTOR VEHICLE TO BE PURCHASE IS:

CASH PRICE AT SELLER'S PLACE OF BUSINESS: 36,825.00
V.I.N. Etc. Service (Optional) \$197.50
 YES NO (INIT.)

Factory Installed Options

Iris Leviton
12 Ocean Ave
Bay Shore, NY
11706
631-583-7886

TOTAL PRICE OF VEHICLE

Less Trade-In

TOTAL AMOUNT

Dealer Conveyance Fee * 3399.00

TOTAL TAXABLE AMOUNT

Sales Tax

Luxury Tax

Registration / Title Fee

NET PAY-OFF ON TRADE-IN

TOTAL 36825

Deposit (Minimum Required 10%) NO REFUND ON DEPOSIT

BALANCE IN CASH OR CERTIFIED CHECK DUE ON DELIVERY

UNPAID BALANCE AMOUNT FINANCED

BRING WITH YOU AT TIME OF DELIVERY:
 TITLE ON CAR TRADED C.O.D. ON VEHICLE
 CURRENT REGISTRATION IN THE AMOUNT OF \$
 INSURANCE CARD \$
 FINAL PAYMENT CASH OR CERTIFIED CHECK

I have read the terms and conditions on the back hereof and agree to them as a part of this order the same as if they were printed above my signature. The front and back hereof comprise the entire agreement affecting this order and no other agreement or understanding of any nature concerning same has been made or entered into. I hereby acknowledge receipt of a copy of this order, and certify that I am of legal age.

Purchaser's Signature: [Signature] Date 12/29/06

Accepted By: [Signature] ESTREE, Inc. dba LEXUS OF WESTPORT (Dealer)

Authorized Signature: [Signature] (Name and Title) Date

THIS ORDER IS NOT BINDING UNTIL SIGNED AND ACCEPTED BY DEALER



NEW CAR SHOWROOM
1317 Post Road East
WESTPORT, CT. 06880
(203) 255-1531

PARTS & SERVICE CENTER
80 Old Kings Hwy. Cut-Off
FAIRFIELD, CT. 06824
(203) 579-4555

ESTREE, Inc.
dba **LEXUS OF WESTPORT**
PRE-OWNED SHOWROOM
187 Old Kings Hwy. Cut-Off
FAIRFIELD, CT. 06824
(203) 336-6292

SOLD TO **CARSDYTEL**
42-06 27TH STREET
ADDRESS **LONG IS CITY NY 11101-4122**
DEAL-NO# **45342**

MILEAGE **15**

YEAR	MAKE	MODEL	NEW, USED DEMO	VEHICLE IDENT. OR SERIAL NO.
2007	LEXUS	ES350	NEW	JTHBJ466272071246
SALESMAN HOUSE			COLOR ALMON	

PD off 1/5/07

THE DEALER CONVEYANCE FEE IS NOT PAYABLE TO THE STATE OF CT.

CREDIT LIFE **N/A**
DISABILITY **N/A**

**LEXUS FACTORY WARRANTY IS 4 YEARS/50,000 MILES
POWERTRAIN WARRANTY 6 YEARS/70,000 MILES**

Reynolds and Reynolds

JTM-131-CUST. 04/2000 (REV)

DATE		INVOICE NO.		STOCK NO.	
12/30/2006		39421		271157	
DESCRIPTION		COST	ACCT NO.	SALE	KEY
ES350 AFTERSALES			41107	36825.00	-
SALES TAX				3140	-
LUXURY TAX				3150	-
SERVICE CONTRACT				470	-
LICENSE AND TITLE				3030	-
DEALER CONVEYANCE FEE				8040	-
ANNUAL PERCENTAGE RATE		TOTAL CASH PRICE		36825.00	-
INSURANCE-VENDORS SINGLE INTEREST		% FINANCE CHARGE			-
INSURANCE-ACCIDENT & HEALTH		TOTAL TIME PRICE		36825.00	-
INSURANCE-CREDIT LIFE		DEPOSIT (NO REFUND OF DEPOSIT)		2110	+
TOTAL TIME PRICE		CASH ON DELIVERY		2110	+
DEPOSIT (NO REFUND OF DEPOSIT)		FACTORY REBATES		2241	+
CASH ON DELIVERY		USED CAR ALLOWANCE PAYMENTS			-
FACTORY REBATES		MONTHS			-
USED CAR ALLOWANCE PAYMENTS		DOLLARS			-
MONTHS		PER MONTH			-
DOLLARS		TOTAL			-
PER MONTH		PAY OFF BAL. OWING FINANCE CO.		3010	-
TOTAL		VSI		2471	-
PAY OFF BAL. OWING FINANCE CO.		FINANCE CONTRACT		2030	+
VSI		FINANCE INCOME		6280	-
FINANCE CONTRACT		FIN. CO RECEIVABLE		227	+
FINANCE INCOME		STOCK NO'S		2400	+
FIN. CO RECEIVABLE				2100	-
STOCK NO'S					-

by Reynolds and Reynolds

TOY-RQ-05E-00001906



TOYOTA MOTOR SALES, U. S. A., INC.
 190TH STREET REGION
 TOYOTA NATIONAL PRC
 19001 S. WESTERN AVENUE
 TORRANCE, CA 90509
 (310) 468-4074

INVOICE

DATE: 12/07/07

REMIT TO:

TOYOTA MOTOR SALES, U. S. A.
 P. O. BOX 96207
 CHICAGO, IL 60693 ATTN: ACCTS RECV

SHIP TO:

WILL CALL
 LEGAL X64775
 ATTN: SHARON BAKER
 TORRANCE CA 90509

Leviten
 SOLD TO:

TOYOTA MOTOR SALES, U. S. A.
 % SHARON BAKER, HQ-11
 19001 S. WESTERN AVENUE
 TORRANCE CA 90509

INVOICE NUMBER 61-21-10-939283		SHIP REFERENCE AC165546	ACCOUNT NUMBER 000154229-00	PAGE 1
DEALER 83605	PAY METHOD CHARGE	INVOICE DATE 12/07/07	CARRIER	FREIGHT COLLECT

LINE	ORD. REF. / PART NO.	DESCRIPTION	ADV	GLA		QUANTITY		UNIT PRICE	EXTENDED	
				A	C	ORDER	B/O			SHIPPED
	AC0340SB 00206-00801	CLIP, CARPET		A	A	1	0	1	0.40	0.40
										0.40
										0.00
										0.00
										0.40
										TOTAL INV AMT DUE

 * T O Y O T A *
 * GENUINE PARTS *

SHIPPING LIST

PAGE 1 OF 1
 BATCH NO: 160-A5

DEALER NO: 83605 SHIP REF NO: AC165546

SOLD TO:
 83605
 TOYOTA MOTOR SALES, U.S.A.
 % SHARON BAKER, HQ-11
 19001 S. WESTERN AVENUE
 TORRANCE CA 90509

SHIP TO:
 83605
 WILL CALL
 LEGAL X64775
 ATTN: SHARON BAKER
 TORRANCE CA 90509

ORDER DATE: 12/06/07 SERVICE: 0.00
 PROCESSING DATE: 12/06/07 FREIGHT:
 SHIPPING PDC: LOS ANGELES
 SHIP VIA: NO CONSOL
 DEALER GROUP: 49
 FREIGHT CODE:
 CARRIER CODE:

SEQ NO	ORDERED PART NUMBER	QTY ORDER	QTY SHIP	QTY REFER	QTY B/O	DESCRIPTION	ORDER REF NO	ADVICE CODE(S)	UNIT PRICE	SERV CHG?
00078	00206-00801	1	1			CLIP, CARPET	AC0340SB		0.40	

PICKER: MERCHANDISE TOTAL 0.40
 SHIPPING WT: % SALES TAX
 NO. OF PACKAGES: SHIPMENT TOTAL
 DATE SHIPPED:

WILL CALL REC'D DEC 06 2007

2007

TOY-RQ-05E-00001908

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x

IRIS LEVITEN,

Plaintiff,

Index No.:
107681/07

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES,
USA, INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.
d/b/a THE AUTOMALL,

Defendants.

-----x

MICHAEL DOUKAS,

Plaintiff,

Index No.:
107681/07

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE, INC.
d/b/a LEXUS OF WESTPORT and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.

-----x

80 Pine Street
New York, New York

July 30, 2009
10:35 a.m.

EXAMINATION BEFORE TRIAL of Defendant,
Toyota Motor Sales, U.S.A., Inc., By: ROBERT
LANDIS, taken by the Plaintiff, Iris Leviten,
pursuant to Notice, held at the above-mentioned
time and place, before Loretta M. Bodtmann, a
Notary Public of the State of New York.

ORIGINAL

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A P P E A R A N C E S :

GAIR, GAIR, CONASON, STEIGMAN,
MACKAUF, BLOOM & RUBINOWITZ, ESQS.
Attorneys for Plaintiff in Action No. 1
Iris Leviten
80 Pine Street - 34th Floor
New York, New York 10005-1768
BY: HOWARD S. HERSHENHORN, ESQ.

KELNER and KELNER, ESQS.
Attorneys for Plaintiff in Action No. 2
Michael Doukas
140 Broadway - 37th Floor
New York, New York 10005
BY: TODD J. STRIER, ESQ.

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
Toyota Motor Sales, U.S.A., Inc.
10 Bank Street - Suite 1061
White Plains, New York 10606
BY: EDWARD GRAY, ESQ.
- and -
STEVEN R. KRAMER, ESQ.

AHMUTY, DEMERS & McMANUS, ESQS.
Attorneys for Defendant
Estree, Inc., d/b/a Lexus of Westport
123 William Street
New York, New York 10038
BY: PATRICK MURPHY, ESQ.

File No.: YCW0962N7JAE

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A P P E A R A N C E S :

CONNORS & CONNORS, ESQS.
Attorneys for Defendant
Iris Leviten
766 Castleton Avenue
Staten Island, New York 10310
BY: TIMOTHY O'DONOVAN, ESQ.
File No.: DGE 23865

ALSO PRESENT:

ALICIA T. McANDREWS, ESQ.
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19001 South Western Avenue
Torrance, California 90501

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2 221. UNIFORM RULES FOR THE
3 CONDUCT OF DEPOSITIONS

4 221.1 Objections at depositions.

5 (a) Objections in general.

6 No objections shall be made at a deposition
7 except those which, pursuant to subdivision (b),
8 (c) or (d) of Rule 3115 of the Civil Practice
9 Law and Rules, would be waived if not
10 interposed, and except in compliance with
11 subdivision (e) of such rules. All objections
12 made at a deposition shall be noted by the
13 officer before whom the deposition is taken, and
14 the answer shall be given and the deposition
15 shall proceed subject to the objections and to
16 the right of a person to apply for appropriate
17 relief pursuant to Article 31 of the CPLR.

18 (b) Speaking objections restricted.

19 Every objection raised during a deposition shall
20 be stated succinctly and framed so as not to
21 suggest an answer to the deponent and, at the
22 request of the questioning attorney, shall
23 include a clear statement as to any defect in
24 form or other basis of error or irregularity.
25 Except to the extent permitted by CPLR Rule 3115
or by this rule, during the course of the
examination, persons in attendance shall not
make statements or comments that interfere with
the questioning.

221.2 Refusal to answer when objection is made.

A deponent shall answer all questions at
a deposition, except (i) to preserve a privilege
or right of confidentiality, (ii) to enforce a
limitation set forth in an Order of the Court,
or (iii) when the question is plainly improper
and would, if answered, cause significant
prejudice to any person. An attorney shall not
direct a deponent not to answer except as
provided in CPLR Rule 3115 or this subdivision.
Any refusal to answer to direction not to answer
shall be accompanied by a succinct and clear
statement of the basis therefor. If the
deponent does not answer a question, the
examining party shall have the right to complete
the remainder of the deposition.

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221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent.

An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in Section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed before a clerk or a Judge of the Court.

IT IS FURTHER STIPULATED AND AGREED that the examination before trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections of the CPLR shall be controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED by and among the attorneys for the respective parties hereto that a copy of this examination shall be furnished without charge, to the attorneys representing the witness testifying herein.

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ROBERT LANDIS ,

having been first duly sworn, was

examined and testified as follows:

EXAMINATION BY

MR. HERSHENHORN:

Q. Please state your name and address
for the record.

A. Robert Landis. Toyota Motor Sales,
U.S.A., Inc., 19001 South Western Avenue,
Torrance, California 90501.

MR. GRAY: For the record, Toyota
is producing Mr. Landis today as a
designated witness for factual purposes.
He will have no opinions or offer any
opinions regarding the occurrence
itself. Thank you.

Q. Good morning, Mr. Landis.

As I already introduced myself, my
name is Howard Hershenhorn from the law firm of
Gair, Gair, Conason, Steigman, Mackauf, Bloom &
Rubinowitz, and I represent the plaintiff, Iris
Leviten, in a lawsuit she brought against Lexus
and various other defendants.

I'm going to ask you a series of

1 R. Landis
2 questions. If at any time I ask you a question
3 which for any reason you don't understand, tell
4 me you don't understand, and I will I rephrase
5 it as many times as required until you have a
6 perfect understanding of the question. If you
7 answer a question without asking me to explain
8 or repeat it, we will assume you understood.

9 Do you understand that
10 instruction?

11 A. Yes.

12 Q. I take it, sir, this is not the
13 first time you participated in a deposition like
14 this, is that correct?

15 A. That is correct.

16 Q. Let's start out by asking you by
17 whom are you currently employed?

18 A. Toyota Motor Sales, Inc., U.S.A.

19 Q. How long have you been employed by
20 Toyota Motors Sales, Inc.?

21 A. A little over eleven years.

22 Q. Can you tell me, sir, what is your
23 job with Toyota Motor Sales, Inc.?

24 A. I'm a technical analysis manager.

25 Q. What are the job duties of a

1 R. Landis

2 technical analysis manager?

3 A. They are varied, but basically I
4 used my engineering education and background to
5 analyze the end use performance of our
6 vehicles. In addition, I work to review
7 Technical Services Bulletins and publications, I
8 serve as liaison for the company if somebody has
9 any technical issues regarding our vehicles and
10 various other things, but those are my primary
11 duties.

12 Q. For how long have you been an
13 technical analysis manager for Toyota?

14 A. About six and a half years.

15 Q. Do any part of your job duties
16 concern themselves with the review of lawsuits,
17 pending lawsuits or any litigation?

18 A. I look at vehicles that are
19 involved in litigation.

20 Q. So the answer to that question
21 would be yes?

22 A. Yes.

23 Q. Can you tell me, of 100 percent of
24 the time that you spend as a technical analyst
25 for Toyota, how much of your time is spent on

1 R. Landis

2 litigation related activities versus other
3 activities?

4 A. Well, it really depends. Sometimes
5 very little time is spent on litigation
6 activities. Sometimes it could be 80 or 90
7 percent of what I'm doing that given day.

8 Q. Let's not take it by day. Let's
9 take it, for example, by year.

10 In a particular year, how much of
11 your time would be spent on litigation related
12 activities versus other activities?

13 A. I really couldn't answer that with
14 a lot of precision. Probably more than 50
15 percent.

16 Q. Could it be as high as 90 percent?

17 A. No.

18 Q. Would it be fair to say the amount
19 of time you spend on litigation versus your
20 other aspects of your job would be in the order
21 of 50 to 75 percent?

22 A. I'd really rather stick with more
23 than 50 percent because it actually changes.
24 Sometimes things happen and I work on something
25 like this past year a published paper that took

1 R. Landis

2 quite a bit of my time. So more than 50 percent
3 on average is related to litigation.

4 Q. How high in a given year in the
5 time you have been a technical analysis manager,
6 what is the highest it has ever been in a given
7 year, how much time you spent on litigation
8 versus other things?

9 A. Again I don't track what I do for
10 litigation versus other work, but maybe 80
11 percent.

12 Q. What year is that you were thinking
13 it was more than 80 percent?

14 A. In the very beginning, maybe six
15 years ago.

16 Q. As a result of your involvement in
17 litigation, can you tell me how many times you
18 testified at a deposition like the one you are
19 testifying at today?

20 A. Could you define "like."

21 Q. Just the way you ordinarily as a
22 engineer use the word "like"?

23 A. Well, with respect to just giving a
24 deposition, probably a dozen times.

25 Q. Can you tell me, sir, as part of

1 R. Landis

2 your job duties for Toyota have you ever also
3 testified at trial?

4 A. Yes, I have.

5 Q. How many times have you testified
6 at trial?

7 A. Twice.

8 Q. What did those cases involve, the
9 two cases, generally what were the engineering
10 issues?

11 A. One was a vehicle battery. One was
12 a transmission shift logic.

13 Q. Were there any claims in the
14 transmission shift latching case of an unwanted
15 acceleration?

16 A. It was transmission shift logic.

17 Q. I thought you said latching?

18 A. Logic. No, it did not relate to
19 anything related to unwarranted acceleration.

20 Q. Before you got to Toyota, what did
21 you do professionally?

22 A. Before, I am sorry, prior to
23 working for Toyota I worked for Nissen.

24 Q. For how many years did you work for
25 Nissen?

1 R. Landis

2 A. Approximately 10 years.

3 Q. What was your job in Nissen?

4 A. I held various job functions, all
5 of them related to quality.

6 Q. Did you hold any job functions
7 relating to litigation?

8 A. Not directly, no.

9 Q. Did you ever testify while an
10 employee of Nissen?

11 A. I did once.

12 Q. When you said not directly a moment
13 ago, what did you mean?

14 A. Well, my job functions related to
15 quality. Sometimes as a result of that, like in
16 one instance, there was an engine concern. It
17 became a warranty limit law matter and there
18 became a need to give a deposition. It wasn't
19 part of my job function, but I had
20 responsibility for the engine.

21 I also had responsibility at one
22 point for investigating vehicle fires. I was
23 investigating them from a quality perspective.
24 I never got involved in any testifying with
25 respect to that position. However, some of the

1 R. Landis

2 vehicles that I looked at would have been in
3 some sort of litigation.

4 Q. Can you tell me, sir, who is your
5 immediate supervisor currently at Toyota?

6 A. His name is Barry Hare, H-A-R-E.

7 Q. What is Mr. Hare's job?

8 A. Very similar to mine. He basically
9 does the same job function as I have. He also
10 has responsibility of managing myself and other
11 engineers.

12 Q. The other engineers that he
13 manages, are you grouped up to a particular
14 department?

15 A. Yes, we are.

16 Q. What department is that?

17 A. The technical analysis group.

18 Q. How many engineers are in that
19 group?

20 A. Counting Barry, five.

21 Q. Would it be fair to say, sir, for
22 every case that is brought against Lexus or
23 Toyota or any division of Toyota that involved
24 product liability litigation, one of the
25 engineers in the technical analysis group is

1 R. Landis

2 typically involved in the case?

3 A. That would be fair to say.

4 Q. Can you tell me, sir, prior to
5 working for Nissen, what did you do?

6 A. I was an engineer for a company
7 called Electromotive Incorporated.

8 Q. Where are they located or where
9 were they located?

10 A. They were located in El Segundo,
11 California.

12 Q. For how long did you work for
13 them?

14 A. Two years.

15 Q. What was your job with them?

16 A. I was an engineer.

17 Q. What did you do prior to that job?

18 A. I was in school.

19 Q. Can you tell me where you went to
20 school?

21 A. Cal. State University North Ridge,
22 which is in North Ridge, California.

23 Q. What degree did you obtain from
24 Cal. State North Ridge?

25 A. Bachelor's degree in Mechanical

1 R. Landis

2 Engineering.

3 Q. Is the Bachelor's degree in
4 Mechanical Engineering that you have obtained
5 from Cal State North Ridge the highest degree of
6 education you have?

7 A. The highest degree, yes.

8 Q. What other education do you have?

9 A. I took some postgraduate course
10 work, but I did not receive a graduate degree.

11 Q. Did you take the postgraduate
12 course you took toward a particular degree?

13 A. No.

14 Q. Can you tell me, sir, you alluded
15 earlier to the fact that you wrote a paper.
16 Have you published engineering papers other than
17 the one that you alluded to before?

18 A. No.

19 Q. What did you allude to before, what
20 type of paper was it that you published?

21 A. A paper through the Society of
22 Automotive Engineers.

23 Q. Can you tell me what the title of
24 that paper is?

25 A. The exact title I can't tell you.

1 R. Landis

2 It's a long title, but I can tell you the
3 substance of it. It is analyzing seat belt
4 markings on vehicles that have free tensioners
5 and force limiters.

6 Q. The paper that you authored through
7 the SAE, did you have any coauthors with that?

8 A. Yes.

9 Q. Were there multiple coauthors?

10 A. Myself and the rest of our group.

11 Q. What year was that paper
12 published?

13 A. Last year. Excuse me, I take that
14 back. It was this year.

15 Q. This year being 2009?

16 A. 2009, yes.

17 Q. By the way, were you one of the
18 people that looked at Ms. Leviten's car?

19 A. Yes.

20 Q. Did you look at her seat belt?

21 A. Yes.

22 Q. What did you conclude by looking at
23 her seat belt?

24 MR. GRAY: Objection to the form.

25 That is an opinion question. Don't

1 R. Landis

2 answer that.

3 A. I would take the advice of my
4 attorney.

5 Q. I am not asking your opinion.

6 Let me ask you this, sir: Did you
7 see on the seat belt on the D ring evidence of
8 seat belt use?

9 MR. GRAY: Objection to the form of
10 the question. You are asking for an
11 opinion. You don't have to answer that.

12 MR. HERSHENHORN: I'm asking him
13 his observations.

14 MR. GRAY: Objection. You are
15 asking conclusions and opinions.

16 Q. What did you observe on the D ring
17 of the seat belt?

18 A. In preparation for today in
19 reviewing my photographs, et cetera, I was
20 focused on the floor mat, which is what I am
21 here to discuss, I believe, and I didn't review
22 my photos with respect to the seat belt. If you
23 have a picture, I will be happy to comment on
24 it.

25 Q. As you sit here today, sir, do you

1 R. Landis

2 know whether or not you came to a conclusion one
3 way or the other as to whether she had been
4 wearing her seat belt?

5 MR. GRAY: Objection to the form
6 again. That is opinion.

7 Q. Did you come to a conclusion one
8 way or the other?

9 A. No, I did not.

10 Q. Did you perform an analysis to make
11 a determination as to whether or not she was
12 wearing a seat belt?

13 A. No, I did not.

14 Q. Would it be fair to say, sir, that
15 if you had wanted to conduct such an analysis
16 that you yourself feel equipped to be able to
17 conduct such analysis?

18 A. Yes, that's correct.

19 Q. How many times did you see
20 Ms. Leviten's car?

21 A. Twice.

22 Q. Other than the one paper that you
23 coauthored with the other five engineers or the
24 other engineers in the technical analysis
25 department at Toyota have you authored any other

1 R. Landis

2 publications?

3 A. No, I have not.

4 Q. Are you a member of any committees
5 associated with the Society of Automotive
6 Engineers?

7 A. Yes.

8 Q. What committees are you a member
9 of?

10 A. I'm a member of the fire committee,
11 seat belt committee, air bag committee and VSC
12 committee or vehicle stability control.

13 Q. Could you tell me, sir, about in a
14 given year how much of your time you put
15 collectively in committees?

16 A. I couldn't tell you that. I don't
17 track that.

18 Q. Do you have an estimate?

19 A. No. I don't even have an
20 estimate.

21 Q. Do each of those committees meet at
22 least once a year?

23 A. Yes.

24 Q. You attend each of the meetings
25 that each of committees have at least once a

1 R. Landis

2 year?

3 A. Try to. Sometime it's not
4 possible.

5 Q. Do each of those committees have a
6 chairperson?

7 A. Yes, they do.

8 Q. Are you the chairperson of any of
9 those committees?

10 A. No, I am not.

11 Q. Do you do any teaching in the field
12 of engineering?

13 A. It's a very broad question.
14 Outside of the company, if you were to consider,
15 say, an outside entity like a fire department or
16 somebody wanting to know how our vehicles work
17 and me being called upon to answer the
18 questions, that would be something I would do.
19 Inside the company I might teach our customer
20 relations department about how air bags
21 operate.

22 If your version is do I go to some
23 university and teach a course, no, I don't.

24 Q. Did you ever teach any type of a
25 class, some type course?

1 R. Landis

2 A. When, say, for example, I'm
3 training a customer relations group about how
4 air bags operate, it is as a classroom.

5 Q. So you do some teaching?

6 A. Yes.

7 Q. The teaching you do is confined to
8 Toyota?

9 MR. GRAY: I object to the form.

10 Q. Let me withdraw that question.

11 The teaching that you do that is a
12 classroom type course would be confined to your
13 job within the confines of Toyota?

14 A. Yes, that's correct.

15 Q. The teaching you do, I think you
16 explained a few moments ago, is it correct, if
17 an outside entity wanted to learn about a
18 product that you make and you were in agreement
19 that you would provide that information, you
20 might provide that information either over the
21 phone or in person or some other way but not
22 inside of a classroom?

23 A. That's correct.

24 Q. Sir, do you hold any patents?

25 A. No, I do not.

1 R. Landis

2 Q. Do you have a CV or a resume?

3 A. Not with me, no.

4 Q. Is there anything on your CV or
5 resume that we have not discussed in terms of
6 your background and qualifications?

7 A. Probably my affiliations with
8 societies we have not discussed. That's all
9 that comes to my mind.

10 Q. Other than SAE what other societies
11 are you affiliated with?

12 A. AAAM. That would be it. I think
13 my CV also lists the International Association
14 of Arson Investigators as well.

15 Q. In the two trials that you
16 testified in, did you offer engineering
17 opinions?

18 A. Yes, I did.

19 Q. In the depositions that you told me
20 you testified in about twelve of them, did you
21 offer engineering opinions?

22 MR. GRAY: Objection to form. Are
23 you asking if he presented as a designee
24 or expert witness?

25 MR. HERSHENHORN: Any way.

1 R. Landis

2 MR. GRAY: Do you understand what
3 you are being asked?

4 THE WITNESS: I do and I have.

5 DIR Q. Have you come to any opinions in
6 this particular case based upon your review of
7 the documentation and the two inspections that
8 you conducted?

9 MR. GRAY: I am going to object.
10 While you are indicating that may be a
11 factual question, he is not here to offer
12 opinions as an expert. He is not being
13 offered as an expert or as to that what
14 he concluded.

15 MR. HERSHENHORN: The question is a
16 factual question.

17 From the factual standpoint has he
18 come to or reached any opinions or
19 conclusions about this case? It is yes
20 or a no.

21 MR. GRAY: I understand the
22 distinction you are trying to make, but
23 he is not here as an expert witness to be
24 asked that question. While you may think
25 it is a factual question within the

1 R. Landis

2 context of a designee deposition, it is
3 not proper and I will tell him not to
4 answer.

5 MR. HERSHENHORN: Mark it for a
6 ruling.

7 Q. Can you tell me, have you written
8 any reports, e-mails or any documents regarding
9 this case?

10 A. Yes, I have.

11 DIR Q. What have you written?

12 MR. GRAY: Objection to the form of
13 the question. Privileged. You don't
14 have to answer privileged questions.

15 MR. HERSHENHORN: Are you directing
16 him not to answer?

17 MR. GRAY: Yes.

18 MR. HERSHENHORN: We will mark it
19 for a ruling.

20 For the record, I am asking the
21 witness what he wrote. I'm not asking
22 him in any manner, shape or form to tell
23 me what was contained in the document. I
24 want to know the types of things he
25 wrote.

1 R. Landis

2 MR. GRAY: The type of things that
3 would be generated by Mr. Landis, which
4 would be exchanged between counsel, would
5 be the type of documents that are
6 privileged. You are not even entitled to
7 know they are created. So the objection
8 stands.

9 Q. Sir, did you author with regard to
10 this case any documents which were not sent to
11 counsel?

12 A. No, I did not.

13 DIR Q. Can you tell me, sir, did you
14 author in this particular case any reports?

15 MR. GRAY: Objection.

16 MR. HERSHENHORN: We are allowed to
17 know whether he authored a report.

18 MR. GRAY: You are not.

19 MR. HERSHENHORN: Yes, we are.

20 MR. GRAY: I have a standing
21 objection. He is not telling you about
22 the documents he wrote which are
23 privileged documents.

24 MR. HERSHENHORN: I am not asking
25 to see documents. There is a not a

1 R. Landis

2 subtle distinction.

3 MR. GRAY: He told you he didn't
4 write any reports which were not directed
5 to counsel.

6 MR. HERSHENHORN: I'm just trying
7 to find out what reports he wrote. I
8 want to know if he wrote e-mails,
9 reports.

10 MR. GRAY: We will have to take it
11 up with a judge at some point.

12 MR. HERSHENHORN: That some point
13 would be today.

14 MR. GRAY: That would be fine.

15 MR. HERSHENHORN: Could you mark
16 that for a ruling so we know what we are
17 going to come back to.

18 Q. Sir, the documents that you wrote,
19 were they at the direction of your counsel?

20 A. Yes.

21 Q. By that I mean the documents that
22 you wrote that your counsel asked you to write?

23 A. Yes.

24 Q. So if the court looks at those
25 documents the court will see whatever it is you

1 R. Landis

2 wrote was based upon what counsel asked you to
3 do?

4 A. Yes.

5 DIR Q. Did any of the documents that you
6 wrote have within those documents any conclusion
7 or opinions?

8 MR. GRAY: Objection to the form.

9 You don't have to answer the question.

10 MR. HERSHENHORN: You do have to
11 answer the question. We will mark it for
12 a ruling.

13 Q. Did you take any photographs at
14 either of the inspections?

15 A. Yes.

16 Q. Do you have those photographs with
17 you today?

18 A. No, I do not. You have some
19 selective photos.

20 Q. How many photographs did you take?

21 A. Rough estimate, first inspection,
22 something shy of 200. Second inspection
23 something just shy of 300. That is a rough
24 estimate.

25 Q. Did you make any videos at either

1 R. Landis

2 of the inspections?

3 A. No, I did not.

4 Q. Can you tell me, sir, what
5 documents have you reviewed to prepare yourself
6 for your deposition today?

7 A. I have reviewed the installation
8 instructions for the carpeted flooring, PDI,
9 pre-delivery inspection instructions. I
10 reviewed the owner's manual for the particular
11 vehicle. Reviewed the deposition transcripts
12 that have taken place. Reviewed sales
13 information for Ms. Leviten's vehicle. I
14 reviewed my photographs with respect to the
15 floor mat. Reviewed the police report. I
16 reviewed the legal documents, basically what I
17 would consider the interrogatory responses, but
18 I guess they are the list of particulars.

19 MR. GRAY: Bill of particulars.

20 A. Bill of particulars, excuse me.
21 And there is probably some other items that
22 escape me at the moment.

23 Q. I would like you to think about it
24 for a moment --

25 A. Okay.

1 R. Landis

2 Q. -- and tell me what else you
3 reviewed and if you need to look through the
4 file, please do.

5 A. I also reviewed a website for the
6 manufacturer of the plastic film that was
7 installed on the driver's side. I also reviewed
8 the website of the manufacturer of the film that
9 was located on the driver's side carpeted floor
10 mat. I would say that's pretty inclusive.

11 Q. The stack of documents you have in
12 front of you, does this contain all of the
13 documents that you reviewed?

14 A. No. It does not contain all of the
15 documents I reviewed.

16 MR. GRAY: For the record, his
17 photographs have been produced previously
18 in discovery.

19 A. I am sorry. As you are going
20 through it, I am reminded. I also had taken
21 some photographs of exemplar vehicles, both at
22 dealerships and at port, and I reviewed those
23 photographs and some of those photographs are in
24 the file that you are looking at.

25 Q. When you were at the inspections of

1 R. Landis

2 the vehicles on those two separate occasions,
3 did you make notes?

4 A. No, I did not.

5 Q. Did you make notes concerning the
6 inspections after the inspections?

7 A. No, I did not.

8 Q. Are your notes basically the
9 photographs then?

10 A. That's correct.

11 Q. I want to start at the beginning
12 and sort of work our way through the process of
13 the installation of the driver's side floor mat
14 in a vehicle such as the vehicle that
15 Ms. Leviten was driving on the day of her
16 accident, which is the 2007 Lexus ES 350. So
17 throughout the deposition obviously when I say
18 "the vehicle" I am referring to her car that I
19 just identified.

20 What is the process from the
21 beginning to end, and by end I mean when the car
22 is given to the end user, the customer, for the
23 installation of the driver's side floor mat?

24 A. Starting at the very beginning,
25 making it simple and referring to the carpeted

1 R. Landis

2 driver's side floor mat.

3 Q. Let me just stop you for a second.

4 You are making that distinction why?

5 A. Because all Lexus vehicles
6 including this one come standard with carpeted
7 floor mats. We also offer accessory all-weather
8 floor mats, which, of course, being an
9 accessory, is not provided on all Lexus
10 vehicles, nor is it installed in the same
11 fashion on all Lexus vehicles.

12 Q. The all-weather floor mat is the
13 type of floor mat that you were referring to
14 which was the subject of the recall?

15 A. That's correct.

16 Q. Let's stick now with the carpeted
17 driver's side floor mat?

18 A. Basically what happens is --

19 Q. Sorry to interrupt. I just want to
20 ask you another question for the purposes of the
21 record.

22 Sticking with and discussing now
23 the carpeted driver's side floor mat for a 2007
24 Lexus ES 350 such as the one that was contained
25 in Iris Leviten's vehicle on the day of her

1 R. Landis

2 accident, can you tell us the process from the
3 beginning until the end as to how that floor mat
4 is installed in the car?

5 A. So Ms. Leviten's vehicle would have
6 arrived at the Port of Newark on a ship from
7 Japan. Upon arrival at the port, it would go
8 through a port processing facility where quality
9 checks would be made on the vehicle. They would
10 verify the operation of electrical devices,
11 et cetera.

12 At that time one of the employees
13 there would place in the trunk of the vehicle
14 certain options and in addition place in the
15 trunk a package that contains the four, in this
16 case four carpeted floor mats. Within that
17 package there is the four floor mats for the
18 main outboard seating positions.

19 In addition, there is a bag with
20 eight hooks in it and in that bag is
21 instructions. This is a copy of those
22 instructions that would have been in the bag
23 (indicating).

24 MR. HERSHENHORN: When you say
25 "this is a copy," for the record we will

1 R. Landis

2 mark the copy as Plaintiff's Exhibit 1 of
3 today's date.

4 Q. Would you continue now with your
5 answer?

6 A. The vehicle then would be taken
7 from the port via truck transport. I think you
8 are familiar with that. And the vehicle would
9 go to the selling dealership. The selling
10 dealership --

11 Q. Excuse me, sir. Did you identify
12 the selling dealership in this case?

13 A. You could identify it.

14 Q. Who is that?

15 A. It was Lexus of Westport,
16 Connecticut.

17 Q. What would happen after the vehicle
18 was taken by the transporter to Lexus of
19 Westport?

20 A. Well, it really depends on the
21 dealership and how the dealership operations
22 work. So I could give you a general discussion
23 of what would typically happen.

24 Q. From Toyota's point of view, what
25 typically would happen?

1 R. Landis

2 A. So while the vehicle is in the
3 dealership's position, they would prepare the
4 vehicle for sale. As part of that, at some
5 point they would install these carpeted floor
6 mats that Toyota Motor Sales, the company I work
7 for -- actually, let me take that back.

8 They would install the carpeted
9 floor mat at some point prior to selling the
10 vehicle typically.

11 Q. You stated a few moments ago that
12 the floor mats also come with eight hooks for
13 installation. Is it your understanding that the
14 dealer would install the floor mat and the hooks
15 or tell me what you understand with regard to
16 the hooks?

17 A. Yes. The dealer would install the
18 eight hooks. That is step number one in the
19 installation instructions. They actually call
20 it the retention clip. So step one, just
21 quoting, it says, "Install retention clip into
22 grommet hole provided in vehicle carpet." So
23 that was a yes.

24 Q. Have you yourself, sir, ever
25 touched or held any of these hooks?

1 R. Landis

2 A. Yes, I have.

3 Q. Did you do that in connection with
4 this case?

5 A. In connection with this case, but
6 also prior to this case I touched those hooks
7 before.

8 Q. How do you install those hooks?

9 A. You just push it into the hole in
10 the carpet.

11 Q. In order to know whether it's in
12 the hole, do you hear a click or feel a click or
13 something like that?

14 A. You hear a click, feel a click. It
15 is a very positive retention.

16 Q. What do you mean when you say it's
17 a very positive retention?

18 A. You have an item that has to
19 compress quite a bit to enter the grommet and
20 then right when it goes through the grommet it
21 expands. So it's a big snap, like snapping your
22 pants or something of that magnitude or you
23 could say one minute it's one way and the next
24 minute it's clipped in.

25 Q. Is there an engineering term of art

1 R. Landis

2 for that?

3 MR. GRAY: Snapping your pants?

4 A. There could be. I'm not familiar
5 with it.

6 Q. The hooks that you described for
7 the subject Lexus, how many hooks would there be
8 for each seating position?

9 A. Two.

10 Q. Those hooks are located in the
11 Leviten vehicle where?

12 A. Well, in the actual Leviten vehicle
13 where the hooks were located.

14 Q. For the Lexus ES 350 where are the
15 hooks installed?

16 A. They are installed at the four
17 outboard seating positions. As we pointed out,
18 there are two seating positions. They are
19 installed towards the rear edge of the carpeted
20 floor mats. That is close to the front cushion
21 of each of the seat cushions.

22 Q. If one has a floor mat in their
23 hand, there is a front to the floor mat and a
24 back to the floor mat, is that fair to say?

25 A. Yes, that is fair to say on this

1 R. Landis

2 vehicle.

3 Q. Would the hooks be installed toward
4 the rear of the floor mat?

5 A. Yes, that is correct.

6 Q. You inspected the Leviten vehicle
7 on two occasions, and on at least one occasion
8 would I be correct to say that you inspected the
9 hooks?

10 A. On one occasion I inspected the
11 hooks for the driver's position, yes.

12 Q. What did you find with respect to
13 the hooks in the driver's position in the
14 Leviten vehicle when you inspected it?

15 A. That they were firmly installed in
16 the carpet.

17 Q. Is there a term of art that you
18 understand to be tensile strength; do you
19 understand that term?

20 A. I understand tensile strength.

21 Q. Is there a particular tensile
22 strength that these hooks are required to
23 withstand?

24 A. I was not involved in the design or
25 development of these hooks, so I have no

1 R. Landis

2 knowledge with respect to that.

3 Q. Did you see with respect to either
4 of the hooks on the driver's front side any
5 indication that the hooks were bent in any
6 manner, shape or form?

7 A. I didn't see -- well, you are
8 referring to the hook itself being bent among
9 itself or bent as a result of the deformation of
10 the sheetmetal causing the hook to be in an
11 orientation different than how it was originally
12 installed?

13 Q. The former.

14 A. The plastic hook itself did not
15 appear to have any distortion to it. I did not
16 remove the hooks and carefully examine them.
17 There was a great deal of restraint placed upon
18 that second inspection with respect to what I
19 could do and what I couldn't do.

20 Q. When you looked at the hooks at the
21 inspection, did you take photographs?

22 A. Yes.

23 Q. When you looked at the hooks, sir,
24 did you look to see whether or not there was any
25 transposition at all between the hook and any

1 R. Landis

2 carpeted surface?

3 MR. GRAY: I am just going to
4 object because I don't know what
5 transposition means.

6 A. Actually I was going to ask you if
7 you could rephrase that.

8 Q. Sure. Did you see any carpet or
9 any fiber or anything else that led you in your
10 mind to conclude that there was any transference
11 from the mat to the hook?

12 MR. GRAY: I object to the form of
13 the question to the extent you are asking
14 for a conclusion, but he can certainly
15 tell you what his physical observations
16 are.

17 A. Without going into any opinion
18 here, just speaking to the facts, what I did
19 notice, and it is easier to look at a
20 photograph, there is the inboard hook
21 (indicating). That would be the driver's side
22 seating position hook that is closest to what we
23 referred to as the transmission tunnel.

24 In it's present state and not being
25 able to remove it or do much to get close to it,

1 R. Landis

2 I was not able to inspect it very well, just to
3 photograph from a distance.

4 The one that is closer to the door,
5 which would be what I consider the outboard one,
6 does have marking circumstantially around the
7 hook itself. This is the hook that engages,
8 would engage a carpeted floor mat. That mark is
9 not there on a new hook.

10 Similarly, if we look at the
11 grommets in the carpeted floor mat, the inboard
12 grommet or the grommet closest to the
13 transmission tunnel in the carpeted floor mat
14 has a lot of debris which may or may not be able
15 to be separated from it, but again we took care
16 to not move much there. Bruise didn't want
17 anything really touched.

18 However, the grommet that is
19 closest, the outboard grommet closest to the
20 door of the vehicle also has radial or, I guess,
21 maybe radial isn't the correct term, has
22 demarcation on it that I haven't found when
23 looking at an exemplar floor mat that has not
24 been in the vehicle.

25 Q. So back to my question:

1 R. Landis

2 Did you see any, when you examined
3 the hooks, did you see any evidence that there
4 was any carpet fiber or anything else that would
5 have transposed itself from the mat to the
6 hook?

7 MR. GRAY: Objection to the form.

8 Q. Other than what you now told me?

9 MR. GRAY: Objection to the form of
10 the question to the extent it calls for
11 an opinion. The important thing is
12 whether you saw any fiber.

13 A. I did not see any fiber, but I also
14 was not able to examine the hooks that closely.
15 To do something like that we would want to
16 remove the hooks from the vehicle, and that
17 wasn't a viable option based on what I was being
18 told at the time of the inspection.

19 Q. Have you ever examined hooks for
20 any Toyota vehicle that had held in place a mat
21 to see what the hooks looked like after a crash?

22 A. Certainly in this matter I did and
23 I have looked at other hooks similarly, yes.

24 Q. In what context have you looked at
25 other hooks?

1 R. Landis

2 A. In other matters involving floor
3 mat allegations.

4 Q. Can you tell me specifically which
5 other mats you looked at hooks?

6 A. I couldn't tell you off the top of
7 my head.

8 Q. Can you tell me off the top of your
9 head any of the other matters in which you
10 looked at hooks?

11 A. There is one that involves an
12 ES 350 that has a rubber floor mat, an
13 all-weather floor mat that I looked at the
14 hooks. That is the one that is coming to mind.

15 Q. Have you looked at hooks in any
16 other Toyota or Lexus ES 350 which did not
17 involve an all-weather floor mat?

18 A. No, I have not.

19 Q. Do you know about generally
20 speaking the requirements for manufacturers to
21 crash test their vehicles?

22 A. Yes.

23 Q. When a manufacturer conducts crash
24 testing, do they sometimes conduct frontal crash
25 testing or frontal offset crash testing?

1 R. Landis

2 A. Yes.

3 Q. When they conduct such testing are
4 the mats in the vehicle?

5 A. I'm not sure.

6 Q. Have you ever seen a hook that was
7 in any Toyota vehicle which had been crash
8 tested?

9 A. No.

10 Q. You told us about the process or at
11 least part of the process concerning how the
12 mats get into the car, and you told us that the
13 mats were put in the trunk and sent to the
14 dealership.

15 When the mats are put onto the hook
16 as you previously described, can you tell me
17 what that process is?

18 A. Basically it's the two-step process
19 described in the instructions which were marked
20 as Exhibit 1, which is to install the hook into
21 the carpet that is in the car and then hook the
22 carpeted floor mat onto the hooks.

23 Q. What is the process of hooking the
24 carpet onto the hooks?

25 A. You line the hole up in the carpet

1 R. Landis

2 with the hook, maneuver the grommet that is in
3 the carpet, this is the carpeted floor mat now,
4 maneuver the grommet that is in the carpeted
5 floor mat over the tip of the hook and onto the
6 hook.

7 Q. Can you tell me, sir, what about
8 the hook, if anything, keeps the carpet in
9 place?

10 A. Keeps the carpeted floor mat in
11 place?

12 Q. Correct.

13 A. Basically the hook latches the
14 carpeted floor mat to the carpet in the
15 vehicle.

16 Q. What is there about the design of
17 the hook that keeps the carpeted floor mat
18 attached to it so that when a driver is in there
19 moving their feet around the carpet does not
20 likewise move?

21 A. I am not the designer of this
22 actual hook, nor was TMS the designer of this
23 hook. However, just as an engineer looking at
24 this hook, you've got a hook that one side is
25 positively fastened to the carpet in the vehicle

1 R. Landis

2 and then you're placing the carpet over the hook
3 which will retain the carpeted floor mat in that
4 position over the carpet. And this is also
5 working in conjunction with the nubs that are on
6 the back of the carpet, the floor mat.

7 Q. What is a nub?

8 A. The nub is these projections.
9 There is close to 2,000 of them on the back of
10 the carpeted floor mat that interlock with the
11 weave of the carpet, referring to the carpet
12 that is in the car.

13 MR. HERSHENHORN: For the record,
14 Exhibit 1 has been marked with a yellow
15 sticker. The witness himself also wrote
16 Plaintiff's 1.

17 MR. GRAY: I did.

18 MR. HERSHENHORN: One of the
19 attorneys wrote it. So the document has
20 two separate exhibit markings.

21 (Plaintiff's Exhibit 1, instruction
22 sheet, marked for identification, as of
23 this date.)

24 Q. Let's go back and identify Exhibit
25 1. What was that a part of?

1 R. Landis

2 A. This is the instructions that come
3 with every set of Lexus floor mats. It comes in
4 a bag folded up inside a bag with the retention
5 clips or hooks.

6 Q. Is it your testimony, sir, that the
7 exhibit that we have marked today Plaintiff's
8 Exhibit 1, that that document in the custom and
9 practice of Toyota would be sent with each and
10 every set of floor mats such as the floor mats
11 that were sent with the Leviten vehicle?

12 A. Yes, that's correct.

13 Q. Is it your testimony, sir, that
14 Plaintiff's Exhibit 1 would therefore be sent
15 along with the floor mat and the hooks to each
16 of the dealers, is that correct?

17 A. Yes, that's correct. It would be
18 since the floor mats are provided in the trunk
19 of the vehicle and the vehicle is provided to
20 the dealer, yes.

21 Q. What form does this exhibit take
22 when it's not here in a lawyer's conference
23 room, in other words, is it one piece of paper?
24 Do you have the original with you? Can you show
25 it to us?

1 R. Landis

2 A. I can. One moment.

3 There would be a bag of clips.
4 Folded up inside this bag of clips, this being
5 the original (indicating).

6 MR. HERSHENHORN: Let's mark for
7 the record a bag which contains the
8 original that the witness just referred
9 to of the photograph of Plaintiff's
10 Exhibit 1 and it should be eight clips.

11 THE WITNESS: I need to
12 double-check that. Here is the last
13 clip.

14 (Plaintiff's Exhibit 2, plastic bag
15 containing eight clips and instruction
16 sheet, marked for identification, as of
17 this date.)

18 Q. Sir, we have been talking about the
19 bag with the clips and the instruction, and we
20 marked that bag and clips with the instruction
21 sheet as Plaintiff's Exhibit 2.

22 MR. GRAY: I would like to
23 substitute a copy for the original
24 instruction.

25 MR. HERSHENHORN: Sorry?

1 R. Landis

2 MR. GRAY: I would like to
3 substitute a copy for the original
4 instruction.

5 THE WITNESS: If possible. That
6 original instruction is not easy to come
7 by.

8 Q. When you say the original
9 instruction is not easy to come by, what do you
10 mean?

11 A. Well, that was specific for this
12 vehicle at this time frame. And the
13 instructions have changed since that time frame
14 such that it's hard to come by something in this
15 exact time frame.

16 Q. How have the instructions changed
17 from the 2007 time frame?

18 A. After -- during the 2007 model
19 year, the all-weather floor mat as we briefly
20 discussed was recalled and there became a
21 caution on that that talks about making sure
22 that you do not stack the all-weather floor mat
23 on top of the carpeted floor mat.

24 Q. Did the instruction change in any
25 other way other than what you just told me?

1 R. Landis

2 A. No, just to add the caution. The
3 cautions were more extensive than what I
4 mentioned, but the cautions were a result of
5 what took place with the all-weather floor mat.

6 Q. If I went to the dealership, to the
7 parts department and I asked them for a set of
8 mats and hooks, I want to know from you what
9 would be different about the instructions. You
10 mentioned that there were cautions on the new
11 instructions that are relative to the recall.
12 My question is:

13 Are their cautions on the new
14 instructions that deal generically with the
15 floor mat installation aside from the issue of
16 the all-weather floor mat?

17 A. As I sit here, without having one
18 with the caution, it might be more generic than
19 I described. I am not certain. The
20 instructions for installing the floor mat though
21 have not changed at all with regard to the two
22 steps.

23 Q. What do you remember it being or
24 may be that was more generic?

25 A. Well, as a result of the

1 R. Landis
2 all-weather floor mat recall, we have taken
3 steps to make sure that people understand that
4 you shouldn't stack floor mats, and as a result
5 of that we point out that you shouldn't stack
6 the floor mat. You need to make sure that the
7 floor mat is the singular floor mat in the
8 vehicle and it is properly placed and properly
9 retained by the hooks.

10 So the properly placed and properly
11 retained by the hooks could apply to any floor
12 mat that happens to be in the vehicle, but I am
13 not sure how it was worded.

14 Q. Did you have something to do with
15 the language that was added?

16 A. No, I did not.

17 Q. Do you have any understanding as to
18 whether or not the intent of the language was to
19 be broader than to just deal with the
20 all-weather floor mats?

21 A. No, I am not. No, I'm not sure
22 what the intent of the language was.

23 Q. Was the language that was used part
24 of some document that you are aware of?

25 A. The language that was used may be

1 R. Landis
2 similar to a Technical Services Bulletin that we
3 also provided to the dealers at the time of the
4 recall, but without having that language that is
5 on the installation instructions and having the
6 Technical Services Bulletin handy I can't tell
7 you for certain.

8 Q. Sir, you also showed me a few
9 moments ago a photograph, and that was a
10 photograph of the hook, I think you identified
11 the hook in the photograph, you identified both
12 the inboard and outboard hooks.

13 You have a stack of photographs
14 here and there. The first two are stapled
15 together, and one can see the inboard hook and
16 the outboard hook. In the photograph, sir, that
17 is the outboard hook on the left for the viewer
18 and the inboard hook is on the right for the
19 viewer?

20 A. That is correct.

21 MR. HERSHENHORN: Let's mark these
22 two photographs as Plaintiff's Exhibit 3
23 and 3A.

24 (Plaintiff's Exhibits 3 and 3A, two
25 photographs, marked for identification,

1 R. Landis

2 as of this date.)

3 Q. Is there a reason these are stapled
4 together?

5 A. They were stapled together because
6 this group just points out witness marks that
7 are on the hooks and grommets. That is what
8 this stack represents.

9 MR. HERSHENHORN: Let's mark that
10 stack as Plaintiff's Exhibit 4, 4A, 4B,
11 4C and 4D.

12 (Plaintiff's Exhibits 4, 4A, 4B, 4C
13 and 4D, five photographs, marked for
14 identification, as of this date.)

15 MR. GRAY: Can we just take a short
16 break.

17 MR. HERSHENHORN: Absolutely.

18 (Recess taken.)

19 BY MR. HERSHENHORN:

20 Q. Sir, we were looking earlier at
21 Exhibits 4, 4A, 4B and 4D, and I think you used
22 the term "witness marks," and I think you said
23 there was some witness marks on the hooks we see
24 in Exhibit 4, is that correct?

25 A. Yes, there is some demarcation on

1 R. Landis

2 the hook.

3 Q. What does the word "demarcation"
4 mean?

5 A. Well, when I look at a new hook,
6 the surface of the hook has no marking on it.
7 It's just the texture of the hook. When I look
8 at this hook, there is some sort of
9 circumferential marking that I'm referring to as
10 demarcation.

11 Q. You say there is a circumferential
12 marking. Can we call that area the neck of the
13 hook or you tell me what you call it as an
14 engineer?

15 A. I would say it's -- we could say
16 the neck of the hook.

17 Q. I would rather use whatever term
18 you are comfortable with.

19 A. That is fine. I would rather just
20 take a pen and make a little rope pointing to
21 it.

22 Q. Well, I don't want you to write on
23 the photograph that you have there, but when you
24 observed what you call the demarcation, would it
25 be correct to say, sir, that there is not a

1 R. Landis

2 demarcation that is entirely circumferential?

3 A. The pictures that I selected here
4 don't show the entire circumference of the
5 hook. So without looking at the rest of my
6 pictures, I can't tell you for sure.

7 Q. But even looking at Exhibit 4,
8 isn't there a portion of the neck of the hook
9 that we see that does not have what you are
10 calling a demarcation?

11 A. No. There is a mark coming across
12 here, across here, across here (indicating). So
13 the entire maybe 150 degrees that I am seeing
14 some sort of marking.

15 Q. You don't see the interruption of
16 the mark?

17 A. I see that the mark changes, it's
18 changed but it's conscious.

19 Q. So back to my question. You do not
20 see what is an interruption of what you are
21 calling a demarcation on the neck of the hook?
22 That is a yes or no.

23 MR. GRAY: You don't have to answer
24 yes or no. You can explain that answer.

25 Q. Can you answer that question with a

1 R. Landis

2 yes or no?

3 A. It's a conscious mark. It changes
4 its thickness as it goes around.

5 MR. STRIER: May I ask one.

6 The grommet itself, what is the
7 grommet made of?

8 THE WITNESS: Metal.

9 Q. Did you take any photographs that
10 illustrate what you are calling a demarcation
11 other than 4 and 4A?

12 A. I took some additional
13 photographs. At the time of the inspection,
14 Bruce Gamberdella were not allowing me to remove
15 the hooks or move the hooks as such.

16 Q. Did you request that you wanted to
17 move the hooks?

18 A. Yes, I wanted to remove the hooks
19 in the floor mat, neither of which were allowed.

20 Q. Did you ever ask your attorneys to
21 ask for permission to do that?

22 MR. GRAY: Ask the court for
23 permission to do it?

24 A. No, no, but there was an open
25 discussion among the attorneys that were

1 R. Landis
2 present. So a portion of this hook is difficult
3 to see by virtue of that part of the hook is
4 pointing towards, say, the accelerator and brake
5 pedal. So it's very difficult for me to
6 photograph. Actually, it's very difficult for
7 me to photograph with the hook installed into
8 the carpet itself.

9 Q. Do you remember the question?

10 A. No. Do you?

11 Q. I know you said you have a flight
12 and you want to skip lunch and you would want to
13 get out of here. It would be helpful if you
14 answer my question.

15 Other than 4 and 4A, do you have
16 any other pictures?

17 A. Yes, I do have other pictures.

18 Q. Let me show you, sir, one of the
19 hooks from the bag of hooks, and let me just go
20 back for a second. Exhibit 2, the eight hooks
21 and the instruction, you kept the original
22 instruction because you say it's hard to get and
23 you substituted it with a photocopy of the
24 instruction.

25 For the record the original

1 R. Landis

2 instruction is the size of what you see on the
3 exhibit demarcated in black, is that correct?

4 A. Yes.

5 Q. Exhibit 2 with the instruction and
6 the hooks, the hooks that would have been in
7 that exhibit, were those also the same hooks or
8 the same type of hooks, substantially similar to
9 the ones that were in Ms. Leviten's vehicle?

10 A. I'm sorry?

11 Q. The hook that I am holding in my
12 hand which is part of Exhibit 2 is substantially
13 similar to the hook that was in Ms. Leviten's
14 vehicle?

15 A. Yes.

16 Q. The hook itself when you look at
17 it, does it have a line that goes from, I will
18 call it, the head of the hook down the neck and
19 through the body of the hook?

20 A. Yes, it does.

21 Q. In engineering parlance, what would
22 that line demarcate?

23 A. A mold line.

24 Q. What is a mold line?

25 A. This plastic part is fashioned

1 R. Landis

2 inside a mold made out of two pieces. And when
3 the plastic is ejected into it, when you remove
4 the two pieces, the die itself, you are left
5 with the line.

6 DIR Q. Would it be fair to say that is
7 basic engineering, the line would be the weakest
8 part of the hook?

9 MR. GRAY: Objection. That is an
10 opinion. You don't have to answer that.
11 Don't answer it.

12 THE WITNESS: Okay.

13 MR. HERSHENHORN: Mark it for a
14 ruling.

15 Q. Sir, did you see any evidence of
16 any interruption of the hook in terms of the
17 line that you just described?

18 A. Could you define interruption of
19 the line?

20 Q. Sure. When you looked at the hook,
21 did you see any separation of either part of the
22 hook?

23 A. No, I did not.

24 Q. Did you see any damage that did not
25 result in a separation but that resulted in even

1 R. Landis

2 a partial separation?

3 A. From what I was able to see, which
4 again there is a portion of the hook that I
5 cannot see.

6 Q. Everything is from what you were
7 able to see?

8 A. Okay. I did not see any partial
9 damage to the hook from what I was able to see.

10 Q. Would it be fair to say that from
11 what you were able to see the only thing that
12 looked unusual or out of the ordinary to you was
13 what you identified as the demarcation on the
14 neck of that hook as we see in Exhibit 4?

15 A. Yes, that's correct.

16 Q. Otherwise the hook was in the same
17 or substantially the same condition as an
18 original hook like the one that you are holding
19 in your hand and that is part of Exhibit 2,
20 correct?

21 A. From what I was able to see during
22 my inspection, that is correct.

23 Q. When you inspected the car, you saw
24 that the driver's side mat in Ms. Leviten's
25 vehicle was not affixed to the hooks, is that

1 R. Landis

2 correct?

3 MR. STRIER: Objection.

4 MR. GRAY: You can answer.

5 What was the condition you found
6 the mat in?

7 MR. HERSHENHORN: That is not the
8 question.

9 Q. When you saw Ms. Leviten's vehicle
10 at your inspection was the driver's side mat
11 affixed to the hooks?

12 A. The first time I saw the Leviten
13 vehicle, I wasn't allowed to go anywhere near
14 the hooks, so I have no idea at the first
15 inspection how the mat was attached or not
16 attached.

17 The second inspection when we did
18 have an opportunity to look more closely at the
19 vehicle, the driver's mat was not attached to
20 the hooks.

21 Q. Not only that, but the mats on the
22 rear were not attached to the hooks?

23 A. No. That is incorrect.

24 Q. The mats in the rear were all
25 attached?

1 R. Landis

2 A. The mats on the passenger side of
3 the vehicle were attached to both hooks and both
4 hooks were firmly affixed to the carpet. The
5 carpet on the driver's side rear, one of the
6 hooks was not affixed to anything and the carpet
7 or the carpeted floor mat and the other hook was
8 affixed just to the carpet in the vehicle, and
9 the carpeted floor mat on the driver's side rear
10 was out of its normal position.

11 Q. So let me go back to my question
12 that I asked you a few moments ago.

13 Would it be fair to say, sir, that
14 when you looked at the driver's side mats in
15 Ms. Leviten's vehicle at your second inspection
16 neither the front driver's side mat nor the rear
17 passenger mat on the driver's side, neither of
18 those mats were appropriately hooked to the
19 carpet?

20 MR. MURPHY: Objection.

21 MR. GRAY: You can answer.

22 A. On the driver's side, yes. That's
23 correct.

24 Q. Did you take any pictures of the
25 hooks on the driver's side in the rear of the

1 R. Landis

2 car?

3 A. Yes, I did.

4 Q. Do you have those?

5 A. Not with me, no.

6 Q. Did you notice any demarcations on
7 those hooks?

8 A. I don't recall.

9 Q. Do you have your original photos
10 with you?

11 A. No, I don't.

12 MR. HERSHENHORN: We are not going
13 to be able to get done with the
14 deposition today.

15 MR. GRAY: We got them all here.

16 MR. KRAMER: We gave them to you.

17 MR. HERSHENHORN: The photos you
18 sent me are not in any way
19 authenticated.

20 MR. GRAY: We will authenticate
21 them. Bring them out.

22 MR. HERSHENHORN: I will talk to
23 you about that at break, but I have a
24 disk of what you sent me, and that is
25 what I have.

1 R. Landis

2 MR. GRAY: Those are all
3 photographs.

4 MR. HERSHENHORN: I want to have
5 his original photographs that he took on
6 his disk, however he has them.

7 MR. GRAY: You have copies of his
8 original photographs.

9 MR. HERSHENHORN: I don't want to
10 argue with you about it. We will talk
11 about it maybe on a break.

12 Is that a yes or a tough guy no?

13 MR. GRAY: I can't stop you from
14 talking to me at a break. It is what it
15 is.

16 MR. HERSHENHORN: All right, we
17 don't have to talk about it at a break.

18 Q. Sir, as you sit here now, do you
19 remember seeing any demarcation on the rear
20 driver's side hooks?

21 A. No, I don't, but I don't remember
22 inspecting that rear driver's side hook or
23 demarcation either.

24 Q. The instructions that are sent that
25 we marked as Plaintiff's Exhibit 1 with the

1 R. Landis
2 vehicle, are those instructions supposed to be
3 followed by the dealer for not only the front
4 driver's side mat but also the rear mats
5 including the passenger mat on the driver's
6 side?

7 MR. MURPHY: Objection.

8 A. The instructions are for all mats
9 that are inside the vehicle.

10 Q. That would include the rear mats as
11 well, is that correct?

12 A. The rear mats that are inside the
13 vehicle, yes.

14 Q. Do you have any knowledge as to why
15 the mat in the driver's side rear was not
16 appropriately or properly affixed?

17 A. I don't know that it wasn't
18 properly affixed. This vehicle was in a very
19 severe accident. I didn't see this vehicle
20 immediately following the accident. So, no, I
21 do not know.

22 Q. Let me ask you a different
23 question, sir.

24 The condition that the mat was in,
25 the driver's side rear, at the time of your

1 R. Landis

2 inspection which you previously identified was
3 unfixed, do you know how it got that way?

4 A. No, I don't.

5 DIR Q. The driver's side mat that was in
6 the front of the vehicle not affixed, do you
7 know how it got that way?

8 MR. GRAY: Objection to the form of
9 the question. Also it is calling for an
10 expert opinion. So I direct you not to
11 answer.

12 A. I wouldn't answer.

13 DIR Q. Do you have an opinion on that
14 without telling me what it is?

15 MR. GRAY: Same objection.

16 MR. HERSHENHORN: You are directing
17 him not to answer?

18 MR. GRAY: I'm directing him not to
19 answer.

20 MR. HERSHENHORN: Just mark those
21 for a ruling please.

22 DIR Q. Do you know, sir, whether the
23 reasons why the front driver's side mat and the
24 rear driver's side mat, whether the reasons
25 neither were properly affixed at the time of

1 R. Landis
2 your inspection were the same, different,
3 something else?

4 MR. KRAMER: Objection.

5 MR. GRAY: Objection. Don't
6 answer.

7 A. I'm not answering you.

8 MR. HERSHENHORN: Just mark it for
9 a ruling.

10 Q. You started telling me that the
11 driver's side rear, the hooks on either side, if
12 I understood your testimony correctly, and
13 please tell me if I didn't, were not properly
14 affixed but for different reasons, is that
15 correct?

16 MR. GRAY: I object to the form. I
17 don't understand -- well --

18 A. I believe I understand it.

19 So on the driver's side rear there
20 should be two hooks that are inserted into the
21 grommets in the carpet. One hook was in the
22 carpet firmly, appeared to be firmly attached to
23 the carpet. The other hook was lying on the
24 floor in the back of the vehicle.

25 Q. Did everybody as far as you are

1 R. Landis

2 aware leave the other hook in that condition
3 lying on the floor?

4 A. As far as I know, I documented it
5 where I saw it.

6 Q. Was that the inboard hook or the
7 outboard hook that was lying on the floor?

8 A. I would have to refer to my
9 photographs. My belief was that it was the
10 indoor hook that was lying on the floor.

11 Q. Did the inboard hook appear to you
12 to have any damage?

13 A. I don't recall examining the hook
14 that closely.

15 Q. From your examination that you did
16 conduct, however close it was, did it appear to
17 you to have any damage?

18 A. All I could say is that the hook
19 was in one piece, but I didn't examine it more
20 closely than that.

21 Q. Would it be fair to say that the
22 hook that was just lying on the floor, that the
23 neck of the hook that you could see was not
24 distorted in any way?

25 A. I wouldn't say that it wasn't

1 R. Landis

2 distorted in any way. I would say it was not
3 broken. I did not examine it to check for
4 distortion.

5 Q. The body of the hook from the
6 examination that you were able to conduct was
7 not damaged in any way either, is that correct?

8 A. Again my examination revealed to me
9 it was still in one piece, but I didn't look at
10 it close enough to say it was damaged in any
11 way, to be honest.

12 Q. I just want to know what you saw
13 that time. You didn't see any damage whatever
14 to the hook, did you?

15 A. No, but I also didn't examine it
16 that closely.

17 Q. Fair enough, but from the
18 examination you did conduct you didn't notice?
19 Let me withdraw that.

20 Did you notice, I'm going to call
21 these, unless you have a better engineering
22 term, the bottom of the hook, did you notice any
23 damage to the feet?

24 A. I don't believe there was damage to
25 the feet.

1 R. Landis

2 Q. Maybe you could come up with a term
3 for these. What do you call these little sort
4 of sharp edges?

5 A. It's called nubs as well.

6 Q. Was there any damage to the nubs?

7 A. I did not look at the nubs.

8 Q. In the course of your experience at
9 both Nissen and Toyota, can you tell me
10 approximately how many vehicles you have
11 examined that were in accidents?

12 A. I can't come close to exactly, but
13 something greater than 100, something less than
14 250.

15 DIR Q. On any occasion, sir, that you have
16 examined any vehicle for either Nissen or
17 Toyota, did you ever see after a collision a
18 hook such as the one that was marked as
19 Plaintiff's Exhibit 2 lying on the back floor of
20 a car such as what you saw at your inspection in
21 this case?

22 MR. GRAY: Objection to the
23 question. It's irrelevant to the issues
24 in this litigation, gets into the area of
25 expert opinion and background. I direct

1 R. Landis

2 him not to answer.

3 MR. HERSHENHORN: That is just his
4 observations about that.

5 MR. GRAY: You are getting into --

6 MR. HERSHENHORN: That is not an
7 appropriate objection.

8 MR. GRAY: You are going into an
9 area of expert background and opinions.

10 MR. HERSHENHORN: Let's call the
11 judge.

12 MR. GRAY: Okay, I think this is a
13 good question to do it, okay.

14 (Discussion off the record.)

15 MR. HERSHENHORN: We had an
16 off-the-record conversation with Erin
17 Lloyd, Judge Karen Smith's law secretary,
18 and she has told us that the witness is
19 required to answer the question.

20 MR. GRAY: She did not say required
21 to answer the question. She said that
22 she was inclined that the question be
23 answered and she would get a ruling from
24 the judge, and we said don't get a ruling
25 from the judge, and we will allow him to

1 R. Landis

2 answer.

3 So you can answer.

4 BY MR. HERSHENHORN:

5 Q. My question is:

6 In any of the other 100 to 250
7 vehicles that you inspected on behalf of Nissen
8 and Toyota have you have seen a hook disengaged
9 from its proper hole as you witnessed at your
10 second inspection in this particular case?

11 A. This is with respect to the
12 driver's floor mat or --

13 Q. Let me ask you the question again.

14 You said earlier that when you
15 examined this vehicle there was a hook in the
16 rear that was just lying there in the rear, is
17 that correct?

18 A. Yes, that's correct.

19 Q. What I am trying to find out is if
20 in any of the between 100 and 250 other vehicles
21 that you ever inspected have you ever seen a
22 hook just lying in the rear as you did in this
23 particular case?

24 A. Well, with respect to Nissen, I
25 don't remember anything about the vehicles I

1 R. Landis

2 inspect, which is quite sometime ago.

3 With respect to the vehicles I have
4 inspected since working at Toyota, first I will
5 point out that only Lexus vehicles have hooks in
6 the back. Toyota vehicles do not. And the
7 number of vehicles that I have seen for Lexus is
8 a fairly small number of vehicles.

9 Of that group of vehicles, I can't
10 even think of one where I have looked to see
11 whether the rear hook is properly inserted or is
12 still inserted into the carpet. Much of the
13 time the vehicles I see have had a year or two
14 years of sitting in the salvage yard since I
15 have seen them or since the accident occurred
16 and I'm seeing them, and everything is a mess.
17 You know, there is various parts of the car that
18 I know are not in the position that they were
19 when the vehicle was first brought to the rest
20 point.

21 So I don't normally take notice of
22 whether or not a floor hook is still installed
23 in the back position or not.

24 MR. HERSHENHORN: I move to strike
25 as nonresponsive.

1 R. Landis

2 Q. I see. If you can answer this
3 question with a yes or no. If you can't, just
4 tell me that you can't okay.

5 In all of the time that you have
6 inspected cars, as you sit here today do you
7 remember ever seeing a hook that was disengaged
8 like the one that you saw in the rear driver's
9 side of the subject vehicle? Can you answer
10 that with a yes or no? Do you remember ever
11 seeing that?

12 A. No, I don't remember ever seeing
13 that.

14 Q. With regard to the inspection that
15 you had in this case, at the first inspection
16 you looked at the vehicle and did certain
17 photography, is that correct?

18 A. Yes, that's correct.

19 Q. Then at the second inspection am I
20 correct that there were certain things that were
21 moved around and you were able to do further
22 inspection, is that also correct?

23 A. That's correct.

24 Q. Did it appear to you, sir, that
25 there was anything changed in the condition of

1 R. Landis

2 the driver's side wheel from the first
3 inspection to the second inspection?

4 A. Without reviewing my photographs, I
5 can't tell you with certainty. I can tell you
6 that this vehicle had been sitting outside and
7 the amount of garbage that had been thrown into
8 it had increased between the first and second
9 inspection.

10 Q. Aside from the amount of garbage
11 that may have been put inside the vehicle, was
12 there anything that you can remember as you sit
13 here now that was different in the condition of
14 the driver's side wheel well between the first
15 inspection and the second inspection?

16 A. If you are referring to the floor
17 well, at the first inspection, I really couldn't
18 even get close to seeing it because there was
19 objections to me getting close to it or touching
20 or moving any of the things that would have
21 allowed me to be able to look closely at it, but
22 that said, I don't recall anything of substance
23 being different in what I was able to see during
24 the first inspection and the second inspection.

25 Q. Can you tell us, what were your

1 R. Landis

2 observations of the driver's side floor mat as
3 you saw it at the second inspection? First tell
4 me where it was located?

5 A. It was located on the floor, on the
6 driver's side seating position only.

7 Q. Was any part of the driver's side
8 floor mat at the time of your second inspection
9 covering any portion of the accelerator pedal?

10 A. Yes, it was.

11 Q. What portion of the accelerator
12 pedal was covered by the driver's side floor mat
13 when you inspected the vehicle for the second
14 time?

15 A. A portion of the pedal itself.

16 Q. Of 100 percent of the pedal, what
17 percentage of the pedal was covered by the
18 driver's side floor mat at the time of your
19 second inspection?

20 A. Let me refer to a photograph here
21 if I can.

22 Q. Sure.

23 A. I don't have the perfect picture to
24 answer this question. However, it appears that
25 100 percent of the pedal itself, pedal referring

1 R. Landis
2 to the portion that your foot contacts as
3 opposed to what the leg can, but the portion
4 that the foot contacts would have been covered.

5 MR. HERSHENHORN: You did have with
6 you in the stack of documents today a
7 photograph which we will mark as
8 Plaintiff's Exhibit 5.

9 (Plaintiff's Exhibit 5, photograph,
10 marked for identification, as of this
11 date.)

12 MR. HERSHENHORN: And another one
13 which we will mark as Exhibit 6.

14 (Plaintiff's Exhibit 6, photograph,
15 marked for identification, as of this
16 date.)

17 Q. By the way, sir, all of the
18 photographs that we have here today in front of
19 you that we looked at marked so far, these were
20 all photographs taken by you in the ordinary
21 course of your business, is that correct?

22 A. Yes, that's correct.

23 Q. You said a few moments ago that 100
24 percent of the accelerator pedal was covered
25 with the floor mat at the time of your second

1 R. Landis

2 inspection, is that correct?

3 A. Of the pedal, referring to the
4 portion that your foot contacts, yes.

5 Q. The portion that your foot contacts
6 would be the portion that is seen at least in
7 part in Plaintiff's Exhibit 6 where there is
8 also a hand that appears to be pulling the floor
9 mat away from the pedal, is that fair to say?

10 A. Yes.

11 Q. Whose hand is that?

12 A. That would be my hand.

13 Q. Yes, with the ring.

14 Was the mat on the driver's side
15 floor mat covering any portion of the brake
16 pedal when you saw it for the first time?

17 A. I don't believe so.

18 Q. By the way, do you know what the
19 weight of the mat is?

20 A. No, I don't.

21 Q. Can you tell me, sir, what the
22 composition of the mat is, in other words, what
23 it is made of and how do those pieces fit
24 together?

25 A. Just from my observation of it, I

1 R. Landis

2 don't have any involvement in the design of it,
3 there is a substrate of rubber with carpet on
4 top of it.

5 Q. Would you agree with me, sir, that
6 the position that we see of the driver's side
7 floor mat as we see it in Exhibit 6 was not the
8 intended position that Toyota would want that
9 floor mat to be in during the ordinary course of
10 driving of the vehicle?

11 MR. MURPHY: Objection.

12 A. The entire floor on the driver's
13 side is terribly deformed. So there is no
14 proper position at this point for that floor mat
15 to be positioned, to be properly positioned.

16 MR. HERSHENHORN: I move to strike
17 as not responsive.

18 Q. Sir, would you agree with me that
19 the floor mat is not supposed to be on top of
20 the accelerator pedal under ordinary
21 circumstances?

22 A. Yes, that is correct.

23 Q. The reason it is not supposed to be
24 on top of the accelerate pedal under ordinary
25 circumstances is it could lead to an unintended

1 R. Landis

2 opening of the accelerator and potentially an
3 accident, is that fair to say?

4 MR. MURPHY: Objection.

5 A. I don't know that to be the case.

6 Q. You don't know if a mat which
7 envelopes the accelerator pedal, that that could
8 lead to an accident?

9 MR. GRAY: That is not the question
10 asked.

11 MR. HERSHENHORN: I am asking the
12 question now. If it's not, then I adopt
13 my new one.

14 MR. GRAY: Adopt your new one then.

15 MR. HERSHENHORN: I just did.

16 A. I will say a possibility will exist
17 that if the floor mat is blocking the gas pedal
18 that it could cause some sort of issue.

19 Q. Why are you reluctant to say just
20 straight out that if the floor mat is on the top
21 of the accelerator that could cause an accident
22 and even injury, are you reluctant to say that?

23 MR. GRAY: Objection to the form.

24 Q. Do you have any reluctance, any
25 reluctance of saying if a driver's side floor

1 R. Landis

2 mat covered an accelerator pedal that it could
3 lead to a serious accident and injury, do you
4 have any reluctance to agreeing to that
5 statement?

6 MR. GRAY: Objection to the form.

7 A. If you take this floor mat and
8 cover the throttle pedal on this car, it is not
9 going to do anything. It is not going to
10 depress the throttle pedal. It's not going to
11 do anything. I guess if in some convoluted way
12 if it causes the driver some confusion, yes.

13 DIR Q. You know as an engineer that if you
14 have one pedal that is completely enveloped in
15 the mat such as an accelerator pedal that that
16 could lead to driver's confusion, correct?

17 MR. GRAY: Objection to the form.

18 This is an area of expert opinion. I
19 direct him not to answer.

20 Q. Sir, would you agree with me that
21 in having a driver's side floor mat which is
22 enveloping the accelerator pedal is an unsafe
23 condition?

24 A. Yes, I would agree with that.

25 Q. Why is it an unsafe condition?

1 R. Landis

2 A. Well, it could potentially lead to
3 some kind of pedal confusion.

4 Q. Would you also agree with me, sir,
5 that a floor mat which is not properly hooked
6 into the hooks which we have as part of Exhibit
7 2 and is allowed to move in the driver's side
8 foot well area also is a dangerous condition?

9 MR. MURPHY: Objection.

10 MR. GRAY: Objection.

11 A. That appears to be calling for an
12 expert opinion.

13 MR. GRAY: It is factual. Could it
14 lead to an unsafe condition?

15 THE WITNESS: Potentially, yes.

16 Q. Would it be fair to say, sir, that
17 one of the reasons why Lexus has the hooks in
18 the position that they have them in the ES 350
19 is to prevent the mats from moving?

20 A. The hooks are there to prevent the
21 mats from moving, that is correct.

22 Q. Why is it important to prevent the
23 mats from moving?

24 A. There is many reasons it is
25 important to keep the mats from moving.

1 R. Landis

2 Q. Tell me from the most serious
3 reason to the least serious reason, what your
4 answer is?

5 A. Well, I couldn't write them in
6 order, but the floor mat is there to protect the
7 carpet. That is why the person gets a floor
8 mat.

9 So obviously the floor mat needs to
10 be in position so it is protecting the carpet
11 underneath. The hooks are there as well as the
12 nubs on the back to keep the carpeted floor mat
13 over the carpeted section.

14 In addition, where people get in
15 and out of the vehicle there is potential for
16 that carpeted floor mat to move and cause people
17 to trip and fall. Those are the primary reasons
18 why the hooks are there. Potentially if this
19 carpeted floor mat were to move to interfere
20 with the pedals that could cause a safety
21 concern as well.

22 Q. So wouldn't you agree with me that
23 the most important reason, the number one most
24 important reason for the hooks is to keep the
25 mat in place so that it does not cause any

1 R. Landis

2 problems with the acceleration or the brakes of
3 the vehicles?

4 MR. MURPHY: Objection.

5 A. It's one of the reasons why.

6 Q. That is not my question. My
7 question is:

8 Isn't that the most important
9 reason?

10 MR. MURPHY: Objection.

11 MR. GRAY: Objection to the form,
12 argumentative. You don't have to answer
13 it in that fashion.

14 Q. What is more important than keeping
15 the mat in place so that the mat does not
16 interfere with the brake or the accelerator
17 pedal?

18 A. You are assuming that this mat will
19 interfere with the brake or accelerator pedal.
20 In my entire time at Toyota and Nissen, I have
21 never seen a carpeted floor mat interfere with
22 the brake or accelerator pedal. I have seen
23 them mispositioned. I have seen certain
24 carpets, but I have not seen the mat interfere
25 with the brake or accelerator pedal.

1 R. Landis

2 If it were to interfere with the
3 brake or accelerator pedal, that would be a
4 serious concern and would be more important than
5 the concerns with respect to keeping the floor
6 mat in position to keep the carpet clean.

7 Q. Sir, can you answer my question.

8 MR. GRAY: Objection.

9 DIR Q. Can you think of a more important
10 reason, whether or not you have seen the
11 condition or you haven't seen the condition, but
12 as an engineer who works for Toyota and has
13 inspected between his Nissen and Toyota career
14 between 100 and 250 vehicles and is reduced here
15 today to talk about the Leviten matter, can you
16 think of a more important reason why you would
17 want to keep the mat in place other than the
18 potential of interference between the mat and
19 either the brake or the accelerator pedal or
20 both?

21 MR. MURPHY: Objection, objection.

22 MR. GRAY: Objection, asked and
23 answered. To the extent it calls for an
24 expert opinion, I direct him not to
25 answer.

1 R. Landis

2 You can tell him to clarify his
3 position as to the hooks and --

4 A. The hooks are there to keep the mat
5 in position.

6 Q. Primarily they are there to keep
7 the mat in position so that the mat does not
8 interfere with either the accelerator or the
9 brake pedal, correct?

10 MR. MURPHY: Objection.

11 MR. GRAY: Objection,
12 argumentative.

13 A. Of course, safety is the greatest
14 concern. I am not certain what this mat can do
15 with regard to any problems related to safety.

16 MR. HERSHENHORN: I'm going to have
17 the answer read back, and tell me if you
18 want to stay with that answer on this
19 record.

20 (Record read.)

21 MR. HERSHENHORN: I am going to
22 withdraw my last question, and we will
23 let your answer stand.

24 THE WITNESS: Actually, I would
25 like to add to that answer.

1 R. Landis

2 MR. HERSHENHORN: When your
3 attorney has an opportunity to question
4 you, you can answer any questions that he
5 wants to ask you.

6 Can we mark this please.

7 (Plaintiff's Exhibit 7, NHTSA
8 Consumer Advisory, marked for
9 identification, as of this date.)

10 Q. Sir, do you recognize this
11 document?

12 A. I recognize parts of the language
13 in this document. I don't recognize this
14 document itself.

15 Q. What is a NHTSA, N-H-T-S-A,
16 Consumer Advisory?

17 A. You are asking me what this is?

18 Q. Yes. What is a NHTSA Consumer
19 Advisory?

20 A. Something they put out both on
21 their website and for newspapers to pick up to
22 inform customers of a concern, typically a
23 recall.

24 Q. Let's just back up for a second.
25 NHTSA is the National Highway Traffic Safety

1 R. Landis

2 Administration, is that correct?

3 A. That is correct.

4 Q. NHTSA is involved with the
5 manufacturers as far as you are aware on a
6 regular basis for various reasons, from crash
7 testing to recalls and lots of other things, is
8 that correct?

9 A. That's correct.

10 Q. Would it be also correct that when
11 there is a recall of a product that the
12 manufacturer and the government, the National
13 Highway Traffic Safety Administration,
14 collaborate on the recall, is that fair to say?

15 A. That's correct.

16 Q. What the government does is they
17 will sometimes issue a Consumer Advisory such as
18 Exhibit 7, is that correct?

19 A. That's correct.

20 Q. Take a moment and read the Consumer
21 Advisory and let me know when you are finished.

22 A. Okay. I've completed it.

23 MR. GRAY: One second. Let me look
24 at that.

25 Q. Would it be fair to say, sir, that

1 R. Landis
2 based upon the NHTSA Consumer Advisory that it
3 was at least Toyota's opinion and that of the
4 government that not only were the floor mats
5 that were part of the recall potential to
6 interfere with the driver's side accelerator and
7 brake pedal but both Toyota and the government
8 realized that it was possible in other models
9 even without the recalled floor mats that there
10 could be interference with the accelerator or
11 brake pedals in a wide range of vehicles,
12 including all vehicles made by Toyota and
13 Lexus? Is that a fair statement?

14 A. What they are saying here, if I may
15 say it in my own words.

16 Q. I am not asking you what they were
17 saying. You can say it in your own words, but
18 my question isn't what they are saying. I asked
19 you a different question. I didn't ask what
20 they were saying.

21 MR. GRAY: You can answer it in
22 that way. If you think he is fairly
23 reading it, tell him. If you think he is
24 reading it unfairly, tell him.

25 A. I believe that both Toyota and

1 R. Landis
2 NHTSA are taking the opportunity, the
3 opportunity about the all-weather floor mats
4 that can cause an issue in these vehicles or in
5 certain vehicles, to point out that a carpeted
6 floor mat can cause a problem in certain
7 vehicles. It hasn't grouped together all Toyota
8 models because you want to have all customers
9 aware of a potential.

10 This same document also points out,
11 of course, it states depending on vehicle design
12 it is possible for unsecured floor mats to
13 interfere with the accelerator or brake pedals
14 on a wide range of vehicles.

15 Q. In a wide range?

16 A. In a rare case. What they are
17 pointing out is some vehicles can have an issue,
18 whatever manufacturer.

19 With respect to the Toyota, it
20 would be foolish to say that maybe this vehicle
21 would have a problem with a floor mat, maybe
22 this vehicle wouldn't. Why would you want to do
23 that? You would want to know. We have said
24 that you should always make sure your floor mats
25 are secured.

1 R. Landis

2 I'm an engineer working for Toyota
3 sales. I'm not the engineer who supplied the
4 retainment system, who did the failure analysis,
5 who has done the testing to decide whether or
6 not the floor mat can interfere with the pedals
7 and cause some sort of issue.

8 Q. What testing have they done to know
9 whether the floor mat could cause some sort of
10 issue as you just said?

11 A. I am not familiar with the testing
12 that Toyota has done.

13 Q. You said they did other tests.
14 What testing?

15 A. What I said was I was not
16 responsible for the design.

17 Q. That is not what you said.

18 MR. GRAY: Objection to the form.

19 Q. In your last answer, and we can
20 read back the end portion, you said that Toyota
21 or the manufacturer did testing to determine
22 what could be involved with the floor mat?

23 MR. GRAY: Objection to the form.

24 Q. I'm trying to find out what testing
25 they did that you are referring to?

1 R. Landis

2 MR. GRAY: Feel free to state your
3 answer.

4 Q. Please free to state all of your
5 answers.

6 A. Again, Toyota Motor Corporation is
7 responsible for the design. They would do the
8 design, development, testing. That is what
9 their responsibility is. Toyota Sales is
10 responsible for sales of the vehicle.

11 What they did, I'm not familiar
12 with what they did. My point is I'm not
13 familiar with what was done. I am not familiar
14 with what events could occur with this floor
15 mat.

16 Q. Would it be fair to say as you sit
17 here today in your job capacity you don't know
18 one way or the other whether or not this floor
19 mat has ever been tested by Toyota or by Lexus
20 with regard to what it could cause in terms of a
21 collision if the mat was unhooked, is that fair
22 to say?

23 MR. GRAY: Objection to the form of
24 the question. You used Toyota as the
25 umbrella name.

1 R. Landis

2 A. I work for Toyota Motor Sales, and
3 working at Toyota Motor Sales I am not aware of
4 us ever seeing an issue with carpeted floor mats
5 concerning the ES 350.

6 Q. Are you aware of any case that has
7 been brought to Toyota's attention where the
8 dealer did not properly install the driver's
9 side floor mat?

10 MR. GRAY: Objection to the form of
11 the question. Again Toyota is an
12 umbrella. He works for TMS.

13 A. I'm aware of situations with the
14 all-weather floor mat not being installed
15 properly by our dealers.

16 Q. Are you aware of any other cases
17 other than this particular case where there is
18 an allegation that the dealer did not properly
19 install the carpeted floor mat like the one that
20 was in Ms. Leviten's car?

21 MR. MURPHY: Objection.

22 A. I am not.

23 Q. So there is no epidemic that you
24 are aware of?

25 MR. GRAY: You don't have to

1 R. Landis

2 answer. He is just being cute.

3 Q. Would it be fair to say that based
4 upon your reading of the NHTSA Consumer Advisory
5 it would be a fair statement that if the
6 driver's side floor mat such as the one, the
7 carpeted one that was installed in Ms. Leviten's
8 vehicle is not properly installed it could lead
9 to interference with the accelerator or brake
10 pedals in a wide range of vehicles?

11 MR. MURPHY: Objection.

12 MR. GRAY: Objection. Are you
13 asking for an opinion in that regard?

14 MR. HERSHENHORN: No, I am asking
15 his knowledge on that.

16 MR. GRAY: His knowledge on what
17 though? You asked him to interpret what
18 the writing was. Are you asking him
19 that? There is an objection. It is
20 unclear.

21 MR. HERSHENHORN: You can read back
22 the question if you want.

23 MR. GRAY: Yeah, why don't you read
24 the question back.

25 (Record read.)

1 R. Landis

2 A. That is what the NHTSA document
3 says.

4 Q. As you sit here now, sir, as a
5 representative, the designee of TMS, do you have
6 any reason whatsoever to dispute what the
7 document says?

8 A. No, I don't.

9 Q. Do you know of any official Toyota
10 position, and by Toyota I mean any Toyota entity
11 including the one you work for, TMS, any
12 official position that Toyota has which would in
13 any manner, shape or form dispute what is
14 contained in Plaintiff's Exhibit 7?

15 A. No. We would like to see the
16 customers make sure their floor mats are
17 secured.

18 Q. So they are not involved in
19 accidents, correct?

20 MR. MURPHY: Objection.

21 MR. GRAY: Objection.

22 A. Just so they are installed the way
23 we intended they to be installed.

24 Q. I don't want to go back around that
25 again.

1 R. Landis

2 Sir, back to this particular
3 vehicle --

4 MR. GRAY: If we are going to
5 change subjects, can we take a short
6 break.

7 MR. HERSHENHORN: Go ahead, sure.

8 (Recess taken.)

9 BY MR. HERSHENHORN:

10 Q. Mr. Landis, would it be correct, a
11 correct statement that if the dealer properly
12 installs a driver's side carpeted floor mat such
13 as the one we have in the Leviten vehicle that
14 in the ordinary use and operation of the vehicle
15 the mat should not be in the position where it
16 is covering the accelerator pedal?

17 MR. MURPHY: Objection.

18 A. That is correct.

19 Q. Would it be also correct to say
20 that, if the dealer installs the mat pursuant to
21 the requirements of the manufacturer, the mat
22 should in no way interfere with the ordinary use
23 and operation of the vehicle?

24 MR. MURPHY: Objection.

25 MR. GRAY: Mr. Landis can't speak

1 R. Landis

2 on behalf of the manufacturer, but he is
3 here as a TMS designee.

4 Q. As a TMS designee, would it be a
5 fair statement that if the mat is properly
6 installed by the dealer it should not interfere
7 with the appropriate use and operation of the
8 vehicle?

9 MR. MURPHY: Objection.

10 A. That's correct.

11 Q. Likewise, sir, as a TMS
12 representative, would it also be fair to say
13 that if the mat is properly installed by the
14 dealer there should not be any portion of the
15 mat covering either the brake or the accelerator
16 at any time during the normal course of
17 operation?

18 MR. MURPHY: Objection.

19 A. That's correct.

20 Q. You inspected the mat, and I think
21 you told me on the first time you really didn't
22 get very detailed and even the second time there
23 is more you want to do but you got more detail.
24 Were you able to see the mat itself and any
25 plastic covering the mat on either the first or

1 R. Landis

2 second occasion or both?

3 A. On both occasions, yes. There was
4 plastic film that is on top of the driver's side
5 floor mat.

6 Q. Can you explain to us how the
7 plastic film that was on top of the driver's
8 side floor mat came to be in that position?

9 A. No, I cannot.

10 Q. Is the plastic film that was on the
11 driver's side floor mat as you observed it at
12 your inspections something that is sent by
13 Toyota to the dealer?

14 A. No, it's not.

15 Q. Then can you explain to us, sir,
16 how is it that the floor mat is sent from Toyota
17 to the dealer?

18 A. I alluded to this a little bit
19 before, but I will share this particular
20 photograph.

21 MR. HERSHENHORN: Mark this as
22 Plaintiff's Exhibit 8.

23 (Plaintiff's Exhibit 8, photograph,
24 marked for identification, as of this
25 date.)

1 R. Landis

2 A. The floor mat, the group of four
3 floor mats as well as the bag and instructions
4 are put in a clear plastic bag and sealed and
5 placed in the trunk of the vehicle as the --
6 just before the vehicle is shipped off to the
7 dealership.

8 Q. We marked this photograph as
9 Plaintiff's Exhibit 8 for identification. Can
10 you tell me, what is this photograph? First of
11 all, who took the photograph?

12 A. I took these photographs.

13 Q. Did you take the photograph in the
14 ordinary course of your business working for
15 Toyota Motor Sales?

16 A. Yes.

17 Q. What does that photograph
18 demonstrate?

19 A. This photograph demonstrates the
20 packaging of the floor mats as well as the
21 packaging of the hooks. This is the bag here
22 with the hooks and instructions that is
23 contained within this, and it's attached to the
24 floor mat. Actually, I take that back.

25 It is not attached to the floor

1 R. Landis

2 mat. It is free to move inside this bag, and it
3 shows basically how it's shipped.

4 Q. What is the difference then between
5 the floor mats that we see in photograph 8, I
6 will call them the how it is shipped photograph,
7 and the mat that you saw on your inspection of
8 the Leviten vehicle?

9 A. Discounting the fact that they are
10 a different color, the Leviten vehicle driver's
11 side mat has a plastic film, and I should point
12 out that in this stack of mats in Exhibit 8,
13 this is the driver's side mat that happens to be
14 on top. You can actually see the driver's mat
15 does not have a plastic film on it.

16 I take that back. This mat here is
17 not the driver's side mat. It is further down
18 in the mat. But I have disassembled this and it
19 does not have a plastic film.

20 Q. In Exhibit 8 the mats are actually
21 within a bag, and I think from your last answer
22 we know that you actually have taken the mats
23 out of the bag as they were originally shipped.

24 As you took them out of the bag,
25 did you see if any of the mats was in its own

1 R. Landis

2 bag or had any plastic attached to it?

3 A. No.

4 Q. Are you aware of there being any
5 process or procedure where the dealer actually
6 puts that plastic on the mat?

7 A. I am not aware of any process or
8 procedure. It's not unusual for a dealer to do
9 something to preserve the cleanliness of the
10 vehicle, not put the mat in until the last
11 moment or put a piece of paper on top of it or
12 something to that effect.

13 Q. What does the foot well of the
14 vehicle look like when it is actually shipped
15 from Toyota to the dealer?

16 A. That would be -- well, that would
17 be this picture here (indicating).

18 MR. HERSHENHORN: Let's mark this
19 picture as Plaintiff's Exhibit 9.

20 (Plaintiff's Exhibit 9, photograph,
21 marked for identification, as of this
22 date.)

23 A. This is a piece of cardboard that
24 was fitted in the vehicle back at the
25 manufacturing plant that stayed with the

1 R. Landis

2 vehicle.

3 Q. Is it your testimony that the piece
4 of cardboard as we see in Exhibit 9 is in place
5 from the time it leaves TMS until it goes to the
6 dealer?

7 A. That's correct.

8 Q. Did you make a search through the
9 parts department or any other way to determine
10 whether or not Toyota, the manufacturer or its
11 representatives here in the United States, sells
12 plastic like the plastic that we saw or that you
13 saw at the Leviten inspection that was on the
14 mat?

15 A. I did make such an inquiry.

16 Q. I had a feeling.

17 What did you learn?

18 A. That we don't specify or supply any
19 protective materials for the floor mat.

20 Q. Is it Toyota's position as far as
21 you understand it that when the mat is to be
22 installed for use by the customer that it is to
23 have the carpeted surface at the top and when it
24 is given to the end user there is not to be any
25 plastic on the mat as you saw it was at the

1 R. Landis

2 inspection of the Leviten vehicle?

3 A. Well, we -- TMS asks the dealers to
4 remove all protective covering that is in the
5 vehicle, being the cover that we put on prior to
6 the delivery of the vehicle since we don't
7 specify -- since we haven't put that plastic
8 there in the first place. I have never seen
9 anything in writing that says remove something
10 that you put on the vehicle.

11 Q. But nevertheless you sell or you
12 send the mats so they are in the one bag and it
13 is the intent of Toyota that the bag be opened
14 at sometime and the mat be taken and the
15 carpeted surface on top be installed in the
16 vehicle prior to it being given to the consumer,
17 is that fair to say?

18 A. That is correct.

19 Q. Likewise it would be fair to say
20 that there is no process or procedure for the
21 vehicle to be delivered to the end user with
22 plastic covering the mat such as what you saw at
23 your second inspection and even at your first
24 inspection of the Leviten vehicle, is that fair
25 to say?

1 R. Landis

2 A. That is fair to say.

3 Q. Could you make some observations of
4 some writing that was on the mat that was in the
5 Leviten vehicle?

6 A. If you are referring to --

7 Q. Let me withdraw the question.

8 Did you make some observation of
9 the writing that was on the covering of the mat
10 as you observed it at the inspection?

11 A. Yes, I did.

12 Q. What did you observe?

13 A. That the plastic film had kind of a
14 continuous writing on it that stated: "Slip and
15 Grip dealer must remove protective covering."

16 Q. Let me mark as Plaintiff's Exhibit
17 10 and 11 two photographs, and let me show you
18 first, sir, Plaintiff's Exhibit 10, and then let
19 me show you Plaintiff's 11.

20 Are these photographs that were
21 taken by you in the ordinary course of your
22 business?

23 (Plaintiff's Exhibits 10 and 11,
24 two photographs, marked for
25 identification, as of this date.)

1 R. Landis

2 A. Yes.

3 Q. Do they fairly and accurately show
4 the condition of the mat as you saw it on the
5 day of your second inspection?

6 A. After an archeological dig, yes,
7 because there was quite a lot piled on top of
8 it.

9 Q. Whatever was taken off the mat,
10 that was taken off in your presence?

11 A. Yes.

12 Q. And there were representatives of
13 all of the parties?

14 A. That is correct, plus it was
15 documented by photographs.

16 Q. Sir, Plaintiff's Exhibits 10 and
17 11, are those the only photos you have of the
18 writing on the mat?

19 A. In the vehicle -- actually -- maybe
20 where it's legible, yes. Some of these other
21 pictures show it, but it's not tremendously
22 legible.

23 Q. We will mark another photograph
24 that you just showed me as Plaintiff's Exhibit
25 12, and let me ask is this a photograph that was

1 R. Landis

2 taken in the regular course of your business and
3 does it substantially show what you observed at
4 the time of your second inspection?

5 (Plaintiff's Exhibit 12,
6 photograph, marked for identification, as
7 of this date.)

8 A. Yes.

9 Q. If we understand your testimony,
10 the plastic that covers the mat that says
11 "Dealer must remove protective cover" is not
12 installed by Toyota and it is something that was
13 done after the vehicle left Toyota's hands?

14 A. That's correct.

15 Q. You are familiar as part of your
16 work in and around dealerships as an engineer
17 that dealers, to preserve the integrity of the
18 carpet, to not get it dirty, et cetera, put from
19 time to time a protective surface on it while
20 they are getting the vehicle ready for
21 delivery?

22 A. Yes.

23 Q. Did you also do some research to
24 figure out what this plastic or where this
25 plastic came from?

1 R. Landis

2 A. Yes.

3 Q. What did you find in that regard?

4 A. I used my favorite friend, Googol,
5 and put in "Slip and Grip," and it came back
6 with a company in Canada as the supplier of it.

7 Q. You have two documents, one says
8 page 1 of 2. I am not sure if you have the
9 other page.

10 A. I am sorry, I should have written
11 on this. It was one of those pages that prints
12 with nothing but the footer on it.

13 MR. HERSHENHORN: So we have two
14 documents which were printed from
15 Googol. We will mark the first as
16 Plaintiff's Exhibit 13 and the second as
17 Plaintiff's 14.

18 (Plaintiff's Exhibits 13 and 14,
19 two documents which were printed out from
20 Googol search, marked for identification,
21 as of this date.)

22 Q. Sir, were these searches that you
23 made on Googol done in the ordinary course of
24 your business?

25 A. Yes.

1 R. Landis

2 Q. Did you print these in the ordinary
3 course of your business?

4 A. Yes.

5 Q. Having looked at this, what do you
6 understand the adhesive plastic we see in
7 Exhibits 13 and 14 to be?

8 A. It's a plastic film that comes from
9 a dealership supply house that provides this
10 film to dealers to protect the vehicle. It
11 could be utilized in many different ways.

12 Q. Is one of the ways it could be
13 utilized as adhesive for floor mats?

14 A. I believe so. That's what it says,
15 adhesive floor mat.

16 Q. Can you tell me, sir, what does TMS
17 do in order to make sure that the floor mats are
18 properly installed before they are delivered or
19 the vehicle is delivered to the end user by way
20 of documents it supplies to the dealer,
21 checklists it supplies to the dealer or any
22 other ways that TMS instructs the dealer to
23 properly secure the floor mat aside from what we
24 have already looked at, which is Plaintiff's
25 Exhibit 2, the instructions that come with the

1 R. Landis

2 actual hooks?

3 MR. GRAY: I believe that is

4 Exhibit 1.

5 MR. HERSHENHORN: You are correct.

6 A. In addition to the instructions
7 that you pointed out, TMS does not provide any
8 additional instruction or check sheet for the
9 2007 ES 350.

10 Q. Does it provide it for other
11 vehicles, other instructions for other vehicles
12 that are not related to the all-weather floor
13 mat?

14 A. After the all-weather floor mat
15 time frame, so the 2008 ES 350 we issue a
16 Technical Services Bulletin that cautions the
17 dealers about installing all-weather floor mats
18 but also covers all floor mats and that bulletin
19 then became part of the pre-delivery
20 instructions for the 2008 ES whereby -- I only
21 have the 2007 with me, but it has a check item
22 in addition to the pre-delivery items that you
23 should install the floor mat before delivering
24 the car.

25 What you are holding there is the

1 R. Landis
2 pre-delivery check sheet and supporting
3 materials for the Leviten vehicle, pertinent to
4 the Leviten vehicle.

5 Q. Let's mark the pre-delivery check
6 sheet as Plaintiff's Exhibit 15, and am I
7 correct, sir, that that is a two-page document?

8 (Plaintiff's Exhibit 15,
9 pre-delivery check sheet, marked for
10 identification, as of this date.)

11 A. The check sheet is a two-page
12 document.

13 Q. Let's stick with the check sheet.
14 Is this check sheet something that is mainly
15 kept in the ordinary course of business of
16 Toyota?

17 A. This is something that the
18 dealership usually holds onto.

19 Q. Do you know who designed this
20 document?

21 A. Yes.

22 Q. Who did?

23 A. Toyota Motor Sales.

24 Q. Was it designed and made in the
25 regular course of Toyota Motor Sales business?

1 R. Landis

2 A. Yes.

3 Q. If I understand your testimony
4 correctly, with regard to Exhibit 1 there is
5 nothing specific on here instructing the dealer
6 as to how to install the mats on the driver's
7 side or for that matter the mats in any part of
8 the car?

9 A. That is correct.

10 Q. Would it be fair to say, sir, that
11 one of the reasons why Toyota would provide
12 Exhibit 1 but no other documentation is that
13 Toyota is providing the mats to a knowledgeable
14 user, meaning the dealer, and Toyota expects
15 that the dealer would know that the mat needs to
16 be properly secured with the hooks before
17 delivered to the end user?

18 MR. MURPHY: Objection.

19 A. We would expect that the dealer
20 would install those mats that are in the trunk
21 and they would follow the instructions, yes.

22 MR. HERSHENHORN: Let's mark ES 350
23 pre-delivery service plan as Plaintiff's
24 Exhibit 16.

25 (Plaintiff's Exhibit 16, ES 350

1 R. Landis

2 pre-delivery service plan, marked for
3 identification, as of this date.)

4 Q. Sir, can you tell me, is this
5 Exhibit 16 a document that is made and kept in
6 the regular course of the business of Toyota
7 Motor Sales?

8 A. Yes.

9 Q. What is the purpose of that
10 document?

11 A. If we were to go back to the check
12 sheet which was Exhibit No. 15, it will go
13 through a number of items such as "Remove access
14 cover from fuse box," but there isn't space on
15 this to show what that is, where it's located,
16 et cetera, et cetera.

17 This manual provides the detail
18 that is necessary for performing these
19 functions.

20 Q. Would it be fair to say that since
21 on Exhibit 15 there is no specific instruction
22 about securing the mat, likewise there is no
23 specific instruction on Exhibit 16?

24 A. That's correct.

25 Q. Earlier you testified that there

1 R. Landis
2 was some instruction that was given by Toyota
3 Motor Sales to its dealers concerning the
4 removal of any interior protection. Do you
5 remember that testimony?

6 A. Yes.

7 Q. I am looking at page 2 of 2,
8 meaning the second side of the PCS, the
9 pre-delivery service check sheet, and I note in
10 the upper left-hand box there is a statement and
11 it says "Leave interior protection on driver's
12 area until delivery to customer."

13 Do you see that?

14 A. Yes.

15 Q. Is that the type of interior
16 protection that you were referring to earlier?

17 A. Yes, exactly.

18 Q. Is there something that spells that
19 out in even more detail in Exhibit 16?

20 A. There is. Whether I'm going to
21 spot it or not, I am not sure.

22 MR. KRAMER: Can I help?

23 MR. HERSHENHORN: Sure, sure.

24 MR. KRAMER: Try page 80, Bates
25 stamp 122.

1 R. Landis

2 THE WITNESS: Yes. So on page 80
3 of Exhibit No. 16.

4 MR. HERSHENHORN: For the record
5 that is Bates stamped number 122.

6 THE WITNESS: There is a little bit
7 more verbose explanation. Should I read
8 it out loud?

9 Q. No, I am just going to look at it.
10 Part of it says, it is titled "Remove interior
11 protective covers," et cetera.

12 Do you see that?

13 A. Yes.

14 Q. Can you tell me, sir, why is it
15 that TMS instructs the dealers to remove the
16 interior protective covers, et cetera, as stated
17 on page 80 of its manual?

18 A. Well, I believe there is various
19 reasons. The overriding reason though is when
20 you are delivering the vehicle to the customer
21 it should just be on the vehicle, all of these
22 pieces of plastic that are protecting different
23 parts of the vehicle, that the vehicle should be
24 basically delivered nice and clean but without
25 the protective covers that are just there to

1 R. Landis

2 protect it prior to the customer getting it.

3 Q. Would it be fair to say, sir, when
4 the vehicle as far as you are aware is designed
5 and tested, it is not tested or designed with
6 the intention that end users would have, for
7 example, plastic covering the driver's side mat
8 as we see in the exhibits in front of us?

9 A. TMS doesn't have involvement with
10 the design and testing, but I think it is safe
11 to say that when they do the design and testing
12 it's on a vehicle that doesn't have these
13 protective covers on it.

14 Q. Sir, when you examined the vehicle,
15 did you make any inspection of the brake rotors?

16 A. No, I did not.

17 Q. Did you make inspection of the
18 braking system whatsoever other than looking at
19 the pedal?

20 A. I did not.

21 Q. When you inspected the vehicle,
22 sir, did you make any inspection of the
23 integrity of the accelerator or brake pedals?

24 A. Yes, I did.

25 Q. What did you observe?

1 R. Landis

2 A. I observed that the tow pan of the
3 vehicle, the portion of the bulkhead between the
4 passenger compartment and the driver's
5 compartment but down low, the sheetmetal that
6 would be behind the gas pedal brake pedal was
7 severely deformed from the engine and
8 transmission back routes, such that the
9 accelerator pedal which is attached to the tow
10 pan has come back and has rotated almost 90
11 degrees.

12 Q. Did you make any inspection or
13 observation of the fire damage to the vehicle?

14 A. I did, yes.

15 Q. What did you see in that regard?

16 A. That there was an engine
17 compartment on fire. It consumed a lot of the
18 plastic in the engine compartment including the
19 brake, master cylinder, fluid reservoir, and
20 that is about it.

21 Q. Sir, did you look at or plug
22 anything into the event data recorder?

23 A. I did not.

24 Q. Are you capable of getting a
25 readout from the event data recorder? By that I

1 R. Landis

2 mean are you trained to do so?

3 A. I am trained to do so.

4 Q. Is one of the things that can be
5 learned by looking at the event data recorder
6 whether or not the brake was on at the time of
7 the accident?

8 A. The data recorder in this vehicle
9 would record the brake lamp switch at the time
10 that the air bags would have been deployed as
11 well as five seconds prior to that.

12 Q. With regard to acceleration, what
13 would the event data recorder tell us about the
14 throttle and its position?

15 A. The throttle position is recorded
16 in the event data recorder with four basic
17 terms. One term is that it's in fail-safe,
18 which means that there is an issue with the
19 system and the check engine light is on. And if
20 that is the case the throttle is in fail-safe,
21 which is the throttle is closed in idle
22 position.

23 If that is not the instance, there
24 are three other things it would record, which
25 would be the throttle is open or wide open,

1 R. Landis
2 closed or in between, but each of those is
3 basically a third. So wide open is the top
4 third, closed the bottom third, and in between I
5 forget what it says but there is something to
6 designate that.

7 Q. Are you familiar with the extent of
8 the depression of the brake pedal required for
9 the event data recorder to record that there was
10 any braking?

11 A. Yes. That is that the brake light
12 switch is engaged. So if the taillights are on,
13 it considers that to be braking.

14 Q. If for some other technical reason
15 the taillights are not on, the event data
16 recorder would not consider there to be braking,
17 is that a fair assumption based on what you were
18 just saying?

19 A. I guess it depends on what --
20 you're assuming they are there, the same switch
21 that provides for the brake lights provides a
22 signal to the engineer control module which
23 provides a signal to the air bag. If you remove
24 all of the taillights from the car but you
25 stepped on the brake pedal, it sends a signal to

1 R. Landis

2 put the brake lights on, it would still record
3 that the brakes are on. So you would not see
4 it.

5 Q. If there was not enough braking
6 capability, if the brake pedal was stiff and
7 could not be depressed, would it record it as
8 being on or would it depend upon how much of the
9 brake pedal could be depressed?

10 A. If you are unable to move,
11 physically move the brake pedal, it's unlikely
12 that it would record that you are pushing on the
13 brakes.

14 Q. That is my question.

15 A. I would point out that the brake
16 light switch is even before you start to get any
17 brake pressure, that is the first thing that
18 happens. But if you physically made it rigid,
19 you would not get a brake signal.

20 Q. Was there any particular reason
21 that you had for not looking more closely at the
22 event data recorder? By that I mean why didn't
23 you download the information or did you want to
24 do it, is there a reason to do it or not do it
25 in your mind?

1 R. Landis

2 A. Okay. That is many questions.

3 Q. Let me ask you one question. Was
4 there any reason why you wanted to download that
5 information?

6 A. I didn't want to or not want to.

7 Q. So it wasn't your decision?

8 A. No, it wasn't my decision.

9 Q. Are there any other documents, sir,
10 that you brought with you today that we have not
11 looked at, documents or photographs? I am not
12 concerned about the legal interrogatory
13 answers.

14 A. Just some additional photographs of
15 the vehicle or actually some exemplar parts as
16 well. If I could --

17 MR. HERSHENHORN: I know what they
18 are. Let's mark these.

19 (Plaintiff's Exhibits 17 through
20 22, photographs, marked for
21 identification, as of this date.)

22 (Recess taken.)

23 BY MR. HERSHENHORN:

24 Q. Sir, let me show you what we
25 marked, a group of photographs, 17 through 22.

1 R. Landis

2 First can you tell me, sir, are you the
3 photographer?

4 A. I'm not the photographer on number
5 17. I'm the photograph on the rest of these.

6 Q. Who was the photographer on 17?

7 A. A gentleman that works down at our
8 port in Long Beach who I asked to take a
9 photograph of the vehicle as it comes in to
10 them, to the port.

11 Q. Do you remember that person's name?

12 A. Yes. His name is Craig Shibuya.

13 Q. Can you spell that.

14 A. Craig Shibuya, S-H-I-B-U-Y-A.

15 Q. When you say Long Beach, you are
16 referring to Long Beach, California?

17 A. That is right.

18 Q. Mr. Shibuya is a TMS employee?

19 A. He is a TMS employee.

20 Q. Were all of those photographs as
21 far as you are aware taken in the regular course
22 of business of the TMS?

23 A. Yes.

24 Q. Can you tell me, what does
25 photograph 17 demonstrate?

1 R. Landis

2 A. This photograph was taken in
3 conjunction with the prior exhibit that shows
4 the cardboard on the floor. That photograph was
5 also taken by Mr. Shibuya, and I asked him to
6 take a picture of how the car comes in, and he
7 sent me the picture with the cardboard and how
8 it goes out, but he choose to also lift it up
9 and take a picture on his own, and this
10 demonstrates what the carpeting looks like
11 underneath the cardboard.

12 Q. There is plastic that does come on
13 the driver's seat and on the carpet which is
14 adjacent to the lower portion of the driver's
15 door?

16 A. Yes, the rocker area.

17 Q. The holes that we see, those are
18 the holes obviously where the hooks would be
19 placed, and we see one hole that is the outboard
20 hole and we see the top of the inboard --

21 A. Yes.

22 Q. Photograph 18 that was taken by
23 you, you said that before?

24 A. Yes.

25 Q. Is that off an exemplar vehicle?

1 R. Landis

2 A. Yes.

3 Q. Is that with a properly secured
4 mat?

5 A. Yes.

6 Q. What was the purpose for your
7 taking number 18?

8 A. I wanted to take some pictures of
9 an exemplar vehicle. Early on I had, only had
10 an opportunity to look at Ms. Leviten's vehicle
11 without being able to explore the floor mat, and
12 one of the things that I had noticed on her
13 vehicle was the leading edge of the floor mat
14 and relative to where the foot rest was and also
15 relative to where the seat mount was. And I
16 wanted to get an idea on an exemplar vehicle
17 where the floor mat falls relative to where the
18 seat is mounted and where the floor mat falls
19 relative to where the foot rest is.

20 Q. In the properly installed floor
21 mat, sir, is there a portion of the head of the
22 hook that is visible?

23 A. Yes.

24 Q. We have a series of photographs, 19
25 through 22, and can you tell me the purpose of

1 R. Landis

2 those photographs?

3 A. The purpose of these photographs
4 was to document with the undersigned of the
5 Lexus carpeted floor mat, what it looks like, to
6 show that it also has the nubs that help to
7 retain the floor mat.

8 Q. You gave no idea as you sit here
9 today, do you, sir, as the coefficient or
10 friction as it relates to the floor of the car?

11 A. No, I don't.

12 Q. Do you know whether or not the
13 bottom of the floor mat is designed to have a
14 particular set coefficient or friction as it
15 relates to the floor of the vehicle?

16 A. No, no, I do not know.

17 Q. When you looked at the Leviten
18 vehicle, the plastic says on it "Dealer to
19 remove," but from what you saw at your
20 inspection did any part of that plastic cover
21 the bottom of the floor mat?

22 A. Not that I am aware of, no.

23 Q. Is 20 taken with a ruler just to
24 demonstrate the size of the nubs?

25 A. The size and the spacing.

1 R. Landis

2 Basically we were going from this nub to this
3 nub, slightly over a half-inch grid.

4 Q. Between nubs?

5 A. Between nubs.

6 Q. Sir, we also marked Plaintiff's
7 Exhibit 23 through 30 as exhibits, and can you
8 tell us, are you the photographer?

9 (Plaintiff's Exhibits 23 through
10 30, photographs, marked for
11 identification, as of this date.)

12 A. Yes.

13 Q. Did you take these in the ordinary
14 course of your business?

15 A. Yes.

16 Q. Do they fairly and accurately
17 represent the Leviten vehicle on your inspection
18 of it?

19 A. Yes.

20 Q. All of those photographs were taken
21 at the vehicle inspection?

22 A. Yes.

23 Q. Can you go step by step and tell us
24 if there was any particular purpose why you
25 chose to pull these photographs out of your

1 R. Landis

2 stack of some 500?

3 A. Yes. Number 23 is just the
4 vehicle, the inboard front retention hook, and
5 basically the floor pan is distorted where it's
6 attached, so that the hook's orientation is
7 affected by that.

8 I was trying to document that and
9 the fact that there is a lot of debris still
10 around it, and Bruce Gamberdella didn't want any
11 further exploration around this area.

12 Q. Did you note fire damage in that
13 area?

14 A. I don't believe it's fire damage
15 but stuff that has been damaged by fire is now
16 in this area.

17 Q. When you say you don't believe
18 there is any fire damage as depicted in 23 but
19 rather stuff that was damaged in the area are
20 you also including some things that may have
21 been not touched by fire but rather melted?

22 A. Yes. And Exhibit 24 is the
23 carpeted floor mat grommet that would fit to
24 this retention hook, and just documenting it,
25 it's also affected by debris.

1 R. Landis

2 Q. Are the rest of these photographs,
3 25 through 30, again just your photographs
4 documenting what you saw at the inspection?

5 A. They are. There was a specific
6 purpose.

7 Q. What was that?

8 A. What was it was -- it's best to
9 take them out of order. Number 25, 26 and 27
10 point out that between the two eyelets of the
11 carpeted floor mats they are spaced almost 14
12 inches apart. Because of the deformation of the
13 floor in the vehicle where the hooks are it is
14 now about 13 inches apart.

15 Q. You are demonstrating the
16 difference of --

17 A. The difference of the inch that the
18 floor has shrunk in that area where a carpeted
19 area is retained.

20 Q. Seeing the deformation in a crash
21 like that of slightly less than an inch to that
22 floor area is nothing that is surprising to you,
23 is it?

24 A. Based on the severity of the crash,
25 no.

1 R. Landis

2 MR. HERSHENHORN: Let's just mark
3 as Exhibit 31 documents Bates stamped 6
4 through 17.

5 (Plaintiff's Exhibit 31, documents
6 Bates stamped 6 through 17, marked for
7 identification, as of this date.)

8 Q. Sir, these are documents that were
9 produced by TMS in the discovery in this case.
10 Did you review these before you sat down for
11 your deposition today?

12 A. No, I did not.

13 Q. Do you know what they are?

14 A. Yes, I do.

15 Q. What are they?

16 A. They are a variety of Toyota
17 documents.

18 Q. Can you just either group them by
19 Bates stamp or go page by page and tell us what
20 they are?

21 A. Number 6 through number 9 are the
22 documents related to the sale and distribution
23 of the vehicle. Number 10 is warranty repair
24 information.

25 Q. What does that indicate; was there

1 R. Landis

2 a warranty repair for this vehicle?

3 A. These documents just indicate the
4 pre-delivery inspection.

5 Q. The dealer gets paid to do that?

6 A. Yes. Then the next Bates stamp,
7 number 11 through Bates stamp 17, are related to
8 customer relations -- customer relations contact
9 report. What this is, Toyota and Lexus have an
10 800 phone number like most large companies, and
11 if a customer has a concern or has a question
12 regarding their vehicle or a dealer or a
13 commercial or anything they want to share with
14 us, they can contact us directly.

15 And this report here, number 11 --
16 excuse me, Bates number 11 and then the next
17 report, Bates number 13, and then the next
18 report, Bates number 15, all relate to a 1994
19 GS 300 that Ms. Leviten had prior to her
20 ES 350.

21 Bates stamp 17 is some additional
22 customer relations document that I don't
23 recognize. I could speculate to it, but --

24 Q. Don't speculate.

25 Sir, does Toyota provide with the

1 R. Landis

2 vehicle both an owner's manual and something it
3 calls a Quick Guide?

4 A. We are referring to this particular
5 ES 350?

6 Q. Yes.

7 A. It would have come with an owner's
8 manual. I don't recall whether or not it came
9 with a Quick Guide or not, but this is around
10 the time we began having a Quick Guide.

11 Q. Can you tell us what a Quick Guide
12 is?

13 A. The owner's manual is a very
14 extensive book that has a lot of information.
15 The Quick Guide is kind of to get you up and
16 going. You can get the basics, get the
17 highlights.

18 Q. Would it be a fair statement that
19 Toyota is aware that some customers opt to read
20 the Quick Guide and not the manual and others
21 the manual and not the Quick Guide and others
22 neither?

23 A. We expect and hope they will read
24 both of them.

25 Q. But you expect in the real world

1 R. Landis

2 lots of people don't?

3 MR. MURPHY: Objection.

4 A. In the real world people do all
5 sorts of strange things.

6 Q. Have you reviewed, have you seen
7 the Quick Guide for this car?

8 A. No, I have not, not in preparation
9 for this matter. I might have seen it at some
10 time in the past.

11 Q. Is it the expectation of Toyota
12 that the dealer be aware of the contents of both
13 the Quick Guide and the owner's manual?

14 A. The dealers have a broad of group
15 of individuals. We would expect the service
16 department folks and we would expect them to be
17 familiar with certain aspects of the owner's
18 manual, and to a certain degree we would expect
19 some of the salespeople to be familiar with
20 certain aspects of it. I wouldn't expect a
21 reception person to be conversant with it.

22 Q. But you would expect that if a
23 dealer is selling a Lexus at least there are
24 some folks that work at the dealership that
25 should be intimately familiar with the contents

1 R. Landis

2 of the owner's manual?

3 MR. MURPHY: Objection.

4 A. I would expect that they would be
5 intimately familiar with certain aspects of the
6 owner's manual that relate to what they do.

7 MR. HERSHENHORN: Can you just read
8 back the answer.

9 (Record read.)

10 Q. What was your involvement in the
11 recall of the vehicles with the all-weather
12 mats?

13 A. My involvement has been to inspect
14 some vehicles where that's been an allegation.
15 With respect to the recall itself and the
16 launching of the recall, I have no
17 responsibility.

18 Q. Have you seen various documents
19 that have been issued by Toyota or NHTSA or both
20 that refer as did the NHTSA document that we
21 marked earlier to the concern that driver's side
22 floor mats, whether they be all-weather mats or
23 not, be properly secured?

24 A. I have seen both of the
25 communications that we had with NHTSA regarding

1 R. Landis

2 the all-weather floor mat on the ES 350.

3 Q. Did you see what I just asked you?

4 A. You asked me if I --

5 Q. Whether within those documents you
6 have seen reference to there being a concern
7 that all floor mats, not just the driver's side
8 floor mats that are the subject of the recall,
9 but that all floor mats be properly installed,
10 have you seen that?

11 A. I have seen the language that we
12 want and NHTSA wants to look at the floor mat
13 regardless of the type of floor mat and make
14 sure it is properly secured.

15 Q. You told me earlier in looking at
16 the warranty documentation that the dealer is
17 actually paid to do the pre-delivery, is that
18 correct?

19 A. That is correct.

20 Q. Tell us how that works. Why is it
21 the dealer was paid to do the pre-delivery, do
22 you know?

23 A. Well, when we ship the vehicle, in
24 addition to items that we discussed such as
25 plastic covers, et cetera, there are certain

1 R. Landis

2 parts of the vehicle that are not installed at
3 the time, such as the fuse that controls the
4 clock, or on some of our vehicles, say, for
5 example, if the rearview mirror doesn't fold
6 back, but they are put on a ship, the car is
7 shipped without the rearview mirror, and we ask
8 the dealer to put those on, the dealer. So the
9 dealer is actually doing a fair bit of work, and
10 that is why we pay them.

11 Q. Do you pay the dealer as far as you
12 are aware an hourly rate for their pre-delivery
13 inspection?

14 A. We pay the dealer for the
15 pre-delivery inspection based on a flat rate
16 where there is a certain amount of time that we
17 determined that it would take to properly do it,
18 and that is how we pay the dealer.

19 Q. I think you said, or maybe you
20 didn't, you did say earlier how much time is
21 expected that they would do the pre-delivery?

22 A. I didn't say it and I don't know.
23 It might be on the document -- actually, it
24 would be on the warranty document.

25 Q. Yes. Can you tell us?

1 R. Landis

2 A. No. It doesn't say. It just says
3 the amount, the cost amount.

4 Q. What was the cost amount?

5 A. The cost amount was \$239.48.

6 Q. Sir, would it be a fair statement
7 that if the floor mats such as the driver's side
8 floor mat that Ms. Leviten had in her vehicle
9 and that you saw at your inspections, that if
10 they are not properly placed by the dealer that
11 there could be interference in the normal use
12 and operation of the vehicle between the floor
13 mat and the pedals, is that a fair general
14 statement?

15 MR. MURPHY: Objection.

16 A. Theoretically the possibility
17 exists that it could interfere with the brake or
18 gas pedal.

19 Q. You have no information whatsoever
20 to dispute anything or change anything that
21 Lexus has stated in its recall notice, do you?

22 A. No, I don't.

23 Q. Sir, would you agree with me that
24 if a floor mat such as the one that was in the
25 driver's side front of Ms. Leviten's vehicle, if

1 R. Landis

2 it is properly installed and placed by the
3 dealer, it should not move off of the retention
4 hooks during the normal use and operation of the
5 vehicle, is that a fair statement?

6 MR. MURPHY: Objection.

7 A. Yes, it is.

8 MR. HERSHENHORN: I have no further
9 questions. Thank you for your time.

10 We do have some questions marked
11 for a ruling, and we will take that up
12 with the attorneys.

13 MR. STRIER: I have no questions.

14 EXAMINATION BY

15 MR. MURPHY:

16 Q. Good afternoon. My name is Patrick
17 Murphy. I'm an attorney for Lexus of Westport.

18 Does TMS have an agreement with its
19 dealers?

20 A. Yes.

21 Q. Have you ever seen an agreement
22 between TMS and Westport?

23 A. No, I have not.

24 Q. Generally speaking do you know what
25 the agreements entail?

1 R. Landis

2 A. No, I don't.

3 Q. Looking at what has been marked as
4 Exhibit 16, you testified earlier regarding the
5 interior protective covers?

6 A. Yes.

7 Q. It states that it is supposed to be
8 removed prior to delivery to the customer?

9 A. Right.

10 Q. Are you aware if the removal of the
11 interior protective covers are to be done by the
12 dealer if there is a third party such as a
13 leasing agency that is involved with the sale
14 prior to the delivery to the end user?

15 A. No. Actually, my belief is that in
16 some instances if there is a broker, something
17 to that nature, the dealer will leave certain
18 protective covers on with the expectation that
19 the next step in the chain will be to remove
20 them so the vehicle doesn't get damaged.

21 Q. How about with regard to the
22 installation of the floor mats, would the agents
23 such as leasing agencies that sold the car to
24 the end user install the floor mats?

25 A. I know the possibility exists.

1 R. Landis

2 This is kind of the scope of Toyota Motor Sales,
3 but in many respects it makes sense to leave
4 protective covers on so that the vehicle is not
5 damaged prior to the delivery.

6 Q. Are you aware of any documents that
7 Toyota Motor Sales or its dealerships have with
8 regard to the issue of third-party agencies and
9 installation of pre-delivery materials?

10 A. No, I am not.

11 REQ MR. MURPHY: Counsel, I believe you
12 stated earlier there is an agreement,
13 that you aware of an agreement between
14 Toyota Motor Sales and Lexus of
15 Westport.

16 I call for the production of that
17 agreement, and I will follow it up in
18 writing.

19 Q. Does TMS give any type of training
20 to its dealers with regard to installation of
21 floor mats?

22 A. I'm not aware of any training.

23 MR. MURPHY: I have no further
24 questions.

25 EXAMINATION BY

1 R. Landis

2 MR. STRIER:

3 Q. My name is Todd Strier. I'm an
4 attorney representing Mr. Doukas.

5 This Slip and Grip film you
6 identified, have you ever seen that film used in
7 any other vehicles before this case?

8 A. I have seen a similar film in a
9 different vehicle, different set of
10 circumstances, but I have seen where it was
11 utilized before to protect a door. I don't
12 remember seeing Slip and Grip, but it was a
13 plastic film with adhesive backing covering the
14 driver's side door.

15 Q. Was that something to your
16 knowledge that TMS put on or someone else?

17 A. TMS put on.

18 MR. HERSHENHORN: Can we take a
19 two-minute break.

20 (Recess taken.)

21 BY MR. STRIER:

22 Q. To your knowledge does TMS
23 pre-approve any type of material that a dealer
24 would put down on a mat for protective
25 covering?

1 R. Landis

2 A. No.

3 MR. STRIER: I have no further
4 questions.

5 MR. HERSHENHORN: I have a couple
6 of follow-up questions.

7 BY MR. HERSHENHORN:

8 Q. Counsel for the dealer asked you
9 some questions and you gave him some answers
10 about what might or what might not be done in
11 the chain of the distribution of the vehicle.

12 Is it fair to say, sir, as you sit
13 here now you have no clue, zero information as
14 to what is done after the vehicle leaves the
15 dealer's hands and goes to some other
16 third-party wholesaler of the vehicle, is that
17 correct?

18 MR. MURPHY: Objection.

19 A. That is correct.

20 Q. Likewise, sir, it is pure
21 speculation on your part when you answered the
22 questions before that it could be that the
23 person who is next in the chain would remove
24 plastic floor covers or not because you have
25 absolutely no knowledge of how that part of the

1 R. Landis

2 industry works, is that fair to say?

3 MR. MURPHY: Objection.

4 A. Yes.

5 Q. Likewise, sir, you would agree with
6 me, would you not, that as to the ultimate party
7 who is responsible for securing the floor mats
8 to the hooks that as far as Toyota is concerned
9 is the dealer?

10 MR. MURPHY: Objection.

11 Q. Let me ask you a question, a
12 different question so it's clear.

13 As between Toyota and its dealer,
14 the ultimate party responsible for making sure
15 that the mats are secured to the hooks is in
16 fact the dealer, correct?

17 MR. MURPHY: Objection.

18 MR. GRAY: Objection to the form.

19 A. Correct.

20 MR. GRAY: I object to the form.
21 It calls for a legal conclusion as to
22 responsibility.

23 Q. From an engineering standpoint,
24 Toyota expects that dealers would follow
25 instructions as we saw in Plaintiff's Exhibit 1

1 R. Landis

2 and properly secure the floor mats in the
3 vehicle?

4 MR. MURPHY: Objection.

5 Q. Correct?

6 A. Yes.

7 MR. HERSHENHORN: I have nothing
8 further.

9 BY MR. MURPHY:

10 Q. Sir, along those lines you have no
11 clue if the floor mats were secured by the
12 dealer in this case prior to being delivered to
13 the third party, is that correct?

14 MR. GRAY: He has no knowledge.

15 Q. Is that a fair statement that you
16 have no knowledge?

17 A. Yes. I was not there when this
18 transaction took place.

19 Q. With regard to the plastic covering
20 that was found in Ms. Leviten's vehicle, had you
21 ever seen that type of plastic covering at any
22 Toyota or Lexus dealerships prior to your
23 inspection of this vehicle?

24 A. I can't say that I ever looked for
25 it but, no, I don't recall seeing it before.

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R. Landis

DIR Q. Just one further question.

In an impact such as in this matter
is it possible that the floor mats would come
unhooked upon impact?

MR. GRAY: Objection. That would
call for expert opinion. Don't answer.

A. I will go by advice of my counsel.

MR. MURPHY: I have no further
questions.

MR. KRAMER: The record is closed.

(Time noted: 2:30 p.m.)

ROBERT LANDIS

Subscribed and sworn to
before me this day
of 2009

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CERTIFICATE

STATE OF NEW YORK)
 : ss
COUNTY OF NEW YORK)

I, LORETTA M. BODTMANN, a Shorthand
Reporter and Notary Public within and for the
State of New York, do hereby certify:

That ROBERT LANDIS, the witness
whose deposition is hereinbefore set forth, was
duly sworn by me and such deposition is a true
record of the testimony given by such witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage and that I am in no way
interested in the outcome of this matter.

In witness whereof, I have hereunto
set my hand this *21st* day of *August* 2009.


LORETTA M. BODTMANN

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Page	Line	Original Text	Correction

 Robert Landis

Sworn to before me this
 ___ day of _____, 2009

 Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

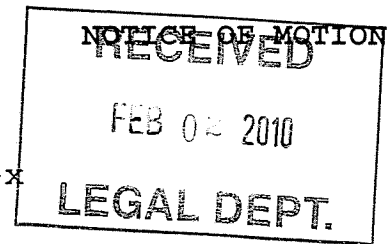
-----x
IRIS LEVITEN,

Plaintiff,
-against-

Index number:
107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.



-----x
S I R S:

PLEASE TAKE NOTICE, that upon annexed affirmation of Howard S. Hershenhorn, dated 21st day of December, 2009, and upon all the pleadings and proceedings heretofore had herein, the plaintiff, IRIS LEVITEN, will move before this Court in Room 130, at the Courthouse located at 60 Centre Street, New York New York on the 7th day of January, at 9:30 in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order

1. Pursuant to CPLR §3226, striking the defendant, METRO AUTO LEASING, INC, d/b/a THE AUTOMALL's, Answer, and granting judgment by default;

2. Precluding the defendant, ESTREE INC., d/b/a LEXUS OF WESTPORT, at the time of trial from calling any witnesses, other than FRANCIS FRIER, who was deposed on October 16, 2009.

3. For such other, further and different relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that answering affidavits must

be served upon the undersigned at least seven (7) days prior to the return date of this motion.

Dated: New York, New York
December 21 , 2009

Yours, etc.

GAIR, GAIR, CONASON,
STEIGMAN, MACKAUF, BLOOM &
RUBINOWITZ

By: 

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

Index number:

-against-

107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

AFFIRMATION OF GOOD
FAITH

Defendants.

-----X

HOWARD S. HERSHENHORN, an attorney and a member of the firm
of Gair, Gair, Conason, Steigman, Mackauf, Bloom & Rubinowitz,
attorneys for the plaintiff in Action 1 herein, hereby affirms as
follows:

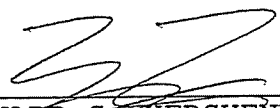
This office has conferred with the offices of AHMUTY, DEMERS
& McMANUS, Attorneys for defendant in Action 1, ESTREE, INC.,
d/b/a LEXUS OF WESTPORT, in good faith in an attempt to resolve,
by agreement, the issues raised by this motion, including,
producing a witness with the knowledge of pre-delivery inspection
of the involved in this action Lexus motor vehicle, but
unfortunately have been unable to secure a testimony of such
witness. Therefore it becomes necessary to make this motion for
the relief requested.

Dated: New York, New York
December 21 , 2009

Yours, etc.

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF

By:



HOWARD S. HERSHENHORN
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005
(212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,
-against-

Index number:
107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

AFFIRMATION IN
SUPPORT

-----X

HOWARD S. HERSHENHORN, an attorney duly admitted to practice
in the State of New York, affirms the following under the
penalties of perjury:

1. I am a member of the firm, GAIR, GAIR, CONASON, STEIGMAN,
MACKAUF, BLOOM & RUBINOWITZ, attorneys for the plaintiff,
IRIS LEVITEN, and as such, I am familiar with the facts,
circumstances, pleadings and proceedings pertaining to this
litigation.
2. This Affirmation is dully submitted in support of the motion
seeking an Order (1) pursuant to CPLR §3226, striking the
defendant, METRO AUTO LEASING, INC, d/b/a THE AUTOMALL's,
Answer, and granting judgment by default (hereinafter
"METRO"); and (2) precluding the defendant, ESTREE INC.,
d/b/a LEXUS OF WESTPORT (hereinafter "ESTREE"), at the time
of trial from calling any witnesses, other than FRANCIS
FRIER, who was deposed on October 16, 2009.
3. This is an action arising out fo an automobile accident

which occurred on February 18, 2007. When the plaintiff, IRIS LEVITEN, lost control of her car as the driver's side front floor mat became lodged on the accelerator pedal, causing an unexpected, unintended, and sudden acceleration. The action the defendant, METRO, arises out of their delivery of the subject vehicle in the chain of distribution. The action against the defendant, ESTREE, arises out of the improper performance of the pre-delivery inspection as well as other issues of negligence.

4. This action was commenced on June 1, 2007 by purchasing an index number 107681/2007 from a clerk in Kings County, New York, Supreme Court (Exhibit "A" copy of Summons and Complaint). Issue was joined by service of Answers on or about September 21, 2007 (Exhibit "B" copies of defendants' Answers).
5. On or about June 30, 2009, the defendant METRO's counsel, STEIN RISO MANTEL, LLP, by their Order to Show Cause (Exhibit "C" copy of the Order of July 16, 2009), relieved as defendant, METRO's, counsel, claiming that they were instructed by their client, METRO, not to continue as its attorneys in this action, as METRO was unable to afford to pay for the services, nor it had "any liability insurance that would provide coverage or pay for its defenses in this action" (Exhibit "D" Affirmation in Support to Stein, Riso Mantel's Order to Show Cause)

6. Defendant METRO failed to comply with five Court's Orders, dated April 15, 2008, October 23, 2008, February 26, 2009, April 2, 2009, and August 27, 2009 (Exhibit "E") and submit to Examination Before Trial.
7. Additionally, in Action #2 herein, a Default Judgment against the defendant METRO was granted by the Order of November 25, 2009 (Exhibit "F").
8. CPLR 3126 provides that a court may, in its discretion, impose a wide range of penalties upon "a party" which either (a) refuses to obey an order for disclosure or (b) willfully fails to disclose information which the court finds ought to have been disclosed. Here, since defendant did both-repeatedly violated court ordered disclosure, intentionally ignored plaintiff's legitimate discovery requests and willfully failed to disclose information which should have been disclosed-this Court should impose the greatest available penalty; the striking of defendant's Answer and the entry of a judgment of default.
9. Generally, willfulness can be inferred when a party repeatedly fails to respond to discovery demands and/or to comply with discovery orders, coupled with inadequate excuses for those defaults (see, Siegman v. Rosen, 270 A.D.2d 14, 704 N.Y.S.2d 40 [1st Dept. 2000]; Frias v. Fortini, 240 A.D.2d 467, 658 N.Y.S.2d 435 [2d Dept. 1997]). There can be no dispute here that defendant have violated

three court orders regarding said discovery is an obvious effort to frustrate plaintiff's legitimate disclosure rights and create a roadblock to thwart every opportunity for long-sought after discovery. It cannot be denied that the defendant have engaged in a pattern or course of flagrantly misleading, evasive discovery tactics to deter and prevent plaintiff from obtaining the potentially useful discovery.

10. Here, the defendant METRO's failure to respond to discovery demands and several Court Orders demonstrate willful misconduct on the part of this defendant.

PRECLUSION OF DEFENDANT ESTREE'S WITNESS

11. The action against the defendant ESTREE, the dealer who sold the subject vehicle to the defendant METRO, which in turn sold it to the plaintiff, sounds in negligence, including, but not limited to the failure to make certain that driver's side front floor mat was properly and safely installed. On July 30, 2009 at the deposition of Robert Landis, a corporate representative from defendant, LEXUS, the distributor of the subject vehicle, was held. At that time, Mr. Landis testified, among other things, that it was the dealer's responsibility to conduct the pre-delivery inspection, make sure the floor mats are safely and properly secured, (Exhibit "G" page 110 from Mr. Landis deposition transcript).
12. Thereafter, on October 16, 2009, the defendant ESTREE

produced Frances Frier for an Examination Before Trial, who testified, that while she sold the subject vehicle to the defendant METRO, she had nothing to do with the pre-delivery inspection, nor did she remember seeing the plaintiff's car. (page 22 and 23 lines 2-14, Exhibit "H"). She also testified she is aware of the checklists that come with the vehicles, but since "I have nothing to do with that, so I don't really bother looking at it" , and that she would not be capable to answer any questions regarding the checklist that came with the plaintiff's car (page 24, lines 2-9, Exhibit "I").

13. Additionally, we have been informed that the defendant ESTREE, was sold to New Country about two years ago (page 11, lines 11-25, page 12 lines 1-20, Exhibit "J").
14. In a good faith attempt, on December 9, 2009, the plaintiff wrote to the defendant, ESTREE's, counsel, demanding that another witness be produced (letter attached as Exhibit "K"). Defendant, ESTREE, has not responded and no witness with the knowledge of the pre-delivery inspection, the key issue in the subject matter, has been produced.
15. As such, defendant, ESTREE, should be precluded from offering any other testimonies at the time of trial. Indeed, any other witness, other than Fran Frier should be precluded as no witness has been produced on this critical issue.

W H E R E F O R E, the plaintiff in the first party action, IRIS LEVITEN, respectfully requests that this Court grant the instant

motion in its entirety and issue an Order (1) Striking the defendant METRO AUTO LEASING, INC., d/b/a/ THE AUTOMALL's, Answer and granting the Default Judgment pursuant to CPLR §3126, and (2)precluding the defendant, ESTREE INC., d/b/a LEXUS OF WESTPORT from calling at the time at trial any witnesses, other than FRANCIS FRIER, who was deposed on October 16, 2009, pursuant to CPLR §3101(d); together with such other and further relief as this Court may deem just and proper.

Dated: New York, New York
December 21, 2009



HOWARD S. HERSHENHORN

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

Index No.: 107681/07.
Date purchased 6/1/07.

Plaintiff(s) designate(s)
New York
County as place of trial

The place of venue is
Defendant's place of business

SUMMONS

Plaintiff resides at
6 Wood Ave., Albertson, NY 11507

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: June 1, 2007
New York, New York

GAIR, GAIR, CONASON, STEIGMAN & MACKAUF
Attorney(s) for Plaintiff(s)
Office and Post Office Address
80 Pine Street
New York, New York 10005

BY:

DANIEL A. GAIR

Defendants Addresses:

Metro Auto Leasing / Automall
The Corporation
350 Fifth Avenue
New York, New York 10118

Lexus, A Division of Toyota Motor
Sales The Prentice-Hall Corporation
Systems, Inc.
80 State Street
Albany, New York 122106

Estree / Lexus of Westport
1317 Post Road East
Westport, CT 06880

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WITH COPY FILE

JUN 11 2007

NEW YORK
COUNTY CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index number:

-----x
IRIS LEVITEN,

**VERIFIED
COMPLAINT**

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----x

Plaintiff, complaining of the defendants, by
her attorneys, Gair, Gair, Conason, Steigman & Mackauf,
respectfully show to this Court and allege, upon information and
belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., is a corporation with its principal place of
business in a state other than New York.
The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., does business in the State of New York.
2. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., regularly does or solicits business, or
engages in any other persistent course of conduct, or
derives substantial revenue from goods used or services
rendered in the State of New York.

NEW YORK
COUNTY CLERK'S OFFICE

JUN - 1 2007

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4. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.
5. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, is a corporation with its principal place of business in a state other than New York.
6. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, does business in the State of New York.
7. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.
8. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.
9. The defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

10. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., was in the business of manufacturing vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
11. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES, INC., was in the business of designing motor vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
12. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., was in the business of selling and distributing, for public use, motor vehicles, including a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
13. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., sold, to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
14. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., transported to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

15. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., distributed to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
16. At some time thereafter, the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, sold to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
17. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, transported to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
18. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, distributed to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
19. On December 29, 2006, the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, leased a Lexus sedan motor vehicle, model number ES 350, bearing license plate DWW7794 vehicle identification number JTHBJ46G272071246 to the

plaintiff, IRIS LEVITEN.

20. On February 18, 2007, the plaintiff, IRIS LEVITEN, was involved in an automobile accident while driving a Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794 and vehicle identification number JTHBJ46G272071246 near the eastbound ramp of the Northern State Parkway near Glen Cove Road.
21. The aforesaid occurrence was caused and contributed to by the negligence of the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794, identification number JTHBJ46G272071246.
22. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, some of these injuries are of a permanent and lasting nature.

23. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

24. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A SECOND CAUSE OF ACTION

25. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "24", inclusive, with the same force and effect as if more fully set forth herein at length.

26. The defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL ATOMIC INDUSTRIES, INC., their agents, servants and employees warranted and represented to the plaintiff, IRIS LEVITEN, that Lexus sedan motor vehicle, model number ES 350, bearing the New York license plate number DWW7794 and identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, serviced, maintained, labeled, distributed, sold and purchased.

27. In designing, manufacturing, assembling, inspecting,

testing, repairing, servicing, maintaining, labeling, distributing and selling the vehicle Lexus model number ES 350, bearing New York State license plate number DWW7794 and vehicle identification number number JTHBJ46G272071246, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL ATOMIC INDUSTRIES, INC., their agents, servants and employees knew that the aforesaid product would be used by the public and that such users would rely upon the warranties and representations that the said product was safe, proper, merchantable and fit for its intended uses.

28. On December 29, 20069, the plaintiff, IRIS LEVITEN, relied on the aforementioned warranties and expected that the aforementioned product was safe, proper, merchantable and fit for its intended uses.
29. The aforementioned product was unsafe, not merchantable and unfit for its intended uses.
30. By reason of the foregoing, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, their agents, servants and employees, violated and breached the aforementioned warranties, in that the product was not reasonably fit, not of merchantable quality, unsafe, defective and constituted unreasonably dangerous

instrumentalities as designed, manufactured, assembled, inspected, repaired, serviced, maintained, tested, labeled, sold and distributed.

31. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting nature.
32. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
33. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A THIRD CAUSE OF ACTION

34. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "33", with the same force and effect as if more fully set forth herein at length.
35. By reason of the foregoing, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, their agents, servants and employees are strictly

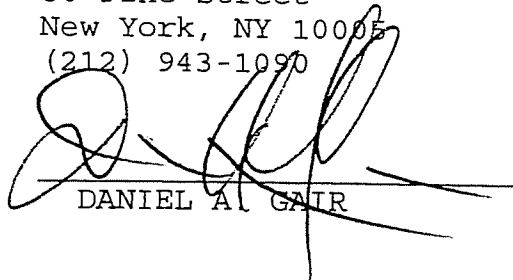
liable in tort to the plaintiff, IRIS LEVITEN, for the injuries sustained by her.

36. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting in nature.
37. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
38. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

W H E R E F O R E, plaintiff demands judgment against the defendants in the First, Second and Third Causes of Action against the defendants LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, together with the costs and disbursements of this action.

Dated: New York, New York
June 1, 2007

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiffs
Office & P.O. Address
80 Pine Street
New York, NY 10005
(212) 943-1090



DANIEL A. GAIR

Sir : Please take notice that the within is a
(certified) true copy of a
duly entered in the office of the clerk of the within named
court on 20
Dated,
Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**
Attorneys for
80 Pine Street, 34th Floor
New York, New York 10005-1768

To:
Attorney for

Sir : Please take notice that an order

of which the within is a true copy will be presented for
settlement to the Hon.

one of the judges of the within named Court, at

on the day of 20
at M.

Dated,
Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**
Attorneys for
80 Pine Street, 34th Floor
New York, New York 10005-1768

To
Attorney for

Index Number:
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA,
INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT and
METRO AUTO LEASING, INC., d/b/a THE AUTOMALL

Defendants.

SUMMONS AND VERIFIED COMPLAINT

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**
Attorneys for Plaintiff(s)
80 Pine Street, 34th Floor
New York, New York 10005-1768
212.943.1090

To :

Attorney for:
Service of a copy of the within
Dated, is hereby admitted.

Attorney for

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

VERIFIED ANSWER

Index # 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

ESTREE, INC. d/b/a LEXUS OF WESTPORT, by its attorneys, AHMUTY,
DEMERS & McMANUS, as and for its answer to the plaintiff's verified complaint, sets forth
the following:

AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION

1: Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "1", "2", "3", "4", "9", "10", "11", "12", "17", "18", "19", "20", "21", "22", "23" and "24" of the verified complaint and refers all questions of law to this Honorable Court.

2: Denies upon information and belief each and every allegation contained in paragraphs designated "6", "7", "8" of the verified complaint and refers all questions of law to this Honorable Court.

3: Denies upon information and belief each and every allegation contained in paragraph designated "13" of the verified complaint, except admits LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., sold, to the defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT,

a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246, and refers all questions of law to this Honorable Court.

4: Denies upon information and belief each and every allegation contained in paragraphs designated "14" of the verified complaint, except admits the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., transported to the defendant, ESTREE, INC., d/b/a ESTREE, INC., d/b/a LEXUS OF WESTPORT, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246, and refers all questions of law to this Honorable Court.

5: Denies upon information and belief each and every allegation contained in paragraph designated "15" of the verified complaint, except admits the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., distributed to the defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246, and refers all questions of law to this Honorable Court.

6: Denies upon information and belief each and every allegation contained in paragraph designated "16" of the verified complaint, except admits ESTREE, INC. d/b/a LEXUS OF WESTPORT, sold to the defendant, METRO AUTO LEASING INC. d/b/a THE AUTOMALL, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ456G272071246, and refers all questions of law to this Honorable Court.

AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION

7: Defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT, repeats, reiterates and realleges each and every denial in answer to paragraphs "1" through "24" as if more specifically

set forth in answer to paragraph designated "25" of the verified complaint and each and every part thereof.

8: Denies upon information and belief each and every allegation contained in paragraphs designated "26", "27" and "30" of the verified complaint as to this answering defendant, otherwise denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "26", "27" and "30" of the verified complaint and refers all questions of law to this Honorable Court.

9: Denies upon information and belief each and every allegation contained in paragraphs designated "28", "29", "31" and "32" of the verified complaint and refers all questions of law to this Honorable Court.

10: Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated "33" of the verified complaint and refers all questions of law to this Honorable Court.

AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION

11: Defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT, repeats, reiterates and realleges each and every denial in answer to paragraphs "1" through "33" as if more specifically set forth in answer to paragraph designated "34" of the verified complaint and each and every part thereof.

12: Denies upon information and belief each and every allegation contained in paragraph designated "35" of the verified complaint as to this answering defendant, otherwise denies having knowledge or information sufficient to form a belief as to each and every allegation contained in

paragraph designated "35" of the verified complaint and refers all questions of law to this Honorable Court.

13: Denies upon information and belief each and every allegation contained in paragraphs designated "36" and "37" of the verified complaint and refers all questions of law to this Honorable Court.

14: Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated "38" of the verified complaint and refers all questions of law to this Honorable Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

15: That the personal injuries and/or damages alleged to have been sustained by the plaintiff were caused entirely or in part through the culpable conduct of the plaintiff, without any negligence on the part of the answering defendant and the answering defendant seeks a dismissal or reduction in any recovery that may be had by the plaintiff in the proportion which the culpable conduct, attributable to the plaintiff, bears to the entire measure of responsibility for the occurrence.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

16: That the personal injuries and/or damages alleged to have been sustained by the plaintiff were caused entirely or in part through the culpable conduct of the co-defendants, without any negligence on the part of the answering defendant and the answering defendant seeks a dismissal or reduction in any recovery that may be had by the plaintiff in the proportion which the

culpable conduct, attributable to the co-defendants, bears to the entire measure of responsibility for the occurrence.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

17: Pursuant to CPLR 1603, this answering defendant asserts the limitations contained in CPLR 1601 and 1602 and all rights contained therein.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

18: Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiff for medical care, dental care, custodial care or rehabilitative services, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from collateral source as defined in Section 4545(c) of the New York Civil Practice Law and Rules.

19: If any damages are recoverable against said defendant, the amount of such damages shall be diminished by the amount of the funds which plaintiff has or shall receive from such collateral source.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

20: Defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT, specifically denies that it gave any warranties regarding the subject "Lexus". However, to the extent that plaintiff's verified complaint alleges a cause of action for breach of warranty, defendant alleges that plaintiff failed to give notice of any breach of warranty to the answering defendant within a reasonable time after discovery of such alleged breach of warranty.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

21: In the event a product or system described in plaintiff's verified complaint inspected, designed, manufactured, sold, imported, and/or distributed by the answering defendant, (which is denied) then any claims against said defendant are barred because said product was materially and substantially changed, modified or altered by parties in possession of the product subsequent to ESTREE, INC. d/b/a LEXUS OF WESTPORT.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

22: In the event a product or system described in plaintiff's verified complaint purportedly tested, inspected, designed, manufactured, sold, imported, and/or distributed by the answering defendant (which is denied) is identified as having caused or contributed to plaintiff's alleged damages, any claims against ESTREE, INC. d/b/a LEXUS OF WESTPORT are barred because said product was misused, abused, or altered by parties in possession of the product subsequent to said defendant.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

23: In the event a product or system described in plaintiff's verified complaint tested, inspected, designed, manufactured, sold, imported, and/or distributed by ESTREE, INC. d/b/a LEXUS OF WESTPORT (which is denied) is identified as having caused or contributed to plaintiff's alleged damages, any claims against said defendant are barred because the characteristics of said product were open and obvious to the purchasers and users of such products, and the plaintiff or others now not known to the defendant knowingly and voluntarily assumed the risk of damage allegedly sustained in the use or misuse of the product which is the subject of this action.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

24: In the event a product or system described in plaintiff's verified complaint purportedly tested, inspected, designed, manufactured, sold, imported, and/or distributed by ESTREE, INC. d/b/a LEXUS OF WESTPORT (which is denied) is identified as having caused or contributed to plaintiff's alleged damages, said product at all times conformed with the current state of the art or knowledge of trade customs and standards applicable at that time in the industry which produced such products.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

25: In the event a product or system described in plaintiff's complaint purportedly tested, inspected, designed, manufactured, sold, imported, and/or distributed by ESTREE, INC. d/b/a LEXUS OF WESTPORT (which is denied) is identified as having caused or contributed to plaintiff's alleged damages said damages were the result of the product having been used in a manner not intended by its manufacturer and not in accordance with instructions and labels provided by it or with known safety practices.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

26: The product which is the subject of plaintiff's verified complaint was designed and manufactured by parties, person or entities other than this answering defendant.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

27: That ESTREE, INC. d/b/a LEXUS OF WESTPORT was not a manufacturer, distributor or seller of the subject product.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

28: The product or system which is the subject of plaintiff's verified complaint was tested, inspected, designed, manufactured, sold, imported and/or distributed by parties, persons or entities, other than the answering defendant.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

29: That the plaintiff assumed the risk related to activity causing the injuries sustained.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

30: That the verified complaint fails to state a valid cause of action as against the answering defendant.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

31: That the plaintiff failed to mitigate, obviate, diminish or otherwise act to lessen or reduce the injuries, damages and disabilities alleged in plaintiff's verified complaint.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

32: Answering defendant reserves the right to move to dismiss the verified complaint on the grounds that plaintiff has failed to join a necessary party to the within action and, accordingly, the Court has no jurisdiction to grant the relief asserted by plaintiff.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

33: That the plaintiff has discharged other tort feasons from liability for the injury and the answering defendant is thereby entitled to a set-off as to any verdict in the plaintiff's favor as against this defendant as set forth in the General Obligations Law Section 15-108.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

34: That New York County is not the proper venue for the action as the proper County of venue is Nassau County.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

35: That the plaintiff breached the contract and/or lease in question.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

36: That plaintiff's right to recover is limited to the terms of the applicable contract, if any, between plaintiff and answering defendant.

**AS AND FOR A CROSS COMPLAINT OVER
AND AGAINST THE CO-DEFENDANTS,
LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC.
and METRO AUTO LEASING, INC. d/b/a THE AUTOMALL
THIS DEFENDANT, ESTREE, INC. d/b/a LEXUS OF WESTPORT,
ALLEGES UPON INFORMATION AND BELIEF:**

37: That if the plaintiff was caused to sustain personal injuries and resulting damages at the time and place set forth in the plaintiff's verified complaint and in the manner alleged therein, through any carelessness, recklessness, acts, omissions, negligence and/or breaches of duty and/or warranty and/or contract, other than of the plaintiff, then the said injuries and damages arose out of the several and joint carelessness, recklessness, acts, omissions, negligence and breaches of duty and/or obligation and/or Statute and/or Warranty and/or contract in fact or implied in law, upon the part of the co-defendants, with indemnification and save harmless agreement and/or responsibility by them in fact and/or implied in law and without any breaches or any negligence of the answering defendant contributing thereto; and if the answering defendant is found liable as to the plaintiff for the injuries and damages as set forth in the plaintiff's verified complaint, then, and in that event,

the relative responsibilities of all said defendants in fairness must be apportioned by a separate determination in view of the existing factual disparity, and the said co-defendants herein will be liable over jointly and severally to the answering defendant and bound to fully indemnify and hold the answering defendant harmless for the full amount of any verdict or judgment that the plaintiff herein may recover against the answering defendant in this action, including all costs of investigation, disbursements, expenses and attorney's fees incurred in the defense of this action and in the conduct of this cross complaint.

WHEREFORE, the defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT, demands judgment dismissing the plaintiff's verified complaint on the merits; and if the plaintiff, IRIS LEVITEN, is found to have contributed to the accident or damages, that any damages be reduced in proportion to which the plaintiff may be found to have so contributed to the accident or damages and further demands judgment over and against the co-defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC. and METRO AUTO LEASING, INC. d/b/a THE AUTOMALL, on the cross-claim, for the amount of any judgment obtained against the answering defendant by plaintiff or any other party or on the basis of the apportionment of responsibility in such amounts as a jury or Court may direct together with the costs, disbursements and expenses of this action including attorney's fees.

Dated: Albertson, New York
September 18, 2007

By: 

KEITH V. TOLA
AHMUTY, DEMERS & McMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, NY 11507
(516) 294-5433
Our File No.: YCW0962N7 JAE

TO:

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiffs
80 Pine Street, 34th Floor
New York, NY 10005

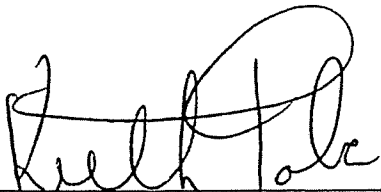
STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

KEITH V. TOLA, being duly sworn, deposes and says:

That he is an associate of the law firm of AHMUTY, DEMERS & McMANUS, the attorneys for the defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT, in the above entitled action; that he has read and knows the contents of the foregoing **VERIFIED ANSWER** and that same is true to his own knowledge, except as to those matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

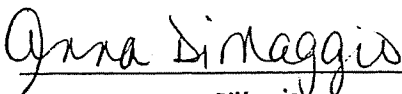
Deponent further says that the grounds for his belief as to all matters therein stated upon information and belief are statements made to him by the defendants and papers and documents received by deponent from the defendants or its representative and which are now in his possession.

Deponent further says that the reason why this verification is made by deponent and not by the defendants is that defendants are not within the County of New York, where deponent has his office.



KEITH V. TOLA

Sworn To Before Me This
21st Day of SEPTEMBER, 2007



Anna DiMaggio
Notary Public, State of New York
No. 01015074216
Qualified in Kings County
Commission Expires March 10, 2011

Index No. 107681/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

=====
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC. d/b/a
LEXUS OF WESTPORT and METRO AUTO LEASING, INC. d/b/a THE AUTOMALL

Defendants.

=====
VERIFIED ANSWER
=====

AHMUTY, DEMERS & McMANUS, ESQS.

Attorneys for Defendant

ESTREE, INC. d/b/a LEXUS OF WESTPORT

200 I.U. Willets Road

Albertson, New York 11507

(516) 294-5433

Our File No.: YCW0962N7 JAE

=====
To:

Attorney(s) for

=====
Service of a copy of the within

is hereby admitted.

Dated:

Attorneys for
=====

SEP 25 2007

3. Denies the allegations contained in paragraphs 19, 21, 22 and 23 of the verified complaint.

RESPONSE TO THE SECOND CAUSE OF ACTION

4. In response to Paragraph 25 of the verified complaint, repeats and realleges paragraphs 1 to 3 of this Answer.

5. Denies the allegations contained in paragraphs 26, 27, 28, 29, 30, 31 and 32 of the verified complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the verified complaint.

RESPONSE TO THE THIRD CAUSE OF ACTION

7. In response to Paragraph 34 of the verified complaint, repeats and realleges paragraphs 1 to 6 of this Answer.

8. Denies the allegations contained in paragraphs 35, 36 and 37 of the verified complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the verified complaint.

FIRST AFFIRMATIVE DEFENSE

10. Plaintiff has failed to mitigate, minimize or avoid the damage about which she now complains.

SECOND AFFIRMATIVE DEFENSE

11. The verified complaint fails to state a claim upon which relief may be granted against the answering defendant.

THIRD AFFIRMATIVE DEFENSE

12. The injuries alleged to have been suffered by the plaintiff Iris Leviten were caused or contributed to or by the culpable conduct including contributory negligence, assumption of the risk and/or product misuse of persons over whom the answering defendant had no authority or control.

FOURTH AFFIRMATIVE DEFENSE

13. Pursuant to CPLR Article 16, the liability of the answering defendant to the plaintiff for non-economic loss shall not exceed the equitable share of this defendant determined in accordance with the relative culpability of each person/party causing or contributing to the total liability for non-economic loss.

FIFTH AFFIRMATIVE DEFENSE

14. Any recovery by plaintiff must be reduced by the amounts paid or reimbursed by collateral sources in accordance with CPLR § 4545.

SIXTH AFFIRMATIVE DEFENSE

15. Plaintiff's action against Defendant Metro Auto Leasing, Inc. is subject to, and limited by, the provisions of Articles 14 and 14-A of the CPLR and § 15-108 of the GOL of New York.

SEVENTH AFFIRMATIVE DEFENSE

16. Upon information and belief, any and all risks, hazards and dangers were open, obvious and apparent, natural and inherent and know to Plaintiff and Plaintiff assumed all risks.

EIGHTH AFFIRMATIVE DEFENSE

17. Defendant Metro Auto Leasing, Inc. had no actual or constructive notice of any alleged defective and/or dangerous condition.

FIRST CROSS-CLAIM

18. If plaintiff recovers against the answering defendant, then the answering defendant will be entitled to an apportionment of responsibility for damages between and among the parties to this action and will be entitled to recover from each other party for its/their proportional share commensurate with any judgment that may be awarded to plaintiff.

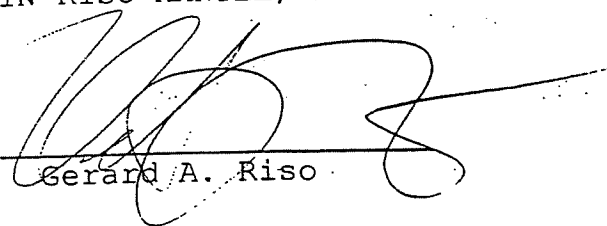
SECOND CROSS-CLAIM

19. If plaintiff recovers against the answering defendant then the answering defendant will be entitled to be indemnified and to recover the full amount of any judgment from the other defendants herein.

WHEREFORE, Defendant Metro Auto Leasing, Inc. demands judgment dismissing the verified complaint; for the costs, fees, expenses and disbursements incurred herein, and in the event judgment or settlement is recovered herein against Defendant Metro Auto Leasing, Inc. Defendant Metro Auto Leasing, Inc. demands judgment on its cross-claims; and for such other and further relief in favor of Defendant Metro Auto Leasing, Inc. as is just and proper.

Dated: January 4, 2008
New York, New York

STEIN RISO MANTEL, LLP

By: 
Gerard A. Riso

The Chrysler Building
405 Lexington Avenue
New York, New York 10174
212-599-1515
Attorneys for Defendant Metro
Auto Leasing, Inc.

To: Gair, Gair, Conason, Steigman & Mackauf
80 Pine Street
New York, New York 10005
Attorneys for Plaintiff

Estree/Lexus of Westport
1317 Post Road
Westport, CT 06880

Lexus, A Division of Toyota
Motor Sales USA
80 State Street
Albany, NY 12106

Index No. 107681-2007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS KEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL

Defendants.

ANSWER AND CROSS CLAIMS

STEIN RISO MANTEL LLP
Attorneys for Metro Auto Leasing, Inc.
The Chrysler Building
405 Lexington Avenue, 42nd Floor
New York, New York 10174
(212) 599-1515

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

VERIFIED ANSWER

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

Defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA., INC., by its attorneys, AARONSON RAPPAPORT
FEINSTEIN & DEUTSCH, LLP as and for its Verified Answer to plaintiff's Verified
Complaint, respectfully shows to this Court and alleges upon information and belief:

ANSWERING AS AND FOR A FIRST CAUSE OF ACTION

FIRST: Denies the allegations contained in Paragraphs "1", "2" and "3" in
the form alleged, except admit that TOYOTA MOTOR SALES, U.S.A., INC., s/h/a
LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC. has its principal offices
in the State of California and is licensed to do business in the State of New York.

SECOND: Denies the allegations contained in Paragraph "4" in the form
alleged.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "5", "6", "7", "8", "9", "16", "17", "18", "19" and "20".

FOURTH: Denies the allegations contained in Paragraphs "10", "11" and "12" in the form alleged, except admit that TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. imported and distributed a Lexus Model Number ES 350, motor vehicle bearing Vehicle Identification Number JTHBJ46G272071246.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "13", "14" and "15" and respectfully refer all questions of law and fact to the this Honorable Court.

SIXTH: Denies the allegations contained in Paragraphs "21", "22", "23" and "24".

ANSWERING AS AND FOR A SECOND CAUSE OF ACTION

SEVENTH: In response to Paragraph "25", repeats each admission or denial contained in Paragraphs "FIRST" through "SIXTH" herein as though fully set forth hereat.

EIGHTH: Denies the allegations contained in Paragraph "26", except admits that the Lexus ES350 sedan motor vehicle, bearing the New York license plate number DWW7794 and vehicle identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, services, maintained, labeled,

distributed, sold and purchased and refers to the warranties contained in the Owner's Manual.

NINTH: Denies the allegations contained in Paragraph "27" in the form alleged, except admits that the Lexus ES350 sedan motor vehicle, bearing the New York State license plate number DWW7794 and Vehicle Identification Number JTHBJ46G272071246 was safe, proper, merchantable and fit for its intended uses.

TENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "28".

ELEVENTH: Denies the allegations contained in Paragraphs "29", "30", "31", "32" and "33".

ANSWERING AS AND FOR A THIRD CAUSE OF ACTION

TWELFTH: In response to Paragraph "34", repeats each admission or denial contained in Paragraphs "FIRST" through "ELEVENTH" herein as though fully set forth hereat.

THIRTEENTH: Denies the allegations contained in Paragraphs "35", "36", "37" and "38".

ANSWERING AS AND FOR A SECOND AFFIRMATIVE DEFENSE.

FOURTEENTH: Pursuant to CPLR Article 16, the liability, if any, of the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. for non-economic loss shall not exceed its equitable shares of liability.

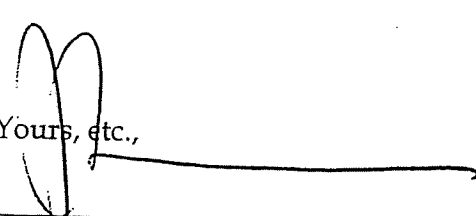
ANSWERING AS AND FOR A SECOND AFFIRMATIVE DEFENSE.

FIFTEENTH: If the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. should be found negligent, which negligence is denied, recovery on the claim set forth in the Complaint is diminished by plaintiff's negligence in failing to exercise due and proper care considering the circumstances existing at the time of the incident in issue, which negligence was greater than the negligence, if any, of the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. pursuant to the provisions of the Comparative Negligence Act.

WHEREFORE, defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. demands judgment dismissing the Complaint, together with the costs and disbursements of the within action.

DATED: New York, New York
August 13, 2007

Yours, etc.,


BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss:

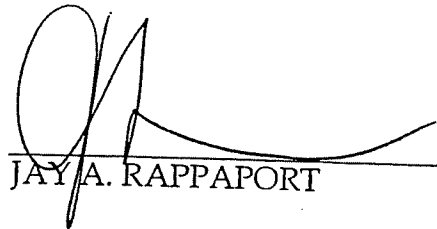
JAY A. RAPPAPORT, being duly sworn, deposes and says:

That I am a member in the firm of attorneys representing the defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.

That I have read the attached ANSWER and the same is true to my own belief, except as to matters alleged on information and belief, and as to those matters, I believe them to be true to the best of my knowledge.

My sources of information are a claims file containing statements, reports and records of investigation, investigators, parties and witnesses, with which I am fully familiar.

That this verification is made by me because my client does not reside within the county where I maintain my office.


JAY A. RAPPAPORT

Sworn to before me this
13th day of August, 2007.


Notary Public

Marlene Kelly
Notary Public, State of New York
No. 01KE6068190
Qualified in Queens County
Commission Expires October 28, 2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

-against-

NOTICE OF DEPOSITION

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that we will take the deposition of the following parties or persons, before a Notary Public not affiliated with any of the parties or their attorneys, on all relevant and material issues, as authorized by Article 31 of the CPLR:

Plaintiff - IRIS LEVITEN

DATE: November 20, 2007

TIME: 10:00 A.M.


PLACE: AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP
757 Third Avenue
New York, New York 10017

PLEASE TAKE FURTHER NOTICE, that the persons to be examined are required to produce all books, records and papers in their custody and possession that

may be relevant to the issues herein.

DATED: New York, New York
August 13, 2007

Yours, etc.,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA, INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK — NFW YORK COUNTY

PRESENT: KAREN S. SMITH
Justice

PART 62

Jris Leviten

INDEX NO. 107681/07

MOTION DATE _____

MOTION SEQ. NO. 06

MOTION CAL. NO. _____

- v -

Levin et al.

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED
<u>1</u>

Notice of Motion/Petition Order to Show Cause - Affidavits - Exhibits

Notice of Cross-Motion - Answering Affidavits — Exhibits ... Memorandum

Reply Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ORDERED that this motion

+ today's court appearance on the record. Court Reporter: Rothrock Deborah 646-386-3073

is granted on consent of Metro and without any opposition by any of the other parties. As Metro has represented that it has no money for defense and as Metro is a corporation and can only appear by an attorney, the court grants Metro a stay of this action until July 30, 2009 when the CRT's are scheduled to go forward on these consolidated actions (Index # 117118/07 is still active, Index # 102331/08 has settled according to the attorneys in court today). Whether or not represented by counsel for purposes of defending the action a representative of Metro must appear by its scheduled CRT on August 6, 2009 at 10:00 AM at the law offices of Amarty +

Dated: _____

Hon. Karen S. Smith, J.S.C.

Signature on page 2

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MULTI/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

go to page 2

Demon - 123 William - St. NY NY, 27th floor. Failure by
Metro to appear by counsel for any compliance
conference or by a representative of Metro
(employee, president etc) will subject Metro
to a motion to strike its answer.
The next compliance conference is Aug. 27, 2009
at 9:30 AM in Rm 280 at 80 Centre
Street

7/16/09

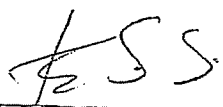

HON. KAREN SMITH

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X
IRIS LEVITEN,

Index No. 107681-2007

Plaintiff,

- against -

Action #1

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X
MICHAEL DOUKAS,

Index No. 117118-2007

Plaintiff,

- against -

Action #2

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X
ANTHONY DIGIROLAMO,

Index No. 102331-2008

Plaintiff,

- against -

Action #3

IRIS LEVITEN,

Defendant.

-----X
**AFFIRMATION IN SUPPORT OF MOTION OF STEIN RISO MANTEL LLP TO BE
RELIEVED AS ATTORNEYS FOR METRO AUTO LEASING, INC.**

GERARD A. RISO, an attorney duly admitted to the practice of law before the Courts of the State of New York, affirms, under the penalties of perjury, as follows:

1. I am a member of Stein Riso Mantel, LLP, attorneys for Defendant Metro Auto Leasing, Inc (“Metro”) in Action #1 (defined below). I respectfully submit this affirmation in support of our motion to be relieved as counsel. As set forth below, our client instructed us to discontinue our representation of Metro in this action.

BACKGROUND

2. Metro is a car leasing company incorporated under the laws of the State of New York.

3. Plaintiff in Action #1 alleges that, in or about December 2006, Metro leased a 2007 Lexus Sedan - model ES 350 – to Plaintiff, Iris Leviten. (*Iris Leviten v. Lexus et al.*, Index No. 107681-2007)

4. On or about February 18, 2007, Leviten was allegedly operating the Lexus, which allegedly was involved in a collision with a 2002 Mack Truck. (¶ 28 of *Amended Verified Complaint in Action #1 - Annexed as Exhibit A*)

5. Plaintiff Michael Doukas in Action # 2 (*Doukas v. Leviten et al.*, Index No. 117118/07) was allegedly a passenger in the Mack Truck, and Plaintiff Anthony DiGirolamo in Action #3 (*DiGirolamo v. Leviten*, Index No. 102331/08) was allegedly operating the Mack Truck when the collision occurred. (¶ 8 of *Complaint in Action #2 - Annexed as Exhibit B*)

6. All three actions were commenced in the Supreme Court of the State of New York, County of New York.

7. On or about July 7, 2008, this Court Ordered that Action #1 be consolidated with Action #2 and Action #3 for joint discovery and joint trial (“Order”). (*See Order Annexed as Exhibit C*)

8. This matter is still in the discovery stages and depositions are currently being conducted.

RELIEF REQUESTED

9. Our client has instructed us that it does not want us to continue as its attorneys in this action and that it no longer can afford to pay for our services. Metro does not have any liability insurance that would provide coverage or pay for its defense in this action.

10. No prior request has been made for the relief requested herein.

11. We move by Order to Show Cause, pursuant to CPLR §321(2), so that this Court can provide for the service of our motion papers on Metro. We ask that we be permitted to serve our client at its business address: Metro Auto Leasing, Inc. 42-10 27th Street, Long Island City, New York 11101 Attention: Michael Silverstein, by next-day mail delivery.

Dated: New York, New York
June 23, 2009


GERARD A. RISO

EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

INDIVIDUAL ASSIGNMENT PART [OR JUSTICE]

4/15/08

Iris Leviten

Plaintiff(s),

- against -

Lexus, et al.

Defendant(s).

Index No.

107681

107

DCM Track

Complex

PRELIMINARY CONFERENCE ORDER

(202.8, 202.12 and 202.19 of the Uniform Rules)

APPEARANCES

Plaintiff(s): Diana Carnemolla for Gair, Gair

Defendant(s): TMS d/b/a Lexus by Ben Careathers of Aaronson, Rappaport, Lexus of Westport by PHM, Dem & M.M. by Lexus METRO AUTO Leasing, INC. by Edward Hinson Stein Riso MARTEL, LLP

It is hereby ORDERED that disclosure shall proceed as follows:

(1) Insurance Coverage: primary & excess or personal affidavits of none; If not already provided, shall be furnished by all OS on or before May 15, 2008.

(2) Bill of Particulars: (a) Demand for a bill of particulars shall be served by AS on or before 5/15/08. (b) Bill of particulars shall be served by on or before. (c) A supplemental bill of particulars shall be served by as to Items on or before.

(3) Medical Reports and Authorizations: Shall be served as follows: of all medical providers for injuries claimed herein, No Fault, medical insurance and medical records, No Fault, medical insurance and medical records by May 9, 2008.

(4) Physical Examination: (a) Examination of TI within 45 days of completion of TI's deposition shall be held. (b) A copy of the physician's report shall be furnished to plaintiff within 45 days of the examination.

(5) Depositions: Depositions of [X] Plaintiff(s) [] Defendant(s) [X] All Parties shall be held. TI to be deposed on or before 7/15/08. [X] TMS to be deposed on or before 8/10/08. [X] Lexus of Westport on or before 8/13/08. [X] Metro Auto Leasing on or before 9/10/08.

(6) Other Disclosure: (a) All parties, on or before 5/15/08, shall exchange names and addresses of all eye witnesses and notice witnesses, statements of opposing parties, and photographs, or, if none, provide an affirmation to that effect. (b) Authorization for plaintiff(s)' employment records for the period 2004 - present (if claimed, see additional directives) shall be furnished on or before May 9, 2008. (c) Demand for discovery and inspection shall be served by on or before. The items sought shall be produced to the extent not objected to, and objections, if any, shall be stated on or before. (d) Other [interrogatories, etc.]

(7) End Date for All Disclosure: November 7, 2008

(8) Impleader: Shall be completed on or before 45 days of completion of all EBTs

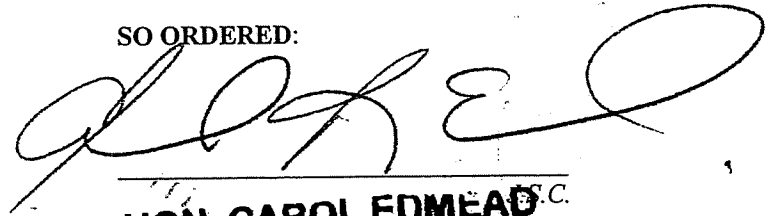
(9) Compliance Conference: Shall be held on December 2, 2008 @ 3PM

(10) Motions: Any dispositive motion(s) shall be made on or before 60 days of the NOI

(11) Note of Issue: Plaintiff shall file a note of issue/certificate of readiness on or before December 16, 2008. A copy of this order, an affirmation stating that the terms of the order have been complied with, and an affidavit of service of the affirmation and note of issue shall be served and filed with the note of issue on or before said date.

FAILURE TO COMPLY WITH ANY OF THESE DIRECTIVES MAY RESULT IN THE IMPOSITION OF COSTS OR SANCTIONS OR OTHER ACTION AUTHORIZED BY LAW.

SO ORDERED:



HON. CAROL EDMOAD SC.

Dated:

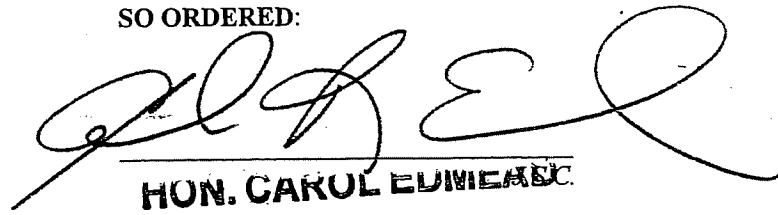
ADDITIONAL DIRECTIVES

In addition to the directives set forth above, it is further ORDERED as follows:

provide a response to ~~respond to~~ TTS demand for
Δ shall provide all documents, customer complaints, memos relating to the recall for the car mats w/in 30 days.

Dated:

SO ORDERED:



HON. CAROL EDMOAD SC.

PRELIMINARY CONFERENCE ORDER

X. ADDITIONAL DIRECTIVES:

- ① All parties to conduct vehicle inspections of the vehicles involved in this accident on notice to all parties.
- ② All parties to exchange inspection [vehicle + scene] photographs and videotapes by May 15, 2008.
- ③ All parties to exchange sales/lease documents, repairs, maintenance and modification changes made to the vehicle documents; if any, by May 15, 2008.
- ④ TT to provide current location of the TT's vehicle by May 15, 2008.
- ⑤ TT to ~~provide~~ ^{respond to} ~~supp~~ ^{request to} respond to TMS demand # 5 [provide what the feasible safer alternative design is and how the floor mat should have been anchored] and # 10 [what the specific warning language should have been and where it should have been posted] by May 15, 2008.

Plaintiff shall notify Δ s w/in 30 days if she intends to claim lost wages and, if so, she shall serve Δ s for ~~her~~ this claim.

Δ s shall respond to all demands served by TT including demands dated 11/28/07, 2/28/08, 4/4/08, 4/11/08 w/in 30 days.

~~The inspection of vehicle w/in TT's control shall be conducted after Δ s have paid their respective share for storage of said vehicle.~~

Plaintiff ~~responds~~ shall respond to Δ 's request for Δ 's to pharmacy, S.S.I. & disability records w/in 30 days.

X. ADDITIONAL DIRECTIVES

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

10/2 ✓

IRIS Leviten

- v -

Lexus, et al

INDIVIDUAL ASSIGNMENT PART 62

STIPULATION

INDEX NO. 107681/07

MOTION CALENDAR NO. 27

DATE 10/23/08

IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

~~This compliance conference shall include discovery in index #~~
117118/07 (Duckas v Leviten) as well.

- Inspection of subject Lexus to be held on or before 12/15/08, time/location to be agreed
- EBT of TI Leviten ^{ON or Before} 1/20/09; 10AM @ Gan, Gan.
- EBT of TI Duckas on or before 1/21/09; 10AM @ Kehler + Kehler
- EBT of Δ Digirolamo on or before 2/2/09; 10AM; @ Rip Counsel 52 Duane St
- EBT of Δ Lexus/Toyota on or before 2/11/09; 10AM @ Ahmuty (123 William)
- EBT of Δ's Estree + Metro on or before 2/18/09; 10AM @ Ahmuty (123 William)
- TI Duckas to provide EP's within 3 weeks; All parties to respond to ^{outstanding} discovery demands by 11/21/08
- Δ's Lexus/Toyota/Estree/Metro to provide TI Duckas with courtesy copy of discovery given to TI Leviten
- Metro Aut. to provide copies of all applicable insurance policies and/or disclaimers
- In re: pursuant to Leviten PC order.

CC: 2/28/09; 2pm

Gail Gail, ~~Conroy~~ Skymano Mitchell for TI Leviten
by: [Signature]
Attorney for Plaintiff

Date: 10/23/08

Duckas by Kehler + Kehler by [Signature]
Attorney for Defendant

So Ordered.

Conroy & Conroy by [Signature]
Attorney for Defendant Leviten

ENTER: HON. KAREN SMITH

Edward Seaman by Mark Thibault
Defendant Lexus for appearance ^{only}
[Signature]
Lexus of Westport by DL... Dep. + M...
Edward Minsor by [Signature]

J.S.C.

- Parties are subject to this part's EBT rules on p. 2 of 2.
- N.T. to be determined at final CC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS Leviten, T

Lexus, et al

Michael DOUKAS

(S/NY 117118/07)

Iris Leviten, et al

INDIVIDUAL ASSIGNMENT PART

62

STIPULATION

INDEX NO. 107681/07

MOTION CALENDAR NO.

DATE 2/26/09

Note of issue to be determined at final CC.
IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

- Photos from inspections of Lexus to be exchanged by all parties by
- EBT of TI Leviten on or before 3/24/09 @ Gair, Gair (10AM)
- EBT of TI DOUKAS on or before 3/31/09 @ Kelen, Kelen (10AM)
- EBT of A DiGirolamo on or before 5/11/09; 10AM @ GIP Counsel 52 Dune St
- EBT of A Lexus/Toyota on or before 5/7/09; 10AM @ Ahmuty (123 Willow St)
- EBT of A's Estree/Metro on or before 5/21/09; 10AM @ Ahmuty (123 Willow St)
- TI Doukas to provide BP/Mod Exchanges By 3/19/09
- All parties to respond to discovery demands, to extent not previously provided, by 3/26/09
- A's Lexus/Toyota/Estree/Metro to provide TI Doukas with courtesy copy of disc. provided to TI Doukas by 3/19/09; A Metro to provide copies of applicable Ins. Policies and/or disclosure to all parties
- All parties to respond to TMS 4/2/08 doc demd, to extent not previously provided, by 3/24/09
- A City waives appearance at non-city depositions.

CC: 4/2/09; 2pm

Parties are subject to this part
EBT rules ~~10/23/08~~ attached
Date: 2/26/09 here to

Gair Gair Gairasm by Diana Carnemolli
Attorney for Plaintiff Leviten
Kelen + Kelen by M
Atty Doukas
CONNORS + CONNORS FOR A LEVITEN LAR
Attorney for Defendant

So Ordered.

HON. KAREN SMITH

ENTER:

J.S.C.

Attorney for Defendant
Sten, Riso, Mentel by telephone (Edward Minsen)
by M
See U.S. Dist., Den: M
SC-86 (rev 2/86)
for MAC

EBT Adjournment Policy
Hon. Karen S. Smith, Part 62
Last Updated: October 20, 2008

In the event that EBTs will not be going forward as scheduled in the Compliance Conference order or stipulation, the parties must reschedule the EBT amongst all parties for no later than 4 weeks from the originally scheduled date.

1. Where the parties cannot agree on a date within 4 weeks, the party requesting the adjournment must contact chambers at (646) 386-3371 on a conference call with all parties within 1 week of the originally scheduled date, or at least 48 hours prior to the next scheduled compliance conference, whichever is sooner.
2. If the parties are able to reschedule the EBT amongst themselves within 4 weeks of the prior date, the party requesting the adjournment must notify the court by fax [(212) 401-9036] of: 1) the original and newly scheduled EBT dates; 2) the names and phone numbers of the attorneys/parties consenting to the adjournment; 3) the reason for the adjournment; and 4) whether the EBT(s) are the only outstanding discovery, either
 - a. Within 1 week of the original EBT date, or
 - b. At least 48 hours in advance of the next scheduled Compliance Conference, whichever is sooner.

If the new EBT date falls *after* the next scheduled Compliance Conference, the Court will generally reschedule the Compliance Conference for after the EBTs are completed, unless there are other discovery issues to be addressed in the meantime. The Court will notify the party requesting the adjournment of any change in the Compliance Conference date, who will then be responsible for notifying all parties of the new Compliance Conference.

Failure to comply with this EBT adjournment policy may result in appropriate sanctions.

Date: 2/26/09

So Ordered: **HON. KAREN SMITH**
Hon. Karen S. Smith, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS Leviten

lexus, etal

Michael Dookas (SINY 117118/07)

IRIS Leviten, etal

INDIVIDUAL ASSIGNMENT PART 62

STIPULATION

INDEX NO. 107681/07

~~MOTION~~ CALENDAR NO. 26

DATE 4/2/09

IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

- Photos from all inspections to be exchanged by all parties by 5/1/09
- EBT of TI Dookas on or before 6/16/09; 10AM @ Kerner + Kerner
- EBT of Δ DiGirolamo on or before 6/24/09; 10AM @ Corp Counsel 52 Duane St
- EBT of Δ Lexus/Toyota on or before 7/24/09; 10AM @ Ahmuty (123 William)
- EBT of Δ's Estree/Metro Auto on or before 8/6/09; 10AM @ Ahmuty (123 William)
- All parties to provide discovery responses, to extent not provided, to all parties by 5/1/09
- Δ's Lexus/Toyota/Estree/Metro to provide TI Dookas access copy of disc. responses previously provided to TI Leviten by 5/1/09
- Δ Metro to provide copies of applicable Insurance Policies and/or Disclaimers to all parties by 5/1/09
- Δ City continues to waive appearance at all non-City depositions.
- Δ's to respond to TI Dookas Disc Dem. dated 3/19/09 by 5/1/09 to extent not done
- CC: 7/16/09; 2pm

EBTs are subject to the Court's EBT Policy - failure to comply will result in sanctions or dismissal
Date: 4/2/09 or preclusion.

William Mc Donnell 66CS 6m (TI LEVITEN)

Michael J. Ahmuty for Kerner + Kerner (TI Dookas)

Ahmuty, Dem. & Min. h. TI K
Attorney for Defendant E. D. K.

So Ordered.

Conroy Conroy (D. Heller) per Leviten as Δ
Attorney for Defendant

ENTER: HON. KAREN SMITH

J.S.C.

Exec. Searched (Skinner) by TMS

[Signature] for MAC

SC-86 (rev 2/86)

Sten, Riso, Mantel by Tel. Call (Edward Mison) by 21

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

LEVITEN, Iris

INDEX NO.

107681/07

Plaintiff(s),

-against-

IAS PART

62

LEXUS, et al.

COMPLIANCE CONFERENCE ORDER

Defendant(s).

On 8/27, 2009 a conference was held in this case. The parties appeared as follows:

Plaintiff(s)

IRIS LEVITEN

by

Gair Gair Conason Steigman
Mackauf Bloom & Rubinowitz
by Diana M.A. Carnemolla

Defendant(s)

et al.
Iris Leviten as Δ

by

See Court of Phil. Debra M. Connor
Connors & Connors by [Signature]

The Court has determined that the Court's Case Management Order of _____, 20____ has not been complied with in that depositions are not complete, Metro Auto failed to appear on 8/16/09 as directed & Δ Estree is scheduled to appear (see below)

Accordingly, it is ORDERED that On 9/18/09 the Δ, Estree Inc d/b/a Lexus of Westport, shall appear for its EBT. ITs Leviten and Doukas to exchange photos from inspections of Lexus vehicle. IT Leviten to respond to ATMS' request for production dated 6/6/08 and notice for Dec 11 dated 4/13/09 w/in 30 days; IT Doukas to respond to ATMS' request for production + notice for Dec 11 dated 7/20/09 w/in 30 days, to the extent not responded.

Enter:

* Compliance Conference: 10/08/09
EBTs subject to adjournment @ 2:00
Policy annexed to 2/26/09 Order

J.S.C.

Dated:

8/27/09

KAREN SMITH
J.S.C.

EXHIBIT F

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

DEFENDANT: **KAREN SMITH**

PART 02

Index Number: 117718/2007 C. 2007

DOUKAS, MICHAEL

vs

LEVITEN, IRIS

Sequence Number: 003

DEFAULT JUDGMENT

FILED
DEC 02 2009
NEW YORK
COUNTY CLERK'S OFFICE

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that ~~this motion~~ ^{plaintiff's}

judgment against defendant Metro Auto Leasing d/b/a The Auto Mall is granted on default by said defendant and upon no opposition by any of the other parties, solely to the extent of granting plaintiff judgment on liability only in an amount to be determined by an expert or damages to be held either at trial or, if the action is disposed of prior to trial, as soon thereafter. Accordingly, the Clerk is ORDERED to enter judgment in favor of plaintiff against defendant Metro Auto Leasing d/b/a The Auto Mall in an amount to be determined by expert as provided here.

Dated: 11/25/09 KAREN SMITH J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

EXHIBIT G

1 R. Landis

2 A. Yes.

3 Q. If I understand your testimony
4 correctly, with regard to Exhibit 1 there is
5 nothing specific on here instructing the dealer
6 as to how to install the mats on the driver's
7 side or for that matter the mats in any part of
8 the car?

9 A. That is correct.

10 Q. Would it be fair to say, sir, that
11 one of the reasons why Toyota would provide
12 Exhibit 1 but no other documentation is that
13 Toyota is providing the mats to a knowledgeable
14 user, meaning the dealer, and Toyota expects
15 that the dealer would know that the mat needs to
16 be properly secured with the hooks before
17 delivered to the end user?

18 MR. MURPHY: Objection.

19 A. We would expect that the dealer
20 would install those mats that are in the trunk
21 and they would follow the instructions, yes.

22 MR. HERSHENHORN: Let's mark ES 350
23 pre-delivery service plan as Plaintiff's
24 Exhibit 16.

25 (Plaintiff's Exhibit 16, ES 350

EXHIBIT H

1 Frier

2 page on it.

3 MR. MURPHY: All right.

4 A Okay, I saw this. I saw this.
5 I did not see this one.

6 Q Did you see anything other than
7 the two pages you pointed out?

8 A I saw this, but I don't remember
9 this being here, and maybe this. I don't
10 know. I didn't really look at it.

11 MR. HERSHENHORN: Let us just
12 mark a few of these.

13 Q Before we mark these, I just
14 want to ask you, ma'am, from the little bit
15 we have heard so far, and you tell me whether
16 I am clear on this or not in any way, and if
17 I am wrong, please tell me; do I understand
18 correctly from the little bit we have heard
19 so far, you were the person who took the
20 order for the vehicle that is involved in
21 this case?

22 A Yes.

23 Q Do I also understand that you
24 had absolutely zero, nothing, to do with the
25 pre-delivery inspection of this vehicle?

1 Frier

2 A Correct.

3 Q Do I also understand correctly,
4 ma'am, you had absolutely nothing to do with
5 the delivery of the vehicle from Lexus of
6 Westport to anyone else?

7 A Correct.

8 Q Do you remember ever seeing this
9 particular vehicle?

10 A I see hundreds of cars that I
11 deliver. No.

12 Q So, it would be fair to say you
13 don't remember ever seeing this vehicle?

14 A Correct.

15 Q At any time during your
16 experience with Fleet Unlimited at Lexus of
17 Westport, did you have anything to do with a
18 pre-delivery inspection of any of their
19 vehicles?

20 A No, sir.

21 Q Did you ever see any of the
22 documentation that comes along with the
23 vehicle from the manufacturer as it concerns
24 pre-delivery inspection?

25 A Sometimes there's a checklist

EXHIBIT I

1 Frier
2 that comes with the vehicle. I don't really
3 look at it. I have nothing to do with that,
4 so I don't really bother looking at it.

5 Q So, would it be fair to say, as
6 you sit here now, you would not be capable of
7 answering any specific questions with regard
8 to that checklist?

9 A Correct.

10 MR. HERSHENHORN: Let us mark
11 these, please, as Exhibits 1 through 7.

12 (The above-mentioned records were
13 marked as Plaintiff's Exhibits 1 through 7,
14 respectively, for identification.)

15 EXAMINATION CONTINUED BY MR. HERSHENHORN:

16 Q Ma'am, we have had marked as
17 Plaintiff's Exhibits 1 through 7 a series of
18 documents that we received during the course
19 of this litigation from your counsel.

20 I want you to tell me verbally
21 what the process was for the sale of Miss
22 Leviten's vehicle, and use these documents
23 when they are involved in your answer.

24 Do you understand that?

25 A I think so.

EXHIBIT J

1 Frier

2 A New Country.

3 Q Is New Country continuing to run
4 the Lexus of Westport dealership or is it now
5 under a new name?

6 A It is under a new name.

7 Q What is the new name?

8 A New Country Lexus or Lexus of
9 New Country. One or the other.

10 Q Do you know a firm or a company
11 by the name of Estree, E-S-T-R-E-E?

12 A Yes. That is Lexus of Westport.

13 Q What do you understand Estree to
14 be when you say that is Lexus of Westport?
15 You understand that to be the
16 corporate name for Lexus of Westport?

17 A Yes.

18 Q With regard to New Country, you
19 said it was about two years ago that they
20 purchased Lexus of Westport.

21 Q Who were the principals of Lexus
22 of Westport when you worked there?

23 A I am not totally sure, but I
24 believe it was a family-owned company.

25 Q What was the name of that family?

EXHIBIT K

GAIR, GAIR, CONASON, STEIGMAN,
MACKAUF, BLOOM & RUBINOWITZ

ROBERT L. CONASON
SEYMOUR BOYERS
ERNEST R. STEIGMAN
STEPHEN H. MACKAUF
JEROME I. KATZ
JEFFREY B. BLOOM
ANTHONY H. GAIR
BEN B. RUBINOWITZ
HOWARD S. HERSHENHORN*
RICHARD M. STEIGMAN
MARY NICHOLLS
RHONDA E. KAY
CHRISTOPHER L. SALLAY*

WARREN J. WILLINGER
DIANA M.A. CARNEMOLLA*
LYNNE KURTZ-CITRIN
PETER J. SAGHIR
DANIEL L. BROOK, M.D., J.D.

COUNSELORS AT LAW
80 PINE STREET
NEW YORK, N.Y. 10005-1768
TEL (212) 943-1090
FAX (212) 425-7513

www.gairgair.com

NEW JERSEY ADDRESS
ONE GATEWAY CENTER
SUITE 2600
NEWARK, N.J. 07102
TEL (973) 645-0581
FAX (973) 622-3423

HARRY A. GAIR (1894-1975)
HARRIET E. GAIR (1905-2006)

*MEMBER OF N.Y. & N.J. BARS

email mail@gairgair.com

December 9, 2009

via fax (212) 513-7843
and first class mail

Patrick Murphy, Esq.
Ahmuty, Demers & McManus, Esqs.
200 I.U. Willets Road
Albertson, NY 11507

Re: Leviten v. Lexus, et. al.
Your file No: YCW-0962N 7-JAE

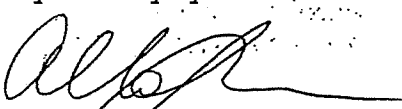
Dear Mr. Murphy;

Prior to and at the deposition of Frances Frier, we demanded that you produce a witness with knowledge of pre-delivery inspection. Please advise whether you will produce same.

This is our good faith attempt to obtain this deposition. Should we not hear from you within 10 days from the date of this letter, an instant motion will follow.

Thank you.

Very truly yours,


Alla Milshteyn, paralegal.

GAIR, GAIR, CONASON, STEIGMAN,
MACKAUF, BLOOM & RUBINOWITZ

ROBERT L. CONASON
SYMOUR BOYBIS
ERNEST R. STEIGMAN
STEPHEN H. MACKAUF
JEROME I. KATZ
JEFFREY B. BLOOM
ANTHONY H. GAIR
BEN B. RUBINOWITZ
HOWARD S. HERSHENHORN*
RICHARD M. STEIGMAN
MARY NICHOLLS
RHINDA E. KAY
CHRISTOPHER L. SALLAY*
WARREN J. WILLINGER
DIANA M.A. CARNEMOLLA*
LYNNE KURTZ-CITREN
PETER J. SAGHER
DANIEL L. BROOK, M.D., J.D.

COUNSELORS AT LAW
80 PINE STREET
NEW YORK, N.Y. 10005-1768
TEL (212) 943-1090
FAX (212) 425-7513
www.gairgair.com

NEW JERSEY ADDRESS
ONE GATEWAY CENTER
SUITE 2600
NEWARK, N.J. 07102
TEL (973) 645-0581
FAX (973) 622-3423

HARRY A. GAIR (1894-1975)
HARRIET E. GAIR (1905-2006)

*MEMBER OF N.Y. & N.J. BARS

email mail@gairgair.com

December 9, 2009

via fax (212) 513-7843
and first class mail

Patrick Murphy, Esq.
Ahmuty, Demers & McManus, Esqs.
200 I.U. Willets Road
Albertson, NY 11507

Re: Leviten v. Lexus, et. al.
Your file No: YCW-0962N 7-JAE


Dear Mr. Murphy;

Prior to and at the deposition of Frances Frier, we demanded that you produce a witness with knowledge of pre-delivery inspection. Please advise whether you will produce same.

This is our good faith attempt to obtain this deposition. Should we not hear from you within 10 days from the date of this letter, an instant motion will follow.

Thank you.

Very truly yours,


Alla Milshteyn, paralegal.

***** 212 425 0316 -*****

-GAIR & GAIR-

001 001 OK 12125137843

STN COMM. ONE-TOUCH/ STATION NAME/TEL. NO. PAGES DURATION

FILE NO.=078

MODE = MEMORY TRANSMISSION START=DEC-09 11:36 END=DEC-09 11:37

***** -COMM. 78 -***** DATE DEC-09-2009 TIME 11:37 *****

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

DANA MORIGI, being duly sworn, deposes and says:

That deponent is not a party to the action herein, is over 18 years of age and resides in Staten Island, New York.

That on the 22nd day of December, 2009, deponent served the within Notice of Motion, Affirmation of Good Faith and Affirmation in Support, by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York, addressed to the last known address(es) of the addressee(s) as indicated below:

To: AHMUTY, DEMERS & McMANUS
 Attorneys for defendant in Action 1
 ESTREE, INC., d/b/a LEXUS OF WESTPORT
 200 IU Willets Road
 Albertson, NY 11507

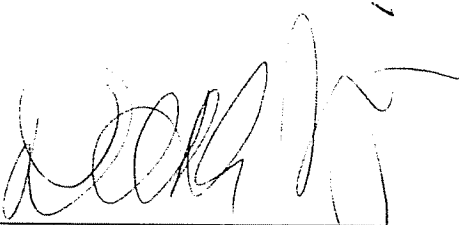
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant in Actions 1 and 2
TOYOTA MOTOR SALES, USA INC.
10 Bank Street, Ste 1061
White Plains, NY 10606

MICHAEL A. CARDOZO, ESQ.
Corporate Counsel
Attorneys for Defendants in Action #2
ANTHONY DIGIROLAMO, NEW YORK CITY
DEPARTMENT OF SANITATION & THE CITY OF NEW YORK
100 Church Street, 4th Floor
New York, NY 10007

CONNORS & CONNORS, P.C.
Attorneys for IRIS LEVITEN in Action #2
766 Castelton Avenue
Staten Island, NY 10310

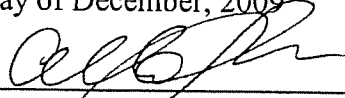
METRO AUTO LEASING/AUTOMALL
350 Fifth Avenue
New York, New York 10118

KELNER & KELNER, ESQS.
Attorneys for plaintiff in Action 2
MICHAEL DOUKAS
140 Broadway, 37th Floor
New York, NY 10005



Dana Morigi

Sworn to before me this 22nd
day of December, 2009



Notary Public

ALLA MILGROM
Notary Public State of New York
No. 01006-00500
Queens County
Queens County, New York 11

Index Number: 10813/07
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
IRIS LEVITEN,
Plaintiff,

-against-
LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA, INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING,
INC., d/b/a THE AUTOMALL,
Defendants.

MOTION

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for Plaintiff(s)
80 Pine Street, 34th Floor
New York, New York 10005-1768
212.943.1090

To :

Attorney for:
Service of a copy of the within
is hereby admitted.
Dated,

Attorney for

Sir : Please take notice that the within is a
(certified) true copy of a
duly entered in the office of the clerk of the within named
court on 20
Dated,
Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for
80 Pine Street, 34th Floor
New York, New York 10005-1768

To:
Attorney for

Sir : Please take notice that an order

of which the within is a true copy will be presented for
settlement to the Hon.

one of the judges of the within named Court, at

on the day of M. 20
at

Dated,
Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for
80 Pine Street, 34th Floor
New York, New York 10005-1768

To
Attorney for

Index Number:
SUPREME COURT OF THE STATE OF NEW YORK
~~COUNTY OF QUEENS~~

IRIS LEVITEN, Plaintiff,

-against-

TOYOTA MOTOR CORPORATION, STRICTLY
AUTO LEASING, INC., JABRA AUTO
LEASING, INC.,
Defendants.

SUMMONS AND VERIFIED COMPLAINT

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for Plaintiff(s)
80 Pine Street, 34th Floor
New York, New York 10005-1768
212.943.1090

To:

Attorney for:

Service of a copy of the within
is hereby admitted.

Dated,

Attorney for

Sir : Please take notice that the within is a
(certified) true copy of a
duly entered in the office of the clerk of the within named
court on 20
Dated, Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for
80 Pine Street, 34th Floor
New York, New York 10005-1768

To:
Attorney for

Sir : Please take notice that an order

of which the within is a true copy will be presented for
settlement to the Hon.

one of the judges of the within named Court, at

on the day of M. 20
at

Dated,

Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for
80 Pine Street, 34th Floor
New York, New York 10005-1768

To

Attorney for

P

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

MICHAEL DOUKAS,

Plaintiff,

Index no. 117118/07

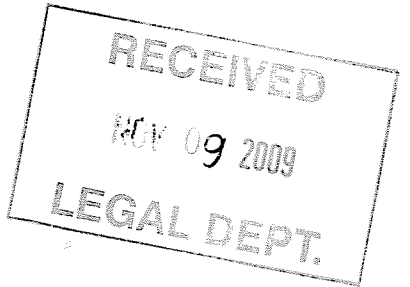
NOTICE OF DEFAULT
MOTION

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA, INC., ESTREE,
INC., d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC., d/b/a THE AUTOMALL,

Defendants.

-----X



S I R S :

PLEASE TAKE NOTICE, that upon the annexed affirmation of Todd J. Strier, Esq., dated the 26th day of October, 2009, and upon all the pleadings and proceedings heretofore had herein, the plaintiff, MICHAEL DOUKAS, will move before this Court at in Room 130, at the Courthouse located at 60 Centre Street, New York, New York, on the 19th day of November, 2009, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to CPLR §3215(a)(b), permitting the entry of a default judgment and assessment of damages against defendant, METRO AUTO LEASING, INC. d/b/a THE AUTOMALL, and for such other and further relief as to this Court may deem just and proper.

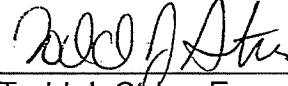
PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, are to be served upon the undersigned within seven (7) days prior to the return date of the within

application.

Dated: New York, New York
October 26, 2009

Yours, etc.

KELNER AND KELNER



Todd J. Stiner, Esq.
Attorneys for Plaintiff
DOUKAS, MICHAEL
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

To: **AHMUTY, DEMERS & McMANUS**
Attorneys for Defendant in Action #1
ESTREE, INC., d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, New York 11507
(516) 294-5433
File No. YCW0962N7JAE

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant in Actions #1 & 2
TOYOTA MOTOR SALES, USA INC. s/h/a LEXUS,
A DIVISION OF TOYOTA MOTOR SALES, USA, INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

MICHAEL A. CARDOZO, ESQ.
Corporation Counsel
Attorney for Defendants in Action #2
ANTHONY DIGIROLAMO, NEW YORK
CITY DEPARTMENT OF SANITATION &
THE CITY OF NEW YORK
100 Church Street, 4th Floor
New York, New York 10007

RECEIVED

NOV 02 2009

Eckert Seamans Cherin Melott LLC

(212) 788-0303
LD no. 2008-001345

CONNORS & CONNORS, P.C.
Attorneys for Defendant Iris Leviten Action #2
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700

GAIR GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff in Action #1
IRIS LEVITEN
80 Pine Street
New York, New York 10005
(212) 943-1090

METRO AUTO LEASING/AUTOMALL
The Corporation
350 Fifth Avenue
New York, New York 10118

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

- against -

Index no. 117118/07

AFFIRMATION

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION, THE
CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.
-----X

Todd J. Strier, an attorney admitted to practice in the State of New York, affirms
the following under the penalties of perjury:

1. I am an associate of the law offices of KELNER AND KELNER, and I am
fully familiar with the facts and circumstances herein based upon the contents of the file
maintained by this office.

2. This Affirmation is respectfully submitted in support of the instant motion
which seeks an Order pursuant to CPLR §3215 granting judgment by default against
the defendant, METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, and directing
that the damages to which plaintiff, MICHAEL DOUKAS, is entitled to be assessed by a
jury of this Court at a time and on a date and place to be contained in the Order to be
entered herein.

3. This is an action in which plaintiff, MICHAEL DOUKAS seek damages for
personal injuries resulting from the negligence of the defendants.

4. On or about January 15, 2009, the defendant, was served with a Supplemental Summons and Amended Verified Complaint herein. Copies of same are annexed hereto as Exhibit "A" and made a part hereof as is the Affidavit of Service.

5. More than 260 days have elapsed since the service and filing of said Supplemental Summons and Amended Verified Complaint and the defendant, METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, has failed to request or obtain an extension of time to appear or answer herein, make any motion which has the effect of extending their time to answer or appear herein or serve an Answer or appearance in this matter. Accordingly judgment by default is appropriate.

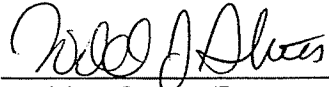
6. That on January 15, 2009, the defendant was served with the Order and Notice of Entry, advised defendant of its default, requested that an answer be interposed to avoid a Default Judgment being entered (See Exhibit "B").

7. No prior application has been made to this or any other Court or Judge for the relief sought herein.

WHEREFORE, it is respectfully requested that the instant application be granted, permitting the entry of a default judgment against the defendant, METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, and setting this case down for an inquiry and assessment of damages against the defendant, METRO AUTO LEASING, INC., d/b/a

THE AUTOMALL, and for such other and further relief as this Court may deem just,
proper and fitting.

Dated: New York, New York
October 26, 2009



Todd J. Strier, Esq.

EXHIBIT "A"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.

Index no. 117118/07
Date Filed:

TORT ACTION

Plaintiff designates NY
County as the place of trial

Basis of Venue is:
Defendant Sanitation
resides in NY County

FILED

JAN 16 2009

NEW YORK
COUNTY CLERK'S OFFICE

SUPPLEMENTAL SUMMONS

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York:
October 21, 2008

Yours, etc.
KELNER & KELNER, ESQS.
Attorneys for Plaintiff

By: Todd J. Strier
Todd J. Strier
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

Defendants' Addresses:

- IRIS LEVITEN, 6 Wood Avenue, Albertson, NY 11507
- ANTHONY DIGIROLAMO, 114 10th Street, Hicksville, NY 11801
- NYC DEPARTMENT OF SANITATION, 125 Worth Street, New York, NY 10013
- THE CITY OF NEW YORK, 1 Centre Street, Municipal Building, New York, NY 10007
- LEXUS, A DIVISION OF TOYOTA MOTOR SALES, 80 State Street, Albany, NY 122106
- ESTREE, INC./ LEXUS OF WESTPORT, 1317 Post Road East, Westport, CT 06880
- METRO AUTO LEASING / AUTOMALL, The Corporation, 350 Fifth Avenue, New York, NY 10118

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index no. 117118/07

MICHAEL DOUKAS,

Plaintiff,

- against -

**AMENDED VERIFIED
COMPLAINT**

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.

Plaintiff, by his attorneys, KELNER & KELNER, ESQS., as and for his
AMENDED VERIFIED COMPLAINT, allege the following, upon information and belief:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times herein mentioned, plaintiff, MICHAEL DOUKAS, was and still is a resident of the County of Suffolk, State of New York.
2. Upon information and belief, at all times herein mentioned, defendant IRIS LEVITEN (hereinafter referred to as defendant "LEVITEN"), was and still is a resident of the County of Nassau, State of New York.
3. Upon information and belief, at all times hereinafter mentioned, defendant, ANTHONY DIGIROLAMO, (hereinafter referred to as defendant "DIGIROLAMO"), was and still is a resident of the County of Nassau, State of New York.

4. At all times hereinafter mentioned, defendant, THE CITY OF NEW YORK, (hereinafter referred to as defendant "CITY"), was and still is a municipal corporation organized and existing under and by virtue of the laws of the State of New York.

5. That plaintiff duly served a Notice of Claim, in writing, upon defendant, CITY, within ninety (90) days after the within cause of action accrued.

6. On or about June 27, 2007, plaintiff herein duly submitted to a hearing pursuant to General Municipal Law 50-h.

7. More than thirty (30) days has elapsed since the service of said Notice of Claim upon defendant, and defendant CITY and its Comptroller have failed, neglected and refused to pay, settle, compromise or adjust the claims of the plaintiffs herein.

8. This action has been commenced within one year and ninety days after the within cause of action arose.

9. At all times herein mentioned, defendant CITY was the registered owner of a certain 2002 Mack Truck bearing New York license plate number K36757 for the year 2007 (hereinafter referred to as the "CITY vehicle").

10. At all times herein mentioned, defendant LEVITEN was the registered owner of a certain 2007 Lexus automobile bearing New York license plate number DWW7794 for the year 2007 (hereinafter referred to as the "LEVITEN vehicle").

11. At all times hereinafter mentioned, plaintiff was a passenger in the defendant CITY's vehicle.

12. At all times hereinafter mentioned, defendant DiGIROLAMO was the operator of the defendant CITY vehicle.

13. Upon information and belief, at all times hereinafter mentioned, defendant DiGIROLAMO operated the defendant CITY vehicle with the knowledge and consent of its owners, defendant CITY.
14. At all times herein mentioned, defendant DiGIROLAMO was an employee of the defendant CITY.
15. At all times herein mentioned, defendant DiGIROLAMO, was an employee of the defendant CITY's New York City Department of Sanitation.
16. On February 18, 2007, at approximately 2:50 p.m., defendant DiGIROLAMO operated the defendant CITY vehicle in the course of his employment with defendant CITY.
17. At all times herein mentioned, defendant DiGIROLAMO operated the defendant CITY vehicle with the knowledge, permission, and consent whether explicit or implied of defendant CITY.
18. Under the Laws of the State of New York, defendants CITY and SANITATION, as owners of the defendant CITY vehicle, are liable for the negligence of the defendant driver, DiGIROLAMO, said liability being joint and several.
19. At all times herein mentioned, defendant CITY managed the defendant CITY vehicle.
20. At all times herein mentioned, defendant CITY maintained the defendant CITY vehicle.
21. At all times herein mentioned, defendant CITY controlled the defendant CITY vehicle.

22. At all times herein mentioned, defendant CITY repaired the defendant CITY vehicle.
23. At all times herein mentioned, defendant CITY conducted periodic inspections of the defendant CITY vehicle.
24. At all times herein mentioned, plaintiff MICHAEL DOUKAS was employed by defendant CITY.
25. At all times herein mentioned, plaintiff MICHAEL DOUKAS was employed by defendant SANITATION.
26. At all times herein mentioned, plaintiff was employed as a sanitation worker by defendant CITY.
27. Upon information and belief, at all times hereinafter mentioned, Glen Cove Road, at or near the intersection of the Northern State Parkway, was and still is a public roadway located within the County of Nassau, State of New York. (Hereinafter referred to as the "accident site").
28. On February 18, 2007, at approximately 2:50 p.m., defendants LEVITEN and DIGIROLAMO were operating their aforesaid vehicles at the accident site.
29. On February 18, 2007, at approximately 2:50 p.m., defendant LEVITEN's vehicle came into contact with the vehicle operated by defendant DIGIROLAMO at the accident site.
30. On February 18, 2007, at approximately 2:50 p.m., defendant LEVITEN's vehicle struck the vehicle operated by defendant DIGIROLAMO at the accident site.

31. On February 18, 2007, at approximately 2:50 p.m., defendant LEVITEN was operating her aforesaid vehicle at the accident site, in a negligent, careless, and reckless manner causing the aforesaid vehicles to crash, and causing plaintiff DOUKAS to suffer serious injuries hereinafter set forth.

32. On February 18, 2007, at approximately 2:50 p.m., defendant DIGIROLAMO was operating his aforesaid vehicle at the accident site, in a negligent, careless, and reckless manner causing the aforesaid automobiles to crash, and causing plaintiff to suffer serious injuries hereinafter set forth.

33. Defendants LEVITEN and DIGIROLAMO were negligent, careless and reckless in the operation, management, maintenance, supervision, and control of their respective vehicles in that said defendants operated said vehicles at an excessive and unlawful rate of speed; in that said defendants failed to have proper control over the vehicles; in that said defendants failed to be reasonably alert and attentive; in that defendants failed to make proper use of the braking and steering systems or that the same were defective; in that said defendants failed to heed to traffic conditions then and there existing; in that said defendants violated the rules, regulations and ordinances, and statutes applicable thereto; and the said defendants were otherwise negligent and careless.

34. That the said accident and the injuries sustained by plaintiff resulting therefrom were caused solely by the negligence of the defendants, jointly and severally, without any negligence on the part of the plaintiff contributing thereto.

35. That as a result of the aforesaid occurrence, plaintiff sustained serious personal injuries, and nervous shock, was rendered sick, sore and disabled and has remained so since said occurrence; plaintiff has suffered and continues to suffer mental anguish, required medical care and treatment, and upon information and belief, will continue to require additional medical care and treatment in the future; plaintiff has been incapacitated from attending to plaintiff's normal duties and upon information and belief, plaintiff will be so incapacitated in the future.

36. Plaintiff sustained serious injuries and basic economic loss as defined by §5102 of the Insurance Law of the State of New York and has the right of recovery against the defendants herein for personal injuries, basic economic loss and non-economic loss pursuant to §5104 of the Insurance Law of the State of New York.

37. Plaintiff has sustained a serious injury as defined in subdivision (d) of §5102 of the Insurance Law of the State of New York which, upon information and belief, will result in future economic loss greater than the basic economic loss as defined in subdivision (a) of §5102 of the Insurance Law of the State of New York.

38. The cause of action herein falls within one of the exceptions listed under CPLR §1601 and 1602.

39. As a result of the foregoing, plaintiff has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter.

AS AND FOR A SECOND CAUSE OF ACTION

40. Plaintiff repeats, reiterates and re-alleges each of the paragraphs of the complaint numbered "1" through "39" with the same force and effect as if same were more fully set forth herein at length.

41. Defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., (hereinafter referred to as defendant "LEXUS") is a corporation with its principal place of business in a state other than New York.

42. Defendant, LEXUS, does business in the State of New York.

43. Defendant, LEXUS, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.

44. Defendant, LEXUS, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.

45. Defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT (hereinafter referred to as defendant "ESTREE"), is a corporation with its principal place of business in a state other than New York.

46. Defendant, ESTREE, does business in the State of New York.

47. Defendant, ESTREE, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.

48. Defendant, ESTREE, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.

49. Defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL (hereinafter referred to as defendant "METRO") is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

50. Defendant, LEXUS, was in the business of manufacturing vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.

51. Defendant, LEXUS, was in the business of designing motor vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.

52. Defendant, LEXUS, was in the business of selling and distributing, for public use, motor vehicles, including a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

53. On December 12, 2006, defendant, LEXUS, sold, to the defendant, ESTREE, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

54. On or about December 12, 2006, defendant, LEXUS, transported to defendant, ESTREE, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

55. On or after December 12, 2006, defendant, ESTREE, sold to the defendant, METRO, a Lexus sedan motor vehicle, model number ES 350, bearing

vehicle identification number JTHBJ46G272071246.

56. Defendant, ESTREE, transported to defendant, METRO, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number number JTHBJ46G272071246.

57. Defendant, ESTREE, distributed to defendant, METRO, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

58. On December 29, 2006, defendant, METRO, leased a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246 to defendant, LEVITEN.

59. On February 18, 2007, defendant, LEVITEN, was involved in an automobile accident while driving a Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794 and vehicle identification number JTHBJ46G272071246 at the accident site.

60. On February 18, 2007, defendant, LEVITEN, was involved in an automobile accident with defendant DiGIROLAMO while driving a Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794 and vehicle identification number JTHBJ46G272071246 at the accident site.

61. The aforesaid occurrence was caused and contributed to by the negligence of the defendants, LEXUS, ESTREE, and METRO, its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing New York

State license plate DWW7794, and vehicle identification number
JTHBJ46G272071246.

62. By reason of the foregoing, plaintiff, MICHAEL DOUKAS, sustained injuries to his head, neck, back, limbs and body, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, some of these injuries are of a permanent and lasting nature.

63. It is hereby alleged pursuant to CPLR §1603, that the foregoing cause of action is exempt from the operation of CPLR §1601, by reason of one or more of the exemptions provided in CPLR §1602.

64. As a result of the foregoing, plaintiff has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter.

AS AND FOR A THIRD CAUSE OF ACTION

65. Plaintiff repeats, reiterates and re-alleges each of the paragraphs of the complaint numbered "1" through "64" with the same force and effect as if same were more fully set forth herein at length.

66. Defendants, LEXUS, ESTREE, METRO, their agents, servants and employees warranted and represented to the defendant, LEVITEN, that Lexus sedan motor vehicle, model number ES 350, bearing the New York license plate number DWW7794 and identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, serviced, maintained, labeled,

distributed, sold and purchased.

67. In designing, manufacturing, assembling, inspecting, testing, repairing, servicing, maintaining, labeling, distributing and selling the vehicle Lexus model number ES 350, bearing New York State license plate number DWW7794 and vehicle identification number JTHBJ46G272071246, defendants, LEXUS, ESTREE, METRO their agents, servants and employees knew that the aforesaid product would be used by the public and that such users would rely upon the warranties and representations that the said product was safe, proper, merchantable and fit for its intended uses.

68. On February 18, 2007, the defendant, LEVITEN, relied on the aforementioned warranties and expected that the LEVITEN vehicle was safe, proper, merchantable and fit for its intended uses.

69. The LEVITEN vehicle was unsafe, not merchantable and unfit for its intended uses.

70. The LEVITEN vehicle was unsafe, not merchantable and unfit for its intended uses and as a result contributed to the occurrence on February 18, 2007.

71. By reason of the foregoing, defendants, LEXUS, ESTREE, METRO their agents, servants and employees, violated and breached the aforementioned warranties, in that the LEVITEN vehicle was not reasonably fit, not of merchantable quality, unsafe, defective and constituted unreasonably dangerous instrumentalities as designed, manufactured, assembled, inspected, repaired, serviced, maintained, tested, labeled, prepped for sale, sold and distributed.

72. By reason of the foregoing, the plaintiff, MICHAEL DOUKAS, sustained injuries to his head, neck, back, limbs and body, and has been caused to suffer severe

physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting nature.

73. It is hereby alleged pursuant to CPLR §1603, that the foregoing cause of action is exempt from the operation of CPLR §1601, by reason of one or more of the exemptions provided in CPLR §1602.

74. As a result of the foregoing, plaintiff has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter.

AS AND FOR A FOURTH CAUSE OF ACTION

75. Plaintiff repeats, reiterates and re-alleges each of the paragraphs of the complaint numbered "1" through "74" with the same force and effect as if same were more fully set forth herein at length.

76. By reason of the foregoing, defendants, LEXUS, ESTREE, METRO, their agents, servants and employees are strictly liable in tort to plaintiff, MICHAEL DOUKAS, for the injuries sustained by him.

77. By reason of the foregoing, the plaintiff, MICHAEL DOUKAS, sustained injuries to his head, neck, back, limbs and body, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting in nature.

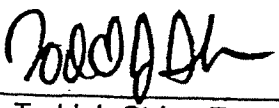
78. It is hereby alleged pursuant to CPLR §1603, that the foregoing cause of action is exempt from the operation of CPLR §1601, by reason of one or more of the exemptions provided in CPLR §1602.

79. As a result of the foregoing, plaintiff has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter.

WHEREFORE, plaintiff MICHAEL DOUKAS demands judgment against defendants on the FIRST CAUSE OF ACTION in an amount greater than the jurisdictional limits of any other courts which would otherwise have had jurisdiction of this action, and the SECOND, THIRD AND FOURTH CAUSE OF ACTION in an amount greater than the jurisdictional limits of any other courts which would otherwise have had jurisdiction of this action, together with the costs and disbursements of this action.

Dated: New York, N.Y.
October 21, 2008

Yours Truly,
KELNER & KELNER, ESQS.
Attorneys for Plaintiff

BY: 
Todd J. Strier, Esq.
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

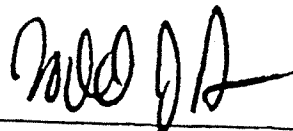
ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

The undersigned, an attorney admitted to practice law before the Courts of the State of New York, hereby affirms as true under the penalty of perjury that affirmant is an attorney for the plaintiffs in this action; that affirmant has read the foregoing **AMENDED VERIFIED COMPLAINT** and knows the contents thereof; that same is true to affirmant's own knowledge, except as to those matter stated upon information and belief; and that those matters affirmant believes to be true. Affirmant further says that the reason this affirmation is made by affirmant and not by the plaintiffs is that the plaintiffs do not reside within the County where affirmant has his office.

The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are as follows: investigation made under affirmant's supervision and information and records in the case file.

Dated: New York, New York:
October 21, 2008



Todd J. Strier

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: KAREN S. SMITH
Justice

PART 62

MICHAEL DOUKAS,
Plaintiff,

INDEX NO. 117118107

- v -

MOTION DATE _____

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW YORK CITY DEPARTMENT OF SANITATION, and THE CITY OF NEW YORK,
Defendants.

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

The following papers, numbered 1 to 3 were read on this motion to amend the complaint

Notice of Motion — Affidavits — Exhibits

PAPERS NUMBERED

1

Answering Affidavits — Exhibits

2

Replying Affidavits

3

Cross-Motion: Yes No

FILED
JAN 13 2009
COUNTY CLERK'S OFFICE
NEW YORK

Upon the foregoing papers, It is ORDERED that plaintiff's motion for leave to amend the complaint to add new defendants, pursuant to CPLR § 3025(b), is granted as provided more fully below;

Plaintiff Michael Doukas ("Doukas") brought this action to recover for injuries allegedly suffered when the vehicle he was operating was involved in a motor vehicle accident with the vehicle driven by defendant Iris Leviten ("Leviten"). This Court, by order dated June 23, 2008, granted a motion to consolidate this action with one commenced by Leviten against numerous defendants (Index No. 107081/07).¹ Doukas now seeks to amend his complaint to assert direct causes of action against Lexus, A Division of Toyota Motor Sales USA, Inc., Estree, Inc., d/b/a Lexus of Westport, and Metro Auto Leasing, each a defendant in the Leviten action, under the theory of product liability for Leviten's vehicle.

Estree, Inc. d/b/a Lexus of Westport ("Estree") submits opposition to plaintiff's motion, contending that the motion is unsupported by an affidavit by someone with personal knowledge and that an attorney's verification of the proposed amended complaint is insufficient to support the application. Estree does not argue it will be prejudiced, however, it does claim plaintiff's breach of warranty claim in the proposed amended complaint is improper. Plaintiff replies that the law does not require an affidavit in this case and that the facts here are distinguishable from the cases cited by Estree, and also suggesting that the appropriate way for Estree to dispute his claims is to assert an affirmative defense in its answer.

Plaintiff also seeks to amend the complaint to correct an error in the license plate number originally identified in the complaint; there is no opposition to this portion of plaintiff's motion.

Leave to amend the complaint pursuant to CPLR § 3025(b) shall be "freely given" in the absence of prejudice or surprise. Here, while Estree claims that an attorney's verification is insufficient to support the amendment, the cases cited in Estree's opposition are clearly distinguishable. Discovery is at its earliest stages and there is no evidence of prejudice or surprise. Further, while Estree argues that because there is

¹ Iris Leviten v Lexus, A Division of Toyota Motor Sales USA, Inc., Estree, Inc., d/b/a Lexus of Westport and Metro Auto Leasing, Inc., d/b/a The Automall, Index No. 107681/07.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

no privity between it and plaintiff there can be no breach of warranty cause of action against it, New York's Uniform Commercial Code § 2-318 expands a seller's liability, specifically providing that

[a] seller's warranty whether express or implied extends to any natural person if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

A motion to amend the complaint should be denied only "where the amended pleading plainly fails to state a cause of action and, thus, lacks merit." (*Strook & Strook & Lavan v Beltrami*, 157 AD2d 590, 591 [1st Dept 1990] [citing *Thomas Crimmins Contracting Co., Inc. v City of New York*, 74 NY2d 166 [1989]; *Daniels v Emple-Orr, Inc.*, 151 AD2d 370 [1st Dept 1989]]). As plaintiff alleges Estree sold the subject vehicle to newly added defendant Metro Auto Leasing, Inc. d/b/a The Automall, the Court cannot say plaintiff's proposed amended complaint "plainly fails to state a cause of action."

Accordingly, it is

ORDERED that plaintiff's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry hereof; it is further

ORDERED that the newly added defendants LEXUS, A Division of TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, shall serve an answer to the amended complaint within 20 days from the date of said service; it is further

ORDERED that movant serve a copy of this decision and order, with a copy of the amended complaint, upon the Clerk of the Court (80 Centre Street), the Clerk of the Trial Support Office (60 Centre Street) and the Clerk of the DCM Part (80 Centre Street) within 10 days of entry hereof, and that upon service, said Clerks are directed to amend the caption and mark their records accordingly; it is further

ORDERED that, within 30 days of receipt of the above-named defendants' respective answers, all discovery previously exchanged between the parties is to be provided to the newly added defendants; it is further

ORDERED that all parties appear for a compliance conference on February 26, 2009 at 2:00 p.m. at 80 Centre Street, Room 103, as previously scheduled.

The foregoing constitutes the decision and order of the Court.

FILED
JAN 13 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: December 23, 2008

Hon. Karen S. Smith, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

Index no. 117118/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.

**SUPPLEMENTAL SUMMONS &
AMENDED VERIFIED COMPLAINT**

KELNER & KELNER, ESQS.

Attorneys for Plaintiff

Office and Post Office Address, Telephone

140 Broadway, 37th Floor

New York, New York 10005

(212) 425-0700

EXHIBIT "B"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Index No.: 117118/07

Plaintiff,

-against-

**ORDER with
NOTICE OF ENTRY**

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

-----X
Defendants.

COUNSELORS:

PLEASE TAKE NOTICE, that the annexed is a true copy of an Order entered in the
office of the County Clerk of the within named Court on January 13, 2009.

Dated: New York, New York
January 15, 2009

Yours, etc.,

KELNER & KELNER, ESQS.
Attorneys for Plaintiff

BY: Todd J. Strier
Todd J. Strier, Esq.
140 Broadway - 37th Floor
New York, New York 10005
(212) 425-0700

TO:

CONNORS & CONNORS, P.C.
Attorneys for Defendant Iris Leviten Action No. 2
766 Castleton Avenue
Staten Island, N.Y. 10310
718-442-1700

MICHAEL CARDOZO, ESQ.
Attorneys for Defendants in Action no. 2
CITY OF NEW YORK/DIGIROLOAMO
100 Church Street, 4th Floor
New York, New York 10007
File No.: 2008-001345

GAIR GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff in Action no. 1
IRIS LEVITEN
80 Pine Street
New York, New York 10005 212-943-1090

AHMUTY, DEMERS & McMANUS
Attorneys for Defendant in Action no. 1
ESTREE, INC., d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, New York 11507
516-294-5433
File No.: YCW0962N7 JAE

STEIN RISO MANTEL, LLP
Attorneys for Defendant in Action no. 1
METRO AUTO LEASING, INC., d/b/a
THE AUTO MALL
405 Lexington Avenue
New York, New York 10174
212-599-1515

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant in Action No. 1
TOYOTA MOTOR SALES, USA INC.
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, USA, INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
914-949-2909

RICHARD JANOWITZ, ESQ.
Attorneys for Defendant in Action no. 2 / 3
ANTHONY DIGIROLAMO
229 7th Street, Suite 304
Garden City, New York 11530
646-522-4141

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: KAREN S. SMITH
Justice

PART 62

MICHAEL DOUKAS,
Plaintiff,

INDEX NO. 117118/07

- v -

MOTION DATE _____

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION,
and THE CITY OF NEW YORK,
Defendants.

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

The following papers, numbered 1 to 3 were read on this motion to amend the complaint

Notice of Motion — Affidavits — Exhibits

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

1

Replying Affidavits _____

2

3

Cross-Motion: Yes No

FILED
JAN 13 2009
COUNTY CLERK'S OFFICE
NEW YORK

Upon the foregoing papers, It is ORDERED that plaintiff's motion for leave to amend the complaint to add new defendants, pursuant to CPLR § 3025(b), is granted as provided more fully below;

Plaintiff Michael Doukas ("Doukas") brought this action to recover for injuries allegedly suffered when the vehicle he was operating was involved in a motor vehicle accident with the vehicle driven by defendant Iris Leviten ("Leviten"). This Court, by order dated June 23, 2008, granted a motion to consolidate this action with one commenced by Leviten against numerous defendants (Index No. 107081/07).¹ Doukas now seeks to amend his complaint to assert direct causes of action against Lexus, A Division of Toyota Motor Sales USA, Inc., Estree, Inc., d/b/a Lexus of Westport, and Metro Auto Leasing, each a defendant in the Leviten action, under the theory of product liability for Leviten's vehicle.

Estree, Inc. d/b/a Lexus of Westport ("Estree") submits opposition to plaintiff's motion, contending that the motion is unsupported by an affidavit by someone with personal knowledge and that an attorney's verification of the proposed amended complaint is insufficient to support the application. Estree does not argue it will be prejudiced, however, it does claim plaintiff's breach of warranty claim in the proposed amended complaint is improper. Plaintiff replies that the law does not require an affidavit in this case and that the facts here are distinguishable from the cases cited by Estree, and also suggesting that the appropriate way for Estree to dispute his claims is to assert an affirmative defense in its answer.

Plaintiff also seeks to amend the complaint to correct an error in the license plate number originally identified in the complaint; there is no opposition to this portion of plaintiff's motion.

Leave to amend the complaint pursuant to CPLR § 3025(b) shall be "freely given" in the absence of prejudice or surprise. Here, while Estree claims that an attorney's verification is insufficient to support the amendment, the cases cited in Estree's opposition are clearly distinguishable. Discovery is at its earliest stages and there is no evidence of prejudice or surprise. Further, while Estree argues that because there is

¹ Iris Leviten v Lexus, A Division of Toyota Motor Sales USA, Inc., Estree, Inc., d/b/a Lexus of Westport and Metro Auto Leasing, Inc., d/b/a The Automall, Index No. 107681/07.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

no privity between it and plaintiff there can be no breach of warranty cause of action against it, New York's Uniform Commercial Code § 2-318 expands a seller's liability, specifically providing that

[a] seller's warranty whether express or implied extends to any natural person if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

A motion to amend the complaint should be denied only "where the amended pleading plainly fails to state a cause of action and, thus, lacks merit." (*Strook & Strook & Lavan v Beltrami*, 157 AD2d 590, 591 [1st Dept 1990] [citing *Thomas Crummins Contracting Co., Inc. v City of New York*, 74 NY2d 166 [1989]; *Daniels v Emple-Orr, Inc.*, 151 AD2d 370 [1st Dept 1989]). As plaintiff alleges Estree sold the subject vehicle to newly added defendant Metro Auto Leasing, Inc. d/b/a The Automall, the Court cannot say plaintiff's proposed amended complaint "plainly fails to state a cause of action."

Accordingly, it is

ORDERED that plaintiff's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry hereof; it is further

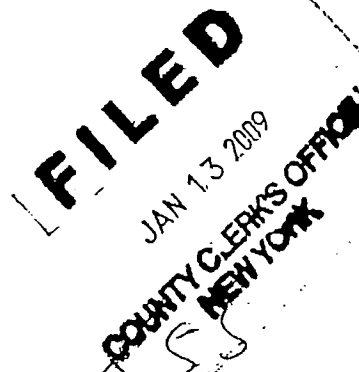
ORDERED that the newly added defendants LEXUS, A Division of TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, shall serve an answer to the amended complaint within 20 days from the date of said service; it is further

ORDERED that movant serve a copy of this decision and order, with a copy of the amended complaint, upon the Clerk of the Court (60 Centre Street), the Clerk of the Trial Support Office (60 Centre Street) and the Clerk of the DCM Part (80 Centre Street) within 10 days of entry hereof, and that upon service, said Clerks are directed to amend the caption and mark their records accordingly; it is further

ORDERED that, within 30 days of receipt of the above-named defendants' respective answers, all discovery previously exchanged between the parties is to be provided to the newly added defendants; it is further

ORDERED that all parties appear for a compliance conference on February 26, 2009 at 2:00 p.m. at 80 Centre Street, Room 103, as previously scheduled.

The foregoing constitutes the decision and order of the Court.



Dated: December 23, 2008

Hon. Karen S. Smith, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MONICA MORAN being duly sworn, deposes and says that she is over 18 years of age, resides in NY County, New York, and is not a party to this action:

That on the 15th day of January, 2009, she served the within Notice of Entry, upon the attorneys below set forth representing the parties as indicated, at the address shown below:

CONNORS & CONNORS, P.C.
766 Castleton Avenue
Staten Island, N.Y. 10310

STEIN RISO MANTEL, LLP
405 Lexington Avenue
New York, NY 10174

MICHAEL CARDOZO, ESQ.
100 Church Street, 4th Floor
New York, NY 10007

**ECKERT SEAMANS CHERIN &
MELLOTT, LLC**
10 Bank St, Suite 1061
White Plains, NY 10606

**GAIR GAIR CONASON STEIGMAN &
MACKAUF**
80 Pine Street
New York, NY 10005

RICHARD JANOWITZ, ESQ.
229 7th Street, Suite 304
Garden City, NY 11530

AHMUTY, DEMERS & McMANUS
200 I.U. Willets Road
Albertson, NY 11507

by depositing a true copy of same securely enclosed in a postpaid wrapper in a post office box regularly maintained by the United States Government within the premises 140 Broadway, County and State of New York, directed to the aforesaid attorneys at the address within the State designated by them for that purpose upon the preceding papers in this action, between which places there, then, was and now is a regular communication by mail.



MONICA MORAN

Sworn to before me this
15th day of January, 2009



Notary Public

TODD J. STRIER
Notary Public, State of New York
No. 02ST5063080
Qualified in New York County
Commission Expires July 15, 2010

Index no. 117118/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF
SANITATION and THE CITY OF NEW YORK,

Defendants.

NOTICE OF ENTRY

KELNER & KELNER, ESQS.
Attorneys for Plaintiff
Office and Post Office Address, Telephone
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

RECEIVED
OCT 10 2009
LEGAL DEPT.

62

~~Leviten, IT~~
v.
LEXUS, et al.
~~DUNKAS, IT~~
v.
LEVITEN, et al.

INDIVIDUAL ASSIGNMENT PART

STIPULATION

INDEX NO. 107601/07

MOTION CALENDAR NO. 117112/07

DATE 10/8/09

IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

① LEXUS AT COURT REPORT SUMMIT APPEAR ON 10/16/09 AT THE
ATTORNEY'S OFFICE FOR ITS DEPOSITION. <sup>Subject to Adversely
Affecting Incidents</sup>

~~② Plaintiff to respond to TMS's 7/17/09 RFP to the
extent not already provided~~

~~③ IT Dunkas to respond to TMS's 7/17/09 RFP to the
extent not already provided~~

~~④ Plaintiff to respond to TMS's 7/17/09 RFP to the
extent not already provided~~

~~⑤ Plaintiff to respond to TMS's 7/17/09 RFP to the
extent not already provided~~

~~⑥ Plaintiff to respond to TMS's 7/17/09 RFP to the
extent not already provided~~

② Plaintiff ^{Leviten} to respond to TMS's ^{within 30 days} outstanding discovery
demands 6/2/08 + 4/13/09 to extent not already provided

③ IT Dunkas to respond to TMS's ^{within 30 days} 7/17/09 RFP to the
extent not already provided

④ Further Deposition before 12/10/09; 2009 (24103)

GGISMBR
Attorney for Plaintiff (56-11)

Kit...
Attorney for Defendant (100-11)

Kit...
Attorney for Defendant

Conners & Conners by Susan O'Shannon

Meraldeen Chen...
ATTORNEY

Date: 10/08/09

So Ordered.

HON. KAREN SMITH

ENTER: _____ J.S.C.

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.
-----X

ANTHONY DIGIROLAMO,

Plaintiff,

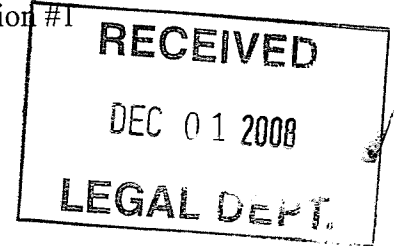
-against-

IRIS LEVITEN,

Defendant.
-----X

Index No. 107681/07

Action #1



Index No.: 117118/07

Action #2

Index No.: 102331/08

Action #3

**DEFENDANT, TOYOTA MOTOR SALES, U.S.A., INC.'S
RESPONSE TO ESTREE, INC.'S FIRST NOTICE FOR DISCOVERY AND INSPECTION**

Defendant, Toyota Motor Sales, U.S.A., Inc. ("TMS") s/h/a "LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC.," through its counsel, Eckert Seamans Cherin & Mellott, LLC, responds to Estree, Inc.'s First Notice for Discovery and Inspection as follows:

PREFATORY STATEMENT AND OBJECTIONS

Defendant TMS hereby responds to plaintiff's First Notice for Discovery and Inspection. These responses are made specifically subject to the General Objections and any specific objection contained within an individual response.

So far as TMS is aware, according to the information available to TMS at the present time, these responses are complete and correct. TMS reserves the right to object to future discovery on the same or related matters and does not waive any objection by providing the information reflected in these responses. TMS further reserves the right to object to the admissibility of any of these responses or the documents produced or related matters, in whole or in part, at trial in this action, on any grounds, including, but not limited to, materiality, relevance, and privilege.

PREFATORY STATEMENT

TMS is the authorized importer and a distributor, in certain geographic areas, of Toyota motor vehicles in the continental United States. TMS does not manufacture, design or assemble Toyota motor vehicles in the ordinary course of its business and, therefore, was not the designer, manufacturer or assembler of the subject vehicle. TMS does not service Toyota motor vehicles in the ordinary course of its business for the general public. Accordingly, TMS does not have sufficient information or documentation to completely and accurately respond to many of these discovery requests.

GENERAL OBJECTIONS

To the extent applicable, the following are incorporated in the response to each individual request:

(a) TMS objects generally to these discovery requests to the extent they seek information which is not within TMS' possession, custody or control. These responses are made

on behalf of TMS only. TMS objects to this discovery to the extent it seeks information from any other entity.

(b) TMS objects generally to these discovery requests to the extent they seek information directed towards vehicle, topics and issues beyond the components of the subject 2007 Toyota Lexus ES350 about which plaintiff makes allegations in the Complaint on the grounds that such discovery requests are overly broad, unduly burdensome, and seek information which is not relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

(c) TMS objects generally to these discovery requests to the extent they seek information which unrelated to the defect allegations raised by plaintiff in this action on the grounds that such discovery requests are overly broad, unduly burdensome, and seek information that is not reasonably calculated to lead to the discovery of admissible evidence.

(d) TMS objects generally to these discovery requests to the extent they may seek information protected by the attorney-client privilege or the work product doctrine.

(e) TMS objects generally to these discovery requests to the extent they may seek competitively sensitive or trade secret materials.

(f) TMS objects generally to these discovery requests to the extent that plaintiff has refused to produce documentation requested by TMS.

(g) TMS objects generally that its investigation and discovery are ongoing and not complete. Therefore, these responses are limited to the information presently available and TMS reserves its right to conduct further investigation and discovery. TMS specifically reserves the right to present subsequently discovered facts or evidence at trial.

DISCOVERY RESPONSES

1. Copies of any accident report or incident report with regard to this matter.

RESPONSE: TMS objects to this discovery request as it is vague, ambiguous, overly broad, burdensome, potentially seeks material from disclosure by the attorney client and/or work product privilege and seeks information not relevant to this lawsuit. Without waiving those objections, TMS states that it is not in possession of any accident report relating to the subject accident other than the police accident report produced previously by plaintiff.

2. Copies of any photographs depicting the vehicles involved in the accident while at the accident scene or at any time thereafter.

RESPONSE: TMS incorporates its response to Request No.: 1 of TMS' May 1, 2008 response to plaintiff's notice for discovery and inspection and response to Request No.: 4 of TMS' May 28, 2008 supplemental response to the Court's preliminary conference order.

3. Copies of any photographs depicting the accident scene.

RESPONSE: TMS incorporates its response to Request No.: 2, above.

4. Copies of any reports regarding investigation into the accident.

RESPONSE: TMS objects to this discovery request as it is vague, ambiguous, overly broad, burdensome, potentially seeks material from disclosure by the attorney client and/or work product privilege and seeks information not relevant to this lawsuit. Without waiving those objections, TMS incorporates its objections and response to Request No.: 1, above.

5. Copies of any transcripts from DMV hearings with regard to the accident.


RESPONSE: TMS does not generate or maintain the requested information.

6. Copies of any City reports, investigations, or similar documents with regard to the accident.

RESPONSE: TMS objects to this discovery request as it is vague, ambiguous, overly broad, burdensome, potentially seeks material from disclosure by the attorney client and/or work product privilege and seeks information not relevant to this lawsuit. Without waiving those objections, TMS incorporates its objections and response to Request No.: 1, above.

Dated: White Plains, New York
November 25, 2008

Yours etc.



By: STEVEN R. KRAMER, ESQ.
ECKERT SEAMANS CHERIN & MELLOTT, LLC.
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
S/H/A "LEXUS, A DIVISION OF TOYOTA
MOTORS SALES, U.S.A., INC."
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
Fax: (914) 949-5424

To: Diana M.A. Carnemolla, Esq.
GAIR GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff (Action #1)
IRIS LEVITEN
80 Pine Street
New York, New York 10005
T: (212) 943-1090
F: (212) 425-7513

STEIN RISO MANTEL LLP
Attorneys for Defendant (Action #1)
METRO AUTO LEASING, INC.
d/b/a THE AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

T: (212) 599-1515
F: (212) 599-6155

Thomas G. Chojnacki, Esq.
AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant (Action #1)
ESTREE, INC. d/b/a
LEXUS OF WESTPORT
123 William Street
New York, New York 10038
T: (212) 513-7788
F: (212) 513-7843
File No.: YCW 0962N7 JAE

David Heller, Esq.
CONNORS & CONNORS, PC
Attorneys for Defendant (Action #2, #3)
IRIS LEVITEN
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Staten Island, NY 10310
T: (718) 442-1700
F: (718) 442-1717

Todd Strier, Esq.
KELNER & KELNER, ESQS.
Attorneys for Plaintiff (Action #2)
MICHAEL DOUKAS
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New York, New York 10005
T: (212) 425-0700
F: (212) 425-0007

Jessica Giambrone, Esq.
CORPORATION COUNSEL
Attorneys for Defendants (Action #2)
ANTHONY DIGIROLOMO,
NYC DEPT OF SANITATION
and THE CITY OF NEW YORK
100 Church Street
New York, New York 10007
T: (212) 788-1204
F: (212) 788-0367

AFFIDAVIT OF SERVICE

STATE OF NEW YORK :
 : ss:
COUNTY OF WESTCHESTER

Eileen M. Driscoll, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Westchester County, New York. On November 25, 2008, deponent served the within **DEFENDANT, TOYOTA MOTOR SALES, U.S.A., INC.'S RESPONSE TO ESTREE, INC.'S FIRST NOTICE FOR DISCOVERY AND INSPECTION** upon:

Diana M.A. Carnemolla, Esq.
GAIR GAIR CONASON STEIGMAN &
MACKAUF
Attorneys for Plaintiff (Action #1)
IRIS LEVITEN
80 Pine Street
New York, New York 10005
T: (212) 943-1090
F: (212) 425-7513

STEIN RISO MANTEL LLP
Attorneys for Defendant (Action #1)
METRO AUTO LEASING, INC.
d/b/a THE AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
T: (212) 599-1515
F: (212) 599-6155

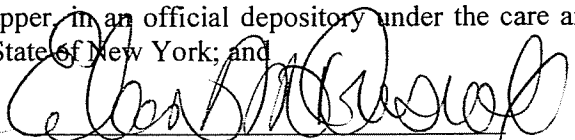
Thomas G. Chojnacki, Esq.
AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant (Action #1)
ESTREE, INC. d/b/a
LEXUS OF WESTPORT
123 William Street
New York, New York 10038
T: (212) 513-7788
F: (212) 513-7843
File No.: YCW 0962N7 JAE

David Heller, Esq.
CONNORS & CONNORS, PC
Attorneys for Defendant (Action #2, #3)
IRIS LEVITEN
766 Castleton Avenue
Staten Island, NY 10310
T: (718) 442-1700
F: (718) 442-1717

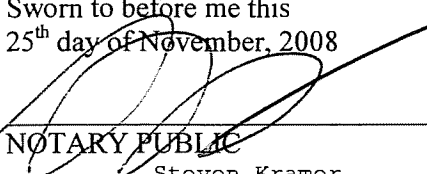
Todd Strier, Esq.
KELNER & KELNER, ESQS.
Attorneys for Plaintiff (Action #2)
MICHAEL DOUKAS
140 Broadway - 37th floor
New York, New York 10005
T: (212) 425-0700
F: (212) 425-0007

Jessica Giambrone, Esq.
CORPORATION COUNSEL
Attorneys for Defendants (Action #2)
ANTHONY DIGIROLOMO,
NYC DEPT OF SANITATION
and THE CITY OF NEW YORK
100 Church Street
New York, New York 10007
T: (212) 788-1204
F: (212) 788-0367

by depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York; and


Eileen M. Driscoll

Sworn to before me this
25th day of November, 2008


NOTARY PUBLIC
Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

-----X

IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.

-----X

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X

ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.

-----X

Index No. 107681/07

Action #1

Index No.: 117118/07

Action #2

Index No.: 102331/08 ...

Action #3

**DEFENDANT, TOYOTA MOTOR SALES, U.S.A., INC.'S
RESPONSE TO ESTREE, INC.'S FIRST NOTICE FOR DISCOVERY AND INSPECTION**

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

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

s/h/a LEXUS, A DIVISION OF

TOYOTA MOTORS SALES, U.S.A.

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

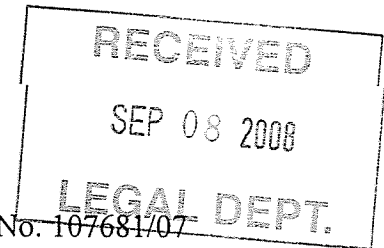
-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X



**DEFENDANT TOYOTA
MOTOR SALES U.S.A.,
INC.'S SUPPLEMENTAL
RESPONSE TO
PLAINTIFF'S FIRST
REQUEST FOR
PRODUCTION
OF DOCUMENTS**

**DEFENDANT, TOYOTA MOTOR SALES, U.S.A., INC.'S SUPPLEMENTAL RESPONSE
TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant, Toyota Motor Sales, U.S.A., Inc. ("TMS") s/h/a "LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC.," through its counsel, Eckert Seamans Cherin & Mellott,
LLC, makes the following supplemental response to Plaintiff's First Request for Production of
Documents as follows:

PREFATORY STATEMENT AND OBJECTIONS

Defendant TMS hereby responds to plaintiff's First Request for Production of
Documents. These responses are made specifically subject to the General Objections and any
specific objection contained within an individual response.

So far as TMS is aware, according to the information available to TMS at the present
time, these responses are complete and correct. TMS reserves the right to object to future
discovery on the same or related matters and does not waive any objection by providing the
information reflected in these responses. TMS further reserves the right to object to the
admissibility of any of these responses or the documents produced or related matters, in whole or

in part, at trial in this action, on any grounds, including, but not limited to, materiality, relevance, and privilege.

PREFATORY STATEMENT

TMS is the authorized importer and a distributor, in certain geographic areas, of Toyota motor vehicles in the continental United States. TMS does not manufacture, design or assemble Toyota motor vehicles in the ordinary course of its business and, therefore, was not the designer, manufacturer or assembler of the subject vehicle. TMS does not service Toyota motor vehicles in the ordinary course of its business for the general public. Accordingly, TMS does not have sufficient information or documentation to completely and accurately respond to many of these discovery requests.

GENERAL OBJECTIONS

To the extent applicable, the following are incorporated in the response to each individual request:

(a) TMS objects generally to these discovery requests to the extent they seek information which is not within TMS' possession, custody or control. These responses are made on behalf of TMS only. TMS objects to this discovery to the extent it seeks information from any other entity.

(b) TMS objects generally to these discovery requests to the extent they seek information directed towards vehicle, topics and issues beyond the components of the subject 2007 Toyota Lexus ES350 about which plaintiff makes allegations in the Complaint on the grounds that such discovery requests are overly broad, unduly burdensome, and seek information which is not relevant to the subject matter of this action and is not reasonably calculated to lead

to the discovery of admissible evidence.

(c) TMS objects generally to these discovery requests to the extent they seek information which unrelated to the defect allegations raised by plaintiff in this action on the grounds that such discovery requests are overly broad, unduly burdensome, and seek information that is not reasonably calculated to lead to the discovery of admissible evidence.

(d) TMS objects generally to these discovery requests to the extent they may seek information protected by the attorney-client privilege or the work product doctrine.

(e) TMS objects generally to these discovery requests to the extent they may seek competitively sensitive or trade secret materials.

(f) TMS objects generally to these discovery requests to the extent that plaintiff has refused to produce documentation requested by TMS.

(g) TMS objects generally that its investigation and discovery are ongoing and not complete. Therefore, these responses are limited to the information presently available and TMS reserves its right to conduct further investigation and discovery. TMS specifically reserves the right to present subsequently discovered facts or evidence at trial.

DISCOVERY RESPONSES

3. All customer complaints regarding sudden acceleration relating to the Lexus ES350 for 2007.

RESPONSE: TMS objects to this discovery request because it is vague, ambiguous, overly broad and burdensome. Without waiving those objections, TMS will search for and produce, if found:

A. Personal injury lawsuits and claims that TMS had notice of prior to February 18, 2007 in which it is was alleged that a factory installed, or original

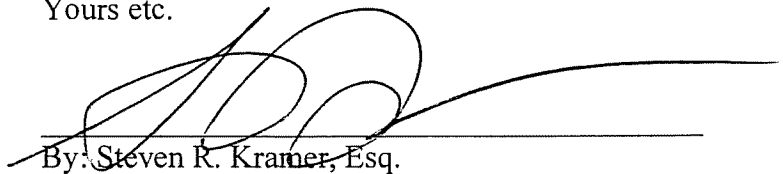
equipment replacement, Carpeted Floor Mat interfered with a driver's ability to control a 2007 Lexus ES350.

SUPPLEMENTAL RESPONSE: TMC objects to this discovery request because it is overly broad, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence, in that it seeks information regarding incidents which are not substantially similar to plaintiff's accident. TMC further objects to this discovery request as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information beyond the scope of the allegations in plaintiffs' Complaint.

Without waiving these objections, TMS has searched for and did not locate any personal injury lawsuits or claims that TMS had notice of prior to February 18, 2007 in which it is was alleged that a factory installed, or original equipment replacement, Carpeted Floor Mat interfered with a driver's ability to control a 2007 Lexus ES350.

Dated: White Plains, New York
September 2, 2008

Yours etc.



By: Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC.
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a "LEXUS, A DIVISION OF TOYOTA
MOTORS SALES, U.S.A., INC."
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
Fax: (914) 949-5424

To: GAIR, GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005
(212) 943-1090

AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
123 William Street
New York, New York 10038
(212) 513-7788

STEIN RISO MANTEL LLP
Attorneys for Defendant
METRO AUTO LEASING, INC.
d/b/a THE AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 599-1515

AFFIDAVIT OF SERVICE

STATE OF NEW YORK :
 : ss:
COUNTY OF WESTCHESTER

Eileen M. Driscoll, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Westchester County, New York.

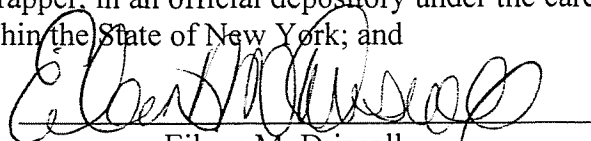
On September 2, 2008, deponent served the within **DEFENDANT TOYOTA MOTOR SALES U.S.A., INC.'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** upon:

GAIR, GAIR, CONASON, STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005
212-943-1090

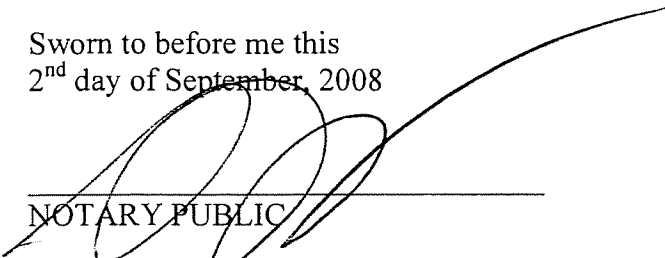
AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant
ESTREE, INC. D/B/A LEXUS OF WESTPORT
123 William Street
New York, New York 10038
212-513-7788

STEIN RISO MANTEL LLP
Attorneys for Defendant
METRO AUTO LEASING, INC. D/B/A THE AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
212-599-1515

by depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York; and


Eileen M. Driscoll

Sworn to before me this
2nd day of September, 2008


NOTARY PUBLIC

Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

Index No. 107681/07

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

DEFENDANT TOYOTA MOTOR SALES U.S.A., INC.'S SUPPLEMENTAL RESPONSE
TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

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

S/H/A LEXUS, A DIVISION OF
TOYOTA MOTORS SALES, U.S.A.

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

**DEFENDANT TOYOTA
MOTOR SALES U.S.A.,
INC.'S RESPONSE TO
PLAINTIFF'S FIRST
REQUEST FOR
PRODUCTION
OF DOCUMENTS**

Defendant.
-----X

**DEFENDANT, TOYOTA MOTOR SALES, U.S.A., INC.'S RESPONSE
TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant, Toyota Motor Sales, U.S.A., Inc. ("TMS") s/h/a "LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC.," through its counsel, Eckert Seamans Cherin & Mellott, LLC, responds to Plaintiff's First Request for Production of Documents as follows:

PREFATORY STATEMENT AND OBJECTIONS

Defendant TMS hereby responds to plaintiff's First Request for Production of Documents. These responses are made specifically subject to the General Objections and any specific objection contained within an individual response.

So far as TMS is aware, according to the information available to TMS at the present time, these responses are complete and correct. TMS reserves the right to object to future discovery on the same or related matters and does not waive any objection by providing the information reflected in these responses. TMS further reserves the right to object to the admissibility of any of these responses or the documents produced or related matters, in whole or in part, at trial in this action, on any grounds, including, but not limited to, materiality, relevance, and privilege.

PREFATORY STATEMENT

TMS is the authorized importer and a distributor, in certain geographic areas, of Toyota motor vehicles in the continental United States. TMS does not manufacture, design or assemble Toyota motor vehicles in the ordinary course of its business and, therefore, was not the designer, manufacturer or assembler of the subject vehicle. TMS does not service Toyota motor vehicles in the ordinary course of its business for the general public. Accordingly, TMS does not have sufficient information or documentation to completely and accurately respond to many of these discovery requests.

GENERAL OBJECTIONS

To the extent applicable, the following are incorporated in the response to each individual request:

(a) TMS objects generally to these discovery requests to the extent they seek information which is not within TMS' possession, custody or control. These responses are made on behalf of TMS only. TMS objects to this discovery to the extent it seeks information from any other entity.

(b) TMS objects generally to these discovery requests to the extent they seek information directed towards vehicle, topics and issues beyond the components of the subject 2007 Toyota Lexus ES350 about which plaintiff makes allegations in the Complaint on the grounds that such discovery requests are overly broad, unduly burdensome, and seek information which is not relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

(c) TMS objects generally to these discovery requests to the extent they seek information which unrelated to the defect allegations raised by plaintiff in this action on the

grounds that such discovery requests are overly broad, unduly burdensome, and seek information that is not reasonably calculated to lead to the discovery of admissible evidence.

(d) TMS objects generally to these discovery requests to the extent they may seek information protected by the attorney-client privilege or the work product doctrine.

(e) TMS objects generally to these discovery requests to the extent they may seek competitively sensitive or trade secret materials.

(f) TMS objects generally to these discovery requests to the extent that plaintiff has refused to produce documentation requested by TMS.

(g) TMS objects generally that its investigation and discovery are ongoing and not complete. Therefore, these responses are limited to the information presently available and TMS reserves its right to conduct further investigation and discovery. TMS specifically reserves the right to present subsequently discovered facts or evidence at trial.

DISCOVERY RESPONSES

1. The final inspection sheet for the subject vehicle prior to delivery to the dealer.

RESPONSE: TMS will search for and produce if found:

- A. TMS does not generate or maintain the requested information in the ordinary course of its business. See the Prefatory Statement.

2. All documents regarding the final inspection prior to delivery to the customer, all pre-delivery inspection documents.

RESPONSE: TMS will provide a copy of the pre-delivery instructions for the 2007 Lexus ES350 that were provided to authorized Lexus dealers.

3. All customer complaints regarding sudden acceleration relating to the Lexus ES350 for 2007.

RESPONSE: TMS objects to this discovery request because it is vague, ambiguous, overly broad and burdensome. Without waiving those objections, TMS will search for and produce, if found:

- A. Personal injury lawsuits and claims that TMS had notice of prior to February 18, 2007 in which it is was alleged that a factory installed, or original equipment replacement, Carpeted Floor Mat interfered with a driver's ability to control a 2007 Lexus ES350.

4. All documents regarding the Lexus product usage caution.

RESPONSE: TMS objects to this discovery request as it is vague, ambiguous, overly broad, burdensome, potentially seeks material protected from disclosure by the attorney client and/or attorney work product privilege and seeks information not relevant to this lawsuit.

Without waiving those objections, TMS will search for and produce:

A. The owners manual applicable to the 2007 Lexus ES 350.

5. All documents concerning the Lexus ES 350 all weather floor mat safety recall for 2007 and early 2008 model year vehicles.

RESPONSE: TMS objects to this discovery request as it is vague, ambiguous, overly broad, burdensome, potentially seeks material protected from disclosure by the attorney client and/or attorney work product privilege and seeks information not relevant to this lawsuit. Without waiving those objections, TMS incorporates its May 1, 2008 response and objections to the Court's preliminary conference order.

6. All documents regarding the "investigation" referred to in the recall regarding "floor mat interference is possible in any vehicle with any combination of floor mats."

RESPONSE: TMS objects to this discovery request as it is vague, ambiguous, overly broad, burdensome, potentially seeks material protected from disclosure by the attorney client and/or attorney work product privilege and seeks information not relevant to this lawsuit. Without waiving those objections, TMS incorporates its May 1, 2008 response and objections to the Court's preliminary conference order.

7. All documents concerning any hazard analysis conducted regarding the Lexus ES 350 floor mats.


RESPONSE: TMS objects to this discovery request as it is vague, ambiguous, overly broad, burdensome, potentially seeks material protected from disclosure by the attorney client and/or attorney work product privilege and seeks information not relevant to this lawsuit. Without waiving those objections, TMS incorporates its May 1, 2008 response and objections to the Court's preliminary conference order.

8. All frontal crash test results for the 2007 Lexus ES 350.

RESPONSE: TMS does not generate or maintain the requested information in the ordinary course of its business. See the Prefatory Statement. TMS states that Toyota Motor Corporation designed, developed, tested, assembled and manufactured the U.S. bound 2007 Lexus ES 350.

Dated: White Plains, New York
June 30, 2008

Yours etc.


By: STEVEN R. KRAMER, ESQ.
ECKERT SEAMANS CHERIN & MELLOTT, LLC.
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
S/H/A "LEXUS, A DIVISION OF TOYOTA
MOTORS SALES, U.S.A., INC."
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
Fax: (914) 949-5424

To: GAIR, GAIR CONASON STEIGMAN & MACKAUF
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(212) 943-1090

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Attorneys for Defendant
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D/B/A LEXUS OF WESTPORT
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STEIN RISO MANTEL LLP
Attorneys for Defendant
METRO AUTO LEASING, INC.
D/B/A THE AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 599-1515

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

**DEFENDANT TOYOTA MOTOR SALES U.S.A., INC.'S RESPONSE TO PLAINTIFF'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

Toyota Motor Sales, U.S.A., Inc., s/h/a Lexus, a

Division of Toyota Motors Sales, U.S.A.,

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

Defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF
TOYOTA MOTORS SALES, U.S.A., INC. ("TMS"), by its attorneys, Eckert Seamans Cherin &
Mellott, LLC, makes the following supplemental response to the Court's preliminary conference
order:

1. Insurance Coverage: TMS is self-insured for the first \$12,000,000 per occurrence and has insurance coverage for sums in excess of said amount sufficient to cover any reasonable adverse judgment which might be entered in this case.
2. Eye and Notice Witnesses: TMS states that it is not aware of any witnesses to the accident other than the individuals identified in the police report.
3. Statements: TMS states that it is not in possession of any statement taken from plaintiff relating to the accident.
4. Photographs: TMS states that it has previously produced copies of inspection photographs of the subject 2007 Lexus ES 350, bearing vehicle identification number JTHBJ46G272071246 (the "subject vehicle"), and TMS refers the parties to TMS' May 1, 2008 discovery response. TMS produces herewith copies of ten (10) photographs of the sanitation truck involved in the accident (Bates 0001-0005).

{V0008637.1}

Index No. 107681707

RECEIVED
MAY 30 2008
LEGAL DEPT.

**Supplemental Response
to Preliminary Conference
Order**

TOY-RQ-05E-00002214

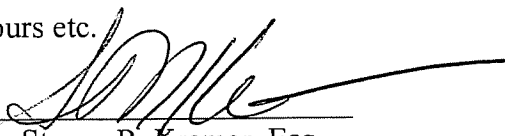
5. Subject Vehicle Sales/Lease/Repair/Maintenance Documents: TMS produces herewith the following documents concerning the sale, repair and maintenance of the subject vehicle:

- A. Main Vehicle Inquiry printout (Bates 0006-0008)
- B. Retail Sale Inquiry printout (Bates 0009)
- C. Warranty Claim History printout (Bates 0010)
- D. Customer Contact Printouts (Bates 0011-0017)

6. Response to Plaintiff's Discovery Demands dated November 28, 2007, February 28, 2008, April 4, 2008 and April 11, 2008: TMS states that it has previously served a response to those demands that were served upon TMS, and TMS refers the parties to TMS' May 1, 2008 discovery response.

Dated: White Plains, New York
May 28, 2008

Yours etc.


By: Steven R. Kramer, Esq.
Eckert Seamans Cherin & Mellott, LLC.
Attorneys for Defendant
Toyota Motor Sales, U.S.A., Inc., s/h/a Lexus, a
Division of Toyota Motors Sales, U.S.A.,
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
(914) 949-5424 (FAX)

To: GAIR, GAIR CONASON STEIGMAN & MACKAUF
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212-943-1090

AHMUTY, DEMERS & MCMANUS
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STEIN RISO MANTEL LLP
Attorneys for Defendant Metro Auto Leasing, Inc. d/b/a The Automall
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
212-599-1515

DATE (4) _____

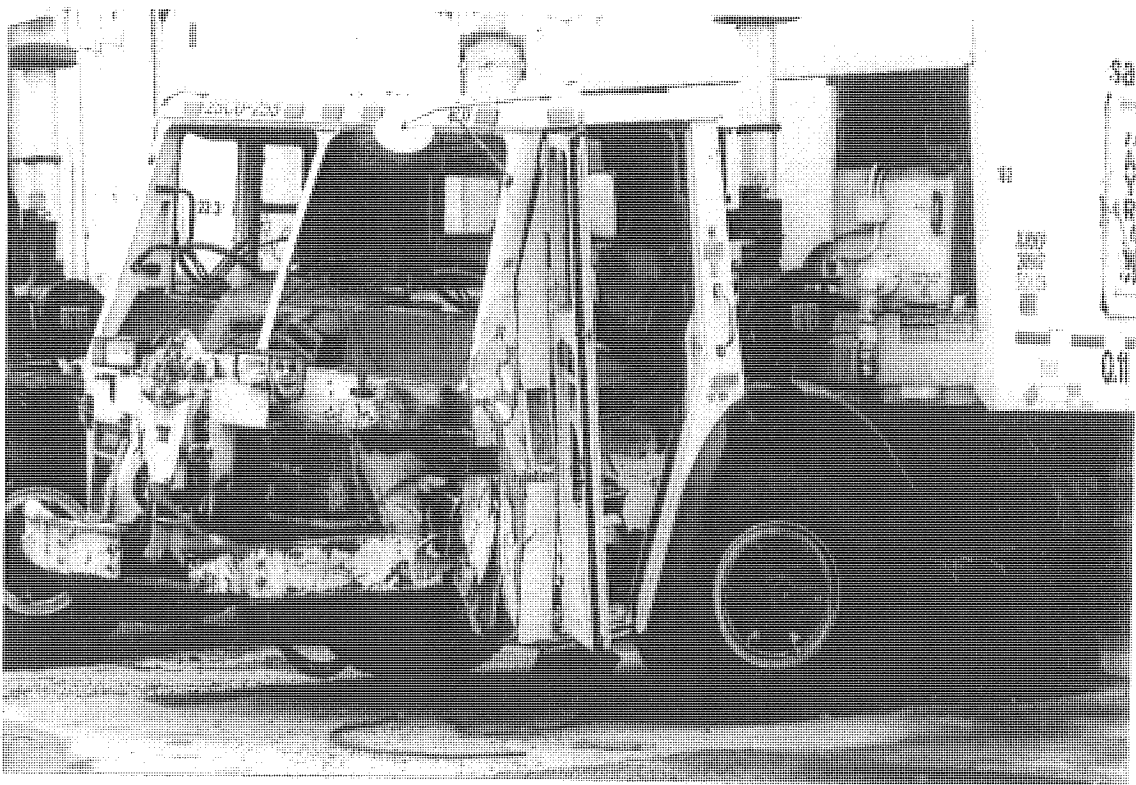
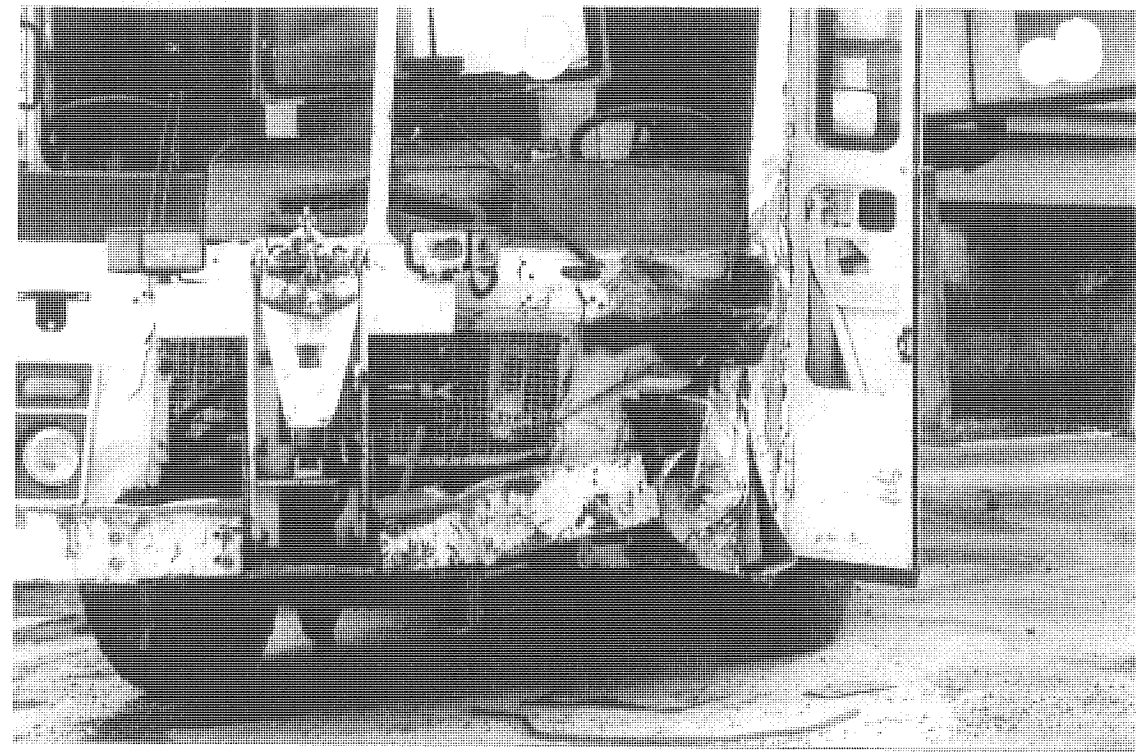
rims, @ _____ psi cold _____
_____ 26,000 LBS _____ with
_____ 12R20 _____ tires,
rims, @ 120 psi cold DUAL

CONFORMS TO ALL APPLICABLE FEDERAL
SAFETY STANDARDS IN EFFECT IN:
DECEMBER mo. 2001 yr.

IDENTIFICATION NUMBER 1M2AC07C22M [REDACTED]
TYPE: REFUSE TRUCK

212-1637





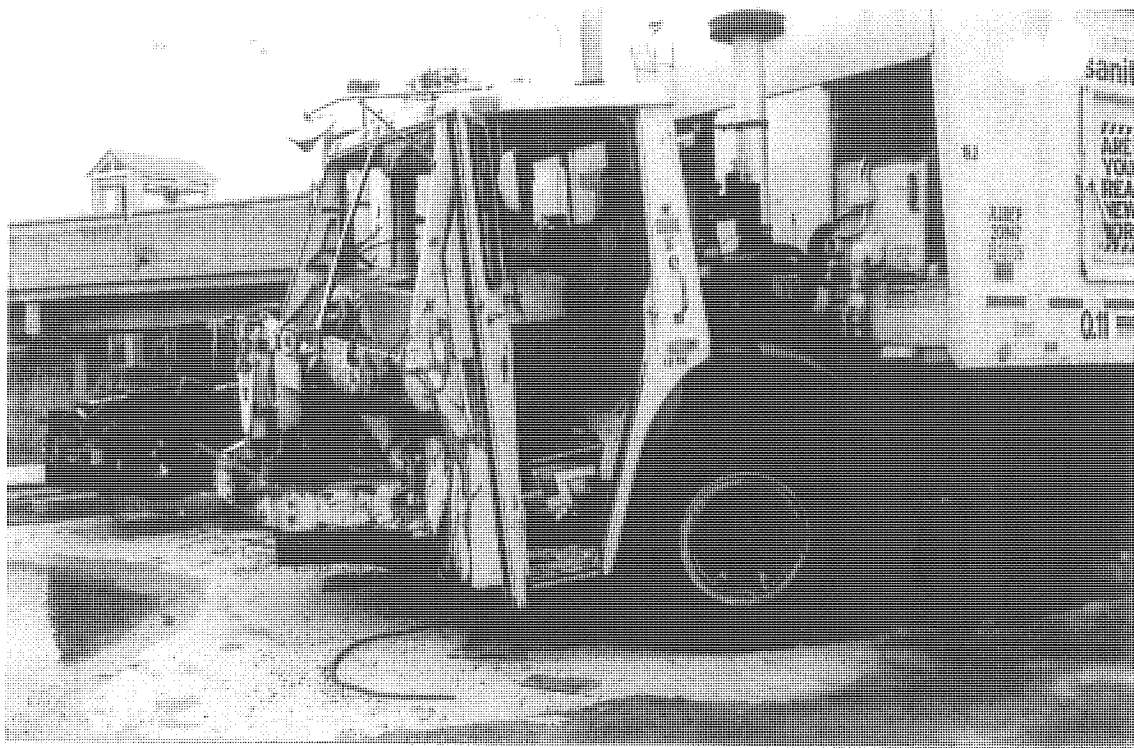
0002

TOY-RQ-05E-00002218



0003

TOY-RQ-05E-00002219



0004

TOY-RQ-05E-00002220



0005

TOY-RQ-05E-00002221

VD07110

MAIN VEHICLE INQUIRY

08/16/07

M100WC51

14:30:02

PAGE 1

MOD/SER: /

VIN: JTHBJ46G272

INQ TYPE: 1A URN:

ETA Dealer Delivery Window: 12/14/2006 - 12/18/2006

Vessel Name.....: GRNCOVE V159

ETA Date.....: 12/09/06

Japan Invoice No.: 1Y59640

ETD Date.....: 11/10/06

Dist Invoice No...:

Last Dist Debit Invoice Date.:

Dlr Invoice No....: 6644096

Last Dist Credit Invoice Date:

Port Veh Loc.....: 13X 54

Last Dist Release Date.....: 12/06/06

Pending Reversal.:

Last Label Date.....: 12/08/06

Prev Dist Credit.: NO

Last Actual Wholesale Date...: 12/12/06

No. of Dlr Credit:

Last Dealer Credit Date.....:

Truckload Shipmt.: ARRIVED

RDR Submitted Date.....: 01/02/07

Port Inst Std Opt: INSTALLED

Last Reversal Date.....:

Port PDS Complete: NO

Last Actual Retail Date.....: 01/02/07

Locked in Spread.: AUTHORIZED

Received Into System.....: 12/13/06

Cal/High Ind.....:

Last Trade Wholesale Date....: 12/12/06

Whsl at Tender....:

Fleet Discount Type...: NOT CALCULATED

Case No.: 8418VDC Railhead:

TMS Fleet Discount.....: 0.00

Pre-Sell Ind.....:

TMD Fleet Discount.....: 0.00

Key Number.....: 43222

Hold Status.....:

LAST PAGE

VD07110

MAIN VEHICLE INQUIRY

08/16/07

M100WC51

14:30:03

PAGE 1

MOD/SER: / VIN: JTHBJ46G272 [REDACTED] INQ TYPE: 01 URN:

** RETAILED AND TENDERED AT NY PORT ON 12/12/06

Model No....: 9000A	Inventory Catg....: H (6)
Serial No...: 72071246	Allocation No.....: 112
Check Code.: 1	Current Dealer....: 330-60604
URN: J16N046792	Wholesale Dealer...: 330-60604
VDS.....: BJ46G	Previous Dealer...: 00330
VIN.....: JTHBJ46G272071246	Label Group No....: 342A22
Model Year.: 2007	Dlr Invoice Date...: 12/12/06
Color Ext...: 04T1 - ALMOD	Retail Date.....: 01/02/07
Int...: LA05 - IVORY	Date of First Use..:
Vessel No...: 172	Curr&Orig Pt/Plant: NY / NY
Fleet Ind...: NON-FLEET	Damage Indicator...: NO DAMAGE
Engine No...: 2GR-A111612 (J)	No. of Retail Rev..:
Order No...: 3944362	Port Mod Ind.....:
Order Info.: 6 11 44 EAS P	
Ed No.: 244454	Comp Car Type/Stat:
Accy: BE FS HL NV PA PT WU LM+WL+GN+	

PF-1: Next Serial Number

0007

TOY-RQ-05E-00002223

VD07110 MAIN VEHICLE INQUIRY

08/16/07 M100WC51

(CONTINUED)

14:30:03 PAGE 2

MOD/SER: / VIN: JTHBJ46G272 [REDACTED] INQ TYPE: 01 URN:

ETA Dealer Delivery Window: 12/14/2006 - 12/18/2006

Vessel Name.....: GRNCOVE V159

ETA Date.....: 12/09/06

Japan Invoice No.: 1Y59640

ETD Date.....: 11/10/06

Dist Invoice No.:

Last Dist Debit Invoice Date:

Dlr Invoice No....: 6644096

Last Dist Credit Invoice Date:

Port Veh Loc.....: 13X 54

Last Dist Release Date.....: 12/06/06

Pending Reversal.:

Last Label Date.....: 12/08/06

Prev Dist Credit.: NO

Last Actual Wholesale Date....: 12/12/06

No. of Dlr Credit:

Last Dealer Credit Date.....:

Truckload Shipmt.: ARRIVED

RDR Submitted Date.....: 01/02/07

Port Inst Std Opt: INSTALLED

Last Reversal Date.....:

Port PDS Complete: NO

Last Actual Retail Date.....: 01/02/07

Locked in Spread.: AUTHORIZED

Received Into System.....: 12/13/06

Cal/High Ind.....:

Last Trade Wholesale Date....: 12/12/06

Whsl at Tender...:

Fleet Discount Type...: NOT CALCULATED

Case No...: 8418VDC Railhead:

TMS Fleet Discount.....: 0.00

Pre-Sell Ind.....:

TMD Fleet Discount.....: 0.00

Key Number.....: 43222

Hold Status.....:

LAST PAGE

VD07110

RETAIL SALE INQUIRY

08/16/07

M100WC51

14:30:06

PAGE 1

MOD/SER: /

VIN: JTHBJ46G272

INQ TYPE: 06 URN:

RDR Submitted Date: 01/02/07
Retail Date: 01/02/07
Dealer Sold By: 330-60604
Salesperson Name: SALLUHI
Salesperson: 770678613
Lease Company Name:
Customer Name: LEVITEN\$IRIS
Customer Address: 6 WOOD AVENUE
Customer City: ALBERTSON
State/Zip Code: NY 11507-
Customer Phone No: 516 248-4098
Type Sale Code: 01 RETAIL - INDIVIDUAL
Factura Number:

Type of Sale: NEW
Demo Extension: NO
Flt Ind at Sale: NON-FLEET
Sales Mile: 00010
Fleet Acct Id: 00000
Customer Prefix: 3-MS.
Number of Retails: 1
USA Check Code: 1

LAST PAGE

0009

TOY-RQ-05E-00002225

15:30 Thursday, August 2, 2007

VIN SERIAL : JTHBJ46G272 [REDACTED]

MODEL :9000 RETL DEALER :60604 LEXUS OF WESTPORT
RETL DATE :. MILEAGE :. TRANS:6
PROD DATE:611 SHIPMENT DTE:.
ENGINE:2GRA111612 A/C:1
DEMO:0 FLEET:0

-----WARRANTY REPAIR HISTORY-----

*DATE OF REPAIR : 12/17/06 SERVICING DLR : 60604 LEXUS OF WESTPORT
CLAIM # :912566 RO# : TOTAL: \$239.48
DFU : REPAIR MILES : 0
OFF :N/A OPCODE : PRE-DE
SPECIAL SERVICE CAMPAIGN INFO :.

CONDITION/CAUSE/REMEDY CCRJ FROM T-CODES-

ENGINE AREA INSPECT DONE

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

SUPPLEMENTAL RESPONSE TO PRELIMINARY CONFERENCE ORDER

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

Toyota Motor Sales, U.S.A., Inc., s/h/a Lexus, a

Division of Toyota Motors Sales, U.S.A.,

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

T

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

RECEIVED
MAY 01 2008
LEGAL DEPT.

-----X
IRIS LEVITEN,

Plaintiff,

**RESPONSE TO PRELIMINARY
CONFERENCE ORDER DEMAND**

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING,
INC., d/b/a THE AUTOMALL,

Index No.: 107681/07

Defendants.
-----X

SIR/MADAM:

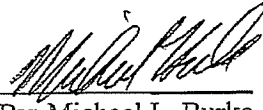
PLEASE TAKE NOTICE, pursuant to rules 3101 and 3120 of the CPLR, the defendant, TOYOTA MOTOR SALES, U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA MOTOR SALES, U.S.A., INC., by their attorneys, Aaronson, Rappaport, Feinstein & Deutsch, LLP, upon information and belief, respond to the plaintiff's notice for discovery and inspection as follows:

1. Toyota objects to this demand as irrelevant, prejudicial, and not reasonably calculated to lead to relevant evidence. Without waiving the above objections, there was and is no recall applicable to the floor mats which were and are contained in the plaintiff's vehicle at issue here.

PLEASE TAKE FURTHER NOTICE, that defendant herein reserves its rights to supplement and or amend these responses up to and including the time of trial.

Dated: New York, New York
May 1, 2008

Yours, etc.



By: Michael L. Burke
AARONSON RAPPAPORT FEINSTEIN &
DEUTSCH, LLP
Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC., S/H/A
LEXUS, A DIVISION OF TOYOTA MOTOR
SALES, U.S.A., INC.
Office & P.O. Address
757 Third Avenue
New York, NY 10017
212-593-6700

To: GAIR, GAIR CONASON
STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005
Attn.: Harold Herschenhorn

cc: AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
123 William Street
New York, New York 10038
Attn.: Tom Chojnacki

STEIN RISO MANTEL, LLP
Attorneys for Defendant
METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
Attn.: Gerard A. Riso

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

Paulette Monfries, being duly sworn, deposes and says: that deponent is not a party to the action, is over 18 years of age and resides at Brooklyn, New York.

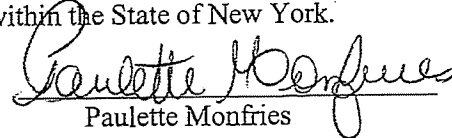
That on the 1st day of May, 2008, deponent served the within **RESPONSE TO PRELIMINARY CONFERENCE ORDER DEMAND** on behalf of TOYOTA MOTOR SALES, U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA MOTOR SALES, upon:

GAIR, GAIR CONASON STEIGMAN & MACKAUF
80 Pine Street
New York, New York 10005
Attn.: Harold Herschenhorn

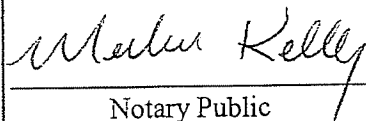
AHMUTY, DEMERS & MCMANUS
123 William Street
New York, New York 10038
Attn.: Tom Chojnacki

STEIN RISO MANTEL, LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
Attn.: Gerard A. Riso

at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.


Paulette Monfries

Sworn to before me this
1st day of May, 2008.



Notary Public

Marlene Kelly
Notary Public, State of New York
No. 01K2808170
Qualified in Queens County
Commission Expires October 25, 2019

Our File No.: 5300.003-Leviten

{00646373.DOC}644581v

AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP

ATTORNEYS AT LAW

757 THIRD AVENUE, NEW YORK, N.Y. 10017
212 593-6700
FAX: 212 593-6970

MEMBERS OF THE FIRM

MARK J. AARONSON	CRAIG P. FENNO	NANCY L. PENNIE
LAWRENCE D. BLOOMSTEIN	MICHAEL M. FUTTERMAN	JAY A. RAPPAPORT
NEIL F. BRENES	ANDREW I. KAPLAN	CAROL E. RUSSELL
RICHARD V. CAPLAN	STEVEN Z. KRONOVET	BARBARA A. RYAN
ROBERT J. CECALA	PHILIP D. LERNER	BARRY M. SCHREIBER
ROBERT S. DEUTSCH	NICHOLAS J. MAROTTA	DAWN C. SHAPIRO
SUSAN ETRA	DAVID A. MAYERI	ALSON R. SHIELDS
PETER J. FAZIO	ROBERT S. MELNICK	NANCY A. STEPROE
MARK B. FEINSTEIN	DANIEL NESSIM	ELLIOTT J. ZUCKER

MICHAEL L. BURKE
(212) 593-6794
MLBURKE@ARFDLAW.COM

May 1, 2008

GAIR, GAIR CONASON STEIGMAN & MACKAUF
80 Pine Street
New York, New York 10005

Attn.: Harold Herschenhorn

Re: Iris Leviten vs. Lexus, A division of Toyota Motor Sales, USA, Inc., et al
Index No.: 07-106681
Our File No.: 5300.003

Dear Mr. Herschenhorn:

Enclosed please find our response to your notice for discovery and inspection dated April 4, 2008.

Sincerely,



Michael L. Burke
MLB:pm

cc: Ahmuty, Demers & McManus
123 William Street
New York, New York 10038
Attn.: Tom Chojnacki

Stein Riso Mantel, LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
Attn.: Gerard A. Riso

{00646438.DOC}
644567v

TOY-RQ-05E-00002232

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

RECEIVED
MAY 01 2008
LEGAL DEPT.

-----x
IRIS LEVITEN,

Plaintiff,

- against -

**RESPONSE TO NOTICE FOR
DISCOVERY & INSPECTION**

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING,
INC., d/b/a THE AUTOMALL,

Index No.: 107681/07

Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, pursuant to rules 3101 and 3120 of the CPLR, the defendant, TOYOTA MOTOR SALES, U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA MOTOR SALES, U.S.A., INC., by their attorneys, Aaronson, Rappaport, Feinstein & Deutsch, LLP, upon information and belief, respond to the plaintiff's notice for discovery and inspection as follows:

1. **All photographs and video taken at vehicle inspection:**

Enclosed please find a copy of all photos taken at the inspection.

2. **All vehicle data retrieved from any and all on board computer/black box:**

No such data was retrieved.

3. **Any and All data reflecting whether the accelerator was open or closed on collision:**

No such data was retrieved.

4. **Any and All data reflecting whether the brake pedal was open or closed on collision**
:

No such data was retrieved.

PLEASE TAKE FURTHER NOTICE, that defendant herein reserves its rights to supplement and or amend these responses up to and including the time of trial.

Dated: New York, New York
May 1, 2008

Yours, etc.



By: Michael L. Burke
AARONSON RAPPAPORT FEINSTEIN &
DEUTSCH, LLP
Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC., S/H/A
LEXUS, A DIVISION OF TOYOTA MOTOR
SALES, U.S.A., INC.
Office & P.O. Address
757 Third Avenue
New York, NY 10017
212-593-6700

To: GAIR, GAIR CONASON
STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005
Attn.: Harold Herschenhorn

cc: AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
123 William Street
New York, New York 10038
Attn.: Tom Chojnacki

STEIN RISO MANTEL, LLP
Attorneys for Defendant
METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
Attn.: Gerard A. Riso

{00646428.DOC}644565v

TOY-RQ-05E-00002234

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
 ss.:
COUNTY OF NEW YORK)

Paulette Monfries, being duly sworn, deposes and says: that deponent is not a party to the action, is over 18 years of age and resides at Brooklyn, New York.

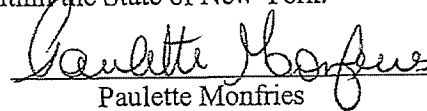
That on the 1st day of May, 2008, deponent served the within **RESPONSE TO NOTICE OF DISCOVERY AND INSPECTION** on behalf of TOYOTA MOTOR SALES, U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA MOTOR SALES, upon:

GAIR, GAIR CONASON STEIGMAN & MACKAUF
80 Pine Street
New York, New York 10005
Attn.: Harold Herschenhorn

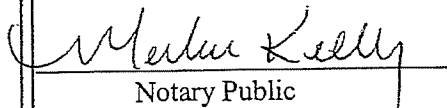
AHMUTY, DEMERS & MCMANUS
123 William Street
New York, New York 10038
Attn.: Tom Chojnacki

STEIN RISO MANTEL, LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
Attn.: Gerard A. Riso

at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.


Paulette Monfries

Sworn to before me this
1st day of May, 2008.


Notary Public

Merline Kelly
Notary Public, State of New York
No. 01KES068180
Qualified in Queens County
Commission Expires October 25, 2010

Our File No.: 5300.003-Leviten

{00646428.DOC}644565v

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.: 107681/07

IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC., ESTREE,
INC., d/b/a LEXUS OF WESTPORT, and
METRO AUTO LEASING, INC., d/b/a
THE AUTOMALL,

Defendants.

RESPONSE TO NOTICE OF DISCOVERY AND INSPECTION

AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP

Attorneys for Defendants

TOYOTA MOTOR SALES, U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, U.S.A., INC.

Office and Post Address

757 Third Avenue

New York, NY 10017

212-593-6700

To: **ALL PARTIES**

7

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index number: 107681/07

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

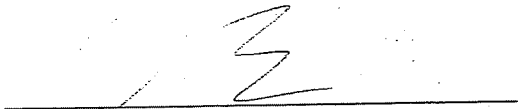
-----X
TO DEFENDANT(S): LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC

S I R (S) :

PLEASE TAKE NOTICE that, pursuant to the plaintiff(s)' demand, you are requested to produce and permit discovery by the plaintiff(s), plaintiff(s)' attorneys or another acting on plaintiff(s)' behalf, the following documents and things for inspection, copying or photocopying:

1. Copies of all photographs and video taken at the vehicle inspection by any and all persons attending on or behalf of Lexus , a Division of Toyota Motor Sales USA., Inc.
2. Copy of all vehicle data retrieved from any and all on board computer/black box.
3. Any and all data reflecting whether the accelerator was open or closed on collision.
4. Any and all data reflecting whether the brake pedal was open or closed on collision.

Dated: New York, New York
April 4, 2008



HOWARD S. HERSHENHORN

TO: AARONSON RAPPAPORT FEINSTEIN &
DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, USA,
s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA
757 Third Avenue
New York, New York 10017
Tel.: 212-593-6700

NOTICE OF ENTRY

Index No. : 107681

Year 2007

Sir : Please take notice that the within is a
(certified) true copy of a
duly entered in the office of the clerk of the within named
court on
Dated, 200

Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for

80 Pine Street
New York, New York 10005-1768

To:
Attorney for

NOTICE OF SETTLEMENT

Sir : Please take notice that an order

of which the within is a true copy will be presented for
settlement to the Hon.

one of the judges of the within named Court, at

on the day of M. 20

Dated,
Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for

80 Pine Street
New York, New York 10005-1768

To
Attorney for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES, USA.,
INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and
METRO AUTO LEASING, INC., d/b/a THE AUTOMALL,

Defendants.

NOTICE FOR DISCOVERY & INSPECTION

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**
Attorneys for Plaintiffs

80 Pine Street
New York, New York 10005-1768
212-943-1090

To

Attorney for

Service of a copy of the within
is hereby admitted.
Dated,

Attorney for

7

RECEIVED
MAY 01 2008
LEGAL DEPT.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

- against -

**RESPONSE TO NOTICE FOR
DISCOVERY & INSPECTION**

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING,
INC., d/b/a THE AUTOMALL,

Index No.: 107681/07

Defendants.

-----x
SIR/MADAM:

PLEASE TAKE NOTICE, pursuant to rules 3101 and 3120 of the CPLR, the defendant, TOYOTA MOTOR SALES, U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA MOTOR SALES, U.S.A., INC., by their attorneys, Aaronson, Rappaport, Feinstein & Deutsch, LLP, upon information and belief, respond to the plaintiff's notice for discovery and inspection as follows:

1. All photographs and video taken at vehicle inspection:

Enclosed please find a copy of all photos taken at the inspection.

2. All vehicle data retrieved from any and all on board computer/black box:

No such data was retrieved.

3. Any and All data reflecting whether the accelerator was open or closed on collision:

No such data was retrieved.

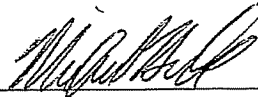
4. Any and All data reflecting whether the brake pedal was open or closed on collision
:

No such data was retrieved.

PLEASE TAKE FURTHER NOTICE, that defendant herein reserves its rights to supplement and or amend these responses up to and including the time of trial.

Dated: New York, New York
May 1, 2008

Yours, etc.



By: Michael L. Burke
AARONSON RAPPAPORT FEINSTEIN &
DEUTSCH, LLP
Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC., S/H/A
LEXUS, A DIVISION OF TOYOTA MOTOR
SALES, U.S.A., INC.
Office & P.O. Address
757 Third Avenue
New York, NY 10017
212-593-6700

To: GAIR, GAIR CONASON
STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005
Attn.: Harold Herschenhorn

cc: AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
123 William Street
New York, New York 10038
Attn.: Tom Chojnacki

STEIN RISO MANTEL, LLP
Attorneys for Defendant
METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
Attn.: Gerard A. Riso

{00646428.DOC}644565v

TOY-RQ-05E-00002241

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
 ss.:
COUNTY OF NEW YORK)

Paulette Monfries, being duly sworn, deposes and says: that deponent is not a party to the action, is over 18 years of age and resides at Brooklyn, New York.

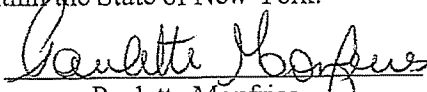
That on the 1st day of May, 2008, deponent served the within **RESPONSE TO NOTICE OF DISCOVERY AND INSPECTION** on behalf of TOYOTA MOTOR SALES, U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA MOTOR SALES, upon:

GAIR, GAIR CONASON STEIGMAN & MACKAUF
80 Pine Street
New York, New York 10005
Attn.: Harold Herschenhorn

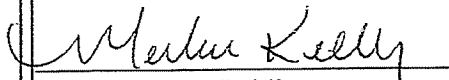
AHMUTY, DEMERS & MCMANUS
123 William Street
New York, New York 10038
Attn.: Tom Chojnacki

STEIN RISO MANTEL, LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
Attn.: Gerard A. Riso

at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.


Paulette Monfries

Sworn to before me this
1st day of May, 2008.


Notary Public

Merline Kelly
Notary Public, State of New York
No. 91KES068190
Qualified in Queens County
Commission Expires October 25, 2010

Our File No.: 5300.003-Leviten

{00646428.DOC}644565v

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.: 107681/07

IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC., ESTREE,
INC., d/b/a LEXUS OF WESTPORT, and
METRO AUTO LEASING, INC., d/b/a
THE AUTOMALL,

Defendants.

RESPONSE TO NOTICE OF DISCOVERY AND INSPECTION

AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP

Attorneys for Defendants

TOYOTA MOTOR SALES, U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, U.S.A., INC.

Office and Post Address

757 Third Avenue

New York, NY 10017

212-593-6700

To: **ALL PARTIES**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

RECEIVED
MAY 01 2008
LEGAL DEPT.

IRIS LEVITEN,

Plaintiff,

RESPONSE TO PRELIMINARY
CONFERENCE ORDER DEMAND

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING,
INC., d/b/a THE AUTOMALL,

Index No.: 107681/07

Defendants.

SIR/MADAM:

PLEASE TAKE NOTICE, pursuant to rules 3101 and 3120 of the CPLR, the defendant, TOYOTA MOTOR SALES, U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA MOTOR SALES, U.S.A., INC., by their attorneys, Aaronson, Rappaport, Feinstein & Deutsch, LLP, upon information and belief, respond to the plaintiff's notice for discovery and inspection as follows:

1. Toyota objects to this demand as irrelevant, prejudicial, and not reasonably calculated to lead to relevant evidence. Without waiving the above objections, there was and is no recall applicable to the floor mats which were and are contained in the plaintiff's vehicle at issue here.

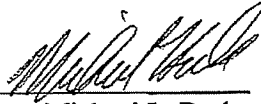
PLEASE TAKE FURTHER NOTICE, that defendant herein reserves its rights to supplement and or amend these responses up to and including the time of trial.

Dated: New York, New York
May 1, 2008

{00646373.DOC}644581v

TOY-RQ-05E-00002244

Yours, etc.



By: Michael L. Burke
AARONSON RAPPAPORT FEINSTEIN &
DEUTSCH, LLP
Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC., S/H/A
LEXUS, A DIVISION OF TOYOTA MOTOR
SALES, U.S.A., INC.
Office & P.O. Address
757 Third Avenue
New York, NY 10017
212-593-6700

To: GAIR, GAIR CONASON
STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005
Attn.: Harold Herschenhorn

cc: AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
123 William Street
New York, New York 10038
Attn.: Tom Chojnacki

STEIN RISO MANTEL, LLP
Attorneys for Defendant
METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
Attn.: Gerard A. Riso

{00646373.DOC}644581v

TOY-RQ-05E-00002245

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)

SS.:

COUNTY OF NEW YORK)

Paulette Monfries, being duly sworn, deposes and says: that deponent is not a party to the action, is over 18 years of age and resides at Brooklyn, New York.

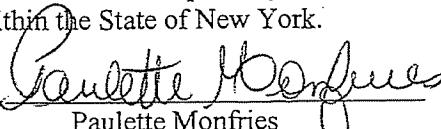
That on the 1st day of May, 2008, deponent served the within **RESPONSE TO PRELIMINARY CONFERENCE ORDER DEMAND** on behalf of TOYOTA MOTOR SALES, U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA MOTOR SALES, upon:

GAIR, GAIR CONASON STEIGMAN & MACKAUF
80 Pine Street
New York, New York 10005
Attn.: Harold Herschenhorn

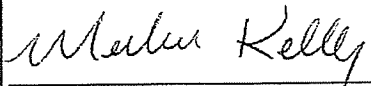
AHMUTY, DEMERS & MCMANUS
123 William Street
New York, New York 10038
Attn.: Tom Chojnacki

STEIN RISO MANTEL, LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
Attn.: Gerard A. Riso

at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.


Paulette Monfries

Sworn to before me this
1st day of May, 2008.

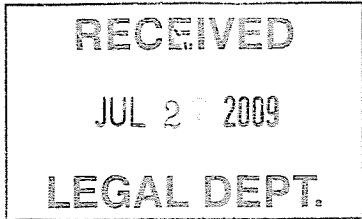


Notary Public

Marlene Kelly
Notary Public, State of New York
No. 01K2898180
Qualified in Queens County
Commission Expires October 25, 2010

Our File No.: 5300.003-Leviten

{00646373.DOC}644581v



SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.

-----X

Index No. 107681/07

Action #1

**REQUEST FOR
PRODUCTION OF
DOCUMENTS**

Index No.: 117118/07

Action #2

Index No.: 102331/08

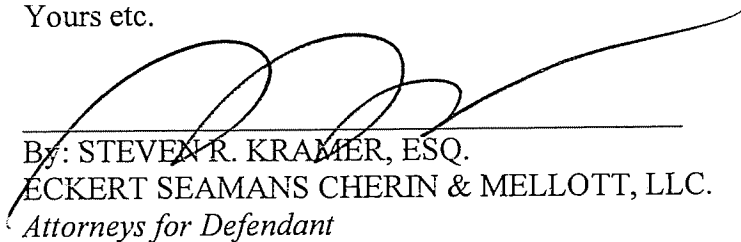
Action #3

PLEASE TAKE NOTICE, that Defendant, Toyota Motor Sales, U.S.A., Inc. ("TMS")
s/h/a "LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC.," through its counsel,
ECKERT SEAMANS CHERIN & MELLOTT, LLC, demands that the plaintiff MICHAEL
DOUKAS produce the following documents at the offices of ECKERT SEAMANS CHERIN &
MELLOTT, LLC , 10 Bank Street, Suite 1061, White Plains, New York, 10606:

1. Plaintiff's Exhibit 1 from Defendant Anthony Digirolamo's deposition, dated June 22, 2009.
2. Plaintiff's Exhibit 2 from Defendant Anthony Digirolamo's deposition, dated June 22, 2009.
3. Plaintiff's Exhibit 3 from Defendant Anthony Digirolamo's deposition, dated June 22, 2009.
4. Plaintiff's Exhibit 4 from Defendant Anthony Digirolamo's deposition, dated June 22, 2009.
5. Plaintiff's Exhibit 5 from Defendant Anthony Digirolamo's deposition, dated June 22, 2009.

Dated: White Plains, New York
July 17, 2009

Yours etc.



By: STEVEN R. KRAMER, ESQ.

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

TOYOTA MOTOR SALES, U.S.A., INC.,
S/H/A "LEXUS, A DIVISION OF TOYOTA
MOTORS SALES, U.S.A., INC."

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax: (914) 949-5424

To: Todd Strier, Esq.
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MICHAEL DOUKAS
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Diana M.A. Carnemolla, Esq.
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METRO AUTO LEASING, INC.
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Thomas G. Chojnacki, Esq.
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123 William Street
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T: (212) 513-7788
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David Heller, Esq.
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Attorneys for Defendant (Action #2, #3)
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766 Castleton Avenue
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T: (718) 442-1700
F: (718) 442-1717

Jessica Giambrone, Esq.
CORPORATION COUNSEL
Attorneys for Defendants (Action #2)
ANTHONY DIGIROLOMO,
NYC DEPT OF SANITATION
and THE CITY OF NEW YORK
100 Church Street
New York, New York 10007
T: (212) 788-1204
F: (212) 788-0367

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

CAROLYN GARCIA, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Bronx County, New York.

On the 21st day of July, 2009, deponent served the within **REQUEST FOR PRODUCTION OF DOCUMENTS** upon:

Diana M.A. Carnemolla, Esq.
GAIR GAIR CONASON
STEIGMAN & MACKAUF
Attorneys for Plaintiff
IRIS LEVITEN
80 Pine Street
New York, New York 10005

Todd J. Strier, Esq.
KELNER & KELNER, ESQS.
Attorneys for Plaintiff
MICHAEL DOUKAS
140 Broadway, 37th Floor
New York, New York 10005


Thomas G. Chojnacki, Esq.
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CONNORS & CONNORS, PC
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Staten Island, NY 10310

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Jessica Giambrone, Esq.
CORPORATION COUNSEL
Attorneys for Defendants
ANTHONY DIGIROLAMO, NYC
DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK
100 Church Street
New York, New York 10007

by depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.



CAROLYN GARCIA

Sworn to before me this
21st day of July, 2009



Eileen Lavelle
NOTARY PUBLIC, State of New York
No. 01LA6197308
Qualified in Westchester County
Commission Expires 11/24/2012

{V0018370.1}

TOY-RQ-05E-00002250

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK
 -----x
 3 IRIS LEVITEN,
 4 Plaintiff,
 5 -against-
 6 LEXUS, A DIVISION OF TOYOTA MOTOR
 7 SALES USA., INC., ESTREE, INC., D/B/A
 8 LEXUS OF WESTPORT, AND METRO AUTO
 9 LEASING, INC., d/b/a THE AUTOMALL,
 10 Defendants.
 11 -----x
 12 MICHAEL DOUKAS,
 13 Plaintiff,
 14 -against-
 15 IRIS LEVITEN, ANTHONY DIGIROLAMO,
 16 NEW YORK CITY DEPARTMENT OF SANITATION
 17 and THE CITY OF NEW YORK,
 18 Defendants.
 19 -----x
 20 (Caption continued on next page.)
 21
 22 EXAMINATION BEFORE TRIAL of the Defendant,
 23 NEW YORK CITY DEPARTMENT OF SANITATION, by
 24 ANTHONY DIGIROLAMO, pursuant to Order, held at
 25 the offices of the Corporation Counsel, 52
 Duane Street, New York, New York, on June 22,
 2009, commencing at 10:45 a.m., before Iris
 Fernhoff, a Shorthand Reporter and Notary
 Public within and for the State of New York.

REINIG REPORTING, INC. (212) 664-7298

1
 2 A P P E A R A N C E S:
 3
 4 STEIN RISO MANTEL, LLP
 5 Attorneys for Defendant METRO AUTO LEASING,
 6 INC., d/b/a THE AUTOMALL
 7 The Chrysler Building
 8 405 Lexington Avenue
 9 New York, New York 10174
 10 (NOT PRESENT)
 11
 12 KELNER & KELNER, ESQS.
 13 Attorneys for Plaintiff MICHAEL DOUKAS
 14 140 Broadway, 37th Floor
 15 New York, New York 10005
 16 BY: GAIL KELNER, ESQ.
 17
 18 CONORS & CONORS, P.C.
 19 Attorneys for Defendant IRIS LEVITEN
 20 766 Castleton Avenue
 21 Staten Island, New York 10310
 22 BY: DAVID S. HELLER, ESQ.
 23 DOCKET # DGE23865
 24
 25 MICHAEL A. CARDOZO, ESQ.
 CORPORATION COUNSEL
 Attorney for Defendants
 ANTHONY DIGIROLAMO, NEW YORK CITY
 DEPARTMENT OF SANITATION
 and THE CITY OF NEW YORK
 52 Duane Street
 New York, New York 10007
 BY: ALEXANDER MICHAELS, ESQ., of Counsel
 * * *

REINIG REPORTING, INC. (212) 684-7298

1
 2 -----x
 3 ANTHONY DIGIROLAMO,
 4 Plaintiff,
 5 -against-
 6 IRIS LEVITEN,
 7 Defendant.
 8 -----x
 9 A P P E A R A N C E S:
 10
 11 GAIR GAIR CONASON STEIGMAN & MACKAUF, ESQS.
 12 Attorneys for Plaintiff IRIS LEVITEN
 13 80 Pine Street
 14 New York, New York 10005
 15 BY: HOWARD S. HERSHENHORN, ESQ.
 16
 17 ECKERT SEAMANS CHERIN & MELLOTT, LLC
 18 Attorneys for Defendant TOYOTA MOTOR SALES,
 19 U.S.A., INC., s/h/a LEXUS A DIVISION OF TOYOTA
 20 MOTORS SALES U.S.A.
 21 10 Bank Street, Suite 1061
 22 White Plains, New York 10606
 23 BY: STEVE KRAMER, ESQ.
 24 File#: 292107-40
 25
 26 AHMUTY DEMERS & McMANUS, ESQS.
 27 Attorneys for Defendant ESTREE, INC., d/b/a
 28 LEXUS OF WESTPORT
 29 123 William Street
 30 New York, New York 10038
 31 BY: SHANNON E. KREUER, ESQ.
 32 FILE# YCW0962NTJAE

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1 IT IS HEREBY STIPULATED AND AGREED by and between
 2 counsel for the respective parties hereto that all
 3 rights provided by the C.P.L.R., and Part 221 of
 4 the Uniform Rules for the Conduct of Depositions,
 5 including the right to object to any question,
 6 except as to the form, or to move to strike any
 7 testimony at this examination, are reserved; and,
 8 in addition, the failure to object to any question
 9 or to move to strike testimony at this examination
 10 shall not be a bar or waiver to make such a motion
 11 at, and is reserved for, the trial of this action.
 12 IT IS FURTHER STIPULATED AND AGREED that this
 13 examination may be signed and sworn to by the
 14 witness being examined, before a Notary Public
 15 other than the Notary Public before whom this
 16 examination was begun, but the failure to do so,
 17 or to return the original of this examination to
 18 counsel, shall not be deemed a waiver of rights
 19 provided by Rules 3116 and 3117 of the C.P.L.R.
 20 and shall be controlled thereby.
 21 IT IS FURTHER STIPULATED AND AGREED that the
 22 filing of the original of this examination shall
 23 be and the same is hereby waived.
 24
 25

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1 Digirolamo
 2 A N T H O N Y D I G I R O L A M O, having
 3 been first duly sworn by a
 4 Notary Public within and for
 5 the State of New York, was
 6 examined and testified under
 7 oath as follows:
 8 EXAMINATION BY
 9 MS. KELNER:
 10 Q. What is your name?
 11 A. Anthony Digirolamo.
 12 Q. Where do you reside?
 13 A. 114 10th Street, Hicksville, New
 14 York 11801.
 15 Q. Good morning, Mr. Digirolamo.
 16 A. Morning.
 17 Q. Am I pronouncing that right?
 18 A. Correct.
 19 Q. My name is Gail Kelner. My firm
 20 represents Michael Doukas in connection with
 21 injuries he sustained in an accident on
 22 February 18, 2007.
 23 I'm going to ask you a series of
 24 questions. I would ask that you keep your
 25 voice up as much as you can. It's a little bit

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7

1 Digirolamo
 2 Sanitation vehicle?
 3 A. Yes.
 4 Q. Do you drive a Sanitation vehicle
 5 in connection with your job duties?
 6 A. Yes, I do.
 7 Q. Do you currently drive such a
 8 vehicle?
 9 A. Yes, I do.
 10 Q. For how long during your period of
 11 employment with the Department of Sanitation
 12 have you driven a Sanitation vehicle?
 13 A. All 28 years.
 14 Q. Is it always the same type of
 15 vehicle?
 16 A. Not the same type. Different
 17 trucks as the years went on we got better and
 18 better, different models as we would say.
 19 Q. Were you involved in an accident on
 20 February 18, 2007?
 21 A. Yes.
 22 Q. And were you performing your job
 23 duties for the Department of Sanitation at the
 24 time that the accident occurred?
 25 A. Yes.

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1 Digirolamo
 2 difficult to hear in here today.
 3 A. Sure.
 4 Q. If you don't understand my
 5 question, please let me know and I will
 6 rephrase it.
 7 A. Okay.
 8 Q. Please keep all of your answers
 9 verbal so that our Reporter can take them down.
 10 Is that okay?
 11 A. Okay.
 12 Q. Mr. Digirolamo, are you currently
 13 employed?
 14 A. Yes.
 15 Q. By whom are you employed?
 16 A. Department of Sanitation of the
 17 City of New York.
 18 Q. How long have you been employed by
 19 the Department of Sanitation?
 20 A. Twenty-eight years.
 21 Q. What is your current position?
 22 A. Sanitation worker.
 23 Q. What does that job entail?
 24 A. Picking up garbage.
 25 Q. Does that also entail driving a

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8

1 Digirolamo
 2 Q. I'm going back now to February of
 3 2007.
 4 Out of what garage were you
 5 stationed at that time?
 6 A. Queens North 11.
 7 Q. Where was that located?
 8 A. On Winchester Boulevard.
 9 Q. Winchester?
 10 A. Yes.
 11 Q. What were your duties at that time?
 12 A. Picking up garbage and then going
 13 to the dump to dump the truck.
 14 Q. And in February of 2007, did you
 15 drive a Department of Sanitation vehicle as
 16 part of your job duties?
 17 A. Yes.
 18 Q. And were you assigned a particular
 19 vehicle or type of vehicle at that time?
 20 A. Yes.
 21 Q. Was it one particular vehicle?
 22 A. Yes.
 23 Q. When were you first assigned this
 24 particular vehicle that you were driving in
 25 February of 2007?

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TOY-RQ-05E-00002252

1 Digirolamo
 2 A. That morning they assigned me that
 3 truck.
 4 Q. Was that the first time you had
 5 driven that truck?
 6 A. No.
 7 Q. Could you describe that vehicle,
 8 please?
 9 A. A big white truck.
 10 Q. Does it have a number?
 11 A. It's got a number.
 12 Q. Was it a particular type of
 13 vehicle; was there a cab and body to it?
 14 A. Yes, it's a Mack truck.
 15 Q. Does it have a hopper in the back?
 16 A. Yes.
 17 Q. And did you have a separate cab?
 18 A. The cab is separate from the back
 19 body, yes.
 20 Q. Back in February of 2007, was that
 21 the type of vehicle that you generally
 22 operated?
 23 A. Yes.
 24 Q. Do you recall the last time that
 25 you had operated the vehicle that you were

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11

1 Digirolamo
 2 A. Yes.
 3 Q. When did you receive training on
 4 that particular vehicle?
 5 A. Basically when the new trucks came
 6 in, usually the garage foreman will give you a
 7 quick brief training on the garage floor.
 8 Q. Do you recall when that particular
 9 vehicle came in or type of vehicle?
 10 A. Offhand, no, I don't.
 11 Q. Was it within a month, within two
 12 months?
 13 A. No, it was longer than that.
 14 Q. Was it within six months?
 15 A. Longer than that, I think.
 16 Q. Do you recall receiving training in
 17 the operation of that vehicle?
 18 A. Yes.
 19 Q. Did that vehicle differ in the
 20 terms of operation of any vehicles you had
 21 driven previously?
 22 A. No.
 23 Q. On this particular vehicle was the
 24 driver seat on the left side of the vehicle?
 25 A. Yes.

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1 Digirolamo
 2 operating on February 18, 2007 before that day?
 3 A. Did I operate it before that day?
 4 Q. Yes, that particular vehicle.
 5 A. Yes.
 6 Q. When was the last time you operated
 7 it before that day?
 8 A. The day before.
 9 Q. Had you driven it for some period
 10 of time?
 11 A. Yes.
 12 Q. How long a period of time had you
 13 driven that vehicle continuously?
 14 A. I don't know how long I've driven
 15 it.
 16 Q. Had you driven it for the week
 17 before the accident?
 18 A. Oh, yeah.
 19 Q. Was that a vehicle that was parked
 20 at the Queens North 11 garage?
 21 A. Correct.
 22 Q. When it was not in operation?
 23 A. Yes.
 24 Q. Had you ever received training in
 25 the operation of that vehicle?

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1 Digirolamo
 2 Q. Was it a manual transmission?
 3 A. Yes.
 4 Q. Prior to February 18, 2007, how
 5 long had you been stationed out of the Queens
 6 North 11 garage?
 7 A. Since 1989.
 8 Q. Was that vehicle equipped with seat
 9 belts?
 10 A. Yes.
 11 Q. Did that vehicle allow for
 12 passengers?
 13 A. Yes.
 14 Q. Where could passengers be seated in
 15 that vehicle?
 16 A. On the right side.
 17 Q. Was it like bucket seats or
 18 a bench?
 19 A. No, bucket seats.
 20 Q. There was a seat belt on the
 21 passenger side?
 22 A. Correct.
 23 Q. Your route on February 18, 2007,
 24 was that the same route that you had the day
 25 before or did the route vary?

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TOY-RQ-05E-00002253

1 Digirolamo
 2 A. No, because the day before I didn't
 3 go to the dump.
 4 Q. Did you drive that vehicle the day
 5 before?
 6 A. Yes, I did.
 7 Q. And other than going to the dump,
 8 was the route the same as the route that you
 9 took on February 18th?
 10 A. The route is the same, yeah,
 11 because we have the specific directions on how
 12 to go there.
 13 Q. What was your route the day before
 14 the accident date?
 15 A. The actual route that I was doing?
 16 Q. Correct.
 17 A. It's in Bayside.
 18 Q. Where was the dump?
 19 A. The dumps in Hempstead.
 20 Q. On the day before the accident,
 21 were there two workers in your truck?
 22 A. Yes.
 23 Q. Who was the other worker on the day
 24 before the accident?
 25 A. The day before the accident it was

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15

1 Digirolamo
 2 with the truck?
 3 A. I bring it back and unload it.
 4 Q. Is the truck brought to the dump on
 5 some regular basis?
 6 A. After shift. On another shift it's
 7 brought to the dump.
 8 Q. Did your shift generally include
 9 going to the dump?
 10 A. Time permitting.
 11 Q. And on Saturday were you supposed
 12 to go to the dump with the truck?
 13 A. I didn't have enough time to go.
 14 Q. So what did you do with the truck
 15 after?
 16 A. I brought it in at the end of the
 17 shift.
 18 Q. And that was back to the garage?
 19 A. Correct.
 20 Q. And did another shift then take
 21 that truck?
 22 A. Correct.
 23 Q. Do you know if the next shift took
 24 that truck to the dump?
 25 A. Supposedly, yeah.

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1 Digirolamo
 2 my regular partner.
 3 Q. Who was your regular partner?
 4 A. Ron Capaldi (phonetic).
 5 Q. What was your route on the day
 6 before the accident?
 7 A. My regular route that I normally do
 8 on a Saturday.
 9 Q. Did the accident happen on a
 10 Sunday?
 11 A. Yes.
 12 Q. What was your normal route for
 13 Saturday?
 14 A. The Bayside area.
 15 I mean, what are you looking for?
 16 Q. Are there a number pickups you make
 17 a day, sir?
 18 A. Yeah.
 19 Q. Then do you normally go to the
 20 dump --
 21 A. No.
 22 Q. -- on Saturday?
 23 A. No, I don't normally go.
 24 Q. What usually occurs on Saturday
 25 after the end of your route? What do you do

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16

1 Digirolamo
 2 Q. Do you generally have the same
 3 route?
 4 Back in 2007, the week before the
 5 accident, did you generally have the same route
 6 in Bayside?
 7 A. Yes.
 8 Q. And you would take the same route,
 9 time permitting to the dump in Hempstead?
 10 A. Yes.
 11 Q. On those occasions that you did
 12 have time to go to the dump, what would the
 13 route be from Bayside?
 14 How would you get to the dump?
 15 A. The Long Island Expressway to Glen
 16 Cove Road. Get off at Glen Cove Road and you
 17 would be on Glen Cove Road and you make a
 18 right. Take that straight up to Old Country
 19 Road. Make a left. And then there's a street
 20 right by Fortunoff's over there. I don't know
 21 what the street is, and you would make another
 22 right. That would lead you right into the
 23 dump.
 24 Q. After you went to the dump, did you
 25 have a route that you took to get back to the

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TOY-RQ-05E-00002254

1 Digirolamo
 2 garage?
 3 A. Same exact way I go.
 4 Q. That would entail going north on
 5 Glen Cove Road to the Long Island Expressway;
 6 is that correct?
 7 A. Correct.
 8 Q. On February 18, 2007, what time did
 9 you report to the garage?
 10 A. Seven o'clock in the morning.
 11 Q. Pardon?
 12 A. Seven in the morning.
 13 Q. Was that your usual reporting time?
 14 A. Yes.
 15 Q. When you arrived, were you assigned
 16 a particular truck to use that day?
 17 A. Yes.
 18 Q. Which truck were you assigned?
 19 A. CU255.
 20 Q. That's the same truck you were
 21 using the day before?
 22 A. Correct.
 23 Q. Were you assigned a partner that
 24 morning?
 25 A. Correct.

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19

1 Digirolamo
 2 the morning, do you generally make any type of
 3 a routine inspection of the truck?
 4 A. Yes.
 5 Q. Did you make an inspection?
 6 A. Yes, I did.
 7 Q. Did you make any particular
 8 observations?
 9 A. The truck was fine.
 10 Q. Do you have to fill out any kind of
 11 a checklist?
 12 A. On the back of our 350 we have a
 13 check-off.
 14 Q. Excuse my ignorance, but can you
 15 explain what a 350 is?
 16 A. It's a card that has your name. It
 17 would say "driver," it would be my name. And
 18 "loader" would be Doukas' name. And it would
 19 have the different itsis (phonetic). Those are
 20 just basically the lines of the route that
 21 you're doing.
 22 On the back of the card it just
 23 basically tells you if you found nothing wrong
 24 with the truck.
 25 Q. Does it have a more formal name?

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1 Digirolamo
 2 Q. Who was your partner?
 3 A. Mike Doukas.
 4 Q. Has Mr. Doukas ever been your
 5 partner before?
 6 A. We've worked together once in a
 7 while, but he wasn't my steady partner.
 8 Q. That would be Mr. Capaldi?
 9 A. Capaldi is my study partner.
 10 Q. Do you know where Mr. Capaldi was
 11 that morning?
 12 A. He didn't work that day. It was a
 13 voluntary base that needed work.
 14 Q. What was a voluntary base?
 15 A. To work that day because it was a
 16 holiday.
 17 Q. Do you recall the last time you had
 18 worked with Mr. Doukas prior to that day?
 19 A. Not really. I don't remember the
 20 last time I worked with him.
 21 Q. How was it determined who would
 22 drive the truck and who would be in the
 23 passenger seat?
 24 A. Well, I'm assigned as the driver.
 25 Q. When you arrive in the garage in

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1 Digirolamo
 2 MR. KRAMER: Is that short for
 3 something?
 4 THE WITNESS: It's just the lines
 5 of the route.
 6 Q. What were the hours of your shift
 7 that day?
 8 A. Seven to seven.
 9 Q. Was that your general shift every
 10 day?
 11 A. No.
 12 Q. What was your normal shift --
 13 A. The normal shift is seven to three.
 14 Q. Was it longer because it was a
 15 holiday?
 16 A. It was longer because it was snow,
 17 so it entailed snow removal and stuff.
 18 Q. What entailed snow removal?
 19 A. The shift itself they had half the
 20 guys on snow removal and half the guys doing
 21 garbage.
 22 Q. Were you assigned to snow
 23 removal --
 24 A. No.
 25 Q. -- or garbage?

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TOY-RQ-05E-00002255

1 Digirolamo
 2 A. No, I was assigned to garbage.
 3 Q. And the route that you were
 4 assigned to that day was the usual Bayside
 5 route?
 6 A. Yes.
 7 Q. It was your normal route and was it
 8 your intention to go to the dump that day?
 9 A. They gave us overtime to dump the
 10 truck.
 11 Q. Do you recall when you finished all
 12 of the garbage pick-ups that day, not the dump
 13 but just completing your normal route?
 14 A. Yes.
 15 Q. What time did you complete your
 16 route?
 17 A. I would say about 2:30.
 18 Q. 2:30?
 19 A. Yeah.
 20 Q. And during that time did you
 21 encounter any problems with the truck?
 22 A. No.
 23 Q. Did you encounter any problems in
 24 operating the truck because of road conditions?
 25 A. No.

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23

1 Digirolamo
 2 medications that you should have taken?
 3 A. I don't take medication.
 4 Q. After you finished your last
 5 pick-up, was it your intention to go to the
 6 dump?
 7 A. Yes.
 8 Q. What was your last pickup?
 9 A. Last pickup was Clearview and 27th
 10 Avenue.
 11 Q. At any time prior to the accident
 12 occurring did you indeed go to the dump?
 13 A. Prior to the accident?
 14 Q. Yes, had you gone to the dump?
 15 A. Yes.
 16 Q. And you had taken Glen Cove Road
 17 south --
 18 A. Correct.
 19 Q. -- and traveled the route that you
 20 previously described?
 21 A. Correct.
 22 Q. Did the accident occur when you
 23 were returning from the dump?
 24 A. Correct, coming back.
 25 Q. Were you under any time pressure

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1 Digirolamo
 2 Q. Prior to completing your route at
 3 approximately 2:30, did you take any lunch
 4 breaks?
 5 A. No.
 6 Q. Did you take any breaks at all?
 7 A. In the morning we did, yeah.
 8 Q. What time did you take a break?
 9 A. Our normal time is quarter to nine.
 10 Q. Did you continually operate your
 11 truck and perform your route from a quarter to
 12 nine until 2:30?
 13 A. Yeah.
 14 Q. Did you stop your route for any
 15 other reasons that day other than breaks?
 16 A. No.
 17 Q. Within the 24-hour period prior to
 18 the accident on February 18th, had you had
 19 anything of an alcoholic nature to drink?
 20 A. No.
 21 Q. On February 18th of 2007, were you
 22 on any medications that you were required to
 23 take on a daily basis?
 24 A. No.
 25 Q. Did you fail to take any

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24

1 Digirolamo
 2 when you were --
 3 A. No.
 4 Q. -- returning from the dump?
 5 A. No.
 6 Q. Did you have a particular time that
 7 you intended to be back at the garage?
 8 A. No.
 9 Q. Do you recall what time the
 10 accident happened?
 11 A. No.
 12 Q. If I said approximately 3:00, would
 13 that assist you in identifying the time?
 14 A. Possible.
 15 Q. Was it still daylight out?
 16 A. Yes, it was still daylight.
 17 Q. Did you need to be back at the
 18 garage at a particular time?
 19 A. No.
 20 Q. Once you had been to the dump, did
 21 you have any other routes that you needed to
 22 perform before your shift ended at 7 p.m.?
 23 A. No.
 24 Q. Had you returned to the garage
 25 prior to 7 p.m., would you have turned the

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TOY-RQ-05E-00002256

1 Digirolamo
 2 truck in early?
 3 A. Yes.
 4 Q. Would you have been paid the
 5 overtime, whatever you were paid, for the
 6 entire time to 7 p.m.?
 7 A. Right.
 8 Q. Did you have any concerns as you
 9 returned from the dump that you might not be
 10 back at the garage by 7:00?
 11 A. No.
 12 Q. Did you encounter any problems with
 13 the roadways as you returned from the dump
 14 prior to the accident?
 15 A. No.
 16 Q. Do you recall what the weather was?
 17 A. The weather was?
 18 It was cloudy that day.
 19 Q. Do you recall when it had last
 20 snowed?
 21 A. The beginning of the week.
 22 Q. You're talking about like a week
 23 ago, that prior Monday?
 24 A. Yeah, probably. It was either
 25 Monday or Tuesday of that week it had snowed.

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1 Digirolamo
 2 A. On the outside, on both sides,
 3 right and left.
 4 Q. Was there also a mirror in the
 5 middle?
 6 A. No, no mirror.
 7 Q. Was there any type of mirror that
 8 would allow you to see in back of you?
 9 A. No, there's no way to see an exact
 10 right behind you. No, you can't. It's just
 11 side mirrors.
 12 Q. A left mirror and a right mirror?
 13 A. Right.
 14 Q. You, yourself, operated the vehicle
 15 as you returned from the dump; is that correct?
 16 A. Correct.
 17 Q. And at some point did you enter
 18 Glen Cove Road in a northbound direction?
 19 A. Yes.
 20 Q. Did the accident occur on Glen Cove
 21 Road?
 22 A. Yes.
 23 Q. As you were traveling north on Glen
 24 Cove Road prior to the accident, can you
 25 describe how many lanes of moving traffic there

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1 Digirolamo
 2 Q. It was four or five days at least
 3 before there had been snow?
 4 A. Yes.
 5 Q. At the time of the accident were
 6 you operating the truck?
 7 A. Yes.
 8 Q. Did Mr. Doukas relieve you as the
 9 driver at any time that day or did you drive?
 10 A. He drove to the dump. I drove back
 11 from the dump.
 12 Q. Is there any particular reason why
 13 he drove to the dump?
 14 A. We just take turns.
 15 Q. Is that the normal procedure even
 16 if one of you is designated as a driver?
 17 A. Yeah.
 18 Q. Did he report to you whether he had
 19 experienced any problems with the operation of
 20 the truck?
 21 A. No.
 22 Q. Was the cab of the truck equipped
 23 with mirrors?
 24 A. Yes.
 25 Q. Where were the mirrors located?

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1 Digirolamo
 2 are on Glen Cove Road as it proceeds north?
 3 A. Just going north?
 4 Q. Correct.
 5 A. Two.
 6 Q. Are there any parking lanes on Glen
 7 Cove Road?
 8 A. No.
 9 Q. How many lanes of southbound
 10 traffic are there on Glen Cove Road --
 11 A. Two.
 12 Q. -- prior to the accident site,
 13 south of the accident site?
 14 A. Two.
 15 Q. Are there any parking lanes in a
 16 southbound direction?
 17 A. No.
 18 Q. Do you know what the speed limit is
 19 on Glen Cove Road?
 20 A. Do I know what the speed limit is?
 21 Q. Correct.
 22 A. Not offhand, no, I don't.
 23 Q. As you proceeded north on Glen Cove
 24 Road, do you know what your approximate speed
 25 was?

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TOY-RQ-05E-00002257

1 Digirolamo
 2 A. I was crawling.
 3 Q. Was there a lot of traffic?
 4 A. Yes.
 5 Q. When you say "crawling," can you
 6 approximate the speed?
 7 A. The truck was basically rolling.
 8 The speedometer wasn't even moving.
 9 Q. For how long prior to the accident
 10 had you been proceeding in that manner would
 11 you estimate?
 12 A. There is so much traffic, I don't
 13 know.
 14 Q. Was it this way from the first time
 15 you entered onto Glen Cove Road or did it
 16 change at some point after you were on the Glen
 17 Cove Road?
 18 A. No, as soon as we were turning onto
 19 Glen Cove Road there was just a lot of traffic
 20 that day.
 21 Q. Did you enter onto Glen Cove Road
 22 from Old Country Road?
 23 A. Yes.
 24 Q. So you made a right turn?
 25 A. Correct.

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1 Digirolamo
 2 Road.
 3 Q. Did the accident occur at that
 4 intersection with a traffic control?
 5 A. The accident didn't happen in an
 6 intersection.
 7 Q. Did the accident occur at a
 8 location on Glen Cove Road that had a traffic
 9 control?
 10 A. Yes.
 11 Q. Was that the traffic control that
 12 you were describing, the first light on Glen
 13 Cove Road?
 14 A. No, I think it was the second one.
 15 Q. Did you come to a stop at the first
 16 light on Glen Cove Road?
 17 A. Yes.
 18 Q. Do you know if that light is at
 19 that intersection?
 20 A. Yeah, that one is, yes.
 21 Q. Do you know the distance between
 22 that light at the intersection where you
 23 stopped and the light where the accident
 24 occurred?
 25 A. No, I have no idea of distance.

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1 Digirolamo
 2 Q. And from the time you made that
 3 right turn would you describe your vehicle's
 4 motion as rolling?
 5 A. Just about, yeah.
 6 Q. And was traffic moving slowly in
 7 the southbound direction?
 8 A. No.
 9 Q. Was traffic moving?
 10 A. Traffic was moving.
 11 Q. How would you characterize the
 12 traffic moving southbound; light, medium, heavy
 13 or something else?
 14 A. I would say it was like medium.
 15 Q. How would you characterize the
 16 traffic in the direction you were proceeding?
 17 A. It was heavy.
 18 Q. At any time prior to the accident
 19 did you bring your vehicle to a complete stop
 20 for a traffic control?
 21 A. Yes.
 22 Q. Do you recall where that last
 23 occurred prior to the accident?
 24 A. It's the first red light. That's
 25 the first light when you get onto Glen Cove

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1 Digirolamo
 2 Q. Do you know how much time elapsed
 3 from the time you came to a complete stop at
 4 the first light until you reached the second
 5 light?
 6 A. No.
 7 Q. Do you know if it was minutes?
 8 A. I wasn't looking. I wasn't paying
 9 attention to the time.
 10 Q. Did you come to a stop at that
 11 second light, which was in the vicinity of
 12 where the accident occurred?
 13 A. Yes.
 14 Q. At that second light where you came
 15 to a stop where the accident occurred, is there
 16 any roadway in the vicinity of that traffic
 17 light other than Glen Cove Road?
 18 A. There was exits coming off the
 19 Northern State.
 20 Q. Do you know if that was an exit off
 21 the eastbound Northern State or the westbound
 22 or something else?
 23 A. It would be eastbound.
 24 Q. Is there a traffic light at the
 25 exit ramp for the eastbound Northern State

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1 Digirolamo
 2 traffic?
 3 A. No, there's a stop sign there.
 4 Q. Does that road continue after the
 5 stop sign, the exit lane for the Northern
 6 State, does that go across the roadway?
 7 A. No, it goes south. In other words,
 8 when you come off, you could only go south.
 9 Q. So there's a stop sign for traffic
 10 coming off the Northern State to enter onto the
 11 southbound Glen Cove Road?
 12 A. Correct.
 13 Q. Is there any control that permits
 14 traffic from the exit ramp of the Northern
 15 State to enter onto the northbound lanes?
 16 A. No.
 17 Q. Is there any roadway on the right
 18 side of the northbound lanes of Glen Cove Road?
 19 A. No, there's just an exit to get
 20 onto the Northern State going east.
 21 Q. So that's the entrance ramp is on
 22 the other side?
 23 A. Right.
 24 Q. At the time that the accident
 25 occurred were you stopped or were you moving?

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1 Digirolamo
 2 MR. MICHAELS: Make sure you let
 3 her finish before you start answering.
 4 THE WITNESS: Oh, all right.
 5 Q. As you were stopped in the right
 6 lane of northbound Glen Cove Road, were there
 7 any vehicles stopped next to you in the left
 8 lane?
 9 A. No.
 10 Q. Do you know if there were any
 11 vehicles in back of you but in the left lane?
 12 A. I didn't look behind me, no.
 13 Q. Do you know if there were any
 14 vehicles in the left lane that were ahead of
 15 you?
 16 A. Yeah. There were vehicles, yeah.
 17 Q. Can you approximate how many
 18 vehicles were ahead of you but in the left
 19 lane?
 20 A. No.
 21 Q. Was it more than two?
 22 A. Yeah, I would say more than two,
 23 yeah.
 24 Q. More than three?
 25 A. I don't know.

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1 Digirolamo
 2 A. Stopped.
 3 Q. Do you know what the color of the
 4 light was for traffic moving north on Glen Cove
 5 Road at that point?
 6 A. It was red.
 7 Q. Had it changed yet to green or was
 8 it still a solid red?
 9 A. No, it was red.
 10 Q. Do you recall what lane of traffic
 11 you were in?
 12 A. I was in the right lane.
 13 Q. Were there any vehicles ahead of
 14 you?
 15 A. Yes.
 16 Q. Closer to the light?
 17 A. Yes.
 18 Q. Do you know how many vehicles were
 19 ahead of you --
 20 A. No.
 21 Q. -- at the light?
 22 A. No, I don't.
 23 MR. MICHAELS: Make sure to let her
 24 finish before you start answering.
 25 THE WITNESS: What's that?

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1 Digirolamo
 2 Q. What about in the right lane ahead
 3 of you, can you approximate how many vehicles
 4 were ahead of you?
 5 A. I don't know.
 6 Q. Was it more than two?
 7 A. Yeah.
 8 Q. More than three?
 9 A. I don't know. I really don't.
 10 Q. If you don't know, it's fine to
 11 tell me you don't know.
 12 Do you know how long you were
 13 stopped at the red light before something
 14 occurred?
 15 A. Less than a minute.
 16 Q. At any time prior to the accident
 17 occurring did you see the light change color?
 18 A. No.
 19 Q. Was the door of your cab closed or
 20 open at that time?
 21 A. Closed.
 22 Q. Is the vehicle equipped with a
 23 radio?
 24 A. No.
 25 Q. Were you engaged in any

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TOY-RQ-05E-00002259

1 Digirolamo
 2 conversation with Mr. Doukas while you were
 3 stopped at that red light?
 4 A. No.
 5 Q. Do you recall where you were
 6 looking as you were stopped at that red light?
 7 A. I was looking straight ahead.
 8 Q. Did there come a point when you
 9 realized that something had occurred in the
 10 roadway?
 11 A. Yes.
 12 Q. And how did you first become aware
 13 that something had occurred?
 14 A. It was like a roadside bombing.
 15 That's all I could tell you.
 16 Q. Did another vehicle come into
 17 contact with your vehicle?
 18 A. Yes.
 19 Q. At any time prior to the accident
 20 did you see this other vehicle?
 21 A. No.
 22 Q. When did you see the other vehicle
 23 for the first time?
 24 A. When everything came to a halt.
 25 Q. What do you mean by "when"

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1 Digirolamo
 2 Q. At any time prior to seeing this
 3 vehicle, did you feel an impact?
 4 A. Did I feel the impact?
 5 Q. Yes.
 6 A. Yeah, after she hit me I felt the
 7 impact.
 8 Q. Which occurred first, did you feel
 9 the impact first or did you see the car first?
 10 A. I felt the impact. I never saw the
 11 car.
 12 Q. And where in your vehicle did you
 13 feel the impact?
 14 A. On the driver's side.
 15 Q. Was it the driver's side near the
 16 front, near the front under the bumper or
 17 something else?
 18 A. I would say between the bumper and
 19 the door.
 20 Q. How would you describe that impact;
 21 hard, medium, soft or something else?
 22 A. Hard.
 23 Q. At the time of the impact did that
 24 impact cause your vehicle to move in any
 25 direction?

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1 Digirolamo
 2 everything came to a halt?"
 3 A. After she had hit us and the car
 4 was right in front of the truck.
 5 Q. Did you see that vehicle at any
 6 time prior to contact?
 7 A. No.
 8 Q. At any time prior to contact did
 9 you hear any sounds of horns?
 10 A. No.
 11 Q. At any time prior to contact did
 12 you hear the sounds of any brakes screeching?
 13 A. No.
 14 Q. When you first saw the other
 15 vehicle where exactly was the other vehicle?
 16 A. The passenger side of her car was
 17 underneath the front of the truck.
 18 Q. Under what portion of the truck was
 19 the passenger side of the vehicle?
 20 A. The front.
 21 Q. Was it under the direct front of
 22 the truck, was it under the left side of the
 23 truck, the right side right of the truck?
 24 A. Well, it was hit on the left. It
 25 wasn't totally under the truck, you know.

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1 Digirolamo
 2 A. Yes.
 3 Q. And in what direction did your
 4 vehicle move?
 5 A. To the right.
 6 Q. At some point did your vehicle then
 7 come to a stop?
 8 A. Yes.
 9 Q. When it came to a stop was it still
 10 on the roadway or somewhere else?
 11 A. We were halfway on the sidewalk and
 12 halfway on the roadway.
 13 Q. When your vehicle came to rest
 14 where was the other vehicle?
 15 A. In front of the truck.
 16 Q. Was it under the truck?
 17 A. Yes.
 18 Q. Did you see the other vehicle at
 19 any time before your vehicle came to rest when
 20 it was half on and half off the roadway?
 21 A. No. When it came to rest is when I
 22 saw the vehicle.
 23 Q. Did you see the vehicle at any time
 24 at any point while your vehicle was being
 25 pushed to the side?

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TOY-RQ-05E-00002260

1 Digirolamo
 2 A. No.
 3 MR. KRAMER: He just said "no"?
 4 THE WITNESS: No.
 5 Q. At any time prior to your truck
 6 coming to rest half on and half off the
 7 roadway, did you know what had caused the
 8 impact?
 9 A. No, not until I saw the car.
 10 Q. When your vehicle came to rest was
 11 the other vehicle under the cab of your car?
 12 A. Yes.
 13 Q. And as this was occurring, as you
 14 felt the impact and the vehicle was moving off
 15 the roadway, did you have any conversation with
 16 Mr. Doukas?
 17 A. No.
 18 Q. Did Mr. Doukas say anything to you?
 19 A. No.
 20 Q. At some point after the vehicle
 21 came to rest, did you have any conversations
 22 with Mr. Doukas?
 23 A. He did. He asked me if my legs
 24 were all right.
 25 Q. Did you observe Mr. Doukas after

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1 Digirolamo
 2 couldn't.
 3 Q. Do you recall hitting any part of
 4 your body against any part of your cab?
 5 A. Yeah.
 6 Q. What part of your body came into
 7 contact with any portion of the inside of your
 8 truck?
 9 A. Right side. Left side.
 10 Q. What did you hit?
 11 A. I hit the console on the right
 12 side. Then I went up against the door on the
 13 left side.
 14 Q. At any time after impact did you
 15 hit your head on anything?
 16 A. Yeah, against the door.
 17 Q. What's the last thing you remember
 18 prior to losing consciousness?
 19 A. Trying to get out.
 20 Q. What's the next thing you remember
 21 when you regained consciousness?
 22 A. I woke up in the ambulance.
 23 Q. Did you have any conversations with
 24 anyone at the accident site?
 25 A. No.

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1 Digirolamo
 2 the impact?
 3 A. Did I observe him?
 4 Q. Did you see him in his seat?
 5 A. Yeah, he was in his seat.
 6 Q. Was he seat-belted?
 7 A. Yes.
 8 Q. Did he say anything?
 9 A. He just asked me how were my legs.
 10 Q. What did you say?
 11 A. I said, my legs were okay.
 12 Q. Did he have a problem with his
 13 legs?
 14 A. Not that I know of at that time,
 15 no.
 16 Q. What did you do next?
 17 A. I was trying to get out of the
 18 truck.
 19 Q. Were you able to get out of the
 20 truck?
 21 A. No, I passed out. I don't know how
 22 I got out of the truck.
 23 Q. What's the last thing you remember
 24 before you passed out?
 25 A. Trying to open the door and I

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1 Digirolamo
 2 Q. When you woke up in the ambulance,
 3 was the ambulance moving or was the ambulance
 4 stopped?
 5 A. It was moving.
 6 Q. Do you recall being placed in the
 7 ambulance?
 8 A. No.
 9 Q. Did the ambulance take you to a
 10 hospital?
 11 A. Yes.
 12 Q. Where did it take you?
 13 A. Winthrop.
 14 Q. During the time that you were in
 15 the ambulance did you have any conversations
 16 with anyone who was in the ambulance with you
 17 about how the accident occurred?
 18 A. No.
 19 Q. Were there any other injured
 20 persons in the ambulance with you?
 21 A. There was. Mike was with me,
 22 Doukas.
 23 Q. He was in the ambulance also?
 24 A. Yes.
 25 Q. Did you have any conversations with

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1 Digirolamo
 2 Mr. Doukas?
 3 A. No, because I passed out again in
 4 the ambulance.
 5 Q. At any time subsequent to the
 6 accident, did you ever have any conversations
 7 with the operator of the other vehicle?
 8 A. No.
 9 Q. Prior to coming here to testify did
 10 you review any documents?
 11 A. No.
 12 Q. Did you review any photographs?
 13 A. No.
 14 Q. Have you ever seen any photographs
 15 of the accident site?
 16 A. No, not of the accident site, no.
 17 Q. What photographs have you seen with
 18 reference to this occurrence?
 19 A. Just one of the truck that was --
 20 that's at the CRS where they keep the condemned
 21 trucks.
 22 Q. What is "CRS"?
 23 A. It's like the main hub where they
 24 repair trucks and stuff. That's where the
 25 truck was brought to.

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1 Digirolamo
 2 A. Not to my knowledge, no.
 3 Q. When you saw the photograph of the
 4 truck, were you advised it was a picture of the
 5 truck as it looked after the accident?
 6 A. Yes.
 7 Q. And were you able to observe damage
 8 to the truck?
 9 A. Not really, it wasn't like a clear
 10 picture, you know. It's just basically -- all
 11 you saw the front was burned, that's it.
 12 Q. Do you know who showed you the
 13 photographs?
 14 A. It was laying around the garage, to
 15 be honest with you.
 16 Q. What were the circumstances under
 17 which you went to the CRS garage?
 18 A. I didn't go. I was never there. I
 19 never saw the truck after the accident.
 20 Q. You said you saw the photograph?
 21 A. Just that one photograph.
 22 Q. Where was the photograph?
 23 A. It was in the garage. It was
 24 laying around the garage.
 25 Q. In which garage?

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1 Digirolamo
 2 Q. Were you involved in bringing the
 3 truck to the CRS?
 4 A. No.
 5 Q. Do you know how the truck arrived
 6 at that location?
 7 A. They towed it there.
 8 Q. Do you know when it was towed
 9 there?
 10 A. No.
 11 Q. Were you asked to look at the
 12 truck --
 13 A. No.
 14 Q. -- after it was brought to that
 15 location?
 16 A. No. I just saw a picture of it
 17 when it was there, parked there.
 18 Q. What were the circumstances under
 19 which you saw a photograph of the truck?
 20 A. What do you mean? I don't
 21 understand. What do you mean "circumstances"?
 22 Q. Were you asked to identify the
 23 truck for the photograph?
 24 A. No, no, no, not at all.
 25 Q. Was the truck ever repaired?

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1 Digirolamo
 2 A. In our garage where I work.
 3 Q. Do you still work out of the same
 4 garage?
 5 A. Yes.
 6 Q. Do you know why the photograph was
 7 in the garage?
 8 A. No. After I came back from work, I
 9 seen it. That's all.
 10 Q. Were you out of work for some
 11 period of time?
 12 A. Yeah.
 13 Q. Did there come a time when you
 14 returned to the same garage?
 15 A. Yes, after.
 16 Q. Do you recall how long after the
 17 accident it was?
 18 A. It was about six weeks.
 19 Q. Do you know if the truck that you
 20 were operating on the day of the accident was
 21 ever put back in service?
 22 A. No.
 23 Q. Do you know what happened to the
 24 truck?
 25 A. It went to CRS.

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TOY-RQ-05E-00002262

1 Digirolamo
 2 Q. And that's for repair?
 3 A. No, that's where they're condemning
 4 it from, from what I'm hearing. I don't know
 5 anything about it, exactly what they're doing
 6 with it.
 7 Q. CRS, is that where damaged trucks
 8 are taken?
 9 A. Yeah. They burn them there.
 10 Q. And when a truck --
 11 A. They bring them there. The damaged
 12 trucks, they bring them there. They house them
 13 there, I guess.
 14 Q. Is that a particular facility or is
 15 there more than one facility like that?
 16 A. Every borough has one.
 17 Q. So is the CRS where this truck was
 18 taken, would have been the one for the borough
 19 of Queens?
 20 A. Yes.
 21 Q. Have you ever been to the CRS
 22 facility in Queens?
 23 A. Have I ever been -- yeah, I've been
 24 there.
 25 Q. Are vehicles repaired at that

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1 Digirolamo
 2 Q. Do you know if that vehicle is
 3 still at CRS today?
 4 A. As far as I know it is.
 5 Q. Have you ever been advised of what
 6 the City intends to do with that truck?
 7 A. No.
 8 Q. From the time of the accident up
 9 until today's date, have you ever had occasion
 10 to speak to anyone who was a witness to the
 11 accident?
 12 A. No.
 13 Q. Did you and Mr. Doukas ever discuss
 14 the accident since the date of the accident?
 15 A. Yeah, we talked about it.
 16 Q. And have you and Mr. Doukas
 17 discussed what happened at the time of the
 18 accident?
 19 A. Basically what I'm telling you now.
 20 Q. Did Mr. Doukas ever tell you that
 21 he observed the vehicle, the other vehicle,
 22 prior to the impact?
 23 A. No.
 24 Q. Did you ever prepare any type of
 25 accident reports in connection with this?

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1 Digirolamo
 2 location?
 3 A. Yeah.
 4 Q. Is there a repair garage?
 5 A. Yeah, it's like a repair garage.
 6 Q. Do trucks go there for normal
 7 repairs?
 8 A. Yep.
 9 Q. Do trucks go there for inspections?
 10 A. Yes.
 11 Q. Prior to the accident, did your
 12 vehicle go there, to that location, for
 13 periodic inspections?
 14 A. No, I think each garage has their
 15 mechanics and our own mechanics do the
 16 inspections on our truck. They don't go there
 17 for that.
 18 Q. Do your mechanics also do repairs
 19 on your trucks?
 20 A. Yeah.
 21 Q. So what circumstances would a
 22 vehicle go to CRS?
 23 A. Because they store it there. We
 24 just can't store it in the garage because we
 25 don't have enough room.

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1 Digirolamo
 2 A. No.
 3 Q. Did you ever prepare an MV-104 for
 4 this, with connection with this accident, a
 5 Motor Vehicle Accident Report for the State of
 6 New York?
 7 A. No.
 8 Q. Do you know if one was ever
 9 prepared on your behalf?
 10 A. I don't know.
 11 Q. Did you ever provide the
 12 information of the circumstances surrounding
 13 the accident to any of your supervisors?
 14 A. No. There was somebody there from
 15 our Safety Unit that came out and handled all
 16 that.
 17 Q. Do you know who that person was?
 18 A. No.
 19 Q. Did you ever have any conversations
 20 with that person?
 21 A. No.
 22 Q. Did you ever provide any
 23 information to anyone from the Department of
 24 Sanitation with respect to --
 25 A. No.

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1 Digirolamo
 2 Q. Let me finish.
 3 A. I'm sorry.
 4 Q. -- with respect to what happened?
 5 A. No.
 6 Q. Did you ever prepare a Department
 7 of Sanitation accident report?
 8 A. No.
 9 Q. Did you provide information to
 10 anyone from the Department of Sanitation in
 11 connection with the preparation of such report?
 12 A. The guy from Safety who was -- he
 13 was the one that wrote everything out.
 14 MS. KELNER: Can we mark these
 15 documents?
 16 Plaintiff's 1 is a Department of
 17 Sanitation accident report.
 18 Plaintiff's 2 is an MV-104, two
 19 pages.
 20 (Department of Sanitation
 21 Accident report, is marked
 22 Plaintiff's Exhibit 1 for
 23 identification, as of this date.)
 24 (MV-104, is marked Plaintiff's
 25 Exhibit 2 for identification, as of

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1 Digirolamo
 2 of the accident?
 3 A. No.
 4 Q. Have you ever given a statement to
 5 anyone other than your counsel with respect to
 6 this accident?
 7 A. No.
 8 Q. Have you ever provided information
 9 to anyone from the Department of Sanitation
 10 with respect to this accident?
 11 A. No.
 12 Q. Did anyone come to see you in the
 13 hospital?
 14 A. The Safety guy was there. The guy
 15 from Safety, but he didn't question me on
 16 anything.
 17 Q. Do you recall what occurred when
 18 the Safety person came to the hospital?
 19 A. He was just walking around asking
 20 people questions, but he didn't ask me
 21 anything.
 22 Q. Do you recall who else was at the
 23 hospital at that time?
 24 A. Yeah, my wife.
 25 Q. Do you recall who he was asking

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1 Digirolamo
 2 this date.)
 3 Q. I'm going to show you what's been
 4 now marked Plaintiff's Exhibit 1 of today's
 5 date. It's entitled, "Official Accident Report
 6 of the Department of Sanitation for the City of
 7 New York." It is a two-sided document.
 8 I'm going to ask you if you've ever
 9 seen this particular document before?
 10 A. No. This one I haven't seen.
 11 Q. Have you seen documents like that?
 12 A. I've seen documents like this,
 13 yeah. But this one, I haven't seen this one.
 14 Q. Are these the type of accident
 15 reports that are generally kept in the ordinary
 16 course of the business of the Department of
 17 Sanitation?
 18 A. Yes.
 19 Q. Do you know the name of the Safety
 20 person from the Department of Sanitation who
 21 investigated this accident on behalf of the
 22 Department of Sanitation?
 23 A. No.
 24 Q. Were you ever interviewed by the
 25 Safety Inspector with respect to your knowledge

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1 Digirolamo
 2 questions of?
 3 A. No, I was lying in the gurney. I
 4 don't know what he was doing.
 5 Q. Did he ever come up to you at all?
 6 A. No.
 7 Q. Do you know where Mr. Doukas was at
 8 that point?
 9 A. He was somewhere in the hospital.
 10 I don't know where he was, no.
 11 Q. As we sit here today, do you have
 12 any recollection of who the Safety person spoke
 13 to at the hospital when you saw him walking
 14 around?
 15 A. No.
 16 Q. Did he ever call you at your home?
 17 A. No, no.
 18 Q. Does the name G. Liboff sound
 19 familiar to you?
 20 A. No.
 21 Q. Let me show you, if you can take
 22 another look at Plaintiff's Exhibit 1, the
 23 front and the back.
 24 Is any of the writing on this
 25 document in your handwriting?

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1 Digirolamo
 2 A. On this? No.
 3 Q. Look at the flip side also.
 4 A. No.
 5 Q. Do you know whose writing it is?
 6 A. No, I have no idea.
 7 MS. KELNER: Maybe we should make
 8 some copies of both of these Exhibits so
 9 we all have them.
 10 MR. MICHAELS: Okay.
 11 (Whereupon, a short recess was
 12 taken.)
 13 Q. Immediately prior to the accident
 14 when you were stopped at the light for, what I
 15 think you described, approximately a minute,
 16 did you look ahead the entire time?
 17 A. Yes.
 18 Q. At any time during that one-minute
 19 period did you look to the right toward
 20 Mr. Doukas?
 21 A. No.
 22 Q. At any time as you were stopped for
 23 that approximate one-minute time period prior
 24 to the impact, did you at any time look to your
 25 left?

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1 Digirolamo
 2 where you were stopped at the time of the
 3 impact, did you look to your left at any time?
 4 A. No.
 5 Q. Do you recall the last time that
 6 you looked to your left prior to the impact?
 7 A. Probably when I made the turn, the
 8 right turn onto Glen Cove Road.
 9 Q. Did you come to a stop at the first
 10 traffic light on Glen Cove Road?
 11 MR. MICHAELS: Asked and answered.
 12 MS. KELNER: No, this the second
 13 light.
 14 MR. MICHAELS: He said the first
 15 traffic light he stopped at as well.
 16 THE WITNESS: Yeah.
 17 Q. Do you know how long you were
 18 stopped at the first light?
 19 A. I don't recall.
 20 Q. When you were stopped at that first
 21 light, did you look to your left at all?
 22 A. No, I was in my right lane, no.
 23 Q. Were you in the right lane the
 24 entire time from the time you entered Glen Cove
 25 Road until the impact?

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1 Digirolamo
 2 A. No.
 3 Q. Was it your customary practice if
 4 you were stopped at a light to only look
 5 straight ahead?
 6 A. Yes.
 7 Q. What about when you were operating
 8 your vehicle, did you look straight ahead or
 9 did you look to your left and your right?
 10 A. When I'm operating it?
 11 Q. Yes.
 12 A. No, I look to the left and the
 13 right.
 14 Q. Do you recall the last time prior
 15 to the impact that you looked to your left?
 16 A. No.
 17 Q. Do you recall looking to your left
 18 at any time when you were in the general
 19 vicinity of the exit ramp of the eastbound
 20 Northern State Parkway?
 21 A. No.
 22 Q. No, you don't remember, or, no, you
 23 didn't look?
 24 A. No, I didn't look.
 25 Q. As you were driving up to the light

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1 Digirolamo
 2 A. Yes.
 3 Q. I'm going to show you what's now
 4 been marked as Plaintiff's Exhibit 2, and
 5 unfortunately, I think it's a compilation of
 6 two documents.
 7 I'm going to ask you to look at the
 8 top page first, and ask if you've seen that
 9 document before?
 10 A. Yes, this was the police report.
 11 Q. Is that the Police Report or is
 12 that the Department report?
 13 A. Isn't this the Police Report?
 14 Q. Could you turn the document over?
 15 Could you tell me what's on the
 16 second side of the document?
 17 A. This is the police report, sorry.
 18 Q. If you can turn it back over to the
 19 page where the tab is: Do you know whether
 20 you've completed any portion of that front page
 21 in your own writing?
 22 A. This? No.
 23 Q. Did you provide any information for
 24 the preparation of the first page?
 25 A. No. Not that I recall, no.

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TOY-RQ-05E-00002265

1 Digirolamo
 2 Q. If you could now turn the document
 3 over to the, I believe, what is the Police
 4 Report.
 5 Did you speak to the police at any
 6 time while they were at the accident site?
 7 A. No.
 8 Q. Did the police ever come to
 9 interview you at any time?
 10 A. No.
 11 Q. Did you provide any of the
 12 information that's located on the second side
 13 of the document of Exhibit 2?
 14 A. No.
 15 Q. I'm going to show you the second
 16 page of Plaintiff's Exhibit 2, and ask if you
 17 have ever seen that document before?
 18 A. No.
 19 Q. Do you know if the information
 20 contained on that second page is information
 21 with respect to the truck you were driving at
 22 the time of the accident?
 23 MR. MICHAELS: If you can tell.
 24 A. No.
 25 Q. No, you don't know?

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1 Digirolamo
 2 site?
 3 A. No, I didn't see him there.
 4 Q. When did you see him?
 5 A. I seen him at the hospital. He was
 6 at the hospital.
 7 Q. Did you have a conversation with
 8 him at the hospital?
 9 A. I wasn't talking much at the
 10 hospital.
 11 Q. Did you ever have a conversation
 12 with him about what happened?
 13 A. Honestly, no.
 14 Q. Do you know how he obtained
 15 information as to the manner in which the
 16 accident occurred?
 17 A. No.
 18 Q. Did you ever tell Mr. Hickey that
 19 you were stopped at a light when there was an
 20 impact?
 21 A. No, because we never really spoke
 22 about it.
 23 Q. When you returned to work, did you
 24 go back to your garage that you had been at
 25 previously?

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1 Digirolamo
 2 A. No.
 3 Q. Are you familiar with a person by
 4 the name of Joseph Hickey?
 5 A. He's an ABS.
 6 Q. What does "ABS" stand for?
 7 A. He's like Assistant Borough Super.
 8 Q. Assistant Borough?
 9 A. Super.
 10 Q. That's for the Department of
 11 Sanitation?
 12 A. Yeah.
 13 Q. That's for Queens?
 14 A. Yeah.
 15 Q. Can you say that again, please?
 16 A. Assistant Borough Super.
 17 Q. Did you ever speak to Mr. Hickey
 18 about the accident?
 19 A. Yes.
 20 Q. Do you recall when you spoke to
 21 Mr. Hickey about the accident?
 22 A. After the accident. As a matter of
 23 fact, he was there at the accident. I was told
 24 he was there.
 25 Q. Did you see him at the accident

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1 Digirolamo
 2 A. Correct.
 3 Q. Did you resume your normal duties?
 4 A. Yes.
 5 MS. KELNER: Does anyone have any
 6 other questions?
 7 MR. HERSHENHORN: I just have a few
 8 follow-up questions.
 9
 10 EXAMINATION BY MR. HERSHENHORN:
 11 MR. HERSHENHORN: Can you mark this
 12 photo, please?
 13 (Photographs are marked
 14 Plaintiff's Exhibits 3 and 4 for
 15 identification, as of this date.)
 16 Q. Sir, take a look at Plaintiff's
 17 Exhibits 3 and 4 marked for today's date.
 18 Forgetting about the lighting
 19 conditions in the photographs, just looking at
 20 the area that's depicted in those photographs,
 21 do those photographs depict the area where the
 22 accident occurred?
 23 A. It looks like it.
 24 Q. And when you say, "it looks like
 25 it," do those photos fairly and accurately show

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1 Digirolamo
 2 the area as it existed on the day of the
 3 accident?
 4 In other words, what I'm trying to
 5 find out from you is: From looking at those
 6 photographs, have there been any changes, as
 7 far as you're aware, to the scene of the
 8 accident from the time that the accident
 9 occurred up until those photos were taken?
 10 MR. MICHAELS: If you know.
 11 A. I don't know. No idea.
 12 Q. And when you say, "it looks like
 13 it," meaning that those photos look like the
 14 scene of the accident?
 15 Could you show me in the
 16 photographs, approximately, where the accident
 17 took place?
 18 A. I don't have a clear picture of
 19 this down here, so I can't tell you. You're
 20 just showing me there here (indicating). I
 21 have to see it down further.
 22 Q. Okay. Looking at Plaintiff's
 23 Exhibit 4, could you see it down further toward
 24 the light?
 25 A. No.

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1 Digirolamo
 2 Q. Do you see there's a stopped --
 3 what looks like a stopped van on the right side
 4 of the photograph?
 5 A. I wouldn't know. I told you I
 6 didn't know.
 7 Q. My question now is: Do you see
 8 that van?
 9 A. Yes, I see the van.
 10 Q. Do you know whether the vehicle
 11 that was in contact with yours came from the
 12 direction that we see the van in on the far
 13 right side of Plaintiff's Exhibit 3?
 14 A. I don't know.
 15 Q. When you were stopped at the
 16 traffic light as you've previously described in
 17 your testimony, can you tell me how many
 18 vehicles there were from the traffic light to
 19 the point that your vehicle was stopped?
 20 A. No, I don't.
 21 MR. MICHAELS: That was asked and
 22 answered.
 23 THE WITNESS: That was asked
 24 already.
 25 Q. Can you tell me was it more than a

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1 Digirolamo
 2 Q. You can't tell?
 3 A. No.
 4 Q. Do you see the traffic light on the
 5 right-hand corner?
 6 A. Yeah.
 7 Q. Is that the traffic light that your
 8 vehicle was stopped for?
 9 A. I -- no, I can't tell you. The
 10 picture is not giving me a true view of what
 11 was really there. It's not giving me the whole
 12 right side going down.
 13 Q. Do you see the ramp that looks like
 14 there's ramp in the photograph coming down
 15 where you see the "do not enter" signs?
 16 A. Right.
 17 Q. Is that the ramp that the car that
 18 struck your truck came off of?
 19 A. I wouldn't know.
 20 Q. Taking a look at this photograph,
 21 do you see --
 22 MR. KRAMER: For the record, which
 23 one is that?
 24 MR. HERSHENHORN: Plaintiff's
 25 Exhibit 3.

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1 Digirolamo
 2 dozen vehicles?
 3 A. I don't know.
 4 MR. MICHAELS: This is asked and
 5 answered.
 6 Q. Can you tell me instead of telling
 7 me how many vehicles there were, can you tell
 8 me what the distance was from the light to your
 9 vehicle when you were stopped?
 10 A. No.
 11 Q. Let me mark and show you
 12 Plaintiff's Exhibit 5 for today's date.
 13 MR. HERSHENHORN: Please mark this
 14 photograph Plaintiff's 5.
 15 (Photograph, is marked
 16 Plaintiff's Exhibit 5 for
 17 identification, as of this date.)
 18 Q. Looking at Exhibit 5, sir, does
 19 that photograph -- is that a better photograph
 20 that helps you to tell us whether it includes
 21 the scene of where the accident occurred?
 22 A. Yes.
 23 Q. And does that photograph fairly and
 24 accurately show the scene of where the accident
 25 occurred as the scene existed on the date of

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TOY-RQ-05E-00002267

1 Digirolamo
 2 the accident?
 3 I'm not talking about the lighting
 4 conditions, just the roadway conditions.
 5 A. Can you give me that question
 6 again?
 7 Q. Sure.
 8 Does the photograph fairly and
 9 accurately show the scene as it existed on the
 10 day of the accident, the general vicinity of
 11 where this accident occurred?
 12 A. Yeah.
 13 Q. And can you show me, using your
 14 finger, where your vehicle was stopped when the
 15 other vehicle came into contact with it?
 16 Again, we understand it's an
 17 approximate location, not an exact location.
 18 A. I can't recall if it was -- I think
 19 it was over here (Indicating).
 20 Q. Where you're pointing with your
 21 finger, there's a box truck in the photograph?
 22 A. Yeah.
 23 Q. Are you saying that it was in front
 24 of the box truck or to the side of the box
 25 truck?

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1 Digirolamo
 2 was under there.
 3 Q. Now, in your testimony earlier, you
 4 said that the impact felt like, your words
 5 were, roadside bombing, correct?
 6 A. Yeah.
 7 Q. What did you mean by that?
 8 A. Well, because I never saw it
 9 coming.
 10 Q. When you say you never saw it
 11 coming, were there any other reasons that it
 12 felt like a roadside bombing; for example, was
 13 there anything about the speed of the other car
 14 that made it feel like a roadside bombing?
 15 A. I don't know how fast she was
 16 going.
 17 Q. Can you tell me did you ever see
 18 any fire break out either from your vehicle,
 19 the other vehicle, a combination?
 20 A. Her vehicle.
 21 Q. What did you see with regard to the
 22 fire?
 23 Where was the fire coming from?
 24 A. The hood of her car.
 25 Q. And can you tell me after the

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1 Digirolamo
 2 A. In front of the box truck.
 3 Q. In the same lane as the box truck?
 4 A. Yes.
 5 MR. HELLER: And that's underneath
 6 the sign that says Hauppauge or
 7 something?
 8 Q. That's under the sign for the
 9 Meadowbrook that indicates a right turn for
 10 Hauppauge?
 11 A. Right.
 12 Q. Do you notice, sir, that there is
 13 an overpass in the photograph?
 14 A. Yes.
 15 Q. Was your vehicle under or was any
 16 part of your vehicle under the overpass when it
 17 came into contact with the other vehicle?
 18 A. Yes.
 19 Q. Was your entire vehicle under the
 20 overpass?
 21 A. No, just the front part.
 22 Q. When you say, "just the front," is
 23 there any way to say was it halfway from the
 24 front to the rear or some other --
 25 A. I would say just like the cab part

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1 Digirolamo
 2 impact, was it immediately that you observed
 3 fire coming from the hood of her car?
 4 A. I would say within seconds.
 5 Q. Did you ever see the operator of
 6 the other vehicle?
 7 A. No.
 8 Q. You said earlier that you passed
 9 out at least once, if not more times, while you
 10 were at the scene.
 11 Remember that testimony earlier
 12 that you had passed out?
 13 A. Yes.
 14 MR. KRAMER: He said twice.
 15 THE WITNESS: Yeah, twice.
 16 MR. MICHAELS: I'm not sure. Both
 17 at the scene?
 18 THE WITNESS: One at the scene and
 19 then again in the ambulance.
 20 Q. When you were at the scene and you
 21 passed out, was that before or after you saw
 22 the fire?
 23 A. That was after the fire because
 24 that's when I was trying to get out.
 25 Q. Now, the vehicle that you were

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1 Digirolamo
 2 driving, does it have windows that you could
 3 roll down if you want to get some air into the
 4 vehicle?
 5 A. No, it just has a little slide-up
 6 window on the side. It was February, so the
 7 windows were closed.
 8 Q. That's my next question.
 9 Were all the windows closed?
 10 A. Yes.
 11 Q. Both your side --
 12 A. Yes.
 13 Q. Let me just ask it so she has it
 14 down.
 15 Are there two windows; one for the
 16 driver, one for the passenger?
 17 A. Yes.
 18 Q. Were both of those windows closed
 19 at the time of the accident?
 20 A. I know mine was.
 21 Q. Did you notice whether your
 22 passenger's window was closed?
 23 A. No.
 24 Q. Do you know whether you had heat on
 25 in the vehicle at the time?

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1 Digirolamo
 2 Q. And Mr. Doukas was the loader?
 3 A. Yes.
 4 Q. As the loader would he be inside
 5 the truck and getting out to load, would he
 6 ride on the outside of the truck, walk
 7 alongside or something different?
 8 A. When he's loading, he would walk
 9 alongside the truck.
 10 Q. When did Mr. Doukas first get into
 11 the truck after you started loading; was it
 12 when you finished?
 13 A. No, we alternate while we're
 14 working. Twenty minutes apiece. We're both in
 15 and out of the truck.
 16 Q. So during the time you were picking
 17 up, Mr. Doukas was also a driver and you were a
 18 loader?
 19 A. Right.
 20 Q. Mr. Doukas drove the truck to the
 21 dump; is that right?
 22 A. Correct.
 23 Q. And after you dumped the truck you
 24 drove it back?
 25 A. I drove it back, correct.

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1 Digirolamo
 2 A. Probably.
 3 Q. I know you said you were stopped.
 4 Would it be fair to say that at the
 5 time of the accident your foot was on the
 6 brake?
 7 A. Yes.
 8 Q. Did that vehicle have a clutch?
 9 A. No.
 10 Q. Was it an automatic?
 11 A. Yes.
 12 MR. HERSHENHORN: I have no further
 13 questions. Thank you.
 14 MR. HELLER: I just have a few.
 15
 16 EXAMINATION BY MR. HELLER:
 17 Q. Sir, the truck that you were
 18 driving, I believe you said it had seat belts?
 19 A. Yes.
 20 Q. What kind of seat belts were they?
 21 A. Shoulder.
 22 Q. Now, during the course of the day
 23 when you were working your route you were the
 24 driver; is that correct?
 25 A. Yes.

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1 Digirolamo
 2 Q. When Mr. Doukas got in the truck to
 3 go back, did you see whether or not he put on
 4 his seat belt?
 5 A. We both did.
 6 Q. Did you see him put his on?
 7 A. Yes.
 8 Q. Is the truck equipped with air
 9 bags?
 10 A. No.
 11 Q. Do you know what the weight of the
 12 truck was empty?
 13 A. Excuse me?
 14 Q. Do you what the weight of this
 15 truck was empty?
 16 How much did it weigh?
 17 A. I don't know. I don't know what
 18 the length and weight is of the truck.
 19 Q. When you first became aware that
 20 there had been an accident, did the truck move
 21 one direction or another?
 22 A. It moved to the right.
 23 Q. In between that time and the time
 24 you lost consciousness, did you look at
 25 Mr. Doukas?

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1 Digirolamo
 2 A. No. He looked at me. He asked --
 3 all I heard him say, "Are your legs all right?"
 4 Q. Did you see Mr. Doukas is what I'm
 5 saying?
 6 A. Did I see him?
 7 I heard him.
 8 Q. But did you see him is my question?
 9 A. Not really I didn't look over to
 10 him. I was too shocked from the impact.
 11 Q. After the truck moved to the right
 12 did it move again after the accident?
 13 A. No.
 14 Q. After the accident did you ever
 15 again speak to Mr. Doukas about the accident,
 16 whether on the day of the accident or some
 17 later time?
 18 A. Like maybe, two, three days later
 19 we spoke.
 20 Q. Where was Mr. Doukas when you spoke
 21 to him?
 22 A. He was home and I was home.
 23 Q. So it was a telephone call?
 24 A. Yeah.
 25 Q. What did you say to Mr. Doukas and

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1 Digirolamo
 2 about the accident or either of your injuries?
 3 A. No. No.
 4 Q. When was the last time you saw
 5 Mr. Doukas?
 6 A. I would say about a month ago.
 7 Q. And under what circumstances did
 8 you see Mr. Doukas a month ago?
 9 A. He was on an MDA at work.
 10 Q. You'll have to pardon me, I have no
 11 idea what an MDA is.
 12 A. It's just like -- he's basically on
 13 a -- all he could do is answer telephones.
 14 Q. So what does MDA stand for?
 15 A. It's like light-duty.
 16 Q. Have you seen Mr. Doukas working
 17 between the time the telephone call that you
 18 told us about and when you saw him on
 19 light-duty a month ago, whether he was doing
 20 light-duty or not?
 21 A. Was he working again after he came
 22 back?
 23 Q. No, did you see him?
 24 A. Yeah. Yeah.
 25 Q. Notwithstanding the fact that he

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1 Digirolamo
 2 what did he say to you?
 3 A. We wanted to know how much pain we
 4 were both in.
 5 Q. Did you say anything about the
 6 happening of the accident? How it happened?
 7 A. No.
 8 Q. Did Mr. Doukas say, for instance,
 9 whether he saw the car?
 10 A. Like I said, I didn't see it coming
 11 and he didn't see it coming.
 12 Q. Other than saying that he was in
 13 pain, did Mr. Doukas describe his injuries at
 14 all to you?
 15 A. Not really, no. Just like I didn't
 16 describe mine to him.
 17 Q. Did Mr. Doukas ever return to work?
 18 A. Yeah, he returned after I did.
 19 Q. Do you know when that was?
 20 A. I think eight weeks later.
 21 Q. Did you ever work with him again?
 22 A. No, not that I recall.
 23 Q. After the conversation that you
 24 told me about on the telephone a few days
 25 after, did you ever speak to Mr. Doukas again

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1 Digirolamo
 2 was doing light-duty now, has he been working
 3 regularly during the time between your
 4 telephone conversation and present?
 5 MS. KELNER: If he knows?
 6 Q. If you know?
 7 A. You want to repeat the question?
 8 Q. You told us that you last saw
 9 Mr. Doukas about a month ago when he was doing
 10 MDA?
 11 A. Right.
 12 Q. And my question is: Between the
 13 time of the telephone conversation --
 14 A. Okay.
 15 Q. -- or between the time Mr. Doukas
 16 first returned to work and the time about a
 17 month ago you saw him at the garage doing
 18 light-duty, has he been working steadily, if
 19 you know?
 20 A. He worked briefly.
 21 Q. When did he return to work doing
 22 the light-duty, do you know?
 23 A. I don't really know offhand. I
 24 don't remember the date.
 25 Q. Could you give me an approximation,

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TOY-RQ-05E-00002270

1 Digirolamo
 2 if it wouldn't be a guess?
 3 MS. KELNER: I object to form.
 4 A. I really don't know.
 5 Q. You said, you referred a couple of
 6 times to CRS.
 7 Do you know what "CRS" stands for?
 8 A. Central Repair Service.
 9 Q. Before you were asked about whether
 10 you'd spoken during the day of the accident.
 11 I'm asking a slightly different question.
 12 At any time from the day of the
 13 accident until the present, has anyone ever
 14 told you that they saw the accident happen?
 15 A. No.
 16 Q. Since the day of the accident have
 17 you seen Mr. Doukas outside of a work
 18 environment, for instance, a social function or
 19 any other way?
 20 A. No.
 21 Q. When you saw Mr. Doukas about a
 22 month ago, was that in the garage where you
 23 were stationed?
 24 A. Yes.
 25 Q. And I believe you gave an example

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1 Digirolamo
 2 of light-duty. Do you know what his light-duty
 3 was; was he answering phones --
 4 A. Yes.
 5 Q. -- or something else?
 6 A. Answering phones.
 7 MR. HELLER: I don't have any
 8 further questions at this time.
 9 Thank you.
 10 MS. KREUER: Just a few follow-ups.
 11 EXAMINATION BY MS. KREUER:
 12 Q. On the day of accident prior to the
 13 accident, was there any ice on the road?
 14 A. No.
 15 Q. Were the roads wet at all?
 16 A. No.
 17 Q. I see you wear glasses.
 18 Do you wear grasses when you drive?
 19 A. No, they're only for reading.
 20 Q. On the day of the accident were you
 21 wearing sunglasses?
 22 A. No.
 23 MS. KREUER: That's all I have.
 24 MR. KRAMER: I have no questions.
 25 MS. KELNER: I just have one more.

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1 Digirolamo
 2 CONTINUED EXAMINATION BY MS. KELNER:
 3 Q. You previously were shown a
 4 photograph. I'll show you Plaintiff's Exhibit 3.
 5 Do you recall seeing a right-turning
 6 lane with an arrow such as depicted in that
 7 photograph?
 8 A. This here (indicating).
 9 Q. Correct, in the vicinity of the
 10 accident?
 11 A. No.
 12 Q. Do you know if there was a
 13 right-turning lane at the point where your
 14 truck was stopped at the light immediately
 15 prior to the impact?
 16 A. No.
 17 Q. No, you don't know?
 18 A. I don't know.
 19 Q. Do you recall seeing any vehicles
 20 to your right as you were stopped at the light
 21 immediately prior to the impact?
 22 A. No.
 23 MS. KELNER: I have no further
 24 questions.
 25 (Time noted: 12:20 p.m.)

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1
 2 A C K N O W L E D G E M E N T
 3
 4 STATE OF NEW YORK)
 5 : ss
 6 COUNTY OF)
 7
 8 I, ANTHONY DIGIROLAMO, hereby certify that I
 9 have read the transcript of my testimony taken
 10 under oath in my deposition of June 22, 2009;
 11 that the transcript is a true, complete and
 12 correct record of my testimony; and that the
 13 answers on the record as given by me are true
 14 and correct.
 15
 16 -----
 17 ANTHONY DIGIROLAMO
 18
 19
 20 Signed and subscribed to
 21 before me, this ____ day
 22 of _____, 2009.
 23
 24 -----
 25 Notary Public, State of New York

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff, ACTION #1
Index No.
107681/07

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., D/B/A
LEXUS OF WESTPORT, AND METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

MICHAEL DOUKAS, ACTION #2
Plaintiff, Index No.
117118/07

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

Defendants.
-----x

(Caption continued on next page.)

EXAMINATION BEFORE TRIAL of the Defendant,
NEW YORK CITY DEPARTMENT OF SANITATION, by
ANTHONY DIGIROLAMO, pursuant to Order, held at
the offices of the Corporation Counsel, 52
Duane Street, New York, New York, on June 22,
2009, commencing at 10:45 a.m., before Iris
Fernhoff, a Shorthand Reporter and Notary
Public within and for the State of New York.

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-----x

ANTHONY DIGIROLAMO, ACTION #3
Plaintiff, Index No.
102331/08

-against-

IRIS LEVITEN,
Defendant.
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IT IS HEREBY STIPULATED AND AGREED by and between
counsel for the respective parties hereto that all
rights provided by the C.P.L.R., and Part 221 of
the Uniform Rules for the Conduct of Depositions,
including the right to object to any question,
except as to the form, or to move to strike any
testimony at this examination, are reserved; and,
in addition, the failure to object to any question
or to move to strike testimony at this examination
shall not be a bar or waiver to make such a motion
at, and is reserved for, the trial of this action.

IT IS FURTHER STIPULATED AND AGREED that this
examination may be signed and sworn to by the
witness being examined, before a Notary Public
other than the Notary Public before whom this
examination was begun, but the failure to do so,
or to return the original of this examination to
counsel, shall not be deemed a waiver of rights
provided by Rules 3116 and 3117 of the C.P.L.R.
and shall be controlled thereby.

IT IS FURTHER STIPULATED AND AGREED that the
filing of the original of this examination shall
be and the same is hereby waived.

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1 Digirolamo
 2 A N T H O N Y D I G I R O L A M O, having
 3 been first duly sworn by a
 4 Notary Public within and for
 5 the State of New York, was
 6 examined and testified under
 7 oath as follows:
 8 EXAMINATION BY
 9 MS. KELNER:
 10 Q. What is your name?
 11 A. Anthony Digirolamo.
 12 Q. Where do you reside?
 13 A. 114 10th Street, Hicksville, New
 14 York 11801.
 15 Q. Good morning, Mr. Digirolamo.
 16 A. Morning.
 17 Q. Am I pronouncing that right?
 18 A. Correct.
 19 Q. My name is Gail Kelner. My firm
 20 represents Michael Doukas in connection with
 21 injuries he sustained in an accident on
 22 February 18, 2007.
 23 I'm going to ask you a series of
 24 questions. I would ask that you keep your
 25 voice up as much as you can. It's a little bit

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7

1 Digirolamo
 2 Sanitation vehicle?
 3 A. Yes.
 4 Q. Do you drive a Sanitation vehicle
 5 in connection with your job duties?
 6 A. Yes, I do.
 7 Q. Do you currently drive such a
 8 vehicle?
 9 A. Yes, I do.
 10 Q. For how long during your period of
 11 employment with the Department of Sanitation
 12 have you driven a Sanitation vehicle?
 13 A. All 28 years.
 14 Q. Is it always the same type of
 15 vehicle?
 16 A. Not the same type. Different
 17 trucks as the years went on we got better and
 18 better, different models as we would say.
 19 Q. Were you involved in an accident on
 20 February 18, 2007?
 21 A. Yes.
 22 Q. And were you performing your job
 23 duties for the Department of Sanitation at the
 24 time that the accident occurred?
 25 A. Yes.

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1 Digirolamo
 2 difficult to hear in here today.
 3 A. Sure.
 4 Q. If you don't understand my
 5 question, please let me know and I will
 6 rephrase it.
 7 A. Okay.
 8 Q. Please keep all of your answers
 9 verbal so that our Reporter can take them down.
 10 Is that okay?
 11 A. Okay.
 12 Q. Mr. Digirolamo, are you currently
 13 employed?
 14 A. Yes.
 15 Q. By whom are you employed?
 16 A. Department of Sanitation of the
 17 City of New York.
 18 Q. How long have you been employed by
 19 the Department of Sanitation?
 20 A. Twenty-eight years.
 21 Q. What is your current position?
 22 A. Sanitation worker.
 23 Q. What does that job entail?
 24 A. Picking up garbage.
 25 Q. Does that also entail driving a

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8

1 Digirolamo
 2 Q. I'm going back now to February of
 3 2007.
 4 Out of what garage were you
 5 stationed at that time?
 6 A. Queens North 11.
 7 Q. Where was that located?
 8 A. On Winchester Boulevard.
 9 Q. Winchester?
 10 A. Yes.
 11 Q. What were your duties at that time?
 12 A. Picking up garbage and then going
 13 to the dump to dump the truck.
 14 Q. And in February of 2007, did you
 15 drive a Department of Sanitation vehicle as
 16 part of your job duties?
 17 A. Yes.
 18 Q. And were you assigned a particular
 19 vehicle or type of vehicle at that time?
 20 A. Yes.
 21 Q. Was it one particular vehicle?
 22 A. Yes.
 23 Q. When were you first assigned this
 24 particular vehicle that you were driving in
 25 February of 2007?

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TOY-RQ-05E-00002275

1 Digirolamo
 2 A. That morning they assigned me that
 3 truck.
 4 Q. Was that the first time you had
 5 driven that truck?
 6 A. No.
 7 Q. Could you describe that vehicle,
 8 please?
 9 A. A big white truck.
 10 Q. Does it have a number?
 11 A. It's got a number.
 12 Q. Was it a particular type of
 13 vehicle; was there a cab and body to it?
 14 A. Yes, it's a Mack truck.
 15 Q. Does it have a hopper in the back?
 16 A. Yes.
 17 Q. And did you have a separate cab?
 18 A. The cab is separate from the back
 19 body, yes.
 20 Q. Back in February of 2007, was that
 21 the type of vehicle that you generally
 22 operated?
 23 A. Yes.
 24 Q. Do you recall the last time that
 25 you had operated the vehicle that you were

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11

1 Digirolamo
 2 A. Yes.
 3 Q. When did you receive training on
 4 that particular vehicle?
 5 A. Basically when the new trucks came
 6 in, usually the garage foreman will give you a
 7 quick brief training on the garage floor.
 8 Q. Do you recall when that particular
 9 vehicle came in or type of vehicle?
 10 A. Offhand, no, I don't.
 11 Q. Was it within a month, within two
 12 months?
 13 A. No, it was longer than that.
 14 Q. Was it within six months?
 15 A. Longer than that, I think.
 16 Q. Do you recall receiving training in
 17 the operation of that vehicle?
 18 A. Yes.
 19 Q. Did that vehicle differ in the
 20 terms of operation of any vehicles you had
 21 driven previously?
 22 A. No.
 23 Q. On this particular vehicle was the
 24 driver seat on the left side of the vehicle?
 25 A. Yes.

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1 Digirolamo
 2 operating on February 18, 2007 before that day?
 3 A. Did I operate it before that day?
 4 Q. Yes, that particular vehicle.
 5 A. Yes.
 6 Q. When was the last time you operated
 7 it before that day?
 8 A. The day before.
 9 Q. Had you driven it for some period
 10 of time?
 11 A. Yes.
 12 Q. How long a period of time had you
 13 driven that vehicle continuously?
 14 A. I don't know how long I've driven
 15 it.
 16 Q. Had you driven it for the week
 17 before the accident?
 18 A. Oh, yeah.
 19 Q. Was that a vehicle that was parked
 20 at the Queens North 11 garage?
 21 A. Correct.
 22 Q. When it was not in operation?
 23 A. Yes.
 24 Q. Had you ever received training in
 25 the operation of that vehicle?

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12

1 Digirolamo
 2 Q. Was it a manual transmission?
 3 A. Yes.
 4 Q. Prior to February 18, 2007, how
 5 long had you been stationed out of the Queens
 6 North 11 garage?
 7 A. Since 1989.
 8 Q. Was that vehicle equipped with seat
 9 belts?
 10 A. Yes.
 11 Q. Did that vehicle allow for
 12 passengers?
 13 A. Yes.
 14 Q. Where could passengers be seated in
 15 that vehicle?
 16 A. On the right side.
 17 Q. Was it like bucket seats or
 18 a bench?
 19 A. No, bucket seats.
 20 Q. There was a seat belt on the
 21 passenger side?
 22 A. Correct.
 23 Q. Your route on February 18, 2007,
 24 was that the same route that you had the day
 25 before or did the route vary?

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TOY-RQ-05E-00002276

1 Digirolamo
 2 A. No, because the day before I didn't
 3 go to the dump.
 4 Q. Did you drive that vehicle the day
 5 before?
 6 A. Yes, I did.
 7 Q. And other than going to the dump,
 8 was the route the same as the route that you
 9 took on February 18th?
 10 A. The route is the same, yeah,
 11 because we have the specific directions on how
 12 to go there.
 13 Q. What was your route the day before
 14 the accident date?
 15 A. The actual route that I was doing?
 16 Q. Correct.
 17 A. It's in Bayside.
 18 Q. Where was the dump?
 19 A. The dumps in Hempstead.
 20 Q. On the day before the accident,
 21 were there two workers in your truck?
 22 A. Yes.
 23 Q. Who was the other worker on the day
 24 before the accident?
 25 A. The day before the accident it was

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15

1 Digirolamo
 2 with the truck?
 3 A. I bring it back and unload it.
 4 Q. Is the truck brought to the dump on
 5 some regular basis?
 6 A. After shift. On another shift it's
 7 brought to the dump.
 8 Q. Did your shift generally include
 9 going to the dump?
 10 A. Time permitting.
 11 Q. And on Saturday were you supposed
 12 to go to the dump with the truck?
 13 A. I didn't have enough time to go.
 14 Q. So what did you do with the truck
 15 after?
 16 A. I brought it in at the end of the
 17 shift.
 18 Q. And that was back to the garage?
 19 A. Correct.
 20 Q. And did another shift then take
 21 that truck?
 22 A. Correct.
 23 Q. Do you know if the next shift took
 24 that truck to the dump?
 25 A. Supposedly, yeah.

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1 Digirolamo
 2 my regular partner.
 3 Q. Who was your regular partner?
 4 A. Ron Capaldi (phonetic).
 5 Q. What was your route on the day
 6 before the accident?
 7 A. My regular route that I normally do
 8 on a Saturday.
 9 Q. Did the accident happen on a
 10 Sunday?
 11 A. Yes.
 12 Q. What was your normal route for
 13 Saturday?
 14 A. The Bayside area.
 15 I mean, what are you looking for?
 16 Q. Are there a number pickups you make
 17 a day, sir?
 18 A. Yeah.
 19 Q. Then do you normally go to the
 20 dump --
 21 A. No.
 22 Q. -- on Saturday?
 23 A. No, I don't normally go.
 24 Q. What usually occurs on Saturday
 25 after the end of your route? What do you do

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16

1 Digirolamo
 2 Q. Do you generally have the same
 3 route?
 4 Back in 2007, the week before the
 5 accident, did you generally have the same route
 6 in Bayside?
 7 A. Yes.
 8 Q. And you would take the same route,
 9 time permitting to the dump in Hempstead?
 10 A. Yes.
 11 Q. On those occasions that you did
 12 have time to go to the dump, what would the
 13 route be from Bayside?
 14 How would you get to the dump?
 15 A. The Long Island Expressway to Glen
 16 Cove Road. Get off at Glen Cove Road and you
 17 would be on Glen Cove Road and you make a
 18 right. Take that straight up to Old Country
 19 Road. Make a left. And then there's a street
 20 right by Fortunoff's over there. I don't know
 21 what the street is, and you would make another
 22 right. That would lead you right into the
 23 dump.
 24 Q. After you went to the dump, did you
 25 have a route that you took to get back to the

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TOY-RQ-05E-00002277

1 Digirolamo
 2 garage?
 3 A. Same exact way I go.
 4 Q. That would entail going north on
 5 Glen Cove Road to the Long Island Expressway;
 6 is that correct?
 7 A. Correct.
 8 Q. On February 18, 2007, what time did
 9 you report to the garage?
 10 A. Seven o'clock in the morning.
 11 Q. Pardon?
 12 A. Seven in the morning.
 13 Q. Was that your usual reporting time?
 14 A. Yes.
 15 Q. When you arrived, were you assigned
 16 a particular truck to use that day?
 17 A. Yes.
 18 Q. Which truck were you assigned?
 19 A. CU255.
 20 Q. That's the same truck you were
 21 using the day before?
 22 A. Correct.
 23 Q. Were you assigned a partner that
 24 morning?
 25 A. Correct.

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19

1 Digirolamo
 2 the morning, do you generally make any type of
 3 a routine inspection of the truck?
 4 A. Yes.
 5 Q. Did you make an inspection?
 6 A. Yes, I did.
 7 Q. Did you make any particular
 8 observations?
 9 A. The truck was fine.
 10 Q. Do you have to fill out any kind of
 11 a checklist?
 12 A. On the back of our 350 we have a
 13 check-off.
 14 Q. Excuse my ignorance, but can you
 15 explain what a 350 is?
 16 A. It's a card that has your name. It
 17 would say "driver," it would be my name. And
 18 "loader" would be Doukas' name. And it would
 19 have the different itsis (phonetic). Those are
 20 just basically the lines of the route that
 21 you're doing.
 22 On the back of the card it just
 23 basically tells you if you found nothing wrong
 24 with the truck.
 25 Q. Does it have a more formal name?

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1 Digirolamo
 2 Q. Who was your partner?
 3 A. Mike Doukas.
 4 Q. Has Mr. Doukas ever been your
 5 partner before?
 6 A. We've worked together once in a
 7 while, but he wasn't my steady partner.
 8 Q. That would be Mr. Capaldi?
 9 A. Capaldi is my study partner.
 10 Q. Do you know where Mr. Capaldi was
 11 that morning?
 12 A. He didn't work that day. It was a
 13 voluntary base that needed work.
 14 Q. What was a voluntary base?
 15 A. To work that day because it was a
 16 holiday.
 17 Q. Do you recall the last time you had
 18 worked with Mr. Doukas prior to that day?
 19 A. Not really. I don't remember the
 20 last time I worked with him.
 21 Q. How was it determined who would
 22 drive the truck and who would be in the
 23 passenger seat?
 24 A. Well, I'm assigned as the driver.
 25 Q. When you arrive in the garage in

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20

1 Digirolamo
 2 MR. KRAMER: Is that short for
 3 something?
 4 THE WITNESS: It's just the lines
 5 of the route.
 6 Q. What were the hours of your shift
 7 that day?
 8 A. Seven to seven.
 9 Q. Was that your general shift every
 10 day?
 11 A. No.
 12 Q. What was your normal shift --
 13 A. The normal shift is seven to three.
 14 Q. Was it longer because it was a
 15 holiday?
 16 A. It was longer because it was snow,
 17 so it entailed snow removal and stuff.
 18 Q. What entailed snow removal?
 19 A. The shift itself they had half the
 20 guys on snow removal and half the guys doing
 21 garbage.
 22 Q. Were you assigned to snow
 23 removal --
 24 A. No.
 25 Q. -- or garbage?

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TOY-RQ-05E-00002278

1 Digirolamo
 2 A. No, I was assigned to garbage.
 3 Q. And the route that you were
 4 assigned to that day was the usual Bayside
 5 route?
 6 A. Yes.
 7 Q. It was your normal route and was it
 8 your intention to go to the dump that day?
 9 A. They gave us overtime to dump the
 10 truck.
 11 Q. Do you recall when you finished all
 12 of the garbage pick-ups that day, not the dump
 13 but just completing your normal route?
 14 A. Yes.
 15 Q. What time did you complete your
 16 route?
 17 A. I would say about 2:30.
 18 Q. 2:30?
 19 A. Yeah.
 20 Q. And during that time did you
 21 encounter any problems with the truck?
 22 A. No.
 23 Q. Did you encounter any problems in
 24 operating the truck because of road conditions?
 25 A. No.

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23

1 Digirolamo
 2 medications that you should have taken?
 3 A. I don't take medication.
 4 Q. After you finished your last
 5 pick-up, was it your intention to go to the
 6 dump?
 7 A. Yes.
 8 Q. What was your last pickup?
 9 A. Last pickup was Clearview and 27th
 10 Avenue.
 11 Q. At any time prior to the accident
 12 occurring did you indeed go to the dump?
 13 A. Prior to the accident?
 14 Q. Yes, had you gone to the dump?
 15 A. Yes.
 16 Q. And you had taken Glen Cove Road
 17 south --
 18 A. Correct.
 19 Q. -- and traveled the route that you
 20 previously described?
 21 A. Correct.
 22 Q. Did the accident occur when you
 23 were returning from the dump?
 24 A. Correct, coming back.
 25 Q. Were you under any time pressure

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1 Digirolamo
 2 Q. Prior to completing your route at
 3 approximately 2:30, did you take any lunch
 4 breaks?
 5 A. No.
 6 Q. Did you take any breaks at all?
 7 A. In the morning we did, yeah.
 8 Q. What time did you take a break?
 9 A. Our normal time is quarter to nine.
 10 Q. Did you continually operate your
 11 truck and perform your route from a quarter to
 12 nine until 2:30?
 13 A. Yeah.
 14 Q. Did you stop your route for any
 15 other reasons that day other than breaks?
 16 A. No.
 17 Q. Within the 24-hour period prior to
 18 the accident on February 18th, had you had
 19 anything of an alcoholic nature to drink?
 20 A. No.
 21 Q. On February 18th of 2007, were you
 22 on any medications that you were required to
 23 take on a daily basis?
 24 A. No.
 25 Q. Did you fail to take any

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1 Digirolamo
 2 when you were --
 3 A. No.
 4 Q. -- returning from the dump?
 5 A. No.
 6 Q. Did you have a particular time that
 7 you intended to be back at the garage?
 8 A. No.
 9 Q. Do you recall what time the
 10 accident happened?
 11 A. No.
 12 Q. If I said approximately 3:00, would
 13 that assist you in identifying the time?
 14 A. Possible.
 15 Q. Was it still daylight out?
 16 A. Yes, it was still daylight.
 17 Q. Did you need to be back at the
 18 garage at a particular time?
 19 A. No.
 20 Q. Once you had been to the dump, did
 21 you have any other routes that you needed to
 22 perform before your shift ended at 7 p.m.?
 23 A. No.
 24 Q. Had you returned to the garage
 25 prior to 7 p.m., would you have turned the

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1 Digirolamo
 2 truck in early?
 3 A. Yes.
 4 Q. Would you have been paid the
 5 overtime, whatever you were paid, for the
 6 entire time to 7 p.m.?
 7 A. Right.
 8 Q. Did you have any concerns as you
 9 returned from the dump that you might not be
 10 back at the garage by 7:00?
 11 A. No.
 12 Q. Did you encounter any problems with
 13 the roadways as you returned from the dump
 14 prior to the accident?
 15 A. No.
 16 Q. Do you recall what the weather was?
 17 A. The weather was?
 18 It was cloudy that day.
 19 Q. Do you recall when it had last
 20 snowed?
 21 A. The beginning of the week.
 22 Q. You're talking about like a week
 23 ago, that prior Monday?
 24 A. Yeah, probably. It was either
 25 Monday or Tuesday of that week it had snowed.

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1 Digirolamo
 2 A. On the outside, on both sides,
 3 right and left.
 4 Q. Was there also a mirror in the
 5 middle?
 6 A. No, no mirror.
 7 Q. Was there any type of mirror that
 8 would allow you to see in back of you?
 9 A. No, there's no way to see an exact
 10 right behind you. No, you can't. It's just
 11 side mirrors.
 12 Q. A left mirror and a right mirror?
 13 A. Right.
 14 Q. You, yourself, operated the vehicle
 15 as you returned from the dump; is that correct?
 16 A. Correct.
 17 Q. And at some point did you enter
 18 Glen Cove Road in a northbound direction?
 19 A. Yes.
 20 Q. Did the accident occur on Glen Cove
 21 Road?
 22 A. Yes.
 23 Q. As you were traveling north on Glen
 24 Cove Road prior to the accident, can you
 25 describe how many lanes of moving traffic there

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1 Digirolamo
 2 Q. It was four or five days at least
 3 before there had been snow?
 4 A. Yes.
 5 Q. At the time of the accident were
 6 you operating the truck?
 7 A. Yes.
 8 Q. Did Mr. Doukas relieve you as the
 9 driver at any time that day or did you drive?
 10 A. He drove to the dump. I drove back
 11 from the dump.
 12 Q. Is there any particular reason why
 13 he drove to the dump?
 14 A. We just take turns.
 15 Q. Is that the normal procedure even
 16 if one of you is designated as a driver?
 17 A. Yeah.
 18 Q. Did he report to you whether he had
 19 experienced any problems with the operation of
 20 the truck?
 21 A. No.
 22 Q. Was the cab of the truck equipped
 23 with mirrors?
 24 A. Yes.
 25 Q. Where were the mirrors located?

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1 Digirolamo
 2 are on Glen Cove Road as it proceeds north?
 3 A. Just going north?
 4 Q. Correct.
 5 A. Two.
 6 Q. Are there any parking lanes on Glen
 7 Cove Road?
 8 A. No.
 9 Q. How many lanes of southbound
 10 traffic are there on Glen Cove Road --
 11 A. Two.
 12 Q. -- prior to the accident site,
 13 south of the accident site?
 14 A. Two.
 15 Q. Are there any parking lanes in a
 16 southbound direction?
 17 A. No.
 18 Q. Do you know what the speed limit is
 19 on Glen Cove Road?
 20 A. Do I know what the speed limit is?
 21 Q. Correct.
 22 A. Not offhand, no, I don't.
 23 Q. As you proceeded north on Glen Cove
 24 Road, do you know what your approximate speed
 25 was?

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1 Digirolamo
 2 A. I was crawling.
 3 Q. Was there a lot of traffic?
 4 A. Yes.
 5 Q. When you say "crawling," can you
 6 approximate the speed?
 7 A. The truck was basically rolling.
 8 The speedometer wasn't even moving.
 9 Q. For how long prior to the accident
 10 had you been proceeding in that manner would
 11 you estimate?
 12 A. There is so much traffic, I don't
 13 know.
 14 Q. Was it this way from the first time
 15 you entered onto Glen Cove Road or did it
 16 change at some point after you were on the Glen
 17 Cove Road?
 18 A. No, as soon as we were turning onto
 19 Glen Cove Road there was just a lot of traffic
 20 that day.
 21 Q. Did you enter onto Glen Cove Road
 22 from Old Country Road?
 23 A. Yes.
 24 Q. So you made a right turn?
 25 A. Correct.

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1 Digirolamo
 2 Road.
 3 Q. Did the accident occur at that
 4 intersection with a traffic control?
 5 A. The accident didn't happen in an
 6 intersection.
 7 Q. Did the accident occur at a
 8 location on Glen Cove Road that had a traffic
 9 control?
 10 A. Yes.
 11 Q. Was that the traffic control that
 12 you were describing, the first light on Glen
 13 Cove Road?
 14 A. No, I think it was the second one.
 15 Q. Did you come to a stop at the first
 16 light on Glen Cove Road?
 17 A. Yes.
 18 Q. Do you know if that light is at
 19 that intersection?
 20 A. Yeah, that one is, yes.
 21 Q. Do you know the distance between
 22 that light at the intersection where you
 23 stopped and the light where the accident
 24 occurred?
 25 A. No, I have no idea of distance.

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1 Digirolamo
 2 Q. And from the time you made that
 3 right turn would you describe your vehicle's
 4 motion as rolling?
 5 A. Just about, yeah.
 6 Q. And was traffic moving slowly in
 7 the southbound direction?
 8 A. No.
 9 Q. Was traffic moving?
 10 A. Traffic was moving.
 11 Q. How would you characterize the
 12 traffic moving southbound; light, medium, heavy
 13 or something else?
 14 A. I would say it was like medium.
 15 Q. How would you characterize the
 16 traffic in the direction you were proceeding?
 17 A. It was heavy.
 18 Q. At any time prior to the accident
 19 did you bring your vehicle to a complete stop
 20 for a traffic control?
 21 A. Yes.
 22 Q. Do you recall where that last
 23 occurred prior to the accident?
 24 A. It's the first red light. That's
 25 the first light when you get onto Glen Cove

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1 Digirolamo
 2 Q. Do you know how much time elapsed
 3 from the time you came to a complete stop at
 4 the first light until you reached the second
 5 light?
 6 A. No.
 7 Q. Do you know if it was minutes?
 8 A. I wasn't looking. I wasn't paying
 9 attention to the time.
 10 Q. Did you come to a stop at that
 11 second light, which was in the vicinity of
 12 where the accident occurred?
 13 A. Yes.
 14 Q. At that second light where you came
 15 to a stop where the accident occurred, is there
 16 any roadway in the vicinity of that traffic
 17 light other than Glen Cove Road?
 18 A. There was exits coming off the
 19 Northern State.
 20 Q. Do you know if that was an exit off
 21 the eastbound Northern State or the westbound
 22 or something else?
 23 A. It would be eastbound.
 24 Q. Is there a traffic light at the
 25 exit ramp for the eastbound Northern State

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1 Digirolamo
 2 traffic?
 3 A. No, there's a stop sign there.
 4 Q. Does that road continue after the
 5 stop sign, the exit lane for the Northern
 6 State, does that go across the roadway?
 7 A. No, it goes south. In other words,
 8 when you come off, you could only go south.
 9 Q. So there's a stop sign for traffic
 10 coming off the Northern State to enter onto the
 11 southbound Glen Cove Road?
 12 A. Correct.
 13 Q. Is there any control that permits
 14 traffic from the exit ramp of the Northern
 15 State to enter onto the northbound lanes?
 16 A. No.
 17 Q. Is there any roadway on the right
 18 side of the northbound lanes of Glen Cove Road?
 19 A. No, there's just an exit to get
 20 onto the Northern State going east.
 21 Q. So that's the entrance ramp is on
 22 the other side?
 23 A. Right.
 24 Q. At the time that the accident
 25 occurred were you stopped or were you moving?

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1 Digirolamo
 2 MR. MICHAELS: Make sure you let
 3 her finish before you start answering.
 4 THE WITNESS: Oh, all right.
 5 Q. As you were stopped in the right
 6 lane of northbound Glen Cove Road, were there
 7 any vehicles stopped next to you in the left
 8 lane?
 9 A. No.
 10 Q. Do you know if there were any
 11 vehicles in back of you but in the left lane?
 12 A. I didn't look behind me, no.
 13 Q. Do you know if there were any
 14 vehicles in the left lane that were ahead of
 15 you?
 16 A. Yeah. There were vehicles, yeah.
 17 Q. Can you approximate how many
 18 vehicles were ahead of you but in the left
 19 lane?
 20 A. No.
 21 Q. Was it more than two?
 22 A. Yeah, I would say more than two,
 23 yeah.
 24 Q. More than three?
 25 A. I don't know.

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1 Digirolamo
 2 A. Stopped.
 3 Q. Do you know what the color of the
 4 light was for traffic moving north on Glen Cove
 5 Road at that point?
 6 A. It was red.
 7 Q. Had it changed yet to green or was
 8 it still a solid red?
 9 A. No, it was red.
 10 Q. Do you recall what lane of traffic
 11 you were in?
 12 A. I was in the right lane.
 13 Q. Were there any vehicles ahead of
 14 you?
 15 A. Yes.
 16 Q. Closer to the light?
 17 A. Yes.
 18 Q. Do you know how many vehicles were
 19 ahead of you --
 20 A. No.
 21 Q. -- at the light?
 22 A. No, I don't.
 23 MR. MICHAELS: Make sure to let her
 24 finish before you start answering.
 25 THE WITNESS: What's that?

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1 Digirolamo
 2 Q. What about in the right lane ahead
 3 of you, can you approximate how many vehicles
 4 were ahead of you?
 5 A. I don't know.
 6 Q. Was it more than two?
 7 A. Yeah.
 8 Q. More than three?
 9 A. I don't know. I really don't.
 10 Q. If you don't know, it's fine to
 11 tell me you don't know.
 12 Do you know how long you were
 13 stopped at the red light before something
 14 occurred?
 15 A. Less than a minute.
 16 Q. At any time prior to the accident
 17 occurring did you see the light change color?
 18 A. No.
 19 Q. Was the door of your cab closed or
 20 open at that time?
 21 A. Closed.
 22 Q. Is the vehicle equipped with a
 23 radio?
 24 A. No.
 25 Q. Were you engaged in any

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1 Digirolamo
 2 conversation with Mr. Doukas while you were
 3 stopped at that red light?
 4 A. No.
 5 Q. Do you recall where you were
 6 looking as you were stopped at that red light?
 7 A. I was looking straight ahead.
 8 Q. Did there come a point when you
 9 realized that something had occurred in the
 10 roadway?
 11 A. Yes.
 12 Q. And how did you first become aware
 13 that something had occurred?
 14 A. It was like a roadside bombing.
 15 That's all I could tell you.
 16 Q. Did another vehicle come into
 17 contact with your vehicle?
 18 A. Yes.
 19 Q. At any time prior to the accident
 20 did you see this other vehicle?
 21 A. No.
 22 Q. When did you see the other vehicle
 23 for the first time?
 24 A. When everything came to a halt.
 25 Q. What do you mean by "when

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1 Digirolamo
 2 Q. At any time prior to seeing this
 3 vehicle, did you feel an impact?
 4 A. Did I feel the impact?
 5 Q. Yes.
 6 A. Yeah, after she hit me I felt the
 7 impact.
 8 Q. Which occurred first, did you feel
 9 the impact first or did you see the car first?
 10 A. I felt the impact. I never saw the
 11 car.
 12 Q. And where in your vehicle did you
 13 feel the impact?
 14 A. On the driver's side.
 15 Q. Was it the driver's side near the
 16 front, near the front under the bumper or
 17 something else?
 18 A. I would say between the bumper and
 19 the door.
 20 Q. How would you describe that impact;
 21 hard, medium, soft or something else?
 22 A. Hard.
 23 Q. At the time of the impact did that
 24 impact cause your vehicle to move in any
 25 direction?

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1 Digirolamo
 2 everything came to a halt"?
 3 A. After she had hit us and the car
 4 was right in front of the truck.
 5 Q. Did you see that vehicle at any
 6 time prior to contact?
 7 A. No.
 8 Q. At any time prior to contact did
 9 you hear any sounds of horns?
 10 A. No.
 11 Q. At any time prior to contact did
 12 you hear the sounds of any brakes screeching?
 13 A. No.
 14 Q. When you first saw the other
 15 vehicle where exactly was the other vehicle?
 16 A. The passenger side of her car was
 17 underneath the front of the truck.
 18 Q. Under what portion of the truck was
 19 the passenger side of the vehicle?
 20 A. The front.
 21 Q. Was it under the direct front of
 22 the truck, was it under the left side of the
 23 truck, the right side right of the truck?
 24 A. Well, it was hit on the left. It
 25 wasn't totally under the truck, you know.

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1 Digirolamo
 2 A. Yes.
 3 Q. And in what direction did your
 4 vehicle move?
 5 A. To the right.
 6 Q. At some point did your vehicle then
 7 come to a stop?
 8 A. Yes.
 9 Q. When it came to a stop was it still
 10 on the roadway or somewhere else?
 11 A. We were halfway on the sidewalk and
 12 halfway on the roadway.
 13 Q. When your vehicle came to rest
 14 where was the other vehicle?
 15 A. In front of the truck.
 16 Q. Was it under the truck?
 17 A. Yes.
 18 Q. Did you see the other vehicle at
 19 any time before your vehicle came to rest when
 20 it was half on and half off the roadway?
 21 A. No. When it came to rest is when I
 22 saw the vehicle.
 23 Q. Did you see the vehicle at any time
 24 at any point while your vehicle was being
 25 pushed to the side?

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1 Digirolamo
 2 A. No.
 3 MR. KRAMER: He just said "no"?
 4 THE WITNESS: No.
 5 Q. At any time prior to your truck
 6 coming to rest half on and half off the
 7 roadway, did you know what had caused the
 8 impact?
 9 A. No, not until I saw the car.
 10 Q. When your vehicle came to rest was
 11 the other vehicle under the cab of your car?
 12 A. Yes.
 13 Q. And as this was occurring, as you
 14 felt the impact and the vehicle was moving off
 15 the roadway, did you have any conversation with
 16 Mr. Doukas?
 17 A. No.
 18 Q. Did Mr. Doukas say anything to you?
 19 A. No.
 20 Q. At some point after the vehicle
 21 came to rest, did you have any conversations
 22 with Mr. Doukas?
 23 A. He did. He asked me if my legs
 24 were all right.
 25 Q. Did you observe Mr. Doukas after

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1 Digirolamo
 2 couldn't.
 3 Q. Do you recall hitting any part of
 4 your body against any part of your cab?
 5 A. Yeah.
 6 Q. What part of your body came into
 7 contact with any portion of the inside of your
 8 truck?
 9 A. Right side. Left side.
 10 Q. What did you hit?
 11 A. I hit the console on the right
 12 side. Then I went up against the door on the
 13 left side.
 14 Q. At any time after impact did you
 15 hit your head on anything?
 16 A. Yeah, against the door.
 17 Q. What's the last thing you remember
 18 prior to losing consciousness?
 19 A. Trying to get out.
 20 Q. What's the next thing you remember
 21 when you regained consciousness?
 22 A. I woke up in the ambulance.
 23 Q. Did you have any conversations with
 24 anyone at the accident site?
 25 A. No.

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1 Digirolamo
 2 the impact?
 3 A. Did I observe him?
 4 Q. Did you see him in his seat?
 5 A. Yeah, he was in his seat.
 6 Q. Was he seat-belted?
 7 A. Yes.
 8 Q. Did he say anything?
 9 A. He just asked me how were my legs.
 10 Q. What did you say?
 11 A. I said, my legs were okay.
 12 Q. Did he have a problem with his
 13 legs?
 14 A. Not that I know of at that time,
 15 no.
 16 Q. What did you do next?
 17 A. I was trying to get out of the
 18 truck.
 19 Q. Were you able to get out of the
 20 truck?
 21 A. No, I passed out. I don't know how
 22 I got out of the truck.
 23 Q. What's the last thing you remember
 24 before you passed out?
 25 A. Trying to open the door and I

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1 Digirolamo
 2 Q. When you woke up in the ambulance,
 3 was the ambulance moving or was the ambulance
 4 stopped?
 5 A. It was moving.
 6 Q. Do you recall being placed in the
 7 ambulance?
 8 A. No.
 9 Q. Did the ambulance take you to a
 10 hospital?
 11 A. Yes.
 12 Q. Where did it take you?
 13 A. Winthrop.
 14 Q. During the time that you were in
 15 the ambulance did you have any conversations
 16 with anyone who was in the ambulance with you
 17 about how the accident occurred?
 18 A. No.
 19 Q. Were there any other injured
 20 persons in the ambulance with you?
 21 A. There was. Mike was with me,
 22 Doukas.
 23 Q. He was in the ambulance also?
 24 A. Yes.
 25 Q. Did you have any conversations with

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1 Digirolamo
 2 Mr. Doukas?
 3 A. No, because I passed out again in
 4 the ambulance.
 5 Q. At any time subsequent to the
 6 accident, did you ever have any conversations
 7 with the operator of the other vehicle?
 8 A. No.
 9 Q. Prior to coming here to testify did
 10 you review any documents?
 11 A. No.
 12 Q. Did you review any photographs?
 13 A. No.
 14 Q. Have you ever seen any photographs
 15 of the accident site?
 16 A. No, not of the accident site, no.
 17 Q. What photographs have you seen with
 18 reference to this occurrence?
 19 A. Just one of the truck that was --
 20 that's at the CRS where they keep the condemned
 21 trucks.
 22 Q. What is "CRS"?
 23 A. It's like the main hub where they
 24 repair trucks and stuff. That's where the
 25 truck was brought to.

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1 Digirolamo
 2 A. Not to my knowledge, no.
 3 Q. When you saw the photograph of the
 4 truck, were you advised it was a picture of the
 5 truck as it looked after the accident?
 6 A. Yes.
 7 Q. And were you able to observe damage
 8 to the truck?
 9 A. Not really, it wasn't like a clear
 10 picture, you know. It's just basically -- all
 11 you saw the front was burned, that's it.
 12 Q. Do you know who showed you the
 13 photographs?
 14 A. It was laying around the garage, to
 15 be honest with you.
 16 Q. What were the circumstances under
 17 which you went to the CRS garage?
 18 A. I didn't go. I was never there. I
 19 never saw the truck after the accident.
 20 Q. You said you saw the photograph?
 21 A. Just that one photograph.
 22 Q. Where was the photograph?
 23 A. It was in the garage. It was
 24 laying around the garage.
 25 Q. In which garage?

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1 Digirolamo
 2 Q. Were you involved in bringing the
 3 truck to the CRS?
 4 A. No.
 5 Q. Do you know how the truck arrived
 6 at that location?
 7 A. They towed it there.
 8 Q. Do you know when it was towed
 9 there?
 10 A. No.
 11 Q. Were you asked to look at the
 12 truck --
 13 A. No.
 14 Q. -- after it was brought to that
 15 location?
 16 A. No. I just saw a picture of it
 17 when it was there, parked there.
 18 Q. What were the circumstances under
 19 which you saw a photograph of the truck?
 20 A. What do you mean? I don't
 21 understand. What do you mean "circumstances"?
 22 Q. Were you asked to identify the
 23 truck for the photograph?
 24 A. No, no, no, not at all.
 25 Q. Was the truck ever repaired?

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1 Digirolamo
 2 A. In our garage where I work.
 3 Q. Do you still work out of the same
 4 garage?
 5 A. Yes.
 6 Q. Do you know why the photograph was
 7 in the garage?
 8 A. No. After I came back from work, I
 9 seen it. That's all.
 10 Q. Were you out of work for some
 11 period of time?
 12 A. Yeah.
 13 Q. Did there come a time when you
 14 returned to the same garage?
 15 A. Yes, after.
 16 Q. Do you recall how long after the
 17 accident it was?
 18 A. It was about six weeks.
 19 Q. Do you know if the truck that you
 20 were operating on the day of the accident was
 21 ever put back in service?
 22 A. No.
 23 Q. Do you know what happened to the
 24 truck?
 25 A. It went to CRS.

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TOY-RQ-05E-00002285

1 Digirolamo
 2 Q. And that's for repair?
 3 A. No, that's where they're condemning
 4 it from, from what I'm hearing. I don't know
 5 anything about it, exactly what they're doing
 6 with it.
 7 Q. CRS, is that where damaged trucks
 8 are taken?
 9 A. Yeah. They burn them there.
 10 Q. And when a truck --
 11 A. They bring them there. The damaged
 12 trucks, they bring them there. They house them
 13 there, I guess.
 14 Q. Is that a particular facility or is
 15 there more than one facility like that?
 16 A. Every borough has one.
 17 Q. So is the CRS where this truck was
 18 taken, would have been the one for the borough
 19 of Queens?
 20 A. Yes.
 21 Q. Have you ever been to the CRS
 22 facility in Queens?
 23 A. Have I ever been -- yeah, I've been
 24 there.
 25 Q. Are vehicles repaired at that

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1 Digirolamo
 2 Q. Do you know if that vehicle is
 3 still at CRS today?
 4 A. As far as I know it is.
 5 Q. Have you ever been advised of what
 6 the City intends to do with that truck?
 7 A. No.
 8 Q. From the time of the accident up
 9 until today's date, have you ever had occasion
 10 to speak to anyone who was a witness to the
 11 accident?
 12 A. No.
 13 Q. Did you and Mr. Doukas ever discuss
 14 the accident since the date of the accident?
 15 A. Yeah, we talked about it.
 16 Q. And have you and Mr. Doukas
 17 discussed what happened at the time of the
 18 accident?
 19 A. Basically what I'm telling you now.
 20 Q. Did Mr. Doukas ever tell you that
 21 he observed the vehicle, the other vehicle,
 22 prior to the impact?
 23 A. No.
 24 Q. Did you ever prepare any type of
 25 accident reports in connection with this?

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1 Digirolamo
 2 location?
 3 A. Yeah.
 4 Q. Is there a repair garage?
 5 A. Yeah, it's like a repair garage.
 6 Q. Do trucks go there for normal
 7 repairs?
 8 A. Yep.
 9 Q. Do trucks go there for inspections?
 10 A. Yes.
 11 Q. Prior to the accident, did your
 12 vehicle go there, to that location, for
 13 periodic inspections?
 14 A. No, I think each garage has their
 15 mechanics and our own mechanics do the
 16 inspections on our truck. They don't go there
 17 for that.
 18 Q. Do your mechanics also do repairs
 19 on your trucks?
 20 A. Yeah.
 21 Q. So what circumstances would a
 22 vehicle go to CRS?
 23 A. Because they store it there. We
 24 just can't store it in the garage because we
 25 don't have enough room.

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1 Digirolamo
 2 A. No.
 3 Q. Did you ever prepare an MV-104 for
 4 this, with connection with this accident, a
 5 Motor Vehicle Accident Report for the State of
 6 New York?
 7 A. No.
 8 Q. Do you know if one was ever
 9 prepared on your behalf?
 10 A. I don't know.
 11 Q. Did you ever provide the
 12 information of the circumstances surrounding
 13 the accident to any of your supervisors?
 14 A. No. There was somebody there from
 15 our Safety Unit that came out and handled all
 16 that.
 17 Q. Do you know who that person was?
 18 A. No.
 19 Q. Did you ever have any conversations
 20 with that person?
 21 A. No.
 22 Q. Did you ever provide any
 23 information to anyone from the Department of
 24 Sanitation with respect to --
 25 A. No.

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TOY-RQ-05E-00002286

1 Digirolamo
 2 Q. Let me finish.
 3 A. I'm sorry.
 4 Q. -- with respect to what happened?
 5 A. No.
 6 Q. Did you ever prepare a Department
 7 of Sanitation accident report?
 8 A. No.
 9 Q. Did you provide information to
 10 anyone from the Department of Sanitation in
 11 connection with the preparation of such report?
 12 A. The guy from Safety who was -- he
 13 was the one that wrote everything out.
 14 MS. KELNER: Can we mark these
 15 documents?
 16 Plaintiff's 1 is a Department of
 17 Sanitation accident report.
 18 Plaintiff's 2 is an MV-104, two
 19 pages.
 20 (Department of Sanitation
 21 Accident report, is marked
 22 Plaintiff's Exhibit 1 for
 23 identification, as of this date.)
 24 (MV-104, is marked Plaintiff's
 25 Exhibit 2 for identification, as of

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1 Digirolamo
 2 of the accident?
 3 A. No.
 4 Q. Have you ever given a statement to
 5 anyone other than your counsel with respect to
 6 this accident?
 7 A. No.
 8 Q. Have you ever provided information
 9 to anyone from the Department of Sanitation
 10 with respect to this accident?
 11 A. No.
 12 Q. Did anyone come to see you in the
 13 hospital?
 14 A. The Safety guy was there. The guy
 15 from Safety, but he didn't question me on
 16 anything.
 17 Q. Do you recall what occurred when
 18 the Safety person came to the hospital?
 19 A. He was just walking around asking
 20 people questions, but he didn't ask me
 21 anything.
 22 Q. Do you recall who else was at the
 23 hospital at that time?
 24 A. Yeah, my wife.
 25 Q. Do you recall who he was asking

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1 Digirolamo
 2 this date.)
 3 Q. I'm going to show you what's been
 4 now marked Plaintiff's Exhibit 1 of today's
 5 date. It's entitled, "Official Accident Report
 6 of the Department of Sanitation for the City of
 7 New York." It is a two-sided document.
 8 I'm going to ask you if you've ever
 9 seen this particular document before?
 10 A. No. This one I haven't seen.
 11 Q. Have you seen documents like that?
 12 A. I've seen documents like this,
 13 yeah. But this one, I haven't seen this one.
 14 Q. Are these the type of accident
 15 reports that are generally kept in the ordinary
 16 course of the business of the Department of
 17 Sanitation?
 18 A. Yes.
 19 Q. Do you know the name of the Safety
 20 person from the Department of Sanitation who
 21 investigated this accident on behalf of the
 22 Department of Sanitation?
 23 A. No.
 24 Q. Were you ever interviewed by the
 25 Safety Inspector with respect to your knowledge

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1 Digirolamo
 2 questions of?
 3 A. No, I was lying in the gurney. I
 4 don't know what he was doing.
 5 Q. Did he ever come up to you at all?
 6 A. No.
 7 Q. Do you know where Mr. Doukas was at
 8 that point?
 9 A. He was somewhere in the hospital.
 10 I don't know where he was, no.
 11 Q. As we sit here today, do you have
 12 any recollection of who the Safety person spoke
 13 to at the hospital when you saw him walking
 14 around?
 15 A. No.
 16 Q. Did he ever call you at your home?
 17 A. No, no.
 18 Q. Does the name G. Liboff sound
 19 familiar to you?
 20 A. No.
 21 Q. Let me show you, if you can take
 22 another look at Plaintiff's Exhibit 1, the
 23 front and the back.
 24 Is any of the writing on this
 25 document in your handwriting?

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TOY-RQ-05E-00002287

1 Digirolamo
 2 A. On this? No.
 3 Q. Look at the flip side also.
 4 A. No.
 5 Q. Do you know whose writing it is?
 6 A. No, I have no idea.
 7 MS. KELNER: Maybe we should make
 8 some copies of both of these Exhibits so
 9 we all have them.
 10 MR. MICHAELS: Okay.
 11 (Whereupon, a short recess was
 12 taken.)
 13 Q. Immediately prior to the accident
 14 when you were stopped at the light for, what I
 15 think you described, approximately a minute,
 16 did you look ahead the entire time?
 17 A. Yes.
 18 Q. At any time during that one-minute
 19 period did you look to the right toward
 20 Mr. Doukas?
 21 A. No.
 22 Q. At any time as you were stopped for
 23 that approximate one-minute time period prior
 24 to the impact, did you at any time look to your
 25 left?

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1 Digirolamo
 2 where you were stopped at the time of the
 3 impact, did you look to your left at any time?
 4 A. No.
 5 Q. Do you recall the last time that
 6 you looked to your left prior to the impact?
 7 A. Probably when I made the turn, the
 8 right turn onto Glen Cove Road.
 9 Q. Did you come to a stop at the first
 10 traffic light on Glen Cove Road?
 11 MR. MICHAELS: Asked and answered.
 12 MS. KELNER: No, this the second
 13 light.
 14 MR. MICHAELS: He said the first
 15 traffic light he stopped at as well.
 16 THE WITNESS: Yeah.
 17 Q. Do you know how long you were
 18 stopped at the first light?
 19 A. I don't recall.
 20 Q. When you were stopped at that first
 21 light, did you look to your left at all?
 22 A. No, I was in my right lane, no.
 23 Q. Were you in the right lane the
 24 entire time from the time you entered Glen Cove
 25 Road until the impact?

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1 Digirolamo
 2 A. No.
 3 Q. Was it your customary practice if
 4 you were stopped at a light to only look
 5 straight ahead?
 6 A. Yes.
 7 Q. What about when you were operating
 8 your vehicle, did you look straight ahead or
 9 did you look to your left and your right?
 10 A. When I'm operating it?
 11 Q. Yes.
 12 A. No, I look to the left and the
 13 right.
 14 Q. Do you recall the last time prior
 15 to the impact that you looked to your left?
 16 A. No.
 17 Q. Do you recall looking to your left
 18 at any time when you were in the general
 19 vicinity of the exit ramp of the eastbound
 20 Northern State Parkway?
 21 A. No.
 22 Q. No, you don't remember, or, no, you
 23 didn't look?
 24 A. No, I didn't look.
 25 Q. As you were driving up to the light

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1 Digirolamo
 2 A. Yes.
 3 Q. I'm going to show you what's now
 4 been marked as Plaintiff's Exhibit 2, and
 5 unfortunately, I think it's a compilation of
 6 two documents.
 7 I'm going to ask you to look at the
 8 top page first, and ask if you've seen that
 9 document before?
 10 A. Yes, this was the police report.
 11 Q. Is that the Police Report or is
 12 that the Department report?
 13 A. Isn't this the Police Report?
 14 Q. Could you turn the document over?
 15 Could you tell me what's on the
 16 second side of the document?
 17 A. This is the police report, sorry.
 18 Q. If you can turn it back over to the
 19 page where the tab is: Do you know whether
 20 you've completed any portion of that front page
 21 in your own writing?
 22 A. This? No.
 23 Q. Did you provide any information for
 24 the preparation of the first page?
 25 A. No. Not that I recall, no.

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TOY-RQ-05E-00002288

1 Digirolamo
 2 Q. If you could now turn the document
 3 over to the, I believe, what is the Police
 4 Report.
 5 Did you speak to the police at any
 6 time while they were at the accident site?
 7 A. No.
 8 Q. Did the police ever come to
 9 interview you at any time?
 10 A. No.
 11 Q. Did you provide any of the
 12 information that's located on the second side
 13 of the document of Exhibit 2?
 14 A. No.
 15 Q. I'm going to show you the second
 16 page of Plaintiff's Exhibit 2, and ask if you
 17 have ever seen that document before?
 18 A. No.
 19 Q. Do you know if the information
 20 contained on that second page is information
 21 with respect to the truck you were driving at
 22 the time of the accident?
 23 MR. MICHAELS: If you can tell.
 24 A. No.
 25 Q. No, you don't know?

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1 Digirolamo
 2 site?
 3 A. No, I didn't see him there.
 4 Q. When did you see him?
 5 A. I seen him at the hospital. He was
 6 at the hospital.
 7 Q. Did you have a conversation with
 8 him at the hospital?
 9 A. I wasn't talking much at the
 10 hospital.
 11 Q. Did you ever have a conversation
 12 with him about what happened?
 13 A. Honestly, no.
 14 Q. Do you know how he obtained
 15 information as to the manner in which the
 16 accident occurred?
 17 A. No.
 18 Q. Did you ever tell Mr. Hickey that
 19 you were stopped at a light when there was an
 20 impact?
 21 A. No, because we never really spoke
 22 about it.
 23 Q. When you returned to work, did you
 24 go back to your garage that you had been at
 25 previously?

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1 Digirolamo
 2 A. No.
 3 Q. Are you familiar with a person by
 4 the name of Joseph Hickey?
 5 A. He's an ABS.
 6 Q. What does "ABS" stand for?
 7 A. He's like Assistant Borough Super.
 8 Q. Assistant Borough?
 9 A. Super.
 10 Q. That's for the Department of
 11 Sanitation?
 12 A. Yeah.
 13 Q. That's for Queens?
 14 A. Yeah.
 15 Q. Can you say that again, please?
 16 A. Assistant Borough Super.
 17 Q. Did you ever speak to Mr. Hickey
 18 about the accident?
 19 A. Yes.
 20 Q. Do you recall when you spoke to
 21 Mr. Hickey about the accident?
 22 A. After the accident. As a matter of
 23 fact, he was there at the accident. I was told
 24 he was there.
 25 Q. Did you see him at the accident

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1 Digirolamo
 2 A. Correct.
 3 Q. Did you resume your normal duties?
 4 A. Yes.
 5 MS. KELNER: Does anyone have any
 6 other questions?
 7 MR. HERSHENHORN: I just have a few
 8 follow-up questions.
 9
 10 EXAMINATION BY MR. HERSHENHORN:
 11 MR. HERSHENHORN: Can you mark this
 12 photo, please?
 13 (Photographs are marked
 14 Plaintiff's Exhibits 3 and 4 for
 15 identification, as of this date.)
 16 Q. Sir, take a look at Plaintiff's
 17 Exhibits 3 and 4 marked for today's date.
 18 Forgetting about the lighting
 19 conditions in the photographs, just looking at
 20 the area that's depicted in those photographs,
 21 do those photographs depict the area where the
 22 accident occurred?
 23 A. It looks like it.
 24 Q. And when you say, "it looks like
 25 it," do those photos fairly and accurately show

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1 Digirolamo
 2 the area as it existed on the day of the
 3 accident?
 4 In other words, what I'm trying to
 5 find out from you is: From looking at those
 6 photographs, have there been any changes, as
 7 far as you're aware, to the scene of the
 8 accident from the time that the accident
 9 occurred up until those photos were taken?
 10 MR. MICHAELS: If you know.
 11 A. I don't know. No idea.
 12 Q. And when you say, "it looks like
 13 it," meaning that those photos look like the
 14 scene of the accident?
 15 Could you show me in the
 16 photographs, approximately, where the accident
 17 took place?
 18 A. I don't have a clear picture of
 19 this down here, so I can't tell you. You're
 20 just showing me there here (indicating). I
 21 have to see it down further.
 22 Q. Okay. Looking at Plaintiff's
 23 Exhibit 4, could you see it down further toward
 24 the light?
 25 A. No.

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1 Digirolamo
 2 Q. Do you see there's a stopped --
 3 what looks like a stopped van on the right side
 4 of the photograph?
 5 A. I wouldn't know. I told you I
 6 didn't know.
 7 Q. My question now is: Do you see
 8 that van?
 9 A. Yes, I see the van.
 10 Q. Do you know whether the vehicle
 11 that was in contact with yours came from the
 12 direction that we see the van in on the far
 13 right side of Plaintiff's Exhibit 3?
 14 A. I don't know.
 15 Q. When you were stopped at the
 16 traffic light as you've previously described in
 17 your testimony, can you tell me how many
 18 vehicles there were from the traffic light to
 19 the point that your vehicle was stopped?
 20 A. No, I don't.
 21 MR. MICHAELS: That was asked and
 22 answered.
 23 THE WITNESS: That was asked
 24 already.
 25 Q. Can you tell me was it more than a

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1 Digirolamo
 2 Q. You can't tell?
 3 A. No.
 4 Q. Do you see the traffic light on the
 5 right-hand corner?
 6 A. Yeah.
 7 Q. Is that the traffic light that your
 8 vehicle was stopped for?
 9 A. I -- no, I can't tell you. The
 10 picture is not giving me a true view of what
 11 was really there. It's not giving me the whole
 12 right side going down.
 13 Q. Do you see the ramp that looks like
 14 there's ramp in the photograph coming down
 15 where you see the "do not enter" signs?
 16 A. Right.
 17 Q. Is that the ramp that the car that
 18 struck your truck came off of?
 19 A. I wouldn't know.
 20 Q. Taking a look at this photograph,
 21 do you see --
 22 MR. KRAMER: For the record, which
 23 one is that?
 24 MR. HERSHENHORN: Plaintiff's
 25 Exhibit 3.

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1 Digirolamo
 2 dozen vehicles?
 3 A. I don't know.
 4 MR. MICHAELS: This is asked and
 5 answered.
 6 Q. Can you tell me instead of telling
 7 me how many vehicles there were, can you tell
 8 me what the distance was from the light to your
 9 vehicle when you were stopped?
 10 A. No.
 11 Q. Let me mark and show you
 12 Plaintiff's Exhibit 5 for today's date.
 13 MR. HERSHENHORN: Please mark this
 14 photograph Plaintiff's 5.
 15 (Photograph, is marked
 16 Plaintiff's Exhibit 5 for
 17 identification, as of this date.)
 18 Q. Looking at Exhibit 5, sir, does
 19 that photograph -- is that a better photograph
 20 that helps you to tell us whether it includes
 21 the scene of where the accident occurred?
 22 A. Yes.
 23 Q. And does that photograph fairly and
 24 accurately show the scene of where the accident
 25 occurred as the scene existed on the date of

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TOY-RQ-05E-00002290

1 Digirolamo
 2 the accident?
 3 I'm not talking about the lighting
 4 conditions, just the roadway conditions.
 5 A. Can you give me that question
 6 again?
 7 Q. Sure.
 8 Does the photograph fairly and
 9 accurately show the scene as it existed on the
 10 day of the accident, the general vicinity of
 11 where this accident occurred?
 12 A. Yeah.
 13 Q. And can you show me, using your
 14 finger, where your vehicle was stopped when the
 15 other vehicle came into contact with it?
 16 Again, we understand it's an
 17 approximate location, not an exact location.
 18 A. I can't recall if it was -- I think
 19 it was over here (Indicating).
 20 Q. Where you're pointing with your
 21 finger, there's a box truck in the photograph?
 22 A. Yeah.
 23 Q. Are you saying that it was in front
 24 of the box truck or to the side of the box
 25 truck?

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1 Digirolamo
 2 was under there.
 3 Q. Now, in your testimony earlier, you
 4 said that the impact felt like, your words
 5 were, roadside bombing, correct?
 6 A. Yeah.
 7 Q. What did you mean by that?
 8 A. Well, because I never saw it
 9 coming.
 10 Q. When you say you never saw it
 11 coming, were there any other reasons that it
 12 felt like a roadside bombing; for example, was
 13 there anything about the speed of the other car
 14 that made it feel like a roadside bombing?
 15 A. I don't know how fast she was
 16 going.
 17 Q. Can you tell me did you ever see
 18 any fire break out either from your vehicle,
 19 the other vehicle, a combination?
 20 A. Her vehicle.
 21 Q. What did you see with regard to the
 22 fire?
 23 Where was the fire coming from?
 24 A. The hood of her car.
 25 Q. And can you tell me after the

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1 Digirolamo
 2 A. In front of the box truck.
 3 Q. In the same lane as the box truck?
 4 A. Yes.
 5 MR. HELLER: And that's underneath
 6 the sign that says Hauppauge or
 7 something?
 8 Q. That's under the sign for the
 9 Meadowbrook that indicates a right turn for
 10 Hauppauge?
 11 A. Right.
 12 Q. Do you notice, sir, that there is
 13 an overpass in the photograph?
 14 A. Yes.
 15 Q. Was your vehicle under or was any
 16 part of your vehicle under the overpass when it
 17 came into contact with the other vehicle?
 18 A. Yes.
 19 Q. Was your entire vehicle under the
 20 overpass?
 21 A. No, just the front part.
 22 Q. When you say, "just the front," is
 23 there any way to say was it halfway from the
 24 front to the rear or some other --
 25 A. I would say just like the cab part

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1 Digirolamo
 2 impact, was it immediately that you observed
 3 fire coming from the hood of her car?
 4 A. I would say within seconds.
 5 Q. Did you ever see the operator of
 6 the other vehicle?
 7 A. No.
 8 Q. You said earlier that you passed
 9 out at least once, if not more times, while you
 10 were at the scene.
 11 Remember that testimony earlier
 12 that you had passed out?
 13 A. Yes.
 14 MR. KRAMER: He said twice.
 15 THE WITNESS: Yeah, twice.
 16 MR. MICHAELS: I'm not sure. Both
 17 at the scene?
 18 THE WITNESS: One at the scene and
 19 then again in the ambulance.
 20 Q. When you were at the scene and you
 21 passed out, was that before or after you saw
 22 the fire?
 23 A. That was after the fire because
 24 that's when I was trying to get out.
 25 Q. Now, the vehicle that you were

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1 Digirolamo
 2 driving, does it have windows that you could
 3 roll down if you want to get some air into the
 4 vehicle?
 5 A. No, it just has a little slide-up
 6 window on the side. It was February, so the
 7 windows were closed.
 8 Q. That's my next question.
 9 Were all the windows closed?
 10 A. Yes.
 11 Q. Both your side --
 12 A. Yes.
 13 Q. Let me just ask it so she has it
 14 down.
 15 Are there two windows; one for the
 16 driver, one for the passenger?
 17 A. Yes.
 18 Q. Were both of those windows closed
 19 at the time of the accident?
 20 A. I know mine was.
 21 Q. Did you notice whether your
 22 passenger's window was closed?
 23 A. No.
 24 Q. Do you know whether you had heat on
 25 in the vehicle at the time?

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1 Digirolamo
 2 Q. And Mr. Doukas was the loader?
 3 A. Yes.
 4 Q. As the loader would he be inside
 5 the truck and getting out to load, would he
 6 ride on the outside of the truck, walk
 7 alongside or something different?
 8 A. When he's loading, he would walk
 9 alongside the truck.
 10 Q. When did Mr. Doukas first get into
 11 the truck after you started loading; was it
 12 when you finished?
 13 A. No, we alternate while we're
 14 working. Twenty minutes apiece. We're both in
 15 and out of the truck.
 16 Q. So during the time you were picking
 17 up, Mr. Doukas was also a driver and you were a
 18 loader?
 19 A. Right.
 20 Q. Mr. Doukas drove the truck to the
 21 dump; is that right?
 22 A. Correct.
 23 Q. And after you dumped the truck you
 24 drove it back?
 25 A. I drove it back, correct.

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1 Digirolamo
 2 A. Probably.
 3 Q. I know you said you were stopped.
 4 Would it be fair to say that at the
 5 time of the accident your foot was on the
 6 brake?
 7 A. Yes.
 8 Q. Did that vehicle have a clutch?
 9 A. No.
 10 Q. Was it an automatic?
 11 A. Yes.
 12 MR. HERSHENHORN: I have no further
 13 questions. Thank you.
 14 MR. HELLER: I just have a few.
 15
 16 EXAMINATION BY MR. HELLER:
 17 Q. Sir, the truck that you were
 18 driving, I believe you said it had seat belts?
 19 A. Yes.
 20 Q. What kind of seat belts were they?
 21 A. Shoulder.
 22 Q. Now, during the course of the day
 23 when you were working your route you were the
 24 driver; is that correct?
 25 A. Yes.

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1 Digirolamo
 2 Q. When Mr. Doukas got in the truck to
 3 go back, did you see whether or not he put on
 4 his seat belt?
 5 A. We both did.
 6 Q. Did you see him put his on?
 7 A. Yes.
 8 Q. Is the truck equipped with air
 9 bags?
 10 A. No.
 11 Q. Do you know what the weight of the
 12 truck was empty?
 13 A. Excuse me?
 14 Q. Do you what the weight of this
 15 truck was empty?
 16 How much did it weigh?
 17 A. I don't know. I don't know what
 18 the length and weight is of the truck.
 19 Q. When you first became aware that
 20 there had been an accident, did the truck move
 21 one direction or another?
 22 A. It moved to the right.
 23 Q. In between that time and the time
 24 you lost consciousness, did you look at
 25 Mr. Doukas?

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1 Digirolamo
 2 A. No. He looked at me. He asked --
 3 all I heard him say, "Are your legs all right?"
 4 Q. Did you see Mr. Doukas is what I'm
 5 saying?
 6 A. Did I see him?
 7 I heard him.
 8 Q. But did you see him is my question?
 9 A. Not really I didn't look over to
 10 him. I was too shocked from the impact.
 11 Q. After the truck moved to the right
 12 did it move again after the accident?
 13 A. No.
 14 Q. After the accident did you ever
 15 again speak to Mr. Doukas about the accident,
 16 whether on the day of the accident or some
 17 later time?
 18 A. Like maybe, two, three days later
 19 we spoke.
 20 Q. Where was Mr. Doukas when you spoke
 21 to him?
 22 A. He was home and I was home.
 23 Q. So it was a telephone call?
 24 A. Yeah.
 25 Q. What did you say to Mr. Doukas and

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1 Digirolamo
 2 about the accident or either of your injuries?
 3 A. No. No.
 4 Q. When was the last time you saw
 5 Mr. Doukas?
 6 A. I would say about a month ago.
 7 Q. And under what circumstances did
 8 you see Mr. Doukas a month ago?
 9 A. He was on an MDA at work.
 10 Q. You'll have to pardon me, I have no
 11 idea what an MDA is.
 12 A. It's just like -- he's basically on
 13 a -- all he could do is answer telephones.
 14 Q. So what does MDA stand for?
 15 A. It's like light-duty.
 16 Q. Have you seen Mr. Doukas working
 17 between the time the telephone call that you
 18 told us about and when you saw him on
 19 light-duty a month ago, whether he was doing
 20 light-duty or not?
 21 A. Was he working again after he came
 22 back?
 23 Q. No, did you see him?
 24 A. Yeah. Yeah.
 25 Q. Notwithstanding the fact that he

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1 Digirolamo
 2 what did he say to you?
 3 A. We wanted to know how much pain we
 4 were both in.
 5 Q. Did you say anything about the
 6 happening of the accident? How it happened?
 7 A. No.
 8 Q. Did Mr. Doukas say, for instance,
 9 whether he saw the car?
 10 A. Like I said, I didn't see it coming
 11 and he didn't see it coming.
 12 Q. Other than saying that he was in
 13 pain, did Mr. Doukas describe his injuries at
 14 all to you?
 15 A. Not really, no. Just like I didn't
 16 describe mine to him.
 17 Q. Did Mr. Doukas ever return to work?
 18 A. Yeah, he returned after I did.
 19 Q. Do you know when that was?
 20 A. I think eight weeks later.
 21 Q. Did you ever work with him again?
 22 A. No, not that I recall.
 23 Q. After the conversation that you
 24 told me about on the telephone a few days
 25 after, did you ever speak to Mr. Doukas again

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1 Digirolamo
 2 was doing light-duty now, has he been working
 3 regularly during the time between your
 4 telephone conversation and present?
 5 MS. KELNER: If he knows?
 6 Q. If you know?
 7 A. You want to repeat the question?
 8 Q. You told us that you last saw
 9 Mr. Doukas about a month ago when he was doing
 10 MDA?
 11 A. Right.
 12 Q. And my question is: Between the
 13 time of the telephone conversation --
 14 A. Okay.
 15 Q. -- or between the time Mr. Doukas
 16 first returned to work and the time about a
 17 month ago you saw him at the garage doing
 18 light-duty, has he been working steadily, if
 19 you know?
 20 A. He worked briefly.
 21 Q. When did he return to work doing
 22 the light-duty, do you know?
 23 A. I don't really know offhand. I
 24 don't remember the date.
 25 Q. Could you give me an approximation,

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1 Digirolamo
 2 if it wouldn't be a guess?
 3 MS. KELNER: I object to form.
 4 A. I really don't know.
 5 Q. You said, you referred a couple of
 6 times to CRS.
 7 Do you know what "CRS" stands for?
 8 A. Central Repair Service.
 9 Q. Before you were asked about whether
 10 you'd spoken during the day of the accident.
 11 I'm asking a slightly different question.
 12 At any time from the day of the
 13 accident until the present, has anyone ever
 14 told you that they saw the accident happen?
 15 A. No.
 16 Q. Since the day of the accident have
 17 you seen Mr. Doukas outside of a work
 18 environment, for instance, a social function or
 19 any other way?
 20 A. No.
 21 Q. When you saw Mr. Doukas about a
 22 month ago, was that in the garage where you
 23 were stationed?
 24 A. Yes.
 25 Q. And I believe you gave an example

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1 Digirolamo
 2 CONTINUED EXAMINATION BY MS. KELNER:
 3 Q. You previously were shown a
 4 photograph. I'll show you Plaintiff's Exhibit 3.
 5 Do you recall seeing a right-turning
 6 lane with an arrow such as depicted in that
 7 photograph?
 8 A. This here (indicating).
 9 Q. Correct, in the vicinity of the
 10 accident?
 11 A. No.
 12 Q. Do you know if there was a
 13 right-turning lane at the point where your
 14 truck was stopped at the light immediately
 15 prior to the impact?
 16 A. No.
 17 Q. No, you don't know?
 18 A. I don't know.
 19 Q. Do you recall seeing any vehicles
 20 to your right as you were stopped at the light
 21 immediately prior to the impact?
 22 A. No.
 23 MS. KELNER: I have no further
 24 questions.
 25 (Time noted: 12:20 p.m.)

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 2 of light-duty. Do you know what his light-duty
 3 was; was he answering phones --
 4 A. Yes.
 5 Q. -- or something else?
 6 A. Answering phones.
 7 MR. HELLER: I don't have any
 8 further questions at this time.
 9 Thank you.
 10 MS. KREUER: Just a few follow-ups.
 11 EXAMINATION BY MS. KREUER:
 12 Q. On the day of accident prior to the
 13 accident, was there any ice on the road?
 14 A. No.
 15 Q. Were the roads wet at all?
 16 A. No.
 17 Q. I see you wear glasses.
 18 Do you wear glasses when you drive?
 19 A. No, they're only for reading.
 20 Q. On the day of the accident were you
 21 wearing sunglasses?
 22 A. No.
 23 MS. KREUER: That's all I have.
 24 MR. KRAMER: I have no questions.
 25 MS. KELNER: I just have one more.

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 2 A C K N O W L E D G E M E N T
 3
 4 STATE OF NEW YORK)
 5 : ss
 6 COUNTY OF)
 7
 8 I, ANTHONY DIGIROLAMO, hereby certify that I
 9 have read the transcript of my testimony taken
 10 under oath in my deposition of June 22, 2009;
 11 that the transcript is a true, complete and
 12 correct record of my testimony; and that the
 13 answers on the record as given by me are true
 14 and correct.
 15
 16 _____
 17 ANTHONY DIGIROLAMO
 18
 19
 20 Signed and subscribed to
 21 before me, this ____ day
 22 of _____, 2009.
 23
 24 _____
 25 Notary Public, State of New York

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I N D E X

WITNESS

ANTHONY DIGIROLAMO

Examination by:

MS. KELNER
MR. HERSHENHORN
MR. HELLER
MS. KREUER

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PLAINTIFF'S

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3 Photograph
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Table with columns 1-9 and A-B, listing various terms and page numbers. Includes terms like '1', '4', '5', '6', '7', '8', '9', 'A', 'B' and various page references.

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Table with columns C, D, E, F, G, H, listing various terms and page numbers. Includes terms like 'C', 'D', 'E', 'F', 'G', 'H' and various page references.

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operator (n) - 45.7,
72.5

Def's 0

2 SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK
 3 -----X
 4 IRIS LEVITEN,
 5 PLAINTIFF,
 6 Index No.
 107681/07
 7 -against-
 8 LEXUS, A DIVISION OF TOYOTA MOTOR SALES
 USA, INC., ESTREE, INC., d/b/a LEXUS OF
 9 WESTPORT, and METRO AUTO LEASING, INC.,
 d/b/a THE AUTOMALL,
 10 DEFENDANTS.
 11 -----X
 12 MICHAEL DOUKAS,
 13 PLAINTIFF,
 14 Index No.
 117118/07
 15 #2
 16 -against-
 17 IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW YORK
 CITY DEPARTMENT OF SANITATION and THE CITY
 OF NEW YORK,
 18 DEFENDANTS.
 19 -----X
 20 (Continued on the following page.)
 21
 22
 23
 24
 25

2 -----X
 ANTHONY DIGIROLAMO,
 3
 4 PLAINTIFF,
 5 Index No.
 102331/08
 6 #3
 7 -against-
 8 IRIS LEVITEN,
 9 DEFENDANT.
 10 -----X
 11 DATE: March 20, 2009
 12 TIME: 10:30 a.m.
 13 EXAMINATION BEFORE TRIAL of
 14 the Plaintiff, IRIS LEVITEN, taken by the
 15 respective parties, pursuant to a Court
 16 Order, held at the offices of Gair, Gair,
 17 Conason, Steigman & Mackauf, Esqs., 80 Pine
 18 Street, New York, New York 10005, before a
 19 Notary Public of the State of New York.
 20
 21
 22
 23
 24
 25

2 A P P E A R A N C E S:
 3
 4 GAIR, GAIR, CONASON,
 STEIGMAN & MACKAUF, ESQS.
 5 Attorneys for the Plaintiff
 80 Pine Street
 6 New York, New York 10005
 BY: HOWARD HERSHENHORN, ESQ.
 7
 8 ECKERT, SEAMANS, CHERIN & MELLOTT, LLC
 9 Attorneys for the Defendant
 Action Number 1
 10 LEXUS, A DIVISION OF TOYOTA
 MOTOR SALES USA
 11 10 Bank Street
 White Plains, New York 10606
 12 BY: EDWARD A. GRAY, ESQ.
 -and-
 13 STEVEN R. KRAMER, ESQ.
 14
 15 CONNORS & CONNORS, ESQS.
 16 Attorneys for the Defendant
 in Action Number 3
 17 IRIS LEVITEN
 766 Castleton Avenue
 18 Staten Island, New York 10310
 BY: LEONARD A. ROBUSTO, ESQ.
 19
 20 (Continued on the following
 21 page.)
 22
 23
 24
 25

2 A P P E A R A N C E S: (Continued)
 3
 4 AHMUTY, DEMERS & McMANUS, ESQS.
 5 Attorneys for the Defendant
 in Action Number 1
 6 ESTREE, INC., d/b/a LEXUS OF
 WESTPORT
 123 William Street
 7 New York, New York 10038
 BY: THOMAS G. CHOJNACKI, ESQ.
 8
 9 KERNER & KERNER, ESQS.
 10 Attorneys for the Plaintiff
 in Action Number 2
 11 MICHAEL DOUKAS
 140 Broadway
 12 New York, New York 10005
 BY: TODD J. STRIER, ESQ.
 13
 14 ALSO PRESENT:
 15 MICHAEL DOUKAS
 16
 17 * * *
 18
 19
 20
 21
 22
 23
 24
 25

2 221. UNIFORM RULES FOR THE
3 CONDUCT OF DEPOSITIONS

4 221.1 Objections at Depositions

5 (a) Objections in general. No
6 objections shall be made at a deposition
7 except those which, pursuant to subdivision
8 (b), (c) or (d) of Rule 3115 of the Civil
9 Practice Law and Rules, would be waived if
10 not interposed, and except in compliance
11 with subdivision (e) of such rule. All
12 objections made at a deposition shall be
13 noted by the officer before whom the
14 deposition is taken, and the answer shall
15 be given and the deposition shall proceed
16 subject to the objections and to the right
17 of a person to apply for appropriate relief
18 pursuant to Article 31 of the CPLR.

19 (b) Speaking objections restricted.
20 Every objection raised during a deposition
21 shall be stated succinctly and framed so as
22 not to suggest an answer to the deponent
23 and, at the request of the questioning
24 attorney, shall include a clear statement
25 as to any defect in form or other basis of
26 error or irregularity. Except to the
27 extent permitted by CPLR Rule 3115 or by
28 this rule, during the course of the
29 examination persons in attendance shall not
30 make statements or comments that interfere
31 with the questioning.

32 221.2 Refusal to answer when objection is
33 made. A deponent shall answer all questions
34 at a deposition, except (i) to preserve a
35 privilege or right of confidentiality, (ii)
36 to enforce a limitation set forth in an
37 order of the court, or (iii) when the
38 question is plainly improper and would, if
39 answered, cause significant prejudice to
40 any person. An attorney shall not direct a
41 deponent not to answer except as provided
42 in CPLR Rule 3115 or this subdivision. Any
43 refusal to answer or direction not to
44 answer shall be accompanied by a succinct
45 and clear statement of the basis therefor.
46 If the deponent does not answer a question,
47 the examining party shall have the right to
48 complete the remainder of the deposition.

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7

2 MR. HERSHENHORN: For the
3 record, the defendant, Metro Auto
4 Leasing, is represented by counsel
5 and they called us yesterday to say
6 that they waive the deposition, as
7 does the City of New York.

8 I R I S L E V I T E N , called as a
9 witness, having been first duly sworn by a
10 Notary Public of the State of New York, was
11 examined and testified as follows:

12 EXAMINATION BY

13 MR. GRAY:

14 Q. What is your name?

15 A. Iris Leviten.

16 Q. What is your address?

17 A. 6 Wood Avenue, Albertson,
18 New York 11507.

19 Q. My name is Eddie Gray. I
20 represent Toyota Motor Sales in this
21 action.

22 What I would like to do is
23 first introduce myself and then allow
24 everybody else to introduce themselves so
25 you have an understanding of who is

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2 221. UNIFORM RULES FOR THE
3 CONDUCT OF DEPOSITIONS

4 221.3 Communication with the deponent.

5 An attorney shall not interrupt the
6 deposition for the purpose of communicating
7 with the deponent unless all parties
8 consent or the communication is made for
9 the purpose of determining whether the
10 question should not be answered on the
11 grounds set forth in section 221.2 of these
12 rules and, in such event, the reason for
13 the communication shall be stated for the
14 record succinctly and clearly.

15 IT IS FURTHER STIPULATED AND AGREED
16 that the transcript may be signed before
17 any Notary Public with the same force and
18 effect as if signed before a clerk or a
19 Judge of the court.

20 IT IS FURTHER STIPULATED AND AGREED
21 that the examination before trial may be
22 utilized for all purposes as provided by
23 the CPLR.

24 IT IS FURTHER STIPULATED AND AGREED
25 that all rights provided to all parties by
the CPLR cannot be deemed waived and the
appropriate sections of the CPLR shall be
controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED by
and between the attorneys for the
respective parties hereto that a copy of
this examination shall be furnished,
without charge, to the attorneys
representing the witness testifying herein.

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8

1 LEVITEN

2 here.

3 MR. KRAMER: My name is
4 Steve Kramer. Good morning.

5 MR. CHOJNACKI: I am
6 Tom Chojnacki. I represent Estree,
7 Inc., which is Lexus of Westport.

8 MR. STRIER: My name is
9 Todd Strier and I represent the
10 plaintiff, Michael Doukas.

11 MR. ROBUSTO: You know me, I
12 am Mr. Robusto. We were in the
13 office at Gair, Gair during the
14 prep session.

15 MR. GRAY: Also present for
16 the record is Mr. Michael Doukas.

17 Q. I want to ask you a series of
18 questions today and basically in this
19 order, about your background, about your
20 prior ownership of vehicles, about your
21 purchase of the vehicle involved in the
22 accident and about the accident itself,
23 then we are going to take a break, allow
24 other attorneys to ask questions in the
25 same general subject areas and then after

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TOY-RQ-05E-00002298

1 LEVITEN
 2 that, do what they call damages, your
 3 injuries, residuals and things like that.
 4 Do you understand that?
 5 A. Yes.
 6 Q. We have a reporter here, you
 7 know that all your responses have to be
 8 verbal, correct?
 9 A. Yes.
 10 Q. You can take a break at any
 11 time you need to take a break.
 12 A. Yes.
 13 Q. Are you today on any type of
 14 medication or drug?
 15 A. No.
 16 Q. Is there anything impeding your
 17 ability to understand and answer questions
 18 today, that you are aware of?
 19 A. No.
 20 Q. In terms of some general
 21 background, ma'am, just could you tell me
 22 your date of birth and present age?
 23 A. 7/22/45. Sixty-three years
 24 old.
 25 Q. Your current home address?

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1 LEVITEN
 2 Q. Had you ever lived with anyone
 3 at the Albertson address?
 4 A. Yes, my daughter.
 5 Q. And your daughter's name is?
 6 A. Melanie.
 7 Q. Melanie Leviten?
 8 A. Her name presently is Melanie
 9 Stefano. At the time she lived with me, it
 10 was Melanie Leviten.
 11 Q. And had you ever been married?
 12 A. Yes.
 13 Q. And for how long were you
 14 married?
 15 A. I have been married two times.
 16 Q. When were you last married?
 17 A. As in what date did I get
 18 married?
 19 Q. When did your last marriage
 20 dissolve or your husband passed away or
 21 however it came to an end?
 22 A. Dissolved?
 23 Q. Was it before the Albertson
 24 address?
 25 A. Yes.

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1 LEVITEN
 2 A. 6 Wood Avenue, Albertson,
 3 New York.
 4 Q. And I understand you were
 5 living there on the day of the accident?
 6 A. Yes.
 7 Q. How many years have you been
 8 living at that address?
 9 A. Up to the present time or up to
 10 the date of the accident?
 11 Q. Up to the present time.
 12 A. Almost 11 years.
 13 Q. And before the Albertson
 14 address, where did you live?
 15 A. In Great Neck.
 16 Q. How long had you lived in Great
 17 Neck?
 18 A. About 15 years.
 19 Q. Do you currently live at the
 20 Albertson address with anyone?
 21 A. No, I don't.
 22 Q. At the time of the accident,
 23 were you living with anyone at this
 24 address?
 25 A. No.

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1 LEVITEN
 2 Q. What was that husband's name?
 3 A. Daniel Leviten.
 4 Q. Is Mr. Daniel Leviten still
 5 alive?
 6 A. Yes, he is.
 7 Q. Do you know where he resides?
 8 A. Yes, I do.
 9 Q. Tell us, please.
 10 A. In Bayside. New York.
 11 Q. Do you have a street?
 12 A. I am not sure.
 13 Q. Do you have more than one
 14 child?
 15 A. I do.
 16 Q. Your husband before Mr. Leviten
 17 was who?
 18 A. I am sorry?
 19 Q. Before Mr. Leviten, your
 20 husband was who?
 21 A. Richard Kamhi, K-A-M-H-I.
 22 Q. Is Mr. Kamhi still alive?
 23 A. No. He is not.
 24 Q. Do you recall when you were
 25 first married to Mr. Kamhi, just the year?

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1 LEVITEN
 2 A. I was about 20 years old.
 3 About -- I don't know, I was about 20
 4 years old.
 5 Q. You were 20 years old?
 6 A. Yes.
 7 Q. Do you remember the marriage
 8 year, what year you got married to
 9 Mr. Kamhi?
 10 A. 1965.
 11 Q. And for how long did that
 12 marriage last?
 13 A. About 13 years.
 14 Q. And then your second marriage,
 15 to Mr. Leviten, do you know what year that
 16 took place?
 17 A. 1981.
 18 Q. And how long did that marriage
 19 last?
 20 A. About 15 years.
 21 Q. Now, your two children, with
 22 whom did you have these children?
 23 A. First husband.
 24 Q. You told us about, was it
 25 Melanie?

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15

1 LEVITEN
 2 resources.
 3 Q. For whom?
 4 A. I believe the company's name is
 5 SCA, I am not sure.
 6 Q. I read some of the answers to
 7 discovery that were provided to your
 8 counsel. For a period of time you worked
 9 for the court system, correct?
 10 A. Yes.
 11 Q. And what court system was that?
 12 A. Supreme Court.
 13 Q. What county?
 14 A. Well, I worked in two different
 15 counties.
 16 Q. When was your first employment
 17 with the court system?
 18 A. Was in Kings County.
 19 Q. Was that around 1977?
 20 A. I believe it was '78 that I
 21 began.
 22 Q. And how long did you work in
 23 Kings County?
 24 A. Maybe three years.
 25 Q. And after Kings County, did you

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1 LEVITEN
 2 A. Melanie.
 3 Q. And the second child is?
 4 A. Lisa.
 5 Q. Lisa?
 6 A. Yes.
 7 Q. And is Lisa's name still
 8 Leviten?
 9 A. Yes, it is.
 10 Q. Where does Lisa live?
 11 A. Lisa lives on Long Island.
 12 Q. Town?
 13 A. Town is Westbury.
 14 Q. Street?
 15 A. Post Avenue.
 16 Q. Can you tell me what type of
 17 employment Lisa has, if any?
 18 A. She's in sales.
 19 Q. For who?
 20 A. ADP.
 21 Q. And Melanie, is she employed
 22 outside the home?
 23 A. Yes.
 24 Q. And as what?
 25 A. Vice-president of human

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1 LEVITEN
 2 go to another county to work in the court
 3 system?
 4 A. I did.
 5 Q. What county was that?
 6 A. Queens County.
 7 Q. And was it from Queens County
 8 that you retired in 2003?
 9 A. Yes. 2002.
 10 Q. You also had some employment
 11 with a real estate company?
 12 A. Yes.
 13 Q. When did that real estate
 14 company employment begin?
 15 A. I have been employed by two
 16 different companies.
 17 Q. How about the first company?
 18 A. When did that begin?
 19 Q. And its name.
 20 A. 2003 and that was Debra,
 21 D-E-B-R-A, Goldsmith Realty.
 22 Q. And where was that located?
 23 A. In Ocean Beach, New York.
 24 Q. For how long did you work for
 25 Debra Goldsmith?

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TOY-RQ-05E-00002300

1 LEVITEN
 2 A. Could have been year and a half
 3 to two years.
 4 Q. You left her employment before
 5 the accident?
 6 A. Yes.
 7 Q. And after Debra Goldsmith,
 8 where did you go?
 9 A. Prudential Douglas Elliman.
 10 Q. Do you remember the year you
 11 started that?
 12 A. Could have been 2004.
 13 Q. Were you employed by them at
 14 the time of the accident?
 15 A. Yes.
 16 Q. Giving rise to this case?
 17 A. Yes.
 18 Q. Are you still employed by them?
 19 A. Yes.
 20 Q. Are you a licensed real estate
 21 agent or broker?
 22 A. Yes, I am.
 23 Q. And when did you get your
 24 license?
 25 A. The year I started to work for

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1 LEVITEN
 2 Q. At the time of the accident, do
 3 you know what your weight was
 4 approximately?
 5 A. Approximately 120.
 6 Q. And your weight today?
 7 A. Approximately 115.
 8 Q. And I would need to know your
 9 shoe size.
 10 A. Size four and a half.
 11 Q. Is there a width?
 12 A. B width.
 13 Q. I want to ask you some
 14 questions about your medical history, not
 15 to pry too much, but there may be some
 16 information helpful for us, what was going
 17 on.
 18 Do you have any current medical
 19 conditions that you are treating for?
 20 A. Current?
 21 Q. Yes. Not associated with a
 22 broken leg, for example, if you are a
 23 diabetic or if you have some kind of liver
 24 function or --
 25 MR. HERSHENHORN: Note my

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1 LEVITEN
 2 Debra Goldsmith.
 3 MR. HERSHENHORN: Do you
 4 know the year?
 5 THE WITNESS: 2000 -- could
 6 have been 2002.
 7 Q. Is your license still current?
 8 A. Yes.
 9 Q. Is there a requirement that you
 10 keep your license current, is there some
 11 kind of testing you do or some kind of fee
 12 you pay to keep your license?
 13 A. Yes.
 14 Q. Is it a yearly fee?
 15 A. Yes.
 16 Q. Other counsel when I get to it,
 17 when they get to the damages portions of
 18 the deposition might have other questions
 19 on that, but for background information,
 20 that's enough for me.
 21 How tall are you?
 22 A. Four-foot-eleven.
 23 Q. Do you know what your inseam
 24 length is?
 25 A. No, I don't.

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1 LEVITEN
 2 objection to the form of the
 3 question.
 4 Go ahead and answer.
 5 A. My kidney.
 6 Q. What is that?
 7 A. I had an operation and I go for
 8 follow-up exams.
 9 Q. When was your kidney operation?
 10 A. March 2008.
 11 Q. Do you know what the condition
 12 was that you had the operation for?
 13 A. I had a tumor.
 14 Q. Prior to the date of the
 15 accident, were there any medical conditions
 16 that you were treating for?
 17 A. No.
 18 Q. No history of cardiovascular
 19 disease, no history of diabetes, other
 20 diseases like that?
 21 MR. HERSHENHORN: Note my
 22 objection to the form.
 23 You can answer.
 24 A. Osteoporosis.
 25 Q. Anything else?

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1 LEVITEN
 2 A. No.
 3 Q. As of the date of the accident,
 4 did you have a family doctor or a treating
 5 physician?
 6 A. Yes.
 7 Q. Could you tell me that person's
 8 name?
 9 A. Dr. John Santucci.
 10 Q. Where is Dr. Santucci located?
 11 A. He is in New Hyde Park or Lake
 12 Success. I think it is Lake Success.
 13 Q. And what type of doctor is he?
 14 A. He is an internist.
 15 Q. For how long had he been your
 16 family or treating doctor?
 17 A. Could be for the past ten
 18 years.
 19 Q. So --
 20 A. I am not sure exactly. What
 21 year I went to him.
 22 Q. Before Dr. Santucci, did you
 23 have a family or treating doctor?
 24 A. Not that I recall.
 25 Q. Prior to the injuries you

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23

1 LEVITEN
 2 Also, another doctor is a
 3 gynecologist.
 4 Q. That doctor's name?
 5 A. That is Amand, A-M-A-N-D,
 6 Fridell, F-R-I-D-E-L-L.
 7 Q. Where is Dr. Fridell located?
 8 A. New Hyde Park.
 9 Q. Were you seeing Dr. Fridell
 10 before the accident?
 11 A. For checkups, annual checkups.
 12 Q. Have you ever been treated for
 13 or diagnosed with any type of nervous
 14 system disease or problems?
 15 A. No.
 16 Q. Any type of neuropathy in your
 17 extremities such as your hands, your feet,
 18 your legs?
 19 A. I am not sure what that means.
 20 Q. Lack of sensation, lack of
 21 feeling?
 22 A. No.
 23 Q. Lack of coordination or control
 24 in your extremities, your hand, your arms,
 25 your legs, your feet?

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1 LEVITEN
 2 received in this accident, had you ever
 3 been hospitalized for anything other than
 4 childbirth?
 5 A. Yes.
 6 Q. For what, ma'am?
 7 A. I was in a car accident when I
 8 was 17.
 9 Q. And what type of injuries did
 10 you sustain that required hospitalization?
 11 A. A fractured pelvis.
 12 Q. And other than that
 13 hospitalization, any others?
 14 A. Appendicitis when I was 13
 15 years old.
 16 Q. Anything else?
 17 A. Hospital you said?
 18 Q. Yes, ma'am.
 19 A. No.
 20 Q. Other than being identified as
 21 a family doctor or treating physician, what
 22 were you seeing Dr. Santucci for, if
 23 anything, for the period of time prior to
 24 the accident?
 25 A. General checkups.

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1 LEVITEN
 2 A. No.
 3 Q. Did you have a podiatrist at
 4 the time of the event?
 5 A. No.
 6 Q. Have you ever seen a podiatrist
 7 for any reason?
 8 A. Did I ever?
 9 Q. Yes.
 10 A. Yes.
 11 Q. Do you recall when and for what
 12 reason?
 13 A. When I was at Amsterdam Nursing
 14 Home, I saw a podiatrist there.
 15 Q. This is you were at Amsterdam
 16 arising --
 17 A. From the accident.
 18 Q. From the injuries due to the
 19 accident?
 20 A. Yes.
 21 Q. Other than that one time?
 22 A. No. Not that I remember.
 23 Q. Ms. Leviten, you told us about
 24 one accident you had when you were 17. Had
 25 you been involved in any other automobile

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1 LEVITEN
 2 accidents, car accidents?
 3 A. Yes.
 4 Q. Do you recall if you can tell
 5 us sequentially when and where?
 6 A. I am not sure about when and
 7 where except for one, I recall, on Roslyn
 8 Road, it could have been --
 9 MR. HERSHENHORN: Don't
 10 guess.
 11 A. Okay, I am not sure when it
 12 was.
 13 Q. Was it before the accident
 14 giving rise to this case?
 15 A. Yes.
 16 Q. Can you give me a ballpark
 17 number of years before, more than five,
 18 more than ten?
 19 A. I think it was less than five.
 20 Q. If I was to ask the year, would
 21 it be in 2000?
 22 A. 2000.
 23 Q. Roslyn Road, you said?
 24 A. Yes.
 25 Q. Where is that located?

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1 LEVITEN
 2 resulting from that accident?
 3 A. No.
 4 Q. Was there any lawsuit commenced
 5 by you or against you as a result of that
 6 accident?
 7 A. No.
 8 Q. Do you know if any particular
 9 traffic citations were issued against you
 10 or the other person involved in the
 11 accident?
 12 A. Traffic citation, I don't think
 13 so.
 14 Q. What type of vehicle were you
 15 operating on the day of that accident?
 16 A. It was a Lexus.
 17 Q. Do you know the year, the model
 18 of the Lexus?
 19 A. It was a GS 300, I believe it
 20 was a 1993.
 21 Q. Was that Lexus owned or leased
 22 by you?
 23 A. Yes.
 24 Q. Was it owned?
 25 A. Yes.

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1 LEVITEN
 2 A. In Roslyn.
 3 Q. Any more information other than
 4 Roslyn Road in Roslyn?
 5 MR. HERSHENHORN: What more
 6 do you want?
 7 MR. GRAY: Cross street,
 8 shopping mall.
 9 MR. HERSHENHORN: Nassau
 10 County?
 11 A. In Nassau County. Yes.
 12 MR. HERSHENHORN: Do you
 13 remember the cross street?
 14 THE WITNESS: No.
 15 Q. Can you --
 16 A. I don't remember.
 17 Q. Can you tell me the
 18 circumstances of the accident?
 19 A. I was stopped at a light --
 20 oh, no. That is not so. I was going with
 21 a green light, someone else was stopped at
 22 a red light and left that light and came
 23 and hit me on the side as I was passing
 24 through the green light.
 25 Q. Did you receive any injuries

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1 LEVITEN
 2 Q. From whom did you buy that
 3 Lexus?
 4 A. Prestige Lexus in New Jersey.
 5 Q. Did that particular Lexus have
 6 floor mats in it?
 7 A. I don't recall.
 8 Q. As a result of that accident,
 9 was the Lexus totaled or were you able to
 10 have it repaired?
 11 A. As a result of what accident?
 12 Q. The one we are talking about in
 13 Roslyn on Roslyn Road?
 14 A. Could you please repeat the
 15 question?
 16 Q. As a result of that accident,
 17 was that particular Lexus repaired or
 18 totaled? What became of it?
 19 A. Repaired.
 20 Q. And for how long did you drive
 21 that Lexus after that accident in Roslyn?
 22 A. I am not sure.
 23 Q. In responding to one of the
 24 questions, you suggested you were stopped,
 25 but that now sounds like it is a different

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1 LEVITEN
 2 accident.
 3 Were you involved in another
 4 accident?
 5 MR. ROBUSTO: Objection to
 6 the form of the question.
 7 MR. HERSHENHORN: Do you
 8 understand the question. She
 9 retracted what she said, that she
 10 was stopped.
 11 MR. GRAY: It suggested to
 12 me that perhaps --
 13 MR. HERSHENHORN: Why don't
 14 you just ask it again.
 15 Q. Were you involved in another
 16 accident before the one giving rise to this
 17 case?
 18 A. Yes.
 19 Q. Were you stopped?
 20 A. Yes.
 21 Q. Can you tell me the
 22 circumstances of that accident?
 23 A. I wasn't -- I was at a stop
 24 sign, or going to stop at a stop sign and
 25 slid through that stop sign.

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1 LEVITEN
 2 Q. You struck another vehicle or
 3 an abutment or --
 4 A. Yes, I tapped, yes.
 5 Q. Can you tell me if you recall
 6 the road conditions that day which would
 7 have caused you to slide through or slide
 8 past the stop sign?
 9 A. Rainy with leaves on the
 10 ground.
 11 Q. As a result of that accident,
 12 where you slid through the stop sign, were
 13 there any lawsuits brought?
 14 A. No.
 15 Q. Claimed by you or against you?
 16 A. No.
 17 Q. Were the property damage issues
 18 then handled by your insurance company, if
 19 you recall?
 20 A. I don't recall.
 21 Q. Would you recall for either of
 22 those accidents, who your insurance --
 23 your automobile insurance company would
 24 have been?
 25 A. The one that was several years

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1 LEVITEN
 2 Q. And then what happened?
 3 A. And then I hit a car.
 4 Q. What type of vehicle were you
 5 operating on that day?
 6 A. I don't remember which car.
 7 Probably, I can guess.
 8 Q. I don't need you to guess.
 9 MR. HERSHENHORN: Don't.
 10 Q. Was that accident before or
 11 after the Roslyn accident?
 12 A. Before.
 13 Q. Do you know if you can ballpark
 14 for me the number of years before, a year
 15 before, two years?
 16 A. Many.
 17 Q. Many?
 18 A. Yes.
 19 Q. So, it didn't begin with a 2,
 20 the year?
 21 A. No. I don't think so.
 22 Q. As a result of that accident,
 23 the one where you slid through a stop sign,
 24 were you injured?
 25 A. No.

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1 LEVITEN
 2 ago, I don't know.
 3 Q. That's the sliding through the
 4 stop sign?
 5 A. Yes. I don't know.
 6 Q. How about the Roslyn?
 7 A. The Roslyn, Allstate.
 8 Q. On the day of the accident
 9 giving rise to this case, who is or was
 10 your insurance company?
 11 A. GEICO.
 12 Q. Do you still have GEICO as your
 13 insurer?
 14 A. I do.
 15 Q. As of the Roslyn accident, we
 16 know you were driving a Lexus, I forgot the
 17 year, 2003?
 18 A. '93.
 19 Q. You were driving a Lexus, 1993
 20 model?
 21 A. Correct.
 22 Q. Was it 300, you said, 300
 23 series?
 24 A. Yes. 300 GS.
 25 Q. The accident giving rise to

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TOY-RQ-05E-00002304

1 LEVITEN
 2 this particular case, what vehicle were you
 3 operating that day?
 4 A. A Lexus.
 5 Q. Do you know the model year?
 6 A. ES 350, 2007.
 7 Q. From whom did you purchase
 8 that?
 9 A. Metro Auto Leasing.
 10 Q. Did you own that vehicle or did
 11 you lease that vehicle?
 12 A. I owned that vehicle.
 13 Q. Between the ownership of the
 14 1993 Lexus and ownership of the 2007 Lexus,
 15 did you own any other vehicles?
 16 A. Yes.
 17 Q. When you purchased the 2007
 18 Lexus, did you trade in or salvage another
 19 vehicle?
 20 A. Could you repeat it?
 21 Q. When you purchased the 2007
 22 Lexus, I take it you had a vehicle at that
 23 time?
 24 A. Yes.
 25 Q. And what was that vehicle?

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1 LEVITEN
 2 MR. GRAY: Registration
 3 card, owner's card, however you
 4 want to identify it, title history.
 5 MR. HERSHENHORN: Note my
 6 objection to the form.
 7 Do you have any documents
 8 left over from that vehicle?
 9 THE WITNESS: No.
 10 Q. Where did you service that 1993
 11 Toyota Lexus GS 300?
 12 A. At a service station in, I
 13 believe the town is Mineola.
 14 Q. Mineola, New York?
 15 A. Mineola, New York. I am not
 16 exactly sure of the town.
 17 Q. Do you know the name of the
 18 service station?
 19 A. Olympia.
 20 Q. Any idea of the street it may
 21 be on?
 22 A. Hillside Avenue.
 23 Q. When is it, if you can recall,
 24 that you started looking for a vehicle to
 25 replace the 1993 Lexus GS 300?

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1 LEVITEN
 2 A. That was the GS 300 Lexus.
 3 Q. So, the vehicle -- did you
 4 trade that in?
 5 A. I sold it.
 6 Q. You sold it?
 7 A. Yes.
 8 Q. So, when you sold the 1993
 9 Lexus GS 300, your next vehicle was the
 10 2007?
 11 A. Yes.
 12 Q. To whom did you sell the 1993
 13 Lexus GS 300?
 14 A. I don't recall this person's
 15 name.
 16 Q. Do you have any record of the
 17 sale, a note, phone number, receipt, a
 18 check?
 19 A. I don't think so.
 20 Q. Do you have any information
 21 regarding that vehicle in terms of an old
 22 owner's card, inspection sticker?
 23 MR. HERSHENHORN: What do
 24 you mean by owner's card? A
 25 registration?

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1 LEVITEN
 2 A. I don't know.
 3 Q. Sometime before you purchased
 4 the 2007 one, correct?
 5 A. I am sorry, please say that
 6 again.
 7 Q. I am just trying to find out
 8 when you started looking to replace your
 9 car, the 1993 one.
 10 A. Are you asking how long before
 11 I purchased it did I look?
 12 Q. Did you start looking, right.
 13 A. Few months before.
 14 Q. And in that few months when you
 15 were looking to replace your 1993 Lexus GS
 16 300, can you tell me where you looked and
 17 what type of vehicles you looked at?
 18 A. The type of vehicles I looked
 19 at was BMW 300 series. Audi, I don't
 20 remember if it was the TL or the RL, the
 21 least expensive of the two models. Audi
 22 A4. Honda Accord. There may be others, I
 23 don't recall at this time.
 24 Q. And to assist you in your
 25 looking, were you using any type of search

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1 LEVITEN
 2 on the web or using Consumer Reports or
 3 those types of documents?
 4 MR. HERSHENHORN: Note my
 5 objection to the form.
 6 A. Newspaper.
 7 Q. Newspaper advertisements?
 8 A. Yes.
 9 Q. Were they mostly talking about
 10 the price of the vehicles as opposed to the
 11 features of the vehicles?
 12 MR. HERSHENHORN: Note my
 13 objection to the form.
 14 A. Were the newspapers talking
 15 mostly the price?
 16 Q. Mostly the price or the
 17 features?
 18 A. Both.
 19 Q. What were you looking for in
 20 this vehicle you were going to use to
 21 replace your 1993 Lexus GS 300?
 22 MR. HERSHENHORN: Can you be
 23 a little more specific.
 24 MR. GRAY: Sure, was it
 25 price driven, was it color driven,

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1 LEVITEN
 2 MR. HERSHENHORN: Why did
 3 you pick that car.
 4 MR. GRAY: I believe you
 5 said RS.
 6 MR. HERSHENHORN: Did you
 7 say RS 350? ES.
 8 (Whereupon, a brief recess
 9 was taken.)
 10 Q. We are back after a short
 11 break. Let me try to rephrase the
 12 question.
 13 What is it that led you to
 14 purchase or own, as you described, the 2007
 15 Lexus ES 350?
 16 A. I liked the look and that I was
 17 comfortable sitting in the car. And
 18 certain features.
 19 Q. Being what, ma'am?
 20 A. Had a backup camera, heated
 21 seats, air bags, navigation system. That's
 22 about it.
 23 Q. Now, did you visit Metro on
 24 more than one occasion to look at cars?
 25 MR. HERSHENHORN: Note my

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1 LEVITEN
 2 four-door, two-door.
 3 MR. HERSHENHORN:
 4 Combination of all those things.
 5 MR. GRAY: Engine size,
 6 leather, heated seats.
 7 A. Probably a combination.
 8 Comfort mostly.
 9 Q. Comfort being what?
 10 A. Being that I fit comfortably on
 11 the seat.
 12 Q. Meaning --
 13 A. Meaning if you are
 14 four-foot-eleven, not every car is
 15 comfortable to sit in.
 16 Q. And when you were looking at
 17 BMWs and Audis and Hondas, did you test sit
 18 in them?
 19 A. Of course, I did.
 20 Q. For lack of a better word?
 21 A. Of course, I did.
 22 Q. Can you tell me then what it is
 23 about the Lexus RS 350 model year 2007,
 24 what was the reason you picked that one?
 25 A. I am sorry.

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1 LEVITEN
 2 objection. It assumes she looked
 3 at cars at Metro, but go ahead.
 4 Q. Was that the dealership you
 5 went to?
 6 MR. HERSHENHORN: That's not
 7 how it works.
 8 Q. Tell me how you got your car.
 9 A. I went to different dealers and
 10 then I found out about Metro Leasing and
 11 went to them a couple of times.
 12 Q. Did you go to them after you
 13 decided to purchase a Lexus?
 14 A. Yes, I did.
 15 Q. Can you tell me what Lexus
 16 dealerships then you may have gone to to
 17 look at the Lexus vehicle that you
 18 ultimately purchased or leased from Metro?
 19 A. I don't remember the
 20 dealerships. They were --
 21 MR. HERSHENHORN: That's
 22 your answer.
 23 A. I don't remember the
 24 dealerships.
 25 Q. If you don't remember their

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1 LEVITEN
 2 names, do you remember where they were
 3 located?
 4 A. They were located on
 5 Long Island.
 6 Q. And were they located near your
 7 town in Long Island?
 8 A. Not necessarily.
 9 Q. Can you give me any idea of the
 10 towns they may have been in that you looked
 11 at?
 12 A. One was Massapequa, I don't
 13 remember --
 14 Q. When you visited these
 15 dealerships, did you take away any type of
 16 literature, business cards from salesmen,
 17 anything which would allow us to identify
 18 the dealership or the people you may have
 19 spoken with about the Lexus you ultimately
 20 purchased or leased?
 21 MR. HERSHENHORN: Note my
 22 objection to the form.
 23 A. I don't recall if I took away
 24 anything.
 25 Q. If you had taken away anything,

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1 LEVITEN
 2 Island City.
 3 Q. Were you still employed at the
 4 courthouse in Long Island City when you
 5 purchased the 2007?
 6 A. No.
 7 Q. Were you still in communication
 8 with people you had worked with at the
 9 courthouse?
 10 A. Yes.
 11 Q. Who would they have been?
 12 MR. HERSHENHORN: All the
 13 people she was in communication
 14 with?
 15 MR. GRAY: Well, I am
 16 assuming she may have left and had
 17 friends she had communicated
 18 regularly with.
 19 A. Couple of court reporters.
 20 Q. Do you have names, if you can
 21 recall?
 22 A. One woman was Hyacinth.
 23 Q. Like the flower?
 24 A. Yes.
 25 Q. Is that her first name?

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1 LEVITEN
 2 do you know whether or not you may still
 3 have it at your home?
 4 A. No. I don't have anything.
 5 Q. Do you maintain any type of
 6 file regarding the purchase of the vehicle
 7 at your home or elsewhere?
 8 A. Should have.
 9 MR. GRAY: I would ask if
 10 you have such a file or materials,
 11 provide it to your counsel, okay?
 12 A. For the 2007.
 13 Q. Right.
 14 How did you find out about this
 15 Metro Leasing?
 16 A. I am not sure.
 17 Q. Do you have any idea how you
 18 found, not a guess, but a reasonable
 19 assumption as to how you found out?
 20 A. Possibly through someone I
 21 worked with.
 22 Q. Do you have a name?
 23 A. I am not sure who it was.
 24 Q. You worked with --
 25 A. At the courthouse in Long

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1 LEVITEN
 2 A. Yes.
 3 Q. Last name?
 4 A. I don't recall at this time.
 5 Another person was Drayiya
 6 (phonetic) Burna.
 7 Q. How do you spell Burna?
 8 A. I think it is B-U-R-N-A.
 9 Couple of judges, I don't know
 10 if they still work there.
 11 Q. Names?
 12 A. Judge McDonald. When I would
 13 go for a Christmas party, I would see them,
 14 communicate that way. So --
 15 Q. Do you know if you attended the
 16 Christmas party in 2006?
 17 A. I might have.
 18 Q. When is the first time that you
 19 recall going to Metro Leasing, if you can
 20 give me a month, a year?
 21 A. Probably the month I bought the
 22 car. Could have been November, December.
 23 Could have been '06.
 24 MR. HERSHENHORN: Don't
 25 guess.

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1 LEVITEN
 2 A. I am not sure.
 3 Q. Let's assume for the sake of
 4 the question that the record reflects the
 5 purchase of the vehicle as December 2006
 6 and delivery in January of 2007, okay?
 7 A. Okay.
 8 Q. Assuming that you went to Metro
 9 in November of 2006 or December 2006, do
 10 you know where Metro was located at that
 11 time?
 12 A. In Long Island City.
 13 Q. When you went to Metro, what
 14 did you say or ask of them?
 15 MR. HERSHENHORN: Note my
 16 objection to the form.
 17 You can answer.
 18 A. I told them what kind of car I
 19 was interested in purchasing.
 20 Q. Did you discuss with them the
 21 prices you had found at other places?
 22 A. No.
 23 Q. When you told them the vehicle
 24 you were interested in purchasing, what, if
 25 anything, did they say to you or represent

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1 LEVITEN
 2 A. Caucasian.
 3 Q. Rough age, description?
 4 A. I am not sure about age. He
 5 was sitting down --
 6 MR. HERSHENHORN: Just
 7 answer the question.
 8 A. I don't know.
 9 Q. Did you receive any type of
 10 business cards from either Mr. Pryce or
 11 this other man?
 12 A. Yes.
 13 Q. Do you maintain at your home or
 14 do you have in your possession in some
 15 fashion either business cards or brochures,
 16 any other documents you may have received
 17 from Metro Leasing regarding this purchase
 18 lease of this vehicle?
 19 A. No.
 20 Q. Have you provided to your
 21 counsel all materials you may have had
 22 regarding the purchase and lease of this
 23 vehicle in terms of brochures, payment
 24 stubs, checks, business cards?
 25 MR. HERSHENHORN: What she

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1 LEVITEN
 2 to you?
 3 A. They told me they could look
 4 around to get me the vehicle I am
 5 interested in at a certain price.
 6 Q. You used the word they?
 7 A. I spoke to one person.
 8 Q. Who was that person?
 9 A. I believe his name is Chris
 10 Pryce. P-R-Y-C-E.
 11 Q. If I recall your testimony
 12 correctly, earlier, you said you went to
 13 Metro a couple of times?
 14 A. Yes.
 15 Q. Do you know how many
 16 approximately?
 17 A. I believe twice.
 18 Q. On both occasions, did you talk
 19 to Mr. Pryce?
 20 A. I remember speaking with
 21 someone else whose name I don't recall.
 22 Q. A man or a woman?
 23 A. A man.
 24 Q. Caucasian, African-American,
 25 Hispanic?

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1 LEVITEN
 2 provided to me is really -- you
 3 can ask us and we can give it to
 4 you.
 5 Q. Did you provide them
 6 materials?
 7 MR. HERSHENHORN: You can
 8 answer.
 9 MR. ROBUSTO: Why don't you
 10 break it down?
 11 A. Could you please repeat the
 12 question?
 13 Q. Sure.
 14 Let me lay a premise. You went
 15 to purchase a car from Metro?
 16 A. Yes.
 17 Q. We know you got a business card
 18 from -- we know you know the name of
 19 Mr. Pryce, correct?
 20 A. Yes.
 21 Q. He may have given you a
 22 business card, correct?
 23 A. Yes.
 24 Q. What I am asking for is, do you
 25 have any other materials they may have

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1 LEVITEN
 2 given you regarding your looking at cars,
 3 people to contact, agreements to purchase
 4 or lease?
 5 A. Bill of sale.
 6 Q. Other than the bill of sale?
 7 A. No.
 8 Q. Have you provided that to your
 9 counsel?
 10 MR. HERSHENHORN: And we
 11 have provided it to you.
 12 MR. GRAY: It is a
 13 question. I can depose you later.
 14 MR. HERSHENHORN: She -- we
 15 have already given that.
 16 MR. GRAY: I understand.
 17 She has to answer the question,
 18 that's all.
 19 Q. Did you provide that to your
 20 counsel?
 21 A. Yes.
 22 Q. Were there any other materials
 23 other than the bill of sale you provided to
 24 your counsel which involves the purchase of
 25 the vehicle or people you spoke with at

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1 LEVITEN
 2 do you recall whether or not those vehicles
 3 had floor mats in them?
 4 A. I don't recall.
 5 Q. The first time you went to
 6 Metro, they didn't have a vehicle, but you
 7 went back a second time; is that correct,
 8 to Metro?
 9 A. I am sorry.
 10 Q. You said you went there twice?
 11 A. Yes.
 12 Q. The second time you went to
 13 Metro, what was the purpose of that visit?
 14 A. To make a decision on
 15 purchasing a car.
 16 Q. The second time you were at
 17 Metro, did they have the car?
 18 A. At the premises you mean?
 19 Q. Yes.
 20 A. No.
 21 Q. Did you make a decision to
 22 purchase the car a second time?
 23 A. Yes.
 24 Q. But Metro didn't have a 2007
 25 Lexus ES 350 on the lot at that time?

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1 LEVITEN
 2 Metro?
 3 A. Not that I recall.
 4 Q. When you first went to Metro,
 5 did they have a 2007 Lexus ES 350 at the
 6 facility that you looked at?
 7 A. No.
 8 Q. When you went to these Lexus
 9 dealerships --
 10 A. I am sorry, you said did I go
 11 there in 2007?
 12 Q. No, when you went to Metro, did
 13 they have, the first time you went to
 14 Metro, did they have on the lot a 2007
 15 Lexus ES 350 that you looked at?
 16 A. No. They did not.
 17 Q. When you went to the Lexus
 18 dealers before going to Metro, you looked
 19 at the Lexus ES 350 model year 2007,
 20 correct?
 21 A. Correct.
 22 Q. Did you get in any of those
 23 vehicles?
 24 A. Yes.
 25 Q. When you got in those vehicles,

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1 LEVITEN
 2 A. No, they did not.
 3 Q. When you agreed to purchase the
 4 car that second time, were you speaking
 5 with Mr. Pryce?
 6 A. I am not sure if it was he I
 7 spoke with or this other person that was in
 8 that company.
 9 Q. The second time you went to
 10 Metro, when you agreed to purchase the car,
 11 did you fill out any paperwork?
 12 A. I think so.
 13 Q. Is that paperwork that you
 14 would have taken with you?
 15 MR. HERSHENHORN: Maybe
 16 partially.
 17 A. I am not sure.
 18 Q. Did you bring any paperwork
 19 with you home from that second visit?
 20 A. I don't remember.
 21 Q. Can you tell me what the
 22 conditions were that you agreed to purchase
 23 the vehicle on the second visit to Metro?
 24 A. I was told that they found the
 25 car.

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1 LEVITEN
 2 MR. HERSHENHORN: He just
 3 asked you what the conditions were,
 4 did they tell you what the deal
 5 was, how much you were going to pay
 6 for it?
 7 A. As far as payment?
 8 Q. Yes.
 9 A. Yes.
 10 Q. What was that?
 11 A. I believe the total price was
 12 37,000.
 13 Q. And were you going to finance
 14 that through them?
 15 A. Not through them, no.
 16 Q. I asked you before whether you
 17 purchased the car or you leased the car,
 18 was the car leased or an outright purchase?
 19 A. It was a purchase.
 20 Q. When you went to Metro the
 21 second time, and you agreed to purchase it,
 22 what did they tell you about finding the
 23 car and where you can actually see the
 24 car?
 25 MR. HERSHENHORN: Note my

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1 LEVITEN
 2 satisfied with the vehicle before the
 3 purchase would be completed?
 4 A. I don't think so.
 5 Q. Did you ever test drive a Lexus
 6 ES 350 model year 2007 before one was
 7 delivered to your home?
 8 A. Yes.
 9 Q. And where did you do these test
 10 drives?
 11 A. I don't recall.
 12 Q. Would it have been at the Lexus
 13 dealerships you had visited?
 14 A. Yes. One or two of them. Not
 15 necessarily every single one.
 16 Q. From the period of time you
 17 decided to make the purchase upon your
 18 second visit to Metro, until the vehicle
 19 arrived at your front door, did you test
 20 drive any 2007 Lexus ES 350s?
 21 A. I don't think so.
 22 Q. Who delivered the Lexus ES 350
 23 model year 2007 to your door?
 24 A. I don't recall.
 25 Q. Was it driven there by a

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1 LEVITEN
 2 objection.
 3 A. They didn't.
 4 Q. What did they tell you about
 5 the car?
 6 A. I believe he said it would be
 7 delivered to my home.
 8 Q. And do you know where the car
 9 was found, did they tell you where it was?
 10 A. Westport, Connecticut
 11 dealership.
 12 Q. Did he tell you the name of the
 13 dealership?
 14 A. I don't recall.
 15 Q. When is the first time that you
 16 actually saw the car that you purchased?
 17 A. I believe when it was delivered
 18 to my home.
 19 Q. Do you know when it was
 20 delivered?
 21 A. The exact day, I don't
 22 remember.
 23 Q. In your agreement with Metro
 24 Leasing, was it contingent upon after the
 25 vehicle being delivered that you were

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1 LEVITEN
 2 person, was it a flatbed truck, was it
 3 towed there, how did it arrive?
 4 MR. HERSHENHORN: Note my
 5 objection to the form.
 6 You can answer the
 7 question.
 8 A. I believe it was driven.
 9 Q. Do you know by whom?
 10 A. No.
 11 Q. When the person arrived at your
 12 home, who did he represent that he was in
 13 terms of his employment?
 14 A. I don't recall.
 15 Q. Now, I'm not familiar with this
 16 program so is this a situation where they
 17 knock on your door, hand you the keys and
 18 leave or do they give you a test ride, do
 19 they describe the vehicle to you?
 20 MR. HERSHENHORN: Note my
 21 objection.
 22 Q. What did they do?
 23 MR. HERSHENHORN: Note my
 24 objection to the form.
 25 You may answer.

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1 LEVITEN
 2 A. They spent some time going over
 3 the features of the vehicle.
 4 Q. Was there more than one person?
 5 A. No.
 6 Q. Just one person?
 7 A. One person.
 8 Q. Is this a male or a female?
 9 A. A male.
 10 Q. Ethnicity?
 11 A. Caucasian.
 12 Q. Describe any physical
 13 characteristics, height, weight, hair, no
 14 hair, color hair?
 15 MR. HERSHENHORN: Note my
 16 objection to the form.
 17 You can answer.
 18 A. Average, nothing outstanding
 19 that I could recall.
 20 Q. Did this person take a test
 21 ride with you in the vehicle?
 22 A. No.
 23 Q. How long did this person spend
 24 with you at your home when he delivered the
 25 vehicle?

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1 LEVITEN
 2 MR. HERSHENHORN: Objection
 3 to the form.
 4 You can answer.
 5 A. I believe there might have been
 6 on the passenger side having to do with the
 7 air bag.
 8 Q. Anything else that you recall
 9 as you sit here today?
 10 A. I don't recall anything else.
 11 Q. Was there any type of plastic
 12 on the seats, paper on the seats, plastic
 13 on the floor, paper on the floor, maybe to
 14 protect the interior from the guy who was
 15 driving it? Sometimes there are mechanics
 16 that have grease on their shoes when they
 17 service your vehicle. Do you remember
 18 seeing anything like that?
 19 MR. HERSHENHORN: Objection
 20 to the form.
 21 You can answer.
 22 A. On that day?
 23 Q. The day you received it, yes.
 24 A. There was plastic on the
 25 driver's side, that I can recall, on the

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1 LEVITEN
 2 A. Few minutes.
 3 Q. Do you recall what features he
 4 pointed out to you?
 5 A. I don't recall exactly.
 6 Q. Did he give you any type of
 7 documentation in addition to the vehicle?
 8 A. I believe there was something
 9 in the glove compartment.
 10 Q. Do you know what it was?
 11 A. A book describing the car.
 12 Q. Anything else?
 13 A. I don't recall.
 14 Q. Do you recall upon delivery to
 15 you there being any type of tags, be they
 16 permanent or temporary, on the inside of
 17 the vehicle?
 18 A. I am not sure what you mean.
 19 Q. Sometimes they have a little
 20 tag like this is the vehicle number hanging
 21 from the rear-view mirror, it may have some
 22 tags on the glove compartment saying this
 23 is the air bag, any type of signs on the
 24 vehicle interior when it was delivered to
 25 you?

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1 LEVITEN
 2 floor.
 3 Q. What type of plastic?
 4 A. I am not sure what you mean by
 5 type.
 6 Q. Heavy film plastic that he took
 7 with him, a plastic that was on the floor
 8 mat, a plastic bag, what type of plastic
 9 was it?
 10 MR. HERSHENHORN: Note my
 11 objection to the form.
 12 You can answer.
 13 A. I never touched it. But it
 14 seemed to be wrapped around the mat, the
 15 carpet.
 16 Q. Did the person remove that
 17 plastic?
 18 A. No.
 19 Q. Did you ever remove that
 20 plastic?
 21 A. No.
 22 Q. Was the plastic on there as of
 23 the day of your accident?
 24 A. Yes.
 25 Q. Did the plastic have any

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1 LEVITEN
 2 writing on it?
 3 A. I don't know.
 4 Q. Was there any such plastic on
 5 the passenger side wrapped around the floor
 6 mat?
 7 A. I never noticed.
 8 Q. How about in the rear of the
 9 vehicle, any plastic on those floor mats or
 10 on the seats or anything like that?
 11 A. I don't think so. But I am not
 12 sure.
 13 Q. When they delivered the
 14 vehicle, did it have a full tank of gas?
 15 A. I don't remember.
 16 Q. Upon the man leaving, what did
 17 you do then in reference to the car?
 18 A. I am not sure what you mean.
 19 Q. Did you get in it right away,
 20 did you show it off to friends, did you
 21 drive around the block?
 22 MR. HERSHENHORN: Note my
 23 objection to the form but you can
 24 answer.
 25 A. I don't remember what I did.

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1 LEVITEN
 2 any way?
 3 A. No.
 4 Q. Do you know whether or not
 5 there were any holes in the floor mat which
 6 allowed it to be fastened to any hooks in
 7 the floor of the vehicle?
 8 A. No.
 9 Q. At any time up through the day
 10 of your accident, did you notice any hooks
 11 or holes in the floor mat to which they
 12 could be attached?
 13 A. No.
 14 Q. Do you know anything about the
 15 floor mat other than seeing this plastic
 16 wrapped around it?
 17 A. No.
 18 Q. If I recall what I read in some
 19 of the discovery, you were the only driver
 20 of that vehicle?
 21 A. Correct.
 22 Q. Is that to say that you were
 23 the only one who ever drove it, none of
 24 your daughters ever drove it, friends
 25 didn't drive it?

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1 LEVITEN
 2 Q. Do you remember the first time
 3 you drove it after the man dropped it off?
 4 A. Do I remember the feeling I
 5 had --
 6 Q. No, the first time, day, hour,
 7 did you let it sit out front for a month
 8 and then drive it, did you drive it that
 9 day or the next day?
 10 MR. HERSHENHORN: Note my
 11 objection to the form.
 12 A. I drove it that day.
 13 Q. In driving it that day, did you
 14 have any problems with the vehicle in terms
 15 of its performance?
 16 A. Not that I recall.
 17 Q. Did it accelerate when you
 18 pushed the gas pedal, stop when you applied
 19 the brake?
 20 A. Yes.
 21 Q. The first day that you received
 22 the car, when you noticed this plastic
 23 wrapped around as you've described it, the
 24 driver floor mat, did you notice how the
 25 floor mat was fastened to the vehicle in

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1 LEVITEN
 2 A. Correct.
 3 Q. Did you use that vehicle we are
 4 talking about, the 2007 Lexus ES 350, did
 5 you use that vehicle for work?
 6 A. I don't think so.
 7 Q. In the period of time that you
 8 had the vehicle, you were employed by the
 9 real estate company, correct?
 10 A. Correct.
 11 Q. And your job duties there were
 12 what, ma'am?
 13 A. To find people that are
 14 interested in selling their houses or
 15 renting or purchasing.
 16 Q. Did you take these potential,
 17 for example, purchasers to homes that they
 18 could look to buy or rent?
 19 A. I don't believe so.
 20 MR. HERSHENHORN: You mean
 21 in that car.
 22 THE WITNESS: In that car.
 23 No.
 24 Q. Is there a company car that was
 25 used?

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1 LEVITEN
 2 A. No.
 3 Q. During the period of time you
 4 owned the car before your accident, did you
 5 ever have anyone in the car with you?
 6 A. I don't remember.
 7 Q. During the period of time
 8 between the delivery of the car by the man
 9 and the day of your accident, can you tell
 10 me the frequency with which you would use
 11 the car? And by that I mean did you use it
 12 every day?
 13 A. No, I didn't.
 14 MR. STRIER: Did we
 15 establish the pickup date and the
 16 actual delivery date?
 17 MR. GRAY: Well, the
 18 discovery documents represent that
 19 she bought it on December 9, 2006
 20 and delivery date of January 18,
 21 2007, but we can't establish that
 22 through the witness so you have to
 23 go back to the answers to
 24 discovery.
 25 MR. STRIER: Thank you.

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1 LEVITEN
 2 A. No, I didn't have an average,
 3 it varied.
 4 Q. Other than the weather, would
 5 it be fair to say that you drove the
 6 vehicle every day?
 7 MR. HERSHENHORN: Note my
 8 objection. She has already
 9 answered that question.
 10 MR. GRAY: I don't think so.
 11 MR. HERSHENHORN: Yes, she
 12 did, you asked her if she drove it
 13 every day, she said it depended on
 14 the weather.
 15 MR. GRAY: I said other than
 16 the weather, did she drive the
 17 vehicle every day.
 18 MR. HERSHENHORN: Note my
 19 objection.
 20 MR. ROBUSTO: Why don't you
 21 rephrase. It is confusing.
 22 Q. You say that you would have
 23 drove the vehicle unless it was bad weather
 24 and I'm saying other than the weather is it
 25 fair to say that you drove the vehicle

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1 LEVITEN
 2 Q. How often did you use it on a
 3 weekly basis?
 4 A. It would depend upon the
 5 weather. A few times a week.
 6 Q. For what purpose would you use
 7 it?
 8 A. To go into the office and to
 9 take care of anything necessary for my
 10 life.
 11 Q. How many days a week were you
 12 working between January 1 and the date of
 13 the accident in February?
 14 A. How many days was I working?
 15 Q. Were you working one day a
 16 week, two days a week, five days a week,
 17 seven days a week?
 18 MR. HERSHENHORN: Note my
 19 objection to the form.
 20 You can answer.
 21 A. I worked every day, but
 22 sometimes making phone calls from home.
 23 Q. Do you have an average number
 24 of times you would go into the office in a
 25 week?

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1 LEVITEN
 2 every day?
 3 MR. HERSHENHORN: Note my
 4 objection.
 5 Do you understand the
 6 question?
 7 THE WITNESS: I understand
 8 the question.
 9 MR. HERSHENHORN: Then
 10 answer it.
 11 A. I don't recall.
 12 Q. Between the delivery of the
 13 vehicle up until the day of the accident,
 14 did you have the vehicle serviced by any
 15 company, person or business?
 16 A. Yes.
 17 Q. Can you tell me what that would
 18 have been?
 19 A. I had a problem with the
 20 windshield wipers not working.
 21 Q. What did you do about that?
 22 A. I brought it to Rallye Lexus.
 23 Q. Where are they located, ma'am?
 24 A. In Glen Cove, I believe.
 25 Q. Do you know approximately when

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1 LEVITEN
 2 it was after the delivery of the vehicle
 3 that you would have done that?
 4 A. I don't recall.
 5 Q. What, if anything, was done at
 6 Rallye regarding the windshield wipers?
 7 A. I am not sure what they did,
 8 but they told me that there was ice on the
 9 wipers and when I got the car back, it
 10 worked. They worked.
 11 Q. Did you leave the vehicle with
 12 Rallye?
 13 A. I don't recall.
 14 Q. Did you drive the vehicle to
 15 Rallye?
 16 A. I don't recall.
 17 Q. Do you recall who you dealt
 18 with at Rallye?
 19 A. Their service department.
 20 Q. Do you recall a name?
 21 A. I don't remember.
 22 Q. Do you have any records of this
 23 service at Rallye?
 24 A. I am not sure.
 25 Q. Did you have to pay them any

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1 LEVITEN
 2 Rallye?
 3 A. When?
 4 Q. When you took the vehicle there
 5 or the vehicle was at the service station,
 6 to have the windshield wipers fixed?
 7 A. I don't remember if it was
 8 picked up or if I drove it. I am not sure
 9 what else.
 10 MR. HERSHENHORN: Therefore
 11 she can't tell you what she did at
 12 Rallye since she may not have been
 13 there.
 14 MR. GRAY: Agreed.
 15 Q. You don't know if you took it
 16 to Rallye?
 17 A. I don't. I don't recall.
 18 Q. You don't know if they came and
 19 got it?
 20 A. They might have.
 21 Q. They might have?
 22 A. Yes.
 23 Q. Had you worked with Rallye in
 24 the past?
 25 A. Yes.

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1 LEVITEN
 2 money for the work they did do?
 3 A. No.
 4 Q. Did the service people at
 5 Rallye physically take possession of your
 6 vehicle and drive it off somewhere?
 7 A. They took possession of my
 8 vehicle.
 9 Q. Did you see what they did with
 10 it?
 11 A. No.
 12 Q. Did you see if anyone drove it
 13 into a service bay or anything like that?
 14 A. I don't know that.
 15 Q. You don't know if you drove to
 16 Rallye; is that correct?
 17 A. I don't remember if I did or
 18 not.
 19 Q. Tell me everything you remember
 20 about being at Rallye, if you could.
 21 MR. HERSHENHORN: She's not
 22 going to answer that question. It
 23 is way too overbroad. You have to
 24 break it down and ask her questions.
 25 Q. What do you remember doing at

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1 LEVITEN
 2 Q. And for what purpose?
 3 A. For checkup.
 4 Q. Was that on your 1993 Lexus?
 5 A. Yes.
 6 Q. Is Rallye the only one who did
 7 any service work on your 2007 Lexus?
 8 A. Yes.
 9 Q. During the period of time after
 10 delivery of the Lexus to you until the time
 11 of your accident, did you ever have the car
 12 taken to a car wash?
 13 A. No.
 14 Q. Did you have the car detailed,
 15 by that I mean anyone come and clean the
 16 car for you?
 17 A. No.
 18 Q. Did you ever clean the car?
 19 A. No.
 20 Q. Did you ever take a vacuum or a
 21 hose or anything to the interior of the car
 22 between the day of delivery until the day
 23 of the accident?
 24 A. No.
 25 Q. Did you ever try to remove the

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1 LEVITEN
 2 plastic which you say, if I recall
 3 correctly, was wrapped around the driver's
 4 side carpet, did you ever try to remove
 5 that?
 6 A. No.
 7 Q. Do you recall the actual date
 8 of the accident?
 9 A. February 18, '07.
 10 Q. Now, between the day of
 11 delivery of the vehicle up until the day
 12 before the accident, which is February 16,
 13 '07, did you have any problems?
 14 A. That would be --
 15 MR. HERSHENHORN: 17?
 16 A. 17th.
 17 Q. February 17. Between the day
 18 of the delivery of the vehicle up to the
 19 day before the accident which is February
 20 17, '07, did you have any problems in the
 21 operation of the vehicle?
 22 MR. ROBUSTO: Other than the
 23 windshield wipers.
 24 MR. GRAY: Right.
 25 MR. HERSHENHORN: And before

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1 LEVITEN
 2 Q. Do you recall what you did that
 3 day before getting into the car about 2:15?
 4 A. I don't remember.
 5 Q. On the day of the accident,
 6 were you taking any type of medication,
 7 prescribed or over the counter?
 8 A. No.
 9 Q. So, no type of cough medicine,
 10 allergy medicines, nothing like that?
 11 A. Nothing like that.
 12 Q. Do you drink alcohol?
 13 MR. HERSHENHORN: Ever?
 14 A. Does that mean ever?
 15 Q. Yes.
 16 A. Yes.
 17 Q. Were you drinking any alcohol
 18 on the day of the accident before you got
 19 into the vehicle at 2:15?
 20 A. No.
 21 Q. Do you take any type of
 22 prescription drugs?
 23 MR. HERSHENHORN: Today.
 24 MR. GRAY: As of the day of
 25 the accident.

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1 LEVITEN
 2 the timing of the crash.
 3 MR. GRAY: Right, not the
 4 day of, the day before, because I
 5 want to ask specifically about the
 6 day of.
 7 A. Not that I recall.
 8 Q. Would the vehicle always
 9 accelerate properly when you pushed the gas
 10 pedal?
 11 A. Yes.
 12 Q. Would the vehicle always stop
 13 correctly when you pushed the brake?
 14 A. Yes.
 15 Q. Now, on the day of the
 16 accident, can you tell me how your day
 17 started out, and when you first got in the
 18 vehicle, what time that was?
 19 A. Got in the vehicle
 20 approximately 2:15, approximately.
 21 Q. Before 2:15 p.m., correct?
 22 A. Yes.
 23 Q. Before 2:15, what time did you
 24 get up that day?
 25 A. I don't remember.

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1 LEVITEN
 2 A. No.
 3 Q. Any type of nonprescription or
 4 recreational drugs?
 5 A. Nonprescription like vitamins?
 6 Q. Or a drug that you can get over
 7 the counter, like NyQuil or Zyrtec?
 8 A. No.
 9 Q. When you got into the car that
 10 day, can you tell me what you did in terms
 11 of whether you put your seat belt on,
 12 adjust the seats, whatever mechanics you go
 13 through when you get in the car?
 14 A. I put my seat belt on. I
 15 adjust the mirrors. I adjust my seat if I
 16 have to. I think that's it.
 17 Q. Where would you normally or
 18 habitually have your seat adjusted to?
 19 A. I am not sure what you mean.
 20 Q. Did that seat move forward and
 21 back on a track?
 22 A. Yes.
 23 Q. When you adjusted the seat for
 24 you to drive this vehicle, where was the
 25 seat along that track?

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TOY-RQ-05E-00002315

1 LEVITEN
 2 A. I am not sure what you mean.
 3 Q. Do you know what full forward
 4 would be in that vehicle?
 5 A. What does that mean?
 6 Q. Full forward?
 7 A. Full forward?
 8 Q. All the way up.
 9 A. I don't know if it was full,
 10 but until I was comfortable.
 11 Q. Can you tell me anywhere along
 12 the track, would you identify it as I have
 13 it all the way back, I have it all the way
 14 forward, I have it in the middle, I have it
 15 closer to the front?
 16 A. Probably closer to the front.
 17 Q. And would it always be in that
 18 position, because you said something about
 19 adjusting the seat?
 20 A. Not necessarily always.
 21 Q. Why would the seat position
 22 change?
 23 A. Sometimes it is more
 24 comfortable to move the seat back to get
 25 out.

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1 LEVITEN
 2 Q. You have no idea whether it
 3 would be closer to the full upright of the
 4 seat or closer to the bottom?
 5 A. Probably closer to the bottom.
 6 Q. When you got to the vehicle,
 7 the 2007 Lexus ES 350 that you had
 8 delivered by Metro, to your home, that car,
 9 we are talking about that one, when you got
 10 in that vehicle, the day of the accident,
 11 do you recall looking at the driver's side
 12 floor mats?
 13 A. No. I don't recall looking at
 14 the mats.
 15 Q. When you were driving the
 16 vehicle that day before reaching the
 17 intersection where the accident happened,
 18 did you feel through your feet anything
 19 unusual or peculiar about the floor mats?
 20 A. Could you repeat that?
 21 Q. Sure. When you were driving
 22 that vehicle that day, before you got to
 23 the intersection where the accident
 24 happened, did you feel through your feet
 25 anything unusual or peculiar about the

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1 LEVITEN
 2 Q. Would you do that all the time?
 3 A. No. Sometimes.
 4 Q. Now, adjusting the seat forward
 5 and back on the track, was that an
 6 electrical adjustment, did you push a
 7 button or did you have to reach under the
 8 seat and pull a lever?
 9 A. A button.
 10 Q. Do the seats also adjust up and
 11 down?
 12 A. Yes.
 13 Q. And in terms of height, would
 14 you have it full up, full down, somewhere
 15 in the middle?
 16 A. I never measured.
 17 Q. Did you ever in sitting in the
 18 car, adjust it all the way up or all the
 19 way down?
 20 A. I'm not sure. It would be
 21 closer --
 22 MR. HERSHENHORN: You have
 23 answered the question.
 24 Q. It would be closer to what?
 25 A. Where I would be comfortable.

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1 LEVITEN
 2 floor mats?
 3 A. No.
 4 MR. HERSHENHORN: Note my
 5 objection to form.
 6 Q. Between when you got into the
 7 car and right before the intersection where
 8 the accident occurred, did you have an
 9 opportunity to look at the floor mat?
 10 MR. HERSHENHORN: Note my
 11 objection. But you can answer.
 12 A. I am not sure what -- could
 13 you repeat that?
 14 Q. Sure. You got in the car and
 15 you pulled away from the curb, and you
 16 drove it for a period of time and then you
 17 came to the intersection where the accident
 18 happened.
 19 Now, what I am asking, during
 20 that period of time you pulled away from
 21 the curb before you reached that
 22 intersection where the accident happened,
 23 did you see anything peculiar regarding the
 24 floor mat of your car, the driver's side?
 25 A. See meaning?

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TOY-RQ-05E-00002316

1 LEVITEN
 2 Q. With your eyes?
 3 A. Look?
 4 Q. Yes.
 5 A. No.
 6 Q. And you didn't feel anything
 7 peculiar with your feet?
 8 MR. HERSHENHORN: Note my
 9 objection.
 10 She has already answered.
 11 She doesn't have to answer again.
 12 Ask another question.
 13 MR. GRAY: She can answer it
 14 again.
 15 MR. HERSHENHORN: She's not
 16 going to answer it again.
 17 MR. GRAY: You direct her
 18 not to answer?
 19 MR. HERSHENHORN: Yes.
 20 Q. He is directing you not to
 21 answer. Do you understand that?
 22 MR. HERSHENHORN: Don't
 23 answer that either.
 24 You already asked her that
 25 question.

1 LEVITEN
 2 between her car and another
 3 vehicle?
 4 MR. GRAY: Unless she was in
 5 an accident before that, yes, the
 6 crash.
 7 A. I am sorry.
 8 MR. HERSHENHORN: Somebody
 9 might assume the throttle opens
 10 wide, that's the beginning of the
 11 accident.
 12 MR. GRAY: I don't think
 13 so.
 14 MR. STRIER: Say the word
 15 contact.
 16 Q. Ms. Leviten, I'll ask the
 17 question again. Between the time you left
 18 the curb of your house and the ramp where
 19 the crash, contact occurred, did you feel
 20 anything through your feet that seemed to
 21 be unusual about the carpet of your vehicle
 22 on the driver's side?
 23 A. No.
 24 Q. Between the time you left the
 25 curb of your house to the ramp right before

1 LEVITEN
 2 MR. ROBUSTO: Objection is
 3 not to the question, the objection
 4 is she already answered.
 5 MR. GRAY: It doesn't
 6 matter, okay? It really doesn't.
 7 Q. Ms. Leviten, during the ride
 8 between when you left your curb until right
 9 before the intersection where the accident
 10 happened, did you have any problems in the
 11 operation of your vehicle?
 12 A. I am sorry, you keep saying
 13 intersection?
 14 Q. Yes.
 15 A. This didn't happen on an
 16 intersection.
 17 Q. What would you describe it as?
 18 A. Parkway, going off the parkway.
 19 Q. From the point you left the
 20 curb to going off the parkway, before the
 21 accident happened, did you experience
 22 anything unusual about the operation of
 23 your vehicle?
 24 MR. HERSHENHORN: By the
 25 accident, do you mean the crash

1 LEVITEN
 2 the crash or contact occurred, did you see
 3 anything unusual about the carpet on the
 4 driver's side of your car?
 5 A. No.
 6 Q. Between the time you left the
 7 curb of your home until you got to the ramp
 8 right before the contact or crash occurred,
 9 did you experience anything unusual
 10 regarding the operation of your vehicle?
 11 A. Yes.
 12 Q. And at what point?
 13 A. At the point of merging onto
 14 the Northern State Parkway.
 15 Q. Where did you merge onto the
 16 Northern State Parkway at?
 17 A. I.U. Willets Road.
 18 Q. From the curb of your house
 19 to -- is it I.U. Willets Road?
 20 MR. HERSHENHORN: Yes, it
 21 is.
 22 Q. How far is that, if you know?
 23 A. I am sorry, please repeat.
 24 MR. HERSHENHORN: From your
 25 home until I.U. Willets Road, how

1 LEVITEN
2 far?
3 A. About three houses away.
4 Q. During that drive of three
5 houses, there was nothing unusual about the
6 operation of your car?
7 MR. HERSHENHORN:
8 Objection. You've already asked
9 her whether from the time she left
10 it up until the point that you've
11 previously defined and she has
12 already told you there's been
13 nothing unusual.
14 Q. When you pulled away from your
15 curb, did you put your foot on the
16 accelerator?
17 A. I am not sure what you mean.
18 MR. HERSHENHORN: At some
19 point.
20 A. At some point.
21 Q. When you pulled away from the
22 curb, did you put your foot on the gas
23 pedal before you reached I.U. Willets?
24 A. Yes.
25 Q. Did the vehicle respond

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1 LEVITEN
2 Parkway?
3 Q. How do you get onto Northern
4 State Parkway from I.U. Willets Road?
5 A. I travel along I.U. Willets
6 Road to the entrance of the Northern State
7 Parkway.
8 Q. Is the entrance controlled by
9 some type of traffic device?
10 A. No.
11 Q. There is no yield sign, no
12 merge sign, nothing?
13 A. I don't recall any sign.
14 Q. Do you have to make a turn off
15 of I.U. Willets onto the Northern State
16 Parkway?
17 A. Yes.
18 Q. What type of turn is that?
19 A. It is a right turn going down a
20 slope.
21 Q. When you go down a slope, in
22 this right turn, do you have your foot on
23 the brake or the accelerator, if you
24 recall?
25 A. I don't recall.

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1 LEVITEN
2 appropriately to your putting your foot on
3 the accelerator?
4 A. Yes.
5 Q. Between the time you left your
6 curb and you approached I.U. Willets for
7 its intersection with -- is it Northern
8 State Parkway?
9 A. Northern State Parkway.
10 Q. Did you ever apply the brake of
11 the vehicle?
12 A. From the time I left my house?
13 Q. Yes.
14 A. Yes.
15 Q. During that brief period of
16 time, I understand it is three houses, did
17 you have any problem with the vehicle
18 stopping in response to your putting the
19 brake on?
20 A. No.
21 Q. Now, when you entered the
22 I.U. Willets Road, is that a ramp into the
23 Northern State Parkway?
24 MR. HERSHENHORN: Is what a
25 ramp into the Northern State

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1 LEVITEN
2 Q. Where is it then you first
3 experienced this operational problem with
4 the car?
5 A. Upon the merge onto the
6 parkway.
7 Q. After you make your right-hand
8 turn, you are going down the ramp, do you
9 have to go back up the ramp to get onto the
10 parkway?
11 A. No.
12 Q. Once you go down a ramp, do you
13 simply merge onto the parkway?
14 A. Yes.
15 Q. Is there any traffic device
16 which controls your merging into the
17 parkway?
18 A. No.
19 Q. Can you tell me the manner in
20 which you merged on the parkway? By that I
21 mean do you turn your blinker on, do you
22 accelerate, do you look out the back, how
23 do you do that?
24 MR. HERSHENHORN: Note my
25 objection to the form.

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1 LEVITEN
 2 A. How do I generally do it?
 3 MR. HERSHENHORN: How did
 4 you do it that day.
 5 Q. How did you do it that day?
 6 A. I had my left-hand signal on
 7 and then I put my foot on the gas to go
 8 faster to merge, faster than coming down
 9 the ramp.
 10 Q. When did you experience
 11 something unusual about the operation of
 12 the vehicle?
 13 MR. HERSHENHORN: Note my
 14 objection. It is about the fourth
 15 time you've asked her. She has
 16 already told you.
 17 Q. I am trying to find out if you
 18 experienced this problem when you put your
 19 foot on the gas pedal or sometime later.
 20 MR. HERSHENHORN: Do you
 21 understand that question?
 22 THE WITNESS: Yes.
 23 Q. You understand the question?
 24 A. Yes, I understand the question.
 25 Q. So, when does this problem

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1 LEVITEN
 2 going?
 3 MR. HERSHENHORN:
 4 Objection. She has already told
 5 you. She said when she applied the
 6 brakes, it may have slowed a
 7 little. Then she said she began to
 8 pump the brakes.
 9 MR. GRAY: My question is
 10 after she pumps the brakes, does it
 11 go faster.
 12 MR. HERSHENHORN: After she
 13 had already told you it slowed a
 14 little.
 15 MR. GRAY: Yes.
 16 MR. HERSHENHORN: You can
 17 answer.
 18 A. I am not sure.
 19 Q. After you pumped the brakes,
 20 what do you recall occurring?
 21 A. No response, the car was going
 22 too fast.
 23 Q. Did you keep your foot on the
 24 brake?
 25 MR. HERSHENHORN:

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1 LEVITEN
 2 manifest itself?
 3 A. Right away.
 4 Q. Upon application of the gas
 5 pedal?
 6 A. Yes.
 7 Q. What happens?
 8 A. The car goes too fast.
 9 Q. Meaning what, ma'am?
 10 MR. HERSHENHORN: Hold it.
 11 She has already told you,
 12 the car goes too fast.
 13 MR. GRAY: I am asking her
 14 to describe what that means.
 15 A. Okay. I put my foot on the gas
 16 pedal to go at a certain speed, the car
 17 goes faster than that speed I am trying to
 18 attain so then I go onto the brake to slow
 19 it down and the car possibly slows a little
 20 bit so that I pump the brakes and the car
 21 is still going so fast.
 22 Q. Does it go faster after you
 23 pump the brakes?
 24 A. Faster than what?
 25 Q. Faster than it had been

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1 LEVITEN
 2 Objection. She has already told
 3 you, she pumped the brakes.
 4 Q. Did you pump it more than once,
 5 did you keep your foot on the brake after
 6 you pumped it, what did you do?
 7 MR. HERSHENHORN: Note my
 8 objection to the form.
 9 A. I kept my foot on the brake.
 10 Q. Were you pushing down on the
 11 brake as opposing to resting your foot on
 12 the brake?
 13 A. Yes, with all my might.
 14 Q. After you pumped the brakes and
 15 you applied the brake with all your might,
 16 did the vehicle slow down at all?
 17 MR. HERSHENHORN: Is this a
 18 different question than what you
 19 asked her previously, when she said
 20 might have slowed down when she
 21 first put her foot on the brake.
 22 MR. GRAY: If you follow the
 23 line of questioning, first time she
 24 put the foot on the brake and it
 25 slowed a little, but -- and now

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1 LEVITEN
 2 she put it with all her might
 3 and -- when you put it on with all
 4 your might, did the vehicle slow
 5 down?
 6 A. No.
 7 Q. How long did you keep your foot
 8 on the brake with all your might?
 9 A. Until I crashed.
 10 Q. Can you tell me from, if you
 11 can, what distance you traveled between
 12 putting your foot on with all your might
 13 and the crash?
 14 A. I don't know.
 15 Q. Can you tell me in terms of
 16 seconds?
 17 MR. HERSHENHORN: What about
 18 in terms of seconds?
 19 MR. GRAY: How long she had
 20 her foot on the brake with all her
 21 might before the crash.
 22 A. No, I don't know.
 23 Q. Where did the crash occur in
 24 relationship to your merging onto the
 25 Northern State Parkway?

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1 LEVITEN
 2 elevation up or down?
 3 A. Down.
 4 Q. As you are going down that
 5 ramp, is that controlled by any traffic
 6 signal or device?
 7 A. I believe so.
 8 Q. Do you know where that traffic
 9 signal or device is located?
 10 MR. HERSHENHORN: Only if
 11 you know.
 12 A. I am not sure.
 13 Q. Do you know what type of
 14 traffic signal or device it is?
 15 A. I am not sure.
 16 Q. As you are going down the ramp,
 17 is there any change in the condition of the
 18 vehicle that you experienced on the
 19 condition itself, does it start to shimmy,
 20 shake, does it speed up, slow down?
 21 MR. HERSHENHORN: Note my
 22 objection to the form.
 23 A. No change.
 24 Q. When you are steering the
 25 vehicle, is it responding to your steering

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1 LEVITEN
 2 MR. HERSHENHORN: Where did
 3 the crash occur?
 4 A. I got off the parkway at Glen
 5 Cove Road.
 6 Q. Is that one exit down, two
 7 exits down from where you got on, three
 8 exits down?
 9 A. One.
 10 Q. Did you ever change lanes while
 11 you were on the Northern State Parkway?
 12 A. Yes.
 13 Q. Can you tell me in relationship
 14 to your entering the Northern State
 15 Parkway, where you changed lanes?
 16 A. When I came off the entrance
 17 from I.U. Willets to merge onto the
 18 parkway. And then when I got off at Glen
 19 Cove Road.
 20 Q. When you were getting off at
 21 Glen Cove Road, did you use any turn
 22 signals at all?
 23 A. I don't remember.
 24 Q. When you got off at Glen Cove
 25 Road, is it an exit ramp, does it change

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1 LEVITEN
 2 efforts?
 3 A. Yes.
 4 Q. From the point where you say
 5 the vehicle sped up faster than you
 6 intended when you put your foot on the gas
 7 pedal until the point of contact or crash,
 8 did you ever look down at the gas pedal or
 9 brake pedal?
 10 A. No.
 11 Q. When you put your foot on the
 12 gas pedal, could you feel the gas pedal
 13 beneath your foot?
 14 A. I am not sure what you mean.
 15 Q. Well, when you tread on
 16 something such as an accelerator, you may
 17 or you may not have a sensation of a gas
 18 pedal and I can feel it through my shoe.
 19 Did you feel it through your shoe?
 20 MR. HERSHENHORN: When?
 21 MR. GRAY: When she pressed
 22 on the gas pedal and it went faster
 23 than expected.
 24 A. I am not sure what I should be
 25 feeling.

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1 LEVITEN
 2 Q. Only you have the recollection
 3 whether you felt anything or not when you
 4 put your foot on the gas pedal.
 5 A. I didn't feel anything.
 6 Q. In terms of applying the gas
 7 pedal, when you first put your foot on it,
 8 went too fast, did it feel unusual to you?
 9 A. I don't recall.
 10 Q. When you first put your foot on
 11 the brake, to slow it down, did the brake
 12 feel unusual to you?
 13 A. I don't recall.
 14 Q. Same question when you pumped
 15 the brake, did it feel unusual to you?
 16 A. Yes.
 17 Q. Can you describe that?
 18 A. It felt hard.
 19 Q. When you pushed the brake down
 20 as hard as you could, with all your might,
 21 did that feel unusual to you?
 22 A. Yes.
 23 Q. Can you describe that?
 24 MR. HERSHENHORN: She just
 25 answered, she said it felt hard.

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1 LEVITEN
 2 describe the UGGS that you had on?
 3 A. I am thinking. They were
 4 plain, came below my knee.
 5 Q. Do you think you might have a
 6 picture of you in these UGGS?
 7 A. No.
 8 Q. Christmas party, daughter says
 9 mom --
 10 MR. HERSHENHORN: She said
 11 no.
 12 Q. Any type of pictures?
 13 A. No.
 14 Q. Do you know where you would
 15 have purchased your UGGS from?
 16 MR. HERSHENHORN: In the
 17 UGGS store.
 18 MR. GRAY: I don't think
 19 there is an UGGS store.
 20 A. Yes.
 21 Q. Where?
 22 A. Posture Line in Great Neck. It
 23 is a children's store.
 24 Q. Do you know whether or not the
 25 Lexus ES 350 model year 2007 you were

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1 LEVITEN
 2 MR. GRAY: That's when she
 3 pumped it.
 4 A. The whole time it felt hard.
 5 Q. When it felt hard, did you look
 6 down to see what may or may not be
 7 occurring?
 8 A. No.
 9 Q. Can you tell me if you recall
 10 what shoes you were wearing on that day
 11 when you were driving the vehicle?
 12 A. Boots.
 13 Q. What type of boots?
 14 A. UGGS.
 15 Q. Do you still have the UGGS?
 16 A. No.
 17 Q. Since I have a bunch of
 18 daughters, I know there is a bunch of
 19 different kinds of UGGS. Which UGGS did
 20 you have?
 21 A. I am not sure what you mean by
 22 kind.
 23 Q. Well, they have high ones, they
 24 have low ones?
 25 MR. HERSHENHORN: Can you

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1 LEVITEN
 2 driving that day had antilock brakes?
 3 A. The 2007 model?
 4 Q. Yes.
 5 A. Yes.
 6 Q. When you applied the brake
 7 pedal as hard as you could, did you
 8 experience anything which I will call
 9 chattering or vibration of the brake
 10 pedal?
 11 MR. HERSHENHORN: This is
 12 before she pumped it.
 13 MR. GRAY: No, when she
 14 applied it as hard as she could.
 15 MR. HERSHENHORN: After she
 16 pumped it.
 17 MR. GRAY: Well, she only
 18 applied it with all her might after
 19 she pumped it.
 20 Q. When you applied it with all
 21 your might --
 22 A. Did I feel --
 23 Q. -- did you experience any
 24 chattering or feeling of vibration of the
 25 brake pedal?

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1 LEVITEN
 2 A. No.
 3 Q. Did the vehicle you had, the
 4 2007 ES 350, have cruise control?
 5 A. I think it did.
 6 Q. Had you ever used the cruise
 7 control?
 8 A. No.
 9 MR. GRAY: That's all the
 10 questions I have.
 11 EXAMINATION BY
 12 MR. CHOJNACKI:
 13 Q. Good afternoon. I have some
 14 follow-up questions for you.
 15 The day that the vehicle was
 16 dropped off at your house, is that the
 17 first time that you noticed the plastic
 18 covering on the carpet on the driver's
 19 side?
 20 A. Yes.
 21 Q. Did you have any discussion
 22 with the gentleman who dropped off the car
 23 about that plastic covering?
 24 A. No.
 25 Q. From the time that you received

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1 LEVITEN
 2 Q. Was there ever a time that you
 3 observed, you actually saw the floor mat
 4 shift positions such that it covered either
 5 the brake pedal or the accelerator pedal
 6 and from the time you got the car up until
 7 the day of your accident?
 8 A. That it shifted over the
 9 pedals?
 10 Q. Correct.
 11 A. No.
 12 Q. It was your understanding that
 13 you were purchasing a new vehicle from
 14 Metro; is that correct?
 15 A. That's correct.
 16 Q. Did you have any discussion
 17 with them about what they were going to be
 18 doing with the vehicle from the time they
 19 got it up until the time they delivered it
 20 to you?
 21 A. No.
 22 Q. Any discussion about whether
 23 they were going to clean the car, wash the
 24 car, anything like that?
 25 A. No.

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1 LEVITEN
 2 the car, up until the day of your accident,
 3 did you ever have any problem operating the
 4 car because of that plastic covering? Did
 5 your feet ever slip on it? Did you ever
 6 notice it?
 7 MR. HERSHENHORN: Note my
 8 objection.
 9 Q. In that respect?
 10 MR. HERSHENHORN: Note my
 11 objection.
 12 You can answer.
 13 A. I never noticed.
 14 Q. Do you ever recall a time when
 15 your feet slipped on that plastic covering
 16 from the time you got the car up until the
 17 time of your accident while you were
 18 operating the car?
 19 A. I never noticed.
 20 Q. From the time that you got the
 21 car until the day of your accident, was
 22 there ever a time that you felt the floor
 23 mat itself move? And this is the floor mat
 24 on the driver's side.
 25 A. I never noticed.

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1 LEVITEN
 2 Q. I am going to try to avoid
 3 repeating questions that Mr. Gray has
 4 already asked you. But just for
 5 background, I may repeat some of those
 6 questions.
 7 I believe you said you first
 8 used the vehicle on the day of your
 9 accident at approximately 2:15 p.m.,
 10 correct?
 11 A. Correct.
 12 Q. Your house on Wood Avenue, is
 13 that west of the Albertson train station?
 14 A. Yes.
 15 Q. Is it east of Willis Avenue?
 16 A. No. It is west.
 17 Q. What about Searingtown Road?
 18 A. What about it?
 19 Q. East or west of Searingtown
 20 Road?
 21 A. My house?
 22 Q. Yes.
 23 A. My house is east.
 24 Q. So, you came onto I.U. Willets
 25 Road shortly after 2:15 p.m. at some point

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1 LEVITEN
 2 on the day of your accident; is that
 3 correct?
 4 A. More or less. I am not sure of
 5 the exact time.
 6 Q. And you were traveling
 7 westbound on I.U. Willets; is that correct?
 8 A. No.
 9 Q. You were going towards the
 10 entrance for the Northern State Parkway?
 11 A. Correct.
 12 Q. Where were you intending to get
 13 onto Northern State Parkway?
 14 A. Just before Glen Cove Road. On
 15 I.U. Willets.
 16 Q. Traveling eastbound. You were
 17 traveling eastbound?
 18 A. Correct.
 19 Q. You crossed over Willis Avenue?
 20 A. Correct.
 21 Q. Crossed over the train tracks
 22 of the Albertson train station?
 23 A. Yes.
 24 Q. Past Roslyn Road?
 25 A. Yes.

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1 LEVITEN
 2 Parkway; is that correct?
 3 A. Yes.
 4 MR. HERSHENHORN: Note my
 5 objection.
 6 You can answer.
 7 Q. When did that actually occur,
 8 had you gotten onto the Northern State
 9 Parkway yet, were you still on the entrance
 10 ramp, or somewhere else?
 11 MR. HERSHENHORN: Just
 12 describe it as best as you can.
 13 A. At the time that I merged onto
 14 the Northern State Parkway.
 15 Q. Do you know how long it took
 16 you from the time that you made the right
 17 turn onto the entrance ramp until the time
 18 that you experienced this problem, how much
 19 time elapsed?
 20 A. I don't know.
 21 Q. Was it more than a minute, less
 22 than a minute?
 23 MR. HERSHENHORN: She just
 24 said she doesn't know.
 25 MR. CHOJNACKI: I am trying

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1 LEVITEN
 2 Q. And then you entered by making
 3 a right turn just before Glen Cove Road?
 4 A. Yes.
 5 Q. During any part of that travel
 6 down I.U. Willets, did you ever experience
 7 any problem braking the vehicle?
 8 A. No.
 9 Q. Did you ever have any problems
 10 with the accelerator pedal during that time
 11 while you were on I.U. Willets Road?
 12 A. No.
 13 Q. The time that you indicated
 14 that the vehicle sped up while you were
 15 applying the gas, more than you intended it
 16 to, is that a correct way of phrasing
 17 it?
 18 MR. HERSHENHORN: Note my
 19 objection.
 20 A. I am not sure of the question.
 21 Q. You indicated you had a problem
 22 where I believe you indicated that the
 23 vehicle sped up more than you intended it
 24 to while you were applying the gas,
 25 sometime while entering Northern State

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1 LEVITEN
 2 to refresh her recollection,
 3 Counsel.
 4 A. I am not sure.
 5 Q. Do you know approximately how
 6 much distance you traveled?
 7 A. From --
 8 Q. From the time that you entered
 9 the ramp, you made that right turn to enter
 10 the ramp until the time you experienced
 11 this problem, do you know approximately how
 12 far you went?
 13 A. A short distance.
 14 Q. From the time that you first
 15 began experiencing the problem, until the
 16 time that you had contact with another
 17 vehicle, do you know how much time elapsed?
 18 A. No.
 19 Q. Was it more than a minute, was
 20 it less than a minute?
 21 A. It seemed like forever.
 22 MR. HERSHENHORN: He didn't
 23 ask you what it seemed like, he
 24 just asked you how much time
 25 elapsed?

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1 LEVITEN
 2 A. I don't know.
 3 Q. Do you know how far you
 4 traveled?
 5 A. No.
 6 Q. During that time, from the time
 7 that you began experiencing a problem with
 8 your car up until the time that there was
 9 contact with another vehicle, did the
 10 direction of travel of your car change in
 11 any way?
 12 A. I am sorry, please repeat that?
 13 Q. Sure. From the time that you
 14 first began experiencing the problem up
 15 until the time that you were in contact
 16 with another car, did your direction of
 17 travel change in any way, did you make a
 18 right turn, a left turn, or were you
 19 continually going straight?
 20 A. I got off the parkway.
 21 Q. From the time that you began
 22 experiencing the problem until the time
 23 that you exited the parkway, did your
 24 direction of travel change in any way?
 25 A. No.

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1 LEVITEN
 2 Q. Is there a shoulder on the
 3 Northern State Parkway in the area where
 4 you were traveling?
 5 A. I don't know.
 6 Q. Did you ever try to pull the
 7 vehicle over and stop before you reached
 8 the exit ramp?
 9 A. And stop?
 10 Q. Yes.
 11 MR. HERSHENHORN: Just
 12 answer the question.
 13 A. The car could not stop.
 14 Q. I am just asking if you tried.
 15 A. No.
 16 Q. Do you know if there was an
 17 emergency brake in the vehicle?
 18 A. Yes, I know.
 19 Q. Was there an emergency brake?
 20 A. Yes.
 21 Q. Did you ever try to apply the
 22 emergency brake from the time you began
 23 experiencing this problem up until the time
 24 there was contact with another vehicle?
 25 A. No.

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1 LEVITEN
 2 Q. When you ended the Northern
 3 State Parkway from I.U. Willets Road, what
 4 lane of travel did you enter into? Was it
 5 the right lane, the middle lane, the left
 6 lane or something else?
 7 MR. HERSHENHORN: Note my
 8 objection.
 9 You may answer.
 10 A. The first lane when you come
 11 off of the entrance.
 12 Q. To your knowledge, is that the
 13 right lane?
 14 A. To my knowledge, it is the
 15 right lane.
 16 Q. Did you ever leave that lane of
 17 travel during the time that you were
 18 actually on the Northern State Parkway up
 19 until the time that you exited?
 20 A. I am not sure.
 21 Q. Were you experiencing this
 22 problem with the vehicle the entire time
 23 that you were on the Northern State
 24 Parkway?
 25 A. Yes.

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1 LEVITEN
 2 Q. Was there a reason why you
 3 didn't do that?
 4 A. I was too busy looking to see
 5 where I could pull off.
 6 Q. The transmission on the
 7 vehicle, is it automatic or is it manual?
 8 A. Automatic.
 9 Q. Is there a drive and then were
 10 there lower gears to go forward on the
 11 vehicle like three, two, one?
 12 MR. HERSHENHORN: Note my
 13 objection to the form.
 14 You may answer.
 15 A. Were there?
 16 Q. Yes.
 17 A. Yes.
 18 Q. Did you ever try to down shift,
 19 put it into a lower gear?
 20 A. No. I tried to get it out of
 21 gear and it would not come out of gear.
 22 Q. How did you try to get the
 23 vehicle out of gear, did you try to put it
 24 into neutral, did you try to put it into
 25 reverse, into a lower forward gear?

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1 LEVITEN
 2 MR. HERSHENHORN: Note my
 3 objection to the form.
 4 A. I tried to get it out of drive.
 5 Q. And do you know which way you
 6 pushed the gear shift to do that?
 7 A. In the direction that you would
 8 do that.
 9 Q. Was there only one direction?
 10 A. Only one direction to do that.
 11 Q. Where is the gear shift located
 12 in that 2007 Lexus, was it on the steering
 13 column, was it to your right?
 14 A. To my right.
 15 MR. HERSHENHORN: Note my
 16 objection to the form.
 17 A. To my right.
 18 Q. The exit ramp for the Northern
 19 State and Glen Cove Road, was that an exit
 20 to the ramp?
 21 A. Yes.
 22 Q. Was it clover leaf exit?
 23 A. I don't know what that means.
 24 Q. The exit ramp that you took
 25 that day, where would that lead you, to go

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1 LEVITEN
 2 before she felt that acceleration.
 3 MR. CHOJNACKI: I'll
 4 backtrack.
 5 Q. Could you estimate for me the
 6 speed you were traveling as you got on the
 7 entrance ramp for the Northern State
 8 Parkway before you had the problem with the
 9 vehicle, approximately how fast you were
 10 going?
 11 A. Before I felt the problem?
 12 Q. Correct.
 13 A. I don't know. Fairly slow.
 14 Q. Ten miles an hour, 20 miles an
 15 hour?
 16 MR. HERSHENHORN: Don't
 17 guess.
 18 Can you estimate?
 19 Q. If you can give an estimate.
 20 A. I would be guessing.
 21 Q. During any time that you were
 22 traveling after you had the problem up
 23 until contact, did you ever look at the
 24 speedometer on the vehicle?
 25 A. I don't recall.

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1 LEVITEN
 2 southbound on Glen Cove Road, to go
 3 northbound on Glen Cove Road or something
 4 else?
 5 A. That exit ramp goes both ways.
 6 Q. And at the exit ramp, you would
 7 either turn left or right depending upon
 8 which direction you wanted to go on Glen
 9 Cove Road?
 10 A. I believe there were two lanes,
 11 one to go north and one to go south.
 12 Q. Which lane of travel were you
 13 in as you exited Northern State Parkway,
 14 the one to go north or the one to go south?
 15 A. I headed south.
 16 Q. Could you estimate for me,
 17 please don't guess, but if you can give a
 18 reasonable estimation, the speed of your
 19 vehicle as you first entered Northern State
 20 Parkway?
 21 A. I should estimate?
 22 Q. If you can give a reasonable
 23 estimation or approximation?
 24 MR. HERSHENHORN: You're
 25 talking before it accelerated,

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1 LEVITEN
 2 Q. Do you know what the highest
 3 rate of speed the vehicle reached during
 4 that time, from the time you had the
 5 problem up until the time of contact?
 6 A. I would be guessing.
 7 Q. From the time that you exited
 8 the Northern State Parkway onto Glen Cove
 9 Road, that exit ramp, was your vehicle
 10 traveling faster while you were on that
 11 exit ramp toward Glen Cove Road or was it
 12 traveling faster while you were on Northern
 13 State Parkway?
 14 MR. HERSHENHORN: Or the
 15 same.
 16 MR. CHOJNACKI: Or the same.
 17 A. I think the same.
 18 Q. Did the vehicle speed change at
 19 all from the time you were on the ramp up
 20 until the point of contact?
 21 MR. HERSHENHORN: Is that a
 22 different question than your last
 23 question?
 24 MR. CHOJNACKI: From the
 25 ramp up until contact. Before, I

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1 LEVITEN
 2 wanted to know the ramp and
 3 Northern State Parkway. Now I want
 4 to know while you were on the ramp
 5 up until the time of contact, did
 6 the vehicle's speed change at all.
 7 A. I don't think so.
 8 Q. The end of the rampway, just
 9 before Glen Cove Road, is there a traffic
 10 control device there?
 11 A. Some device there. I don't
 12 know if it is a stop sign or a light. I am
 13 not sure.
 14 Q. The lane that you were in, I
 15 believe you indicated the one to go
 16 southbound, was there any vehicle in front
 17 of you as you approached the end of the
 18 rampway at Glen Cove Road?
 19 A. No.
 20 Q. Was traffic moving on Glen Cove
 21 Road as you approached the end of the
 22 rampway?
 23 A. Yes.
 24 Q. At some point, there was
 25 contact between your vehicle and another

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1 LEVITEN
 2 vehicle on February 18, 2007?
 3 A. Yes.
 4 Q. Do you know what that other
 5 vehicle was?
 6 A. Sanitation truck.
 7 Q. Do you know what color it was?
 8 A. Gray.
 9 Q. Did it have any type of
 10 lettering on it?
 11 A. I don't recall.
 12 Q. Did you ever see the truck
 13 prior to contact?
 14 A. Yes.
 15 Q. Do you know approximately how
 16 long before contact occurred you first saw
 17 that vehicle?
 18 MR. ROBUSTO: In terms of
 19 time or distance?
 20 MR. CHOJNACKI: In terms of
 21 time.
 22 A. Seconds.
 23 Q. Five seconds, less than five
 24 seconds?
 25 MR. HERSHENHORN:

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1 LEVITEN
 2 Objection. She said seconds.
 3 MR. CHOJNACKI: I am
 4 entitled to refresh her
 5 recollection.
 6 MR. HERSHENHORN: She didn't
 7 say she didn't have a
 8 recollection. She said seconds.
 9 Q. 300 seconds?
 10 MR. HERSHENHORN:
 11 Objection. She just said seconds.
 12 Q. Do you know how far you were
 13 from that vehicle in terms of either feet,
 14 yards, miles when you first saw the
 15 vehicle, the sanitation truck?
 16 A. I believe I was making my way
 17 down the ramp to exit onto Glen Cove Road.
 18 Q. And approximately how far were
 19 you from the truck when you first saw
 20 it?
 21 MR. HERSHENHORN: An
 22 estimate without guessing.
 23 A. Would be two lanes of traffic
 24 plus part of that rampway going down.
 25 Q. During the time that you were

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1 LEVITEN
 2 on the rampway, where were your feet?
 3 A. My right leg was on the brake.
 4 Q. And your left leg, your left
 5 foot?
 6 A. Was on the floor.
 7 Q. Earlier you indicated that you
 8 were pressing the brake with all your
 9 might. From the time you began pressing
 10 the brake with all your might up until the
 11 time there was contact with the sanitation
 12 truck, did you ever stop pressing the brake
 13 with all your might?
 14 A. No.
 15 Q. Do you know what direction the
 16 sanitation truck was traveling in?
 17 A. It was going north.
 18 Q. What part of your vehicle made
 19 contact with the sanitation truck?
 20 A. The front.
 21 Q. Do you know what part of the
 22 sanitation truck you hit?
 23 A. No, I don't.
 24 Q. Was it on the side, was it the
 25 front, the back?

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1 LEVITEN
 2 A. Their vehicle?
 3 Q. Yes.
 4 A. I don't know.
 5 Q. At any time prior to contact,
 6 did you ever sound your horn?
 7 A. Yes.
 8 Q. Do you know approximately when
 9 you did that, in terms of time, how long
 10 before contact occurred?
 11 A. As soon as I realized I needed
 12 to get off the parkway, I leaned on the
 13 horn.
 14 Q. From the time that you began
 15 sounding your horn until contact, did you
 16 ever observe the sanitation truck change
 17 its direction of travel in any way, swerve
 18 to avoid the accident, stop, anything like
 19 that?
 20 MR. HERSHENHORN: Objection.
 21 You may answer.
 22 Go ahead.
 23 A. Could you --
 24 Q. Sure. I'll rephrase.
 25 From the time you sounded your

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1 LEVITEN
 2 wet?
 3 A. I don't believe so.
 4 Q. Any snow on the ground?
 5 A. I don't remember.
 6 Q. When you got into the vehicle
 7 that day, was there any ice on the
 8 windshield or any of the windows of your
 9 car?
 10 MR. HERSHENHORN: Note my
 11 objection to the form.
 12 A. Not that I noticed.
 13 Q. During the time from when you
 14 began experiencing the problem with the car
 15 up until the time that there was contact,
 16 did your vehicle slip or slide in any way?
 17 A. I don't think so.
 18 Q. At any time prior to when you
 19 sounded the horn, when you saw the truck,
 20 had you ever sounded your horn before that
 21 from the time you began experiencing the
 22 problem?
 23 A. I don't think so.
 24 Q. Did you ever flash your lights
 25 from the time you began experiencing a

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1 LEVITEN
 2 horn up until contact, did the sanitation
 3 truck continue straight or did it move in
 4 some fashion?
 5 A. It looked like it continued
 6 straight. But I am not sure.
 7 Q. Other than the sanitation
 8 truck, did your vehicle come into contact
 9 with any other vehicles?
 10 A. I don't know that it did or
 11 didn't.
 12 Q. Do you know approximately what
 13 time the accident occurred?
 14 A. Approximately 2:30 in the
 15 afternoon.
 16 Q. Was it a sunny day, overcast,
 17 something else?
 18 MR. HERSHENHORN: Objection
 19 to the form.
 20 You may answer.
 21 A. I believe it was nice weather.
 22 Q. Do you know if it had rained
 23 that day at all?
 24 A. I don't think so.
 25 Q. Do you know if the roads were

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1 LEVITEN
 2 problem up until the time that you had the
 3 contact?
 4 A. I don't think so.
 5 Q. Did you ever put your hazard
 6 lights on from the time you began
 7 experiencing the problem up until the time
 8 you had contact?
 9 A. I don't think so.
 10 Q. Just so I am clear, prior to
 11 the date of your accident, had you ever
 12 experienced any problem similar to that
 13 since the time you bought the car?
 14 A. Similar to what?
 15 Q. To what you experienced that
 16 day. With the acceleration, the problem
 17 with the brakes?
 18 A. No.
 19 MR. CHOJNACKI: Thank you,
 20 Ms. Leviten.
 21 (Whereupon, a luncheon
 22 recess was taken.)
 23 EXAMINATION BY
 24 MR. STRIER:
 25 Q. Good afternoon, Ms. Leviten.

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TOY-RQ-05E-00002327

1 LEVITEN
 2 My name is Todd Strier. I am an attorney
 3 with Kelner & Kelner. As you know, I
 4 represent Michael Doukas. I have a few
 5 questions for you.
 6 When you were on the Northern
 7 State Parkway and you were on the ramp
 8 towards Glen Cove Road, did you ever come
 9 to a stop at the stop sign?
 10 A. I am not even sure about the
 11 stop sign.
 12 Q. Did you ever come to a stop on
 13 the off ramp before the impact?
 14 A. No.
 15 Q. Can you describe the impact for
 16 me, light, medium, heavy or something else?
 17 A. Heavy.
 18 MR. STRIER: I have no
 19 further questions. Thank you.
 20 EXAMINATION BY
 21 MR. CHOJNACKI:
 22 Q. Good afternoon, again,
 23 Ms. Leviten.
 24 A. Good afternoon.
 25 Q. As a result of the impact

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1 LEVITEN
 2 remember?
 3 A. I remember hearing a voice.
 4 Q. Do you know whose voice that
 5 was?
 6 A. No.
 7 Q. Did you regain consciousness
 8 while you were still in your vehicle?
 9 A. Yes.
 10 Q. When you regained
 11 consciousness, did you see anybody?
 12 A. While I was in my vehicle?
 13 Q. Correct.
 14 A. No.
 15 Q. When you regained
 16 consciousness, were you feeling pain in any
 17 part of your body?
 18 A. While I was in my vehicle?
 19 Q. Yes.
 20 A. I don't recall.
 21 Q. At some point, were you taken
 22 out of the vehicle?
 23 A. Yes.
 24 Q. Were you able to do that on
 25 your own or did someone assist you?

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1 LEVITEN
 2 between your car and the sanitation track,
 3 did you lose consciousness?
 4 A. Yes.
 5 Q. Do you know for how long you
 6 had lost consciousness?
 7 A. No, I don't know.
 8 Q. Did you lose consciousness
 9 immediately, as far as you can recall, upon
 10 impact or do you remember anything after
 11 the impact before you lost
 12 consciousness?
 13 MR. HERSHENHORN: Note my
 14 objection to the form. It is like
 15 three questions in there.
 16 MR. CHOJNACKI: Right.
 17 MR. HERSHENHORN: Can you
 18 just tell us which question you
 19 want her to answer.
 20 MR. CHOJNACKI: Sure.
 21 Q. To your knowledge, did you lose
 22 consciousness upon impact or sometime
 23 thereafter?
 24 A. I believe upon impact.
 25 Q. What's the first thing that you

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1 LEVITEN
 2 A. I was not able to do that on my
 3 own.
 4 Q. Do you know how you exited the
 5 vehicle?
 6 A. No, I don't.
 7 Q. Do you know how you left the
 8 scene of the accident?
 9 A. By an ambulance.
 10 Q. Do you know if that was a
 11 private ambulance company, was it part of a
 12 fire department or something else?
 13 A. I don't know.
 14 Q. Do you know approximately how
 15 much time went by from the time the contact
 16 occurred until the time that you actually
 17 left the accident scene?
 18 A. No, I don't know.
 19 Q. Did you receive any treatment
 20 in the ambulance?
 21 A. I don't recall.
 22 Q. Do you know where the ambulance
 23 took you?
 24 A. To Winthrop University
 25 Hospital.

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1 LEVITEN
 2 Q. It is in Mineola?
 3 A. It is in Mineola.
 4 Q. During the time that you were
 5 being taken by ambulance to Winthrop, did
 6 you have any conversations with any of the
 7 EMS personnel in the ambulance?
 8 A. Not that I recall.
 9 Q. Did you receive treatment at
 10 Winthrop?
 11 A. Yes.
 12 Q. Where did they take you, into
 13 the emergency room or somewhere else?
 14 A. I believe it was the emergency
 15 room.
 16 Q. What, if anything, do you
 17 recall them doing there for you in the
 18 emergency room?
 19 A. They cut off my clothes, they
 20 had removed a neck brace and then they took
 21 me for x-rays and other tests.
 22 Q. You mentioned a neck brace, do
 23 you remember when that neck brace was
 24 placed on you?
 25 A. At the scene of the accident.

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1 LEVITEN
 2 A. My leg, my right leg and my
 3 chest.
 4 Q. Do you know if you were given
 5 any medication during the ambulance ride
 6 for your pain?
 7 A. I don't think so.
 8 Q. What part of your body was
 9 x-rayed at Winthrop?
 10 A. I am not sure. Definitely not
 11 right leg. I don't know what else.
 12 Probably my chest.
 13 Q. Do you remember going for a
 14 chest x-ray?
 15 A. They took so many x-rays, I
 16 really don't know what they x-rayed. And I
 17 think they also did a CAT scan, but I am
 18 not sure of what part of my body.
 19 Q. Were you admitted to Winthrop?
 20 A. Yes.
 21 Q. How long did you remain
 22 hospitalized?
 23 A. At Winthrop?
 24 Q. Yes.
 25 A. I believe it was three days.

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1 LEVITEN
 2 Q. While you were still in your
 3 vehicle?
 4 A. No.
 5 Q. Where were you physically when
 6 they put the neck brace on you as far as
 7 you recall?
 8 A. I remember being on the ground.
 9 Q. Do you know how you got on the
 10 ground?
 11 A. No.
 12 Q. Other than the neck brace, do
 13 you remember if anything else was placed on
 14 you while you were still at the accident
 15 scene?
 16 A. Somebody put a jacket over me.
 17 Q. While you were in the
 18 ambulance, were you on a gurney or a
 19 stretcher?
 20 A. I was on something, but I don't
 21 know what you call it.
 22 Q. During the ambulance ride, were
 23 you feeling pain in any part of your body?
 24 A. Yes.
 25 Q. Where were you feeling pain?

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1 LEVITEN
 2 Q. During the three days that you
 3 were hospitalized at Winthrop, did you
 4 undergo surgery?
 5 A. Yes.
 6 Q. Where was that surgery, to what
 7 part of your body?
 8 A. My right leg.
 9 Q. Do you know who the surgeon
 10 was?
 11 A. It is a name that I have
 12 difficulty pronouncing.
 13 MR. HERSHENHORN: Do the
 14 best you can.
 15 A. Omid Beza something.
 16 MR. HERSHENHORN: Spell it
 17 for her, as best you can.
 18 A. O-M-I-D, B-E-Z -- I am not
 19 sure of the rest of the spelling.
 20 Q. Do you know when that surgery
 21 was performed?
 22 A. February 18.
 23 Q. The day of your accident?
 24 A. 2007, yes.
 25 Q. Did you discuss the surgery

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1 LEVITEN
 2 with the surgeon before the surgery was
 3 performed?
 4 A. I don't remember.
 5 Q. Was the surgeon male or female?
 6 A. Male.
 7 Q. Did he tell you what the
 8 surgery was going to involve before the
 9 surgery was performed?
 10 A. I don't remember.
 11 Q. Other than surgery on the right
 12 leg, did you have any other surgery while
 13 you were at Winthrop?
 14 A. No.
 15 Q. After the surgery, did the
 16 surgeon tell you what was involved, what
 17 the operation had involved?
 18 A. Broken bones.
 19 Q. Did he tell you specifically
 20 what bones?
 21 A. No.
 22 Q. Did he explain to you at all
 23 what he did during the operation?
 24 A. He might have but I don't
 25 recall.

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1 LEVITEN
 2 A. I am not sure.
 3 Q. Do you remember having any
 4 discussions with anyone about going to
 5 the Hospital for Special Surgery?
 6 A. Yes.
 7 Q. Who was that?
 8 A. With the surgeon from Winthrop
 9 and my daughters.
 10 Q. As best you can recall, can you
 11 tell me the sum and substance, what you
 12 talked about with the surgeon, about
 13 Hospital for Special Surgery?
 14 A. Just that it was a good
 15 hospital and I could do well with that
 16 hospital.
 17 Q. Did he indicate to you that you
 18 needed further surgery?
 19 A. Yes.
 20 Q. And that's why you were being
 21 sent there?
 22 A. Yes, he did indicate I needed
 23 further surgery.
 24 Q. Did he ever tell you why that
 25 couldn't be performed at Winthrop?

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1 LEVITEN
 2 Q. Were you given any pain
 3 medication while you were at Winthrop?
 4 A. Yes.
 5 Q. Do you know what type of pain
 6 medication you were given?
 7 A. What it is called?
 8 Q. Yes.
 9 A. No, I don't remember.
 10 Q. Do you know how it was
 11 administered, was it given orally, was it
 12 an injection, something else?
 13 A. I definitely remember oral, but
 14 it might have been intravenous as well.
 15 Q. Were you eventually discharged
 16 from Winthrop?
 17 A. Yes.
 18 Q. Were you given any discharge
 19 instructions?
 20 A. Just to go to another hospital.
 21 Q. What hospital was that?
 22 A. Hospital for Special Surgery.
 23 Q. Was that at your request or was
 24 it a recommendation from the surgeon or
 25 something else?

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1 LEVITEN
 2 A. No.
 3 Q. Do you know how you got to the
 4 Hospital for Special Surgery?
 5 A. I think it was an ambulance.
 6 Q. When you left Winthrop, how did
 7 you leave, in a wheelchair, on crutches,
 8 something else?
 9 A. I don't remember.
 10 Q. Do you know how you were
 11 transported in the ambulance, were you
 12 sitting in a seat, were you sitting in a
 13 wheelchair, something else?
 14 A. I am not sure.
 15 Q. Do you know the name of the
 16 ambulance company?
 17 A. No.
 18 Q. You mentioned you also spoke
 19 with your daughters?
 20 A. Yes.
 21 Q. Do you know what you spoke to
 22 them about? This is while you were at
 23 Winthrop.
 24 A. Finding a doctor at Hospital
 25 for Special Surgery.

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TOY-RQ-05E-00002330

1 LEVITEN
 2 Q. Was that something that they
 3 asked you or is that something you asked
 4 them to do for you or something else?
 5 A. I am not sure how that came
 6 about.
 7 Q. Did you ever discuss with them
 8 how the accident occurred?
 9 A. Probably.
 10 Q. To the best of your
 11 recollection, what do you recall telling
 12 them?
 13 A. Just what I told you.
 14 Q. Could you summarize that for
 15 me, what I mean is to the best of what you
 16 can recall telling them?
 17 A. That my brakes didn't work and
 18 my car was out of control.
 19 Q. Were you admitted to Hospital
 20 for Special Surgery?
 21 A. Yes, I was.
 22 Q. Do you know how long you were
 23 hospitalized there?
 24 A. About one week.
 25 Q. Did you undergo surgery while

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1 LEVITEN
 2 you were at that hospital?
 3 A. Yes.
 4 Q. Do you know who the surgeon
 5 was?
 6 A. David Helfet. H-E-L-F-E-T.
 7 Q. Do you know when that surgery
 8 was performed?
 9 A. Yes.
 10 Q. When was that?
 11 A. February 21 -- wait. February
 12 21, and then a week later I had another
 13 operation on --
 14 MR. HERSHENHORN: He just
 15 asked you the date.
 16 A. February 28.
 17 Q. Prior to that first surgery at
 18 the Hospital For Special Surgery, did you
 19 discuss with the surgeon what the operation
 20 was going to involve?
 21 A. I don't remember.
 22 Q. Do you recall at all any
 23 conversations with the surgeon about the
 24 operation itself?
 25 A. There was conversation, but I

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1 LEVITEN
 2 don't recall exactly what we talked about.
 3 Q. What about after that first
 4 surgery was done, did you ever have a
 5 chance to speak with the surgeon?
 6 A. At Hospital for Special
 7 Surgery?
 8 Q. Yes.
 9 A. Yes.
 10 Q. And what did he tell you?
 11 A. That I needed another surgery.
 12 Q. Did he give you any more detail
 13 about why you needed another surgery or
 14 what the next surgery was going to involve?
 15 A. He probably did, but I don't
 16 remember exactly what he said.
 17 Q. The surgery that was performed,
 18 was that performed on your right leg at
 19 Special Surgery?
 20 A. Yes.
 21 Q. And also the next one at
 22 Special Surgery on February 28, that's also
 23 on your right leg?
 24 A. Yes.
 25 Q. Other than your right leg, have

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1 LEVITEN
 2 you undergone any surgeries following the
 3 motor vehicle accident that are related to
 4 the motor vehicle accident?
 5 A. No.
 6 Q. After this surgery on February
 7 28, of 2007, on your right leg, have you
 8 undergone any other surgeries on your right
 9 leg?
 10 A. Yes.
 11 Q. How many others?
 12 A. One.
 13 Q. When was that?
 14 A. December 2nd, 2008.
 15 Q. When were you discharged from
 16 Hospital for Special Surgery?
 17 A. Which operation?
 18 Q. After the second operation, the
 19 February 28 operation? Were you discharged
 20 the next day, that day, sometime
 21 thereafter?
 22 A. Sometime thereafter. I believe
 23 it was the beginning of March.
 24 Q. Where were you discharged to,
 25 your home, another facility?

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1 LEVITEN
 2 A. Amsterdam Nursing Home.
 3 Q. How long were you at Amsterdam?
 4 A. Two months.
 5 Q. After being discharged from
 6 Special Surgery, did you continue to treat
 7 with Dr. Helfet?
 8 A. Yes.
 9 Q. When was the last time you saw
 10 him?
 11 A. About a week ago.
 12 Q. Was he the one who performed
 13 the surgery in December of '08?
 14 A. Yes.
 15 Q. Where was that done?
 16 A. At Hospital for Special
 17 Surgery.
 18 Q. Do you know what that surgery
 19 involved, the one in December '08?
 20 A. It involved taking out all the
 21 metal.
 22 Q. Other than removal the
 23 hardware, did it involve anything else, as
 24 far as you are aware?
 25 A. I am not sure. Oh, yes, he did

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1 LEVITEN
 2 at all?
 3 A. Yes.
 4 Q. How often would you see him?
 5 A. It could have been twice. I am
 6 not sure, though.
 7 Q. Other than Dr. Helfet, did you
 8 see any other physicians while you were at
 9 Amsterdam Nursing Home?
 10 A. I saw a podiatrist.
 11 Q. Do you know his name or her
 12 name?
 13 A. I don't remember. I believe it
 14 was a woman. I don't remember her name.
 15 Q. Do you know why you saw a
 16 podiatrist?
 17 A. I also broke the fifth
 18 metatarsal in my left foot, and I wanted
 19 someone else there to check my feet.
 20 Q. When you say you also broke the
 21 fifth metatarsal in your left foot, was
 22 that as part of the automobile accident?
 23 A. Yes.
 24 Q. Was a cast ever placed on your
 25 foot?

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1 LEVITEN
 2 tell me he had to cut a bone out.
 3 Q. Did he mention what bone?
 4 A. I don't know. You mean the
 5 name of the bone?
 6 Q. Yes.
 7 A. No.
 8 Q. During your two months at
 9 Amsterdam, were you taking any pain
 10 medication?
 11 A. Yes.
 12 Q. Do you know what you were
 13 taking?
 14 A. I don't recall.
 15 Q. Do you know if that was taken
 16 orally or IV?
 17 A. Orally.
 18 Q. Do you know if you were taking
 19 pain medication during the entire two
 20 months? At some point did the pain
 21 medication stop or something else?
 22 A. I believe it was during the two
 23 months I was there.
 24 Q. During that two months that you
 25 were at Amsterdam, did you see Dr. Helfet

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1 LEVITEN
 2 A. Yes, both. A boot cast.
 3 Q. That was for your left foot?
 4 A. Both.
 5 Q. How long did you wear a boot
 6 cast on your left foot?
 7 A. I was certainly home still
 8 wearing it, I am not sure the time
 9 frame.
 10 MR. HERSHENHORN: Give an
 11 approximation, if you can.
 12 A. I am not sure.
 13 Q. But is it fair to say that
 14 during the entire two months you were at
 15 Amsterdam, you were wearing a boot cast?
 16 A. I believe so.
 17 Q. And for some period while you
 18 were home?
 19 A. I believe so.
 20 Q. The boot cast, is that
 21 something that you wore 24 hours, would you
 22 take it off when you slept at night or
 23 something else? I am specifically asking
 24 about the one on your left foot.
 25 A. I believe I wore that 24 hours.

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1 LEVITEN
 2 Q. The cast that was on your right
 3 foot, was it similar to the one that was on
 4 your left foot?
 5 A. No. It was a longer, it was up
 6 my leg on the right foot.
 7 Q. Do you know when that cast was
 8 placed on you?
 9 A. On me?
 10 Q. Yes.
 11 A. Immediately. When they
 12 operated.
 13 Q. Were you placed in a cast after
 14 your first surgery at Winthrop?
 15 A. They had some wrapping around
 16 my leg, I don't know what you would call
 17 it, if it was a cast.
 18 Q. But the longer cast that you
 19 talked about, was that placed on you after
 20 your surgery at Special Surgery on February
 21 28?
 22 A. I don't know if it was after
 23 the 21st surgery or the 28th, but I believe
 24 it was at the Hospital For Special Surgery.
 25 Q. How long did you wear that

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1 LEVITEN
 2 time?
 3 A. The one on my right foot, I
 4 wore longer.
 5 Q. Do you know approximately how
 6 much longer?
 7 A. No. I don't know.
 8 Q. Were you receiving any type of
 9 physical therapy while you were at
 10 Amsterdam?
 11 A. Yes.
 12 Q. How often would you receive
 13 therapy?
 14 A. Six days a week.
 15 Q. Did that start right away or
 16 was there a period after you were admitted
 17 there that you weren't receiving therapy?
 18 A. Maybe after a couple of days.
 19 Q. How long did the therapy
 20 sessions last?
 21 A. Approximately, I believe it was
 22 maybe an hour in the morning, an hour in
 23 the afternoon. And then I would ask an
 24 aide on the floor to also help me to walk.
 25 Or if I was in a wheelchair, to take me in

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1 LEVITEN
 2 cast?
 3 A. A long time. I don't remember
 4 when it was taken off.
 5 Q. The boot cast, was that
 6 something that you were able to remove
 7 yourself?
 8 A. Yes.
 9 Q. But the longer cast on your
 10 right foot, the doctor actually cut off
 11 you?
 12 A. No, that was also removable.
 13 Q. Who made the determination that
 14 you could stop wearing the cast, was that
 15 something you did on your own or was that
 16 something you did at a doctor's orders?
 17 A. I believe the doctor.
 18 Q. Did he actually physically
 19 remove it from you or told you you didn't
 20 have to wear it anymore, or something else?
 21 A. I don't recall if it was he or
 22 the physical therapist.
 23 Q. Do you know which cast you wore
 24 longer, the one on your left foot or the
 25 one on your right foot or was it the same

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1 LEVITEN
 2 the wheelchair.
 3 Q. What did the therapy consist
 4 of, what did they do for you?
 5 A. They helped me with strength
 6 and balance.
 7 Q. Did they have you stand up?
 8 A. When I was on using a walker
 9 and crutches.
 10 Q. When did you start using the
 11 walker and the crutches?
 12 A. While I was still at Amsterdam
 13 Nursing Home. But I don't know what date.
 14 Q. Halfway through, toward the
 15 beginning, toward the end, something else?
 16 A. I am not sure.
 17 Q. Other than seeing Dr. Helfet
 18 twice, seeing the podiatrist and receiving
 19 treatment from the therapist, did you treat
 20 with anyone else at Amsterdam?
 21 A. There were nurses that would
 22 check on me. Somebody did a Doppler test
 23 to see if I had any blood clot in my legs.
 24 I don't recall anything else.
 25 Q. Were you ever told the results

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1 LEVITEN
 2 of the Doppler test?
 3 A. Yes.
 4 Q. What did they tell you?
 5 A. That I had no blood clot.
 6 Q. Who discharged you from
 7 Amsterdam?
 8 A. I believe it was Dr. Helfet.
 9 Q. Did you talk with him at all
 10 prior to your discharge?
 11 A. I probably did.
 12 Q. Do you recall at all what that
 13 conversation involved?
 14 A. I know it involved therapy,
 15 further therapy.
 16 Q. Were you discharged to your
 17 home?
 18 A. Yes.
 19 Q. How did you get home?
 20 A. I don't recall.
 21 Q. When you left Amsterdam Nursing
 22 Home, were you in a wheelchair, were you
 23 using a walker, crutches or something
 24 else?
 25 MR. HERSHENHORN: Objection

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1 LEVITEN
 2 treat for your right leg?
 3 A. Yes.
 4 Q. What was the first treatment
 5 you received after being discharged?
 6 A. I don't know. I don't
 7 remember, I should say. I don't remember.
 8 Q. Did you continue to treat with
 9 Dr. Helfet?
 10 A. Yes.
 11 Q. And he had recommended that you
 12 continue physical therapy?
 13 A. Yes.
 14 Q. Where did you go for physical
 15 therapy?
 16 A. St. Charles Rehabilitation
 17 Center.
 18 Q. Do you know where that is
 19 located?
 20 A. It is located in Albertson or
 21 Seasingtown.
 22 Q. Do you know approximately when
 23 you started there?
 24 A. Approximately after I was home
 25 for maybe three or four weeks.

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1 LEVITEN
 2 to the form.
 3 You may answer.
 4 A. I believe I was on crutches.
 5 Although I came home with a walker also,
 6 so -- I don't know how long it was until I
 7 transferred.
 8 Q. When you first got home, were
 9 you using a walker more often than the
 10 crutches, the crutches more often than the
 11 walker or something else?
 12 A. I started to use the walker
 13 solely and then through therapy they helped
 14 me to transfer to use the crutches.
 15 Q. Do you recall when you stopped
 16 using crutches?
 17 A. No. I don't know when that
 18 was.
 19 Q. Do you know what the season
 20 was, was it still in the summer, was it
 21 fall at that point?
 22 A. Could have been the fall. But
 23 I am not sure.
 24 Q. After your discharge from
 25 Amsterdam Nursing Home, did you continue to

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1 LEVITEN
 2 Q. During that three or four weeks
 3 that you were home, did you receive any
 4 medical treatment at all?
 5 A. Yes, I had a therapist come to
 6 the house.
 7 Q. Do you know who employed that
 8 therapist?
 9 A. Who employed? The insurance.
 10 Q. Do you know if it was a private
 11 therapist, someone affiliated with
 12 Amsterdam, someone affiliated with
 13 St. Charles?
 14 A. Not affiliated with Amsterdam
 15 and not affiliated with St. Charles.
 16 Q. How often would the therapist
 17 come?
 18 A. Two or three times a week.
 19 Q. What would the therapist do for
 20 you?
 21 A. Strengthening exercises, range
 22 of motion.
 23 Q. During the time that this
 24 private therapist was coming to your home,
 25 do you recall if you still had the cast on

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1 LEVITEN
 2 your right leg?
 3 A. I don't remember.
 4 Q. Was it always the same
 5 therapist?
 6 A. For those three or four weeks?
 7 Q. Yes?
 8 A. I believe so.
 9 Q. During that three or four
 10 weeks, did you ever see Dr. Helfet?
 11 A. I don't recall the next time I
 12 had seen him.
 13 Q. During that three or four
 14 weeks, were you taking any pain medication?
 15 A. I believe so.
 16 Q. Do you know what you were
 17 taking?
 18 A. It could have been Tylenol
 19 extra strength.
 20 Q. Over the counter or were you
 21 given a prescription?
 22 A. Over the counter.
 23 Q. Were you given a prescription
 24 for pain medication when you were
 25 discharged from Amsterdam?

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1 LEVITEN
 2 Q. Did the home health aide take
 3 you?
 4 A. Yes.
 5 Q. How long did you have a home
 6 health aide for?
 7 MR. HERSHENHORN: The first
 8 time she had one.
 9 MR. CHOJNACKI: Yes.
 10 A. Until March 2008.
 11 Q. When did that health aide
 12 start, right after your discharge at
 13 Amsterdam or some time after?
 14 A. Right after discharge from
 15 Amsterdam.
 16 Q. Was it always the same person?
 17 A. No.
 18 Q. How many different aides did
 19 you have?
 20 A. A few. I don't know how many
 21 exactly.
 22 Q. Do you know what agency
 23 provided the health aide?
 24 A. At that time when I first came
 25 home? I am not sure.

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1 LEVITEN
 2 A. I was.
 3 Q. Do you know what that was?
 4 A. I don't remember.
 5 Q. Did you ever fill out that
 6 prescription?
 7 A. I am not sure.
 8 Q. Was there a particular pharmacy
 9 that you used?
 10 A. Yes. But it has changed
 11 names. Eckerd.
 12 Q. It is still a pharmacy in the
 13 same location?
 14 A. It is still a pharmacy in the
 15 same location.
 16 Q. And it is currently Eckerd as
 17 far as you are aware?
 18 A. I believe it is.
 19 Q. Where is that located?
 20 A. On Willis Avenue.
 21 Q. The first time that you went to
 22 St. Charles for therapy, how did you get
 23 there?
 24 A. I had an aide, a home health
 25 aide.

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1 LEVITEN
 2 Q. How often would the health aide
 3 come?
 4 A. Every day.
 5 Q. Five days a week, seven days a
 6 week?
 7 A. Seven.
 8 Q. How long would they stay?
 9 A. About 12 hours.
 10 Q. And generally speaking, what
 11 would the aide do for you?
 12 A. Help me to transfer from the
 13 bed to a commode. Stay by me, make sure I
 14 don't fall. Prepare meals. Do light
 15 cleaning, laundry chores. Driving me to
 16 whatever I needed. Help me to shower. I
 17 am sure there are other things, but that's
 18 all I can remember at this time.
 19 Q. When was the first time you
 20 actually left your house after being
 21 discharged from Amsterdam?
 22 A. I am not sure.
 23 Q. Were you paying for the aide or
 24 was it covered by insurance or something
 25 else?

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1 LEVITEN
 2 A. Through insurance.
 3 Q. Did you have any type of co-pay
 4 that you had to lay out out of pocket for
 5 the aide?
 6 A. No.
 7 Q. What about for the physical
 8 therapist who came to your home?
 9 A. No.
 10 Q. What about for going to
 11 St. Charles?
 12 A. No.
 13 Q. When you began at St. Charles,
 14 how often were you going?
 15 A. Three times a week.
 16 Q. Are you still going for therapy
 17 at St. Charles?
 18 A. I am.
 19 Q. How often are you going
 20 currently?
 21 A. Three times a week.
 22 Q. Has there ever been a time that
 23 you've gone less than three times a week?
 24 A. I had to stop one period of
 25 time for an operation.

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1 LEVITEN
 2 A. Couple of months.
 3 Q. Do you recall whether you
 4 started rehab again in January of '09 or
 5 February of '09?
 6 A. No, I am not sure.
 7 Q. But currently, you go three
 8 times a week?
 9 A. I do.
 10 Q. When do you generally go, in
 11 the mornings, the afternoons?
 12 A. Monday, Wednesday, Friday.
 13 Monday and Wednesday is afternoon, and
 14 Friday is morning. But that hasn't always
 15 been, but it has always been three times a
 16 week.
 17 Q. Do you have to make
 18 appointments or is it up to you when you
 19 want to go in, or something else?
 20 A. They make the appointment for
 21 you.
 22 Q. Currently, how do you get to
 23 rehab?
 24 A. My aide drives me.
 25 Q. You still have a home health

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1 LEVITEN
 2 Q. Was that in December of '08 or
 3 for something else?
 4 A. For something else.
 5 Q. What was that?
 6 A. Kidney operation.
 7 Q. How long did you miss from
 8 therapy because of the kidney operation?
 9 A. About three months.
 10 Q. Do you know approximately when
 11 that was?
 12 A. That's approximately -- I
 13 don't know exactly. I am sorry?
 14 Q. What I mean is do you know
 15 approximately what three-month period that
 16 was?
 17 A. The operation was in March,
 18 March, April, May.
 19 Q. Of 2008?
 20 A. Of 2008.
 21 And then I stopped again when I
 22 had this recent operation in December.
 23 Q. How long did you miss after
 24 that operation?
 25 MR. HERSHENHORN: Estimate.

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1 LEVITEN
 2 aide?
 3 A. I do.
 4 Q. How often do you have the aide,
 5 is it still seven days a week?
 6 A. Seven days a week.
 7 Q. For 12 hours a day?
 8 A. No, from 9:00 to 6:00.
 9 Q. 9:00 a.m. to 6:00 p.m.?
 10 A. 9:00 a.m. to 6:00 p.m.
 11 Q. Generally speaking, do you have
 12 the same aide who comes Monday to Friday
 13 and a different aide that comes Saturday
 14 and Sunday?
 15 A. At this time I have someone
 16 from Monday to Friday and I have someone
 17 different on Saturday and Sunday, could be
 18 different Saturday and could be different
 19 Sunday.
 20 Q. Who is the person that comes
 21 Monday through Friday?
 22 A. Name?
 23 Q. Name.
 24 A. Clara.
 25 Q. Do you know her last name?

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1 LEVITEN
 2 A. Faustin. F-A-U-S-T-I-N.
 3 MR. HERSHENHORN: We will
 4 probably call her as a witness for
 5 trial so if you would like us to
 6 produce her for deposition, just
 7 let us know.
 8 MR. CHOJNACKI: Okay.
 9 Q. How often do you generally see
 10 Dr. Helfet, once a month, once every other
 11 month, or something else?
 12 A. Could be after six weeks, could
 13 be after eight weeks.
 14 Q. When was the last time you saw
 15 him?
 16 A. I think it was the 10th.
 17 Q. Do you have an appointment with
 18 him in the future?
 19 A. I do. In May.
 20 Q. This most recent with
 21 Dr. Helfet, did you discuss your condition
 22 with him?
 23 A. Yes.
 24 Q. Did you make any complaints to
 25 him?

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1 LEVITEN
 2 A. Generally speaking?
 3 Q. Yes.
 4 A. That it takes time.
 5 Q. Did he discuss with you whether
 6 you might need any further surgery now that
 7 the hardware has been removed?
 8 A. He did not discuss that with
 9 me.
 10 Q. Other than seeing Dr. Helfet,
 11 do you see any other doctors for your left
 12 foot or ankle or your right leg?
 13 A. I have gone to chiropractors.
 14 Q. Anyone else?
 15 A. I can't recall at this time.
 16 Q. Which chiropractors have you
 17 seen?
 18 A. A Dr. Silverman, Dr. Charles,
 19 Dr. Lewis, L-E-W-I-S.
 20 Q. Are they all affiliated with
 21 the same facility?
 22 A. No.
 23 Q. Do you know where they are
 24 located?
 25 A. Dr. Silverman is in Glen Cove.

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1 LEVITEN
 2 A. I did.
 3 Q. What did you complain about?
 4 A. Swelling and pain.
 5 Q. Specifically where?
 6 A. And range of motion pain,
 7 ankle. Leg, I think that's --
 8 Q. Your right leg?
 9 A. My right leg, yes.
 10 Q. Currently, do you have any
 11 complaints with regard to your right foot
 12 or ankle?
 13 A. Some.
 14 Q. Did you discuss any complaints
 15 about your left foot or ankle with
 16 Dr. Helfet at the last visit?
 17 A. No.
 18 Q. Have you ever received therapy
 19 for your left foot or ankle since this
 20 accident occurred?
 21 A. Whatever I do for my right leg,
 22 I do for my left leg.
 23 Q. What, if anything, did
 24 Dr. Helfet tell you during this last visit
 25 about your condition?

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1 LEVITEN
 2 Dr. Lewis is in Commack I believe. And
 3 Dr. Charles is in Manhattan.
 4 Q. Chronologically, who did you
 5 see first of those three, if you know?
 6 A. I think it was Dr. Charles.
 7 Q. Did someone refer you to
 8 Dr. Charles?
 9 A. No.
 10 Q. How did you find out about him?
 11 A. I had gone to see him in the
 12 early '90s.
 13 Q. How many times did you see
 14 Dr. Charles?
 15 MR. HERSHENHORN: For her
 16 leg.
 17 A. Since the accident?
 18 Q. Yes.
 19 A. Once or twice.
 20 Q. Is he treating you for your
 21 right leg and/or your left foot and ankle?
 22 A. He is a chiropractor so he
 23 treats my whole body.
 24 Q. Did you go to him specifically
 25 because of complaints you had with regard

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1 LEVITEN
 2 to your right leg and your left foot?
 3 A. Yes.
 4 Q. Do you know approximately when
 5 you saw him?
 6 A. No.
 7 Q. 2007, 2008?
 8 A. Probably 2007.
 9 Q. What, if anything, did he do
 10 for you during those two visits?
 11 A. Adjustments, supplements,
 12 kenisiology.
 13 Q. Did he make any recommendations
 14 for further treatment?
 15 A. Just that I come back to see
 16 him.
 17 Q. Is there a reason why you
 18 stopped going back to him?
 19 A. I felt he was too expensive.
 20 Q. Is that something you paid for
 21 yourself or did insurance cover it?
 22 A. I paid for that myself. Maybe
 23 I gave it to the insurance company.
 24 Q. How much was that?
 25 A. 250.

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1 LEVITEN
 2 Q. Do you know what type of tests
 3 he performed?
 4 A. I don't know what they are
 5 called.
 6 Q. Did you have to pay out of
 7 pocket for Dr. Lewis?
 8 A. Yes.
 9 Q. How much was that?
 10 A. I don't remember.
 11 Q. Is there a reason you stopped
 12 treating with Dr. Lewis?
 13 A. I wasn't satisfied.
 14 Q. Did you discuss that with him?
 15 A. Yes.
 16 Q. Specifically about what were
 17 you not satisfied?
 18 A. With the way I was feeling
 19 generally.
 20 Q. Did he make any recommendations
 21 for further treatment?
 22 A. He told me that I should keep
 23 coming.
 24 Q. Was it anything about the care
 25 he was giving or was it that your condition

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1 LEVITEN
 2 Q. Per visit or total?
 3 A. Per visit.
 4 Q. How did you get there?
 5 A. I don't remember.
 6 Q. Did your aide take you?
 7 A. I don't remember.
 8 Q. Did you see Dr. Lewis next or
 9 Dr. Silverman next?
 10 A. Dr. Lewis next.
 11 Q. How often did you see
 12 Dr. Lewis?
 13 A. I went several times. It
 14 wasn't a regular visit.
 15 Q. You weren't going once a week
 16 or twice a week?
 17 A. No, it wasn't like that.
 18 Q. Did someone refer you to
 19 Dr. Lewis?
 20 A. Yes.
 21 Q. Who referred you?
 22 A. A friend of mine.
 23 Q. What did Dr. Lewis do for you?
 24 A. Adjustments, tests, also
 25 vitamins, minerals, supplements.

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1 LEVITEN
 2 wasn't improving or something else?
 3 A. I felt that my condition wasn't
 4 improving.
 5 Q. And then you saw Dr. Silverman
 6 next?
 7 A. Yes.
 8 Q. Do you still treat with
 9 Dr. Silverman currently?
 10 A. Well, I haven't been going
 11 recently, but yes.
 12 Q. When was the last time you saw
 13 him?
 14 A. Before my operations.
 15 Q. So, before December of 2008?
 16 A. Yes.
 17 Q. Was there anything different
 18 about the treatment that Dr. Silverman was
 19 giving you than the treatment that
 20 Dr. Lewis was giving you, and by that I
 21 mean were they adjusting the same parts of
 22 your body?
 23 A. I am not sure. Different
 24 supplements also.
 25 Q. What type of supplements were

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1 LEVITEN
 2 they giving you?
 3 A. Dr. Lewis would give certain
 4 vitamins and minerals and Dr. Silverman
 5 would give homeopathic remedies.
 6 Q. Was that something they would
 7 provide at their office or would they give
 8 you a name of something to go purchase on
 9 your own?
 10 A. They would provide you at their
 11 office.
 12 Q. And charge you for it?
 13 A. Yes.
 14 Q. How much was Dr. Silverman
 15 costing you per visit?
 16 A. Should I average? Estimate?
 17 Q. If you can estimate, yes.
 18 A. Between 100 and 150.
 19 Q. Do you know approximately how
 20 many times you saw Dr. Silverman?
 21 A. No. A few times.
 22 Q. In terms of your total
 23 treatment, who did you see the most,
 24 Dr. Lewis, Dr. Charles or Dr. Silverman?
 25 A. I don't know who I saw more.

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1 LEVITEN
 2 come to your house and going to
 3 St. Charles, have you received physical
 4 therapy anywhere else?
 5 A. No.
 6 Q. I am assuming you have
 7 appointments next week with St. Charles?
 8 A. Yes.
 9 Q. Other than your future
 10 appointments with St. Charles and a future
 11 appointment with Dr. Helfet, do you have
 12 any appointments actually scheduled for any
 13 medical treatment in the future with
 14 respect to your right leg?
 15 A. No.
 16 Q. Prior to the motor vehicle
 17 accident of February 18, 2007, had you ever
 18 injured your right leg?
 19 A. I don't believe so.
 20 Q. Prior to that motor vehicle
 21 accident, had you ever injured your left
 22 leg?
 23 A. I don't believe so.
 24 Q. Since the motor vehicle
 25 accident, have you ever reinjured your

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1 LEVITEN
 2 Q. Did someone refer you to
 3 Dr. Silverman?
 4 A. No.
 5 Q. Did Dr. Silverman ever make any
 6 adjustments specifically with respect to
 7 your right leg?
 8 A. I don't recall.
 9 Q. When you treated with him, did
 10 you make complaints to him about your right
 11 leg?
 12 A. Yes.
 13 Q. And the supplements that he was
 14 giving you, were those intended to be, to
 15 treat your right leg?
 16 A. I believe so.
 17 Q. Did you make complaints to him
 18 about your left foot and ankle?
 19 A. I believe about the swelling.
 20 Q. Did he do anything for you with
 21 respect to the swelling?
 22 A. I believe he gave me something
 23 for inflammation.
 24 Q. Other than the therapy you
 25 received at Amsterdam, having the therapist

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1 LEVITEN
 2 right leg?
 3 A. No.
 4 Q. What about your left leg?
 5 A. No.
 6 Q. As you sit here today, what
 7 complaints, if any, do you have with
 8 respect to your left leg?
 9 A. Swelling around the ankle.
 10 Q. Anything else?
 11 A. Some discomfort sometimes when
 12 I touch my leg.
 13 Q. Anything else?
 14 A. With the left leg?
 15 Q. Yes.
 16 A. No.
 17 Q. How often do you get swelling
 18 around the ankle in your left leg?
 19 A. Seems to be there all the time.
 20 Q. What about the discomfort, how
 21 often do you experience that?
 22 A. Whenever I might lean on that
 23 leg or touch it in a certain area.
 24 Q. Is that something you notice
 25 every day, less than every day?

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1 LEVITEN
 2 A. The swelling I notice.
 3 As far as the discomfort, not
 4 every day do I notice it.
 5 Q. What about your right leg,
 6 currently, what are your complaints?
 7 A. Pain and swelling.
 8 Q. Anything else?
 9 A. I am not sure what you mean by
 10 anything else.
 11 Q. Any other complaints that you
 12 have with respect to the leg, your right
 13 leg?
 14 A. Other than pain and swelling?
 15 Q. Yes.
 16 A. I don't think so.
 17 Q. How often do you have pain in
 18 your right leg?
 19 A. Probably every day.
 20 Q. Are you in pain right now?
 21 A. Some, I have it elevated right
 22 now.
 23 Q. Is there anything that makes
 24 the pain worse?
 25 A. No.

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1 LEVITEN
 2 walking up a step where instead of -- I
 3 would have to demonstrate, but walking up a
 4 step and down, up and down, up and down.
 5 Q. The band, is it a stretchable
 6 exercise band?
 7 A. Yes.
 8 Q. Do you still do the home
 9 exercise program?
 10 A. I do.
 11 Q. How often do you do that?
 12 A. Maybe once or twice a week.
 13 There might be other exercises that I
 14 didn't mention.
 15 Q. Were you given verbal
 16 instructions on home exercises, were you
 17 given a sheet that listed home exercises or
 18 something else?
 19 A. Verbal. At one time, I might
 20 have been given a sheet.
 21 Q. Were you ever shown how to do
 22 the exercises?
 23 A. Yes.
 24 Q. Where did you receive that
 25 instruction, at St. Charles?

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1 LEVITEN
 2 Q. Do you take any medication
 3 currently for the pain?
 4 A. No.
 5 Q. How often do you have swelling?
 6 A. All the time.
 7 Q. Has Dr. Helfet prescribed any
 8 medication for you within the last two
 9 months with regard to your right leg,
 10 either pain medication, anti-inflammatories
 11 anything else?
 12 A. No.
 13 Q. Have you talked with him about
 14 the pain that you are experiencing?
 15 A. Yes.
 16 Q. Did you ever make a request
 17 from him for pain medication?
 18 A. No.
 19 Q. Were you ever given any type of
 20 home exercise program for your right or
 21 left leg?
 22 A. Yes.
 23 Q. What did that entail?
 24 A. A band for range of motion,
 25 balancing on one foot at a time, squats,

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1 LEVITEN
 2 A. At St. Charles.
 3 Q. Is there anything you can't do
 4 currently that you used to be able to do
 5 because of the accident?
 6 A. Yes.
 7 Q. What specifically can't you do
 8 today that you used to do before the
 9 accident?
 10 A. Run, jump, climb, ski and hop.
 11 Q. How often before the accident
 12 would you run?
 13 A. I don't know how often I would
 14 run.
 15 Q. Would you jog on a regular
 16 basis or something like that?
 17 A. No.
 18 Q. Did you belong to a gym?
 19 A. No. But I do exercise at home.
 20 Q. What type of exercises would
 21 you do at home before the accident?
 22 A. I have a rebounder, I have a
 23 step and I have free weights, and I have
 24 tapes that I follow, exercise tapes.
 25 Q. Did you have a specific

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1 LEVITEN
 2 exercise regimen that you used to follow
 3 before the accident?
 4 A. More or less.
 5 Q. Have you been able to do any of
 6 that exercise regimen since the accident?
 7 A. Some.
 8 Q. Was the hopping and the jumping
 9 part of your pre-accident exercise regimen
 10 and that's what you're not able to do that?
 11 A. Yes.
 12 Q. Specifically, was that part of
 13 the tape or one of the tapes?
 14 A. Yes.
 15 Q. Do you know what tape that was?
 16 A. The name of the tape?
 17 Q. Yes.
 18 A. Gilad is the trainer.
 19 Q. How often would you ski before
 20 the accident?
 21 A. Only a couple of times.
 22 Q. Did you have a membership
 23 anywhere?
 24 A. No.
 25 Q. Any other hobbies that you used

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1 LEVITEN
 2 A. I just started to drive last
 3 week. And the answer is yes.
 4 Q. So, before last week, you
 5 hadn't driven at all since the accident?
 6 A. I did at some point.
 7 Q. Has either Dr. Helfet or
 8 St. Charles or anyone else given you an
 9 indication as to how much longer you can
 10 expect to have a home health aide?
 11 A. No.
 12 Q. Have you ever inquired?
 13 A. No.
 14 Q. Other than the chiropractors
 15 that we discussed, have you had any other
 16 out-of-pocket expenses as a result of this
 17 accident? Did you have to pay St. Charles
 18 a co-pay, Dr. Helfet a co-pay, did you owe
 19 any money to any of the hospitals, anything
 20 like that?
 21 A. Dr. Gale.
 22 Q. Who is Dr. Gale?
 23 A. From the last operation, he did
 24 the suturing.
 25 Q. And how much was that bill?

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1 LEVITEN
 2 to have before the accident that you don't
 3 partake of anymore because of the accident?
 4 A. Bicycle riding.
 5 Q. How often would you do that?
 6 A. In the summertime, often.
 7 Spring, summer and fall I would ride.
 8 Q. Have you tried that at all
 9 since the accident?
 10 A. Yes.
 11 Q. Were you able to do that?
 12 A. Limited.
 13 Q. Currently, do you drive?
 14 A. Yes.
 15 Q. Do you have any restrictions on
 16 your license because of the accident?
 17 A. No.
 18 Q. Do you have any special
 19 assistive devices in the car currently?
 20 A. No.
 21 Q. What type of car are you
 22 driving?
 23 A. Lexus.
 24 Q. When you go for therapy, do you
 25 ever drive yourself?

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1 LEVITEN
 2 A. I think it was 350 for
 3 consultation and 3,000 or 3500 for the
 4 surgery.
 5 Q. Did you submit that bill to
 6 your insurance company?
 7 A. Yes.
 8 Q. And did they reject it or
 9 something else?
 10 A. They gave me an amount.
 11 Q. Which was less than the
 12 doctor's bill; is that correct?
 13 A. What do you mean -- oh, yes,
 14 less than the full amount.
 15 Q. You had insurance for the 2007
 16 Lexus?
 17 A. Car insurance?
 18 Q. Yes.
 19 A. Yes.
 20 Q. Was that through GEICO?
 21 A. Yes.
 22 Q. Do you also have your own
 23 health insurance plan?
 24 A. Yes.
 25 Q. Who is that with?

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1 LEVITEN
 2 A. Empire.
 3 Q. Has GEICO ever notified you if
 4 your No-Fault coverage has been exhausted?
 5 A. No.
 6 Q. As a result of the accident,
 7 did you miss any time from work?
 8 A. Yes.
 9 Q. Approximately how much time did
 10 you miss from work?
 11 A. Since the time of the accident
 12 until the present time.
 13 Q. So, you have not gone back to
 14 Prudential?
 15 A. Correct.
 16 Q. Do you intend at some point in
 17 the future to go back to work?
 18 A. Yes.
 19 Q. Have you made any plan in that
 20 respect, talked to Prudential about when
 21 you would like to come back?
 22 A. I have renewed my license, I am
 23 looking to take a course in that respect,
 24 planning.
 25 Q. In 2006, you were working for

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1 LEVITEN
 2 Q. Your pay with Prudential, is
 3 that based on commission through sales?
 4 A. Yes.
 5 Q. Were you also receiving a
 6 pension from the unified court system?
 7 A. Yes.
 8 Q. How much is that?
 9 A. Approximately 4200 a month.
 10 Q. Did you have any type of
 11 private disability insurance?
 12 A. I do now.
 13 Q. As of the time of the accident,
 14 did you?
 15 A. No.
 16 Q. Did you make any claim to GEICO
 17 for lost wages, under your No-Fault?
 18 A. I don't think so.
 19 Q. Did you ever file for Social
 20 Security disability?
 21 A. Yes, I did. Because they
 22 pay -- I am sorry. To go back, retract,
 23 retrace that last question.
 24 Q. Your private disability?
 25 MR. HERSHENHORN: No, GEICO.

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1 LEVITEN
 2 Prudential; is that correct?
 3 A. Yes.
 4 Q. Do you know approximately how
 5 much you earned from Prudential in 2006?
 6 A. Approximately \$20,000.
 7 Q. Did you file income taxes for
 8 the 2007 year?
 9 A. Yes.
 10 Q. Do you know approximately what
 11 your income was in 2007?
 12 A. I believe that income I told
 13 you of \$20,000 was in 2007. I am not sure
 14 which year now.
 15 Q. Your accident was February of
 16 2007?
 17 A. So that was 2000 --
 18 Q. From January of 2007 up to
 19 February 18, 2007, do you know
 20 approximately how much you made with
 21 Prudential?
 22 A. For that month?
 23 Q. Yes, that six-week period of
 24 time.
 25 A. No.

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1 LEVITEN
 2 A. GEICO lost wage, they do pay
 3 me.
 4 Q. Do you know how much you are
 5 receiving from GEICO?
 6 A. 300 something a month.
 7 Q. And did you ever apply to
 8 Social Security disability?
 9 A. Yes.
 10 Q. Do you know what the status of
 11 that application is, was it granted,
 12 denied, pending?
 13 A. Granted.
 14 Q. How much are you receiving from
 15 Social Security disability?
 16 A. Approximately \$1900.
 17 Q. Per month?
 18 A. Per month.
 19 Q. Do you know when that started?
 20 A. I believe when I was 62.
 21 Q. Do you know if that was
 22 actually Social Security disability as
 23 opposed to just your regular Social
 24 Security?
 25 A. I am not sure if it is a

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1 LEVITEN
 2 combination.
 3 Q. Did you retain an attorney to
 4 file a Social Security disability claim for
 5 you?
 6 A. No.
 7 Q. Do you recall actually filling
 8 out paperwork to submit a disability claim
 9 to Social Security?
 10 A. Yes.
 11 Q. You did that yourself?
 12 A. Yes.
 13 MR. CHOJNACKI: I have
 14 nothing else. Thank you.
 15 EXAMINATION BY
 16 MR. GRAY:
 17 Q. Just a few.
 18 What model year are you
 19 currently driving?
 20 A. ES 350.
 21 Q. From whom did you purchase or
 22 lease that vehicle?
 23 A. From Ray Catena dealership in
 24 New Jersey.
 25 Q. Is it a purchase, do you own it

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1 LEVITEN
 2 then when is the next time you drove?
 3 A. I am not sure. Could have
 4 been -- I am guessing.
 5 MR. HERSHENHORN: Don't
 6 guess. What is your best estimate.
 7 Q. Would you have driven a vehicle
 8 before you purchased your current Lexus?
 9 A. No.
 10 Q. And you purchased your current
 11 Lexus in December 2008?
 12 A. Had to be a year before. I had
 13 it a year.
 14 Q. So, 2007, December 2007 you
 15 purchased it?
 16 A. Yes.
 17 Q. You were driving for a period
 18 of time?
 19 A. Yes.
 20 Q. And you had your operation?
 21 A. Yes.
 22 Q. And then for a period of time
 23 because of your operation, you couldn't
 24 drive?
 25 A. Correct.

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1 LEVITEN
 2 or is it a lease?
 3 A. I own it.
 4 Q. And when did you make the
 5 purchase of it?
 6 A. The end of December.
 7 Q. Of 2008?
 8 A. 8.
 9 Q. Did you own or lease any other
 10 vehicles between the date of your accident
 11 and December 2008?
 12 A. No.
 13 Q. I may have got this wrong, but
 14 you seem to have indicated you drove for a
 15 period of time and stopped and drove again;
 16 is that correct?
 17 A. Yes.
 18 Q. Can you tell me what that
 19 sequence was, about?
 20 A. I am not sure how long I was
 21 driving for. It was before the operation
 22 in March 2008, but I am not sure how many
 23 months before I was driving for.
 24 Q. I am losing a time line here.
 25 You had your accident in February 2007 and

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1 LEVITEN
 2 Q. And then you just started
 3 driving again last week?
 4 A. Yes. Because of the operation,
 5 as a result from December 2nd, I had an
 6 operation last March, I drove and I had to
 7 stop for the kidney operation and I drove
 8 and I had to stop for the leg operation in
 9 December. But I don't know how many months
 10 in between.
 11 Q. Do you drive with two feet or
 12 one foot?
 13 A. One.
 14 Q. So, you use the same foot to
 15 apply the gas and the brake?
 16 A. Correct.
 17 Q. Before your accident giving
 18 rise to this lawsuit, which foot did you
 19 drive with?
 20 A. My right.
 21 Q. And today, which foot do you
 22 drive with?
 23 A. My right.
 24 Q. The Lexus, what year is this
 25 current Lexus?

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1 LEVITEN
 2 A. It is an '08.
 3 Q. Regarding this model, your 2008
 4 Lexus, does it have floor mats for the
 5 driver side?
 6 A. Yes.
 7 Q. Are they wrapped in plastic?
 8 A. No.
 9 Q. Do they have any hooks which
 10 allow the floor mat to be fastened down?
 11 A. Yes.
 12 Q. Since you've been driving that
 13 particular Lexus, have you had any problems
 14 with unwanted or sudden acceleration of the
 15 vehicle?
 16 A. No.
 17 Q. Have you had any problems with
 18 braking of the vehicle?
 19 A. No.
 20 Q. By braking, I mean stopping the
 21 vehicle when you apply the brakes.
 22 A. No problem that I have noticed.
 23 Q. Do you have that car with you
 24 today?
 25 A. No.

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1 LEVITEN
 2 MR. GRAY: That's all I have
 3 EXAMINATION BY
 4 MR. CHOJNACKI:
 5 Q. I may have asked this already.
 6 The December surgery, was that at Hospital
 7 for Special Surgery?
 8 A. This December 2nd.
 9 Q. December of '08.
 10 A. Yes.
 11 Q. I notice that you have a cane
 12 with you?
 13 A. Yes.
 14 Q. How long have you been using a
 15 cane to help you walk?
 16 A. Since the operation from 2 --
 17 from December 2nd.
 18 Q. Prior to that time, had you
 19 used a cane at all?
 20 A. At some point, I was using the
 21 cane.
 22 Q. Is it fair to say that you
 23 began using the cane after you discarded
 24 the crutches or was it at some other time?
 25 A. After the crutches, yes.

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1 LEVITEN
 2 Q. Do you know approximately how
 3 long you used the cane for?
 4 A. It is also a start and stop
 5 because of this last operation.
 6 Q. Did you have any discussion
 7 with Dr. Helfet about how much longer he
 8 anticipates you will be using this cane?
 9 A. I did have that conversation.
 10 Q. Do you know what the sum and
 11 substance of the conversation was?
 12 A. He said it was up to the
 13 physical therapist.
 14 Q. Did you have any discussion
 15 with the physical therapist about that?
 16 A. Yes. And he said that I should
 17 use it when I feel it necessary. And that
 18 is rain, snow, ice, where I feel that my
 19 safety might be in jeopardy.
 20 Q. If tomorrow is a nice, sunny
 21 day?
 22 A. I could probably go out without
 23 it.
 24 MR. CHOJNACKI: Thank you.
 25 MR. ROBUSTO: Let the record

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1 LEVITEN
 2 show there was extensive snow
 3 flurries today.
 4 EXAMINATION BY
 5 MR. GRAY:
 6 Q. What prevents you from working?
 7 A. Because I wasn't able to drive
 8 continuously, because you need to take
 9 people around and you need to go visit
 10 houses and see what's on the market,
 11 primarily. And emotional feeling.
 12 Insecurity about driving other people in my
 13 car.
 14 MR. GRAY: Thank you.
 15 (Whereupon, at 3:00 p.m.,
 16 the Examination of this Witness was
 17 concluded.)
 18
 19
 20
 21
 22 Subscribed and sworn to before me
 23 this 7th day of May 2009.
 24
 25
 KATHLEEN ANDRES
 Notary Public, State of New York
 No. 21ANS051913
 Qualified in Nassau County
 Commission Expires Nov. 13, 2009

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LEVITEN
I N D E X

4	EXAMINATION BY	PAGE
5	MR. GRAY	7, 184, 191
6	MR. CHOJNACKI	100, 125, 189
7	MR. STRIER	124
10	INFORMATION OR DOCUMENTS REQUESTED	PAGE
11	Any type of file in plaintiff's	
12	possession regarding the purchase	
13	of the vehicle	42

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LEVITEN
C E R T I F I C A T E

STATE OF NEW YORK)
) SS.:
COUNTY OF KINGS)

I, JANNA LIRTSMAN, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of March, 2009.

Janna Lirtsman
JANNA LIRTSMAN

DIAMOND REPORTING (718)624-7200 info@diamonddreporting.com

GAIR, GAIR, CONASON, STEIGMAN & MACKAUF

Re: Leviten v. Lexus, et al.

Held On: March 20, 2009

Statement of Plaintiff: IRIS LEVITEN (CPLR 3116(a)):

It is hereby stated that the following answers set forth in the above deposition to the questions stated below are incorrect for the reason that they were incorrectly transcribed by the stenographer taking the testimony or that the witness' recollection is now more accurate, the correct answer being stated below:

PAGE	LINE	ORIGINAL TEXT	CORRECTION
11	9	Stefano	Stephano
23	5	FRIDEL, AMAND	Armand Friedel
	7	"	FRIEDEL
	9	"	FRIEDEL
33	16	# Yes	NO
36	19	Audi	Acura
40	16	Then you	that you
44	5	Drayiya	Drayiya Claudia
110	2	ended	entered
131	10	definitely not	definitely my right
158	13	sorry?	sorry.

Iris Leviten
IRIS LEVITEN

Sworn to before me this 27th day of May, 2009

Kathleen Andres
Notary Public

KATHLEEN ANDRES
Notary Public, State of New York
No. 01AN051913
Qualified in Nassau County
Commission Expires Nov. 13, 2009

GAIR, GAIR, CONASON, STEIGMAN & MACKAUF

Re: Leviten v. Lexus, et al.

Held On: March 20, 2009

Statement of Plaintiff: IRIS LEVITEN (CPLR 3116(a)):

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PAGE	LINE	ORIGINAL TEXT	CORRECTION
165	12	Kenziology	Kinesiology
179	21	Dr. Gale	Dr. Gayle
	22	Dr. Gale	Dr. Gayle
184	2	lost wage	lost wages

Iris Leviten
IRIS LEVITEN

Sworn to before me this 27th day of May, 2009

Kathleen Andres
Notary Public

KATHLEEN ANDRES
Notary Public, State of New York
No. 01AN051913
Qualified in Nassau County
Commission Expires Nov. 13, 2009

Diamond Reporting, Inc.
ERRATA SHEET

Plaintiff(s):

Defendant(s):

Page	Line No.	Error	Correction
<p>DATE: _____</p> <p>NAME OF WITNESS: _____</p> <p>SIGNATURE: _____</p>			
Subscribed and sworn to before me			this _____ day of _____, 2008.
NOTARY PUBLIC			

BSA	03/20/09	LEVINEN vs LEXUS	WITNESS: I. LEVINEN	Look-See(4)
Look-See Concordance Report	January 18, 2007 (1)	12 [2]		2008 [12]
	156:9, 160:7			20:10; 140:14; 155:10;
	19:5			150:19, 20; 165:7; 168:15;
	195:4			186:7, 11, 22; 187:11; 189:3
UNIQUE WORDS: 1,777	January of 09 (1)	120 (1)		2:10; 192:23; 194:21
TOTAL OCCURRENCES: 7,329	153:5	123 (1)		21 [2]
NOISE WORDS: 384	45:6; 182:18	124 (1)		138:11, 12
TOTAL WORDS IN FILE: 23,862	March (4)	125 (1)		218:11; 19
SINGLE FILE CONCORDANCE	140:23; 158:17, 18; 188:6	125 (1)		193:6
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---	March, 2009 (1)	140 (1)		221.1 (1)
INCLUDES ALL TEXT OCCURRENCES	194:21	4:11		5:3
---	March 20, 2009 (1)	15 (2)		221.2 (2)
DATES ON	2:10	10:18; 13:20		5:17; 6:7
---	May (2)	16 (1)		221.3 (1)
INCLUDES PURE NUMBERS	158:18; 161:19	73:12		144:21, 25
---	November (1)	17 (8)		280 (1)
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---	November of 2006 (1)	17th (1)		28 (5)
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		\$20,000 (2)		28th (1)
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				183:9

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From 772245 to 4200

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Table with 4 columns: BSA, 03/20/09 LEVITEN vs LEXUS, WITNESS: I. LEVITEN, Look-See(51). Rows include terms like 'current [7]', '9:25; 18:7, 10; 19:18; 187:8', '100:188:25', etc.

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Table with 4 columns: BSA, 03/20/09 LEVITEN vs LEXUS, WITNESS: I. LEVITEN, Look-See(50). Rows include terms like 'drug [7]', '9:14; 76:6', 'drugs [2]', '75:22; 76:4', etc.

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Table with 4 columns: BSA, 03/20/09 LEVITEN vs LEXUS, WITNESS: I. LEVITEN, Look-See(51). Rows include terms like '118:16; 119:14; 119; 126:25', '138:17; 139:3; 145:14; 150:8', etc.

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APPROVED
FOR THE PAYMENT
OF MOTION FEE
ONLY

At IAS Part 62, of the Supreme Court of
the State of New York, County of New York, at the
Courthouse, 20 Centre Street, New York, New
York, on the 25 day of June 2009

015194

RECEIVED
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LEGAL DEPT.

PRESENT:

Honorable Karen S. Smith, Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

Index No. 107681-2007

ORDER TO SHOW CAUSE

Action #1

Index No. 117118-2007

Action #2

FILE 2
INDEX NUMBER 117118-2007
TS MOTIONS
TOTAL
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JAMES COCHRAN DATE
2009 JUN 06 10:23 AM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X
ANTHONY DIGIROLAMO,

Index No. 102331-2008

Plaintiff,

- against -

Action #3

IRIS LEVITEN,

Defendant.
-----X

Upon reading and filing the annexed affirmation of Gerard A. Riso, dated June 23, 2009, and upon all the papers and proceedings heretofore had herein,

Let the Defendant Metro Auto Leasing, Inc. ("Metro") ^{appear and} show cause before the Honorable Karen S. Smith, Justice of the Supreme Court, at IAS Part 62, of this Court held in and for the Supreme Court, New York County, at the Courthouse, located at ~~60~~ Centre Street, New York, New York, Room 200, on the 16th day of July, 2009, or as soon thereafter as counsel can be heard, why an order should not be made and entered relieving Stein Riso Mantel LLP as counsel for Metro; ^{and}

^{cause being alleged} SUFFICIENT ~~REASON APPEARING~~ ^{personal} THEREFOR, LET service of a copy of this Order to Show Cause, together with the papers upon which it is granted, upon said Defendant ~~at Metro Auto Leasing, Inc. 42-10 27th Street, Long Island City, New York 11101, Attention: Michael Silverstein,~~ and let service of a copy of this Order to Show Cause, be served upon all other parties to the action, by first class mail to the offices of their respective attorneys of record, on or

before the ^{27th} day of June, 2009, be deemed good and sufficient service. Opposition, if any, ^m
be served & filed with Part 62 on or before July 7th, 2009; reply, if
any, on or before July 13, 2009. ENTERED:

Oral argument
directed:

K.S.S.
KAREN SMITH
J.S.C.

K.S.S.
J.S.C.
KAREN SMITH
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X
IRIS LEVITEN,

Index No. 107681-2007

Plaintiff,

- against -

Action #1

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X
MICHAEL DOUKAS,

Index No. 117118-2007

Plaintiff,

- against -

Action #2

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X
ANTHONY DIGIROLAMO,

Index No. 102331-2008

Plaintiff,

- against -

Action #3

IRIS LEVITEN,

Defendant.

-----X
**AFFIRMATION IN SUPPORT OF MOTION OF STEIN RISO MANTEL LLP TO BE
RELIEVED AS ATTORNEYS FOR METRO AUTO LEASING, INC.**

GERARD A. RISO, an attorney duly admitted to the practice of law before the Courts of the State of New York, affirms, under the penalties of perjury, as follows:

1. I am a member of Stein Riso Mantel, LLP, attorneys for Defendant Metro Auto Leasing, Inc (“Metro”) in Action #1 (defined below). I respectfully submit this affirmation in support of our motion to be relieved as counsel. As set forth below, our client instructed us to discontinue our representation of Metro in this action.

BACKGROUND

2. Metro is a car leasing company incorporated under the laws of the State of New York.

3. Plaintiff in Action #1 alleges that, in or about December 2006, Metro leased a 2007 Lexus Sedan - model ES 350 – to Plaintiff, Iris Leviten. (*Iris Leviten v. Lexus et al.*, Index No. 107681-2007)

4. On or about February 18, 2007, Leviten was allegedly operating the Lexus, which allegedly was involved in a collision with a 2002 Mack Truck. (¶ 28 of *Amended Verified Complaint in Action #1 - Annexed as Exhibit A*)

5. Plaintiff Michael Doukas in Action # 2 (*Doukas v. Leviten et al.*, Index No. 117118/07) was allegedly a passenger in the Mack Truck, and Plaintiff Anthony DiGirolamo in Action #3 (*DiGirolamo v. Leviten*, Index No. 102331/08) was allegedly operating the Mack Truck when the collision occurred. (¶ 8 of *Complaint in Action #2 - Annexed as Exhibit B*)

6. All three actions were commenced in the Supreme Court of the State of New York, County of New York.

7. On or about July 7, 2008, this Court Ordered that Action #1 be consolidated with Action #2 and Action #3 for joint discovery and joint trial (“Order”). (*See Order Annexed as Exhibit C*)

8. This matter is still in the discovery stages and depositions are currently being conducted.

RELIEF REQUESTED

9. Our client has instructed us that it does not want us to continue as its attorneys in this action and that it no longer can afford to pay for our services. Metro does not have any liability insurance that would provide coverage or pay for its defense in this action.

10. No prior request has been made for the relief requested herein.

11. We move by Order to Show Cause, pursuant to CPLR §321(2), so that this Court can provide for the service of our motion papers on Metro. We ask that we be permitted to serve our client at its business address: Metro Auto Leasing, Inc. 42-10 27th Street, Long Island City, New York 11101 Attention: Michael Silverstein, by next-day mail delivery.

Dated: New York, New York
June 23, 2009


GERARD A. RISO

Exhibit A

-----X
MICHAEL DOUKAS,

Plaintiff,

**AMENDED VERIFIED
COMPLAINT**

- against -

IRIS LEVITEN, ANTHONY DiGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.
-----X

Plaintiff, by his attorneys, KELNER & KELNER, ESQS., as and for his
AMENDED VERIFIED COMPLAINT, allege the following, upon information and belief:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times herein mentioned, plaintiff, MICHAEL DOUKAS, was and still is a resident of the County of Suffolk, State of New York.
2. Upon information and belief, at all times herein mentioned, defendant IRIS LEVITEN (hereinafter referred to as defendant "LEVITEN"), was and still is a resident of the County of Nassau, State of New York.
3. Upon information and belief, at all times hereinafter mentioned, defendant, ANTHONY DiGIROLAMO, (hereinafter referred to as defendant "DiGIROLAMO"), was and still is a resident of the County of Nassau, State of New York.

4. At all times hereinafter mentioned, defendant, THE CITY OF NEW YORK, (hereinafter referred to as defendant "CITY"), was and still is a municipal corporation organized and existing under and by virtue of the laws of the State of New York.

5. That plaintiff duly served a Notice of Claim, in writing, upon defendant, CITY, within ninety (90) days after the within cause of action accrued.

6. On or about June 27, 2007, plaintiff herein duly submitted to a hearing pursuant to General Municipal Law 50-h.

7. More than thirty (30) days has elapsed since the service of said Notice of Claim upon defendant, and defendant CITY and its Comptroller have failed, neglected and refused to pay, settle, compromise or adjust the claims of the plaintiffs herein.

8. This action has been commenced within one year and ninety days after the within cause of action arose.

9. At all times herein mentioned, defendant CITY was the registered owner of a certain 2002 Mack Truck bearing New York license plate number K36757 for the year 2007 (hereinafter referred to as the "CITY vehicle").

10. At all times herein mentioned, defendant LEVITEN was the registered owner of a certain 2007 Lexus automobile bearing New York license plate number DWW7794 for the year 2007 (hereinafter referred to as the "LEVITEN vehicle").

11. At all times hereinafter mentioned, plaintiff was a passenger in the defendant CITY's vehicle.

12. At all times hereinafter mentioned, defendant DiGIROLAMO was the operator of the defendant CITY vehicle.

13. Upon information and belief, at all times hereinafter mentioned, defendant DiGIROLAMO operated the defendant CITY vehicle with the knowledge and consent of its owners, defendant CITY.

14. At all times herein mentioned, defendant DiGIROLAMO was an employee of the defendant CITY.

15. At all times herein mentioned, defendant DiGIROLAMO, was an employee of the defendant CITY's New York City Department of Sanitation.

16. On February 18, 2007, at approximately 2:50 p.m., defendant DiGIROLAMO operated the defendant CITY vehicle in the course of his employment with defendant CITY.

17. At all times herein mentioned, defendant DiGIROLAMO operated the defendant CITY vehicle with the knowledge, permission, and consent whether explicit or implied of defendant CITY.

18. Under the Laws of the State of New York, defendants CITY and SANITATION, as owners of the defendant CITY vehicle, are liable for the negligence of the defendant driver, DiGIROLAMO, said liability being joint and several.

19. At all times herein mentioned, defendant CITY managed the defendant CITY vehicle.

20. At all times herein mentioned, defendant CITY maintained the defendant CITY vehicle.

21. At all times herein mentioned, defendant CITY controlled the defendant CITY vehicle.

22. At all times herein mentioned, defendant CITY repaired the defendant CITY vehicle.

23. At all times herein mentioned, defendant CITY conducted periodic inspections of the defendant CITY vehicle.

24. At all times herein mentioned, plaintiff MICHAEL DOUKAS was employed by defendant CITY.

25. At all times herein mentioned, plaintiff MICHAEL DOUKAS was employed by defendant SANITATION.

26. At all times herein mentioned, plaintiff was employed as a sanitation worker by defendant CITY.

27. Upon information and belief, at all times hereinafter mentioned, Glen Cove Road, at or near the intersection of the Northern State Parkway, was and still is a public roadway located within the County of Nassau, State of New York. (Hereinafter referred to as the "accident site").

28. On February 18, 2007, at approximately 2:50 p.m., defendants LEVITEN and DIGIROLAMO were operating their aforesaid vehicles at the accident site.

29. On February 18, 2007, at approximately 2:50 p.m., defendant LEVITEN's vehicle came into contact with the vehicle operated by defendant DIGIROLAMO at the accident site.

30. On February 18, 2007, at approximately 2:50 p.m., defendant LEVITEN's vehicle struck the vehicle operated by defendant DIGIROLAMO at the accident site.

31. On February 18, 2007, at approximately 2:50 p.m., defendant LEVITEN was operating her aforesaid vehicle at the accident site, in a negligent, careless, and reckless manner causing the aforesaid vehicles to crash, and causing plaintiff DOUKAS to suffer serious injuries hereinafter set forth.

32. On February 18, 2007, at approximately 2:50 p.m., defendant DIGIROLAMO was operating his aforesaid vehicle at the accident site, in a negligent, careless, and reckless manner causing the aforesaid automobiles to crash, and causing plaintiff to suffer serious injuries hereinafter set forth.

33. Defendants LEVITEN and DIGIROLAMO were negligent, careless and reckless in the operation, management, maintenance, supervision, and control of their respective vehicles in that said defendants operated said vehicles at an excessive and unlawful rate of speed; in that said defendants failed to have proper control over the vehicles; in that said defendants failed to be reasonably alert and attentive; in that defendants failed to make proper use of the braking and steering systems or that the same were defective; in that said defendants failed to heed to traffic conditions then and there existing; in that said defendants violated the rules, regulations and ordinances, and statutes applicable thereto; and the said defendants were otherwise negligent and careless.

34. That the said accident and the injuries sustained by plaintiff resulting therefrom were caused solely by the negligence of the defendants, jointly and severally, without any negligence on the part of the plaintiff contributing thereto.

35. That as a result of the aforesaid occurrence, plaintiff sustained serious personal injuries, and nervous shock, was rendered sick, sore and disabled and has remained so since said occurrence; plaintiff has suffered and continues to suffer mental anguish, required medical care and treatment, and upon information and belief, will continue to require additional medical care and treatment in the future; plaintiff has been incapacitated from attending to plaintiff's normal duties and upon information and belief, plaintiff will be so incapacitated in the future.

36. Plaintiff sustained serious injuries and basic economic loss as defined by §5102 of the Insurance Law of the State of New York and has the right of recovery against the defendants herein for personal injuries, basic economic loss and non-economic loss pursuant to §5104 of the Insurance Law of the State of New York.

37. Plaintiff has sustained a serious injury as defined in subdivision (d) of §5102 of the Insurance Law of the State of New York which, upon information and belief, will result in future economic loss greater than the basic economic loss as defined in subdivision (a) of §5102 of the Insurance Law of the State of New York.

38. The cause of action herein falls within one of the exceptions listed under CPLR §1601 and 1602.

39. As a result of the foregoing, plaintiff has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter.

AS AND FOR A SECOND CAUSE OF ACTION

40. Plaintiff repeats, reiterates and re-alleges each of the paragraphs of the complaint numbered "1" through "39" with the same force and effect as if same were more fully set forth herein at length.

41. Defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., (hereinafter referred to as defendant "LEXUS") is a corporation with its principal place of business in a state other than New York.

42. Defendant, LEXUS, does business in the State of New York.

43. Defendant, LEXUS, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.

44. Defendant, LEXUS, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.

45. Defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT (hereinafter referred to as defendant "ESTREE"), is a corporation with its principal place of business in a state other than New York.

46. Defendant, ESTREE, does business in the State of New York.

47. Defendant, ESTREE, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.

48. Defendant, ESTREE, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.

49. Defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL (hereinafter referred to as defendant "METRO") is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

50. Defendant, LEXUS, was in the business of manufacturing vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.

51. Defendant, LEXUS, was in the business of designing motor vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.

52. Defendant, LEXUS, was in the business of selling and distributing, for public use, motor vehicles, including a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

53. On December 12, 2006, defendant, LEXUS, sold, to the defendant, ESTREE, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

54. On or about December 12, 2006, defendant, LEXUS, transported to defendant, ESTREE, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

55. On or after December 12, 2006, defendant, ESTREE, sold to the defendant, METRO, a Lexus sedan motor vehicle, model number ES 350, bearing

vehicle identification number JTHBJ46G272071246.

56. Defendant, ESTREE, transported to defendant, METRO, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number number JTHBJ46G272071246.

57. Defendant, ESTREE, distributed to defendant, METRO, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

58. On December 29, 2006, defendant, METRO, leased a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246 to defendant, LEVITEN.

59. On February 18, 2007, defendant, LEVITEN, was involved in an automobile accident while driving a Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794 and vehicle identification number JTHBJ46G272071246 at the accident site.

60. On February 18, 2007, defendant, LEVITEN, was involved in an automobile accident with defendant DiGIROLAMO while driving a Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794 and vehicle identification number JTHBJ46G272071246 at the accident site.

61. The aforesaid occurrence was caused and contributed to by the negligence of the defendants, LEXUS, ESTREE, and METRO, its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing New York

State license plate DWW7794, and vehicle identification number JTHBJ46G272071246.

62. By reason of the foregoing, plaintiff, MICHAEL DOUKAS, sustained injuries to his head, neck, back, limbs and body, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, some of these injuries are of a permanent and lasting nature.

63. It is hereby alleged pursuant to CPLR §1603, that the foregoing cause of action is exempt from the operation of CPLR §1601, by reason of one or more of the exemptions provided in CPLR §1602.

64. As a result of the foregoing, plaintiff has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter.

AS AND FOR A THIRD CAUSE OF ACTION

65. Plaintiff repeats, reiterates and re-alleges each of the paragraphs of the complaint numbered "1" through "64" with the same force and effect as if same were more fully set forth herein at length.

66. Defendants, LEXUS, ESTREE, METRO, their agents, servants and employees warranted and represented to the defendant, LEVITEN, that Lexus sedan motor vehicle, model number ES 350, bearing the New York license plate number DWW7794 and identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, serviced, maintained, labeled,

distributed, sold and purchased.

67. In designing, manufacturing, assembling, inspecting, testing, repairing, servicing, maintaining, labeling, distributing and selling the vehicle Lexus model number ES 350, bearing New York State license plate number DWW7794 and vehicle identification number JTHBJ46G272071246, defendants, LEXUS, ESTREE, METRO their agents, servants and employees knew that the aforesaid product would be used by the public and that such users would rely upon the warranties and representations that the said product was safe, proper, merchantable and fit for its intended uses.

68. On February 18, 2007, the defendant, LEVITEN, relied on the aforementioned warranties and expected that the LEVITEN vehicle was safe, proper, merchantable and fit for its intended uses.

69. The LEVITEN vehicle was unsafe, not merchantable and unfit for its intended uses.

70. The LEVITEN vehicle was unsafe, not merchantable and unfit for its intended uses and as a result contributed to the occurrence on February 18, 2007.

71. By reason of the foregoing, defendants, LEXUS, ESTREE, METRO their agents, servants and employees, violated and breached the aforementioned warranties, in that the LEVITEN vehicle was not reasonably fit, not of merchantable quality, unsafe, defective and constituted unreasonably dangerous instrumentalities as designed, manufactured, assembled, inspected, repaired, serviced, maintained, tested, labeled, prepped for sale, sold and distributed.

72. By reason of the foregoing, the plaintiff, MICHAEL DOUKAS, sustained injuries to his head, neck, back, limbs and body, and has been caused to suffer severe

physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting nature.

73. It is hereby alleged pursuant to CPLR §1603, that the foregoing cause of action is exempt from the operation of CPLR §1601, by reason of one or more of the exemptions provided in CPLR §1602.

74. As a result of the foregoing, plaintiff has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter.

AS AND FOR A FOURTH CAUSE OF ACTION

75. Plaintiff repeats, reiterates and re-alleges each of the paragraphs of the complaint numbered "1" through "74" with the same force and effect as if same were more fully set forth herein at length.

76. By reason of the foregoing, defendants, LEXUS, ESTREE, METRO, their agents, servants and employees are strictly liable in tort to plaintiff, MICHAEL DOUKAS, for the injuries sustained by him.

77. By reason of the foregoing, the plaintiff, MICHAEL DOUKAS, sustained injuries to his head, neck, back, limbs and body, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting in nature.

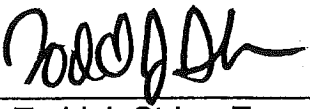
78. It is hereby alleged pursuant to CPLR §1603, that the foregoing cause of action is exempt from the operation of CPLR §1601, by reason of one or more of the exemptions provided in CPLR §1602.

79. As a result of the foregoing, plaintiff has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter.

WHEREFORE, plaintiff MICHAEL DOUKAS demands judgment against defendants on the FIRST CAUSE OF ACTION in an amount greater than the jurisdictional limits of any other courts which would otherwise have had jurisdiction of this action, and the SECOND, THIRD AND FOURTH CAUSE OF ACTION in an amount greater than the jurisdictional limits of any other courts which would otherwise have had jurisdiction of this action, together with the costs and disbursements of this action.

Dated: New York, N.Y.
October 21, 2008

Yours Truly,
KELNER & KELNER, ESQS.
Attorneys for Plaintiff

BY: 

Todd J. Strier, Esq.
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

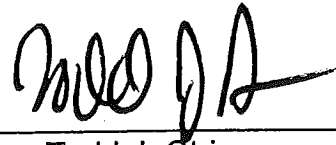
ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

The undersigned, an attorney admitted to practice law before the Courts of the State of New York, hereby affirms as true under the penalty of perjury that affirmant is an attorney for the plaintiffs in this action; that affirmant has read the foregoing **AMENDED VERIFIED COMPLAINT** and knows the contents thereof; that same is true to affirmant's own knowledge, except as to those matter stated upon information and belief, and that those matters affirmant believes to be true. Affirmant further says that the reason this affirmation is made by affirmant and not by the plaintiffs is that the plaintiffs do not reside within the County where affirmant has his office.

The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are as follows: investigation made under affirmant's supervision and information and records in the case file.

Dated: New York, New York:
October 21, 2008



Todd J. Strier

Index no. **117118/07**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.

**SUPPLEMENTAL SUMMONS &
AMENDED VERIFIED COMPLAINT**

KELNER & KELNER, ESQS.
Attorneys for Plaintiff
Office and Post Office Address, Telephone
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

Index no. 117118/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF
SANITATION and THE CITY OF NEW YORK,

Defendants.

NOTICE OF MOTION

KELNER & KELNER, ESQS.
Attorneys for Plaintiff
Office and Post Office Address, Telephone
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

COMPLAINT

IRIS LEVITEN, ANTHONY DiGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

Index No.:

Defendants.
-----X

S I R (S):

PLEASE TAKE NOTICE, that plaintiff, MICHAEL DOUKAS, by and through plaintiff's attorneys, the Law Offices of Gary S. Alweiss, complaining of IRIS LEVITEN, ANTHONY DiGIROLAMO, NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK, the defendants herein, respectfully alleges as follows:

1. At all times hereinafter mentioned, plaintiff, MICHAEL DOUKAS, was and still is a resident of the County of Suffolk, State of New York.
2. Upon information and belief, at all times hereinafter mentioned, defendant, IRIS LEVITEN, was and still is a resident of the County of Nassau, State of New York.
3. Upon information and belief, at all times hereinafter mentioned, defendant, ANTHONY DiGIROLAMO, was and still is a resident of the County of Nassau, State of New York.
4. Upon information and belief, at all times hereinafter mentioned, the defendants, NEW YORK CITY DEPARTMENT OF SANITATION, was and still is a body corporate and politic constituting a public benefit corporation duly authorized and organized under the laws of

the State of New York.

5. Upon information and belief, at all times hereinafter mentioned, the defendants, THE CITY OF NEW YORK, was and still is a body corporate and politic constituting a public benefit corporation duly authorized and organized under the laws of the State of New York.

6. That plaintiff has served Notice of Claim upon The NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK within the specified statutory time period and manner. At least ninety (90) days have elapsed since Notice of Claim was presented to the NEW YORK CITY DEPARTMENT OF SANITATION and the CITY OF NEW YORK and the NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK have neglected or refused to make any adjustment of payment thereof. This action was commenced within one (1) year and ninety (90) days after the happening of the events upon which this claim is based.

7. Upon information and belief, at all times hereinafter mentioned, Glen Cove Road, and at or near the intersection of the Northern State Parkway, was and still is a public roadway located within the County of Nassau, State of New York.

8. Upon information and belief, at all times hereinafter mentioned, the plaintiff, MICHAEL DOUKAS, was a passenger in a 2002 Mac Truck bearing New York license plate number DWW 7794, which was being operated by the defendant, ANTHONY DiGIROLAMO, with the knowledge and consent of its owners, defendants, NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK.

9. Under the Laws of the State of New York, the defendants, NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK, as owners of the aforesaid

2002 Mac Truck, are liable for the negligence of the defendant driver, ANTHONY DiGIROLAMO, said liability being joint and several.

10. Upon information and belief, at all times hereinafter mentioned, defendant, IRIS LEVITEN, owned and operated a 2007 Lexus automobile bearing New York license plate number DWW7794.

11. On or about February 18, 2007, at approximately 2:50 p.m. on Glen Cove Road, at or near the intersection of Northern State Parkway, the defendants, IRIS LEVITEN and ANTHONY DiGIROLAMO, were operating the aforesaid vehicles in such a negligent, careless, and reckless manner causing the aforesaid automobiles to crash, and causing plaintiff to suffer serious personal injuries hereinafter set forth.

12. The defendant operators were negligent, careless, and reckless in the operation, management, maintenance, supervision, and control of said automobiles in that said defendants operated said automobiles at an excessive and unlawful rate of speed; in that said defendants failed to have proper control over the automobiles; in that said defendants failed to be reasonably alert and attentive; in that said defendants failed to anticipate the condition of the road and travel conditions in general; in that said defendant failed to make proper use of the braking and steering systems or that the same were defective; in that said defendants failed to heed to traffic conditions then and there existing; in that said defendants violated the rules, regulations, and ordinances, and statutes applicable thereto; and the said defendants were otherwise negligent and careless.

13. That the said accident and the injuries sustained by plaintiff resulting therefrom were caused solely by the negligence of the defendants, jointly and severally, without any

negligence on the part of the plaintiff contributing thereto.

14. That as a result of the aforesaid occurrence, plaintiff sustained serious personal injuries, and nervous shock, was rendered sick, sore and disabled and has remained so since said occurrence; plaintiff has suffered and continues to suffer mental anguish, required medical care and treatment, and upon information and belief, will continue to require additional medical care and treatment in the future; plaintiff has been incapacitated from attending to plaintiff's normal duties, and upon information and belief, plaintiff may continue to be so incapacitated in the future.

15. Plaintiff sustained serious injuries and basic economic loss as defined by § 5102 of the Insurance Law of the State of New York and has the right of recovery against the defendants herein for personal injuries, basic economic loss and non-economic loss pursuant to § 5104 of the Insurance Law of the State of New York.

16. Plaintiff has sustained a serious injury as defined in subdivision (d) of § 5102 of the Insurance Law of the State of New York which, upon information and belief, will result in future economic loss greater than the basic economic loss as defined in subdivision (a) of § 5102 of the Insurance Law of the State of New York.

17. The cause of action herein falls within one of the exceptions listed under C.P.L.R. §§ 1601 and 1602.

18. That by reason of the premises set forth above, the plaintiff, MICHAEL DOUKAS, has been damaged in a sum of money to be determined by the Court and jury which amount is in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this action.

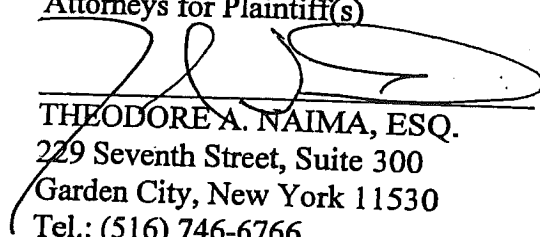
WHEREFORE, plaintiff, MICHAEL DOUKAS, demands judgment, jointly and severally, against the defendants, IRIS LEVITEN, ANTHONY DiGIROLAMO, NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK, in a sum of money to be determined by the Court and jury which amount is in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this action; all together with interest, costs and disbursements of this action.

Dated: Garden City, New York
December 10, 2007

Yours, etc.,

LAW OFFICES OF GARY S. ALWEISS
Attorneys for Plaintiff(s)

By:


THEODORE A. NAIMA, ESQ.
229 Seventh Street, Suite 300
Garden City, New York 11530
Tel.: (516) 746-6766

MICHAEL DOUKAS,

Plaintiff(s),

-against-

IRIS LEVITEN, ANTHONY DiGIROLAMO, NEW YORK CITY DEPARTMENT OF
SANITATION and THE CITY OF NEW YORK,

Defendant(s).

NEW YORK COUNTY CLERK'S OFFICE
DEC 8 2007
NOT COMPARED
WITH COPY FILE

SUMMONS & COMPLAINT

Law Offices of
GARY S. ALWEISS
Attorneys for Plaintiff
229 Seventh Street, Suite 300
Garden City, New York 11530
Tel.: (516) 746-6766

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

NOTICE OF ENTRY that the within is a (certified) true copy of a
entered in the office of the clerk of the within named Court on 20

NOTICE OF SETTLEMENT that an Order of which the within is a true copy will be presented for settlement to
the Hon. one of the judges of the within named Court,
at
on 20, at M.

Dated:

Law Offices of
GARY S. ALWEISS
229 Seventh Street, Suite 300
Garden City, NY 11530

To:

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff(s),

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION AND
THE CITY OF NEW YORK,

Defendant(s).
-----X

AMENDED ANSWER

Index #: 117118/07

Law Dept. #: 2008-001345

Defendants THE CITY OF NEW YORK, and THE CITY OF NEW YORK AND THE CITY OF NEW YORK S/H/A DEPARTMENT OF SANITATION AND ANTHONY DIGIROLAMO, by MICHAEL A. CARDOZO, Corporation Counsel, answering the complaint, allege upon information and belief:

1. Deny each allegation set forth in paragraph(s) 9, 14, 16-18, inclusive.
2. Deny knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in paragraph(s) 1, 3, inclusive.
3. Deny the allegations set forth in paragraph(s) 6, inclusive, except that a notice of a claim was presented, that more than thirty days have elapsed without adjustment thereof.
4. Deny each allegation set forth in paragraph(s) 7, inclusive, except that with respect to those portions of the street(s), sidewalks and appurtenances referred to in the complaint which were or may have been owned by the City of New York, defendant(s) had such duties as were imposed by law.

5. Deny each allegation set forth in paragraph(s) 8, inclusive, except that the CITY OF NEW YORK owned, and ANTHONY DIGIROLAMO operated the vehicle identified in the complaint.

6. Deny each allegation set forth in paragraph(s) 4, 5, inclusive, except that the City of New York is a municipal corporation which maintains a Department of Sanitation pursuant to law.

7. Deny each allegation set forth in paragraph(s) 2, 10-13, 15, inclusive, so far as the same may refer to the defendant(s) answering hereby.

AFFIRMATIVE DEFENSE(S)

8. Plaintiff(s)' culpable conduct caused or contributed, in whole or in part, to his/her/their injuries and or damages.

9. At all times mentioned in the complaint, plaintiff(s) knew or should have known in the exercise of due/reasonable care of the risks and dangers incident to engaging in the activity alleged. Plaintiff(s) voluntarily performed and engaged in the alleged activity and assumed the risk of the injuries and/or damages claimed. Plaintiff(s) failed to use all required, proper, appropriate and reasonable safety devices and/or equipment and failed to take all proper, appropriate and reasonable steps to assure his/her/their safety. Plaintiff(s)' primary assumption of risk solely caused his/her/their injuries and/or damage and defendant(s) owed no duty to the plaintiff(s) with respect to the risk assumed. Plaintiff(s)' express assumption of risk solely caused his/her/their injuries and/or damage and defendant(s) owed no duty to the plaintiff(s) with respect to the risk assumed. Plaintiff(s)' implied assumption of risk caused or contributed, in whole or in part to his/her/their injuries. In any action for injuries arising from the use of a vehicle in, or upon which plaintiff(s) were riding; it will be claimed that the injuries and/or

damages sustained were caused by the failure of the plaintiff(s) to use available seat-belts and/or other safety devices.

10. Defendants are immune from suit for their exercise of discretion in the performance of a governmental function and/or their exercise of professional judgment.

11. The amounts recoverable by plaintiff(s) are subject to limitation pursuant to Section 1601 of the Civil Practice Law and Rules, by reason of the culpable conduct of other person(s) who are, or with reasonable diligence could have been made party defendant(s) to this action, or pursuant to Section 15-108 of the General Obligations Law, by reason of a prior settlement between plaintiff(s) and said person(s), or pursuant to Section 4545 of the Civil Practice Law and Rules are subject to reduction by collateral sources received by plaintiff(s), or by reason of the fact that punitive damages are not recoverable against municipal defendant(s).

12. This court lacks jurisdiction over the defendant(s) ANTHONY DIGIROLAMO, in that said defendant(s) were not personally served with the summons.

13. In cases involving authorized emergency vehicle(s) engaged in an emergency operation, or persons, teams, motor vehicles, and other equipment, while actually engaged in work on a highway, or hazard vehicles while actually engaged in hazardous operations on or adjacent to a highway, defendant(s) were not reckless in the manner in which they acted, and are entitled to the benefits of VTL sec. 1103 and/or VTL sec. 1104.

CROSS-CLAIMS

14. Any damages sustained by the plaintiff(s) were caused in whole or in part by the acts or omissions of defendant(s) IRIS LEVITEN, who are or may be liable to the defendant(s) answering hereby for contribution on the basis of their equitable shares of responsibility, or for indemnity on the basis of a contract between them, actual or implied.

WHEREFORE, defendant(s) demand judgment dismissing the complaint and all cross-claims against them, or, in the event that they are adjudged liable, granting judgment over, or apportioning such liability in accordance with their equitable shares of responsibility, and awarding the costs of this action, together with such other and further relief as to the court may seem just.

MICHAEL A. CARDOZO
Corporation Counsel
100 Church Street
New York, New York 10007

VERIFICATION

ABAN COOPER being duly sworn deposes and says that: deponent is an employee of the Office of the Corporation Counsel; that deponent has read the foregoing answer, cross-claim(s) and counterclaim(s), if any, and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters alleged upon information and belief, which deponent believes to be true based upon the files, books and records maintained by The City of New York, New York City Health and Hospitals Corporation or the New York City Board/Department of Education, and the officers or agents thereof; and further swears that on this date he/she caused said answer, cross-claim(s) and counterclaim(s), if any, together with the accompanying combined demands for particulars and discovery, to be served upon:

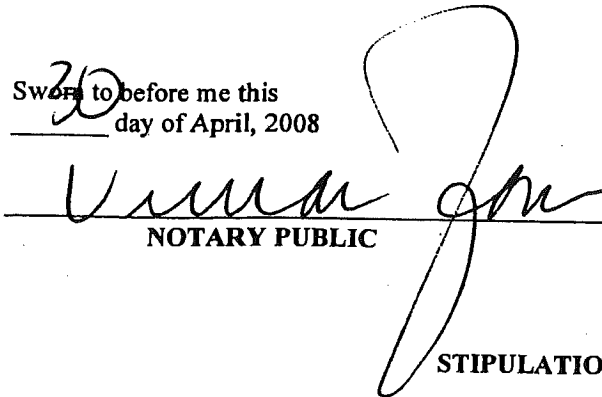
THEODORE A. NAIMA, ESQ
the attorney(s) for Plaintiff(s)
at 229 SEVENTH STREET, SUITE 300
GARDEN CITY, NEW YORK 11530

by depositing a copy of the same, into a box situated at 100 Church Street in the Borough of Manhattan, City of New York, for subsequent daily delivery to the United States Post Office.

Dated: New York, New York
April 20, 2008


ABAN COOPER

Sworn to before me this
20 day of April, 2008


NOTARY PUBLIC

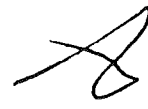
VIVIAN JONES
Commissioner of Deeds
City of New York No. 2-11288
Commission Expires Jan. 4, 2010

STIPULATION/CERTIFICATION

IT IS HEREBY STIPULATED AND AGREED, that at any time prior to the filing of a note of issue in this action, plaintiff(s) may amend the complaint to name additional defendants herein, provided that such additional defendants shall not include the City of New York, the Board/Department of Education, Health & Hospitals Corporation, City University of New York, or any of their respective departments, subdivisions or employees, nor any other person entitled to defense or indemnification by the City of New York.

The signature below shall constitute the signature required pursuant to NYCRR 130-1.1-a and pertains to all of the enclosed documents: answer, cross-claim(s) and counter-claims(s), if any, together with the accompanying combined demands for particulars and discovery.

Dated: New York, New York
April 29, 2008

By: 
ERIC WEST / SHEILA WEINSTEIN
Assistant Corporation Counsel

Attorney(s) for Plaintiff(s)

Please do not send correspondence to the above named Assistant Corporation Counsel unless otherwise directed. See Answer back for additional contact information.

Index #: 117118/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff(s),

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW YORK CITY
DEPARTMENT OF SANITATION AND THE CITY OF NEW YORK,

Defendant(s).

AMENDED ANSWER

MICHAEL A. CARDOZO

Corporation Counsel

Attorney for Defendants

THE CITY OF NEW YORK, and THE CITY OF NEW YORK AND
THE CITY OF NEW YORK S/H/A DEPARTMENT OF SANITATION
AND ANTHONY DIGIROLAMO,

100 Church Street

New York, New York 10007

Telephone Numbers:

Pleadings Unit (appearances & amendments)

(212) 788-0499

Early Intervention Unit (settlements – all Boroughs)

(212) 788-1215

All Other Matters (by county of venue)

(718) 590-3487 (EBT's-3971) (Bronx)

(718) 222-2000 (EBT's-2069) (Kings)

(212) 788-0646 (EBT's-0628) (New York)

(718) 206-4731 (EBT's (718) 206-4703) (Queens)

(718) 447-5983 (EBT's-5985) (Richmond)

Please refer to the following Law Dept. #: **2008-001345**

and indicate the County in which the action is pending in all papers,
correspondence and other communications with respect thereto.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
MICHAEL DOUKAS,**

Plaintiff(s)

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO
NEW YORK CITY DEPARTMENT OF
SANITATION and THE CITY OF NEW
YORK,

Defendant(s)

VERIFIED ANSWER
WITH
CROSS CLAIM

Index #: 117118/07

Defendant(s) Iris Leviten, by the undersigned answering the VERIFIED complaint of the plaintiff(s), upon information and belief, states as follows:

ANSWERING A FIRST CAUSE OF ACTION

FIRST: Denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered and designated as: 1,3,4,5,6,7,8,9,10,11,17

SECOND: Denies each and every allegation contained in paragraphs numbered and designated as: 12,13,14,15,16,18

THIRD: Admits each and every allegation contained in paragraphs numbered and designated as: 2

AS AND FOR AN AFFIRMATIVE DEFENSE – COMPARATIVE NEGLIGENCE

The personal injuries and/or property damage alleged to have been sustained by the plaintiff(s) were caused entirely or in part through the culpable conduct attributable to the plaintiff(s) and the defendant seeks a dismissal or reduction in any recovery had by the plaintiff in the proportion which the culpable conduct attributable to the plaintiff(s) bears to the culpable conduct which caused the damages.

AS AND FOR AN AFFIRMATIVE DEFENSE – SEAT BELT

The plaintiff(s) damages must be mitigated by the plaintiff(s) failure to use the available seat belts or infant restraining devices and that the damages claimed to have been sustained were caused by the lack of use of said seat belts and/or infant restraining devices.

AS AND FOR AN AFFIRMATIVE DEFENSE – PERSONAL JURISDICTION

Service of process was not in conformity with the C.P.L.R.; therefore this Court does not have jurisdiction over the person of the defendant.

AS AND FOR AN AFFIRMATIVE DEFENSE – COLLATERAL SOURCE

The costs incurred, or paid by plaintiff(s), if any, for medical care, dental care, custodial care or rehabilitation services, loss of earning or other economic loss, in the past or future, were or will, with reasonable certainty be replaced or indemnified, in whole or in part, from a collateral source of the type described in CPLR §4545 and defendant is entitled to have any award reduced in the amount of such payments.

AS AND FOR A CROSS CLAIM AGAINST THE CO-DEFENDANT(S)

Anthony Digirolamo New York City Department of Sanitation The City Of New York , IT IS ALLEGED:

That if the plaintiff(s) Michael Doukas, recover herein, it will be by virtue of the recklessness, carelessness and negligence of the co-defendant(s), Anthony Digirolamo New York City Department of Sanitation The City Of New York ,, above named, and not of the defendant(s) Iris Leviten, and that this answering defendant(s) Iris Leviten, demands judgment for contribution and/or indemnification in whole or in part and that the respective degrees of negligence of the co-defendant(s) Anthony Digirolamo New York City Department of Sanitation The City Of New York ,, be ascertained, determined and adjudicated and that the defendant(s) Iris Leviten, have judgment over and against the above-named co-defendant(s) Anthony Digirolamo New York City Department of Sanitation The City Of New York ,, as their proportionate share commensurate with their respective degrees of negligence as will be decided on at the trial herein.

WHEREFORE, the defendant(s) Iris Leviten, demands judgment dismissing the plaintiff(s) Michael Doukas, Complaint or in the alternative, that this answering defendant(s) Iris Leviten, have judgment for contribution and/or indemnification in whole or in part over and against the co-defendant(s) Anthony Digirolamo New York City Department of Sanitation The City Of New York ,, above named, to the degree and proportionate share of the plaintiff(s), Michael Doukas recovery as to their respective degrees of negligence as determined herein, with costs and disbursements of this action.

DATED: Westbury, New York
March 04, 2008

Dean A. Barbakoff, Esq.

KAY & GRAY

Attorneys for Defendant(s)

Iris Leviten

875 Merrick Avenue

Westbury, New York 11590

516-229-4422

Our File No: 08R0185

Claim No: 0244514670101035 (J570)

VERIFICATION

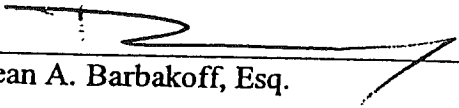
Dean A. Barbakoff, Esq., an attorney admitted to practice in the Courts of this State, and associated with the firm of KAY & GRAY, attorneys for the defendant(s) Iris Leviten, states:

That your affirmant has read the foregoing Answer and knows the contents thereof; that the same is true to your affirmant's own knowledge except as to the matters which are stated therein to be alleged on information and belief, and as to those matters your affirmant believes it to be true. The source of your affirmant's information and belief, is an investigation caused to be made with respect to the facts in this action.

That the reason this verification is made by affirmant and not by the defendant is because the defendant does not reside within the county where KAY & GRAY maintain their office.

The undersigned affirms that the foregoing statement is true, under penalties of perjury.

Date: Westbury, New York
March 04, 2008



Dean A. Barbakoff, Esq.

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD

PART 35

Index Number : 107681/2007
LEVITTEN, IRIS
vs.
LEXUS
SEQUENCE NUMBER : 003
CONSOLIDATION/JOINT TRIAL

INDEX NO. _____
MOTION DATE 6/30/08
MOTION SEQ. NO. 003
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED _____

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...

Answering Affidavits - Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

It is hereby

ORDERED that the application of defendant Iris Leviten in the action *Michael Doukas v. Iris Leviten, et al.*, Index No. 117118/07 ("Action 2") and defendant in action *Anthony Digirolamo v Iris Leviten*, Index No. 102331/08 ("Action 3") to consolidate Actions 2 and 3 with the instant action, *Iris Leviten v Lexus, et al.*, Index No. 107681/07 ("Action 1") for joint discovery and joint trial, pursuant to CPLR § 602 is granted; and it is further

ORDERED that the cross application of defendant in Action #1, Lexus, pursuant to CPLR §3103 is granted as follows:

- (1) the subject 2007 Lexus ES 350 vehicle, bearing vehicle identification number JTHBJ46G271246 (the "subject vehicle") shall be preserved in its post-accident condition throughout the entirety of this litigation, including appeal, and shall not be destroyed, and/or altered; nor shall any components of the subject vehicle be altered and/or destroyed;

Dated: _____ J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
JUL 07 2008
COUNTY CLERK'S OFFICE
NEW YORK

-----X
IRIS LEVITEN,

Index No. 107681-2007

Plaintiff,

- against -

ORDER TO SHOW CAUSE

Action #1

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62
-----X

MICHAEL DOUKAS,

Index No. 117118-2007

Plaintiff,

- against -

Action #2

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62
-----X

ANTHONY DIGIROLAMO,

Index No. 102331-2008

Plaintiff,

- against -

Action #3

IRIS LEVITEN,

Defendant.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X
IRIS LEVITEN,

Index No. 107681-2007

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X
MICHAEL DOUKAS,

Index No. 117118-2007

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X
ANTHONY DIGIROLAMO,

Index No. 102331-2008

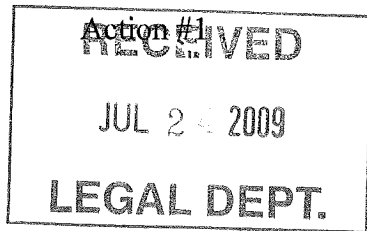
Plaintiff,

- against -

IRIS LEVITEN,

Defendant.

-----X
**AFFIRMATION OF EDWARD R. MINSON IN SUPPORT OF STEIN
RISO MANTEL, LLP'S MOTION TO BE RELIEVED AS COUNSEL AND
IN OPPOSITION TO PLAINTIFF'S CROSS-MOTION**



Action #2

Action #3

EDWARD R. MINSON, an attorney duly admitted to practice law before the Courts of the State of New York, affirms, under penalty of perjury, as follows:

1. I am an associate with the law firm of Stein Riso Mantel, LLP (“SRM”), attorneys for Defendant Metro Auto Leasing (“Metro”). I respectfully submit this affirmation in support of our motion to be relieved as Metro’s counsel and in opposition to the Cross Motion made by Plaintiff Michael Doukas¹ which seeks to strike Metro’s Answer and prevent Stein Riso Mantel, LLP from being relieved as Metro’s counsel until Metro complies with all discovery.

2. As the Court is aware, three separate actions have been consolidated for discovery and trial purposes. The actions are as follows: *Iris Leviten v. Lexus et al.* - Index No. 107681/07 (“Leviten Action”); *Michael Doukas v. Iris Leviten et al.* - Index No. 117118/07 (“Doukas Action”); and *Anthony Digirolamo v. Iris Leviten* - Index No. 102331/08 (“Digirolamo Action”).

3. Metro is a Defendant in the Leviten Action and the Doukas Action, but is not a party to the Digirolamo Action. Metro has only appeared in the Leviten Action by filing an Answer with Cross Claims on or about January 4, 2008, but Metro has not answered or appeared in the Doukas Action. (Annexed hereto as Exhibit A is the Answer with Cross Claims.)

4. The facts and circumstances set forth herein are based upon my personal knowledge and my review of the pleadings filed by the parties in this action.

Doukas Does Not Have Standing to Strike Metro’s Answer

5. The Cross Motion made by Doukas to strike Metro’s Answer is frivolous on several levels. Metro has not filed an Answer in the Doukas Action and has only filed an Answer in the Leviten Action where Doukas is not a party to.

¹ This Opposition also serves as a response to Plaintiff Iris Leviten’s Cross Motion which seeks the same relief and adopts all of the same arguments as Plaintiff Doukas.

6. Since Metro has not filed an answer in the Doukas Action, there is no answer for this Court to strike.

7. Therefore, I can only assume that Plaintiff Doukas is trying to strike Metro's Answer in the Leviten Action where Plaintiff Doukas is not a party. However, Doukas' intentions are unclear since counsel fails to annex the Answer, which they are trying to strike, as an exhibit to their motion.

8. The one thing that is clear is that Plaintiff Doukas does not have standing to bring a motion to strike Metro's Answer, in an action that Plaintiff Doukas is not even a party to. For these reasons, and the reasons stated below, Plaintiff's Cross Motion is academic and Metro's Answer in the Leviten Matter should not be stricken.

Metro Has Responded to Discovery Demands

9. Doukas' contention that Metro has failed to respond to discovery demands is erroneous. Metro has been on record since June 26, 2008 that it does not have any records in this litigation. Instead of Doukas accepting the fact that Metro does not have any records, Doukas is trying to characterize Metro's lack of documents as a refusal to produce, which is absolutely not the case.

10. Plaintiff Leviten served Metro on or about February 28, 2008 with (i) a Demand for Verified Bill of Particulars; (ii) a Demand for Expert Witness; and (iii) a Notice for Discovery & Inspection. (Annexed hereto as Exhibit B, C and D are the respective Demands by Plaintiff referenced above.)

11. On or about June 26, 2008, Metro served its responses entitled (i) Response to Demand for Discovery and Inspection; (ii) Response to Demand for Expert Witness; and (iii) Bill of Particulars as to Affirmative Defenses. (Annexed hereto as Exhibits E, F, and G are the

respective responses along with the affidavits of service.) The sum and substance of Metro's responses is that they are not in possession of any documents. It is unfortunate that Metro does not have documents, but those are the facts.

12. In addition to not having any documents in its possession, Metro does not have any insurance. Metro made this abundantly clear in its motion by order to show cause to be relived as counsel. (See ¶ 9 of Gerard A. Riso's Affirmation annexed to said motion.) Since Doukas infers this representation is not sufficient, I have also included a Response to Plaintiff Leviten's Demand for Insurance. (Annexed as Exhibit H and I respectively are Plaintiff Leviten's Demand and Metro's Response to the Insurance Demand.)

13. Doukas' agitation to the facts can not result in this Court striking Metro's Answer. The Court Orders, which Doukas claims Metro has ignored, contain generic language that all parties must respond to outstanding discovery. Since Metro has been on record since June 2008 that it does not have any documents, Metro has satisfied all of the Court Orders.

No Prior Attempt to Resolve

14. Doukas' Cross Motion, to strike Metro's Answer, is procedurally deficient because Doukas failed, prior to making the motion, to make a good faith attempt to resolve the dispute.² Doukas failed to provide an affirmation demonstrating that such an effort was made, which is required by 22 NYCRR § 202.7(a)(2). (“[W]ith respect to a motion relating to disclosure or to a bill of particulars, an affirmation that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issue raised by the motion.”); see *Sixty-Six Crosby Assocs. v Berger & Kramer*, 256 AD2d 26, 680 NYS2d 846 (1988) (court properly denied petitioner's motion for discovery, since petitioner failed to include an affirmation of good

² Note that counsel for Iris Leviten failed to provide an affirmation representing that a good faith effort attempt to resolve the discovery dispute was made.

faith, as mandated by 22 NYCRR § 202.7); *Diel v Rosenfeld*, 12 AD3d 558, 784 N.Y.S.2d 379 (The defendant was not entitled to the dismissal of the complaint without first moving to compel, accompanied by an affirmation that she makes a good faith effort to resolve the discovery dispute. The defendants' attorney failed to demonstrate that any attempt was made to confer with his adversary regarding the resolution of this issue).

15. The Court is clear that a good faith effort must be made, and counsel for Doukas submits an affirmation that clearly acknowledges that no such attempt was made.

16. Counsel for Doukas's excuse for not making a good faith attempt was that he believed any attempts would fall on deaf ears. First, the statute is clear that attempts must be made, and counsel does not have the discretion to choose if he wants to make such attempts. Second, Plaintiff's representation is a blatant lie because I have had several telephone conversations with counsel for Doukas explaining that we do not have documents or insurance, and I have repeatedly directed him to Metro's responses mentioned above.

17. As such, Doukas' motion is without merit and Metro's Answer should not be stricken.

Stein Riso Mantel, LLP Should Be Allowed to Be Relieved As Counsel

18. Doukas' argument that SRM should be barred from being able to be relieved as counsel until Metro responds to all discovery requests is academic because Metro has responded to the discovery requests.

19. Doukas has failed to provide this Court with any requests that has not been complied with. Typically, in a motion of this kind, a party would provide the discovery demands that have not been answered, but Doukas fails to do so.

20. Further, Doukas is unable to direct the Court to any document that Metro has failed or refused to provide. As such, Doukas' actions are a clear indication that Metro has responded to such discovery demands, and our motion to be relieved as counsel should be granted.

21. Finally, Doukas argues that SRM should not be allowed to be relieved as counsel because it "would cause immediate prejudice to all parties" and "delay the complex discovery schedule." However, Doukas fails to explain how any party would actually be prejudiced or how the discovery schedule would be delayed. As previously mentioned, Metro does not have any documents to produce so it would have zero impact on the discovery schedule.

Conclusion

22. Accordingly, Metro's Answer in the Leviten Matter should not be stricken because (i) Doukas does not have standing to make such a request; (ii) Metro responded to discovery demands on June 26, 2008 representing that it is not in possession of any documents and does not have any insurance; and (iii) Doukas failed to make the required good faith attempt to resolve any and all discovery disputes prior to making such Cross Motion.

23. Further, Stein Riso Mantel, LLP's Motion by Order to Show Cause to be relieved as Metro's counsel should be granted for the reasons stated above and for the reasons indicated in the affirmation of Gerard A. Riso dated June 23, 2009 annexed to SRM's Motion.

Dated: New York, New York
July 10, 2009

STEIN RISO MANTEL, LLP

By: Edward R. Minson

Edward R. Minson
405 Lexington Avenue, 42nd Fl.
New York, New York 10174
(212) 599-1515

Attorneys for Metro Auto Leasing, Inc.

Exhibit A

3. Denies the allegations contained in paragraphs 19, 21, 22 and 23 of the verified complaint.

RESPONSE TO THE SECOND CAUSE OF ACTION

4. In response to Paragraph 25 of the verified complaint, repeats and realleges paragraphs 1 to 3 of this Answer.

5. Denies the allegations contained in paragraphs 26, 27, 28, 29, 30, 31 and 32 of the verified complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the verified complaint.

RESPONSE TO THE THIRD CAUSE OF ACTION

7. In response to Paragraph 34 of the verified complaint, repeats and realleges paragraphs 1 to 6 of this Answer.

8. Denies the allegations contained in paragraphs 35, 36 and 37 of the verified complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the verified complaint.

FIRST AFFIRMATIVE DEFENSE

10. Plaintiff has failed to mitigate, minimize or avoid the damage about which she now complains.

SECOND AFFIRMATIVE DEFENSE

11. The verified complaint fails to state a claim upon which relief may be granted against the answering defendant.

THIRD AFFIRMATIVE DEFENSE

12. The injuries alleged to have been suffered by the plaintiff Iris Leviten were caused or contributed to or by the culpable conduct including contributory negligence, assumption of the risk and/or product misuse of persons over whom the answering defendant had no authority or control.

FOURTH AFFIRMATIVE DEFENSE

13. Pursuant to CPLR Article 16, the liability of the answering defendant to the plaintiff for non-economic loss shall not exceed the equitable share of this defendant determined in accordance with the relative culpability of each person/party causing or contributing to the total liability for non-economic loss.

FIFTH AFFIRMATIVE DEFENSE

14. Any recovery by plaintiff must be reduced by the amounts paid or reimbursed by collateral sources in accordance with CPLR § 4545.

SIXTH AFFIRMATIVE DEFENSE

15. Plaintiff's action against Defendant Metro Auto Leasing, Inc. is subject to, and limited by, the provisions of Articles 14 and 14-A of the CPLR and § 15-108 of the GOL of New York.

SEVENTH AFFIRMATIVE DEFENSE

16. Upon information and belief, any and all risks, hazards and dangers were open, obvious and apparent, natural and inherent and know to Plaintiff and Plaintiff assumed all risks.

EIGHTH AFFIRMATIVE DEFENSE

17. Defendant Metro Auto Leasing, Inc. had no actual or constructive notice of any alleged defective and/or dangerous condition.

FIRST CROSS-CLAIM

18. If plaintiff recovers against the answering defendant, then the answering defendant will be entitled to an apportionment of responsibility for damages between and among the parties to this action and will be entitled to recover from each other party for its/their proportional share commensurate with any judgment that may be awarded to plaintiff.

SECOND CROSS-CLAIM

19. If plaintiff recovers against the answering defendant then the answering defendant will be entitled to be indemnified and to recover the full amount of any judgment from the other defendants herein.

WHEREFORE, Defendant Metro Auto Leasing, Inc. demands judgment dismissing the verified complaint; for the costs, fees, expenses and disbursements incurred herein, and in the event judgment or settlement is recovered herein against Defendant Metro Auto Leasing, Inc. Defendant Metro Auto Leasing, Inc. demands judgment on its cross-claims; and for such other and further relief in favor of Defendant Metro Auto Leasing, Inc. as is just and proper.

Dated: January 4, 2008
New York, New York

STEIN RISO MANTEL, LLP

By: 
Gerard A. Riso

The Chrysler Building
405 Lexington Avenue
New York, New York 10174
212-599-1515
*Attorneys for Defendant Metro
Auto Leasing, Inc.*

To: Gair, Gair, Conason, Steigman & Mackauf
80 Pine Street
New York, New York 10005
Attorneys for Plaintiff

Estree/Lexus of Westport
1317 Post Road
Westport, CT 06880

Lexus, A Division of Toyota
Motor Sales USA
80 State Street
Albany, NY 12106

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index No.107681-07

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC.,
d/b/a LEXUS OF WESTPORT, and
METRO AUTO LEASING, INC., d/b/a
THE AUTOMALL,

Defendants.

-----X

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

Christine Mayer, being duly sworn, deposes and says:

1. I am over 18 and not a party to this action and I reside at Congers, New York.

2. On January 4, 2008 I served a true copy of the Answer and Cross Claims by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) listed below:

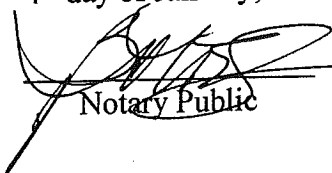
Gair, Gair, Conason, Steigman & Mackauf
80 Pine Street
New York, New York 10005

Estree/Lexus of Westport
1317 Post Road
Westport, CT 06880

Lexus, A Division of Toyota
Motor Sales USA
80 State Street
Albany, NY 12106


Christine Mayer

Sworn to before me this
4th day of January, 2008.


Notary Public

BETH E. SPICKLER
Notary Public, State of New York
No. 02SP4894222
Qualified in Westchester County
Commission Expires April 20, 2011

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index number: 107681/07

-----X
IRIS LEVITEN,

Plaintiff,

**DEMAND FOR VERIFIED
BILL OF PARTICULARS**

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

TO DEFENDANT(S): METRO AUTO LEASING, INC.

S I R (S) :

PLEASE TAKE NOTICE that the plaintiffs herein demand that you serve upon the undersigned attorneys, within thirty (30) days after the service of this Demand upon you, a Verified Bill of Particulars with respect to the affirmative defenses in the answer herein, setting forth in detail:

AS TO THE FIRST AFFIRMATIVE DEFENSE

State in what manner it is claimed that the plaintiff could have mitigated, minimized or avoided the damages claimed.

AS TO THE SECOND AFFIRMATIVE DEFENSE

State in detail the basis of the claim that the complaint fails to state a claim upon which relief may be granted.

Set forth the title, article and section number of each statute, law and ordinance relied upon with respect to the defense that the complaint fails to state a claim upon

which relief may be granted.

AS TO THE THIRD CAUSE OF ACTION

State the manner in which the aforementioned items of negligence, carelessness or culpable conduct caused or contributed to the plaintiff(s)' injuries.

Set forth in specific detail the dangers and risks which were open, obvious, apparent and known to the plaintiffs.

State the risks which it is claimed the plaintiff(s) assumed.

AS TO THE FOURTH CAUSE OF ACTION

Set forth in detail the provisions of Article 16 of the CPLR with regard to the limitation of joint and several liability the defendants will rely upon.

AS TO THE FIFTH AFFIRMATIVE DEFENSE

Set forth in detail the provisions of Section 4545 of the Civil Practice Law and Rules, which would require that any verdict or judgment recovered by the plaintiff against the defendant be reduced.

AS TO THE SIXTH AFFIRMATIVE DEFENSE

Set forth in detail the basis for the claim in which the answering defendant asserts Section 15-108 of the General Obligations Law.

Set forth in detail the basis that the answering defendant be entitled to a set-off for any settlements, releases or discontinuances.

AS TO THE SEVENTH AFFIRMATIVE DEFENSE

Set forth in specific detail the dangers and risks which were open, obvious, apparent and known to the plaintiffs.

State the risks which it is claimed the plaintiff(s) assumed.

PLEASE TAKE FURTHER NOTICE that unless the above request is complied with within the next thirty (30) days, an application will be made to preclude the defendants from giving any evidence in accordance with the aforementioned affirmative defenses.

Exhibit C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index number: 107681/07

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

TO DEFENDANT(S): METRO AUTO LEASING, INC.

S I R (S) :

PLEASE TAKE NOTICE that demand is hereby made upon you to produce the following information pursuant to CPLR 3101(d):

1. Identify each person whom you expect to call as an expert witness at trial.
2. Disclose in reasonable detail the subject matter on which each expert is expected to testify.
3. Disclose in reasonable detail the substance of the facts and opinions on which each expert is expected to testify.
4. Set forth the qualifications of each expert.
5. Set forth a summary of the grounds for each expert's opinion.
6. Provide the following background information, if applicable:
 - A. For Medical Experts:
 - a. All medical schools attended.
 - b. Area of expertise.

- c. Board certifications.
- d. Licenses.
- e. Hospital or place of all internships.
- f. Hospital or place of all residencies.
- g. Hospital or place of all fellowships.

B. For All Other Experts:

- a. All schools attended.
- b. Degrees received.
- c. Licenses.
- d. Publications.
- e. Nature of employment.
- f. Special area of practice.
- g. Number of years of practice in field of expertise.

This Demand shall be deemed a continuing one requiring a response at any such time as any expert witnesses expected to be called at trial become known. However, service of a response to this Demand on the eve of trial will be rejected and a motion in limine to preclude the use of such expert testimony will be made at trial. Your failure to provide this expert witness disclosure will result in preclusion of such expert testimony. Lasek v. Nachtigall, 189 A.D.2d 749 (2d Dept. 1993); Hudson v. MABSTOA, 188 A.D.2d 355 (1st Dept. 1992); Corning v. Carlin, 178 A.D.2d 576 (2d Dept. 1991); Simpson v. Bellew, 161 A.D.2d 693 (2d Dept. 1990).

Exhibit D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index number: 107681/07

-----X
IRIS LEVITEN,

Plaintiff,

**NOTICE FOR
DISCOVERY &
INSPECTION**

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

TO DEFENDANT(S): METRO AUTO LEASING, INC.

S I R (S) :

PLEASE TAKE NOTICE that, pursuant to the plaintiff(s)' demand, you are requested to produce and permit discovery by the plaintiff(s), plaintiff(s)' attorneys or another acting on plaintiff(s)' behalf, the following documents and things for inspection, copying or photocopying:

1. The names and addresses of all persons claimed by defendant(s) to have either witnessed the events complained of or to have firsthand knowledge of said events or knowledge of the relevant facts and circumstances surrounding the events, whether by the defendant(s) at the scene or thereafter obtained by defendant(s)' attorney(s) or representatives. If no such persons are known to defendant(s) or defendant(s)' representatives, so state in reply to this demand. The plaintiff(s) will object at the time of trial to the testimony of any persons not specifically identified by name and address. Zellman v. Metropolitan Transportation Authority, 40 A.D.2d 248, 339 N.Y.S.2d 255 (2d Dept. 1973).

2. The names and addresses of all witnesses who can testify to notice and the condition complained of. Hoffman v. Rosan, 73 A.D.2d 207, 425 N.Y.S.2d 619 (1st Dept.

1980).

3. The names and addresses of all witnesses who possess vital information which bears on the liability issues. Hughes v. Elias, 120 A.D.2d 703, 502 N.Y.S.2d 772 (2d Dept. 1986).

4. The names and addresses of all witnesses who will testify to the existence of a defective condition which was a competent producing cause of the incident. Zayas v. Morales, 45 A.D.2d 610, N.Y.S.2d 279 (2d Dept. 1974).

5. All statements of the plaintiff(s), including written statements, tape recordings, videotapes, or any transcripts thereof.

6. Any and all photographs or moving pictures in the possession of the defendant(s) taken of the plaintiff(s), including surveillance videotapes, films and photographs and audio tapes, including transcripts or memoranda thereof. There shall be disclosure of all portions of such material, including out-takes, rather than only those portions a party intends to use; CPLR § 3101(I).

7. Each and every photograph, videotape, film, audiotape, including out-takes, memoranda and/or transcripts thereof, of any of the parties, their agents, servants, employees or other allegedly acting on behalf of the parties, including but not limited to, all such material that will be offered or referred to at trial, together with all such material in the possession or control of the party to whom the within Notice is addressed.

8. Any and all records in the possession, custody and/or control of the defendant(s) pertaining to the plaintiff(s), including, but not limited to, office records, bills, insurance forms, x-rays, radiographic studies and reports, laboratory tests, laboratory analyses, diagnostic cards, physicians' notes, nurses' notes, prescriptions, treatment cards, consultation reports and hospital

records and/or reports.

9. Any incident reports filed in the regular course of business relating to this occurrence.

PLEASE TAKE FURTHER NOTICE that if the defendant(s) or defendant(s)' representatives obtain names and addresses of persons who witnessed the incident or have firsthand knowledge of its occurrence subsequent to the service of this Notice, this information is to be furnished to the plaintiff(s) whenever obtained. The plaintiff(s) will object at the time of trial to the testimony of any persons not specifically identified by name and address. The plaintiff(s) will move to preclude the testimony of any persons not so identified.

PLEASE TAKE FURTHER NOTICE that if any of the aforesaid recordings were taken of the plaintiff(s) and are not produced, objection will be made to their introduction at the time of trial.

Said discovery is to be produced on the 20st day of March, 2008, at 80 Pine Street, 34th floor, New York, New York, at 2:00 P.M.

PLEASE TAKE FURTHER NOTICE that a written communication enclosing the aforerequested information may be sent prior to the above-mentioned time in lieu of a personal appearance on the above date.

Dated: New York, New York
February 28, 2008

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

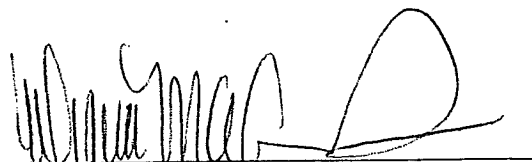
DIANA CARNEMOLLA, the undersigned, an attorney admitted to practice in the Courts of New York State, states that he is an associate of the firm of Gair, Gair, Conason, Steigman & Mackauf attorneys for the plaintiff in the within action; that deponent has read the following:

1. Demands for Bills of Particulars;
2. Demand for Discovery and Inspection;
3. Demand for Expert Witness Information;
4. Demand for Insurance Information; and
5. Notice of Examination Before Trial

and knows its contents thereof; to the best of affirmant's knowledge, information and belief, the presentation of the paper or the contentions therein are not frivolous as defined in subsection (c) of Section 130-1.1.

The undersigned affirms that the foregoing statements are true under the penalties of perjury.

Dated: New York, New York
February 28, 2008



DIANA CARNEMOLLA

TO: STEIN RISO MANTEL, LLP
Attorneys for Defendant
METRO AUTO LEASING, INC.
The Chrysler Building
405 Lexington Avenue, 42nd Fl.
New York, New York 10174
Tel.: 212-599-1515

Exhibit E

TOY-RQ-05E-00002418

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X Index No. 107681/07

IRIS LEVITEN,

Plaintiff,

RESPONSE TO
DEMAND FOR DISCOVERY
AND INSPECTION

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., ESTREE, INC., d/b/a LEXUS OF WESTPORT,
and METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL,

Defendants.

-----X

Defendant, Metro Auto Leasing, Inc., through its attorneys, Stein Riso Mantel, LLP,
as and for its response to Plaintiff's Notice for Discovery & Inspection, responds as follows:

GENERAL OBJECTIONS

1. Defendant objects to the requests to the extent they seek information prepared in anticipation of litigation and/or trial preparation material and/or protected by the attorney-client privilege, the attorney work product, or other privileges or immunities from disclosure.

2. Defendant, in providing the response, does not waive any objection based on relevance, materiality, competence, privilege, immunity from disclosure, admissibility or other grounds. Nor does Defendant waive any of the privileges or immunities set forth in paragraph 1 above. Defendant also reserves the right to object to any additional discovery efforts that Plaintiff might make in this litigation relating to the matters covered by this response. Neither an indication that documents will be produced nor an objection to an interrogatory indicates that any such document exists or is in

Defendant's custody, possession or control. Defendant will not be obligated to create documents that do not otherwise exist.

3. Inadvertent production of any information or privileged or objectionable document shall not be deemed a waiver of such privilege or objection. Defendant reserves the right to require the return of any document produced inadvertently and all copies thereof.

4. Defendant objects to the requests to the extent it seeks documents already provided in discovery in this litigation by another party, and Defendant will not duplicate any such documentation in response to these requests.

RESPONSES

1. Defendant does not have responsive documents in its custody, possession or control.

2. Defendant does not have responsive documents in its custody, possession or control.

3. Defendant does not have responsive documents in its custody, possession or control.

4. Defendant does not have responsive documents in its custody, possession or control.

5. Defendant does not have responsive documents in its custody, possession or control.

6. Defendant does not have responsive documents in its custody, possession or control.

7. Defendant does not have responsive documents in its custody, possession or control.

8. Defendant does not have responsive documents in its custody, possession or control.

DATED: New York, New York
June 26, 2008

Stein Riso Mantel, LLP

By: Edward R. Minson
Edward R. Minson

Attorneys for Metro Auto Leasing, Inc.
405 Lexington Avenue, 42nd Fl.
New York, New York 10174
(212) 599-1515

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

NANCY E. GIBSON, being duly sworn, deposes and says:

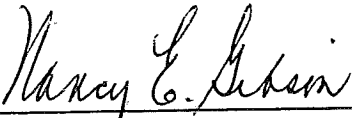
I am not a party to this action, am over the age of 18 years and reside in the State of New York.

On June 26, 2008, I served the within RESPONSE TO DEMAND FOR DISCOVERY AND INSPECTION, RESPONSE TO DEMAND FOR EXPERT WITNESS and BILL OF PARTICULARS AS TO AFFIRMATIVE DEFENSES by enclosing true copies of same in post-paid, properly addressed wrappers and depositing same in an official depository under the exclusive care and custody of the U.S. Postal Service addressed as follows:

Ahmuty Demers & McManus
123 Williams Street
New York, New York 10038

Gair, Gair, Conason, Steigman
& Mackauf
80 Pine Street
New York, New York 10005-1768

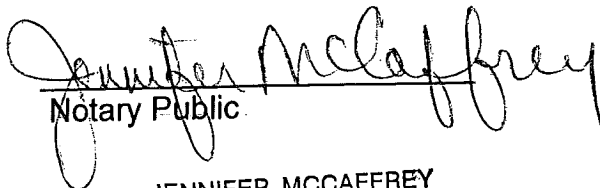
Jay A. Rappaport, Esq.
Aaronson Rappaport Reinstein & Deutsch, LLP
757 Third Avenue
New York, New York 10017



Nancy E. Gibson

Sworn to before me

this 26th day of June, 2008



Notary Public

JENNIFER MCCAFFREY
Notary Public, State Of New York
No. 01MC4983836
Qualified In Dutchess County
Commission Expires July 8, 2011

Index No. 107681-2007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL

Defendants.

RESPONSE TO DEMAND FOR EXPERT WITNESS

STEIN RISO MANTEL LLP
Attorneys for Metro Auto Leasing, Inc.
The Chrysler Building
405 Lexington Avenue, 42nd Floor
New York, New York 10174
(212) 599-1515

TOY-RQ-05E-00002423

Exhibit F

TOY-RQ-05E-00002424

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X Index No. 107681/07

IRIS LEVITEN,

Plaintiff,

RESPONSE TO
DEMAND FOR EXPERT
WITNESS

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., ESTREE, INC., d/b/a LEXUS OF WESTPORT,
and METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL,

Defendants.

-----X

Defendant, Metro Auto Leasing, Inc., through its attorneys, Stein Riso Mantel, LLP,
as and for its response to Plaintiff's Demand for Expert Witness, pursuant to CPLR
3101(d), responds as follows:

1. Defendant has not retained a trial expert at this time; however Defendant reserves its right to retain an expert at a later date.
2. See Response to No. 1.
3. See Response to No. 1.
4. See Response to No. 1.
5. See Response to No. 1.
6. See Response to No. 1.

DATED: New York, New York
June 26, 2008

Stein Riso Mantel, LLP

By: Edward R. Minson

Edward R. Minson

Attorneys for Metro Auto Leasing, Inc.

405 Lexington Avenue, 42nd Fl.

New York, New York 10174

(212) 599-1515

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

NANCY E. GIBSON, being duly sworn, deposes and says:

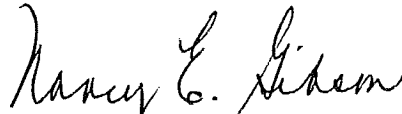
I am not a party to this action, am over the age of 18 years and reside in the State of New York.

On June 26, 2008, I served the within RESPONSE TO DEMAND FOR DISCOVERY AND INSPECTION, RESPONSE TO DEMAND FOR EXPERT WITNESS and BILL OF PARTICULARS AS TO AFFIRMATIVE DEFENSES by enclosing true copies of same in post-paid, properly addressed wrappers and depositing same in an official depository under the exclusive care and custody of the U.S. Postal Service addressed as follows:

Ahmuty Demers & McManus
123 Williams Street
New York, New York 10038

Gair, Gair, Conason, Steigman
& Mackauf
80 Pine Street
New York, New York 10005-1768

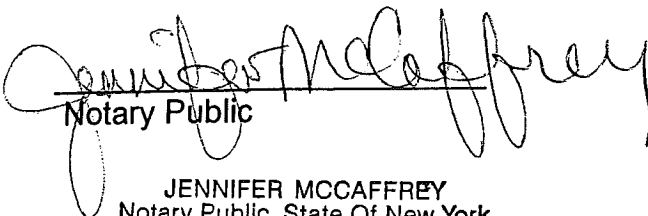
Jay A. Rappaport, Esq.
Aaronson Rappaport Reinstein & Deutsch, LLP
757 Third Avenue
New York, New York 10017



Nancy E. Gibson

Sworn to before me

this 26th day of June, 2008



Notary Public

JENNIFER MCCAFFREY
Notary Public, State Of New York
No. 01MC4983836
Qualified In Dutchess County
Commission Expires July 8, 20 11

Index No. 107681-2007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL

Defendants.

RESPONSE TO DEMAND FOR DISCOVERY AND INSPECTION

STEIN RISO MANTEL LLP
Attorneys for Metro Auto Leasing, Inc.
The Chrysler Building
405 Lexington Avenue, 42nd Floor
New York, New York 10174
(212) 599-1515

TOY-RQ-05E-00002428

Exhibit G

TOY-RQ-05E-00002429

o/c

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X Index No. 107681/07

IRIS LEVITEN,

Plaintiff,

BILL OF
PARTICULARS AS TO
AFFIRMATIVE
DEFENSES

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., ESTREE, INC., d/b/a LEXUS OF WESTPORT,
and METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL,

Defendants.

-----X

Defendant, Metro Auto Leasing, Inc. d/b/a The Automall, by its attorneys, Stein Riso Mantel, LLP, as and for its response to plaintiff's Demand For A Verified Bill of Particulars, responds as follows:

Demand As To The First Affirmative Defense:

State in what manner it is claimed that the plaintiff could have mitigated, minimized or avoided the damages claimed.

Response to Demand As To the First Affirmative Defense

If the plaintiff sustained any injuries as alleged in the Complaint and Verified Bill of Particulars, said injuries were caused or contributed to by the negligence, culpable fault and wrong doing of the plaintiff in carelessly and negligently causing and permitting her automobile to be operated in a negligent manner; in failing and omitting to have said automobile under reasonable and proper control; in carelessly and negligently causing and permitting her automobile to be operated

over and along the public highway at a high and excessive rate of speed and/or at a greater rate of speed that care and caution would permit under the circumstances then and there existing; in failing and omitting to operate the said automobile with due regard for the safety of herself and others; in carelessly and negligently failing and omitting to provide and/or make prompt and timely use of adequate and efficient brakes, signaling devices and steering mechanisms; in carelessly and negligently failing and omitting to keep and to maintain a proper look out and to be reasonably alert; in carelessly and negligently causing and permitting her automobile to be operated in such a negligent and reckless manner so as to precipitate the accident herein; in failing to properly inspect and to maintain the automobile; in failing to utilize the available seat belt which would have prevented and/or mitigated any injuries she claims to have sustained; in failing to exercise due care and caution for her own safety in view of the conditions allegedly then and there in existence; in failing to utilize that degree of care and caution that a reasonable person would utilize under the circumstances then and there existing; that in the exercise of care and caution plaintiff knew or should have known of the conditions at the time and place of the occurrence and with such knowledge, consciously disregarded same and the danger allegedly posed thereby and/or assumed the risk thereof; and the plaintiff was wholly negligent and careless in failing and omitting to take proper and suitable precautions to avoid the said incident.

Demand As To the Second Affirmative Defense:

State in detail the basis of the claim that the complaint fails to state a claim upon which relief may be granted.

Response to Demand As To The Second Affirmative Defense:

The Complaint does not adequately plead a basis to hold Defendant responsible for any of the alleged defects with regard to the automobile.

Demand As To The Third Cause of Action:

State the manner in which the aforementioned items of negligence, carelessness or culpable conduct caused or contributed to the plaintiff(s)' injuries. Set forth in specific detail the dangers and risks which were open, obvious, apparent and known to the plaintiffs. State the risks which it is claimed the plaintiff(s) assumed.

Response to Demand As To The Third Cause of Action:

See Answer to *Response to Demand As To the First Affirmative Defense.*

Demand As To The Fourth Cause of Action:

Set forth in detail the provisions of Article 16 of the CPLR with regard to the limitation of joint and several liability the defendants will rely upon.

Response to Demand As To The Fourth Cause of Action:

The determination as to the applicability o Article 16 is best left for the Court and ~~responding defendant specifically reserves its right to amend and/or supplement~~ this response upon completion of discovery.

Demand As To The Fifth Affirmative Defense:

Set forth in detail the provisions of Section 4545 of the Civil Practice Law and Rules, which would require that any verdict or judgment recovered by plaintiff against the defendant be reduced.

Response to Demand As To The Fifth Affirmative Defense:

Responding defendant is not in possession of sufficient information at this point to properly respond to this demand and reserves the right to amend and/or supplement this response upon completion of discovery.

Demand As To The Sixth Affirmative Defense:

Set forth in detail the basis for the claim in which the answering defendant asserts Section 15-108 of the General Obligations Law.

Set forth in detail the basis that the answering defendant be entitled to a set-off for any settlements, releases or discontinuances.

Response to Demand As To The Sixth Affirmative Defense:

Currently responding defendant is unaware of any settlement agreements which would reduce plaintiff's recovery, however, should any of the named defendants or any current non-parties settle with plaintiff, defendant will claim a reduction in terms of plaintiff's total recovery pursuant to GOL 15-108 and therefore defendant reserves the right to amend and/or supplement this response.

Demand As To The Seventh Affirmative Defense:

Set forth in specific detail the dangers and risks which were open, obvious, apparent and known to the plaintiff.

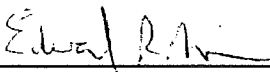
State the risks which it is claimed the plaintiff(s) assumed

Response to Demand As To The Seventh Affirmative Defense:

Responding defendant is not in possession of sufficient information at this point to properly respond to this demand and reserves the right to amend and/or supplement this response upon completion of discovery.

DATED: New York, New York
June 26, 2008

Stein Riso Mantel, LLP

By: 

Edward R. Minson

Attorneys for Metro Auto Leasing, Inc
The Chrysler Building
405 Lexington Avenue, 42nd Fl.
New York, New York 10174
(212) 599-1515

TO: GAIR, GAIR, CONASON, STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005-1768

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

NANCY E. GIBSON, being duly sworn, deposes and says:

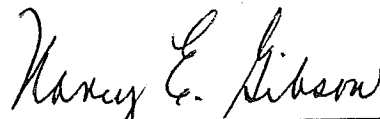
I am not a party to this action, am over the age of 18 years and reside in the State of New York.

On June 26, 2008, I served the within RESPONSE TO DEMAND FOR DISCOVERY AND INSPECTION, RESPONSE TO DEMAND FOR EXPERT WITNESS and BILL OF PARTICULARS AS TO AFFIRMATIVE DEFENSES by enclosing true copies of same in post-paid, properly addressed wrappers and depositing same in an official depository under the exclusive care and custody of the U.S. Postal Service addressed as follows:

Ahmuty Demers & McManus
123 Williams Street
New York, New York 10038

Gair, Gair, Conason, Steigman
& Mackauf
80 Pine Street
New York, New York 10005-1768

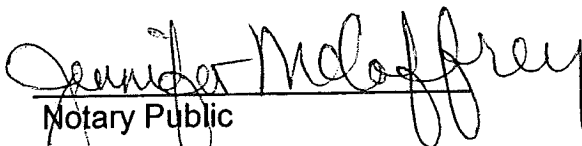
Jay A. Rappaport, Esq.
Aaronson Rappaport Reinstein & Deutsch, LLP
757 Third Avenue
New York, New York 10017



Nancy E. Gibson

Sworn to before me

this 26th day of June, 2008



Notary Public

JENNIFER MCCAFFREY
Notary Public, State Of New York
No. 01MC4983836
Qualified In Dutchess County
Commission Expires July 8, 2011

Index No. 107681-2007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL

Defendants.

BILL OF PARTICULARS AS TO AFFIRMATIVE DEFENSES

STEIN RISO MANTEL LLP
Attorneys for Metro Auto Leasing, Inc.
The Chrysler Building
405 Lexington Avenue, 42nd Floor
New York, New York 10174
(212) 599-1515

Exhibit H

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index number: 107681/07

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

**DEMAND FOR
INSURANCE COVERAGE**

TO DEFENDANT(S): METRO AUTO LEASING, INC.

S I R S :

PLEASE TAKE NOTICE that demand is made upon you to reveal to the undersigned, in writing, pursuant to Section 3101(f) of the Civil Practice Law and Rules, within twenty (20) days of receipt of this Demand, the following:

1. The complete and full insurance agreements, including face sheet, under which the insurance of the defendants may be liable to satisfy part or all of the judgment which may be entered in the above entitled action or to indemnify or reimburse payments made to satisfy a judgment in the above entitled action.
2. The complete name and address of the insurance company(s). Their file and policy numbers and coverage amount.
3. A statement and an affidavit as to whether or not there is any additional, concurrent, excess or umbrella coverage which would be applicable. If there is such coverage, all information as to those policies as requested in "2" above.

4. In the case of no coverage, please provide an affidavit of no excess sworn to by your client. In the case of disclaimer, reservation of right or any other conditions relevant to any of the above coverage, please so state.

Exhibit I

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X Index No. 107681/07

IRIS LEVITEN,

Plaintiff,

RESPONSE TO
DEMAND FOR
INSURANCE
COVERAGE

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., ESTREE, INC., d/b/a LEXUS OF WESTPORT,
and METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL,

Defendants.

-----X

Defendant, Metro Auto Leasing, Inc., through its attorneys, Stein Riso Mantel, LLP,
as and for its response to Plaintiff's Demand For Insurance Coverage pursuant to CPLR
3101(f), responds as follows:

Request No. 1

The complete and full insurance agreements, including face sheet, under which the
insurance of the defendants may be liable to satisfy part or all of the judgment which
may be entered in the above-entitled action or to indemnify or reimburse payments
made to satisfy a judgment in the above-entitled action.

Response to Request No. 1

Defendant does not have any insurance coverage pertaining to this litigation.

Request No. 2

The complete name and address of the insurance company(s). Their file and policy
numbers and coverage amount.

Response to Request No. 2

See response to Request No. 1.

Request No. 3:

A statement and an affidavit as to whether or not there is any additional, concurrent, excess or umbrella coverage which would be applicable. If there is such coverage, all information as to those policies as requested in "2" above.

Response to Request No. 3

See response to Request No. 1.

Request No. 4

In the case of no coverage, please provide an affidavit of no excess sworn to by your client. In case of disclaimer, reservation of right or any other conditions relevant to any of the above coverage, please so state.

Response to Request No. 4

See response to Request No. 1.

DATED: New York, New York
July 10, 2009

Stein Riso Mantel, LLP

By: Edward R. Minson
Edward R. Minson

Attorneys for Metro Auto Leasing, Inc.
405 Lexington Avenue, 42nd Fl.
New York, New York 10174
(212) 599-1515

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X
IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X
MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

- against -

IRIS LEVITEN,

Defendant.
-----X

Index No. 107681-2007

AFFIRMATION OF EDWARD
R. MINSON IN SUPPORT OF
STEIN RISO MANTEL LLP'S
MOTION TO BE RELIEVED
AS COUNSEL AND IN
OPPOSITION TO PLAINTIFF'S
CROSS-MOTION

Action #1

Index No. 117118-2007

Action #2

Index No. 102331-2008

Action #3

Stein Riso Mantel, LLP, 405 Lexington Ave., New York, N.Y. 10174

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
D/B/A THE AUTOMALL,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

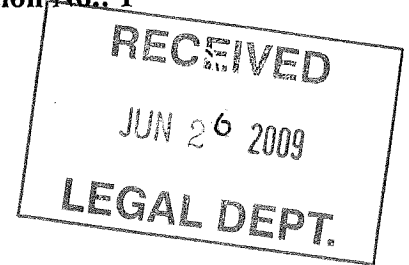
IRIS LEVITEN,

Defendant.
-----X

9
**RESPONSE TO PRELIMINARY
CONFERENCE ORDER**

Index No.: 107681/07

Action No.: 1



Index No.: 117118/07

Action No.: 2

Index No.: 102331/08

Action No.: 3

COUNSELORS:

The defendant, Iris Leviten, responding to the preliminary conference order herein, states as follows on information and belief:

1. Enclosed as **Exhibit A** are pictures from the inspection of the car as conducted by defendant Levitan.

2. The order refers to a notice for discovery and inspection served by the plaintiff, Doukas, on or about March 19, 2008. The file maintained by the defendant, Levitan, as received from predecessor counsel, does not contain such a discovery demand. Defendant Levitan respectfully requests that plaintiff Doukas send a second copy of this demand to defendant Levitan's current counsel and it will be promptly responded to.

Responding defendant herein reserves the right to supplement this response if, and when, additional information becomes available.

Dated: Staten Island, New York
April 20, 2009

Yours, etc.,

CONNORS & CONNORS, P.C.



DAVID S. HELLER

Attorneys for Defendant
IRIS LEVITEN
766 Castleton Avenue
Staten Island, NY 10310
(718) 442-1700
File No.: DGE 23865

TO: AHMUTY, DEMERS & MCMANUS, ESQS.
Attorneys for Defendant, ESTREE, INC., D/B/A LEXUS OF WESTPORT - Action #1
200 I.U. Willets Road
Albertson, NY 11507

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant, TOYOTA MOTOR SALES, U.S.A., INC.,
S/H/A LEXUS, A DIVISION OF TOYOTA MOTORS SALES, U.S.A., INC.
10 Bank Street - Suite 1061
White Plains, New York 10606
(914) 949-2909

LAW OFFICES OF GARY S. ALWEISS
Attorney for Plaintiff
229 Seventh Street, Suite 300
Garden City, New York 11530
(516) 746-1047

KELNER & KELNER, ESQS.
Attorneys for Plaintiff
MICHAEL DOUKAS - Action #2
140 Broadway- 37th Floor
New York, NY 10005
(212) 425-0700

MICHAEL CORDOZO, ESQ.
Attorney for Defendants
ANTHONY DIGIROLAMO, NEW YORK CITY DEPARTMENT
OF SANITATION AND THE CITY OF NEW YORK - Action #2
100 Church Street
New York, NY 10007
(212) 788-0303

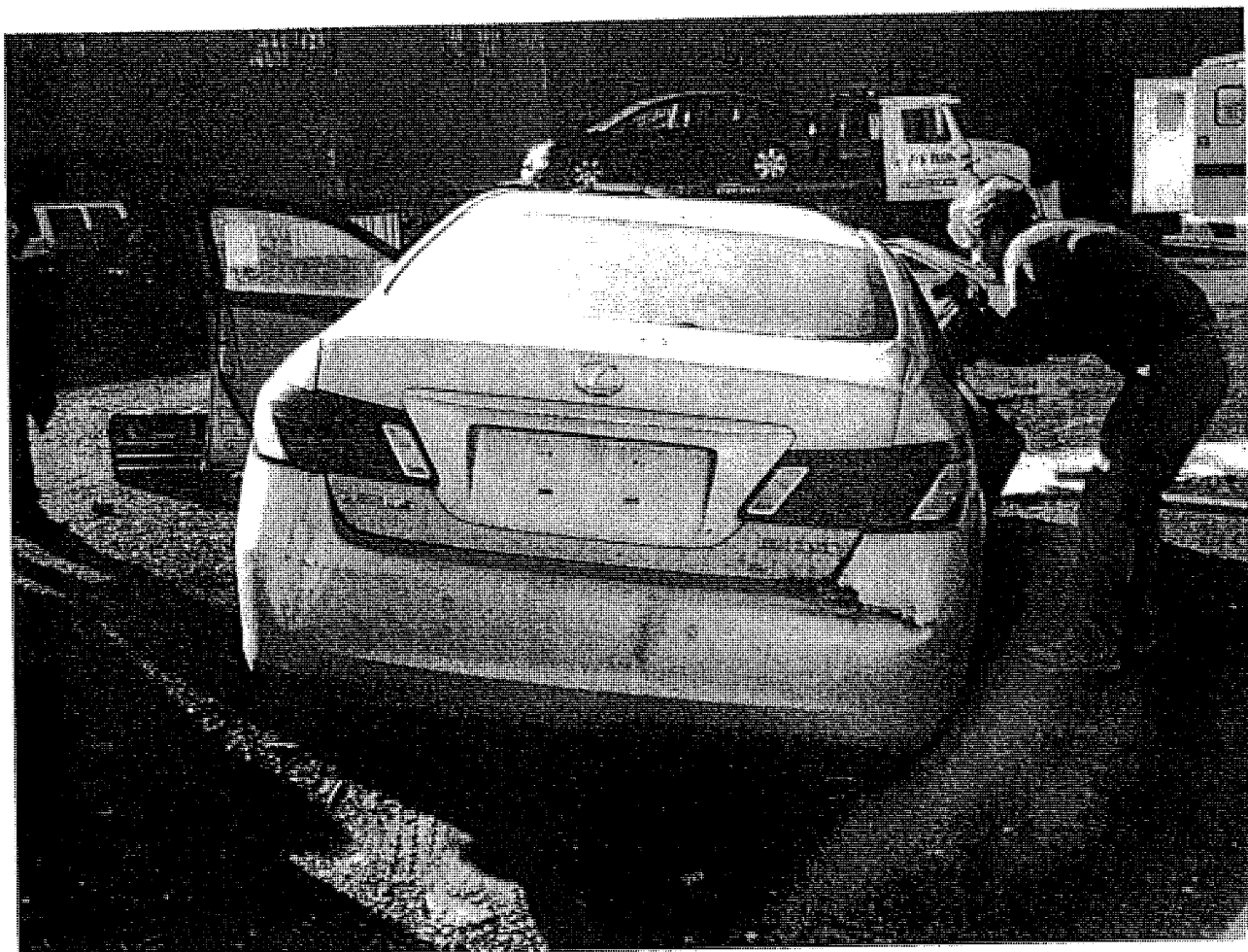
GAIR, GAIR, CONASON, STEGMAN & MACKAUF
Attorneys for Plaintiff
IRIS LEVITEN - Action # 1
80 Pine Street
New York, NY 10005

ARRONSON, RAPPAPORT, FEINSTEIN & DEUTSCH, ESQS.
Attorneys for Defendant
TOYOTA MOTOR SALES, USA, INC. - Action #1
757 Third Avenue
New York , NY 10017

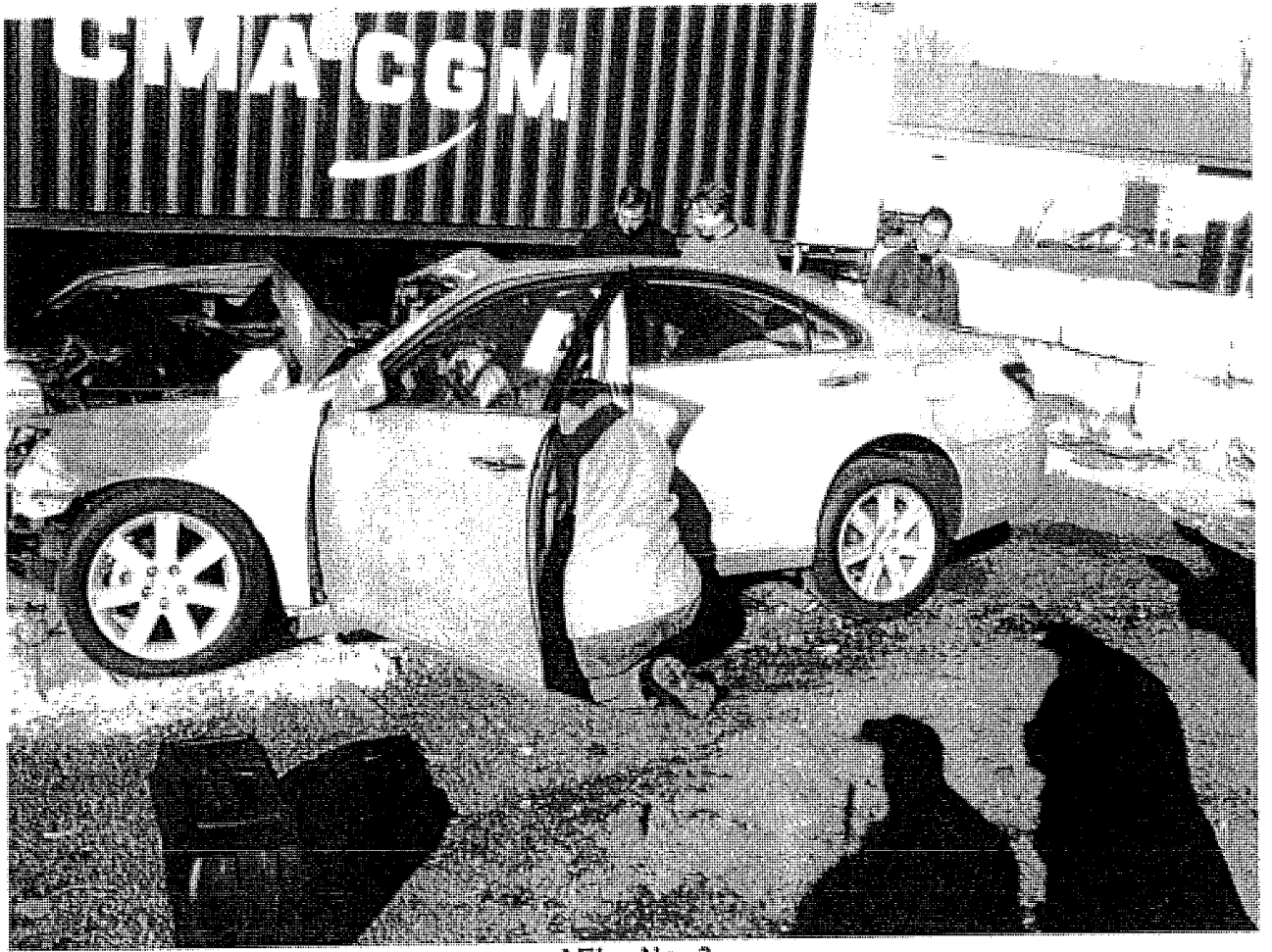
STEIN, RISO & MANTEL
Attorneys for Defendant
METRO AUTO LEASING, INC. - Action #1
405 Lexington Avenue
New York, NY 10174



AEL - No. 1



AEL - No. 2



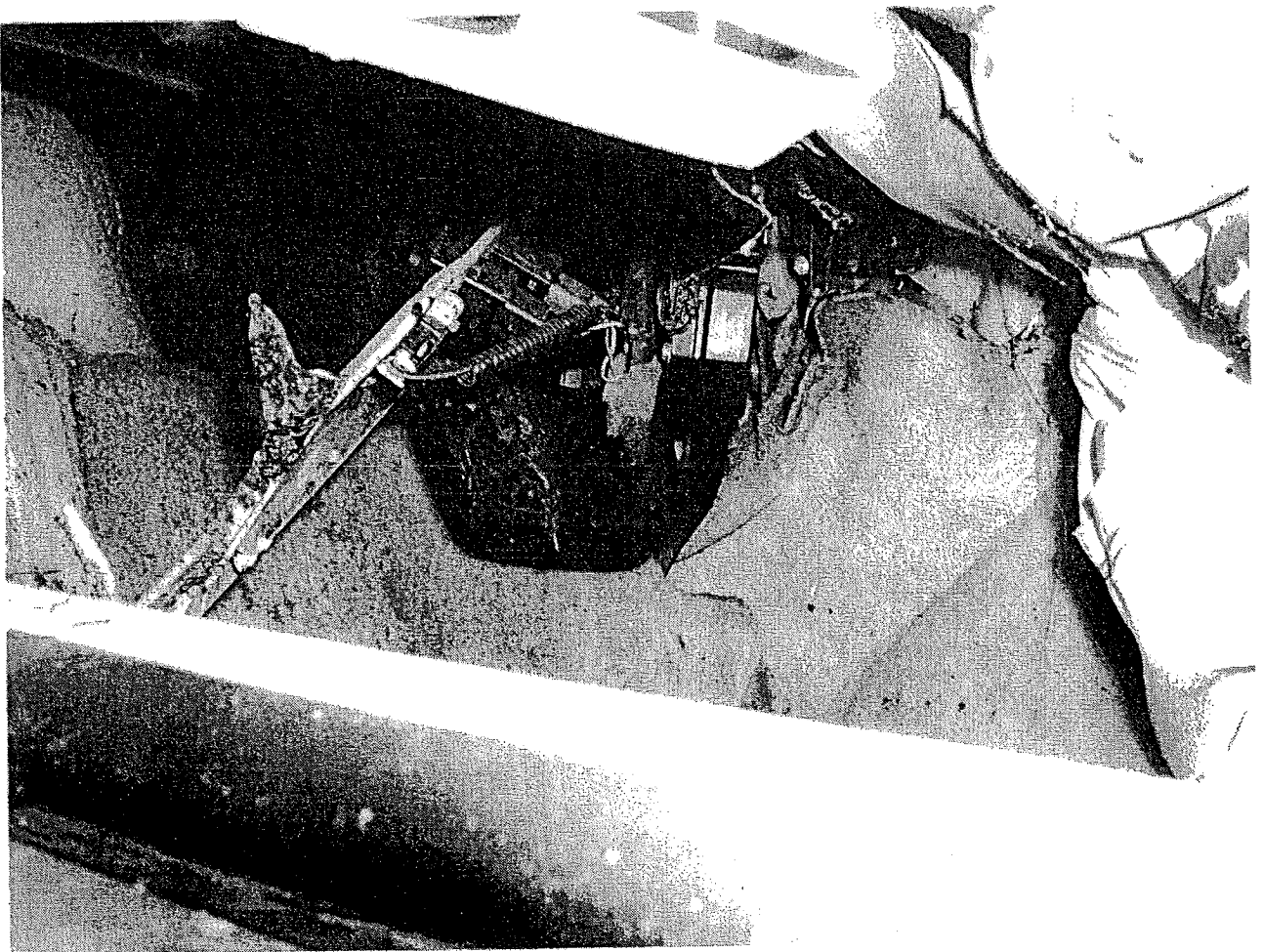
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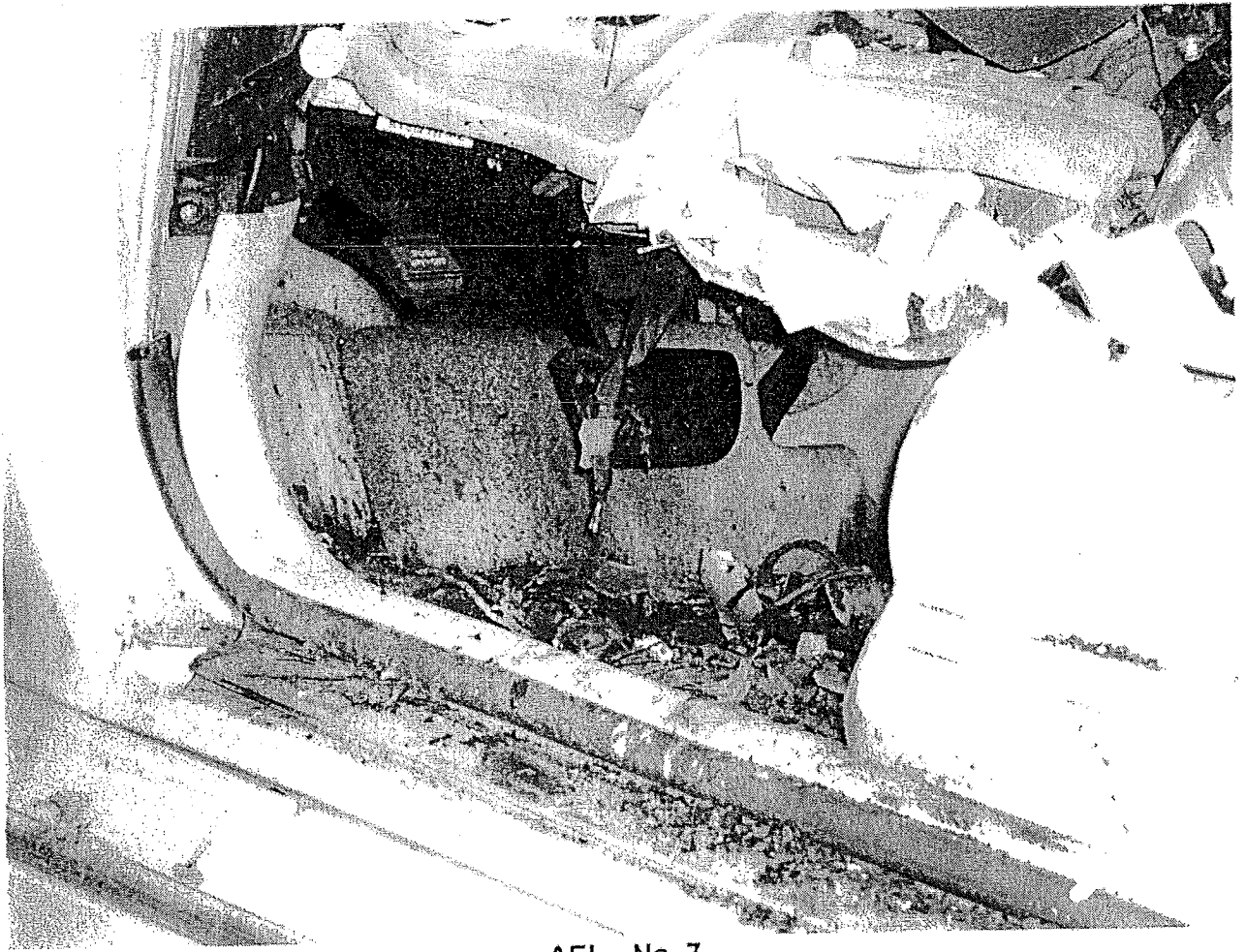
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AEL - No. 5



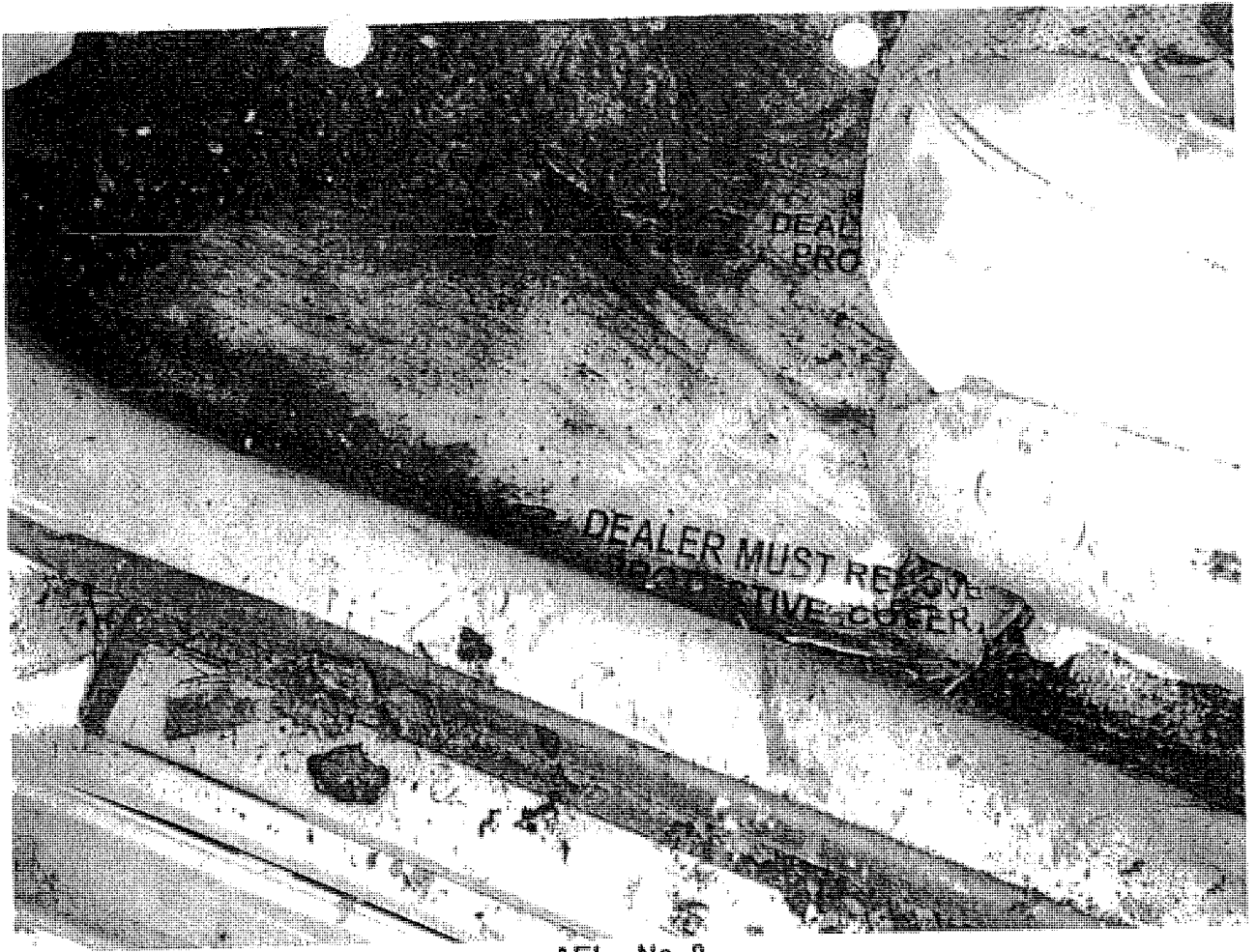
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AEL - No. 7



AEL - No. 8



AEL - No. 9



AEL - No. 10



AEL - No. 11



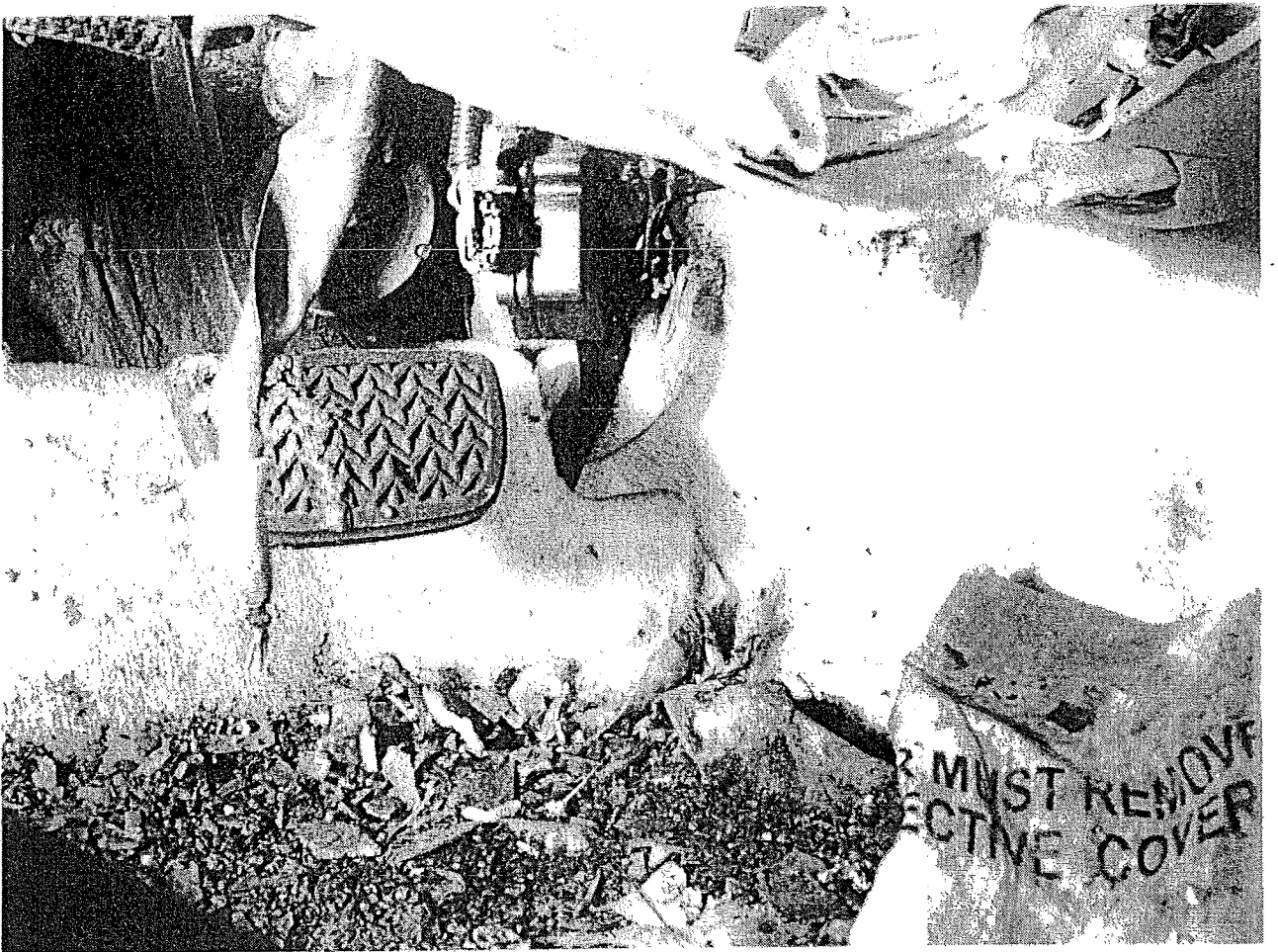
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AEL - No. 13



AEL - No. 14



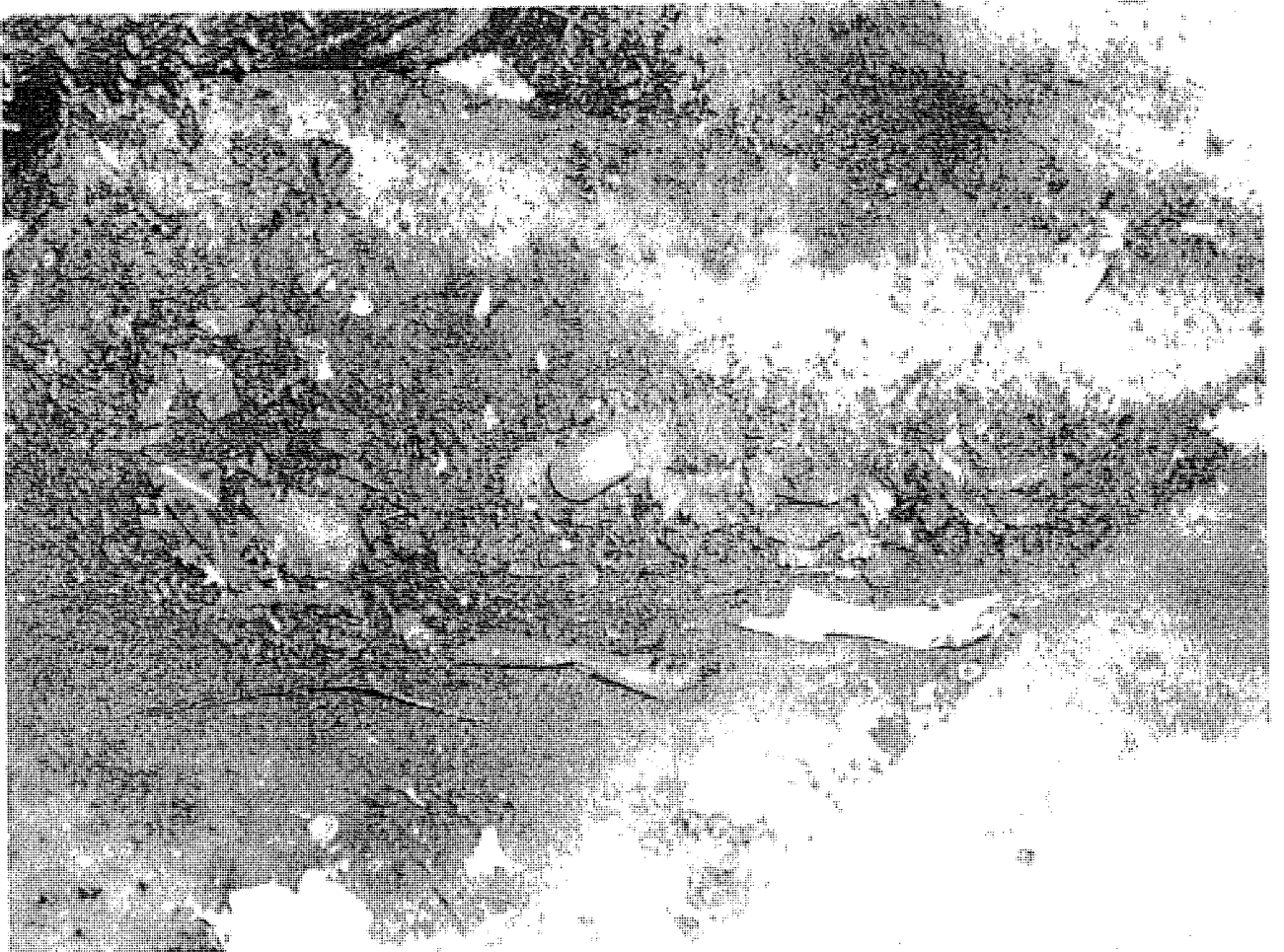
AEL - No. 15



AEL - No. 16



AEL - No. 17



AEL - No. 18



AEL - No. 19



AEL - No. 20

Index 117118 Year 2007 RJI No. Hon.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW YORK CITY
DEPARTMENT OF SANITATION and THE CITY OF NEW YORK,

Defendants.

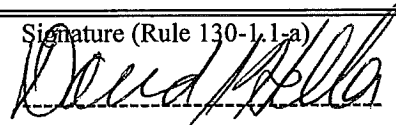
RESPONSE TO PRELIMINARY CONFERENCE ORDER

CONNORS & CONNORS, P.C.

*Attorneys for Defendant, Iris Leviten
Office and Post Office Address, Telephone
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700 PHONE
(718) 442-1717 FAX*

To

Signature (Rule 130-1.1-a)



Print name beneath

DAVID S. HELLER

Attorney(s) for

Service of a copy of the within

is hereby admitted,

Dated,

Attorney(s) for

Please take notice

NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order
settlement to the HON.

of the within named court, at
on

of which the within is a true copy will be presented for
one of the judges

at M

Dated,

Yours, etc.

CONNORS & CONNORS, P.C.

Attorneys for

To

Attorney(s) for

*Office and Post Office Address
766 CASTLETON AVENUE
STATEN ISLAND, NEW YORK 10310*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X Index No. 107681/07

IRIS LEVITEN,

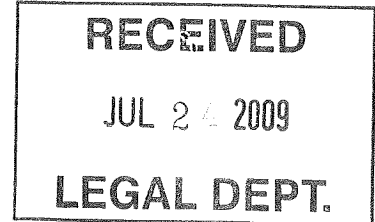
Plaintiff,

RESPONSE TO
DEMAND FOR
INSURANCE
COVERAGE

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., ESTREE, INC., d/b/a LEXUS OF WESTPORT,
and METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL,

Defendants.



-----X
Defendant, Metro Auto Leasing, Inc., through its attorneys, Stein Riso Mantel, LLP,
as and for its response to Plaintiff's Demand For Insurance Coverage pursuant to CPLR
3101(f), responds as follows:

Request No. 1

The complete and full insurance agreements, including face sheet, under which the
insurance of the defendants may be liable to satisfy part or all of the judgment which
may be entered in the above-entitled action or to indemnify or reimburse payments
made to satisfy a judgment in the above-entitled action.

Response to Request No. 1

Defendant does not have any insurance coverage pertaining to this litigation.

Request No. 2

The complete name and address of the insurance company(s). Their file and policy
numbers and coverage amount.

Response to Request No. 2

See response to Request No. 1.

Request No. 3:

A statement and an affidavit as to whether or not there is any additional, concurrent, excess or umbrella coverage which would be applicable. If there is such coverage, all information as to those policies as requested in "2" above.

Response to Request No. 3

See response to Request No. 1.

Request No. 4

In the case of no coverage, please provide an affidavit of no excess sworn to by your client. In case of disclaimer, reservation of right or any other conditions relevant to any of the above coverage, please so state.

Response to Request No. 4

See response to Request No. 1.

DATED: New York, New York
July 10, 2009

Stein Riso Mantel, LLP

By: Edward R. Minson
Edward R. Minson

Attorneys for Metro Auto Leasing, Inc.
405 Lexington Avenue, 42nd Fl.
New York, New York 10174
(212) 599-1515

-----X
IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62
-----X

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62
-----X

ANTHONY DIGIROLAMO,

Plaintiff,

- against -

IRIS LEVITEN,

Defendant.
-----X

Index No. 107681-2007

RESPONSE TO DEMAND FOR
INSURANCE COVERAGE

Action #1

Index No. 117118-2007

Action #2

Index No. 102331-2008

Action #3

Stein Riso Mantel, LLP, 405 Lexington Ave., New York, N.Y. 10174

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
D/B/A THE AUTOMALL,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

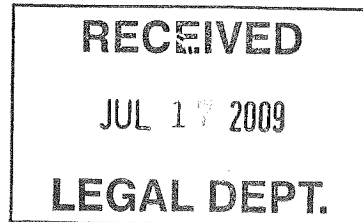
IRIS LEVITEN,

Defendant.
-----X

AFFIRMATION

Index No.: 107681/07

Action No.: 1



Index No.: 117118/07

Action No.: 2

Index No.: 102331/08

Action No.: 3

DAVID S. HELLER, an attorney duly admitted to practice before this Honorable Court, under penalty of perjury, affirms and says as follows:

1. I am an attorney with the law firm of Connors & Connors, attorneys for the defendant, Leviten, herein and I make this Affirmation with regard to the Order to Show Cause of Stein, Riso, Mantel to be relieved as counsel in this case. This firm, the attorneys for co-defendant METRO AUTO LEASING, INC., D/B/A THE AUTOMALL, (METRO) have moved to be relieved, based upon the affirmation of Gerard Riso, dated June 23, 2009.

2. Defendant Leviten does not oppose this relief. Indeed, if the facts are as set forth in Mr. Riso's affirmation, the relief is entirely merit.

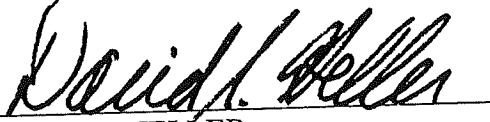
3. However, plaintiff and co-defendants have an interest in knowing whether or not defendant METRO, is financially capable of responding in damages to this action. According to the Riso affirmation, at Paragraph 9, METRO states that it can no longer pay its counsel, and that it does not have liability insurance.

4. It is respectfully submitted that this court should direct METRO, either through outgoing counsel, or as a defendant pro se, to provide an affidavit by a person with knowledge as to the existence of liability insurance as required under CPLR 3101(f).

5. While it is possible, it seems unlikely that an established dealer in luxury automobiles would either be self insured or without any liability insurance. At the very least, METRO should be required to provide a sworn statement under the penalty of perjury as to the truthfulness of the assertion that they have made to their counsel in this regard.

6. Moreover, as set forth in defendant Leviten's cross motion served herewith, METRO's inability or refusal to pay its attorney does not excuse its refusal to provide court ordered discovery. For that reason METRO's answer should be stricken.

WHEREFORE, it is respectfully submitted that before granting the Order to Show Cause herein, the defendant, METRO, either through outgoing counsel or pro se, be required to disclose and/or state under oath the complete extent of any insurance available to it, and that defendant Leviten should have such other and further relief as she is entitled to in the circumstances. .



DAVID S. HELLER

Index107681 Year 2007 RJI No. Hon.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
D/B/A THE AUTOMALL,

Defendants.

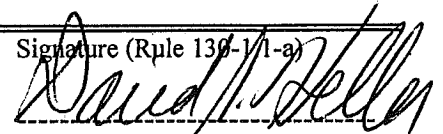
(And Action No.:2 and Action No.:3)

AFFIRMATION

CONNORS & CONNORS, P.C.
Attorneys for Defendant, Iris Leviten
Office and Post Office Address, Telephone
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700 PHONE
(718) 442-1717 FAX

To

Signature (Rule 136-1/1-a)



Print name beneath

DAVID S. HELLER

Attorney(s) for

Service of a copy of the within

is hereby admitted,

Dated,

Attorney(s) for

Please take notice

NOTICE OF ENTRY

that the within is a (certified) true copy of a
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that an order
settlement to the HON.
of the within named court, at
on

of which the within is a true copy will be presented for
one of the judges

at M

Dated,

Yours, etc.

CONNORS & CONNORS, P.C.
Attorneys for

To

Office and Post Office Address
766 CASTLETON AVENUE
STATEN ISLAND, NEW YORK 10310

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
D/B/A THE AUTOMALL,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

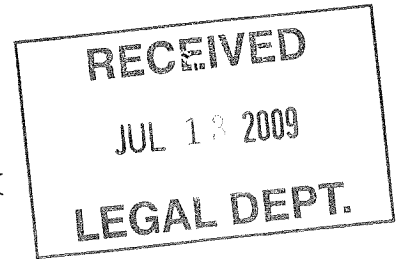
IRIS LEVITEN,

Defendant.
-----X

**NOTICE OF CROSS MOTION
TO STRIKE**

Index No.: 107681/07

Action No.: 1



Index No.: 117118/07

Action No.: 2

Index No.: 102331/08

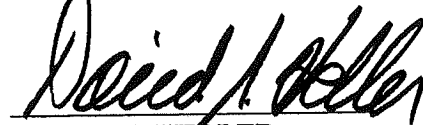
Action No.: 3

S I R S :

PLEASE TAKE NOTICE, that upon the annexed Affirmation of DAVID S. HELLER, dated the 7TH day of July 2009, the undersigned shall move this Court at an IAS Motion, Room 1254, Part 59, to be held at the Courthouse located at 111 Centre Street, New York, New York 10007, on the **16TH day of July, 2009**, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order to strike the Answer of co-defendant Metro Auto Leasing, Inc., and for such other and further relief as defendant Leviten may be entitled to.

Dated: Staten Island, New York
July 7, 2009

Yours, etc.



DAVID S. HELLER
CONNORS & CONNORS, P.C.
Attorneys for Defendant
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700
File No. DGE23865

TO: AHMUTY, DEMERS & MCMANUS, ESQS.
Attorneys for Defendant, ESTREE, INC., D/B/A LEXUS OF WESTPORT - **Action #1**
200 I.U. Willets Road
Albertson, NY 11507

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant, TOYOTA MOTOR SALES, U.S.A., INC.,
S/H/A LEXUS, A DIVISION OF TOYOTA MOTORS SALES, U.S.A., INC.
10 Bank Street - Suite 1061
White Plains, New York 10606
(914) 949-2909

LAW OFFICES OF GARY S. ALWEISS
Attorney for Plaintiff
229 Seventh Street, Suite 300
Garden City, New York 11530
(516) 746-1047

KELNER & KELNER, ESQS.
Attorneys for Plaintiff
MICHAEL DOUKAS - **Action #2**
140 Broadway- 37th Floor
New York, NY 10005
(212) 425-0700

MICHAEL CORDOZO, ESQ.
Attorney for Defendants
ANTHONY DIGIROLAMO, NEW YORK CITY DEPARTMENT
OF SANITATION AND THE CITY OF NEW YORK - **Action #2**
100 Church Street
New York, NY 10007
(212) 788-0303

GAIR, GAIR, CONASON, STEGMAN & MACKAUF
Attorneys for Plaintiff
IRIS LEVITEN - **Action # 1**
80 Pine Street
New York, NY 10005

ARRONSON, RAPPAPORT, FEINSTEIN & DEUTSCH, ESQS.
Attorneys for Defendant
TOYOTA MOTOR SALES, USA, INC. - **Action #1**
757 Third Avenue
New York, NY 10017

STEIN, RISO & MANTEL
Attorneys for Defendant
METRO AUTO LEASING, INC. - **Action #1**
405 Lexington Avenue
New York, NY 10174

Richard Janowitz, Esq.
Attorney for Plaintiff
Anthony Digirolomo - **Action # 3**
229 Seventh Street, Suite 304
Garden City, NY 11530

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
D/B/A THE AUTOMALL,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.

-----X

AFFIRMATION

Index No.: 107681/07

Action No.: 1

Index No.: 117118/07

Action No.: 2

Index No.: 102331/08

Action No.: 3

DAVID S. HELLER, an attorney duly admitted to practice before this Honorable Court, under the penalty of perjury, affirms and says as follows:

1. I am an attorney with the law firm of CONNORS & CONNORS, P.C., attorneys for defendant, IRIS LEVITEN, and I make this affirmation in support of defendant IRIS LEVITEN's cross motion to strike the pleadings of the co-defendant Metro Auto Leasing, Inc.

2. The facts are as set forth in the Cross Motion and supporting Affirmation of Todd J. Strier, the attorney for the plaintiff Doukas in this consolidated action.

3. Not only is defendant Leviten also a plaintiff in the consolidated case, and thus situated as is the plaintiff Doukas, but she is also sued herein as a defendant. As such, she has both a direct claim against the co-defendant Metro Auto Leasing, Inc., and, as a defendant in the consolidated action, a viable cross-claim against Metro Auto Leasing, Inc., as well.

4. For the reasons set forth in the Strier Affirmation, which defendant Leviten adopts with all the force and effect as of they were herein set forth at length, if the relief requested by plaintiff Doukas in his cross motion is granted, the same relief must be extended, for the same reasons, to Iris Leviten as a defendant.

5. While it is questionable whether an affirmation of good faith is needed in the peculiar circumstances presented by the case at bar, such an affirmation is annexed hereto as **Exhibit A**.

WHEREFORE, for the reason set forth in the Affirmation and supporting papers of plaintiff Doukas, adopted by defendant Leviten on her behalf, defendant Leviten's motion should be granted in its entirety, and defendant Leviten should have such other and further relief as she is entitled to in the circumstances.

Dated: Staten Island, New York
July 7, 2009

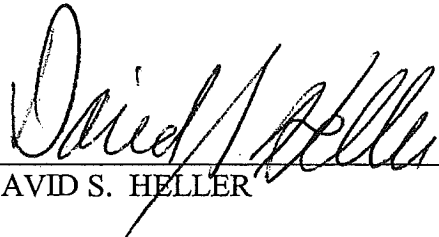

DAVID S. HELLER

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
D/B/A THE AUTOMALL,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.

-----X

**AFFIRMATION OF
GOOD FAITH**

Index No.: 107681/07

Action No.: 1

Index No.: 117118/07

Action No.: 2

Index No.: 102331/08

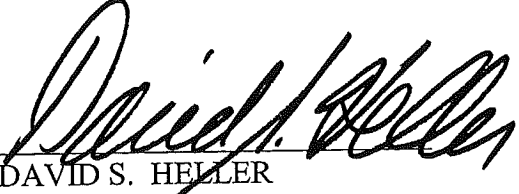
Action No.: 3

The undersigned, an attorney admitted to practice in this state, affirms that the following statements are true under the penalties of perjury:

1. I am the attorney for the Defendant, IRIS LEVITEN, in the above entitled action.
2. This defendant attempted to resolve the discovery issues raised in this motion by obtaining orders that the discovery materials desired should be exchanged. For the reasons set forth in the affirmation of Todd Strier dated July 1, 2009, and primarily because the attorney for the defendant that has failed to provide discovery is seeking to be relieved of that representation, no further efforts were practical in the circumstances.

WHEREFORE, the within motion of defendant Leviten should be granted in its entirety.

Dated: Staten Island, New York
July 7, 2009


DAVID S. HELLER

Index 107681

Year 2007

RJI No.

Hon.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
D/B/A THE AUTOMALL,

Defendants.

(And Action No.:2 and Action No.:3)

**NOTICE OF CROSS MOTION, AFFIRMATION IN SUPPORT, and AFFIRMATION
OF GOOD FAITH**

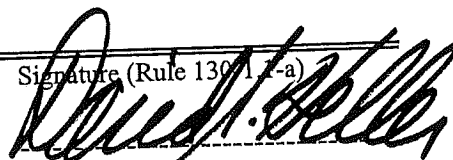
CONNORS & CONNORS, P.C.

*Attorneys for Defendant, Iris Leviten
Office and Post Office Address, Telephone*

766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700 PHONE
(718) 442-1717 FAX

To

Signature (Rule 130.1.1-a)



Print name beneath
DAVID S. HELLER

Attorney(s) for

Service of a copy of the within

is hereby admitted,

Dated,

Attorney(s) for

Please take notice

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settlement to the HON.
of the within named court, at
on

of which the within is a true copy will be presented for
one of the judges

at M

Dated,

Yours, etc.

CONNORS & CONNORS, P.C.

Attorneys for

To

Office and Post Office Address
766 CASTLETON AVENUE
STATEN ISLAND, NEW YORK 10310

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x
IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
----- x

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW YORK
CITY DEPARTMENT OF SANITATION, THE CITY OF
NEW YORK, LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
----- x

C O U N S E L O R S :

PLEASE TAKE NOTICE, that upon the annexed affirmation of TODD J. STRIER, dated July 1, 2009 and upon all of the pleadings and proceedings heretofore had herein, the undersigned shall cross-move this court at the IAS Part 62, at the Courthouse located at 80 Centre Street, Room 280, New York, NY, on the 16th day of July, 2009 at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order pursuant to CPLR §3126, striking the Answer of defendant METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, upon the grounds that said defendant has willfully failed to comply with four Court Orders; *to wit*, the Preliminary Conference Order dated April 15, 2008 and the Compliance Conference Orders dated October 23, 2008, February 26, 2009 and April 2, 2009; setting this matter down for an immediate inquest; together with such other and further relief as the court may deem just and proper in the

Index no. 107681/07

**NOTICE OF
CROSS-MOTION**

Return Date: 7/16/2009

Index no. 117118/07

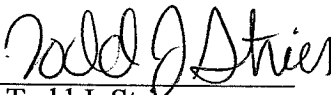
premises.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering affidavits, if any, are to be served upon the undersigned at least seven (7) days prior to the return date of this motion.

Dated: New York, New York
July 1, 2009

Yours etc.,

KELNER & KELNER, ESQS.
Attorneys for Plaintiff MICHAEL DOUKAS
(ACTION NO. 2)

By : 
Todd J. Strier
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

TO: CONNORS & CONNORS, P.C.
Attorneys for Defendant Iris Leviten Action No. 2
766 Castleton Avenue
Staten Island, N.Y. 10310
718-442-1700

MICHAEL CARDOZO, ESQ.
Attorneys for Defendants in Action no. 2
CITY OF NEW YORK/DIGIROLOAMO
100 Church Street, 4th Floor
New York, New York 10007
File No.: 2008-001345

GAIR GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff in Action no. 1
IRIS LEVITEN
80 Pine Street
New York, New York 10005
212-943-1090

AHMUTY, DEMERS & McMANUS
Attorneys for Defendant in Action no. 1
ESTREE, INC., d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, New York 11507
516-294-5433
File No.: YCW0962N7 JAE

STEIN RISO MANTEL, LLP
Attorneys for Defendant in Action no. 1
METRO AUTO LEASING, INC., d/b/a
THE AUTO MALL
405 Lexington Avenue
New York, New York 10174
212-599-1515

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant in Action No. 1
TOYOTA MOTOR SALES, USA INC.
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, USA, INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
914-949-2909

RICHARD JANOWITZ, ESQ.
Attorneys for Defendant in Action no. 2 / 3
ANTHONY DIGIROLAMO
229 7th Street, Suite 304
Garden City, New York 11530
646-522-4141

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x
IRIS LEVITEN,

Index no. 107681/07

Plaintiff,

- against -

AFFIRMATION

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Return Date: 7/16/2009

Defendants.

----- x
MICHAEL DOUKAS,

Index no. 117118/07

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW YORK
CITY DEPARTMENT OF SANITATION, THE CITY OF
NEW YORK, LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

-----x

TODD J. STRIER, an attorney duly licensed to practice law in the courts of the State of
New York, hereby affirms, pursuant to CPLR §2106, the truth of the following under penalties of
perjury upon information and belief:

1. Your affirmant is an attorney with the law firm of KELNER & KELNER, ESQS.,
attorneys for the plaintiff in Action number 2 herein, and, as such, is fully familiar with the facts
and circumstances of this case by virtue of a review of the file maintained by this office.

2. This affirmation is submitted in support of plaintiff, MICHAEL DOUKAS's, motion for an order, pursuant to CPLR §3126 to strike defendant METRO AUTO LEASING, INC., d/b/a THE AUTOMALL's answer (hereinafter referred to as defendant "METRO") for failing to comply with the Preliminary Conference Order dated April 15, 2008 and the Compliance Conference Orders dated October 23, 2008, February 26, 2009 and April 2, 2009. Attached hereto as Exhibit "A" are a copy of said orders.

3. This matter presently involves two separate claims which were consolidated for purposes of a joint trial and discovery in June 2008 as a result of a motor vehicle accident involving the LEVITEN vehicle and the DOUKAS vehicle. Subsequently, your affirmant moved and was granted relief to amend the DOUKAS caption to include defendants LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL. That decision was decided in December 2008.

4. Defense counsel for defendant METRO should not be permitted to be relieved as counsel at this juncture in the litigation. Said relief would cause immediate prejudice for all parties involved and would delay the complex discovery schedule presently in place. Counsel for defendant METRO has taken an active role over the past year yet has failed to produce one document in response to court orders. As a result, defendant METRO's answer should be stricken and an inquest ordered.

5. Counsel for defendant METRO actively participated in the Preliminary Conference in April 2008 before Justice Carol Edmead.. Although they willingly did not show at the compliance conferences, your affirmant on more than one occasion, contacted counsel for defendant METRO from the court house, reviewed the contents of the compliance conference orders and received verbal agreements to be bound by their terms.

4. At no time during the course of this litigation has defendant METRO provided a response to any discovery demands set forth on them. Specifically, the preliminary conference

order mandated that all parties comply by discovery including the exchange of sales/lease documents and insurance disclosures on or about May 15, 2008. Furthermore, the compliance orders from October 2008, February 2009 and April 2009 all directed defendant METRO to provide all copies of applicable insurance policies and/or disclaimers.

5. Your affirmant requests this court strike defendant METRO's answer for failure to comply with the court orders. Furthermore, this court should not grant counsel's request to be relieved *until such time* that a full documentary disclosure by defendant METRO is made. It is inconceivable that counsel for defendant METRO didn't have access to defendant METRO's file to determine any of the discovery demands made upon them. Failure to do so has prejudiced the other parties abilities to prosecute this matter.

6. Your affirmant is sympathetic to any law firm which is not receiving payment for their services, however, counsel for defendant METRO has waited an unreasonable amount of time to seek the instant relief. Both Plaintiff's have already been deposed and we are set to commence the depositions of the defendants shortly. By virtue of this court granting the movant's order to show cause, the present discovery schedule will be delayed again putting strain on the Standard and Goals set forth by the Office of Court Administration.

7. In light of the violations by defendant METRO, your affirmant requests that this court strike defendant METRO's answer. This is the only relief that would be appropriate at this stage which would allow the remaining parties to continue with discovery. Alternatively, your affirmant asks that they direct defendant METRO to comply with all outstanding discovery within 30 days or their answer will be unconditionally stricken.

8. CPLR §3126 provides in pertinent part:

If any party, or a person who at the time a deposition is taken or an examination or inspection is made is an officer, director, member, employee or agent of a party or otherwise under a party's control, refuses to obey an Order for disclosure or wilfully fails to disclose information which the Court finds ought to have been disclosed pursuant to this article, the Court may make such Orders with regard to the failure or refusal as are just, among them:

3. an Order striking out pleadings or parts thereof, or staying further proceedings until the Order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

9. In *Jones v. Green, DDS*, 34 AD3d 260, 825 NYS2d 446 (1st Dept. 2006), the Appellate Division, First Department, the Court held the plaintiff's long continued pattern of non-compliance with court orders and discovery demands warranted dismissal of complaint. The same holding applies to the instant case wherein defendant METRO has failed to comply with four court orders. Sanctions, which have been suggested and upheld, by Appellate Courts, include severe monetary sanctions as well as dismissal of an answer. (See *Figdor v. City of New York*, 33 AD3d 560, 823 NYS2d 385 (1st Dept 2006)).

10. In *Shapiro v. Kurtzman*, 32 AD3d 508, 820 NYS2d 311 (2nd Dept. 2006), the Appellate Division, Second Department, the Court dismissed a plaintiff's complaint for failing to comply with one Court Order. The Court held that:

To invoke the drastic remedy of striking a pleading, the Court must determine that the party's failure to comply with a disclosure Order was the result of willful, deliberate, and contumacious conduct or its equivalent. (*Emanuel v. Broadway Mall Props.*, 293 AD2d 708, 741 NYS2d 278, quoting *Poulas v. U-Haul Intl.*, 288 AD2d 202, 732 NYS2d 579). However, where a party disobeys a Court Order and by his or her conduct frustrates the disclosure scheme of the CPLR, as the plaintiff did here, dismissal of a pleading is within the broad discretion of the Court (see *Kihl v. Pfeffer*, 94 NY2d 118, 1220123, 722 NE2d 55, 700 NYD2d 87; *Ritter Found v. Tebele*, 222 AD2d 355, 635 NYS2d 628). Here, the plaintiffs failure to comply with a Court Order directing disclosure, and his delay in providing responses to the respondent's discovery demands, supported an inference that his failure to provide disclosure was willful and contumacious (see *Emanuel v. Broadway Mall Props.*, *supra*). Accordingly, the Supreme Court providently exercised its discretion in dismissing the plaintiff's second amended complaint insofar as asserted against the respondent.

11. In *Polanco v. Duran*, 278 AD2d 397, 717 NYS2d 643 (2nd Dept. 2000), the Appellate Division, Second Department struck the defendants' Answer as a sanction for violating discovery in the face of a preliminary conference Order. The Court held

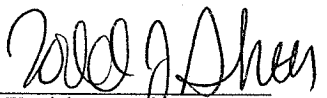
[h]ere, the defendants' willful and contumacious conduct can be inferred from their failure to comply with the Court's preliminary conference Order directing that depositions be held on a date certain, and their continued adjournment of scheduled depositions without an adequate excuse (*see DeJulio v. Wulf*, 260 AD2d 425, 687 NYS2d 727; *Castrignano v. Flynn*, 255 AD2d 352, 679 NYS2d 674; *Brady v. County of Nassau*, 234 AD2d 408, 650 NYS2d 802).

12. Defendant METRO has disregarded, flouted and violated each and every Order of this Court. It has become apparent that defendant METRO has no intention of abiding by any Order of this Court. Their conduct clearly demonstrates a willful and contumacious disregard for this Court which justifies the striking of this defendant's answer.

WHEREFORE, the plaintiff MICHAEL DOUKAS respectfully requests that this Court grant the instant cross motion in its entirety and issue an Order, denying defendant METRO's counsel to be relieved, pursuant to CPLR §3126, striking the Answer of defendant METRO for failing to comply with multiple court orders together with such other and further relief as this Court may deem just and proper.

Dated: New York, New York
July 1, 2009

Yours, etc.
KELNER and KELNER
Attorneys for Plaintiff DOUKAS

By: 
Todd J. Stiller
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

To: **CONNORS & CONNORS, P.C.**
Attorneys for Defendant Iris Leviten Action No. 2
766 Castleton Avenue
Staten Island, N.Y. 10310
718-442-1700

MICHAEL CARDOZO, ESQ.
Attorneys for Defendants in Action no. 2
CITY OF NEW YORK/DIGIROLOAMO
100 Church Street, 4th Floor
New York, New York 10007
File No.: 2008-001345

GAIR GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff in Action no. 1
IRIS LEVITEN
80 Pine Street
New York, New York 10005
212-943-1090

AHMUTY, DEMERS & McMANUS
Attorneys for Defendant in Action no. 1
ESTRÉE, INC., d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, New York 11507
516-294-5433
File No.: YCW0962N7 JAE

STEIN RISO MANTEL, LLP
Attorneys for Defendant in Action no. 1
METRO AUTO LEASING, INC., d/b/a
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405 Lexington Avenue
New York, New York 10174
212-599-1515

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant in Action No. 1
TOYOTA MOTOR SALES, USA INC.
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, USA, INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
914-949-2909

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
IRIS LEVITEN,

Index no. 107681/07

Plaintiff,

- against -

**AFFIRMATION IN
GOOD FAITH**

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Return Date: 7/16/2009

Defendants.

----- X
MICHAEL DOUKAS,

Index no. 117118/07

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW YORK
CITY DEPARTMENT OF SANITATION, THE CITY OF
NEW YORK, LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

-----X
TODD J. STRIER, an attorney duly admitted to practice law in the State of New York,
hereby affirms the truth of the following under penalties for perjury:

1. Your affirmant is associated with the law firm KELNER AND KELNER,
attorneys for the plaintiff in ACTION #2, and, as such, is fully familiar with the facts and
circumstances of this action by reason a review of the files maintained by this office.

2. This affirmation is submitted, pursuant to 22 NYCRR 202.7(c), to demonstrate
why no conferrals were held with the law firm of STEIN, RISO, MANTEL, LLP attorneys for
defendant METRO, prior to the institution of the within motion because of willful violations of
multiple Court Orders by said defendant.

3. To date, defendant METRO has disregarded, flouted and violated four (4) Court Orders.

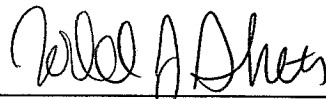
4. It has become apparent that defendant METRO has no intention of abiding by any Order of this Court. Their conduct clearly demonstrates a willful and contumacious disregard for this Court.

5. Your affirmant did not contact defendant's counsel prior to the institution of the within motion because defendants steadfastly refuse to obey any and all Court Orders. As such, telephone calls to counsel would be to no avail.

6. At this juncture, the plaintiff has been substantially prejudiced by the conduct of the defendants. Court intervention is necessary at this time to prevent this and further abuses by this defendants.

WHEREFORE, plaintiff respectfully requests that this Court consider the within motion as properly made, and grant the requested relief in its entirety

Dated: New York, New York
July 1, 2009



TODD J. STRIER

Index no. 107681/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

----- X
MICHAEL DOUKAS,

Index no. 117118/07

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW YORK
CITY DEPARTMENT OF SANITATION, THE CITY OF
NEW YORK, LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

CROSS MOTION

KELNER & KELNER, ESQS.

Attorneys for Plaintiff MICHAEL DOUKAS (ACT NO. 2)

Office and Post Office Address, Telephone

140 Broadway, 37th Floor

New York, New York 10005

(212) 425-0700

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

INDIVIDUAL ASSIGNMENT PART [OR JUSTICE]

Iris Leviten

Plaintiff(s),

- against -

Lexus, et al.

Defendant(s).

Index No.

107681

107

DCM Track

Complex

PRELIMINARY CONFERENCE ORDER

(202.8, 202.12 and 202.19 of the Uniform Rules)

APPEARANCES

Plaintiff(s): Dianna Carlemolla for Gair, Gair

Defendant(s): TMS d/b/a Lexus by Ben Carethers of Acronson, Rappaport Lexus of Westport by PHMily, Dem a M. Min by J. W. METRO AUTO Leasing, INC. by Edward MINSOJ Stein Rosa MARTEL LLP

It is hereby ORDERED that disclosure shall proceed as follows:

(1) Insurance Coverage: If not already provided, shall be furnished by all Δs on or before May 10, 2008. primary's excess or personal affidavits of none;

(2) Bill of Particulars:

- (a) Demand for a bill of particulars shall be served by Δs on or before 5/15/08.
(b) Bill of particulars shall be served by on or before
(c) A supplemental bill of particulars shall be served by as to Items on or before

(3) Medical Reports and Authorizations:

Shall be served as follows: of all medical providers for injuries claimed herein. Medical insurance and appropriate records, No Fault, (what's) (what's) (what's) by May 9, 2008.

(4) Physical Examination:

- (a) Examination of TT within 45 days of completion of TT's deposition. shall be held
(b) A copy of the physician's report shall be furnished to plaintiff within 45 days of the examination.

(5) Depositions: Depositions of [X] Plaintiff(s) [] Defendant(s) [X] All Parties shall be held

TT to be deposed on or before 7/15/08
Δ TMS to be deposed on or before 8/1/08.
Δ Lexus of Westport on or before 8/13/08.
Δ Metro Auto Leasing on or before 9/1/08.

(6) Other Disclosure:

- (a) All parties, on or before 5/15/08, shall exchange names and addresses of all eye witnesses and notice witnesses, statements of opposing parties, and photographs, or, if none, provide an affirmation to that effect.
(b) Authorization for plaintiff(s)' employment records for the period 2004 - present (if claimed, see additional directives) shall be furnished on or before May 9, 2008.
(c) Demand for discovery and inspection shall be served by on or before. The items sought shall be produced to the extent not objected to, and objections, if any, shall be stated on or before
(d) Other [interrogatories, etc.]

Case Name: Leviten

Index No: 107681/07

(7) End Date for All Disclosure: November 7, 2008

(8) Impleader: Shall be completed on or before 45 days of completion of all EBTs

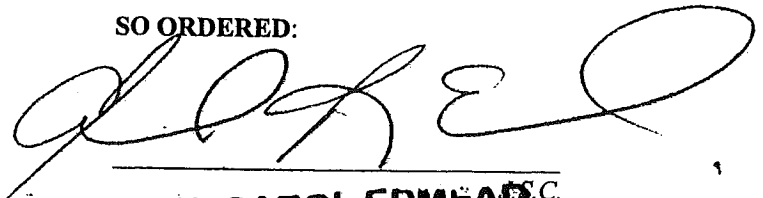
(9) Compliance Conference: Shall be held on December 2, 2008 @ 3 PM

(10) Motions: Any dispositive motion(s) shall be made on or before 60 days of the NOI

(11) Note of Issue: Plaintiff shall file a note of issue/certificate of readiness on or before December 16, 2008. A copy of this order, an affirmation stating that the terms of the order have been complied with, and an affidavit of service of the affirmation and note of issue shall be served and filed with the note of issue on or before said date.

FAILURE TO COMPLY WITH ANY OF THESE DIRECTIVES MAY RESULT IN THE IMPOSITION OF COSTS OR SANCTIONS OR OTHER ACTION AUTHORIZED BY LAW.

SO ORDERED:



HON. CAROL EDMead S.C.

Dated: 4/15/08

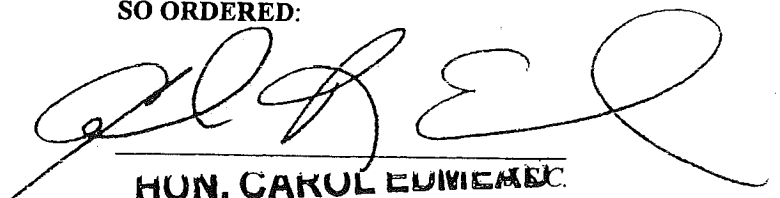
ADDITIONAL DIRECTIVES

In addition to the directives set forth above, it is further ORDERED as follows:

provide a response to ~~respond to~~ ITS demand for
A shall provide all documents, customer complaints, memos,
relating to the recall for the car mats w/in 30 days.

Dated: 4/15/08

SO ORDERED:



HON. CAROL EDMead S.C.

PRELIMINARY CONFERENCE ORDER

X. ADDITIONAL DIRECTIVES:

- ① All parties to conduct vehicle inspections of the vehicles involved in this accident on notice to all parties. ~~()~~
- ② All parties to exchange inspection [vehicle + scene] photographs and videotapes by May 15, 2008.
- ③ All parties to exchange sales/lease documents, repairs, maintenance and modification charges made to the vehicle documents, if any, by May 15, 2008.
- ④ π to provide current location of the π 's vehicle by May 15, 2008.
- ⑤ π to ~~provide~~ ^{respond to Δ 's request to} ~~provide~~ ^{supp} ~~interrog~~ response to TMS demand #5 [provide what the feasible safer alternative design is and how the floor mat should have been anchored] and # 10 [what the specific warning language should have been and where it should have been posted] by May 15, 2008.

Plaintiff shall notify Δ s w/in 30 days if she intends to claim lost wages and, if so, she shall serve Δ s for ~~her~~ this claim.

Δ s shall respond to all demands served by π including demands dated 11/28/07, 2/28/08, 4/4/08 & 4/11/08 w/in 30 days.

~~The inspection of vehicle w/in π 's control shall be conducted after Δ s have paid their respective share for storage of said vehicle.~~

Plaintiff ~~responds~~ shall respond to Δ 's request for Δ 's to pharmacy, S.S.I. & disability records w/in 30 days.

X. ADDITIONAL DIRECTIVES

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Pg 10/2 ✓

IRIS Leviten

- v -

Lexus, et al

INDIVIDUAL ASSIGNMENT PART 62

STIPULATION

INDEX NO. 107681/07

MOTION CALENDAR NO. 27

DATE 10/23/08

IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

~~This compliance conference shall include discovery in index #~~
117118/07 (Dookas v Leviten) as well.

- Inspection of subject Lexus to be held on or before 12/15/08, time/location to be agreed
- EBT of TI Leviten ^{on or before} 1/20/09; 10AM @ Gan, Gan.
- EBT of TI Dookas on or before 1/21/09; 10AM @ Kelzen + Kelzen
- EBT of Δ Digirolamo on or before 2/2/09; 10AM; @ Cip Lunel 52 Duane St
- EBT of Δ Lexus/Toyota on or before 2/11/09; 10AM @ Ahmuty (123 William)
- EBT of Δ's Estree + Metro on or before 2/18/09; 10AM @ Ahmuty (123 William)
- TI Dookas to provide EP's within 3 weeks; All parties to respond to ^{outstanding} ~~discovery~~ demands by 11/21/08
- Δ's Lexus/Toyota/Estree/Metro to provide TI Dookas with courtesy copy of discovery given to TI Leviten
- Metro Bus. to provide copies of all applicable insurance policies ^{and} disclaimers
- Ines pursuant to Leviten PC order.

CC: 2/28/09; 2pm

Gail Goff, Corson, Stymeno Metcalf for TI Leviten
by: [Signature]
Attorney for Plaintiff

Date: 10/23/08

Dookas by Kelzen + Kelzen by [Signature]
Attorney for Defendant TI

So Ordered.

Conan & Conan by [Signature]
Attorney for Defendant Leviten

ENTER: HON. KAREN SMITH

J.S.C.

Edward Seaman, by Mark Thabet
Defendant Lexus for appearance ^{FORM}
[Signature]
Lexus of Wespital by DL... Dem... + M...
Edward Minsor by [Signature]

- Parties are subject to this part 2 EBT rules on p. 2 of 2.

- 11- to be determined at final CC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS Leviten, IT
✓
Lexus, et al

INDIVIDUAL ASSIGNMENT PART 62

STIPULATION

Michael DUKAS (S/NY 117118/07)

INDEX NO. 107681/07

✓
Iris Leviten, et al

MOTION CALENDAR NO.

DATE 2/26/09

Notes of issue to be determined at final CC
IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

Photos

~~Photos~~ from inspections of Lexus to be exchanged by all parties by

• FBT of IT Leviten on or before 3/20/09 @ Gair, Gair (10AM)

• FBT of IT DUKAS on or before 3/27/09 @ Kerner, Kerner (10AM)

• FBT of A DiGirolamo on or before 5/11/09; 10AM @ Corp Counsel 52 Dora St

• FBT of A Lexus / Toyota on or before 5/17/09; 10AM @ Altmuth (123 William St)

• FBT of A's Estree / Metro on or before 5/21/09; 10AM @ Altmuth (123 William St)

✗ • IT DUKAS to provide FBT/Model Exchanges By 3/19/09

• All parties to respond to discovery demands, to extent not previously provided, by 3/26/09

• A's Lexus / Toyota / Estree / Metro to provide IT DUKAS with a court copy of disc. provided to

IT counter by 3/19/09; A Metro to provide copies of applicable Ins. Policies ^{and} / or documents to all parties

• All parties to respond to TMS 6/2/09 disc. demand, to extent not previously provided, by 3/26/09

- A City waives appearance at non-city depositions.

cc: 4/2/09; 2pm

Parties are subject to this part
FBT ~~rules~~ ~~attached~~ attached
Date: 2/26/09

Gair Gair (S/NY 117118/07) by Diana Carnemoli
Attorney for Plaintiff Leviten

Kerner + Kerner by ~~IT~~
Attorney for Defendant
DUKAS + COWORS FOR A LEVITEN LAR

So Ordered.

Attorney for Defendant

HON. KAREN SMITH

ENTER:

J.S.C.

Sten. Riso, Mental by telephone (Edward Altmuth)

SC-86 (rev 2/86)

Attorney for Defendant

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Iris Leviten

lexus, etal

Michael Doukas (Siny 117118/07)

Iris Leviten, etal

INDIVIDUAL ASSIGNMENT PART 62

STIPULATION

INDEX NO. 107681/07

~~NOTION~~ CALENDAR NO. 26

DATE 4/2/09

IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

- Photos from all inspections to be exchanged by all parties by 5/1/09
- EBT of TI Doukas on or before 6/16/09; 10AM @ Keher + Keher
- EBT of Δ DiGirolamo on or before 6/24/09; 10AM @ Corp Counsel 52 Duane St
- EBT of Δ Lexus/Toyota on or before 7/24/09; 10AM @ Ahmuty (123 William)
- EBT of Δ's Estree/Metro Auto on or before 8/16/09; 10AM @ Ahmuty (123 William)
- All parties to provide discovery responses, to extent not provided, to all parties by 5/1/09
- Δ's Lexus/Toyota/Estree/Metro to provide TI Doukas courtesy copy of disc. responses previously provided to TI Leviten by 5/1/09
- Δ Metro to provide copies of applicable Insurance Policies and/or Disclaimers to all parties by 5/1/09
- Δ City continues to waive appearance at all non-City depositions.
- Δ's to respond to TI Doukas Disc Dem. dated 3/19/09 by 5/1/09 to extent not done
- CC: 7/16/09; 2pm

EBTs are subject to the Court's EBT policy - failure to comply will result in sanctions or dismissal
Date: 4/2/09 or preclusion.

William McConmulla Esq. (TI LEVITEN)
Attorney for Plaintiff
Michael J. Keher Esq. (TI Doukas)
Ahmuty, Deane & M...
Attorney for Defendant Esq.

So Ordered.

Conroy Korvas (D. Heller) for Leviten as Δ
Attorney for Defendant

ENTER: HON. KAREN SMITH

J.S.C.

Forest Saman (Shaman) by TMS
[Signature] for MAC

SC-86 (rev 2/86)

Stev Riso, Mantel by Tel. Call (Edward Minsin) 4/2/09

RECEIVED
JUN 11 2008
LEGAL DEPT.

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,
-against-

NOTICE OF CROSS
MOTION

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.

-----X

PLEASE TAKE NOTICE that, upon the annexed Affirmation of Steven R. Kramer, Esq., dated June 6, 2008, and the exhibits attached thereto, the Affirmation of Good Faith of Steven R. Kramer, Esq., dated June 6, 2008, and the pleadings and proceedings herein, defendant Toyota Motors Sales, Inc., s/h/a "Lexus, a Division of Toyota Motors Sales, U.S.A., Inc." will cross-move this Court, at the Motion Support Office thereof, Room 130 of the Supreme Court of the State of New York, for the County of New York, 60 Centre Street, New York, New York, on the 30th day of June, 2008, at 9:30 a.m. or as soon thereafter as counsel may be heard, for an Order:

1. Pursuant to CPLR § 3103, issuing an order to prevent the destruction and/or alteration of the vehicle (and its components) that is the subject of this product liability action and, further, issuing an order regarding the protocol for inspection of the subject vehicle; and
2. Such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that any answering papers, if any, are due to be

served upon the undersigned within the time set forth in CPLR § 2214(b).

Dated: White Plains, New York
June 5, 2008

Yours etc,



By: Steven R. Kramer, Esq.

Eckert Seamans Cherin & Mellott, LLC.

Attorneys for Defendant

*Toyota Motor Sales, U.S.A., Inc., s/h/a "Lexus, a
Division of Toyota Motors Sales, U.S.A., Inc."*

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

(914) 949-5424 (FAX)

To: GAIR, GAIR CONASON STEIGMAN & MACKAUF

Attorneys for Plaintiff

80 Pine Street

New York, New York 10005

212-943-1090

AHMUTY, DEMERS & MCMANUS

Attorneys for Defendant Estree, Inc. d/b/a Lexus of Westport

123 William Street

New York, New York 10038

212-513-7788

STEIN RISO MANTEL LLP

Attorneys for Defendant Metro Auto Leasing, Inc. d/b/a The Automall

The Chrysler Building

405 Lexington Avenue

New York, New York 10174

212-599-1515

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,
-against-

AFFIRMATION IN
SUPPORT OF MOTION

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

Steven R. Kramer, an attorney at law duly admitted to practice before all of the Courts of the State of New York, hereby affirms the following under the penalties of perjury:

1. I am a member of the law firm of ECKERT SEAMANS CHERIN & MELLOTT, LLC, attorneys for Defendant Toyota Motors Sales, Inc., s/h/a "Lexus, a Division of Toyota Motors Sales, U.S.A., Inc." (hereinafter referred as "TMS") and, as such, I am familiar with the facts and circumstances pertaining to this action, and the pleadings and proceedings herein.

2. I submit this Affirmation in support of TMS' cross-motion, pursuant to CPLR § 3103, for the issuance of an order to prevent the destruction and/or alteration of the vehicle (and its components) that is the subject of this product liability action and, further, issuing an order regarding the protocol for inspection of the subject vehicle.

SUMMARY OF ARGUMENT

3. This is a product liability case in which plaintiff alleges that her February 18,

2007 accident was caused when she could not control the subject 2007 Lexus ES 350 vehicle, bearing vehicle identification number JTHBJ46G272071246 (hereinafter referred as the “subject vehicle”). Plaintiff claims that the subject vehicle’s floor mats/carpeting interfered with her ability to control the vehicle. Plaintiff’s counsel have physical custody of the subject vehicle and have transported the subject vehicle to a parking garage located at 945 Cortland Avenue, Bronx, New York.

4. Because of the paramount importance in preserving the subject vehicle (and all of its component parts) in its current and immediate post-accident condition, we sent plaintiff’s counsel a Stipulation to Preserve Physical Evidence. However, on June 5, 2008, we spoke with plaintiff’s counsel and they advised us that they would not sign the stipulation.

5. In light of the need to prevent the destruction and/or alteration of critical evidence, and the need to afford all parties the same rights at vehicle inspections, TMS now makes this motion.

PROCEDURAL HISTORY

6. The subject accident took place on February 18, 2007 and plaintiffs filed suit on June 1, 2007 (a copy of the summons and complaint is attached as Exhibit “A”). Issue was joined as to TMS on August 13, 2007 (a copy of the answer is attached as Exhibit “B”). Plaintiff served an interrogatory response claiming that her February 18, 2007 accident was caused when she could not stop the subject vehicle and she claims that the subject vehicle’s floor mats/carpeting interred with her ability to control the vehicle (attached as Exhibit “C”). On May 19, 2008, our law firm was substituted as counsel for TMS (a copy of the Notice of Substitution

of Counsel is attached as Exhibit “D”).

THE STIPULATION TO PRESERVE THE SUBJECT VEHICLE

7. On June 2, 2008, we sent plaintiff’s counsel a proposed Stipulation to Preserve Physical Evidence (the “Preservation Stipulation”) (a copy of our letter and the stipulation are collectively attached as Exhibit “E”). The Preservation Stipulation is simple and consists only of two (2) pages.

GOOD FAITH ATTEMPT

8. On June 5, 2008, I had a telephone conversation with plaintiff’s counsel who advised me that they would not sign the stipulation to preserve the subject vehicle.

THE COURT SHOULD ORDER PRESERVATION OF THE SUBJECT VEHICLE

9. The paramount importance of the maintenance of physical evidence has continuously been recognized by New York’s courts. See Kirkland v. New York City Housing Authority, 236 A.D.2d 170, 173, 666 N.Y.S.2d 609, 611 (1st Dept. 1997) (“Physical evidence often is the most eloquent impartial ‘witness’ to what really occurred”). The Court of Appeals in *Ortega v. City of New York*, 9 N.Y.3d 69, 2007 WL 2988760 at *3 (October 16, 2007), although rejecting a cause of action for spoliation against non-parties, held that when parties involved in litigation engage in the destruction of evidence:

[a] number of remedial options are provided by existing New York statutory and common law. Under CPLR 3126, if a court finds that a party destroyed evidence that ‘ought to have been disclosed ..., the court may make such orders with regard to the failure or refusal as are just.’ New York courts therefore possess broad discretion to provide proportionate relief to the party deprived of the lost evidence, such as precluding proof favorable to the spoliator to restore balance to the litigation, requiring the spoliator to pay costs to the injured party associated with the development of replacement evidence, or

employing an adverse inference instruction at the trial of the action. Where appropriate, a court can impose the ultimate sanction of dismissing the action or striking responsive pleadings, thereby rendering a judgment by default against the offending party.

See also Erdely v. Access Direct Systems, Inc., __ N.Y.S.2d __, 2007 WL 4127870 at *2 (2nd Dept. November 20, 2007) (“However, in light of the defendant's negligence in disposing of the ladder, a key piece of evidence, at a time when it should have been obvious that the injured plaintiff would assert a claim, it is appropriate, as a sanction, to preclude the defendant from controverting the plaintiffs' prima facie showing regarding the existence of a defect and the defendant's notice of it”); General Accident Insurance Company v. American Honda Motor Co., __ N.Y.S.2d __ (App. Term 1st Dept. 1995), N.Y. Law Journal, p.28, cols. 3-4 (“That the automobile was discarded before a formal notice or order to produce was served or, for that matter, before commencement of the litigation, does not preclude sanction...”); Brancaccio v. Mitsubishi Motors Co., Inc., ___ F. Supp. ___, 1992 WL 189937 (S.D.N.Y. 1992) (“Since the plaintiffs are plainly at fault for allowing the car to be repossessed, their claims must be dismissed”).

10. Plaintiff's counsel have physical custody of the subject vehicle, but that itself can not permit plaintiffs to have different obligations than all other parties in this case. TMS simply seeks the issuance of an order requiring that plaintiff to preserve the subject vehicle in its post-accident condition throughout the entirety of this litigation and that a specific protocol be entered concerning examinations of the vehicle. Sections 1, 3 and 4 of the Preservation Stipulation accomplish that purpose, by providing as follows:

1. The subject vehicle shall be preserved throughout this litigation (and any appeals thereto) in a cool, dry indoor-covered environment.

3. No party, or any one acting on its behalf, shall conduct any destructive testing, destructive examination, or disassembly of the subject vehicle or any of its components unless all counsel of record mutually agree in writing to the destructive testing, destructive examination or disassembly, or the Court issue an order as a result of a motion made on notice to all counsel of record, permitting destructive testing, destructive examination or disassembly.
4. All inspections of the subject vehicle must be on seven (7) days prior written notice to all counsel, and each party, including its counsel and experts, is permitted to attend any inspection of the subject vehicle.

See Exhibit "E."

11. TMS respectfully requests that because the parties should have mutual access to the subject vehicle and be mutually protected from spoliation/alteration of evidence, this Court should order that the subject vehicle be preserved.

CONCLUSION

12. The vehicle which is the subject of this product litigation action is a crucial piece of physical evidence which must be preserved throughout the case. All parties are entitled to protection from spoliation/alteration of the evidence, and that is why this Court should issue and order, pursuant to CPLR § 3103, issuing to prevent the destruction and/or alteration of the vehicle (and its components) that is the subject of this product liability action and, further, issuing an order regarding the protocol for inspection of the subject vehicle.

WHEREFORE, it is respectfully requested that this Court issue an order, providing:

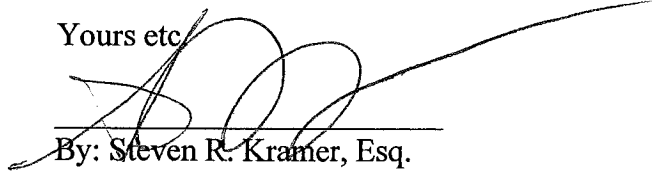
1. The subject vehicle shall be preserved throughout this litigation (and any appeals thereto) in a cool, dry indoor-covered environment.

2. The subject vehicle is currently owned by plaintiff and stored at parking garage located at 945 Cortland Avenue, Bronx, New York.
3. No party, or any one acting on its behalf, shall conduct any destructive testing, destructive examination, or disassembly of the subject vehicle or any of its components unless all counsel of record mutually agree in writing to the destructive testing, destructive examination or disassembly, or the Court issue an order as a result of a motion made on notice to all counsel of record,
4. All inspections of the subject vehicle must be on seven (7) days prior written notice to all counsel, and each party, including its counsel and experts, is permitted to attend any inspection of the subject vehicle.

Together with such other, further and different relief as this Court deems just and proper.

Dated: White Plains, New York
June 6, 2008

Yours etc



By: Steven R. Kramer, Esq.

Eckert Seamans Cherin & Mellott, LLC.

Attorneys for Defendant

*Toyota Motor Sales, U.S.A., Inc., s/h/a "Lexus, a
Division of Toyota Motors Sales, U.S.A., Inc."*

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

(914) 949-5424 (FAX)

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

Index No. 107681/07

AFFIRMATION OF
GOOD FAITH

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

Steven R. Kramer, Esq. an attorney duly admitted to practice law before the Courts of this State, aware of the penalties of perjury, hereby affirms as follows pursuant to CPLR §2106:

1. I am a member of the law firm of ECKERT SEAMANS CHERIN & MELLOTT, LLC, attorneys for Defendant Toyota Motors Sales, Inc., s/h/a "Lexus, a Division of Toyota Motors Sales, U.S.A., Inc." (hereinafter referred as "TMS") and, as such, I am familiar with the facts and circumstances pertaining to this action.

2. On June 2, 2008, we sent plaintiff's counsel a proposed Stipulation to Preserve Physical Evidence (the "Preservation Stipulation") (See Exhibit "E" to motion).

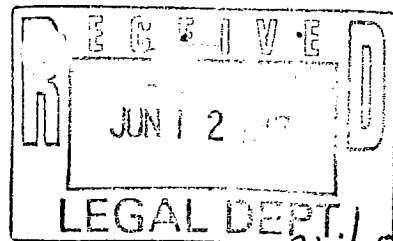
3. On June 5, 2008, I had a telephone conversation with plaintiff's counsel who advised me that they would not sign the stipulation to preserve the subject vehicle.

Dated: White Plains, New York
June 6, 2008



Steven R. Kramer, Esq.

Exhibit A



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.: 107681/07.
Date purchased 6/1/07.

IRIS LEVITEN,

Plaintiff,

Plaintiff(s) designate(s)
New York
County as place of trial

-against-

The place of venue is
Defendant's place of business

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

SUMMONS

Defendants.

Plaintiff resides at
6 Wood Ave., Albertson, NY 11507

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: June 1, 2007
New York, New York

GAIR, GAIR, CONASON, STEIGMAN & MACKAUF
Attorney(s) for Plaintiff(s)
Office and Post Office Address
80 Pine Street
New York, New York 10005

BY:

DANIEL A. GAIR

Defendants Addresses:

Metro Auto Leasing / Automall
The Corporation
350 Fifth Avenue
New York, New York 10118

Lexus, A Division of Toyota Motor
Sales The Prentice-Hall Corporation
Systems, Inc.
80 State Street
Albany, New York 122106

Estree / Lexus of Westport
1317 Post Road East
Westport, CT 06880

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WITH COPY FILE
JUN 11 2007

NEW YORK
COUNTY CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index number:

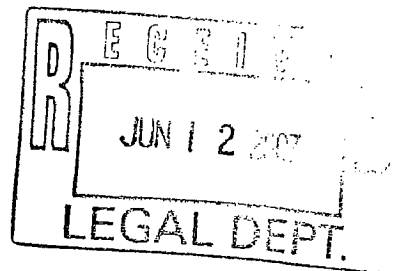
-----x
IRIS LEVITEN,

VERIFIED
COMPLAINT

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,



Defendants.
-----x

Plaintiff, complaining of the defendants, by
her attorneys, Gair, Gair, Conason, Steigman & Mackauf,
respectfully show to this Court and allege, upon information and
belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., is a corporation with its principal place of
business in a state other than New York.
The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., does business in the State of New York.
3. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., regularly does or solicits business, or
engages in any other persistent course of conduct, or
derives substantial revenue from goods used or services
rendered in the State of New York.

NEW YORK

JUN 11 2007

NOT COMPARED
WITH COPY FILE

4. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.
5. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, is a corporation with its principal place of business in a state other than New York.
6. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, does business in the State of New York.
7. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.
8. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.
9. The defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

10. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., was in the business of manufacturing vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
11. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES, INC., was in the business of designing motor vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
12. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., was in the business of selling and distributing, for public use, motor vehicles, including a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
13. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., sold, to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
14. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., transported to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

15. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., distributed to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
16. At some time thereafter, the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, sold to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
17. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, transported to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
18. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, distributed to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
19. On December 29, 2006, the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, leased a Lexus sedan motor vehicle, model number ES 350, bearing license plate DWW7794 vehicle identification number JTHBJ46G272071246 to the

plaintiff, IRIS LEVITEN.

20. On February 18, 2007, the plaintiff, IRIS LEVITEN, was involved in an automobile accident while driving a Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794 and vehicle identification number JTHBJ46G272071246 near the eastbound ramp of the Northern State Parkway near Glen Cove Road.
21. The aforesaid occurrence was caused and contributed to by the negligence of the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794, identification number JTHBJ46G272071246.
22. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, some of these injuries are of a permanent and lasting nature.

23. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

24. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A SECOND CAUSE OF ACTION

25. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "24", inclusive, with the same force and effect as if more fully set forth herein at length.

26. The defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL ATOMIC INDUSTRIES, INC., their agents, servants and employees warranted and represented to the plaintiff, IRIS LEVITEN, that Lexus sedan motor vehicle, model number ES 350, bearing the New York license plate number DWW7794 and identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, serviced, maintained, labeled, distributed, sold and purchased.

27. In designing, manufacturing, assembling, inspecting,

testing, repairing, servicing, maintaining, labeling, distributing and selling the vehicle Lexus model number ES 350, bearing New York State license plate number DWW7794 and vehicle identification number number JTHBJ46G272071246, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL ATOMIC INDUSTRIES, INC., their agents, servants and employees knew that the aforesaid product would be used by the public and that such users would rely upon the warranties and representations that the said product was safe, proper, merchantable and fit for its intended uses.

28. On December 29, 20069, the plaintiff, IRIS LEVITEN, relied on the aforementioned warranties and expected that the aforementioned product was safe, proper, merchantable and fit for its intended uses.
29. The aforementioned product was unsafe, not merchantable and unfit for its intended uses.
30. By reason of the foregoing, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, their agents, servants and employees, violated and breached the aforementioned warranties, in that the product was not reasonably fit, not of merchantable quality, unsafe, defective and constituted unreasonably dangerous

instrumentalities as designed, manufactured, assembled, inspected, repaired, serviced, maintained, tested, labeled, sold and distributed.

31. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting nature.
32. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
33. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A THIRD CAUSE OF ACTION

34. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "33", with the same force and effect as if more fully set forth herein at length.
35. By reason of the foregoing, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, their agents, servants and employees are strictly

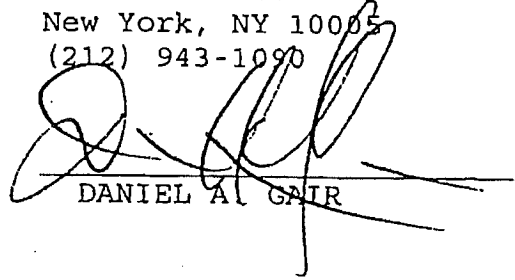
liable in tort to the plaintiff, IRIS LEVITEN, for the injuries sustained by her.

36. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting in nature.
37. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
38. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

W H E R E F O R E, plaintiff demands judgment against the defendants in the First, Second and Third Causes of Action against the defendants LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, together with the costs and disbursements of this action.

Dated: New York, New York
June 1, 2007

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiffs
Office & P.O. Address
80 Pine Street
New York, NY 10005
(212) 943-1090



DANIEL A. GAIR

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

VERIFIED ANSWER

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

Defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA., INC., by its attorneys, AARONSON RAPPAPORT
FEINSTEIN & DEUTSCH, LLP as and for its Verified Answer to plaintiff's Verified
Complaint, respectfully shows to this Court and alleges upon information and belief:

ANSWERING AS AND FOR A FIRST CAUSE OF ACTION

FIRST: Denies the allegations contained in Paragraphs "1", "2" and "3" in
the form alleged, except admit that TOYOTA MOTOR SALES, U.S.A., INC., s/h/a
LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC. has its principal offices
in the State of California and is licensed to do business in the State of New York.

SECOND: Denies the allegations contained in Paragraph "4" in the form
alleged.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "5", "6", "7", "8", "9", "16", "17", "18", "19" and "20".

FOURTH: Denies the allegations contained in Paragraphs "10", "11" and "12" in the form alleged, except admit that TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. imported and distributed a Lexus Model Number ES 350, motor vehicle bearing Vehicle Identification Number JTHBJ46G272071246.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "13", "14" and "15" and respectfully refer all questions of law and fact to the this Honorable Court.

SIXTH: Denies the allegations contained in Paragraphs "21", "22", "23" and "24".

ANSWERING AS AND FOR A SECOND CAUSE OF ACTION

SEVENTH: In response to Paragraph "25", repeats each admission or denial contained in Paragraphs "FIRST" through "SIXTH" herein as though fully set forth hereat.

EIGHTH: Denies the allegations contained in Paragraph "26", except admits that the Lexus ES350 sedan motor vehicle, bearing the New York license plate number DWW7794 and vehicle identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, services, maintained, labeled,

distributed, sold and purchased and refers to the warranties contained in the Owner's Manual.

NINTH: Denies the allegations contained in Paragraph "27" in the form alleged, except admits that the Lexus ES350 sedan motor vehicle, bearing the New York State license plate number DWW7794 and Vehicle Identification Number JTHBJ46G272071246 was safe, proper, merchantable and fit for its intended uses.

TENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "28".

ELEVENTH: Denies the allegations contained in Paragraphs "29", "30", "31", "32" and "33".

ANSWERING AS AND FOR A THIRD CAUSE OF ACTION

TWELFTH: In response to Paragraph "34", repeats each admission or denial contained in Paragraphs "FIRST" through "ELEVENTH" herein as though fully set forth hereat.

THIRTEENTH: Denies the allegations contained in Paragraphs "35", "36", "37" and "38".

ANSWERING AS AND FOR A SECOND AFFIRMATIVE DEFENSE.

FOURTEENTH: Pursuant to CPLR Article 16, the liability, if any, of the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. for non-economic loss shall not exceed its equitable shares of liability.

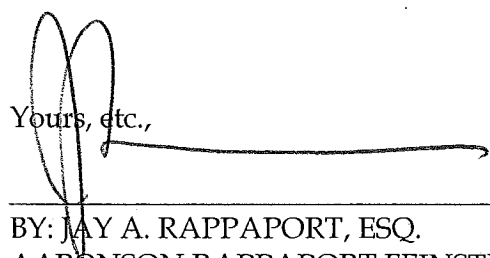
ANSWERING AS AND FOR A SECOND AFFIRMATIVE DEFENSE.

FIFTEENTH: If the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. should be found negligent, which negligence is denied, recovery on the claim set forth in the Complaint is diminished by plaintiff's negligence in failing to exercise due and proper care considering the circumstances existing at the time of the incident in issue, which negligence was greater than the negligence, if any, of the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. pursuant to the provisions of the Comparative Negligence Act.

WHEREFORE, defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. demands judgment dismissing the Complaint, together with the costs and disbursements of the within action.

DATED: New York, New York
August 13, 2007

Yours, etc.,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR
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TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
 : ss:
COUNTY OF NEW YORK)

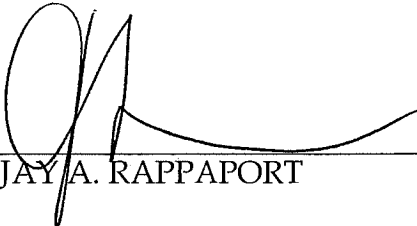
JAY A. RAPPAPORT, being duly sworn, deposes and says:

That I am a member in the firm of attorneys representing the defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.

That I have read the attached ANSWER and the same is true to my own belief, except as to matters alleged on information and belief, and as to those matters, I believe them to be true to the best of my knowledge.

My sources of information are a claims file containing statements, reports and records of investigation, investigators, parties and witnesses, with which I am fully familiar.

That this verification is made by me because my client does not reside within the county where I maintain my office.



JAY A. RAPPAPORT

Sworn to before me this
13th day of August, 2007.



Notary Public

Meline Kelly
Notary Public, State of New York
No. 01KE5068190
Qualified in Queens County
Commission Expires October 28, 2010

Exhibit C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

-against-

Index number:
108013/07

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

RESPONSES TO
INTERROGATORIES

Defendants.
-----x

S I R S :

Plaintiff, for her response to the interrogatories propounded by the defendants TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. alleges as follows, upon information and belief:

1. State the (a) date and place of birth of plaintiff; (b) residence address of plaintiff at the time this action was commenced; (c) residence address of plaintiffs at the time of the alleged negligence.

ANSWER:

The plaintiff, IRIS LEVITEN, was born on July 22, 1945, resides at 6 Wood Avenue, Albertson, New York, 11507, and at the time of the alleged occurrence resided at the same address.

2. Set forth the exact date and time of the alleged automobile accident, and a description of how the accident occurred.

ANSWER:

The accident occurred on February 18, 2007 at or about 2:50 p.m., when the plaintiff, when getting off Northern State Parkway and crossing south-bound Glen Cover Road, plaintiff's motor vehicle, collided with a sanitation truck, owned by the Department of Sanitation and operated by Anthony Digirolamo, which was going north-bound on Glen Cove Road, County of Nassau, State of New York.

3. The specific location of the act or occurrence with reference to addresses, landmarks, or other identifying points of reference, including the direction and distance therefrom.

ANSWER:

The accident occurred at Glen Cove Road Carle Place at intersection with Northern State Parkway east-bound ramp, in the town of North Hempstead, County of Nassau, State of New York.

4. Set forth every fact which the plaintiff will offer to prove at the time of trial in support of the claim that the TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. was negligent.

ANSWER:

The plaintiff objects to this demand as it is overbroad and seeking information outside of scope of interrogatories, however, without waiving such objection, the aforesaid occurrence was caused and contributed to by the negligence of the defendants, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A

DIVISION OF TOYOTA MOTOR SALES USA., INC., its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794, identification number JTHBJ46G272071246; in designing, manufacturing, distributing and selling an inherently and unreasonably dangerous and defective product and instrumentality; in designing, manufacturing, distributing, and selling a vehicle without adequate lower leg protection and which was not crush worthy; in failing to properly warn of the dangerous and hazardous potential of the aforesaid product; in manufacturing and selling a product which did not meet consumer expectations; in placing on the market a product which they knew or should have known was inherently defective, hazardous and unsafe; in failing to ensure that the floor mat and carpeting were properly and adequately secured on the driver's side of the subject motor vehicle; in failing to properly and appropriately secure the floor mat and carpeting on the driver's side of the subject motor vehicle; in failing to use proper and appropriate material to secure the floor mat and carpeting on the driver's side of the subject motor vehicle; in using improper and inappropriate material to secure the floor mat and carpeting on

the driver's side of the subject motor vehicle; in failing to properly and appropriately install the retention hooks on the driver side of the subject motor vehicle; in failing to follow the proper pre delivery requirements in installation of the floor mat; in failing to install the retention hooks in accordance with safety requirements; in causing, permitting and allowing the floor mat and carpeting on the driver's side of the subject motor vehicle to become and be unsecured; in failing to properly and appropriately inspect the interior of the subject motor vehicle; in causing, permitting, and allowing the unsecured floor mat and carpeting to interfere with the subject motor vehicle operation; in failing to ensure that the floor mats and carpeting were properly secured as to not interfere with the driver's ability to safely operate the subject motor vehicle; in causing, permitting, and allowing the subject motor vehicle to become and be unsafe in operation; in failing to properly and appropriately inspect the interior of the subject motor vehicle for possible unfastened retention hooks that secure the floor mat and carpeting; in failing to properly and appropriately install and secure the driver's side carpeting and floor mat; in allowing the driver's side floor mat and carpeting to interfere with the driver's ability to use the accelerator; in creating a dangerous and unsafe condition which caused the vehicle to rapidly accelerate;

in negligently causing, permitting and allowing the plaintiff's motor vehicle to have an unintended acceleration; in failing to perform pre-delivery checks of the interior of the subject motor vehicle to ensure safety of its users; in performing improper and insufficient pre-delivery checks of the subject motor vehicle; in failing to properly follow all of the itemized safety inspection requirements; and in causing, permitting, and allowing the plaintiff to suffer injuries alleged herein.

5. If the plaintiff is claiming a manufacturing or design defect, set forth the following:

- (a) identify the alleged manufacturing defect with particularity; and
- (b) set forth the manner in which plaintiff claims the product was negligently manufactured; and
- (c) identify the alleged design defect with particularity; and
- (d) set forth the manner in which plaintiff claims the product was negligently designed; and
- (e) identify and particularize each and every alleged safer alternative design; and
- (f) a specific statement as to the changes in design alleged that support a claim for strict products liability;
- (g) the identification by make, serial number, etc., of any similar product whose design plaintiff, or others, allege that

TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA., INC., should have followed giving rise
to a cause of action for design defect.

(h) particularize how each safer alternative design was both
functionable and still cost efficient; and

(i) identify how the vehicle was inherently dangerous.

ANSWER:

See response number "4" herein.

6. If plaintiff is claiming a breach of a written
express warranty attach hereto a true copy of each.

ANSWER:

See response number "4" herein.

7. If any such express warranty was oral, set forth:

(a) the date on which each such express warranty was made;

(b) the place where each such express warranty was made;

(c) by whom each such express warranty was made;

(d) to whom each such express warranty was made;

(e) the substance of each such express warranty.

ANSWER:

See response number "4" herein.

8. Set forth each and every implied warranty allegedly
made by TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA., INC. with respect to the subject
vehicle and alleged defective component part in question. If any

such implied warranty was in writing, attach hereto a true copy of each.

ANSWER:

To be provided upon completion of discovery.

9. If any such implied warranty was oral, set forth:

- (a) the date on which each such implied warranty was made;
- (b) the place where each such implied warranty was made;
- (c) by whom each such implied warranty was made;
- (d) to whom each such implied warranty was made;
- (e) the substance of each such implied warranty.

ANSWER:

To be provided upon completion of discovery.

10. Particularize the claim, if made, that inadequate warnings and instructions were made by TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. identifying:

- (a) the warnings and instructions given (and providing copies of any written documents);
- (b) how they were inadequate;
- (c) identify each warning and instruction which is claimed should have been given.
- (d) state where such warnings and instructions should have been posted.

ANSWER:

See response number "4" herein.

11. Identify all owners and drivers of the subject vehicle and include their current address and relationship to the plaintiff

(a) State how many times each person drove the vehicle at issue.

(b) Did any of the drivers of the vehicle ever experience any problems with the vehicle?

1. If the answer to the above is "yes", describe the problem in detail, how many times it occurred, where it occurred, the time it occurred, the speed of the vehicle at the time of the occurrence and identities of all witnesses to each occurrence.

2. Were any of these incidents reported to any agent or employee of the defendant?

3. If "yes" identify each employee and/or agent of the defendant, so informed, what they were told, when they were informed, how they were informed and produce all documentation relative to this.

ANSWER:

(a) The subject motor vehicle is owned by the plaintiff, IRIS LEVITEN. The plaintiff resides at 6 Wood Avenue, Albertson, New York, 11507. The plaintiff is the only driver of the subject motor vehicle.

(b) 1. Upon information and belief, the plaintiff incurred a problem with the subject vehicle wipers. Upon examination by the

dealership employee, it was determined that the wipers did not work because of the ice accumulation.

2. The vehicle was examined at Lexus dealership located in Glen Cove, New York.

3. Attached herein is a copy of the receipt identifying the name of the agent and the repairs done.

12. Identify the present location of the vehicle.

(a) Who is the current owner of the vehicle?

(b) Were any repairs made to the vehicle since the incident in question?

1. If so, describe what repairs were made.

2. Where was each repair made.

3. Produce all documentation referable to such repairs

4. State how much the repair work cost.

ANSWER:

The motor vehicle is presently stored at the parking garage located at 945 Cortland Avenue, Bronx, NY.

(a) The plaintiff is the owner of the motor vehicle.

(b) The vehicle was damaged beyond repair. No repairs were made.

13. Provide the current address of each and every plaintiff.

(a) Identify all individuals who currently reside with each plaintiff; their relationship to the plaintiff and their age.

ANSWER:

The plaintiff resides alone at 6 Wood Avenue, Albertson, New York, 11507.

14. Provide the address for each plaintiff at the time of the incident.

(a) Identify all individuals who resided with each plaintiff at that time; their relationship to the plaintiff and their age at the time.

ANSWER:

At the time of the accident the plaintiff resided alone at 6 Wood Avenue, Albertson, New York, 11507.

15. Provide all other addresses each plaintiff may have resided at between the date of the occurrence and their current residence.

(a) Identify all individuals who resided with each plaintiff at that time; their relationship to the plaintiff and their age at the time.

ANSWER:

None, other than the plaintiff's address mentioned in the response number "14".

(a) Plaintiff resides alone, and at the time of the accident also resided alone.

16. Identify all jobs each plaintiff has held since 2000 and provide the following:

(a) The address of each job.

- (b) The name of plaintiffs immediate supervisor.
- (c) The length of time plaintiff worked at each job.
- (d) The positions held by plaintiff.
- (e) The job duties for each position held by plaintiff.
- (f) Plaintiff's yearly salary at each job.
- (g) The reason plaintiff left each job.

ANSWER:

Since the year 2000 the plaintiff was employed by Supreme Court Queens County as a senior court reporter, and as a real estate agent at Prudential Ellisman Real Estate since 2004.

(a) Supreme Court Queens County, 25-10 Court Square, Long Island City, New York; Prudential Douglas Elliman Real Estate, 475 Port Washington Boulevard, Port Washington, New York.

(b) The plaintiff's immediate supervisor at the Supreme Court Queens County was Teresa Silkie; at Prudential Elliman Real Estate, the plaintiff's immediate supervisor is Molly Grossman.

(c) The plaintiff was employed by the Supreme Court Queens County from 1977 to 2002. And she is employed by Prudential Douglas Elliman Real Estate from 2003 until present.

(d) The plaintiff was employed by the Supreme Court Queens County as a senior court reporter, and she is presently employed by Prudential Elliman Real Estate as a real estate agent.

(e) As a senior court reporter the plaintiff's duties included: recording and transcribing court proceedings when required, reading testimony to the jury, filing, storage of transcripts,

supervising a group of eight court reporters, including scheduling of times and specific courtrooms for the proceedings for the court reporters to cover.

As a real estate agent, the plaintiff's duties include: showing rental and sales properties, client contact, completing necessary documentation.

(f) As a senior court reporter, the plaintiff's salary plus minutes was approximately \$110,000.00 per year; as a real estate agent the plaintiff earned in 2006 approximately \$20,000.00.

(g) Plaintiff retired from her position as senior court reporter in 2002.

17. On the date of the incident, state where the plaintiff was going?

(a) State where they were coming from?

(b) State the speed of the vehicle at the time the plaintiff first noticed a problem with the vehicle,

(c) State the speed limit in existence on the road the plaintiff's vehicle was traveling on at the time of the incident.

(d) How long had plaintiff been driving for prior to the incident occurring?

(e) Describe the road conditions at the time of the incident.

ANSWER:

At the time of the incident the plaintiff was going to Best Buy located on 1100 Old Country Road, Westbury, New York.

(a) At the time of the incident the plaintiff was coming from

home.

(b-f) The plaintiff objects to this demand as evidentiary in nature and beyond the scope of interrogatories.

18. Describe how the vehicle's floor mats were defectively designed identifying each component which is claimed is defective.

(a) Identify how each component should have been designed.

(b) State the cost for each alternatively designed component.

ANSWER:

See response number "4" herein.

19. Describe how the alleged defective design of the floor mats or any other alleged defective part(s) caused and/or contributed to this incident.

(a) State how the safer alternative design would have prevented this incident.

ANSWER:

See response number "4" herein.

20. Describe how the alleged design defect caused and/or contributed to this incident.

(a) State how the safer alternative design would have prevented this incident.

ANSWER:

See response number "4" herein.

21. Describe how the assembly of the vehicle was negligent.

(a) State how the vehicle should have been assembled.

ANSWER:

Upon information and belief, the vehicle was not equipt with proper and adequate material and/or equipment to secure the floor mat and carpeting to the floor on the driver's side.

(a) The vehicle should have been assembled including the proper and adequate material and/or equipment to secure the floor mat and carpeting to the floor on the driver's side.

22. State how the assembly of this vehicle caused or contributed to this accident.

(a) State how the better assembly would have prevented this incident.

ANSWER:

Upon information and belief, the assembly of this vehicle caused and contributed to the subject accident, in that, the subject motor vehicle was not equipped with proper and adequate retention hooks and/or clips and/or other material to properly and appropriately secure a floor mat and carpeting to the floor on the driver's side of the plaintiff's vehicle, so that it became grossly misplaced and interfered with the plaintiff's ability to use the accelerator, covered and depressed the gas pedal, abstracted the plaintiff's ability to safely operate her motor vehicle and caused the plaintiff to be involved in a motor vehicle accident and suffer serious permanent injuries, also see

paragraph number "4" herein.

(a) Should the floor mat and carpeting be properly and adequately secured to the floor, by the proper and adequate retention hooks and/or clips and/or other material and not become grossly misplaced and interfere with the plaintiff's ability to use the accelerator, cover and depressed the gas pedal, abstract the plaintiff's ability to safely operate her motor vehicle and she would not be involved in a motor vehicle accident and suffer serious permanent injuries, also see paragraph number "4" herein.

23. Describe how the inspection of the vehicle was negligent.

ANSWER:

Upon information and belief, the inspection of the vehicle was negligent in that, the defendants, their agents, servants, employees and representatives failed to perform pre-delivery checks of the interior of the subject motor vehicle to ensure safety of its users; in performing improper and insufficient pre-delivery checks of the subject motor vehicle; in failing to properly follow all of the itemized safety inspection requirements. Also, see paragraph "4" herein.

24. State how the vehicle should have been inspected.

ANSWER:

It is claimed that the vehicle should have been inspected to ensure: that it is not inherently defective,

hazardous and unsafe in its operating and use; that the floor mat and carpeting are properly and appropriately secured to the floor; that the retention hooks and/or clips and/or other material are properly and appropriately fastening the floor mat and carpeting to the floor; that the floor mat and carpeting may not become grossly misplaced and interfere with the plaintiff's ability to use the accelerator; that the floor mat and carpeting may not cover and depress the gas pedal, and interfere with safe operating of the motor vehicle.

25. Describe how the labeling of the vehicle was defective.

(a) Identify how the labeling for this vehicle should have been given.

ANSWER:

See response number "4" herein.

26. Describe how the labeling caused and/or contributed to this incident.

(a) State how the appropriate labeling would have prevented this incident.

ANSWER:

See response number "4" herein.

27. Describe how the service of this vehicle was negligent.

ANSWER:

See response number "4" herein

28. State how the vehicle should have been serviced.

ANSWER:

See response number "4" herein

29. State how the service of this vehicle caused or contributed to this accident.

ANSWER:

See response number "4" herein

30. Describe how the maintenance of this vehicle was negligent.

(a) State how the vehicle should have been maintained

ANSWER:

See response number "4" herein

31. State how the maintenance of this vehicle caused or contributed to this accident.

ANSWER:

See response number "4" herein

32. Was the subject vehicle in any prior accidents?

(a) If yes, please provide the following for each accident.

i. description of the accident;

ii. all individuals present and included in the accident;

iii. location of the accident;

iv. describe all repairs made to the vehicle as a result of the accident;

v. product copies of all documentation regarding any repairs;

vi. date and time of the accident.

ANSWER:

The subject motor vehicle was not involved in any prior accidents.

33. Were any modifications made or added to the vehicle at any time prior to the date of the subject incident?

(a) If "yes", state which modifications were made and by who providing a complete name and address.

(b) Produce all documentation regarding the modifications:

(c) State when each modification was made.

ANSWER:

None.

34. State where and by whom the vehicle was regularly maintained.

ANSWER:

Upon information and belief the plaintiff's vehicle was not maintained during the period from January 16, 2007, when she received the vehicle, and the date of this occurrence, February 18, 2007.

35. If it is alleged the defendant breached or violated any statutes, standards, ordinances, or laws, provide all such statutes, standards ordinances or laws violated and state how they were violated.

ANSWER:

The Court will be asked to take notice of all statutes,

standards, ordinances, and laws violated by defendants.

36. State if anyone has inspected the vehicle.

~~(a) If so, provide the date, time and location of each inspection:~~

(b) Identify every individual who was present for each inspection.

ANSWER:

Upon information and belief the plaintiff's vehicle was not inspected during the period from January 16, 2007, when she received the vehicle, and the date of this occurrence, February 18, 2007.

37. Since the accident, state every location the vehicle has been and provide a chain of custody description for the vehicle and any of its component parts.

ANSWER:

After the subject occurrence, the vehicle was towed to Nuzzi Brothers Auto Collision Inc., located at 77 Jericho Turnpike, New Hyde Park, New York, 11040. The vehicle was stored at Aladdin Auto Body, located at 8613 Ditmas Avenue, Brooklyn, New York, 11236 until December 19, 2007. Presently the vehicle is stored at the parking garage located at 945 Cortland Avenue, Bronx, NY.

38. Was anyone utilizing a cell phone inside the vehicle at the time of the incident?

a. If "yes"; identify who was utilizing a cell phone, when in relation to the incident it was in use, provide the cell phone service provider and the cell phone number of the phone in use as well as the identity of the owner of the cell phone.

ANSWER:

Upon information and belief, the plaintiff was not utilizing a cell phone.

39. Provide the location of each passenger inside the vehicle just prior to the incident occurring.

ANSWER:

The plaintiff was alone in the car at the time of the occurrence.

40. Set forth whether any repairs or modifications were performed on the vehicle:

(a) before the date of the accident and provide the identity of the repairman;

(b) after the accident and provide the identity of the repairman;

ANSWER:

(a) other than taking ice off from the plaintiff's vehicle wipers, no repairs and/or modifications were done to the plaintiff's vehicle.

(b) the vehicle was damaged beyond repair in the subject accident, no subsequent repairs were done.

41. Identify by full name and exact location the individual or organization presently in possession, in whole or in part, of the subject vehicle and, if in part, specify the component part(s).

ANSWER:

The subject vehicle is presently stored at the parking garage located at 945 Cortland Avenue, Bronx, NY.

42. If either the subject vehicle or alleged defective part is no longer in plaintiffs actual or constructive possession, set forth:

(a) the date on which the subject vehicle and/or alleged defective part was last in plaintiffs possession;

(b) to whom was the subject vehicle and/or alleged defective part was transferred or released;

(c) the purpose of the transfer or release; and

(d) whether or not the subject vehicle or alleged defective part was, in whole or in part, destroyed and, if so, the corresponding date of destruction.

ANSWER:

See response number "41" herein.

43. Set forth the odometer reading on the date of purchase or lease of the subject vehicle and at the time of the accident.

ANSWER:

Upon information and belief, the odometer read 81 miles when

plaintiff purchased her vehicle. Odometer reading at the time of the accident is to be provided.

44. ~~Set forth the full caption of each and every lawsuit~~ brought on plaintiffs behalf to recover damages for any connected or aggravated injuries allegedly caused and sustained by reason of the acts of one or more preceding, joint, concurrent and/or succeeding tort feasons, including:

- (a) Court
- (b) Index Number
- (c) Calendar number
- (d) Names and addresses of all litigants
- (e) Names and addresses of all attorneys appearing for litigants.
- (f) Status of lawsuit
 - (1) if noticed for trial, specify the date.
 - (2) if settled, annex a copy of each release delivered indicating the amounts contributed by each defendānt.
 - (3) if discontinued without payment, annex a copy of each stipulation so delivered to each defendant.
 - (4) if tried, annex a copy of the judgment with notice of entry
 - (5) if judgment was satisfied, set forth date and amount of payment and annex a copy of satisfaction of judgment.

ANSWER:

None.

45. An itemization of all property damage claimed, if any, including the cost of repair or replacement of each item. Include the date of acquisition, state whether the item was acquired used or new and state in purchase price.

ANSWER:

The subject vehicle was damaged beyond repair, no repairs were made.

46. If it will be claimed that the aforesaid injuries necessitated any special educational, emotional, or vocational training or schooling, set forth the name and address of each organization and the dates.

ANSWER:

Not applicable.

47. Set forth the full names and addresses of each and every physician from whom the plaintiff has ever received medical treatment with respect to any neurological vascular, urological, intestinal, orthopedic, or surgical or related condition for the fifteen (15) years prior to the alleged negligence with dates of treatment.

ANSWER:

The plaintiff objects to this demand as palpably improper. However, without waiving said objection, duly executed HIPAA compliant authorizations for all applicable medical records and

containing plaintiff's treating physicians and their complete addresses are provided under separate cover.

48. ~~Set forth the full names and addresses of each and every hospital, institution, facility or clinic in which plaintiff has ever received treatment with respect to any neurological vascular, urological, intestinal, orthopedic, or surgical or related condition for the fifteen (15) years prior to the alleged negligence with dates of confinement or outpatient treatment.~~

ANSWER:

The plaintiff objects to this demand as palpably improper. However, without waiving said objection, duly executed HIPAA compliant authorizations for all applicable medical records and containing all hospitals, institutions and clinics where plaintiff received medical care and treatment for the injuries sustained in the subject accident are provided under separate cover.

49. The nature, location, extent and duration of each injury which, it will be claimed was caused by the negligence of this defendant. If any injuries are claimed to be permanent or serious within the meaning of Insurance Law 5 102(d), so specify.

ANSWER:

As a result of this occurrence, the plaintiff suffered the

following serious injuries, which are permanent and lasting in nature:

Severely comminuted, impacted fractures of the distal tibia, distal and calcaneus of the right ankle; distraction of the ankle with at least 1.2 cm overlap of the distal tibia cortices; 0.8cm medial and 1.1 cm posterior displacement of the distal tibia; several fragments of cortex extending in the intramedullary space of the distal tibia; proximal distraction of the distal fibula with at least a 1.7 cm overlap of the distal fibular cortices; 1.0 cm medial displacement of the distal fibula; extraarticular distal tibia fracture of the pilon; right third metatarsal fracture; left metatarsal fracture; several right side ribs fractures; contusion/ecchymosis in the fat in the region of the left groin; pleuritic chest pain, pain and swelling in her right distal tibia/ankle joint lower extremity, bulge on the right thigh.

Upon information and belief, the plaintiff will develop osteoarthritis in the areas of the fracture sites and will necessitate further surgeries, including removal of the plates from the right leg.

All of the foregoing injuries are claimed to be permanent and lasting in nature.

Surgical intervention on February 18, 2007 in the nature of

irrigation and debridement of open distal tibia/fibula fracture with application of a spanning external fixator in delta frame configuration, ~~involving reducing of the fracture by manual~~ method, using C-arm intensification; locating of the inside out open injury at the anterolateral aspect of the ankle; thorough irrigation and debridement of the distal and proximal aspect of the open injury; inserting two parallel 5-mm titanium self-drilling Schanz pins from anteromedial to posterolateral under C-arm intensification; constructing a delta frame with a transcalcaneal pin inserted from medial to lateral; performing manual reduction of the fracture, and securing fixation of the external fixator; suturing the extensions to the open fracture using #3-0 nylon sutures; and placing sterile dressing; injuries to the nerves, muscles, tissues, ligaments, tendons and blood vessels in the areas of the surgical intervention; sensory disturbance in the areas of the surgical intervention; stapling and suturing in the areas of the surgical intervention; scarring, cosmetic defect and deformity in the areas of the surgical intervention;

Surgical intervention on February 21, 2007 in the nature of irrigation and debridement of right open tibia and fibular fracture; open reduction and internal fixation of right distal fibula; revision external fixation of right tibia with removal of

external fixator, right calcaneus, involving posterolateral incision to the distal fibula; finding the comminuted distal fibular fracture; ~~contouring~~ contouring a 12 hole 1/3 tubular plate along the lateral aspect of the fibula and effecting a proper reduction using reduction forceps; placing screws distally and proximally to hold the plate to the fibula; making an incision between tibialis anterior and extensor hallucis longus; placing Shanz pin from anterior to posterior; irrigating of the wound; placing a ConstaVac drain; suturing of the wound and removing the Shanz pin and applying postoperative dressing; injuries to the nerves, muscles, tissues, ligaments, tendons and blood vessels in the areas of the surgical intervention; sensory disturbance in the areas of the surgical intervention; stapling and suturing in the areas of the surgical intervention; scarring, cosmetic defect and deformity in the areas of the surgical intervention;

Surgical intervention on February 28, 2007, in the nature of right tibial removal of external fixator; open reduction and internal fixation of distal tibia and bone grafting, involving making a 2 cm distal incision at the distal aspect of the distal tibia; performing a closed reduction maneuvers to obtain the correct alignment, length and rotation; placing an additional Shantz pin through the previous open fracture site; placing a screw in the second to most proximal hole to hold the plate in

place; placing a screw in the distal most hole; placing two additional screws in the distal fragment; inserting a proximal screw and placing it distal to the previously placed screw, then placing a screw in the proximal most screw; making an additional incision to place one additional screw adjacent to the proximal aspect of the fracture; placing the Grafton flex chips in the fracture site; irrigating of the wound; closing of the subcutaneous tissues using 2-0 Vicryl sutures and the overlying skin with nylon; applying dressing to the wound; injuries to the nerves, muscles, tissues, ligaments, tendons and blood vessels in the areas of the surgical intervention; sensory disturbance in the areas of the surgical intervention; stapling and suturing in the areas of the surgical intervention; scarring, cosmetic defect and deformity in the areas of the surgical intervention;

While hospitalized the plaintiff necessitated numerous X-rays, CT scans, intra-venously administered medications; large doses of antibiotics, placing and subsequent removing of ConstaVac drain and Foley catheter and suffered injuries to the nerves, muscles, tissues, ligaments, tendons and blood vessels in the areas of incisions, impairment of circulation and sensory disturbances in the areas of incisions, pain, swelling, stiffness, numbness and tenderness in the places of incisions.

While hospitalized, the plaintiff also necessitated physical therapy and was started toe-touch weightbearing with a CAM boot.

~~After discharge from the Hospital for Special Surgery, the~~ plaintiff was transferred for rehabilitation to Amsterdam Nursing Home, where she underwent restorative physical therapy and occupational therapy, geri-gym program and floor ambulation program.

50. Set forth the full name and address of each and every privately retained physician from whom medical treatment or consultation was sought by reason of the injuries allegedly sustained.

ANSWER:

As a result of this occurrence the plaintiff has been treated by David L. Helfet, M.D. from the date of the occurrence until present.

51. If it will be claimed that the aforesaid injuries necessitated any hospitalization, set forth the name and address of each hospital with dates of confinement or outpatient treatment.

ANSWER:

As a result of this occurrence, the plaintiff was admitted at Winthrop University Hospital located at 259 1st Street, Mineola, New York, 11501-3987 from February 18, 2007 to February

21, 2007; the Hospital for Special Surgery located at 535 East 70th Street, New York, New York 10021 from February 21, 2007 to March 6, 2007; and to Amsterdam Nursing Home, located at 1060 Amsterdam Avenue, New York, New York 10025 from March 6, 2007 to April 26, 2007.

52. If it will be claimed that the aforesaid injuries necessitated treatment at any other institution, set forth the name and address of each institution with dates of confinement.

ANSWER:

See response number "51" herein.

53. If it will be claimed that the aforesaid injuries necessitated confinement to bed or home, set forth the following:

- (a) The dates of confinement to home.
- (b) The dates of confinement to bed.

ANSWER:

As a result of this occurrence the plaintiff was:

- (a) Confined to home, other than attending her doctor's appointment, physical therapy sessions, and light chores, from the date of her discharge from Amsterdam Nursing home on April 26, 2007 until present.
- (b) The plaintiff was confined to bed, other than attending her doctor's appointment, physical therapy sessions, and following prescribed by her doctors home exercise routine from the date of

her discharge from Amsterdam Nursing home on April 26, 2007 for approximately five (5) months.

54. ~~If loss of earnings is claimed, set forth the following:~~

- (a) The name and address fo claimant's employer at the time of the alleged negligence.
- (b) The capacity in which claimant was employed.
- (c) Claimant's earnings for the year prior to the alleged negligence.
- (d) The last date claimant worked prior to the alleged " negligence.
- (e) the name and address of claimant's present employer.
- (f) Loss of earnings claimed.
- (g) If the plaintiff was a student, please identify all schools attended and the dates she was unable to attend.

ANSWER:

- (a) At the time of the accident the plaintiff was employed by Prudential Douglas Elliman Real Estate, 475 Port Washington Boulevard, Port Washington, New York.
- (b) At the time of the accident the plaintiff was employed as a sales agent.
- (c) The plaintiff's earnings for the year 2006 were approximately \$20,000.
- (d) The plaintiff last worked on February 17, 2007.

(e) The plaintiff is presently employed by Prudential Douglas Elliman Real Estate, 1528 Old Northern Boulevard, Roslin, New York, 11576.

(f) To be provided.

(g) Not applicable.

55. If any special damages are claimed, set forth, including but not limited to, the following:

(a) The charges for the above named hospitals, separately listing each hospital bill;

(b) Physicians' charges.

(c) Charges for medicines, itemizing the medicines charged for.

(d) Nursing.

(e) Specify by category and amount any other special damages claimed.

ANSWER:

(a-e) Duly executed HIPAA compliant authorization to obtain the plaintiff's no-fault file, containing the amounts spent for hospital and medical care, medicines, and nursing is provided under separate cover.

56. Pursuant to CPLR 4545 identify the party who paid the damages claimed in paragraphs above, including the relationship of the injured claimant to that party. If the third party payments were made as a result of reimbursements through an

insurance company, set forth the complete name and address of the company the complete name of the person in whose name the policy is issued.

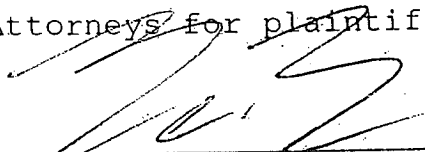
ANSWER:

The plaintiff's hospital and medical care was paid in whole and/or in part by her no-fault insurance carrier, GEICO, under the claim number: 024451467-0101-035, located at 750 Woodbury Road, Woodbury, New York 11797-2589. Duly executed HIPAA compliant authorization to obtain a copy of the plaintiff's no-fault file is provided under separate cover.

Dated: New York, New York

January 27, 2008

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF,
Attorneys for plaintiff

By 
HOWARD S. HERSHENHORN
80 Pine Street
New York, New York 10005
(212) 943-1090

To:
JAY A. RAPPAPORT, ESQ
AARONSON RAPPAPORT FEINSTEN &
DEUTSCH, LLP
Attorneys for defendant TOYOTA
MOTOR SALES, USA INC
757 Third Avenue
New York, New York 10017

AHMUTY, DEMERS & McMANUS


Attorneys for defendant
ESTREE, INC., d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, NY 11507

STEIN RISO and MANTEL LLP
405 Lexington Avenue
New York, NY 10174

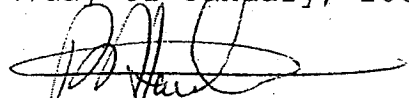
STATE OF NEW YORK)
 : s.s.:
COUNTY OF)

IRIS LEVITEN, being duly sworn, deposes and
says:

I am the plaintiff in the within action;
I have read the foregoing Answers to Interrogatories and
know the contents thereof; that the same is true to my own
knowledge, except as to the matters therein stated to be alleged
on information and belief, and as to those matters, I believe
them to be true.


IRIS LEVITEN

Sworn to before me this
27th day of January, 2008



Notary Public

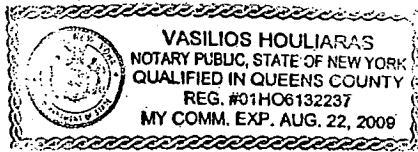


Exhibit D

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

FILE COPY

-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Notice of Substitution
of Counsel

Defendant.
-----X

PLEASE TAKE NOTICE that, ECKERT SEAMANS CHERIN & MELLOTT, LLC.,
10 Bank Street, Suite 1061, White Plains, New York, (914) 949-2909, has been, pursuant to a
duly executed consent to change attorney form (attached as Exhibit "A"), substituted as attorneys
of record for defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION
OF TOYOTA MOTORS SALES, U.S.A., INC.

Dated: White Plains, New York
May 19, 2008

Yours etc


By: Steven R. Kramer, Esq.

Eckert Seamans Cherin & Mellott, LLC.

Attorneys for Defendant

Toyota Motor Sales, U.S.A., Inc., s/h/a Lexus, a

Division of Toyota Motors Sales, U.S.A.,

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

(914) 949-5424 (FAX)

To: GAIR, GAIR CONASON
STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005
212-943-1090

AHMUTY, DEMERS & MCMANUS

Attorneys for Defendant Estree, Inc.

d/b/a Lexus of Westport

123 William Street

New York, New York 10038

212-513-7788

STEIN RISO MANTEL LLP

Attorneys for Defendant Metro Auto Leasing, Inc.

d/b/a The Automall

The Chrysler Building

405 Lexington Avenue

New York, New York 10174

212-599-1515

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

- against -

**CONSENT TO CHANGE
ATTORNEY**

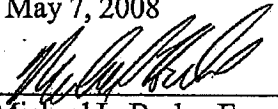
LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING,
INC., d/b/a THE AUTOMALL,

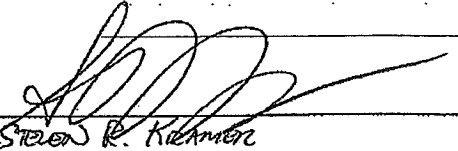
Index No.: 107681/07

Defendants.
-----X

IT IS HEREBY CONSENTED that the law firm of ECKERT, SEAMANS, CHERIN,
AND MELLOTT, INC., with offices located at 10 Bank Street, Suite 1061, White Plains, NY
10606, be substituted as attorneys of record for the defendant, TOYOTA MOTOR SALES,
U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA MOTOR SALES, U.S.A., INC. in
the above entitled action in place and stead of AARONSON RAPPAPORT FEINSTEIN &
DEUTSCH, LLP, with offices located at 757 Third Avenue, New York, New York 10017, as of
the date hereof, and that the substitution is effective without further notice.

Dated: New York, New York
May 7, 2008

By: 
Michael L. Burke, Esq.
AARONSON RAPPAPORT
FEINSTEIN & DEUTSCH, LLP
Out-Going Counsel
757 Third Avenue
New York, NY 10017
212-593-6700

By: 
Steven R. Keamer
ECKERT, SEAMANS, CHERIN, AND
MELLOTT, INC.
In-Coming Counsel
10 Bank Street, Suite 1061,
White Plains, NY 10606
914-949-2909



By: Alesia T. McAndrews, Esq.
Managing Counsel
TOYOTA MOTOR SALES, U.S.A.,
INC., S/H/A LEXUS, A DIVISION OF
TOYOTA MOTOR SALES, U.S.A.,
INC.
19001 South Western Avenue
Torrance, CA 90501
310-468-4049

AFFIDAVIT OF SERVICE

STATE OF NEW YORK :
 : ss:
COUNTY OF WESTCHESTER :

Denise Falzerano, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Westchester County, New York.

On May 19, 2008, deponent served the within **Notice of Substitution of Counsel** upon:

GAIR, GAIR CONASON
STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005

AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant Estree, Inc.
d/b/a Lexus of Westport
123 William Street
New York, New York 10038

STEIN RISO MANTEL LLP
Attorneys for Defendant Metro Auto Leasing, Inc.
d/b/a The Automall
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

- By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York; and
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery


Denise Falzerano

Sworn to before me this
19th day of May, 2008

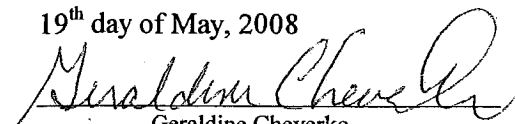

Geraldine Cheverko
NOTARY PUBLIC, State of New York
No. 02CH61770101
Qualified in Putnam County
Commission Expires 7/2/2011

Exhibit E

TOY-RQ-05E-00002564

FILE COPY

June 2, 2008

Howard S. Hershenhorn, Esq.
GAIR, GAIR CONASON
STEIGMAN & MACKAUF
80 Pine Street
New York, New York 10005Re: *Leviten v Lexus, et al.*
Supreme Court of the State of New York
New York County – Index No.: 107681/07
ESCM File No.: 292107.00040

Dear Mr. Hershenhorn:

As you know, we have been substituted as counsel of records for Lexus, a division of Toyota Motor Sales, U.S.A., Inc. (“TMS”).

We are writing regarding a number of issues:

I. Outstanding Discovery

Our review of the file indicates that plaintiff has not served a response to the Court’s preliminary conference order (which contained a significant number of additional directives). Please serve a response.

We also did not see in the file plaintiff’s response to TMS’ August 28, 2007 notice for discovery and inspection, expert witness demand, collateral source demand and combined demand for discovery and inspection.

II. Preservation of Vehicle

We believe that the subject vehicle should be preserved in its post-accident condition and no destructive testing/inspection be performed (unless agreed to by all parties). We therefore enclose a stipulation to preserve evidence. Please review it and, if acceptable, execute and return it to me.

Howard S. Hershenhorn, Esq.
June 2, 2008

Page 2


III. Additional Vehicle Inspection

We understand that, although an inspection was performed on behalf of TMS, plaintiff would not permit materials to be moved or removed from the driver compartment. It is imperative that TMS be able to move the material so that a complete inspection can be performed.

We propose to photo-document the location of the materials and then move them. A non-destructive inspection can be performed.

Please let us know your thoughts, and by copy of this letter to all counsel, we ask for counsels' input as well.

Very truly yours,



Steven R. Kramer
SRK/df

Enclosure

cc: AHMUTY, DEMERS & MCMANUS
123 William Street
New York, New York 10038

STEIN RISO MANTEL LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

STIPULATION TO PRESERVE SUBJECT VEHICLE AND COMPONENTS

WHEREAS, the parties wish to create a mutually agreeable protocol for the storage, inspection and testing of the subject 2005 Lexus ES 350, bearing vehicle identification number JTHBJ46G272071246, including all component parts related thereto ("the subject vehicle");

IT IS NOW, hereby stipulated and agreed by and between the parties, through their respective counsel, as follows:

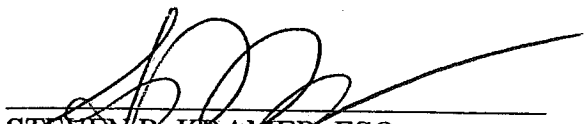
1. The subject vehicle shall be preserved throughout this litigation (and any appeals thereto) in a cool, dry indoor-covered environment.
2. The subject vehicle is currently owned by plaintiff and stored at parking garage located at 945 Cortland Avenue, Bronx, New York.
3. No party, or any one acting on its behalf, shall conduct any destructive testing, destructive examination, or disassembly of the subject vehicle or any of its components unless all counsel of record mutually agree in writing to the destructive testing, destructive examination or disassembly, or the Court issue an order as a result of a motion made on notice to all counsel of

record, permitting destructive testing, destructive examination or disassembly.

4. All inspections of the subject vehicle must be on seven (7) days prior written notice to all counsel, and each party, including its counsel and experts, is permitted to attend any inspection of the subject vehicle.

5 This Stipulation shall remain in effect throughout the pendency of the litigation and any appeals thereto, until such time as the litigation is resolved either through settlement or final judgment.

Dated: June 2, 2008



STEVEN R. KRAMER, ESQ.
ECKERT SEAMANS CHERIN &
MELLOTT, LLC
Attorneys for Defendant
Toyota Motor Sales, U.S.A., Inc., s/h/a
Lexus, Division of Toyota Motors Sales,
U.S.A..
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant
Estree, Inc. d/b/a Lexus of Westport
123 William Street
New York, New York 10038
212-513-7788

GAIR, GAIR CONASON
STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005
212-943-1090

STEIN RISO MANTEL LLP
Attorneys for Defendant Metro Auto
Leasing, Inc. d/b/a The Automall
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
212-599-1515

SO ORDERED:

Hon.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK :
 : ss:
COUNTY OF WESTCHESTER

Denise Falzerano, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Westchester County, New York.

On June 6, 2008, deponent served the within **Notice of Cross Motion, Affirmation in Support of Motion and Affirmation of Good Faith, along with Exhibits** upon:

GAIR, GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005
212-943-1090

AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant Estree, Inc. d/b/a Lexus of Westport
123 William Street
New York, New York 10038
212-513-7788

STEIN RISO MANTEL LLP
Attorneys for Defendant Metro Auto Leasing, Inc. d/b/a The Automall
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
212-599-1515

by depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York; and


Denise Falzerano

Sworn to before me this
6th day of June, 2008


Steven Kramer

NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

**Notice of Cross Motion, Affirmation in Support of Motion and
Affirmation of Good Faith, along with Exhibits**

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

Toyota Motor Sales, U.S.A., Inc., s/h/a Lexus, a

Division of Toyota Motors Sales, U.S.A.,

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

IRIS LEVITEN,

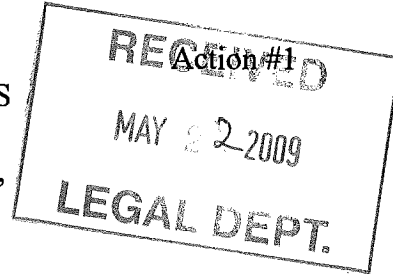
Plaintiff,

Index No. 107681/07

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.



-----X

MICHAEL DOUKAS,

Plaintiff,

Index No.: 117118/07

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

Action #2

-----X

ANTHONY DIGIROLAMO,

Plaintiff,

Index No.: 102331/08

-against-

IRIS LEVITEN,

Defendant.

Action #3

-----X

**DEFENDANT, TOYOTA MOTOR SALES, U.S.A., INC.'S
RESPONSE TO THE COURT'S APRIL 2, 2009 ORDER**

Defendant, Toyota Motor Sales, U.S.A., Inc. ("TMS") s/h/a "LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC.," through its counsel, Eckert Seamans Cherin & Mellott,
LLC, responds to the Court's April 2, 2009 court order as follows:


1. Vehicle Inspection Photographs: TMS has previously produced copies of the November 13 and 14, 2007 inspection photographs of the subject 2007 Lexus ES 350, bearing vehicle identification number JTHBJ46G272071246 (the "subject vehicle"), and TMS refers the parties to TMS' May 1, 2008 discovery response. TMS produces, as Exhibit "A" hereto, copies of photographs taken at the December 2, 2008 inspection of the subject vehicle.

2. Courtesy Copies of Discovery Responses for Plaintiff Michael Doukas: TMS refers the parties to TMS' May 14, 2009 letter to plaintiff Michael Doukas' counsel which enclosed TMS' discovery responses served in the *Leviton* action.

3. Response to Plaintiff's Michael Doukas' March 19, 2009 Document Demand: TMS refers the parties to TMS' response dated April 16, 2009.

Dated: White Plains, New York
May 19, 2009

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC. s/h/a
LEXUS, A DIVISION OF TOYOTA MOTORS
SALES, U.S.A.
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
(914) 949-5424 fax

TO: Diana M.A. Carnemolla, Esq.
GAIR GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff
IRIS LEVITEN
80 Pine Street
New York, New York 10005

Thomas G. Chojnacki, Esq.
AHMUTY, DEMERS & McMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
123 William Street
New York, New York 10038

Edward R. Minson, Esq.
STEIN RISO MANTEL LLP
Attorneys for Defendant
METRO AUTO LEASING, INC.
d/b/a THE AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

Todd J. Strier, Esq.
KELNER & KELNER, ESQS.
Attorneys for Plaintiff
MICHAEL DOUKAS
140 Broadway, 37th Floor
New York, New York 10005

David S. Heller, Esq.
CONNORS & CONNORS, PC
Attorneys for Defendant
IRIS LEVITEN
766 Castleton Avenue
Staten Island, NY 10310

Jessica Giambrone, Esq.
CORPORATION COUNSEL
Attorneys for Defendants
ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK
100 Church Street
New York, New York 10007

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PATRICIA MORGAN, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Dutchess County, New York.

On the 19th day of May, 2009, deponent served the within **DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC.'S RESPONSE TO THE COURT'S APRIL 2, 2009 ORDER** upon:

Diana M.A. Carnemolla, Esq.
GAIR GAIR CONASON STEIGMAN
& MACKAUF
Attorneys for Plaintiff
IRIS LEVITEN
80 Pine Street
New York, New York 10005

Thomas G. Chojnacki, Esq.
AHMUTY, DEMERS & McMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a
LEXUS OF WESTPORT
123 William Street
New York, New York 10038

Edward R. Minson, Esq.
STEIN RISO MANTEL LLP
Attorneys for Defendant
METRO AUTO LEASING, INC.
d/b/a THE AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

Todd J. Strier, Esq.
KELNER & KELNER, ESQS.
Attorneys for Plaintiff
MICHAEL DOUKAS
140 Broadway, 37th Floor
New York, New York 10005

David S. Heller, Esq.
CONNORS & CONNORS, PC
Attorneys for Defendant
IRIS LEVITEN
766 Castleton Avenue
Staten Island, NY 10310

Jessica Giambrone, Esq.
CORPORATION COUNSEL
Attorneys for Defendants
ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT
OF SANITATION and
THE CITY OF NEW YORK
100 Church Street
New York, New York 10007

by depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.


PATRICIA MORGAN

Sworn to before me this
19th day of May, 2009

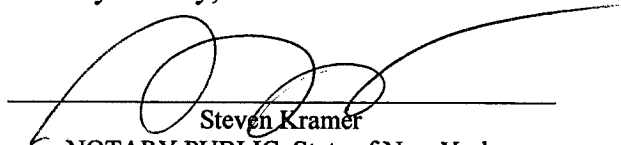

Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

Exhibit A

-----X
IRIS LEVITEN,

Plaintiff,

Index No. 107681/07

-against-

Action #1

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.

-----X
MICHAEL DOUKAS,

Plaintiff,

Index No.: 117118/07

-against-

Action #2

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

Index No.: 102331/08

-against-

Action #3

IRIS LEVITEN,

Defendant.

-----X

**DEFENDANT TOYOTA MOTOR SALES, U.S.A., INC.'S
RESPONSE TO THE COURT'S APRIL 2, 2009 ORDER**

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

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

s/h/a LEXUS, A DIVISION OF

TOYOTA MOTORS SALES, U.S.A.

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

RECEIVED
MAY 15 2009
LEGAL DEPT.

-----X
IRIS LEVITEN,

Plaintiff,

Index No. 107681/07

-against-

Action #1

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

**DEFENDANT'S NOTICE
OF ISSUANCE OF
SUBPOENA**

Defendant.

-----X
MICHAEL DOUKAS,

Plaintiff,

Index No.: 117118/07

-against-

Action #2

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

Index No.: 102331/08

-against-

Action #3

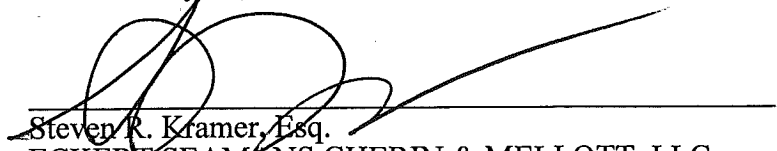
IRIS LEVITEN,

Defendant.

-----X
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the attached subpoena is being served on GEICO Claims Service Center in the above-entitled litigation.

Dated: May 11, 2009



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC. s/h/a LEXUS,
A DIVISION OF TOYOTA MOTORS SALES, U.S.A.
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
(914) 949-5424 fax

To: Diana M.A. Carnemolla, Esq.
GAIR GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff
IRIS LEVITEN
80 Pine Street
New York, New York 10005

Edward R. Minson, Esq.
STEIN RISO MANTEL LLP
Attorneys for Defendant
METRO AUTO LEASING, INC.
d/b/a THE AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

Thomas G. Chojnacki, Esq.
AHMUTY, DEMERS & McMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
123 William Street
New York, New York 10038

David S. Heller, Esq.
CONNORS & CONNORS, PC
Attorneys for Defendant
IRIS LEVITEN
766 Castleton Avenue
Staten Island, NY 10310

Todd J. Strier, Esq.
KELNER & KELNER, ESQS.
Attorneys for Plaintiff
MICHAEL DOUKAS
140 Broadway, 37th Floor
New York, New York 10005

Jessica Giambrone, Esq.
CORPORATION COUNSEL
Attorneys for Defendants
ANTHONY DIGIROLOMO, NYC DEPT OF SANITATION
and THE CITY OF NEW YORK
100 Church Street
New York, New York 10007

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.

-----X

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X

ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.

-----X

**To: Government Employees Insurance Company
750 Woodbury Road
Woodbury, NY 11797
Claim # 0244514670101035**

Index No. 107681/07

Action #1

**SUBPOENA
DUCES TECUM**

Index No.: 117118/07

Action #2

Index No.: 102331/08

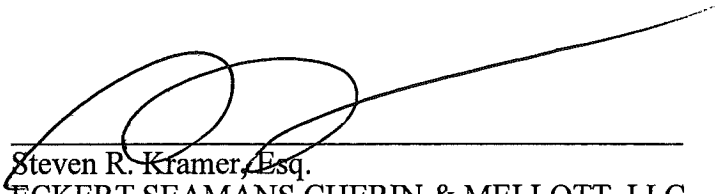
Action #3

WE COMMAND YOU that, all business and excuses being laid aside, you send certified copies of the records listed below, for the patient identified below, to the undersigned at Eckert Seamans Cherin & Mellott, LLC, 10 Bank Street, Suite 1061, White Plains, New York, 10606, by the 12th day of June, 2009:

Records to Be Sent

PLEASE SEE ATTACHED SCHEDULE.

Dated: White Plains, New York
May 11, 2009



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendants
TOYOTA MOTOR SALES, U.S.A., INC. s/h/a
LEXUS, A DIVISION OF TOYOTA MOTORS
SALES, U.S.A.
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
(914) 949-5424 fax

To: All Counsel

SCHEDULE A

Section I Preliminary Statement

This subpoena is being issued on behalf of **TOYOTA MOTOR SALES, U.S.A., INC. s/h/a LEXUS, A DIVISION OF TOYOTA MOTORS SALES, U.S.A.** The issuing defendant was sued by plaintiff **Iris L. Leviten** who alleges, among other things, that she sustained personal injuries as a result of an accident involving, among other vehicles, a 2007 Lexus ES 350.

Section II Scope of Subpoena

This subpoena requires You to produce or permit the inspection, copying, testing or sampling of Documents (as defined below) that are in Your custody, possession or control.

Section III Definitions and Directions

The following definitions apply in the context of this subpoena:

“Documents” refers to anything that is not privileged and is responsive to one or more of the requests made in Section IV. This includes, but is not limited to, the following items, whether printed or recorded or reproduced by any other mechanical or electrical process, written, produced by hand or produced by or stored in a computer or by other electronic means, regardless of origin or location: books, notes, notations, calendars, message slips, schedules, planners, records, communications, reports, correspondence, letters, telegrams, emails, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, applications, booklets,

brochures, catalogues, circulars, magazines, pamphlets, periodicals, bulletins, instructions, minutes, other communications (including, but not limited to, inter and intra office communications), purchase orders, bills of lading, bid tabulations, questionnaires, surveys, contracts, agreements, options to purchase, memoranda of agreements, assignments, licenses, books of account, billings, credit card records, orders, invoices, statements, bills, checks, vouchers, ledger sheets, accounts, journals, cancelled checks, bank statements, bank passbooks, confirmations, statements of accounts, analyses, diaries, graphs, notebooks, charts, tables, working papers, plans, indices, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of accountants or consultants, deposition transcripts or other transcripts, accounting books or records, data sheets, data processing cards, photographs, photographic negatives, pictures, phone records, tape recordings, discs, wire recordings, transcripts of recordings, drawings, motion picture film, electronic or magnetic records or tapes, advertisements, press releases, drafts, and marginal comments appearing on any such documents, test, test reports, test analysis, all other written or printed matter of any kind, or any other data compilations from which information can be obtained and translated if necessary, as well as any electronically stored information (“ESI”), located in Your offices or at an off-site location (including home offices).

“Communicate” or “communication” shall mean all inquiries, discussions, conversations, negotiations, agreements, emails, undertakings, meetings, telephone conversations, letters, notes, telegrams, advertisements, or other forms of information exchange, whether oral or written, between two or more persons.

“Record” or “records” shall mean any and all records, files (including computer files), documents (as defined by State law, including those in electronic form), graphs, charts, maps, writings, correspondence, drawings, transcripts, drafts, recordings, data, studies, guidelines, directives, and/or reports.

“ESI” includes, but is not limited to, the contents of computer hard drives, floppy discs, CD-Rom discs, removable/external/portable storage devices, network servers and personal digital assistants. The information contained on such media normally includes, but is not limited to, electronic mail, word processing files, spreadsheets, imaged documents, presentations, pictures, audiovisual recordings and databases. This subpoena encompasses all of Your departments as well as any personal, home and/or portable media used by You.

“Identify,” “identity,” or “identification” mean, when used in reference to a natural person, his or her full name; present or last known home address (including street name and number, city or town, state, zip code, and telephone number); present or last known business address (including street name and number, city or town, state, zip code, and telephone number); present or last known occupation, position, business affiliation, and job description; occupation, position, business affiliation and job description at the time relevant to the particular interrogatory being answered. If a company, corporation, association, partnership, or legal entity other than a natural person: its full name; a description of the type of organization or entity; the full address of its principal place of business; the jurisdiction of its incorporation or organization; and the date of its incorporation or organization. If a document: its description (for example: letter, memorandum, report, etc.); its title; its date; the number of pages therein; its subject; the identity of its author, signatory or signatories,

and any person who participated in its preparation; the identity of its addressee or recipient; the identity of each person to whom copies were sent and each person by whom copies were received; its present location; and the identity of its present custodian. If any such document was, but is no longer, in the possession or subject to the control of plaintiff, state what disposition was made of it and when. If an oral communication: the date and time when it occurred; the place where it occurred; the complete substance of the communication; the identity of each person participating in the communication.

“Concerning” and “relating to” (or any form thereof) shall mean, in whole or in part, alluding to, analyzing, characterizing, commenting upon, comprising, concerning, constituting, containing, dealing with, describing, disclosing, discussing, embodying, evidencing, explaining, identifying, mentioning, pertaining to, referring to, reflecting, responding to, setting forth, showing, stating, supporting or summarizing.

“You” and “Your” refer to you; your agency; your organization; subsidiaries, affiliates, predecessors and/or successors of your agency or organization; and/or agents, servants, employees or contractors hired by you, your agency or organization or subsidiaries, affiliates, predecessors and/or successors of your agency or organization.

“And” or “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The plural of any word used herein includes the singular and the singular includes the plural. The masculine gender of any word used herein includes the feminine. All verbs used herein shall be construed to include all tenses. The past tense of any word used herein includes the present tense, and the present tense includes the past tense.

Documents produced in response to this subpoena must be produced as they are kept in the normal course of business or shall be organized and labeled to correspond with the requests made in Section IV. CPLR § 3120.

Do not assume that Documents responsive to this subpoena should be produced in hard copy. The defendants may wish to inspect or image hard copy documents, and they have the right to designate the form in which ESI is produced. Thus, it is very important that You contact the attorney who issued this subpoena before producing Documents. The defendants will attempt to make Your production as efficient as possible. However, they reserve their right to refuse an improperly formatted or otherwise unacceptable production.

If You withhold Documents on a claim that they are privileged or subject to protection as trial-preparation materials, Your claim must be made expressly and must be supported by a description of the nature of the Documents that is sufficient to enable the party issuing this subpoena to contest the claim.

Each of the requests made in Section IV is to be read consistently with the definitions provided above.

Failure to obey this subpoena may be deemed a contempt of court. CPLR § 2308.

Section IV
Documents Requested

1. All vehicle damage reports, vehicle damage estimates, towing records, salvage records, crush certificates, property damage records, reports of mechanical inspection, engineer's reports and copies of any data downloaded from vehicle air bag systems, concerning an accident which occurred on **February 18, 2007**, at Glen Cove Road intersecting Northern State Eastbound Ramp, in the Town of Carle Place, County of Nassau, State of New York between **Iris L. Leviten**, who was the operator of a 2007 Lexus ES 350, bearing Vehicle Identification Number JTHBJ46G272071246, and **Anthony Digirolamo**, who was the operator of a 2002 Mack Truck (**GEICO Claim No. 0244514670101035**).
2. Records concerning the post-accident location and disposition of 2007 Lexus ES 350, bearing Vehicle Identification Number JTHBJ46G272071246.
3. Records concerning the post-accident location and disposition of the 2002 Mack Truck.
4. Any and all diagrams or photographs (including duplicate negatives, negative proof sheets and video tapes) of the scene of the accident.
5. Any and all diagrams or photographs (including duplicate negatives, negative proof sheets and video tapes) of the 2007 Lexus ES 350, bearing Vehicle Identification Number JTHBJ46G272071246.
6. Any and all diagrams or photographs (including duplicate negatives, negative proof sheets and video tapes) of the 2002 Mack Truck vehicle.
7. Any and all diagrams or photographs (including duplicate negatives, negative proof sheets and video tapes) of the occupants of the 2007 Lexus ES 350, bearing Vehicle Identification Number JTHBJ46G272071246.
8. Any records which describe any accidents involving the 2007 Lexus ES 350, VIN# JTHBJ46G272071246 prior to February 18, 2007.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS Leuten
v
Lexus, et al
Michael Dookas (SINY 117118/07)
v
IRIS Leuten, et al

INDIVIDUAL ASSIGNMENT PART 62

STIPULATION

INDEX NO. 107681

~~MOTION~~ CALENDAR NO. 26

DATE 4/2/09

RECEIVED
APR 06 2009
LEGAL DEPT.

IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

- Photos from all inspections to be exchanged by all parties by 5/1/09
- EBT of TI Dookas on or before 6/16/09; 10AM @ Keher + Keher
- EBT of Δ DIGIrolamo on or before 6/22/09; 10AM @ Corp Counsel 52 Duane St
- EBT of Δ Lexus/Toyota on or before 7/24/09; 10AM @ Ahmuty (123 Willou)
- EBT of Δ's Estree/Metro Auto on or before 8/6/09; 10AM @ Ahmuty (123 Willou)
- All parties to provide discovery responses, to extent not provided, to all parties by 5/1/09
- Δ's Lexus/Toyota/Estree/Metro to provide TI Dookas courtesy copy of disc. responses previously provided to TI Leuten by 5/1/09
- Δ Metro to provide copies of applicable Insurance Policies and/or Disclaimers to all parties by 5/1/09
- Δ City continues to waive appearance at all non-City depositions.
- Δ's to respond to TI Dookas Disc Dem. dated 3/19/09 by 5/1/09 to extent not done
- EC: 7/16/09; 2pm

EBTs are subject to the Court's EBT rules - failure to comply will result in sanctions or dismissal
Date: 4/2/09 or preclusion.

[Signature] (TI LEUTEN)
Attorney for Plaintiff
[Signature] (TI Dookas)
Attorney for Defendant Estree

So Ordered.

[Signature] (D. Heller) for Leuten as Δ
Attorney for Defendant

ENTER: HON. KAREN SMITH

J.S.C.

[Signature] by TMS
[Signature] for MAC
SC-86 (rev 2/86)

[Signature] by Tel. Call (Edward Miron) by 21

EBT Adjournment Policy
Hon. Karen S. Smith, Part 62
Last Updated: October 20, 2008

In the event that EBTs will not be going forward as scheduled in the Compliance Conference order or stipulation, the parties must reschedule the EBT amongst all parties for no later than 4 weeks from the originally scheduled date.

1. Where the parties cannot agree on a date within 4 weeks, the party requesting the adjournment must contact chambers at (646) 386-3371 on a conference call with all parties within 1 week of the originally scheduled date, or at least 48 hours prior to the next scheduled compliance conference, whichever is sooner.
2. If the parties are able to reschedule the EBT amongst themselves within 4 weeks of the prior date, the party requesting the adjournment must notify the court by fax [(212) 401-9036] of: 1) the original and newly scheduled EBT dates; 2) the names and phone numbers of the attorneys/parties consenting to the adjournment; 3) the reason for the adjournment; and 4) whether the EBT(s) are the only outstanding discovery, either
 - a. Within 1 week of the original EBT date, or
 - b. At least 48 hours in advance of the next scheduled Compliance Conference, whichever is sooner.

If the new EBT date falls *after* the next scheduled Compliance Conference, the Court will generally reschedule the Compliance Conference for after the EBTs are completed, unless there are other discovery issues to be addressed in the meantime. The Court will notify the party requesting the adjournment of any change in the Compliance Conference date, who will then be responsible for notifying all parties of the new Compliance Conference.

Failure to comply with this EBT adjournment policy may result in appropriate sanctions.

Date: _____

4/2/09

So Ordered: _____

HON. KAREN SMITH

Hon. Karen S. Smith, J.S.C.

RECEIVED
MAR 09 2009
LEGAL DEPT.

LD 2008-001345

P. 1072 P

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS Leviten, T
Lexus, et al

INDIVIDUAL ASSIGNMENT PART 62

STIPULATION

michael DOUKAS (S/NY 117118/07)
Iris Leviten, et al

INDEX NO. 107681/07

MOTION CALENDAR NO.

DATE 2/26/09

Notes of issue to be determined at final CC:
IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

- Photos from inspections of Lexus to be exchanged by all parties by
- EBT of TI Leviten on or before 3/29/09 @ Gair, Gair (10AM)
- EBT of TI DOUKAS on or before 3/27/09 @ Kelen, Kelen (10AM)
- EBT of A DiGirolamo on or before 5/11/09; 10AM @ Bro Counsel 52 West St
- EBT of A Lexus/Toyota on or before 5/7/09; 10AM @ Ahmuty (123 William St)
- EBT of A's Estree/Metro on or before 5/21/09; 10AM @ Ahmuty (123 William St)
- TI Doukas to provide PSP/Mod Exchanges By 3/19/09
- All parties to respond to discovery demands, to extent not previously provided, by 3/26/09
- A's Lexus/Toyota/Estree/Metro to provide TI Doukas with 1 courtesy copy of disc. provided to TI Leviten by 3/19/09; A Metro to provide copies of applicable Ins. Policies ^{and} for disclosure to all parties
- All parties to respond to TMS 6/2/08 due demd, to extent not previously provided, by 3/26/09
- A City waives appearance at non-city depositions.

cc: 4/2/09; 2pm

Parties are subject to this part
EBT rules ~~attached~~ attached
Date: 2/26/09

Gair/Gair ^{onasm budiana Carnemolli}
Attorney for Plaintiff Leviten
Kelen + Kelen by JA
Attorney for Defendant
DOUKAS + DOUKAS FOR A. LEVITEN LARola

So Ordered.

Steen, Riso, Mantel by telephone (Edward Minson)
Attorney for Defendant

HON. KAREN SMITH

ENTER: _____ J.S.C.

Steen, Riso, Mantel by telephone (Edward Minson)
by JA
Gair/Gair - S Dhool, Dev. Min
SC-86 (rev. 2/86)
for MAC

EBT Adjournment Policy
Hon. Karen S. Smith, Part 62
Last Updated: October 20, 2008

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 - b. At least 48 hours in advance of the next scheduled Compliance Conference, whichever is sooner.

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Failure to comply with this EBT adjournment policy may result in appropriate sanctions.

Date: 2/26/09

So Ordered: **HON. KAREN SMITH**
Hon. Karen S. Smith, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

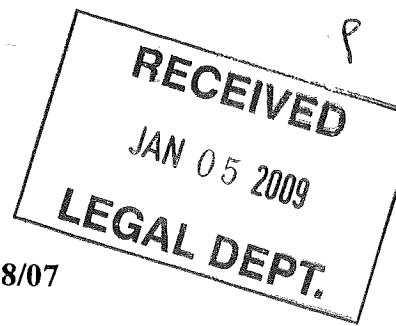
----- x
MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF
SANITATION and THE CITY OF NEW YORK,

Defendants.
----- x



Index no. 117118/07

REPLY AFFIRMATION

Assigned to:
Room 130
Return Date: 12/18/08

TODD J. STRIER, an attorney duly licensed to practice law in the courts of the State of New York, hereby affirms, pursuant to CPLR §2106, the truth of the following under penalties of perjury upon information and belief:

1. Your affirmant is an attorney with the law firm of KELNER & KELNER, ESQS., attorneys for the plaintiff herein, and, as such, is fully familiar with the facts and circumstances of this case by virtue of a review of the file maintained by this office.
2. This reply affirmation is submitted in opposition to defendant ESTREE's Affirmation in Opposition and in further support of plaintiff's motion for an order, pursuant to CPLR §§1003, 305(a) and 3025(b), granting plaintiff MICHAEL DOUKAS leave to supplement the summons and amend the verified complaint herein so as to add LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL as party defendants in Action number 2, granting this plaintiff leave to file and serve said Supplemental Summons and Amended Verified Complaint and to correct the license plate number of the vehicle in which plaintiff was a passenger on the date of the accident.
3. Plaintiff seeks to amend his pleadings pursuant to CPLR §3025(b) which permits a party to seek leave to amend pleadings. Your affirmant wishes to reiterate what was previously cited in his original papers that it is well-settled law that "[s]ection 3025 is to be liberally

construed to permit pleadings to be amended and that leave to amend shall be freely given absent prejudice or surprise.” See *City of New York v. Crossbay Contracting Corp.*, 235 A.D.2d 10, 662 N.Y.S.2d 462 (1st Dept. 1997) *appeal granted, reargument denied* 250 A.D.2d 1032, 676 N.Y.S.2d 468 (1st Dept. 1998) *reversed in part, appeal dismissed* 93 N.Y.2d 14, 686 N.Y.S.2d 750 (1999); *McCaskey, Davies and Associates, Inc. v. New York City Health & Hospitals Corporation*, 59 N.Y.2d 755, 463 N.Y.S.2d 434 (1983); *Fahey v. County of Ontario*, 44 N.Y.2d 934, 408 N.Y.S.2d 314 (1978).

4. Defendant ESTREE’s opposition to said motion is predicated upon a claim that plaintiff must submit an affidavit of a person having personal knowledge, or any other evidence setting forth the merits of the claim”. Defendant ESTREE, however, relies upon *Guzman v. Mike’s Pipe Year*, 35 A.D.3d 266, 825 N.Y.S.2d 480 (1st Dept 2006) which deals with a defendant’s attempt to amend an answer to assert a new affirmative defense. In that decision, the court based its decision on a 1984 case entitled *Brennan v. City of New York*, 99 A.D.2d 445, 470 N.Y.S.2d 621 (1st Dept 1984) in which the court denied plaintiff’s request to increase the ad damnum clause due to lack of factual and medical support to allow the court, in that case, to render an informed determination regarding the original amount demanded.

5. Furthermore, the *Guzman* decision also cites to the matter of *Marinelli v. Shifrin*, 260 A.D.2d, 227, 688 N.Y.S.2d 72 (1st Dept 1999) which, again, does not have any direct relevance to the instant case and the relief requested. In *Marinelli*, the court denied the defendant’s attempt to amend his pleadings in order to defeat summary judgment. In that case, the sole purpose of the leave to amend was to defeat a motion for summary judgment which your affirmant acknowledges would have required evidentiary proof in admissible form, such as an affidavit with someone with knowledge. Such is not the case here.

6. Here, plaintiff seeks to merely amend his complaint to add parties that are already named in another consolidated caption of this case. There is no prejudice or laches in plaintiff’s request since depositions have yet to occur and all parties have appeared in the other action

(Supreme New York Index Number 107681/07).

7. There is nothing in the instant case which deals even remotely with the issues raised by the *Guzman* or *Brennan* decisions and thus any attempt to rely upon these cases is nothing more than an attempt to mislead this court.

8. Lastly, defendant raises an issue regarding plaintiff asserting a claim involving breach of warranty against defendant ESTREE, however, does not cite any case law or statute that indicates that plaintiff is prohibited from bringing such a claim. Defendant ESTREE's recourse would be to assert the appropriate affirmative defenses if this honorable court permits the plaintiff's request to amend.

WHEREFORE, plaintiff MICHAEL DOUKAS respectfully requests that the within motion be granted in its entirety, and that this court issue an order:


- a) pursuant to CPLR §1003, adding LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, as party defendants in Action No. 2; and
- b) pursuant to CPLR §305(a), permitting the issuance, filing and service of a supplemental summons in Action No. 2 adding as party defendants LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL; and
- c) pursuant to CPLR §3025(b), permitting plaintiff leave to file and serve an amended complaint upon LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL and to amend the caption in action no. 2; and

d) together with such other and further relief as the court may deem just and proper
in the premises.

Dated: New York, New York
December 16, 2008

Yours, etc.

KELNER and KELNER
Attorneys for Plaintiff DOUKAS

By: 
Todd J. Strier
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

To: **CONNORS & CONNORS, P.C.**
Attorneys for Defendant Iris Leviten Action No. 2
766 Castleton Avenue
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File No.: 2008-001345

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ESTREE, INC., d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
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516-294-5433
File No.: YCW0962N7 JAE

STEIN RISO MANTEL, LLP
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METRO AUTO LEASING, INC., d/b/a

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405 Lexington Avenue
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TOYOTA MOTOR SALES, USA INC.
s/h/a LEXUS, A DIVISION OF TOYOTA
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10 Bank Street, Suite 1061
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ANTHONY DIGIROLAMO
229 7th Street, Suite 304
Garden City, New York 11530
646-522-4141

Index no. 117118/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF
SANITATION and THE CITY OF NEW YORK,

Defendants.

REPLY AFFIRMATION

KELNER & KELNER, ESQS.
Attorneys for Plaintiff
Office and Post Office Address, Telephone
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

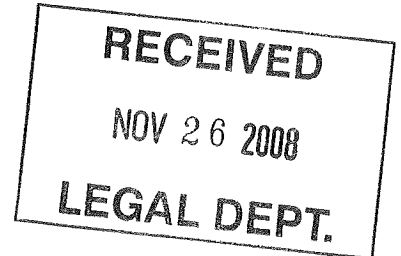
-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.
-----X

Index No.: 117118/07

AFFIRMATION IN OPPOSITION



THOMAS G. CHOJNACKI, an attorney at law, duly licensed to practice in the State of New York, hereby makes the following statements under the penalty of perjury:

1. I am an associate of the firm of AHMUTY, DEMERS & McMANUS, ESQS., attorneys for defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT, in the above captioned matter and as such I am fully familiar with the facts and circumstances surrounding this matter.
2. I submit this affirmation in opposition to the motion by the plaintiff, Michael Doukas, seeking an Order pursuant to CPLR §1003 adding certain entities as party defendants in this matter, and permitting the plaintiff pursuant to CPLR §305 to file a Supplemental Summons and for an Order pursuant to CPLR §3025 permitting leave to file and serve an Amended Complaint which would add amongst others, Estree, Inc. d/b/a Lexus of Westport as a party defendant in the Doukas action.
3. In support of that motion, the Doukas plaintiff through their counsel submits an Affirmation in Support by the attorney representing Mr. Doukas as well as prior pleadings and the proposed new Summons and Complaint. It should be noted that the original Complaint of Mr. Doukas is not verified at all and the proposed Amended Complaint was verified by counsel.
4. As such, there is no support in the motion from anyone with personal knowledge of the facts.

5. Although it is well settled that leave to file amended pleadings pursuant to CPLR §3025(b) should be freely given absent prejudice or surprise, the Court's have also held that "...such leave should not be granted upon mere request, without appropriate substantiation." See Guzman v. Mike's Pipe Yard, 35 A.D.3d 266, 825 N.Y.S.2d 480 (1st Dep't 2006).

6. Where the moving papers consist solely of an attorneys affirmation without an Affidavit of a person having personal knowledge, or any other evidence setting forth the merits of the claim, it has been deemed that they lack probative value as held in the Guzman case.

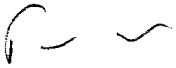
7. In Guzman, the Court denied leave to amend a pleading where the motion was deemed unsupported and thus insufficient as a matter of law.

8. This is precisely the same scenario as addressed in the Doukas motion as there is in fact no evidentiary support whatsoever for the proposed Amended Complaint.

9. Further, it appears that the Doukas plaintiff is seeking to assert claims involving breach of warranty claims against Estree, Inc., and yet, there is no privity between the Doukas plaintiff and Estree, and as such, it is submitted that those claims are indeed devoid of any merit.

WHEREFORE, it is respectfully requested that this Court issue an Order denying plaintiff's motion in its entirety and grant such other and further relief as this Court deems just and proper.

Dated: Albertson, New York
November 11, 2008



THOMAS G. CHOJNACKI, ESQ.
AHMUTY, DEMERS & McMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, NY 11507
(516) 294-5433
Our File No.: YCW 0962N7 JAE

TO:

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F: (212) 425-0007

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LEXUS OF WESTPORT (Action #1)
and IRIS LEVITEN (Action #3)
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Corporation Counsel
Attorneys for Defendants
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NYC DEPT OF SANITATION and
THE CITY OF NEW YORK (Action #2)
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Diana M.A. Carnemolla, Esq.
Gair, Gair, Conason,
Steigman & Mackauf
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IRIS LEVITEN (Action #1)
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Stein Rison & Mantel, LLP
Attorneys for Defendant
METRO AUTO LEASING, INC.
d/b/a THE AUTOMALL (Action #1)
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F: (212) 599-6155

Steven R. Kramer, Esq.
Eckert Seamans Cherin & Mellott
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.
s/h/a "LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, U.S.A., INC."
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Richard Janowitz, Esq.
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229 Seventh Avenue, Suite 304
Garden City, New York 11530

Index No. 107681/07

NOV 17 2008

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

=====
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC. d/b/a
LEXUS OF WESTPORT and METRO AUTO LEASING, INC. d/b/a THE AUTOMALL

Defendants.
=====

AFFIRMATION IN OPPOSITION

=====
AHMUTY, DEMERS & McMANUS, ESQS.
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, New York 11507
(516) 294-5433
Our File No.: YCW 0962N7 JAE

=====
To:
Attorney(s) for ESTREE, INC. d/b/a LEXUS OF WESTPORT

=====
Service of a copy of the within AFFIRMATION IN OPPOSITION is hereby admitted.

Dated: November 13, 2008
=====

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

P
Pg 1 of 2 ✓

IRIS Leviten
- v -
Lexus, et al

RECEIVED
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LEGAL DEPT.

INDIVIDUAL ASSIGNMENT PART 62
STIPULATION
INDEX NO. 107681/07
MOTION CALENDAR NO. 27
DATE 10/23/08

IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

~~This compliance conference shall include discovery in index #~~
117118/07 (Dookas v Leviten) as well.

- Inspection of subject Lexus to be held on or before 12/15/08, time/location to be agreed
- EBT of TI Leviten ^{on or before} 1/20/09; 10AM @ Gan, Gan.
- EBT of TI Dookas on or before 1/21/09; 10AM @ Kelen + Kelen
- EBT of Δ Digirolamo on or before 2/2/09; 10AM; @ Rip Currel 52 Duane St
- EBT of Δ Lexus/Toyota on or before 2/11/09; 10AM @ Ahmuty (123 William)
- EBT of Δ's Estree + Metro on or before 2/18/09; 10AM @ Ahmuty (123 William)
- TI Dookas to provide EP's within 3 weeks; All parties to respond to ^{outstanding} discovery demands by 11/21/08
- Δ's Lexus/Toyota/Estree/Metro to provide TI Dookas with courtesy copy of discovery given to TI Leviten
- Metro Auto. to provide copies of all applicable insurance policies and disclaimers
- Ines pursuant to Leviten PC order.

CC: 2/28/09; 2pm

Gail Gelfand, counsel, ~~Seamans~~ Metcalf for TI Leviten
by: *[Signature]*
Attorney for Plaintiff

Date: 10/23/08

Dookas by Kelen + Kelen by *[Signature]*
Attorney for Defendant TI

So Ordered.

Couran & Couran by *[Signature]*
Attorney for Defendant Leviten

ENTER: HON. KAREN SMITH

J.S.C.

Edward Sesamus by Mark Theobald
Defendant Lexus for appearance ^{SC-BG (REV 2/05)}
[Signature]
for MAX
Lexus of Westport by DLand's Demer + M...
Edward Minsor by *[Signature]*
Δ Metro Auto Loan

- Parties are subject to this part's EBT rules on p. 2 of 2.
- NZ to be determined at final CC.

EBT Adjournment Policy
Hon. Karen S. Smith, Part 62
Last Updated: October 20, 2008

In the event that EBTs will not be going forward as scheduled in the Compliance Conference order or stipulation, the parties must reschedule the EBT amongst all parties for no later than 4 weeks from the originally scheduled date.

1. Where the parties cannot agree on a date within 4 weeks, **the party requesting the adjournment** must contact chambers at (646) 386-3371 on a conference call with all parties within 1 week of the originally scheduled date, or at least 48 hours prior to the next scheduled compliance conference, whichever is sooner.
2. If the parties are able to reschedule the EBT amongst themselves within 4 weeks of the prior date, the **party requesting the adjournment** must notify the court by fax [(212) 401-9036] of: 1) the original and newly scheduled EBT dates; 2) the names and phone numbers of the attorneys/parties consenting to the adjournment; 3) the reason for the adjournment; and 4) whether the EBT(s) are the only outstanding discovery, either
 - a. Within 1 week of the original EBT date, or
 - b. At least 48 hours in advance of the next scheduled Compliance Conference, whichever is sooner.

If the new EBT date falls *after* the next scheduled Compliance Conference, the Court will generally reschedule the Compliance Conference for after the EBTs are completed, unless there are other discovery issues to be addressed in the meantime. The Court will notify the party requesting the adjournment of any change in the Compliance Conference date, who will then be responsible for notifying all parties of the new Compliance Conference.

Failure to comply with this EBT adjournment policy may result in appropriate sanctions.

Date: 10/23/08

So Ordered: **HON. KAREN SMITH**
Hon. Karen S. Smith, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
MICHAEL DOUKAS,

Plaintiff,

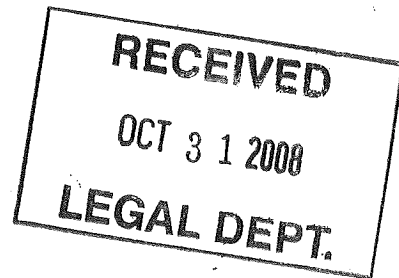
- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF
SANITATION and THE CITY OF NEW YORK,

Defendants.
----- X

Index no. 117118/07

NOTICE OF MOTION



C O U N S E L O R S :

PLEASE TAKE NOTICE, that upon the annexed affirmation of TODD J. STRIER, dated October 23, 2008 and upon all of the pleadings and proceedings heretofore had herein, the undersigned shall cross-move this court at the IAS Support Part Room 130, at the Courthouse located at 60 Centre Street, New York, NY, on the 4th day of December, 2008 at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order:

- a) pursuant to CPLR §1003, adding LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, as party defendants in the action number 2; and
- b) pursuant to CPLR §305(a), permitting the issuance, filing and service of a supplemental summons in action number 2 and adding as party defendants LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL; and
- c) pursuant to CPLR §3025(b), permitting plaintiff leave to file and serve an amended complaint upon LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO

LEASING, INC., d/b/a THE AUTOMALL and to amend the caption of action number 2; and

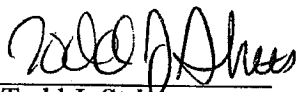
d) together with such other and further relief as the court may deem just and proper in the premises.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering affidavits, if any, are to be served upon the undersigned at least seven (7) days prior to the return date of this motion.

Dated: New York, New York
October 23, 2008

Yours etc.,

KELNER & KELNER, ESQS.
Attorneys for Plaintiff

By: 
Todd J. Strier
140 Broadway, 37th Floor
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TO: CONNORS & CONNORS, P.C.
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File No.: 2008-001345

GAIR GAIR CONASON STEIGMAN & MACKAUF
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AHMUTY, DEMERS & McMANUS

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ESTREE, INC., d/b/a LEXUS OF WESTPORT
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Albertson, New York 11507
516-294-5433
File No.: YCW0962N7 JAE

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405 Lexington Avenue
New York, New York 10174
212-599-1515

ECKERT SEAMANS CHERIN & MELLOTT, LLC

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s/h/a LEXUS, A DIVISION OF TOYOTA
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Garden City, New York 11530
646-522-4141

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
MICHAEL DOUKAS,

Index no. 117118/07

Plaintiff,

- against -

**AFFIRMATION IN
SUPPORT**

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF
SANITATION and THE CITY OF NEW YORK,

Defendants.
----- X

TODD J. STRIER, an attorney duly licensed to practice law in the courts of the State of New York, hereby affirms, pursuant to CPLR §2106, the truth of the following under penalties of perjury upon information and belief:

1. Your affirmant is an attorney with the law firm of KELNER & KELNER, ESQS., attorneys for the plaintiff herein, and, as such, is fully familiar with the facts and circumstances of this case by virtue of a review of the file maintained by this office.

2. This affirmation is submitted in support of plaintiff, MICHAEL DOUKAS's, motion for an order, pursuant to CPLR §§1003, 305(a) and 3025(b), granting plaintiff MICHAEL DOUKAS leave to supplement the summons and amend the verified complaint herein so as to add LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL as party defendants in Action number 2, granting this plaintiff leave to file and serve said Supplemental Summons and Amended Verified Complaint and to correct the license plate number of the vehicle in which plaintiff was a passenger on the date of the accident.

3. The above-entitled action number 2 was brought by plaintiff MICHAEL DOUKAS to recover damages for serious permanent injuries arising from a motor vehicle occurrence which happened on February 18, 2007, on Glen Cove Road in the County of Nassau,

City and State of New York. At the time and place of this occurrence, defendant LEVITEN's vehicle, operated by defendant IRIS LEVITEN struck the vehicle in which plaintiff MICHAEL DOUKAS was a passenger. As a result, plaintiff MICHAEL DOUKAS sustained permanent injuries including, but not limited to, cervical injuries, which will require surgical intervention.

4. Action Number 2 was duly commenced by the filing of a Summons and Verified Complaint on December 26, 2007. Issue was joined by service of defendant CITY's answer on or about April 30, 2008, and defendant LEVITEN's answer on or about March 4, 2008. Copies of the summons and complaint and the answers are annexed hereto as Exhibit "A."

5. Plaintiff MICHAEL DOUKAS now seeks leave to supplement the Summons herein and amend his Verified Complaint to add as party defendants the named defendants in Action No. 1 under index number 107681/07, to wit: LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL to Action No. 2 under index number 117118/07.

6. Your affirmant took over representation of plaintiff MICHAEL DOUKAS in the instant action, having taken over the case from a prior firm on April 9, 2008. Upon receipt of the file, it was determined that the defendants named in Action no.1 should have been included as party defendants in Action no. 2 (the DOUKAS action).. Upon information and belief, one of the alleged theories behind the cause of the subject accident deals with a possible product liability case against the manufacturer of defendant LEVITEN's vehicle. As such, it would only be prudent to include those defendants in Action no. 2.

7.. It is both desirable and necessary that LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL be joined as party defendants herein, so that all parties who are or may be liable to plaintiff MICHAEL DOUKAS for damages may be joined in one cause of action, and that this plaintiff's claims against them be determined in that action.

8. CPLR §305 provides in pertinent part that

(a) . . . Where, upon order of the court or by stipulation of all parties or as of right pursuant to section 1003, a new party is joined in the action and the joinder is not made upon the new party's motion, a supplemental summons specifying the pleading which the new party must answer shall be filed with the clerk of the court and served upon such party. *See* CPLR §305(a) (McKinney's 2001).

9. Annexed hereto and made a part hereof as Exhibit "B" is a copy of the proposed Supplemental Summons joining as a party defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, who were not named on the original summons in Action no. 2. *See e.g., Polizzano v. Gotham Construction Corp.*, 47 A.D.2d 48, 365 N.Y.S.2d 186 (1st Dept. 1975). It is respectfully submitted that this plaintiff be permitted to supplement the Summons herein, as said defendants cannot claim prejudice because no new claims other than those already in existence would be asserted. *See, Patrician Plastic Corp. v. Bernadel Realty Corp.*, 25 N.Y.2d 599, 307 N.Y.S.2d 868 (1970).

10. CPLR §3025 provides in pertinent part:

(b) Amendments and supplemental pleadings by leave. A party may amend his pleadings . . . at any time by leave of court. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances.

It is well-settled law that "Section 3025 is to be liberally construed to permit pleadings to be amended and that leave to amend shall be freely given absent prejudice or surprise." *See City of New York v. Crossbay Contracting Corp.*, 235 A.D.2d 10, 662 N.Y.S.2d 462 (1st Dept. 1997) *appeal granted, reargument denied* 250 A.D.2d 1032, 676 N.Y.S.2d 468 (1st Dept. 1998) *reversed in part, appeal dismissed* 93 N.Y.2d 14, 686 N.Y.S.2d 750 (1999); *McCaskey, Davies and Associates, Inc. v. New York City Health & Hospitals Corporation*, 59 N.Y.2d 755, 463 N.Y.S.2d 434 (1983); *Fahey v. County of Ontario*, 44 N.Y.2d 934, 408 N.Y.S.2d 314 (1978).

11. There is no surprise to defendants LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC. d/b/a LEXUS OF WESTPORT and METRO AUTO LEASING, INC. d/b/a THE AUTOMALL since their actions may have led to the injuries sustained by plaintiff MICHAEL DOUKAS in Action No. 2. Additionally, there is no prejudice to the remaining defendants, as this case is still in its early stages of litigation. Moreover, a preliminary conference is upon information and belief being held on October 23, 2008. All parties will take part in the discovery.

12. Annexed hereto and made a part hereof as Exhibit "C" is the proposed Amended Verified Complaint joining LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL as party defendants in Action No. 2. The proposed amendment to this plaintiff's Complaint does not add new facts to this case, rather it only seeks to include new defendants who may potentially be liable to this plaintiff.

13. In light of the foregoing it is respectfully requested that the court allow plaintiff MICHAEL DOUKAS to supplement the Summons and amend his Verified Complaint by adding LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL as additional party defendants in Action no. 2 and, upon amendment, permit service of same upon them.

14. It is further requested that the caption of Action no. 2 be amended to add LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL as party defendants. As amended, the caption should read as follows:

[see next page]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x
MICHAEL DOUKAS,

Index No. 117118/07

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF
SANITATION, THE CITY OF NEW YORK,
LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA, INC., ESTREE, INC. d/b/a LEXUS
OF WESTPORT and METRO AUTO LEASING,
INC. d/b/a THE AUTOMALL

Defendants.
----- x

WHEREFORE, plaintiff MICHAEL DOUKAS respectfully requests that the within motion be granted in its entirety, and that this court issue an order:

- a) pursuant to CPLR §1003, adding LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, as party defendants in Action No. 2; and
- b) pursuant to CPLR §305(a), permitting the issuance, filing and service of a supplemental summons in Action No. 2 adding as party defendants LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL; and
- c) pursuant to CPLR §3025(b), permitting plaintiff leave to file and serve an amended complaint upon LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL and to amend the caption in action no.

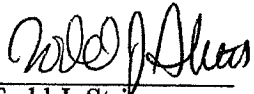
2; and

d) together with such other and further relief as the court may deem just and proper
in the premises.

Dated: New York, New York
October 23, 2008

Yours, etc.

KELNER and KELNER
Attorneys for Plaintiff DOUKAS

By: 
Todd J. Strier
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

To: **CONNORS & CONNORS, P.C.**
Attorneys for Defendant Iris Leviten Action No. 2
766 Castleton Avenue
Staten Island, N.Y. 10310
718-442-1700

MICHAEL CARDOZO, ESQ.
Attorneys for Defendants in Action no. 2
CITY OF NEW YORK/DIGIROLOAMO
100 Church Street, 4th Floor
New York, New York 10007
File No.: 2008-001345

GAIR GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff in Action no. 1
IRIS LEVITEN
80 Pine Street
New York, New York 10005
212-943-1090

AHMUTY, DEMERS & McMANUS
Attorneys for Defendant in Action no. 1
ESTREE, INC., d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, New York 11507
516-294-5433
File No.: YCW0962N7 JAE

STEIN RISO MANTEL, LLP

Attorneys for Defendant in Action no. 1
METRO AUTO LEASING, INC., d/b/a
THE AUTO MALL
405 Lexington Avenue
New York, New York 10174
212-599-1515

ECKERT SEAMANS CHERIN & MELLOTT, LLC

Attorneys for Defendant in Action No. 1
TOYOTA MOTOR SALES, USA INC.
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, USA, INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
914-949-2909

RICHARD JANOWITZ, ESQ.

Attorneys for Defendant in Action no. 2 / 3
ANTHONY DIGIROLAMO
229 7th Street, Suite 304
Garden City, New York 11530
646-522-4141

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff(s),

AMENDED ANSWER

-against-

Index #: 117118/07

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION AND
THE CITY OF NEW YORK,

Law Dept. #: 2008-001345

Defendant(s).
-----X

Defendants THE CITY OF NEW YORK, and THE CITY OF NEW YORK AND
THE CITY OF NEW YORK S/H/A DEPARTMENT OF SANITATION AND ANTHONY
DIGIROLAMO, by MICHAEL A. CARDOZO, Corporation Counsel, answering the complaint,
allege upon information and belief:

1. Deny each allegation set forth in paragraph(s) 9, 14, 16-18, inclusive.
2. Deny knowledge or information sufficient to form a belief with respect to
the truth of the allegations set forth in paragraph(s) 1, 3, inclusive.
3. Deny the allegations set forth in paragraph(s) 6, inclusive, except that a
notice of a claim was presented, that more than thirty days have elapsed without adjustment
thereof.
4. Deny each allegation set forth in paragraph(s) 7, inclusive, except that
with respect to those portions of the street(s), sidewalks and appurtenances referred to in the
complaint which were or may have been owned by the City of New York, defendant(s) had such
duties as were imposed by law.

5. Deny each allegation set forth in paragraph(s) 8, inclusive, except that the CITY OF NEW YORK owned, and ANTHONY DIGIROLAMO operated the vehicle identified in the complaint.

6. Deny each allegation set forth in paragraph(s) 4, 5, inclusive, except that the City of New York is a municipal corporation which maintains a Department of Sanitation pursuant to law.

7. Deny each allegation set forth in paragraph(s) 2, 10-13, 15, inclusive, so far as the same may refer to the defendant(s) answering hereby.

AFFIRMATIVE DEFENSE(S)

8. Plaintiff(s)' culpable conduct caused or contributed, in whole or in part, to his/her/their injuries and or damages.

9. At all times mentioned in the complaint, plaintiff(s) knew or should have known in the exercise of due/reasonable care of the risks and dangers incident to engaging in the activity alleged. Plaintiff(s) voluntarily performed and engaged in the alleged activity and assumed the risk of the injuries and/or damages claimed. Plaintiff(s) failed to use all required, proper, appropriate and reasonable safety devices and/or equipment and failed to take all proper, appropriate and reasonable steps to assure his/her/their safety. Plaintiff(s)' primary assumption of risk solely caused his/her/their injuries and/or damage and defendant(s) owed no duty to the plaintiff(s) with respect to the risk assumed. Plaintiff(s)' express assumption of risk solely caused his/her/their injuries and/or damage and defendant(s) owed no duty to the plaintiff(s) with respect to the risk assumed. Plaintiff(s)' implied assumption of risk caused or contributed, in whole or in part to his/her/their injuries. In any action for injuries arising from the use of a vehicle in, or upon which plaintiff(s) were riding; it will be claimed that the injuries and/or

damages sustained were caused by the failure of the plaintiff(s) to use available seat-belts and/or other safety devices.

10. Defendants are immune from suit for their exercise of discretion in the performance of a governmental function and/or their exercise of professional judgment.

11. The amounts recoverable by plaintiff(s) are subject to limitation pursuant to Section 1601 of the Civil Practice Law and Rules, by reason of the culpable conduct of other person(s) who are, or with reasonable diligence could have been made party defendant(s) to this action, or pursuant to Section 15-108 of the General Obligations Law, by reason of a prior settlement between plaintiff(s) and said person(s), or pursuant to Section 4545 of the Civil Practice Law and Rules are subject to reduction by collateral sources received by plaintiff(s), or by reason of the fact that punitive damages are not recoverable against municipal defendant(s).

12. This court lacks jurisdiction over the defendant(s) ANTHONY DIGIROLAMO, in that said defendant(s) were not personally served with the summons.

13. In cases involving authorized emergency vehicle(s) engaged in an emergency operation, or persons, teams, motor vehicles, and other equipment, while actually engaged in work on a highway, or hazard vehicles while actually engaged in hazardous operations on or adjacent to a highway, defendant(s) were not reckless in the manner in which they acted, and are entitled to the benefits of VTL sec. 1103 and/or VTL sec. 1104.

CROSS-CLAIMS

14. Any damages sustained by the plaintiff(s) were caused in whole or in part by the acts or omissions of defendant(s) IRIS LEVITEN, who are or may be liable to the defendant(s) answering hereby for contribution on the basis of their equitable shares of responsibility, or for indemnity on the basis of a contract between them, actual or implied.

WHEREFORE, defendant(s) demand judgment dismissing the complaint and all cross-claims against them, or, in the event that they are adjudged liable, granting judgment over, or apportioning such liability in accordance with their equitable shares of responsibility, and awarding the costs of this action, together with such other and further relief as to the court may seem just.

MICHAEL A. CARDOZO
Corporation Counsel
100 Church Street
New York, New York 10007

VERIFICATION

ABAN COOPER being duly sworn deposes and says that: deponent is an employee of the Office of the Corporation Counsel; that deponent has read the foregoing answer, cross-claim(s) and counterclaim(s), if any, and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters alleged upon information and belief, which deponent believes to be true based upon the files, books and records maintained by The City of New York, New York City Health and Hospitals Corporation or the New York City Board/Department of Education, and the officers or agents thereof; and further swears that on this date he/she caused said answer, cross-claim(s) and counterclaim(s), if any, together with the accompanying combined demands for particulars and discovery, to be served upon:

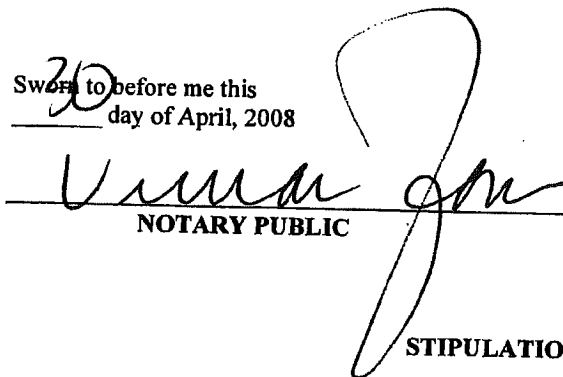
THEODORE A. NAIMA, ESQ
the attorney(s) for Plaintiff(s)
at 229 SEVENTH STREET, SUITE 300
GARDEN CITY, NEW YORK 11530

by depositing a copy of the same, into a box situated at 100 Church Street in the Borough of Manhattan, City of New York, for subsequent daily delivery to the United States Post Office.

Dated: New York, New York
April 20, 2008


ABAN COOPER

Sworn to before me this
20 day of April, 2008


NOTARY PUBLIC

VIVIAN JONES
Commissioner of Deeds
City of New York No. 2-11288
Commission Expires Jan. 4, 2010

STIPULATION/CERTIFICATION

IT IS HEREBY STIPULATED AND AGREED, that at any time prior to the filing of a note of issue in this action, plaintiff(s) may amend the complaint to name additional defendants herein, provided that such additional defendants shall not include the City of New York, the Board/Department of Education, Health & Hospitals Corporation, City University of New York, or any of their respective departments, subdivisions or employees, nor any other person entitled to defense or indemnification by the City of New York.

The signature below shall constitute the signature required pursuant to NYCRR 130-1.1-a and pertains to all of the enclosed documents: answer, cross-claim(s) and counter-claims(s), if any, together with the accompanying combined demands for particulars an discovery.

Dated: New York, New York
April 29, 2008

By:


ERIC WEST / SHEILA WEINSTEIN
Assistant Corporation Counsel

Attorney(s) for Plaintiff(s)

Please do not send correspondence to the above named Assistant Corporation Counsel unless otherwise directed. See Answer back for additional contact information.

Index #: 117118/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff(s),

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW YORK CITY
DEPARTMENT OF SANITATION AND THE CITY OF NEW YORK,

Defendant(s).

AMENDED ANSWER

MICHAEL A. CARDOZO

Corporation Counsel

Attorney for Defendants

THE CITY OF NEW YORK, and THE CITY OF NEW YORK AND
THE CITY OF NEW YORK S/H/A DEPARTMENT OF SANITATION
AND ANTHONY DIGIROLAMO,

100 Church Street

New York, New York 10007

Telephone Numbers:

Pleadings Unit (appearances & amendments)

(212) 788-0499

Early Intervention Unit (settlements – all Boroughs)

(212) 788-1215

All Other Matters (by county of venue)

(718) 590-3487 (EBT's-3971) (Bronx)

(718) 222-2000 (EBT's-2069) (Kings)

(212) 788-0646 (EBT's-0628) (New York)

(718) 206-4731 (EBT's (718) 206-4703) (Queens)

(718) 447-5983 (EBT's-5985) (Richmond)

Please refer to the following Law Dept. #: **2008-001345**

and indicate the County in which the action is pending in all papers,
correspondence and other communications with respect thereto.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff(s)

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO
NEW YORK CITY DEPARTMENT OF
SANITATION and THE CITY OF NEW
YORK,

Defendant(s)

VERIFIED ANSWER
WITH
CROSS CLAIM

Index #: 117118/07

Defendant(s) Iris Leviten, by the undersigned answering the VERIFIED complaint of the plaintiff(s), upon information and belief, states as follows:

ANSWERING A FIRST CAUSE OF ACTION

FIRST: Denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered and designated as: 1,3,4,5,6,7,8,9,10,11,17

SECOND: Denies each and every allegation contained in paragraphs numbered and designated as: 12,13,14,15,16,18

THIRD: Admits each and every allegation contained in paragraphs numbered and designated as: 2

AS AND FOR AN AFFIRMATIVE DEFENSE – COMPARATIVE NEGLIGENCE

The personal injuries and/or property damage alleged to have been sustained by the plaintiff(s) were caused entirely or in part through the culpable conduct attributable to the plaintiff(s) and the defendant seeks a dismissal or reduction in any recovery had by the plaintiff in the proportion which the culpable conduct attributable to the plaintiff(s) bears to the culpable conduct which caused the damages.

AS AND FOR AN AFFIRMATIVE DEFENSE – SEAT BELT

The plaintiff(s) damages must be mitigated by the plaintiff(s) failure to use the available seat belts or infant restraining devices and that the damages claimed to have been sustained were caused by the lack of use of said seat belts and/or infant restraining devices.

AS AND FOR AN AFFIRMATIVE DEFENSE – PERSONAL JURISDICTION

Service of process was not in conformity with the C.P.L.R.; therefore this Court does not have jurisdiction over the person of the defendant.

AS AND FOR AN AFFIRMATIVE DEFENSE – COLLATERAL SOURCE

The costs incurred, or paid by plaintiff(s), if any, for medical care, dental care, custodial care or rehabilitation services, loss of earning or other economic loss, in the past or future, were or will, with reasonable certainty be replaced or indemnified, in whole or in part, from a collateral source of the type described in CPLR §4545 and defendant is entitled to have any award reduced in the amount of such payments.

AS AND FOR A CROSS CLAIM AGAINST THE CO-DEFENDANT(S)

Anthony Digirolamo New York City Department of Sanitation The City Of New York , IT IS ALLEGED:

That if the plaintiff(s) Michael Doukas, recover herein, it will be by virtue of the recklessness, carelessness and negligence of the co-defendant(s), Anthony Digirolamo New York City Department of Sanitation The City Of New York ,, above named, and not of the defendant(s) Iris Leviten, and that this answering defendant(s) Iris Leviten, demands judgment for contribution and/or indemnification in whole or in part and that the respective degrees of negligence of the co-defendant(s) Anthony Digirolamo New York City Department of Sanitation The City Of New York ,, be ascertained, determined and adjudicated and that the defendant(s) Iris Leviten, have judgment over and against the above-named co-defendant(s) Anthony Digirolamo New York City Department of Sanitation The City Of New York ,, as their proportionate share commensurate with their respective degrees of negligence as will be decided on at the trial herein.

WHEREFORE, the defendant(s) Iris Leviten, demands judgment dismissing the plaintiff(s) Michael Doukas, Complaint or in the alternative, that this answering defendant(s) Iris Leviten, have judgment for contribution and/or indemnification in whole or in part over and against the co-defendant(s) Anthony Digirolamo New York City Department of Sanitation The City Of New York ,, above named, to the degree and proportionate share of the plaintiff(s), Michael Doukas recovery as to their respective degrees of negligence as determined herein, with costs and disbursements of this action.

DATED: Westbury, New York
March 04, 2008

Dean A. Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4422
Our File No: 08R0185
Claim No: 0244514670101035 (J570)

VERIFICATION

Dean A. Barbakoff, Esq., an attorney admitted to practice in the Courts of this State, and associated with the firm of KAY & GRAY, attorneys for the defendant(s) Iris Leviten, states:

That your affirmant has read the foregoing Answer and knows the contents thereof; that the same is true to your affirmant's own knowledge except as to the matters which are stated therein to be alleged on information and belief, and as to those matters your affirmant believes it to be true. The source of your affirmant's information and belief, is an investigation caused to be made with respect to the facts in this action.

That the reason this verification is made by affirmant and not by the defendant is because the defendant does not reside within the county where KAY & GRAY maintain their office.

The undersigned affirms that the foregoing statement is true, under penalties of perjury.

Date: Westbury, New York
March 04, 2008


Dean A. Barbakoff, Esq.

Index no. **117118/07**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF **NEW YORK**

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF
SANITATION and THE CITY OF NEW YORK,

Defendants.

NOTICE OF MOTION

KELNER & KELNER, ESQS.
Attorneys for Plaintiff
Office and Post Office Address, Telephone
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

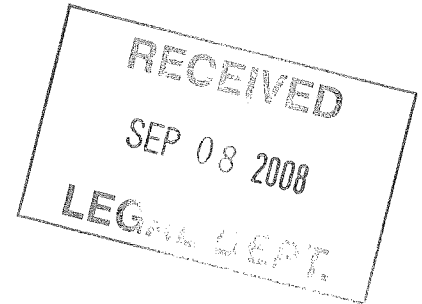
Index No. 107681/07

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X



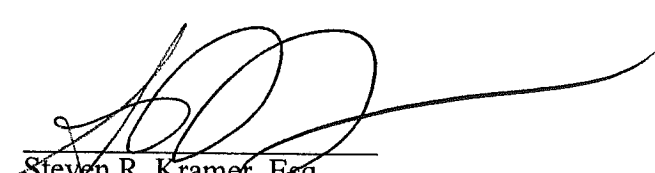
To: Nuzzi Brothers
77 Jericho Turnpike
New Hyde Park, NY 11040-4515

WE COMMAND YOU that, all business and excuses being laid aside, you send certified copies of the records listed below, for the patient identified below, to the undersigned at Eckert Seamans Cherin & Mellott, LLC, 10 Bank Street, Suite 1061, White Plains, New York, 10606, by the 2nd day of September, 2008:

Records to Be Sent

PLEASE SEE ATTACHED RIDER.

Dated: White Plains, New York
August 08, 2008



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
(914) 949-5424 fax

To: All Counsel

Index No.

COUNTY OF

COURT

against

Plaintiff(s)

Defendant(s)

Judicial Subpoena

DUCCES TECUM

Attorney(s) for

Office; Post Office Address; Telephone No.

It is stipulated that the undersigned witness is excused from attending at the time herein provided or at any adjourned date but agrees to remain subject to, and attend upon, the call of the undersigned attorney.

Date:

Witness

Attorney(s) for

Sworn to before me on

Brenda Barb
Print name beneath signature
Brenda Barb
LICENSE NO.

DESCRIPTOR USE WITH 1 of 3a

Deponent describes the individual served as follows:

Male Female

Other identifying features:

White Skin Black Skin Yellow Skin Brown Skin Red Skin

Black Hair Brown Hair Blond Hair Gray Hair Red Hair

Balding White Hair

14-20 Yrs. 21-35 Yrs. 36-50 Yrs. 51-65 Yrs. Over 65 Yrs.

Under 5' 5'0"-5'3" 5'4"-5'8" 5'9"-6'0" Over 6'

Under 100 Lb. 100-130 Lb. 131-160 Lb. 161-200 Lb. Over 200 Lb.

Deponent also enclosed a copy of same in a postpaid sealed wrapper properly addressed to said witness at witness' last known residence and deposited said wrapper in a post office—official depository under the exclusive care and custody of the United States Postal Service within New York State

on: 19 at: A.M. P.M. on: 19 at: A.M. P.M.

1. INDIVIDUAL deponent served the within subpoena on the witness therein named, by delivering a true copy thereof to the witness personally and at the same time paying (or tendering) in advance \$ 1500 the authorized travelling expenses and one day's witness fee; deponent knew the person so served to be

2. CORPORATION deponent served the within subpoena on Muzzi Auto Collision corporation, the witness therein named, by delivering a true copy thereof to personally, whom deponent knew to be the authorized travelling expenses and one day's witness fee; deponent knew the corporation so served to be said corporate witness

3. ALTERNATIVE METHOD witness' actual place of business—dwelling place—usual place of abode, deponent served the within subpoena upon the witness (a) by delivering thereat, a true copy thereof to a person of suitable age and discretion (b) by affixing a true copy thereof to the door thereof, deponent was unable, with due diligence to find witness or a person of suitable age and discretion, thereat, having called there

That on 8/20/28 at No. 1222pm being duly sworn, deposes and says: that deponent is not a

CHECK APPLICABLE BOX AND FILL IN FORM

RIDER A

1. All records and documents concerning the repair, service and maintenance of the 2007 Lexus ES350 Vehicle Identification No. JTHBJ46G27201246.

2. All records and documents concerning the transport, storage and movement of the 2007 Lexus ES350 Vehicle Identification No. JTHBJ46G27201246.

3. All records and documents concerning the alteration or removal of any component part(s) from the 2007 Lexus ES350 Vehicle Identification No. JTHBJ46G27201246.

4. All photographs of the 2007 Lexus ES350 Vehicle Identification No. JTHBJ46G27201246.

5. All photographs of the accident scene, located on the Ten Mile Trail out of Brantingham, in the Town of Hempstead, County of Nassau involving the 2007 Lexus ES350 Vehicle Identification No. JTHBJ46G27201246.

6. All photographs of Iris Leviten from February 18, 2007 to the present.

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

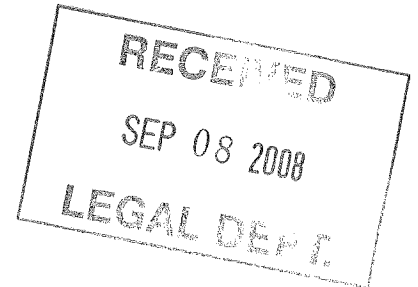
Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

Index No. 107681/07



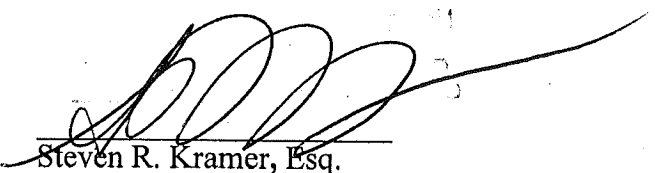
**To: Alladin Auto Body
8613 Bitmas Street
Brooklyn, NY 11236**

WE COMMAND YOU that, all business and excuses being laid aside, you send certified copies of the records listed below, for the patient identified below, to the undersigned at Eckert Seamans Cherin & Mellott, LLC, 10 Bank Street, Suite 1061, White Plains, New York, 10606, by the 2nd day of September, 2008:

Records to Be Sent

PLEASE SEE ATTACHED RIDER.

Dated: White Plains, New York
August 08, 2008



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
(914) 949-5424 fax

To: All Counsel

{V0010251.1}

TOY-RQ-05E-00002625

to this action, is over 18 years of age and is duly at being sworn, deposes and says: that deponent is not a pa
That on 8/19/08 1:20 19 at No. 8613 Ditmas, Brooklyn, NY

CHECK APPLICABLE BOX AND FILL IN FORM

INDIVIDUAL

deponent served the within subpoena on Larry Alladin the witness therein named, by delivering a true copy thereof to witness personally and at the same time paying (or tendering) in advance \$ 15 the authorized travelling expenses and one day's witness fee: deponent knew the person so served to be witness described in said subpoena.

CORPORATION

deponent served the within subpoena on a corporation, the witness therein named, by delivering a true copy thereof to personally, whom deponent knew to be the of said corporation, and at the same time paying (or tendering) in advance \$ the authorized travelling expenses and one day's witness fee: deponent knew the corporation so served to be said corporate witness.

ALTERNATIVE METHOD

witness' actual place of business—dwelling place—usual place of abode, deponent served the within subpoena upon the witness strike-out either (a) or (b)
(a) by delivering thereat, a true copy thereof to a person of suitable age and discretion
(b) by affixing a true copy thereof to the door thereof, deponent was unable, with due diligence to find witness or a person of suitable age and discretion, thereat, having called there

on.....19..... at..... A.M. P.M. on.....19..... at..... A.P.
on.....19..... at..... A.M. P.M. on.....19..... at..... A.P.

deponent also enclosed a copy of same in a postpaid sealed wrapper properly addressed to said witness at witness' last known residence No.

in—a post office—official depository under the exclusive care and custody of the United States Postal Service within New York State and deposited said wrapper

DESCRIPTION USE WITH 1 or 3a

Deponent describes the individual served as follows:

- Male Female
- White Skin Black Skin Black Hair Brown Hair
- Yellow Skin Blond Hair White Hair Balding
- Brown Gray Hair 14-20 Yrs. 21-35 Yrs. 36-50 Yrs. 51-65 Yrs. Over 65 Yrs.
- Red Skin Red Hair Under 5' 5'0"-5'3" 5'4"-5'8" 5'9"-6'0" Over 6'
- Under 100 Lbs. 100-130 Lbs. 131-160 Lbs. 161-200 Lbs. Over 200 Lbs.

Other identifying features:

Sworn to before me on

Aug 19, 2008
Anna Ditroia

ANNA DITROIA
Notary Public, State Of New York
No. 01D15042558

Qualified In Westchester County
Commission Expires April 24, 2011

[Signature]

Print name beneath signature

LICENSE NO.....

Index No.

COURT COUNTY OF

Plaintiff(s)

against

Defendant(s)

Judicial Subpoena

DUCES TECUM

Attorney(s) for

Office; Post Office Address; Telephone No.

It is stipulated that the undersigned witness is excused from attending at the time herein provided or at any adjourned date but agrees to remain subject to, and attend upon, the call of the undersigned attorney.

Dated:

Witness

Attorney(s) for

RIDER A

1. All records and documents concerning the repair, service and maintenance of the 2007 Lexus ES350 Vehicle Identification No. JTHBJ46G27201246.

2. All records and documents concerning the transport, storage and movement of the 2007 Lexus ES350 Vehicle Identification No. JTHBJ46G27201246.

3. All records and documents concerning the alteration or removal of any component part(s) from the 2007 Lexus ES350 Vehicle Identification No. JTHBJ46G27201246.

4. All photographs of the 2007 Lexus ES350 Vehicle Identification No. JTHBJ46G27201246.

5. All photographs of the accident scene, located on the Ten Mile Trail out of Brantingham, in the Town of Hempstead, County of Nassau involving the 2007 Lexus ES350 Vehicle Identification No. JTHBJ46G27201246.

6. All photographs of Iris Leviten from February 18, 2007 to the present.

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,


Defendant.
-----X

COUNSELORS :

PLEASE TAKE NOTICE, that the within is a true copy of an Order by Honorable Carol Edmead, J.S.C. dated July 2, 2008, and having been filed with the Clerk of Court of New York County on July 7, 2008.

Dated: White Plains, New York
July 21, 2008

Yours etc.



By: STEVEN R. KRAMER, ESQ.
ECKERT SEAMANS CHERIN & MELLOTT, LLC.
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
S/H/A "LEXUS, A DIVISION OF TOYOTA
MOTORS SALES, U.S.A., INC."
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
Fax: (914) 949-5424

To: GAIR, GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff (Action #1)
80 Pine Street
New York, New York 10005
(212) 943-1090

Index No. 107681707

RECEIVED

JUL 21 2008

LEGAL DEPT.

AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant (Action #1)
ESTREE, INC.
D/B/A LEXUS OF WESTPORT
123 William Street
New York, New York 10038
(212) 513-7788

STEIN RISO MANTEL LLP
Attorneys for Defendant (Action #1 - Index # 11718/07)
METRO AUTO LEASING, INC.
D/B/A THE AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 599-1515

Dean A. Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant Iris Leviten
(Action #1 - Index # 11718/07)
875 Merrick Avenue
Westbury, NY 11590
516-229-4422
File # 08R0185

KELNER & KELNER, ESQS.
Attorneys for Plaintiff, Michael Doukas (Action #2 - Index #: 117118/07)
140 Broadway - 37th floor
New York, New York 10005
212-425-0700

Michael Cordoza, Esq.
Attorneys for Defendant Anthony Digirolamo,
New York City Department of Sanitation
and The City of New York - Action #2
100 Church Street
New York, New York 10007
212-788-0303

YCN 0462N FJAE

REC'D JUL 08 2008

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD

PART 35

Index Number : 107681/2007

LEVITTEN, IRIS

vs.

LEXUS

SEQUENCE NUMBER : 003

CONSOLIDATION/JOINT TRIAL

INDEX NO. _____

MOTION DATE 6/30/08

MOTION SEQ. NO. 003

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED _____

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...

Answering Affidavits - Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

It is hereby

ORDERED that the application of defendant Iris Leviten in the action *Michael Doukas v Iris Leviten, et al.*, Index No. 117118/07 ("Action 2") and defendant in action *Anthony Digirolamo v Iris Leviten*, Index No. 102331/08 ("Action 3") to consolidate Actions 2 and 3 with the instant action, *Iris Leviten v Lexus, et al.*, Index No. 107681/07 ("Action 1") for joint discovery and joint trial, pursuant to CPLR § 602 is granted; and it is further

ORDERED that the cross application of defendant in Action #1, Lexus, pursuant to CPLR §3103 is granted as follows:

- (1) the subject 2007 Lexus ES 350 vehicle, bearing vehicle identification number JTHBJ46G271246 (the "subject vehicle") shall be preserved in its post-accident condition throughout the entirety of this litigation, including appeal, and shall not be destroyed, and/or altered; nor shall any components of the subject vehicle be altered and/or destroyed;

Dated: _____

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

JUL 07 2008

COUNTY CLERK'S OFFICE

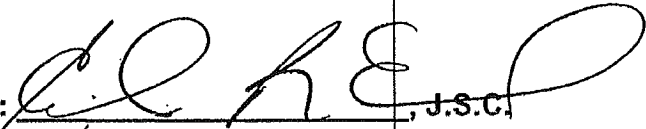
NEW YORK

- (2) the subject vehicle shall be preserved throughout this litigation, and any appeals, in a cool, dry indoor-covered environment;
- (3) no party, or any one acting on its behalf, shall conduct any destructive testing, destructive examination, or disassembly of the subject vehicle or any of its components unless all counsel of record mutually agree in writing to the destructive testing, destructive examination or disassembly, or the Court issue an order as a result of a motion made on notice to all counsel of record, permitting destructive testing, destructive examination or disassembly; and
- (4) All inspections of the subject vehicle must be on seven (7) days prior written notice to all counsel, and each party, including its counsel and experts, is permitted to attend any inspection of the subject vehicle; and it is further

ORDERED that counsel for plaintiff in Action 1 shall serve a copy of this Order with notice of entry within twenty days of entry on all counsel.

FILED
 JUL 07 2008
 COUNTY CLERK'S OFFICE
 NEW YORK

Dated 7/2/08

ENTER:  J.S.C.
 HON. CAROL EDMOAD

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

AFFIDAVIT OF SERVICE

STATE OF NEW YORK :
 : ss:
COUNTY OF WESTCHESTER :

Denise Falzerano, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Westchester County, New York.

On July 21, 2008, deponent served the within **Order with Notice of Entry** upon:

GAIR, GAIR CONASON STEIGMAN & MACKAUF
80 Pine Street
New York, New York 10005

AHMUTY, DEMERS & MCMANUS
123 William Street
New York, New York 10038

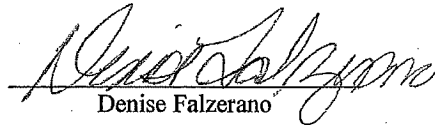
STEIN RISO MANTEL LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

Dean A. Barbakoff, Esq.
KAY & GRAY
875 Merrick Avenue
Westbury, NY 11590

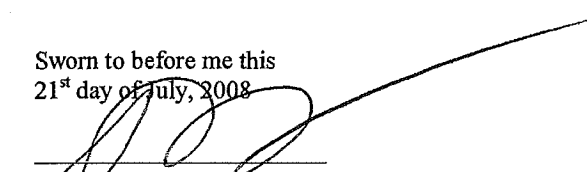
KELNER & KELNER, ESQS.
140 Broadway – 37th floor
New York, New York 10005

Michael Cordoza, Esq.
100 Church Street
New York, New York 10007

by depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York.


Denise Falzerano

Sworn to before me this
21st day of July, 2008


Steven Kramer
NOTARY PUBLIC, State of New York
No. 02KR6150796
Qualified in Westchester County
Commission Expires 8/7/2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index Number: 107681/07

-----X
IRIS LEVITEN,

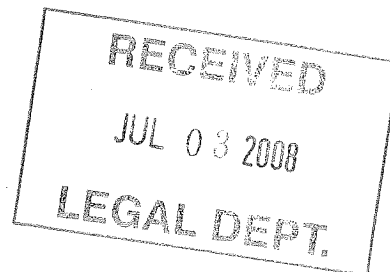
**REPLY
AFFIRMATION**

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X



HOWARD S. HERSHENHORN, an attorney duly admitted to practice law
before the Courts of the State of New York, hereby affirms under penalty of perjury pursuant to
CPLR 2106:

I am a member of the firm of GAIR, GAIR, CONASON, STEIGMAN &
MACKAUF, attorneys for the plaintiff, and as such, I am fully familiar with all of the facts,
circumstances pleading and proceedings pertaining to this action.

I submit this affirmation in support of the motion for consolidation and in
opposition to the defendant's notice of cross-motion.

At the outset it should be noted that plaintiff has taken all measures reasonably
possible to secure and preserve the subject vehicle. Plaintiff has spent over \$6,000.00 to store
the vehicle. Plaintiff has, on multiple occasions, asked the defendants to share in the cost of
such preservation. However, the defendants have balked. Defendants have had an inspection
of the vehicle along with their experts and have themselves taken numerous photographs and

video. Indeed, the defendant Lexus has examined the vehicle on at least two occasions and the defendant dealership on at least one.

Your affiant has no problem agreeing to continue to store the vehicle.

However, the stipulations and conditions therein require the defendants to share equally in the future costs of storage and to share equally in the past costs involved.

With respect to the affirmation of Thomas G. Chojnacki, it contains various misstatements of the facts. However, since we all agree that the vehicle should be preserved, we will not take this court's time to review this any more in depth.

Dated: New York, New York
June 23, 2008



HOWARD S. HERSHENHORN

TO: Eckert, Seamans, Cherin and Mellott, Inc.
Attorneys for Defendant TOYOTA MOTOR SALES, USA
s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES, USA
10 Bank Street, Suite 1061
White Plains, NY 10606
914-949-2909

Ahmuty, Demers & McManus
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
123 Williams Street
New York, New York 10038
212-513-7788

Stein Riso Mantel, LLP
Attorneys for Metro Auto Leasing, Inc.
The Chrysler Building
405 Lexington Avenue, 42nd Fl.
New York, New York 10174
(212) 599-1515

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X Index No. 107681/07

IRIS LEVITEN,

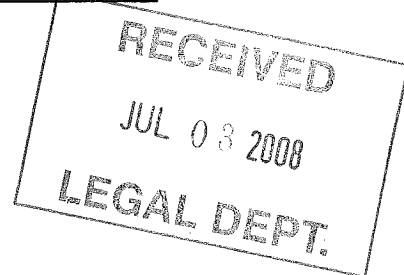
Plaintiff,

RESPONSE TO
DEMAND FOR
INSURANCE
COVERAGE

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., ESTREE, INC., d/b/a LEXUS OF WESTPORT,
and METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL,

Defendants.



-----X

Defendant, Metro Auto Leasing, Inc., through its attorneys, Stein Riso Mantel, LLP,
as and for its response to Plaintiff's Demand For Insurance Coverage pursuant to CPLR
3101(f), responds as follows:

Request No. 1

The complete and full insurance agreements, including face sheet, under which the
insurance of the defendants may be liable to satisfy part or all of the judgment which
may be entered in the above-entitled action or to indemnify or reimburse payments
made to satisfy a judgment in the above-entitled action.

Response to Request No. 1

Defendant does not have any insurance coverage pertaining to this litigation.

Request No. 2

The complete name and address of the insurance company(s). Their file and policy
numbers and coverage amount.

Response to Request No. 2

See response to Request No. 1.

Request No. 3:

A statement and an affidavit as to whether or not there is any additional, concurrent, excess or umbrella coverage which would be applicable. If there is such coverage, all information as to those policies as requested in "2" above.

Response to Request No. 3

See response to Request No. 1.

Request No. 4

In the case of no coverage, please provide an affidavit of no excess sworn to by your client. In case of disclaimer, reservation of right or any other conditions relevant to any of the above coverage, please so state.

Response to Request No. 4

See response to Request No. 1.

Stein Riso Mantel, LLP

By: Edward R. Minson

Edward R. Minson

Attorneys for Metro Auto Leasing, Inc.

405 Lexington Avenue, 42nd Fl.

New York, New York 10174

(212) 599-1515

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X Index No. 107681/07

IRIS LEVITEN,

Plaintiff,

RESPONSE TO
NOTICE FOR
DISCOVERY &
INSPECTION

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., ESTREE, INC., d/b/a LEXUS OF WESTPORT,
and METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL,

Defendants.

-----X

Defendant, Metro Auto Leasing, Inc., through its attorneys, Stein Riso Mantel, LLP, as and for its response to Plaintiff's Notice For Discovery & Inspection, responds as follows:

GENERAL OBJECTIONS

1. Defendant objects to the requests to the extent they seek information prepared in anticipation of litigation and/or trial preparation material and/or protected by the attorney-client privilege, the attorney work product, or other privileges or immunities from disclosure.

2. Defendant, in providing the response, does not waive any objection based on relevance, materiality, competence, privilege, immunity from disclosure, admissibility or other grounds. Nor does Defendant waive any of the privileges or immunities set forth in paragraph 1 above. Defendant also reserves the right to object to any additional discovery efforts that Plaintiff might make in this litigation relating to the matters covered by this

response. Neither an indication that documents will be produced nor an objection to an interrogatory indicates that any such document exists or is in Defendant's custody, possession or control. Defendant will not be obligated to create documents that do not otherwise exist.

3. Inadvertent production of any information or privileged or objectionable document shall not be deemed a waiver of such privilege or objection. Defendant reserves the right to require the return of any document produced inadvertently and all copies thereof.

4. Defendant objects to the requests to the extent it seeks documents already provided in discovery in this litigation by another party, and Defendant will not duplicate any such documentation in response to these requests.

REQUESTS

Request No. 1

The names and addresses of all persons claimed by defendant(s) to have either witnessed the events complained of or to have firsthand knowledge of said events or knowledge of the relevant facts and circumstances surrounding the events, whether by the defendant(s) at the scene or thereafter obtained by defendant(s)' attorney(s) or representatives. If no such persons are known to defendant(s) or defendant(s)' representatives, so state in reply to this demand. The plaintiff(s) will object at the time of trial to the testimony of any persons not specifically identified by name and address. Zellman v. Metropolitan Transportation Authority, 40 A.D.2d 48, 339 N.Y.S.2d 255 (2d Dept. 1973).

Response to Request No. 1

Defendant is not aware of any witnesses at this time; however, Defendant reserves the right to amend this response if any witnesses become available.

Request No. 2

The names and addresses of all witnesses who can testify to notice and the condition complained of. Hoffman v. Rosan, 73 A.D.2d 207, 4265 N.Y.S.2d 619 (1st Dept. 1980).

Response to Request No. 2

See response to Request No. 1.

Request No. 3

The names and addresses of all witnesses who possess vital information which bears on the liability issues. Hughes v. Elias, 120 A.D. 2d 703, 502 N.Y.S.2d 771 (2d Dept. 1986).

Response to Request No. 3

See response to Request No. 1.

Request No. 4

The names and addresses of all witnesses who will testify to the existence of an elective condition which was a competent producing cause of the incident. Zayas v. Morales, 5 A.D.2d 610, N.Y.S.2d 279 (2d Dept. 1974).

Response to Request No. 4

See response to Request No. 1

Request No. 5

All statements of the plaintiff(s), including written statements, tape recordings videotapes, or any transcripts thereof

Response to Request No. 5

Defendant does not have responsive documents in its custody, possession or control.

Request No. 6

Any and all photographs or moving pictures in the possession of the defendant(s) taken of the plaintiff(s), including surveillance videotapes, films and photographs and audio tapes, including transcripts or memoranda thereof. There shall be disclosure of all portions of such material, including out-takes, rather than only those portions a party intends to use; CPLR §3101(1).

Response to Request No. 6

Defendant does not have responsive documents in its custody, possession or control.

Request No. 7

Each and every photograph, videotape, film, audiotape, including out-takes, Memoranda and/or transcripts thereof, of any of the parties, their agents, servants, employees or other allegedly acting on behalf of the parties, including but not limited to, all

such material that will be offered or referred to at trial, together with all such material in the possession or control of the party to whom the within Notice is addressed.

Response to Request No 7

Defendant does not have responsive documents in its custody, possession or control.

Request No. 8

Any and all records in the possession, custody and/or control of the defendant(s) pertaining to the plaintiff(s), including, but not limited to, office records, bills, insurance forms, x-rays, radiographic studies and reports, laboratory tests, laboratory analyses, diagnostic cards, physicians' notes, nurses' notes, prescriptions, treatment cards, consultation reports and hospital records and/or reports.

Response to Request No. 8

Defendant does not have responsive documents in its custody, possession or control.

Request No. 9

Any incident reports filed in the regular course of business relating to this occurrence.

Response to Request No. 9

Defendant does not have responsive documents in its custody, possession or control.

STEIN RISO MANTEL, LLP

By: Edward R. Minson
Edward R. Minson
Attorneys for Defendant
Metro Auto Leasing, Inc.
The Chrysler Building
405 Lexington Avenue, 42nd Fl.
New York, New York 10174
(212) 599-1515

TO: Ahmuty, Demers & McManus
123 Williams Street
New York, New York 10038

Jay A. Rappaport, Esq.
Aaronson Rappaport Reinstein & Deutsch, LLP
757 Third Avenue
New York, New York 10017

GAIR, GAIR, CONASON, STEIGMAN & MACKAUF
80 Pine Street
New York, New York 10005-1768

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

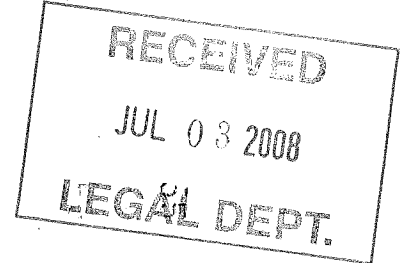
-against-

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----X

Index # 108013/07

**AFFIRMATION IN
SUPPORT**



THOMAS G. CHOJNACKI, an attorney duly admitted to practice law in the State of New York, hereby affirms the truth of the following under the penalties of perjury:

1. That I am an associate with the firm of AHMUTY, DEMERS & McMANUS, ESQS., attorneys for the defendants in this matter, and as such, I am fully familiar with the facts and circumstances surrounding this matter.

2. I submit this Affirmation in Support of the motion submitted by Dean Barbakoff on behalf of Iris Leviten as a defendant in actions brought against her by Michael Doukas and Anthony Digirolamo

3. For the reasons set forth in the Affirmation in Support of Mr. Barbakoff, it is respectfully submitted that consolidation of these actions for the purposes of joint trial is appropriate.

WHEREFORE, it is respectfully requested that this Court issue an Order directing that the three cases cited in the motion be tried jointly.

Dated: Albertson, New York
May 29, 2008



THOMAS G. CHOJNACKI, ESQ.
AHMUTY, DEMERS & McMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, NY 11507
(516) 294-5433
Our File No.: YCW 0962N7 JAE

TO:

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiffs
80 Pine Street, 34th Floor
New York, NY 10005

AARONSON, RAPPAPORT
FEINSTEIN & DEUTSCH, LLP
757 Third Avenue
New York, New York 10017

STEIN RISON & MANTEL, LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

Index No. 107681/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

=====
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC. d/b/a
LEXUS OF WESTPORT and METRO AUTO LEASING, INC. d/b/a THE AUTOMALL

Defendants.
=====

AFFIRMATION IN SUPPORT

=====
AHMUTY, DEMERS & McMANUS, ESQS.
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, New York 11507
(516) 294-5433
Our File No.: YCW 0962N7 JAE

=====
To:
Attorney(s) for ESTREE, INC. d/b/a LEXUS OF WESTPORT

=====
Service of a copy of the within *is hereby admitted.*
Dated: May 30, 2008

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

Index # 108013/07

**RESPONSE TO NOTICE
FOR DISCOVERY AND
INSPECTION**

PLEASE TAKE NOTICE, that the defendant, **ESTREE, INC. d/b/a LEXUS OF WESTPORT**, by their attorneys, AHMUTY, DEMERS & McMANUS, as and for its response to plaintiff's Notice for Discovery and Inspection, sets forth the following upon information and belief:

1. Responding defendant is not in possession of the final inspection sheet, as this demand is more properly directed toward the co-defendants.
2. Responding defendant is not in possession of any documents related to the final inspection prior to delivery to the customer, other than those documents already exchanged in this litigation.
3. Responding defendant is not in possession of any complaints regarding sudden acceleration with regard to a Lexus ES 350.
4. Responding defendant is not in possession of any documents related to the Lexus product usage caution.
5. Responding defendant is not in possession of any documents concerning the Lexus ES 350 all weather floor mat safety recall for 2007 or 2008.
6. Responding defendant is not in possession of any documents regarding the investigation referred to in the recall.

RECEIVED
JUN 17 10:08
OFFICE OF APPELLATE
COURTS & JUSTICE, LLP

7. Responding defendant is not in possession of any documents concerning any hazard analysis conducted regarding the Lexus ES 350.
8. Responding defendant is not in possession of any frontal crash test results for the Lexus ES 350.

Dated: Albertson, New York
June 10, 2008



THOMAS G. CHOJNACKI, ESQ.
AHMUTY, DEMERS & McMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, NY 11507
(516) 294-5433
Our File No.: YCW 0962N7 JAE

TO:

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiffs
80 Pine Street, 34th Floor
New York, NY 10005

AARONSON, RAPPAPORT
FEINSTEIN & DEUTSCH, LLP
757 Third Avenue
New York, New York 10017

STEIN RISON & MANTEL, LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

Index No. 107681/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

=====
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC. d/b/a
LEXUS OF WESTPORT and METRO AUTO LEASING, INC. d/b/a THE AUTOMALL

Defendants.
=====

RESPONSE TO NOTICE FOR DISCOVERY AND INSPECTION

=====
AHMUTY, DEMERS & McMANUS, ESQS.

Attorneys for Defendant

ESTREE, INC. d/b/a LEXUS OF WESTPORT

200 I.U. Willets Road

Albertson, New York 11507

(516) 294-5433

Our File No.: YCW 0962N7 JAE

=====
To:

Attorney(s) for ESTREE, INC. d/b/a LEXUS OF WESTPORT

=====
*Service of a copy of the within RESPONSE TO NOTICE FOR DISCOVERY AND
INSPECTION is hereby admitted.*

Dated: June 11, 2008
=====

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index # 108013/07

Plaintiff,

-against-

RESPONSE TO
PRELIMINARY
CONFERENCE ORDER

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

-----X

PLEASE TAKE NOTICE, that the defendant, **ESTREE, INC. d/b/a LEXUS OF WESTPORT**, by its attorneys, AHMUTY, DEMERS & McMANUS, as and for its response to the Preliminary Conference Order sets forth the following upon information and belief:

1. Responding defendant claims coverage under a policy of insurance issued by Granite State Insurance Company. Particulars of the policy will be provided under separate cover.
2. Responding defendant is not aware of any witnesses to this occurrence other than those which may have been disclosed by other parties.
3. Responding defendant is not in possession of any adverse party statements.
4. Annexed hereto as **EXHIBIT "A"** are copies of photographs of the exit ramp for the Northern State Parkway at Glen Cove Road as well as photos taken of the Leviten vehicle at an inspection.
5. Attached hereto as **EXHIBIT "B"** are copies of all records maintained by Lexus of Westport with regard to the Leviten vehicle.

6. Responding defendant has not been served with any discovery demands by the plaintiff and specifically do not have copies of demands dated October 28, 2007, February 8, 2008, April 4, 2008 and April 11, 2008, and therefore can not respond to same. Should plaintiff provide these demands, responding defendant will provide a response within 30 days of receipt of same.

PLEASE TAKE FURTHER NOTICE, that the answering defendant hereby reserves its right to amend and/or supplement this response up to and including the time of trial.

Dated: Albertson, New York
June 2, 2008



THOMAS G. CHOJNACKI, ESQ.
AHMUTY, DEMERS & McMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, NY 11507
(516) 294-5433
Our File No.: YCW 0962N7 JAE

TO:

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiffs
80 Pine Street, 34th Floor
New York, NY 10005

AARONSON, RAPPAPORT
FEINSTEIN & DEUTSCH, LLP
757 Third Avenue
New York, New York 10017

STEIN RISON & MANTEL, LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

EXHIBIT “A”

LEVITEN, IRIS

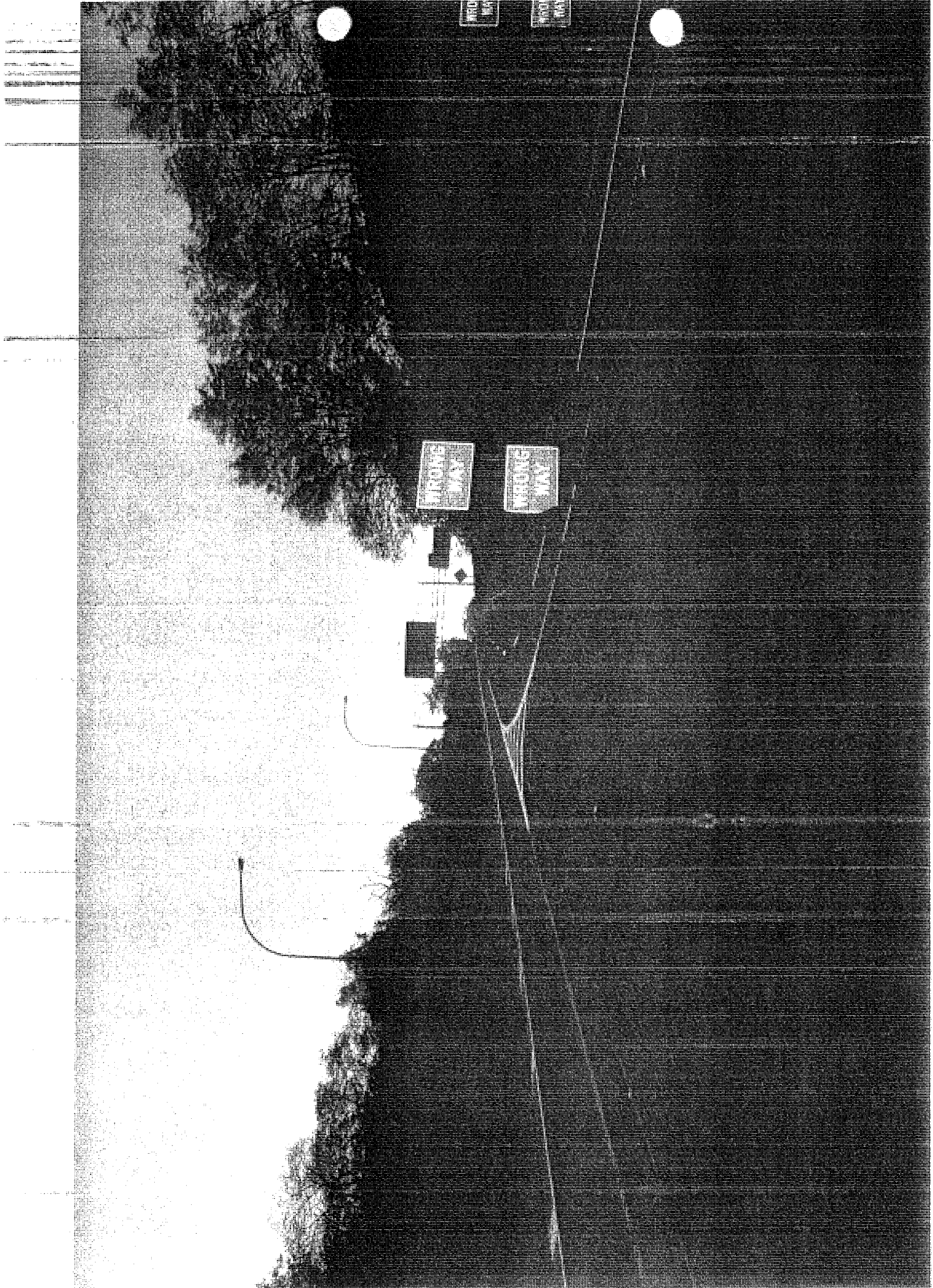
2007 ES 350

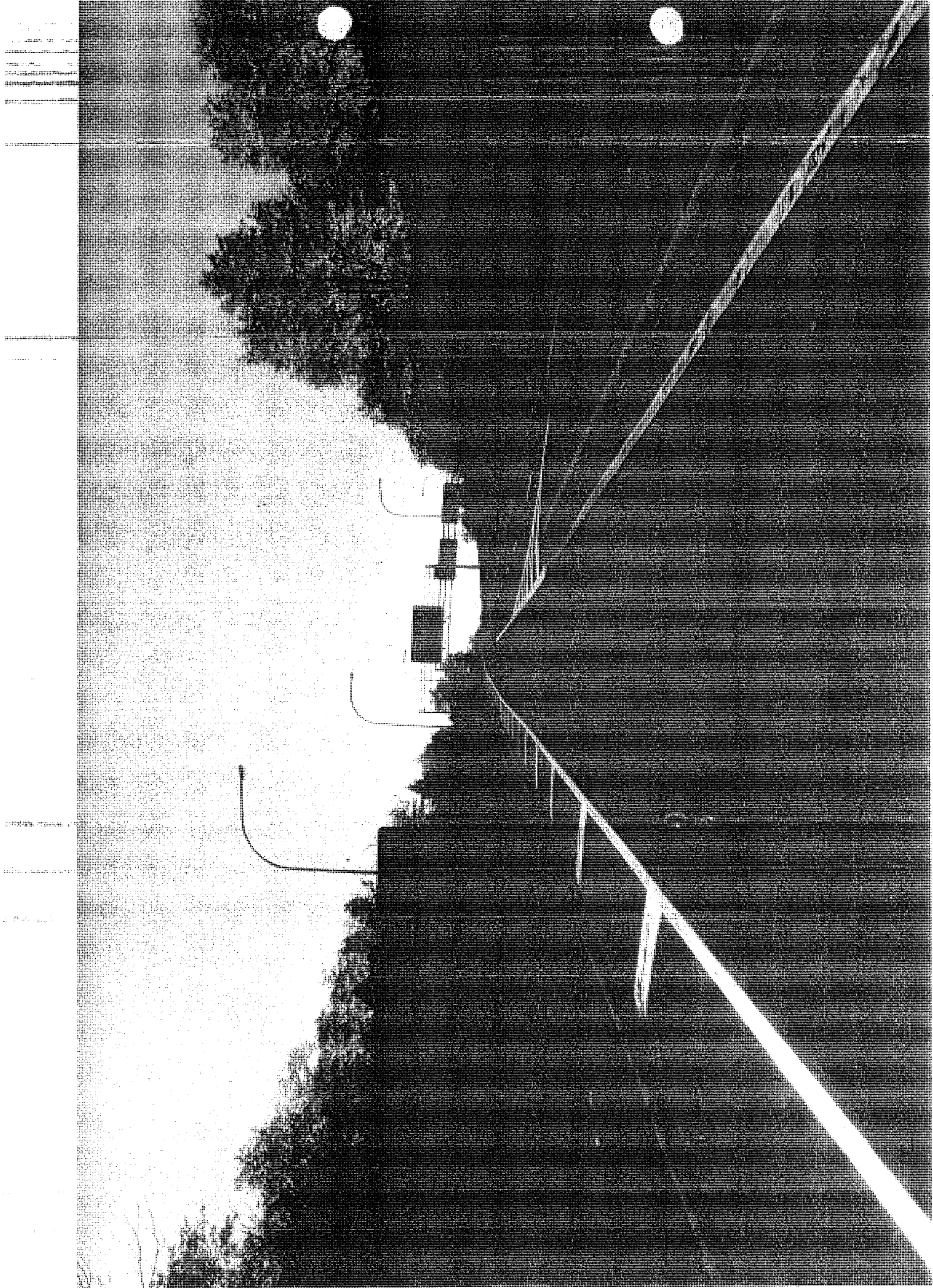
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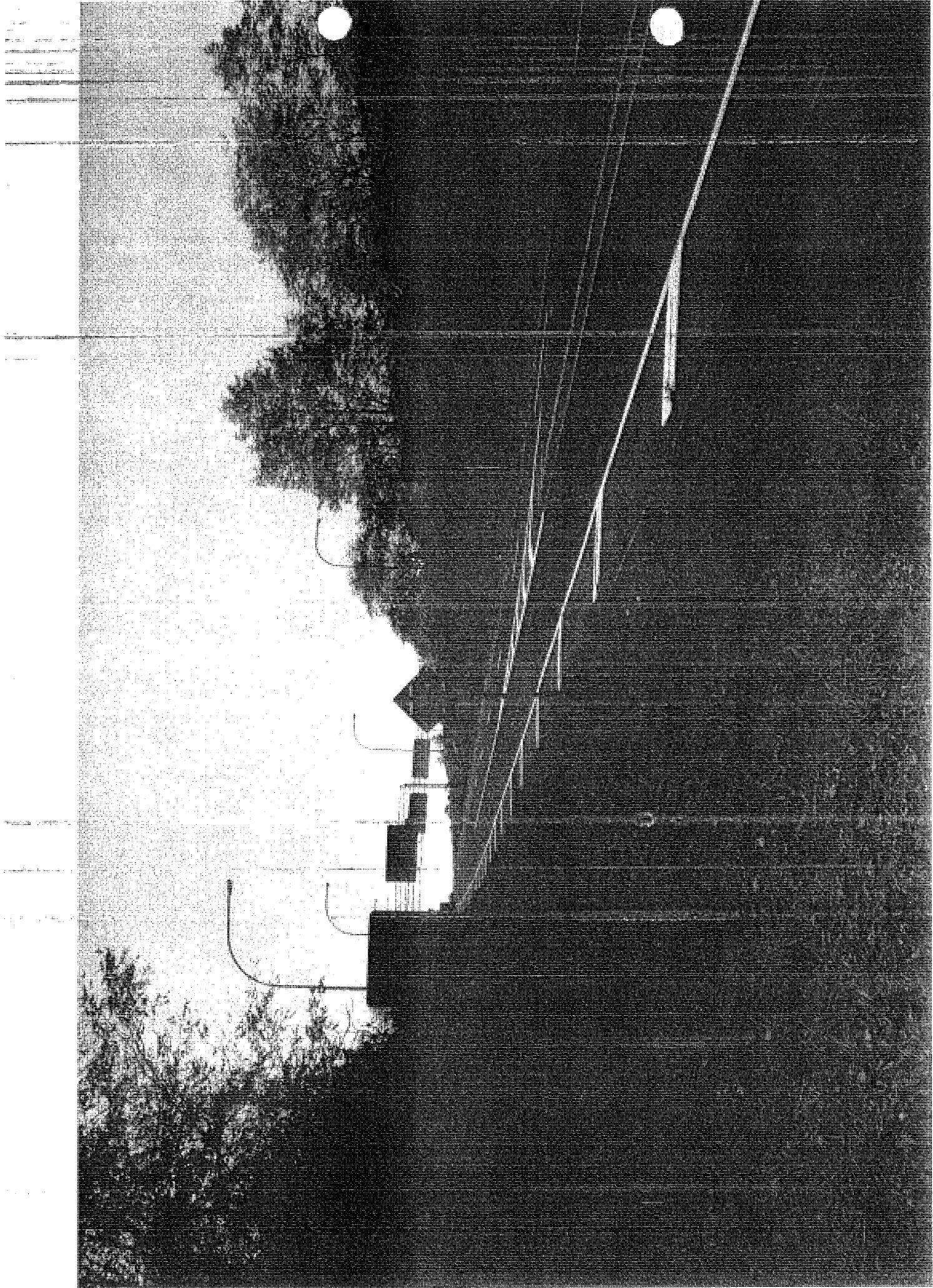
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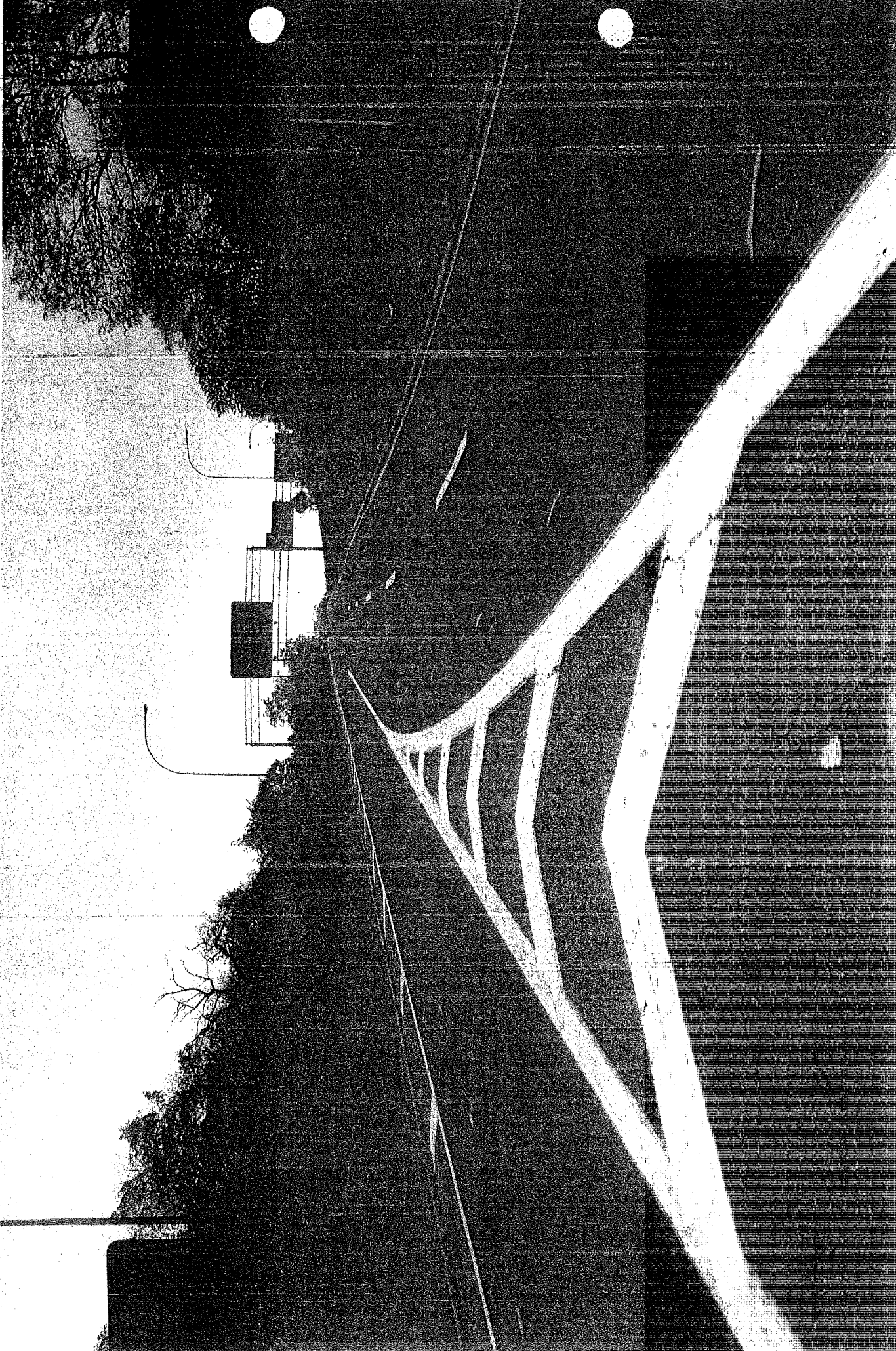
EX 1731

NORFOLK STATE PARK,
(GLEN COVE RD. EXIT) N 3

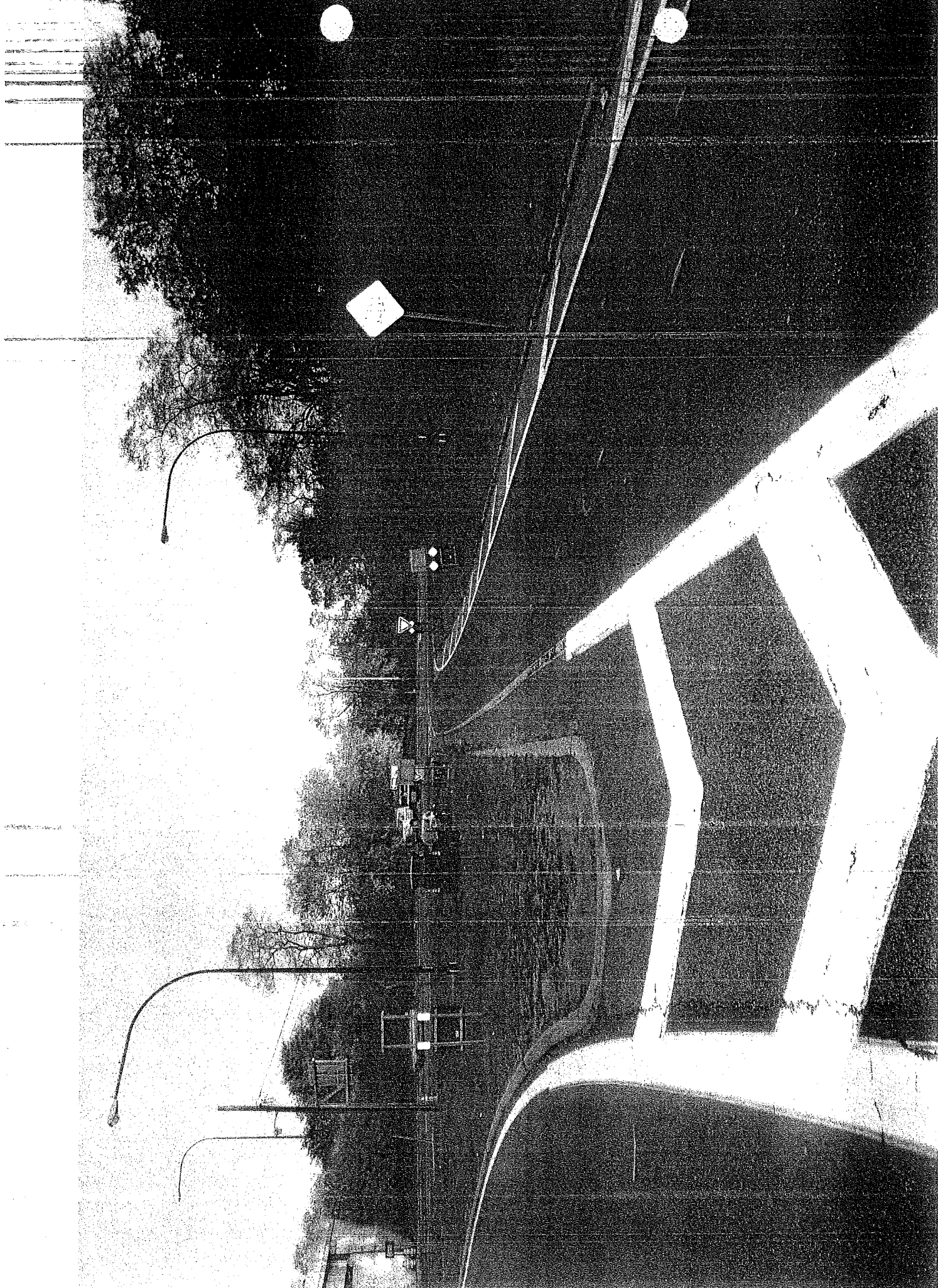


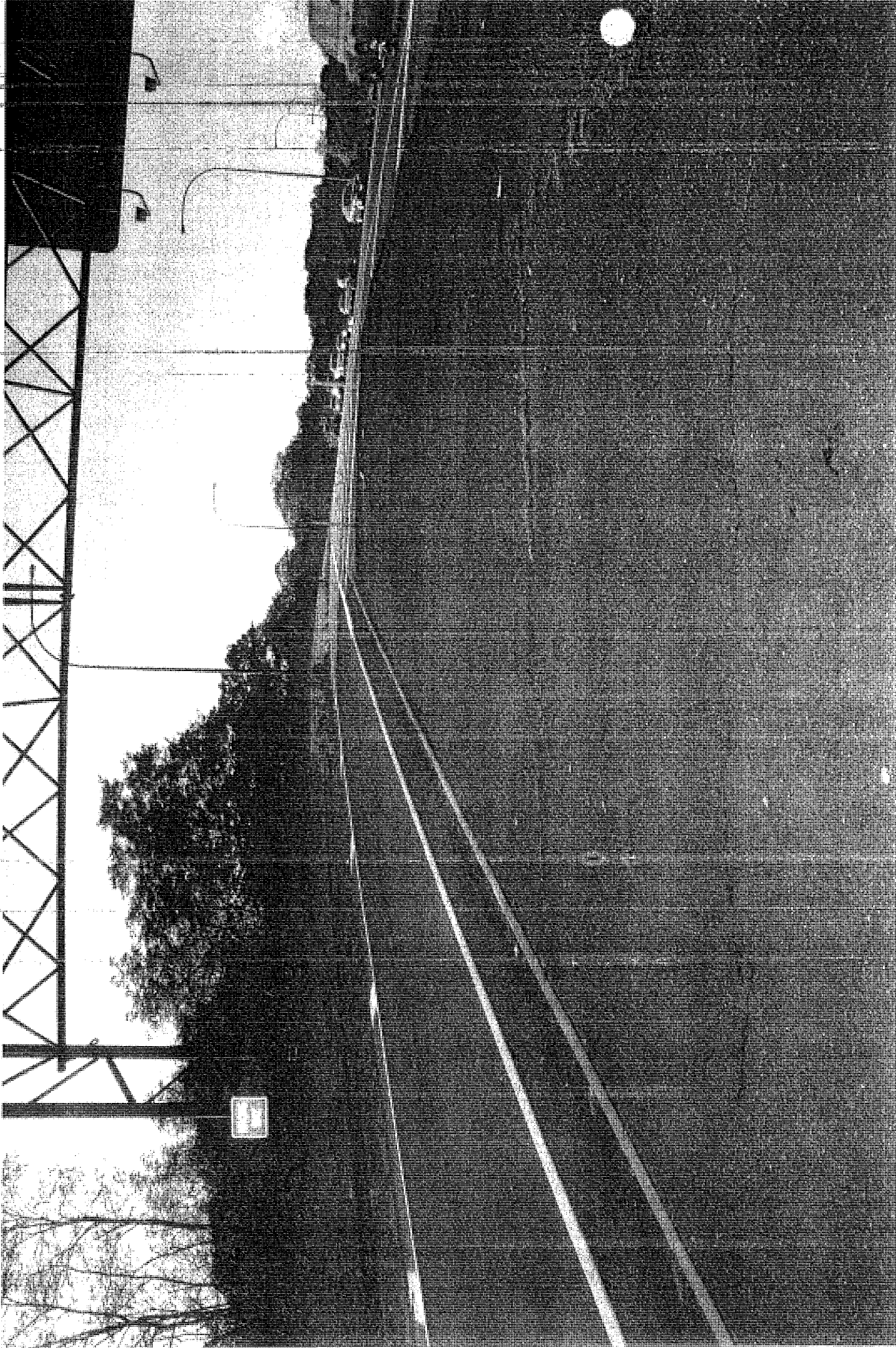


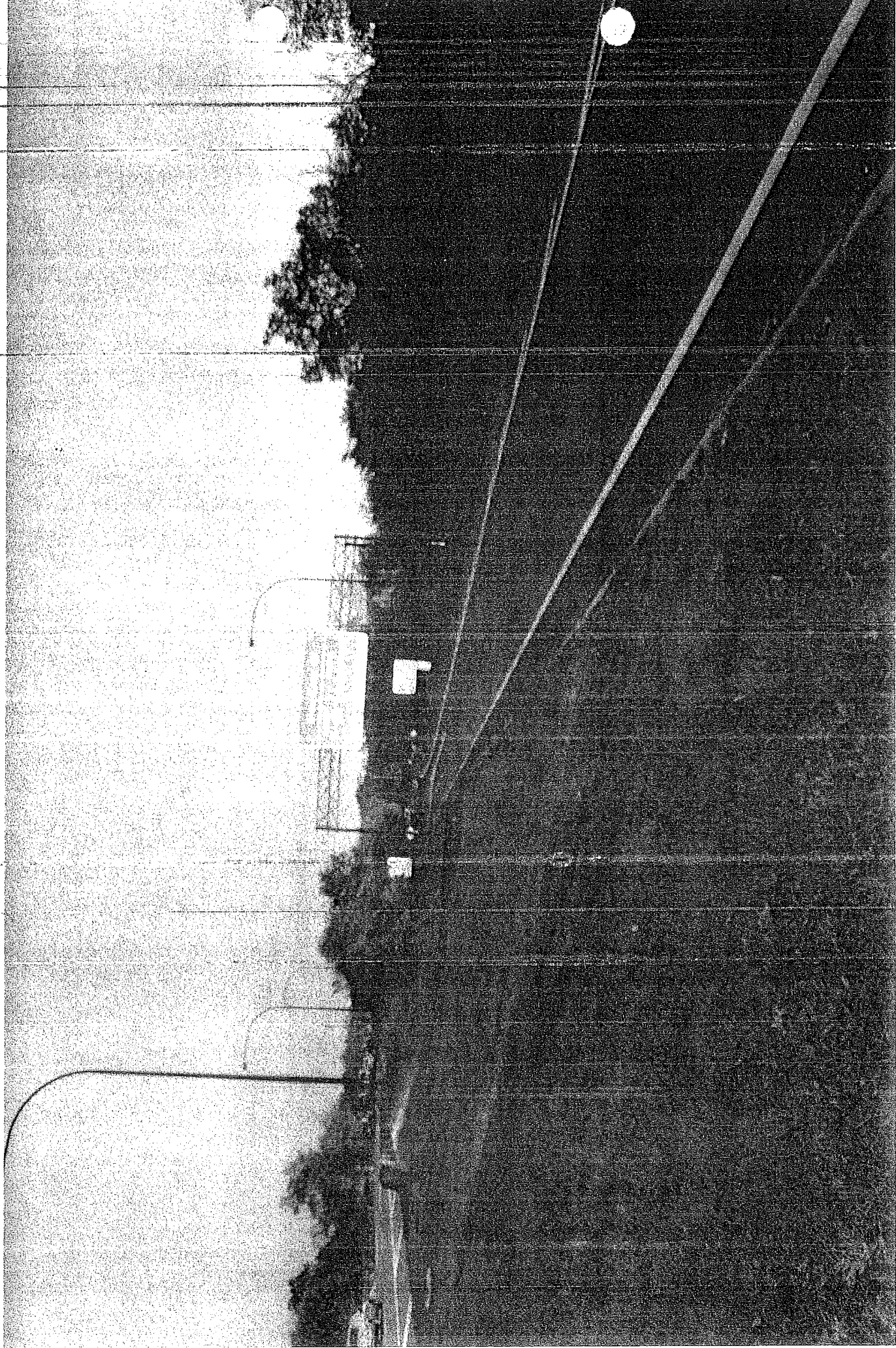


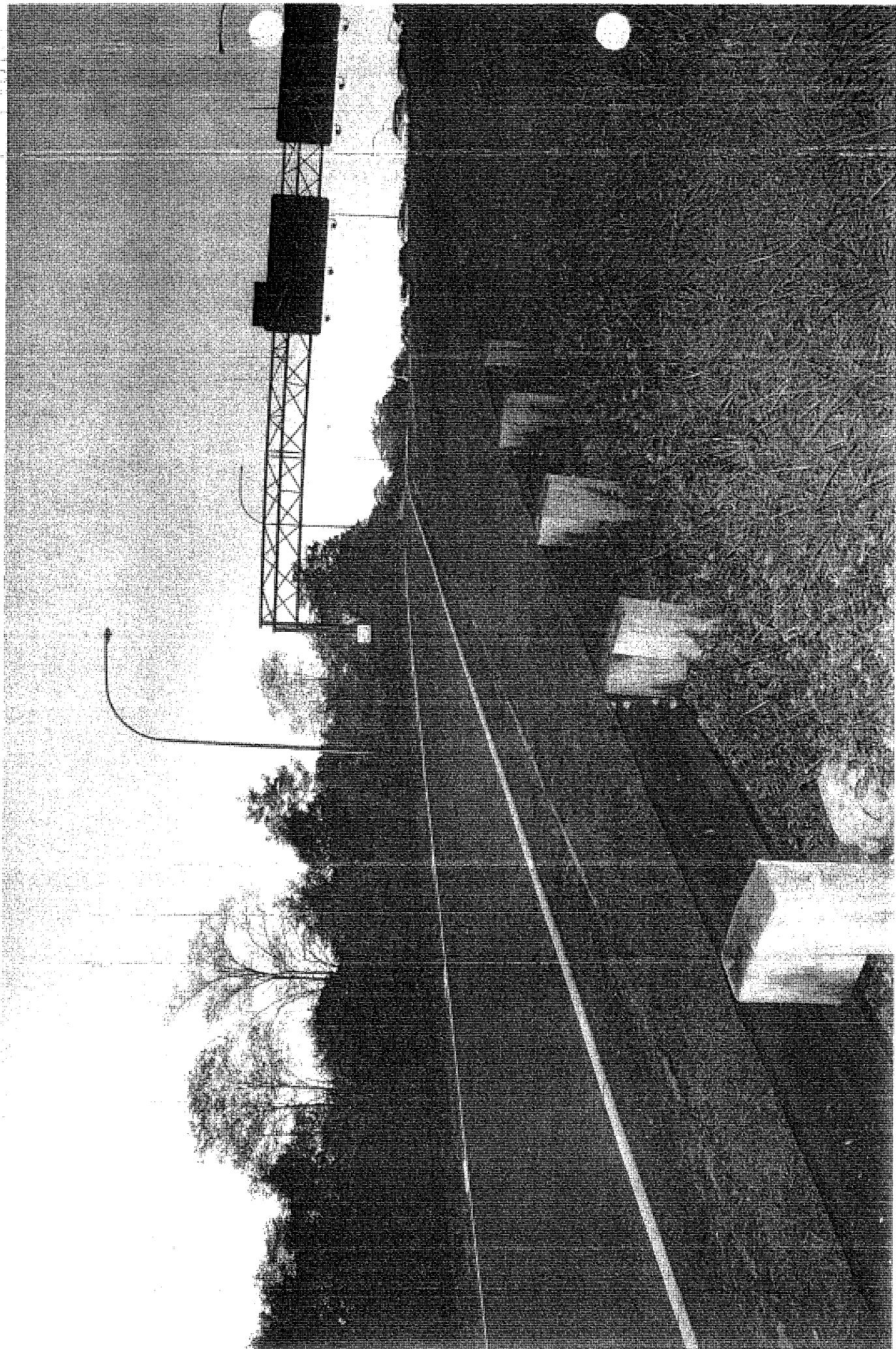


TOY-RQ-05E-00002656



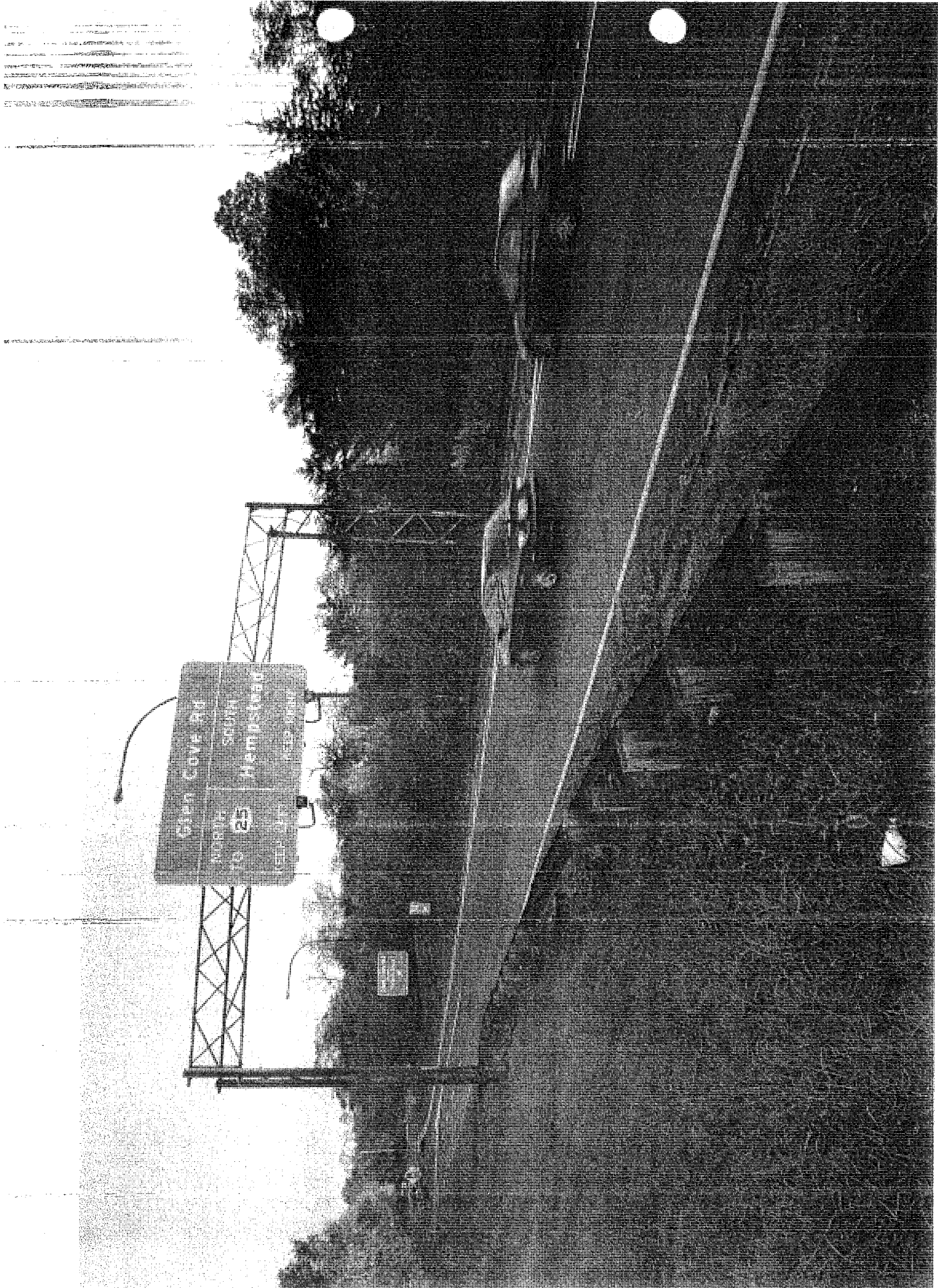




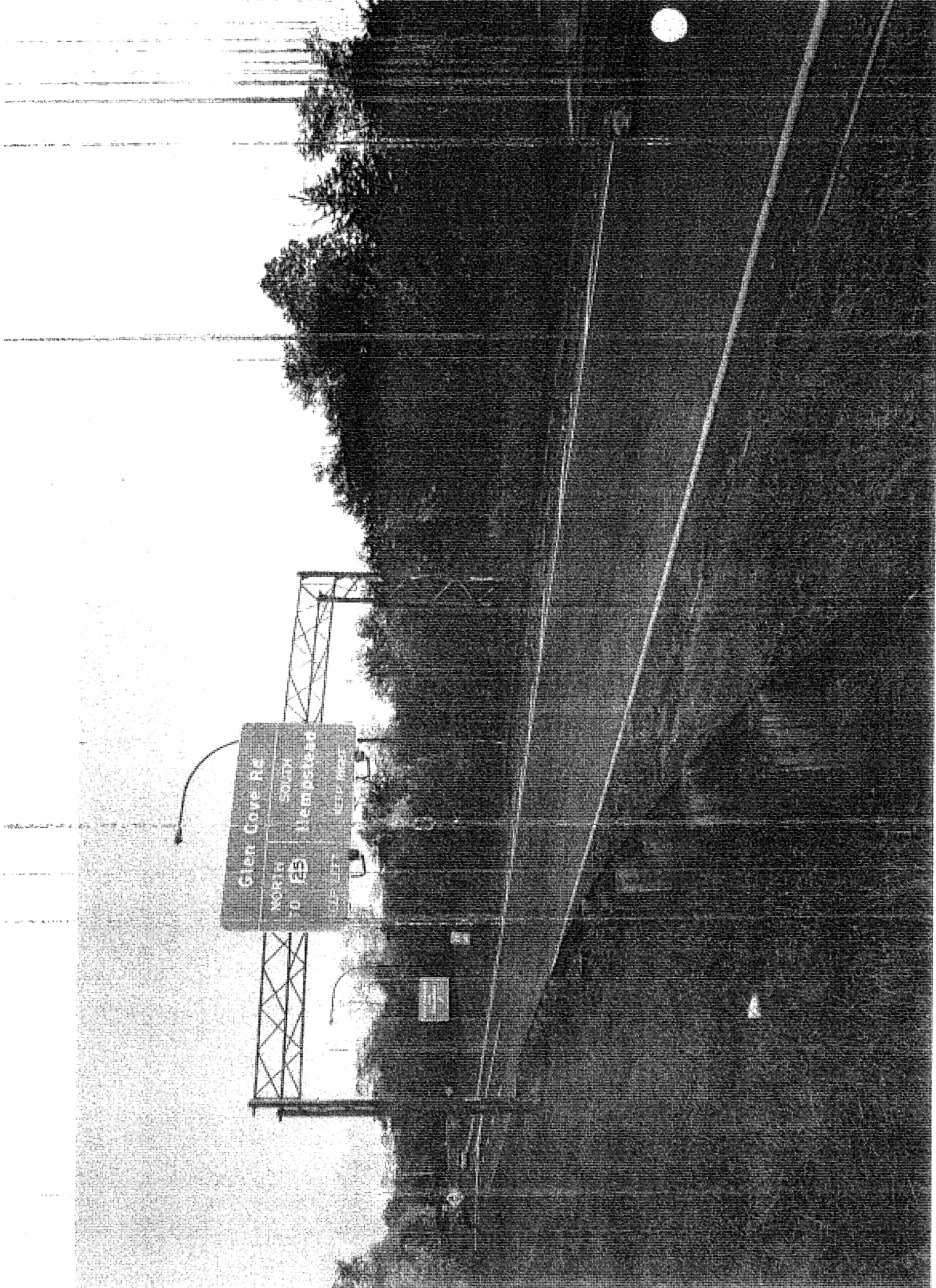


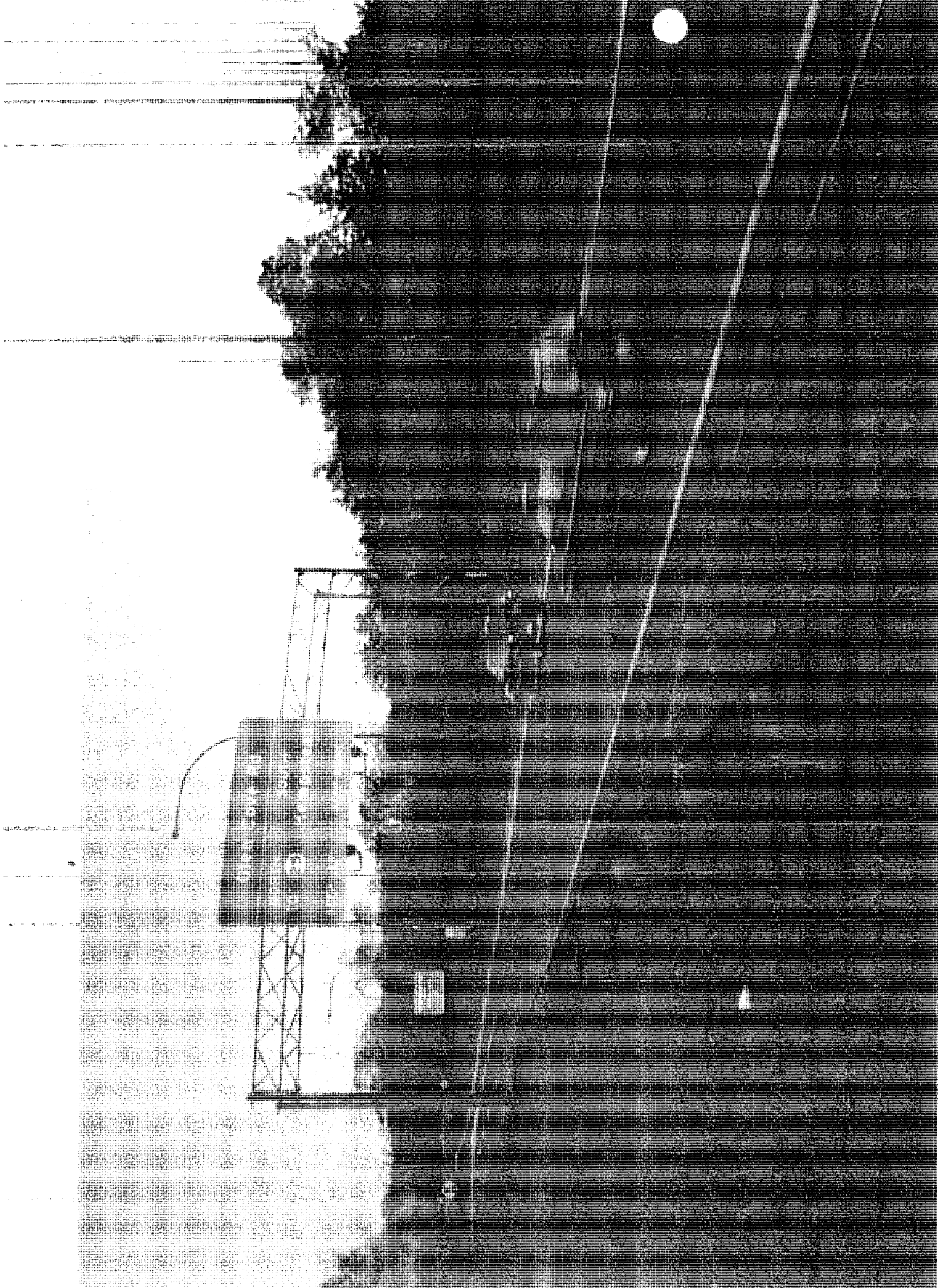
Glen Cove Rd
NORTH SOUTH
0 25
Hempstead
KEEP LEFT

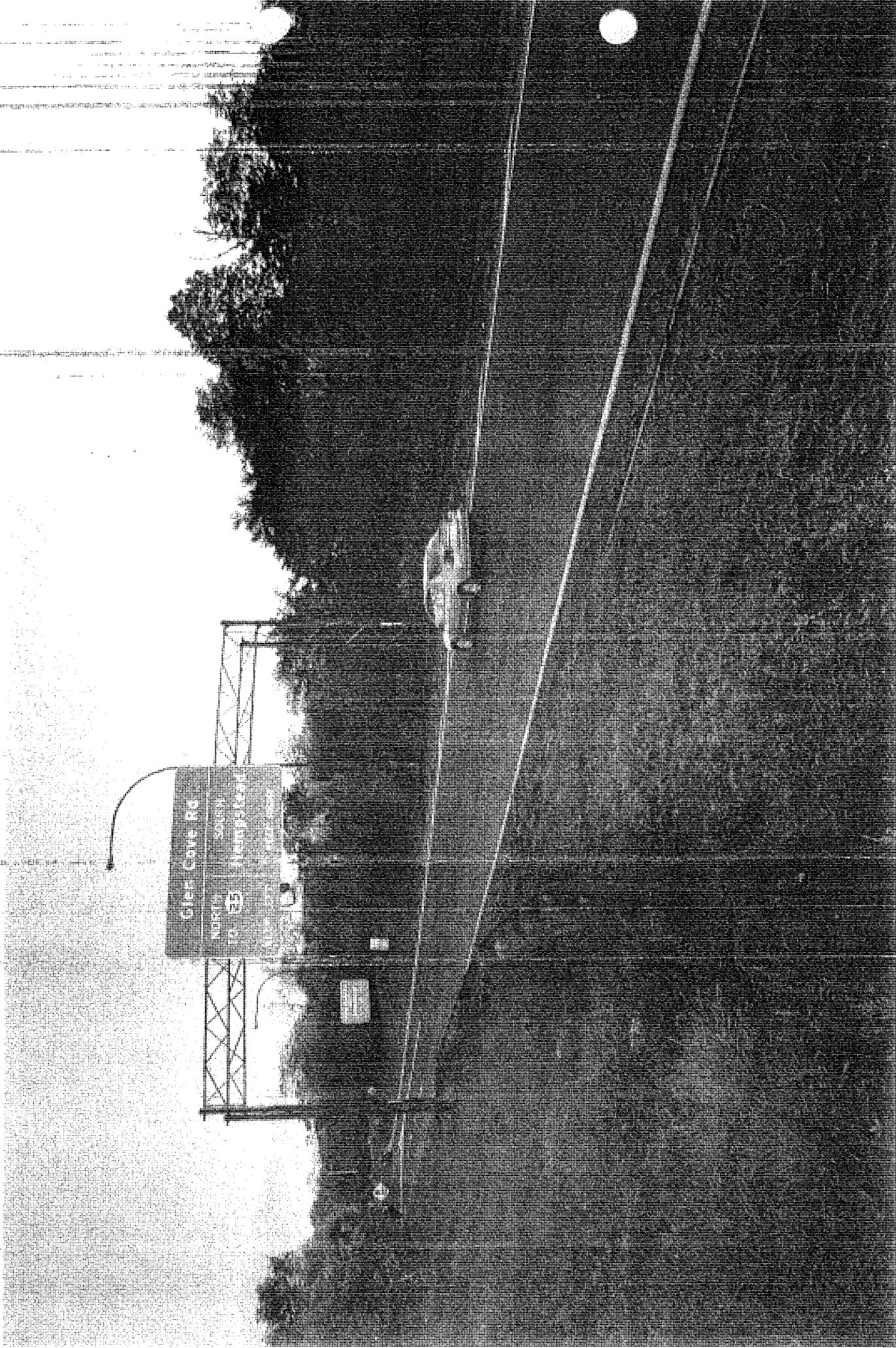
Glen Cove Rd
North
25
Hempstead
Left

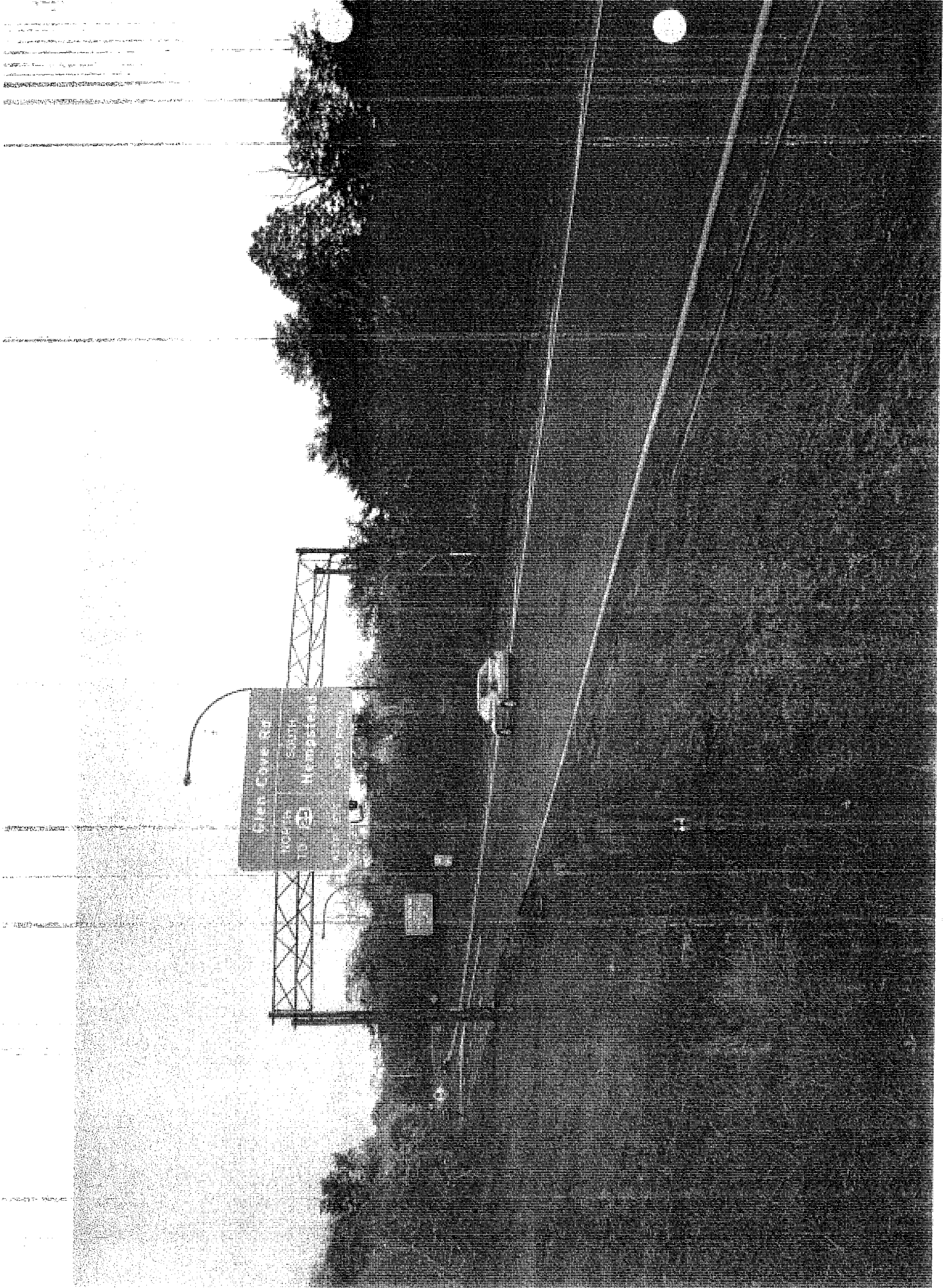


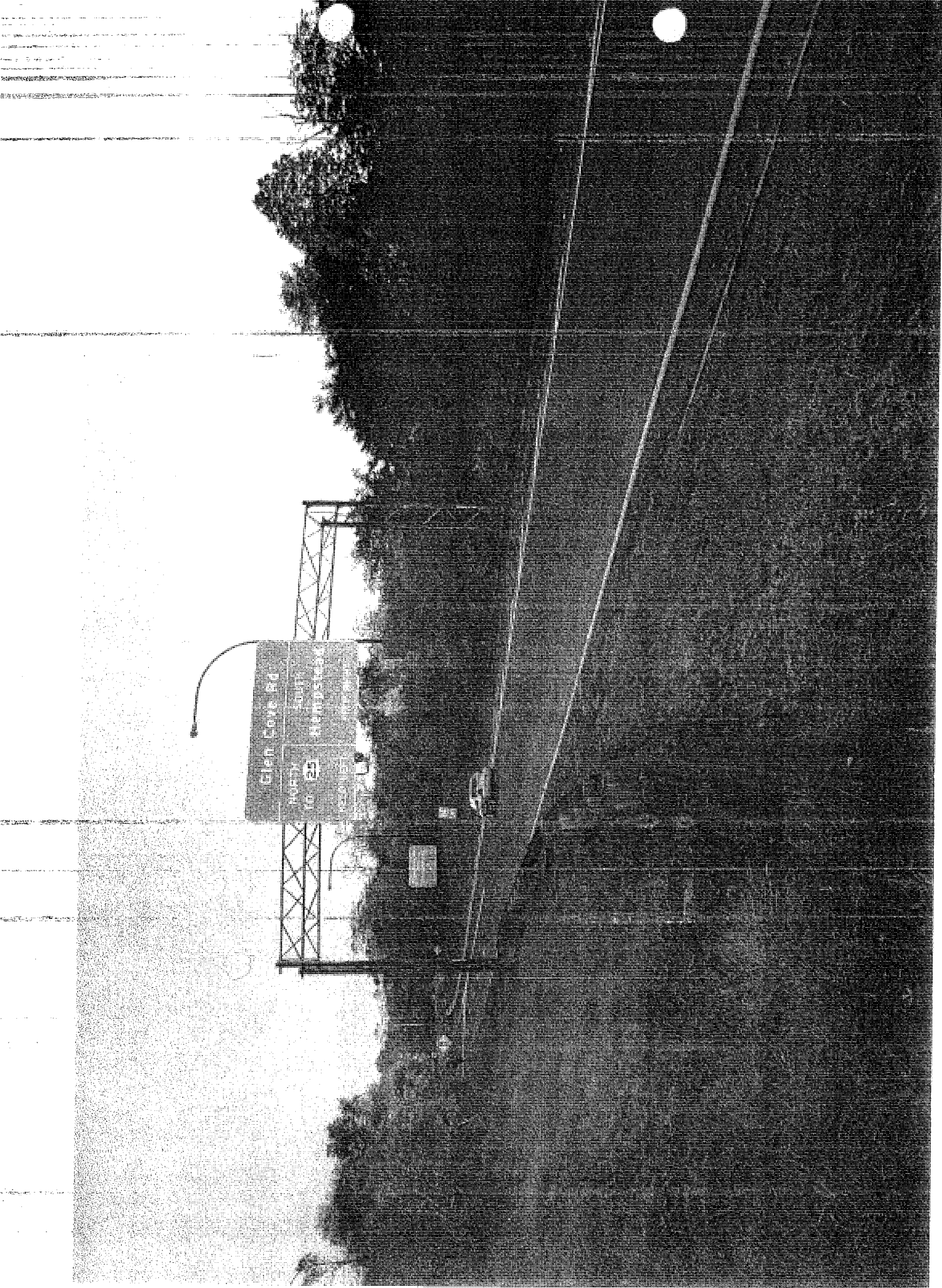
Glenn Cove Rd
NEWBY
TO 25 SOUTH
Hemphill

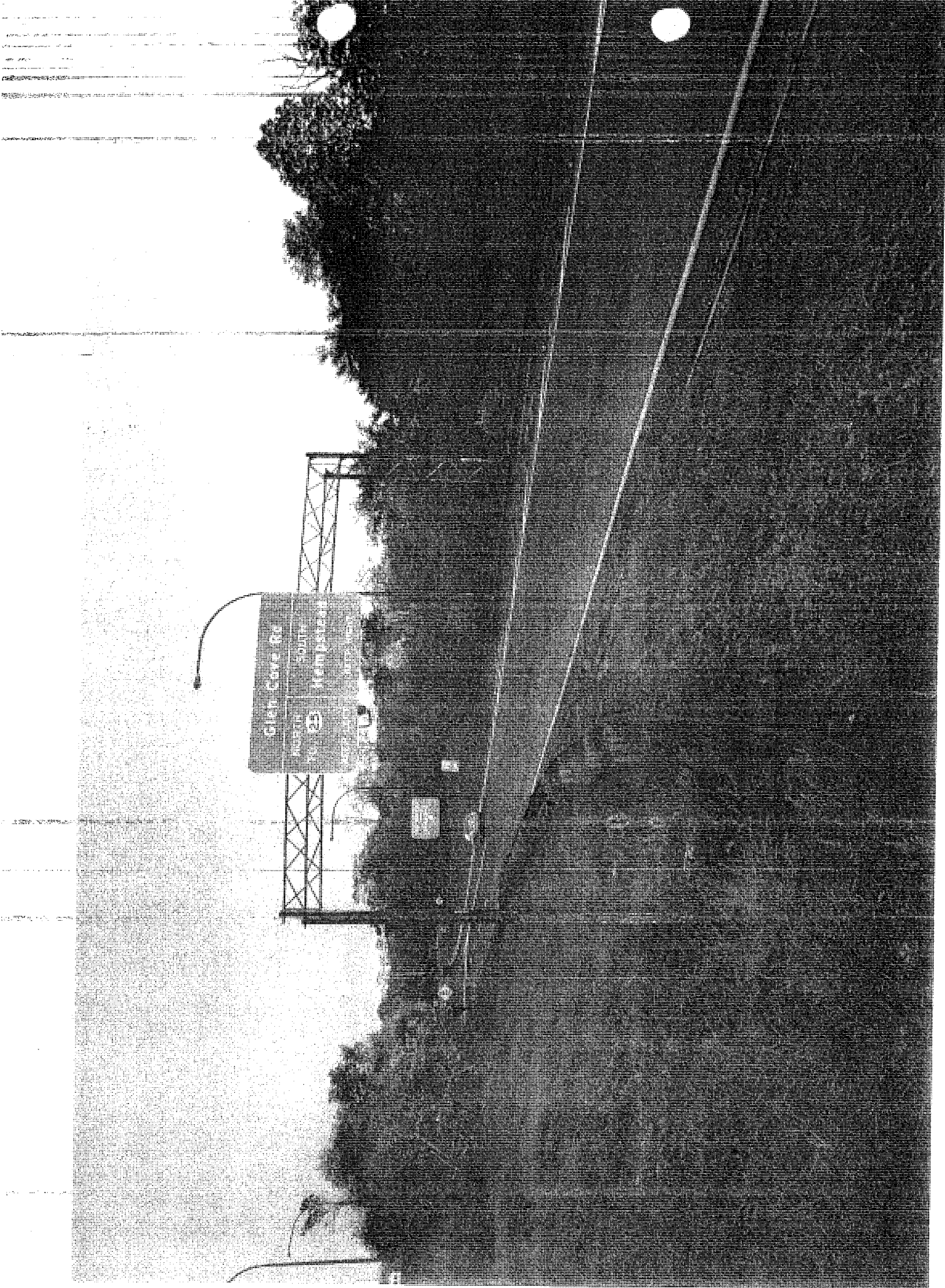


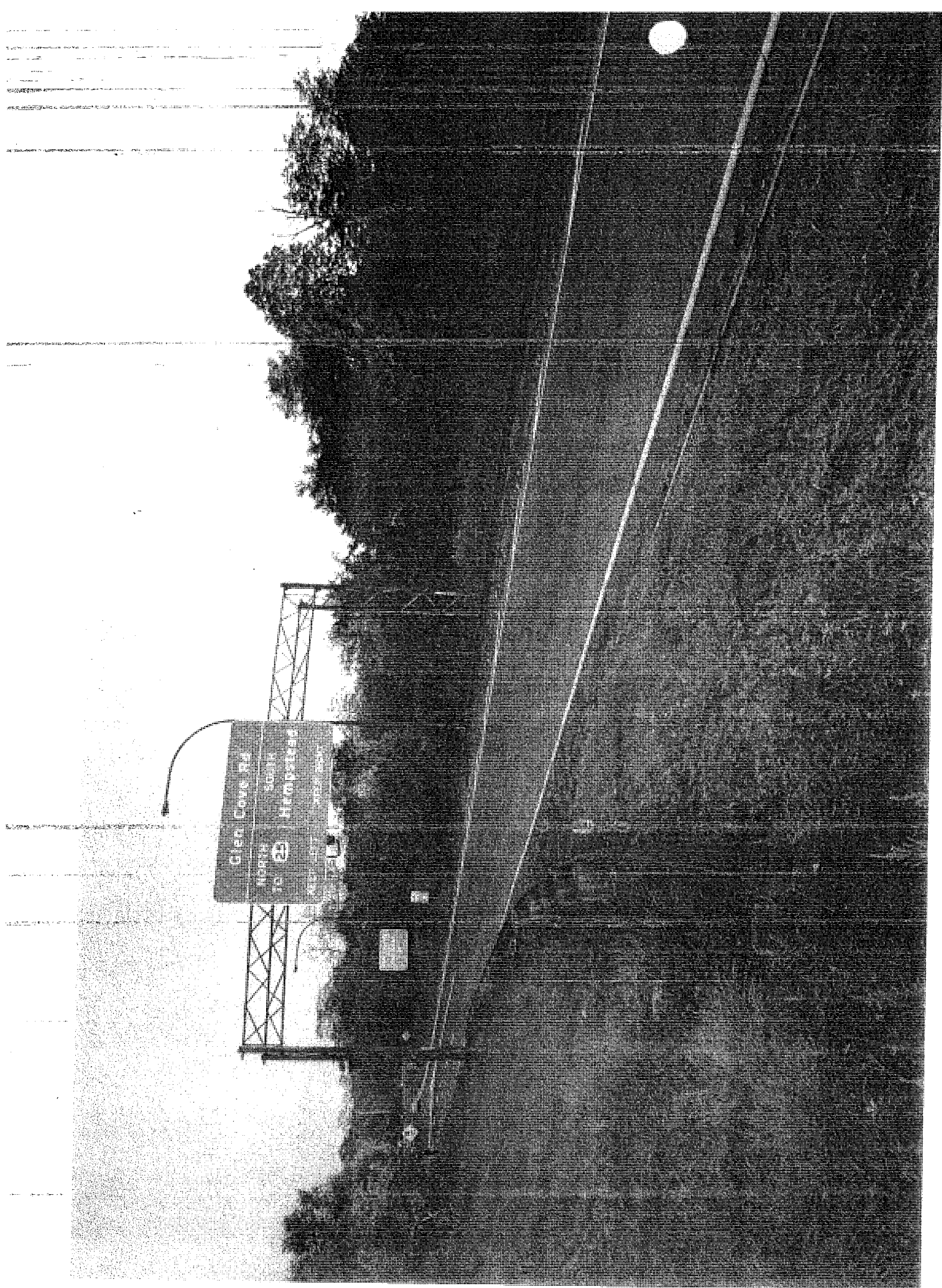


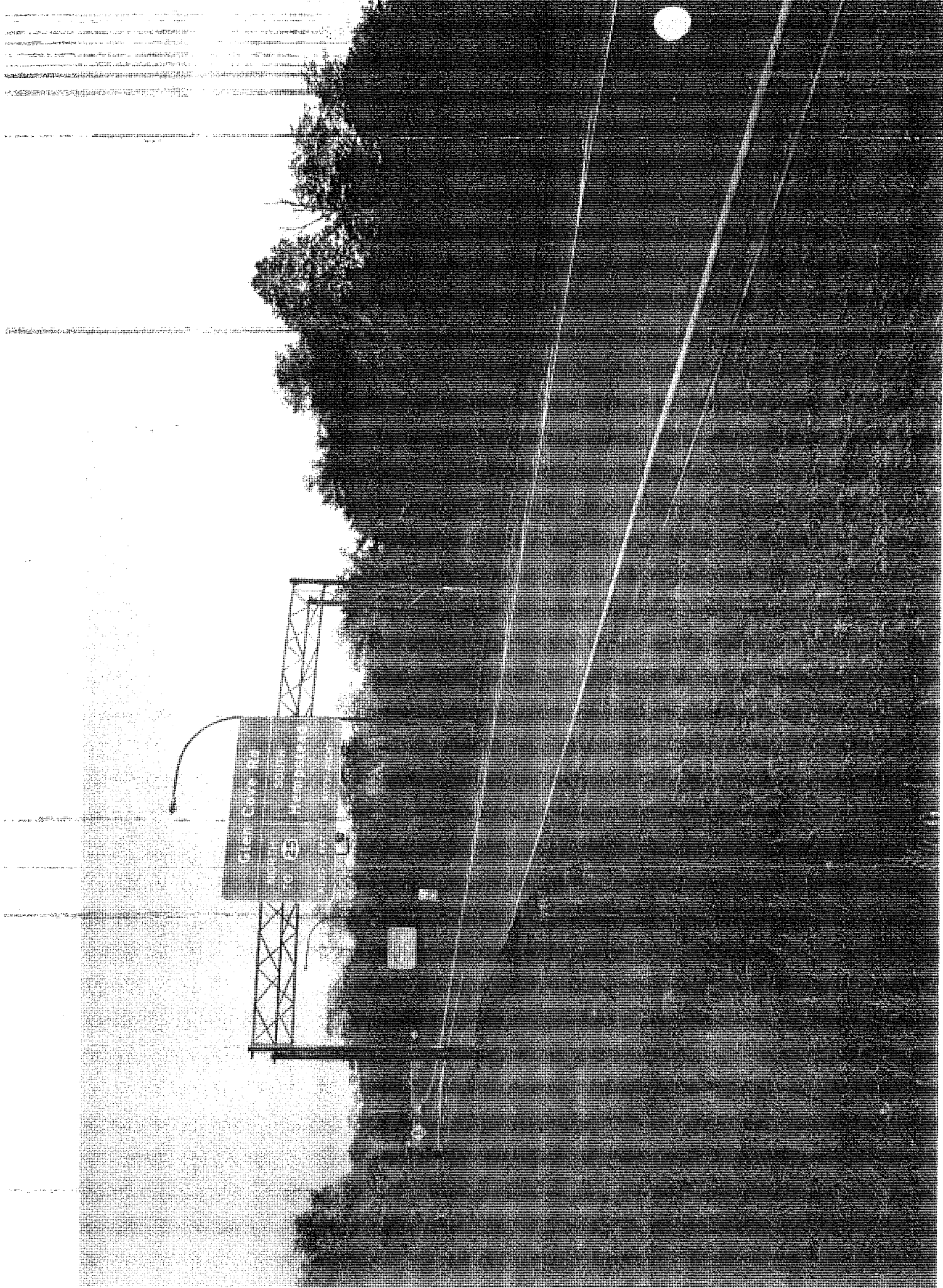


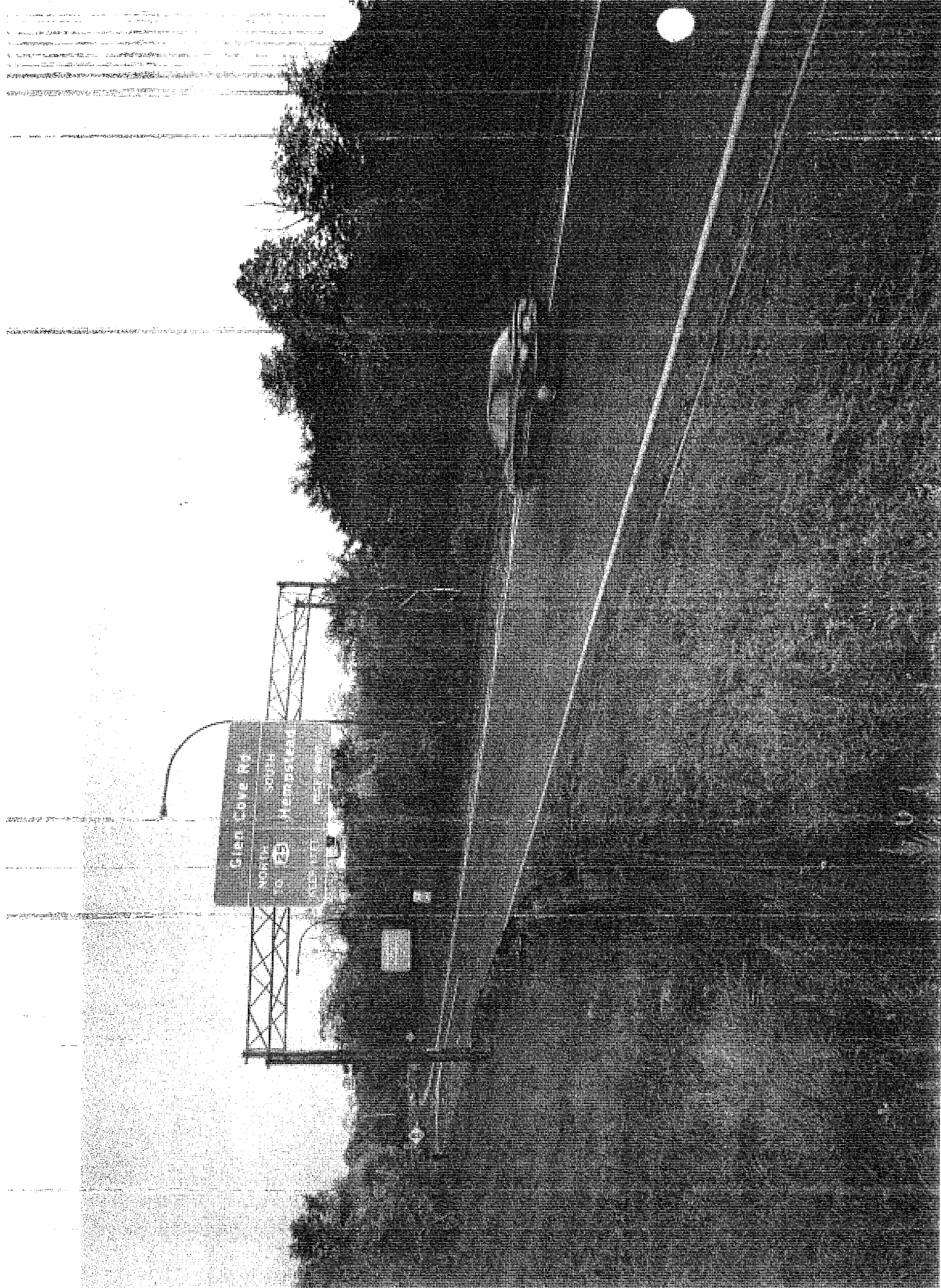


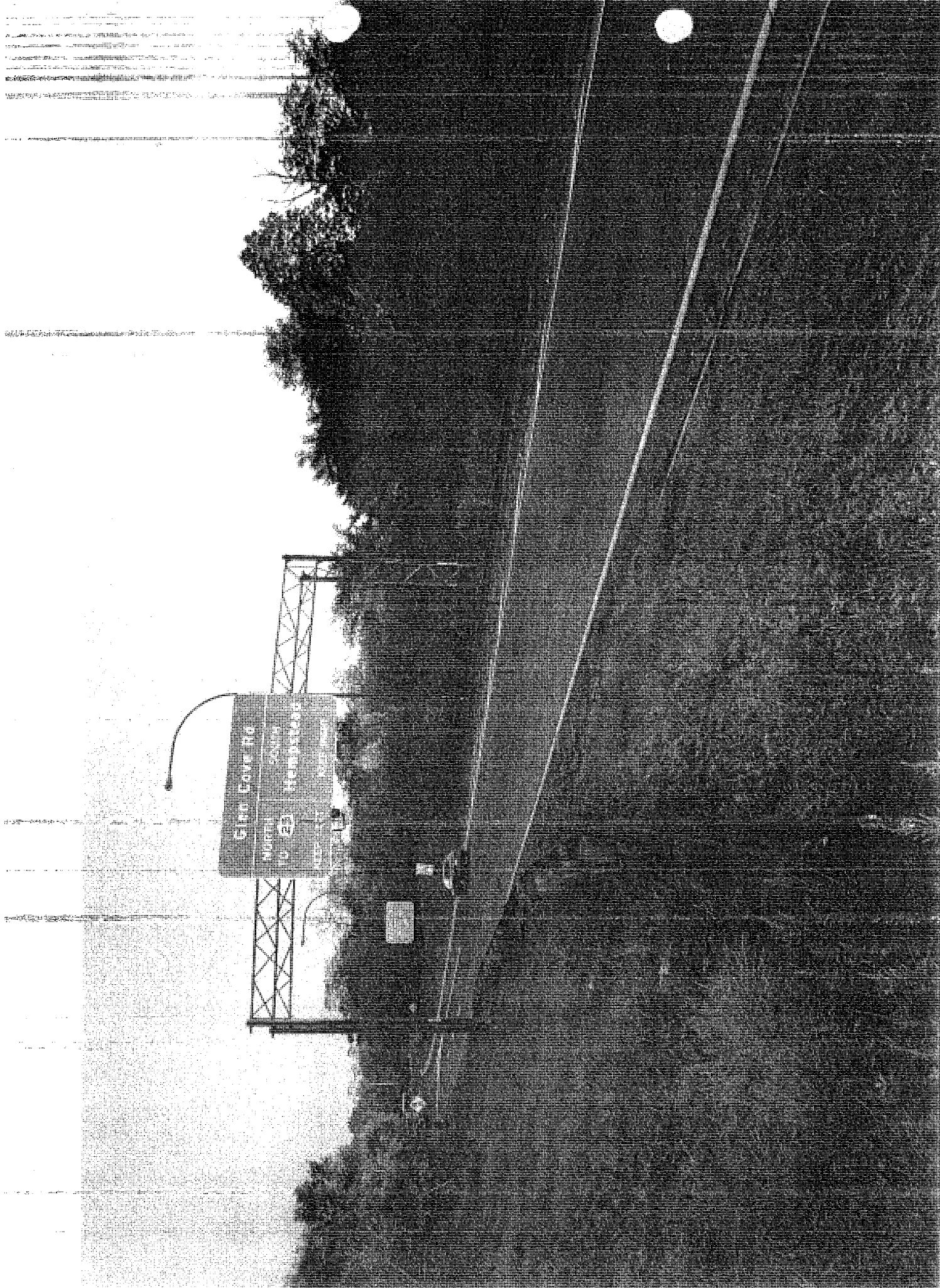


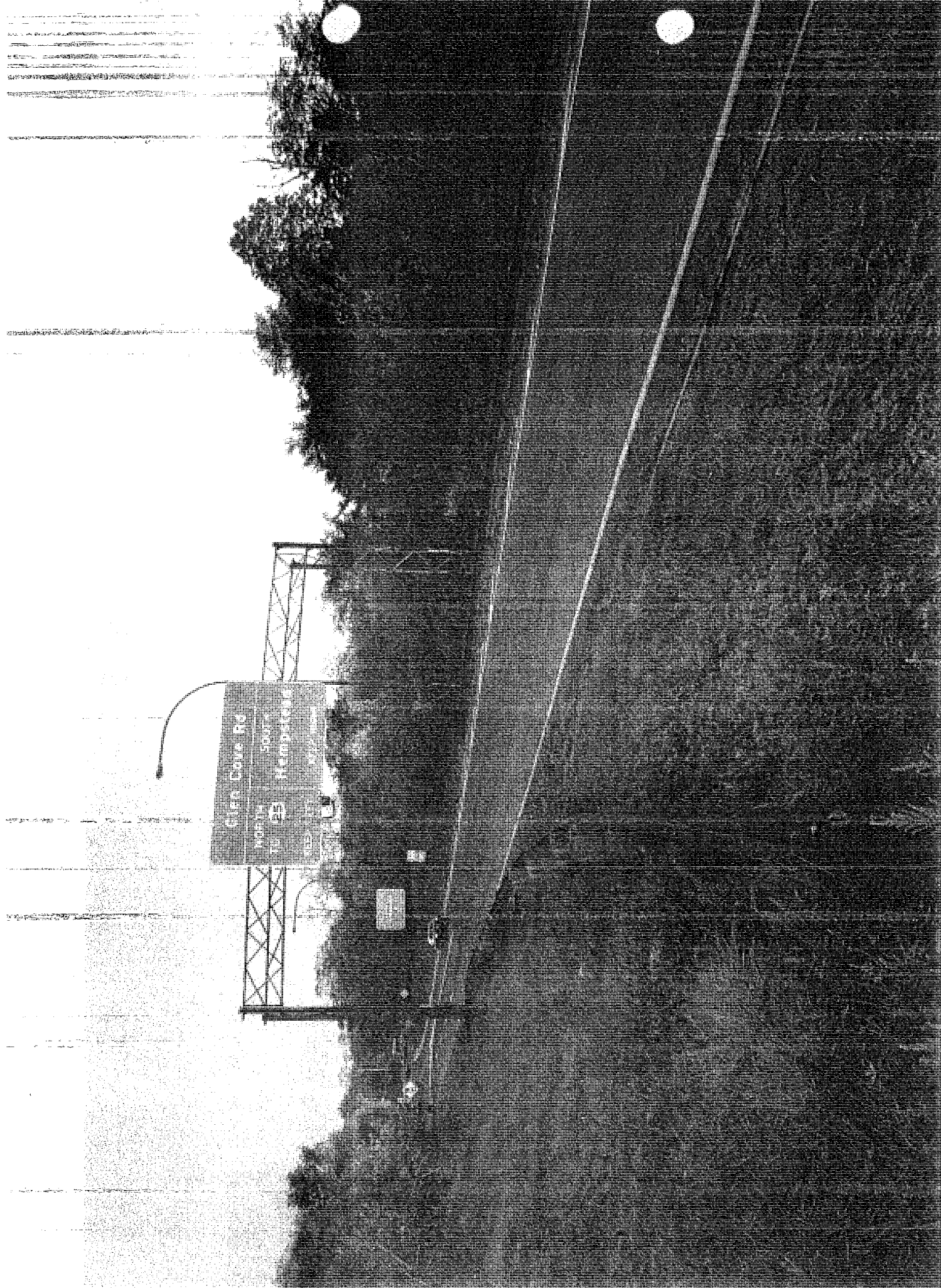


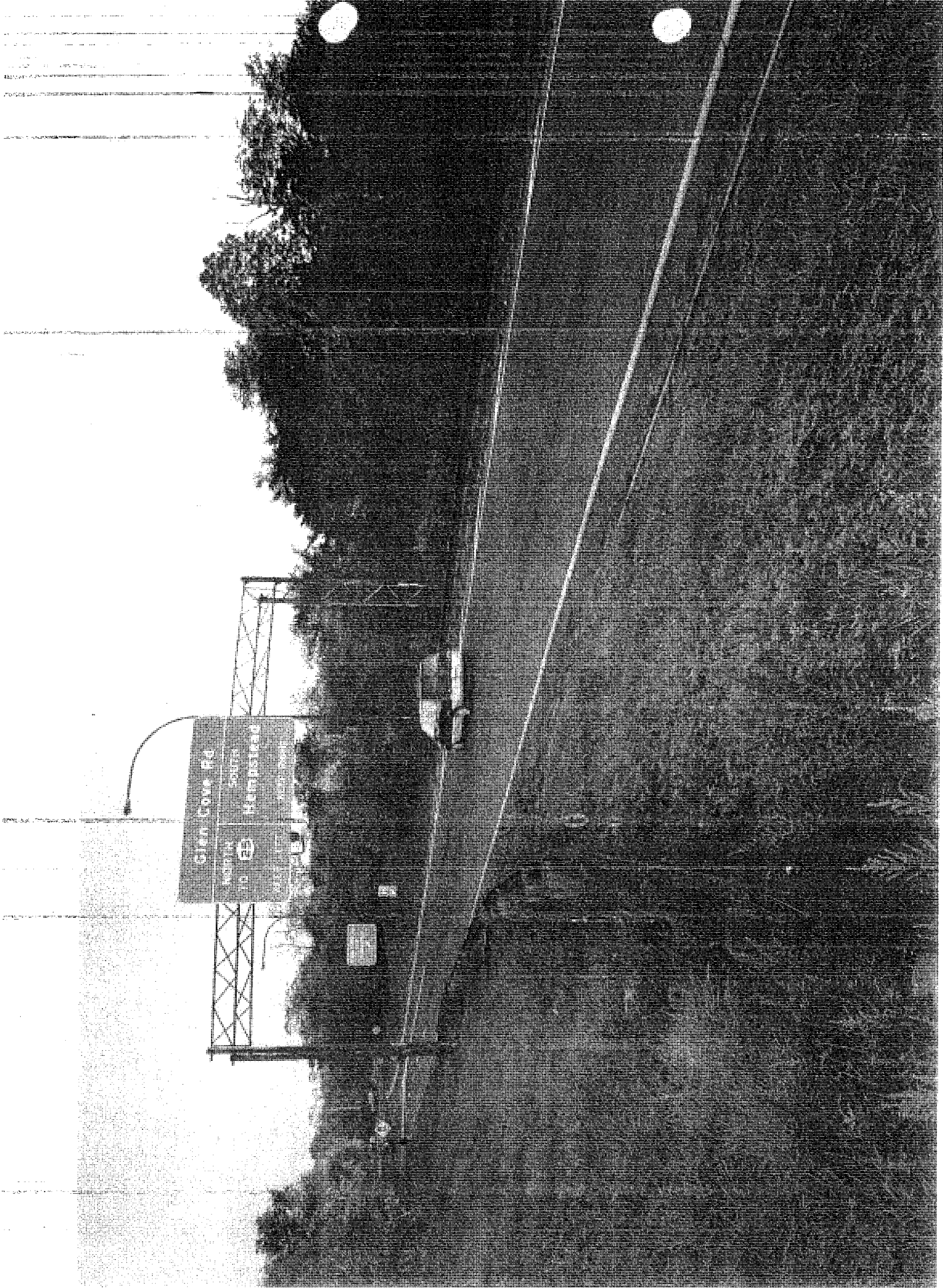


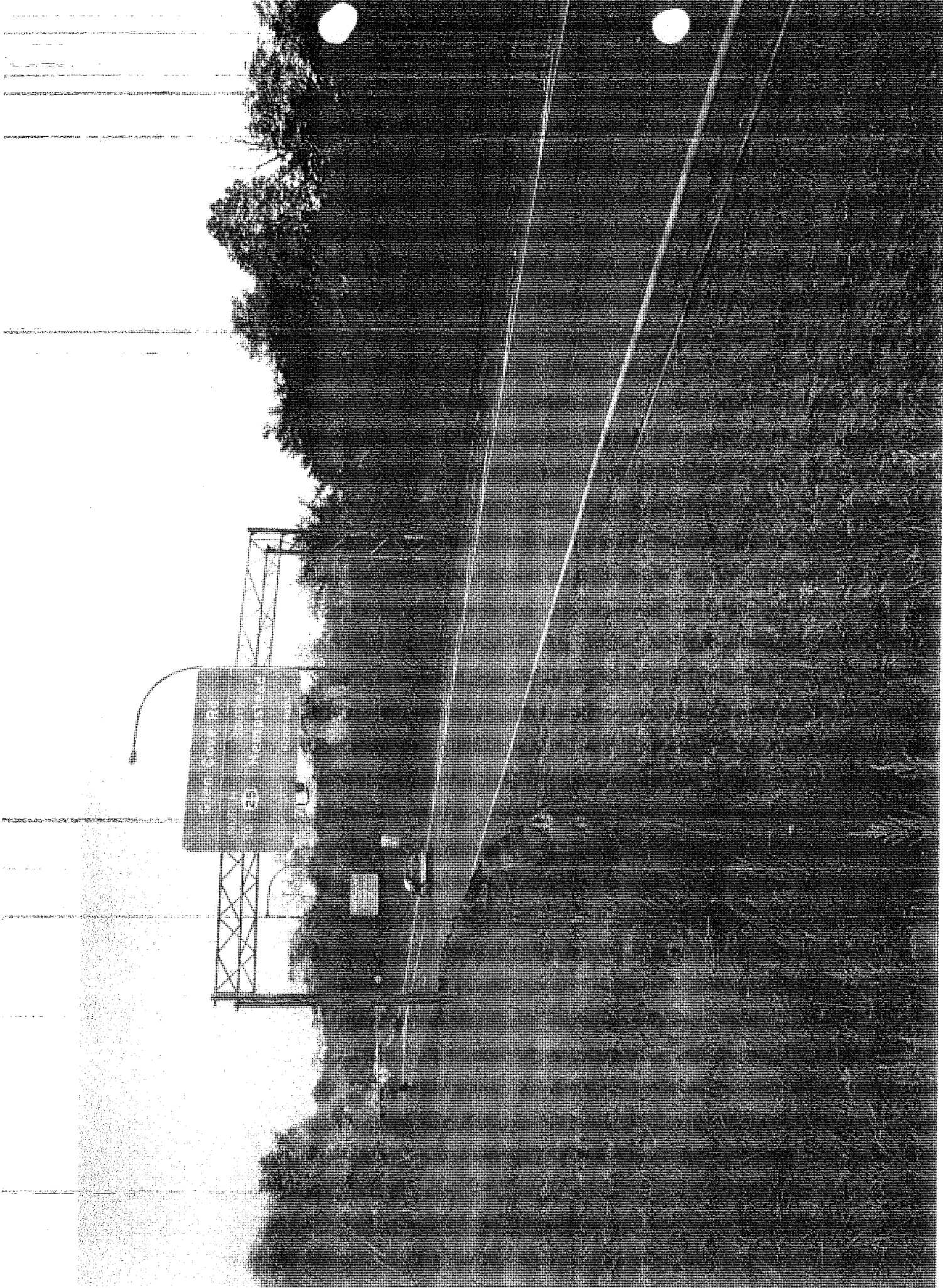


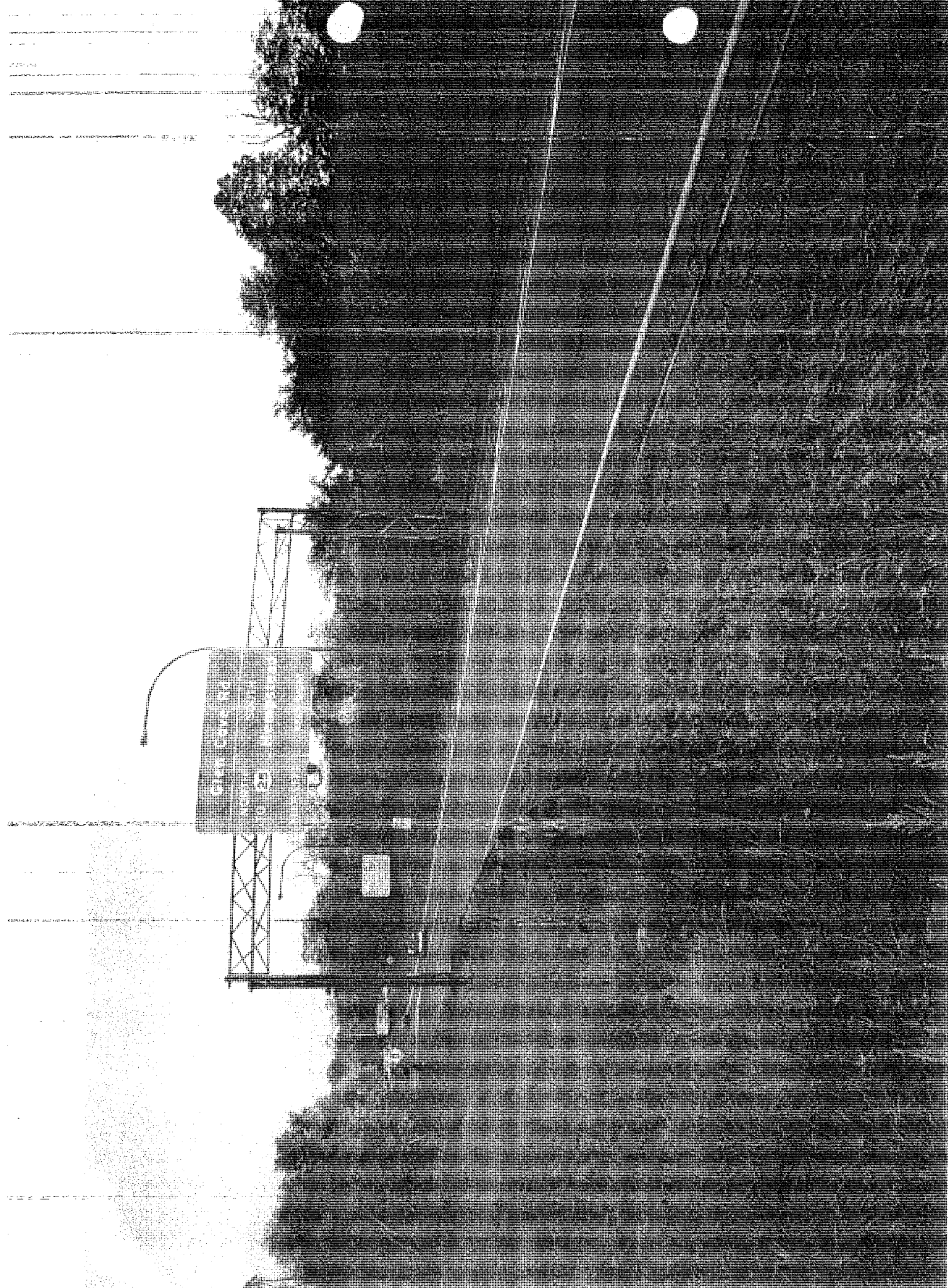


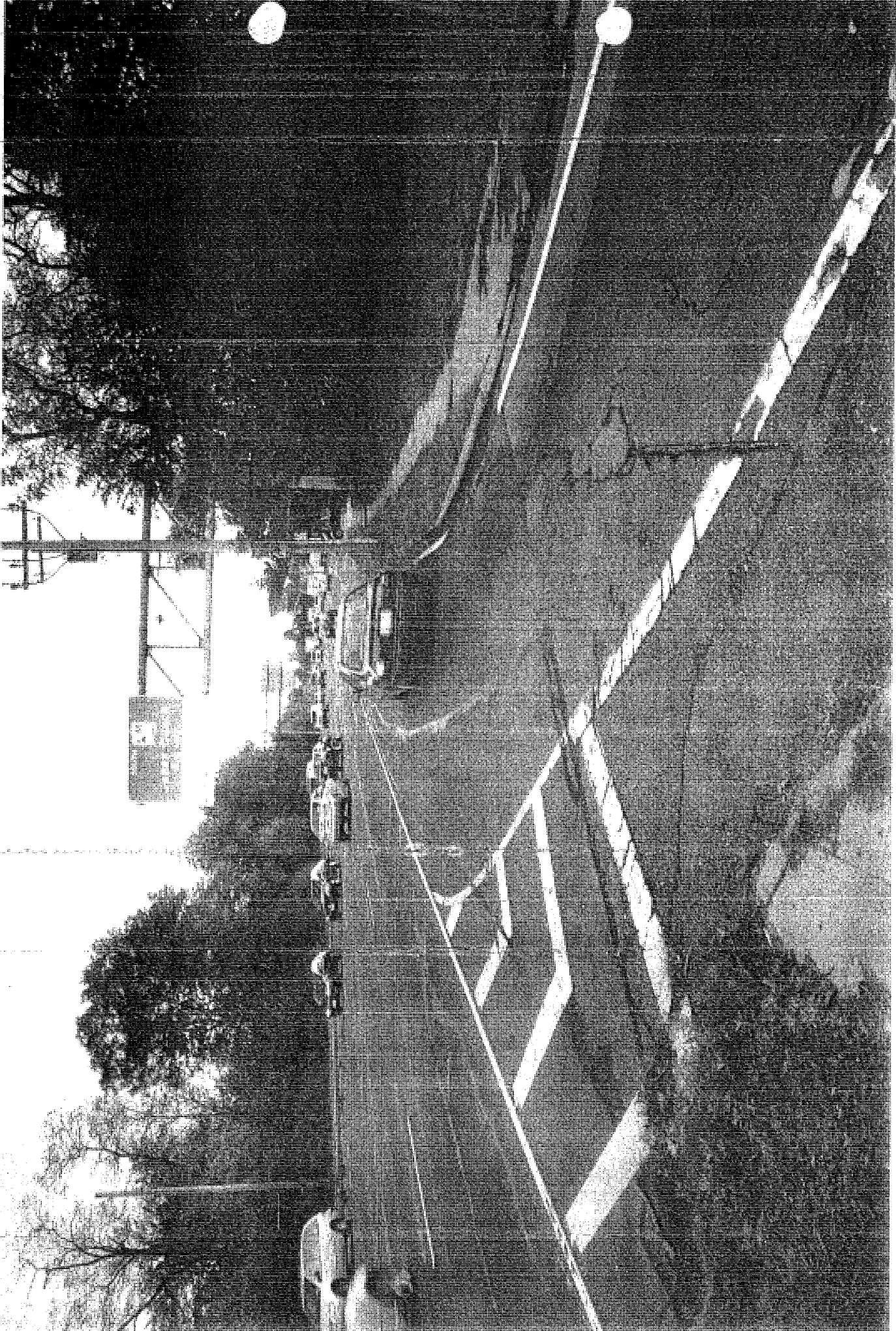


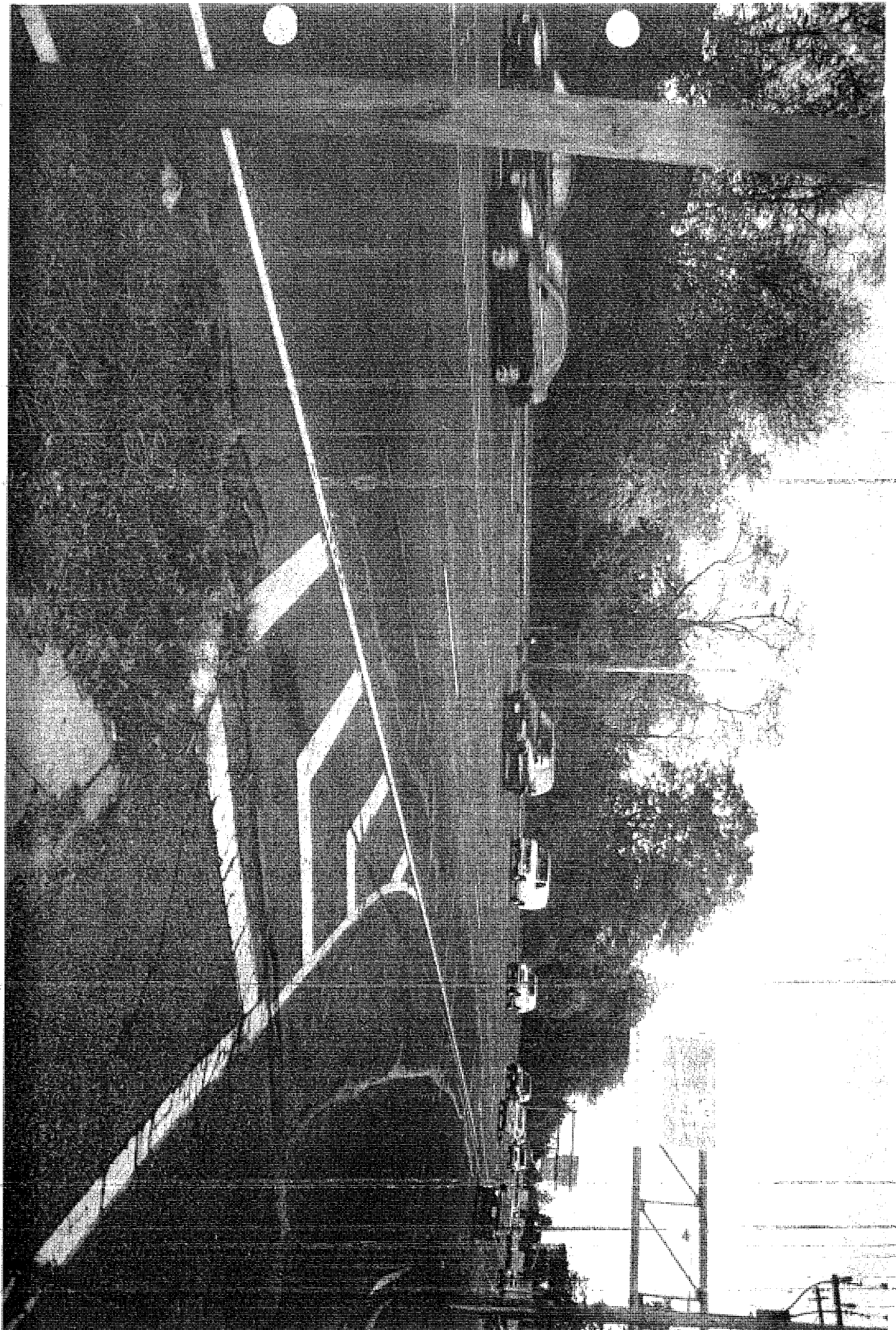




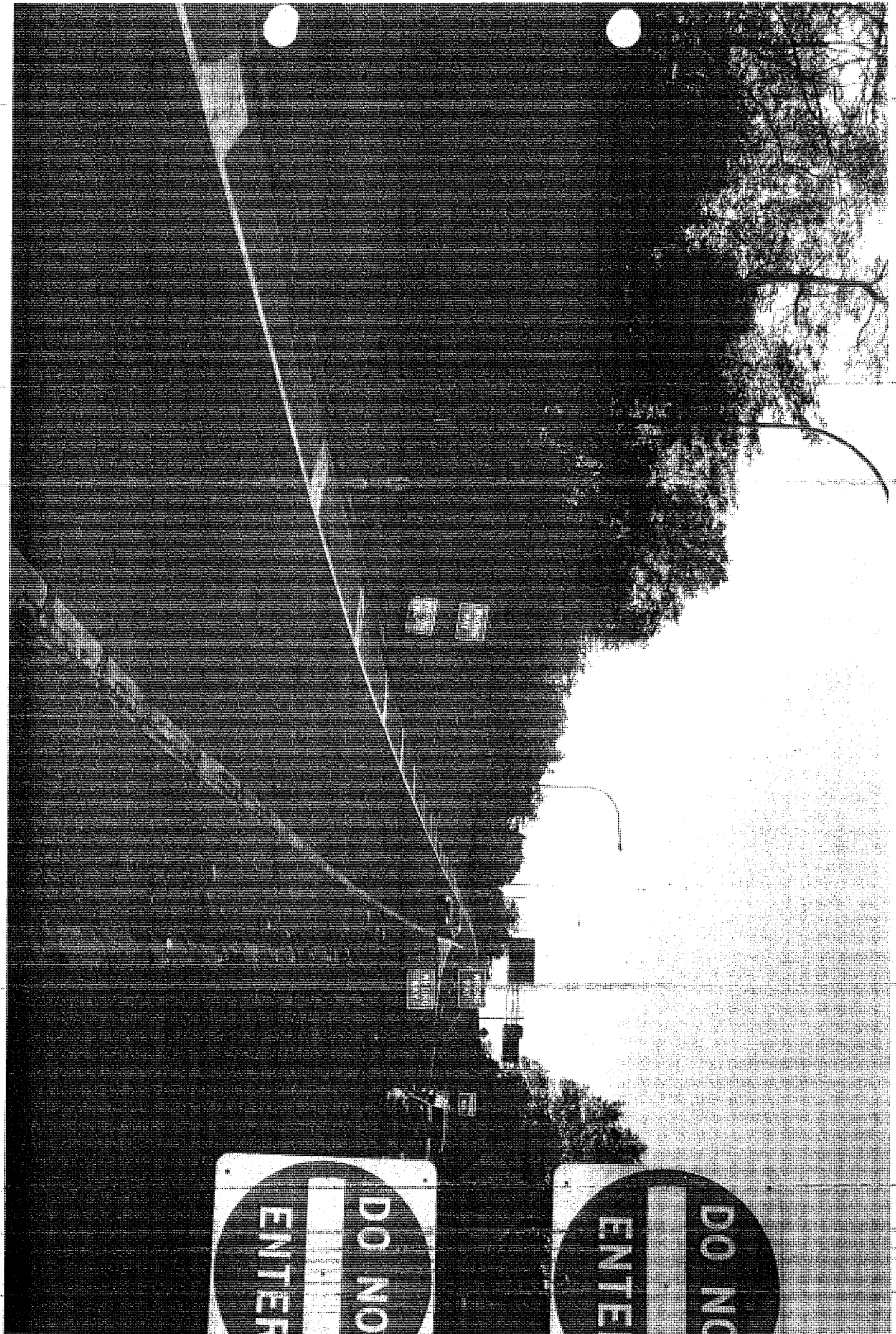


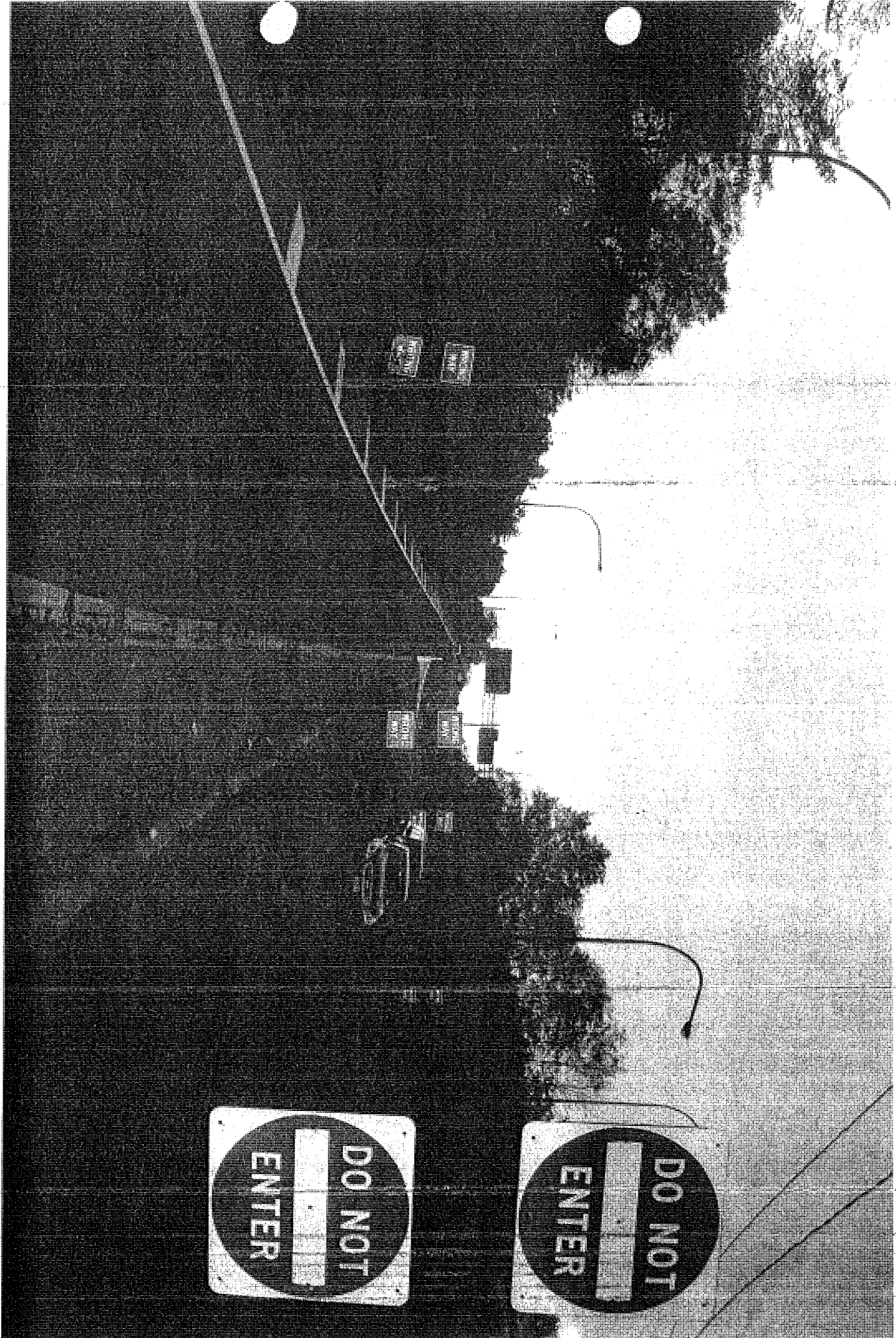


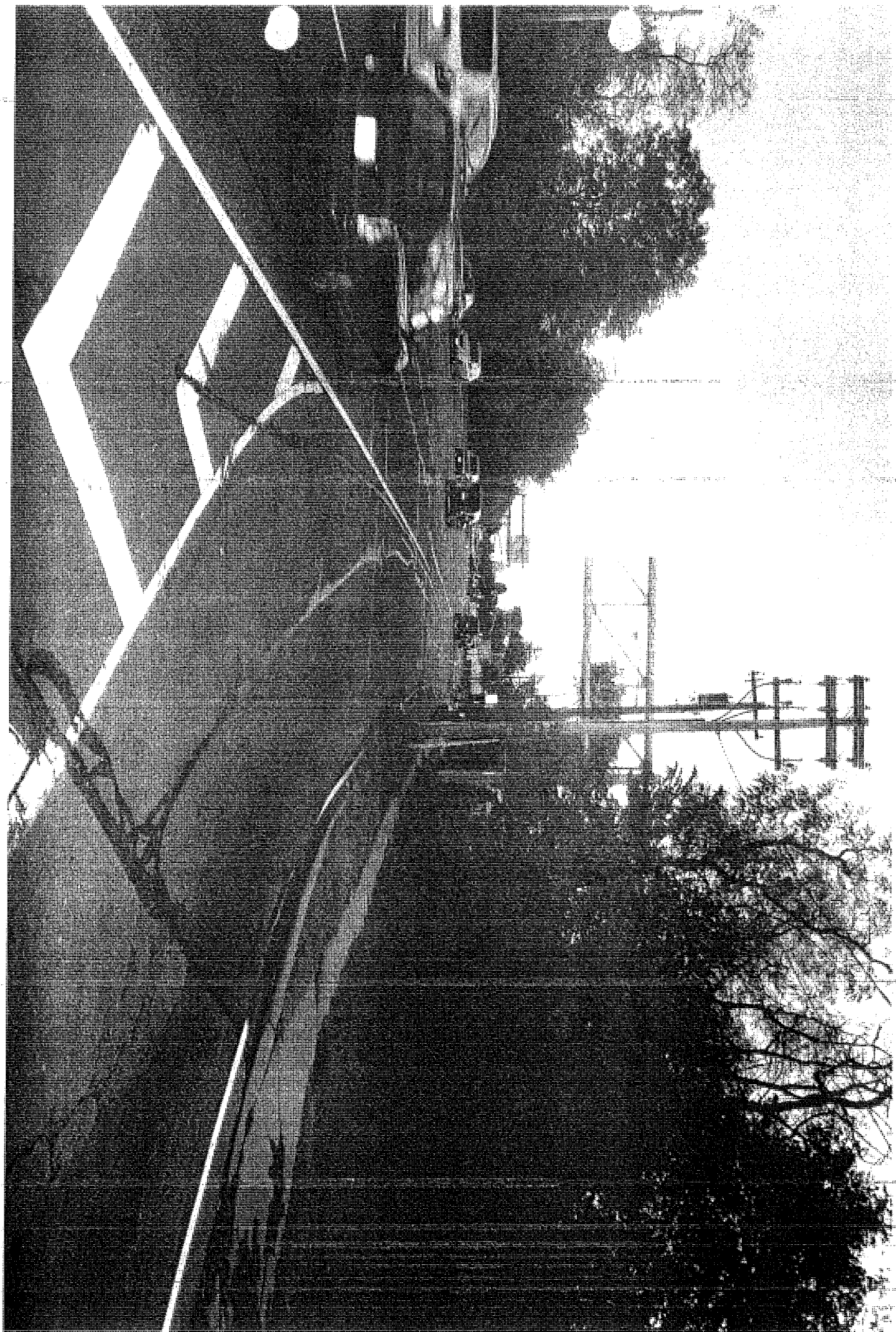




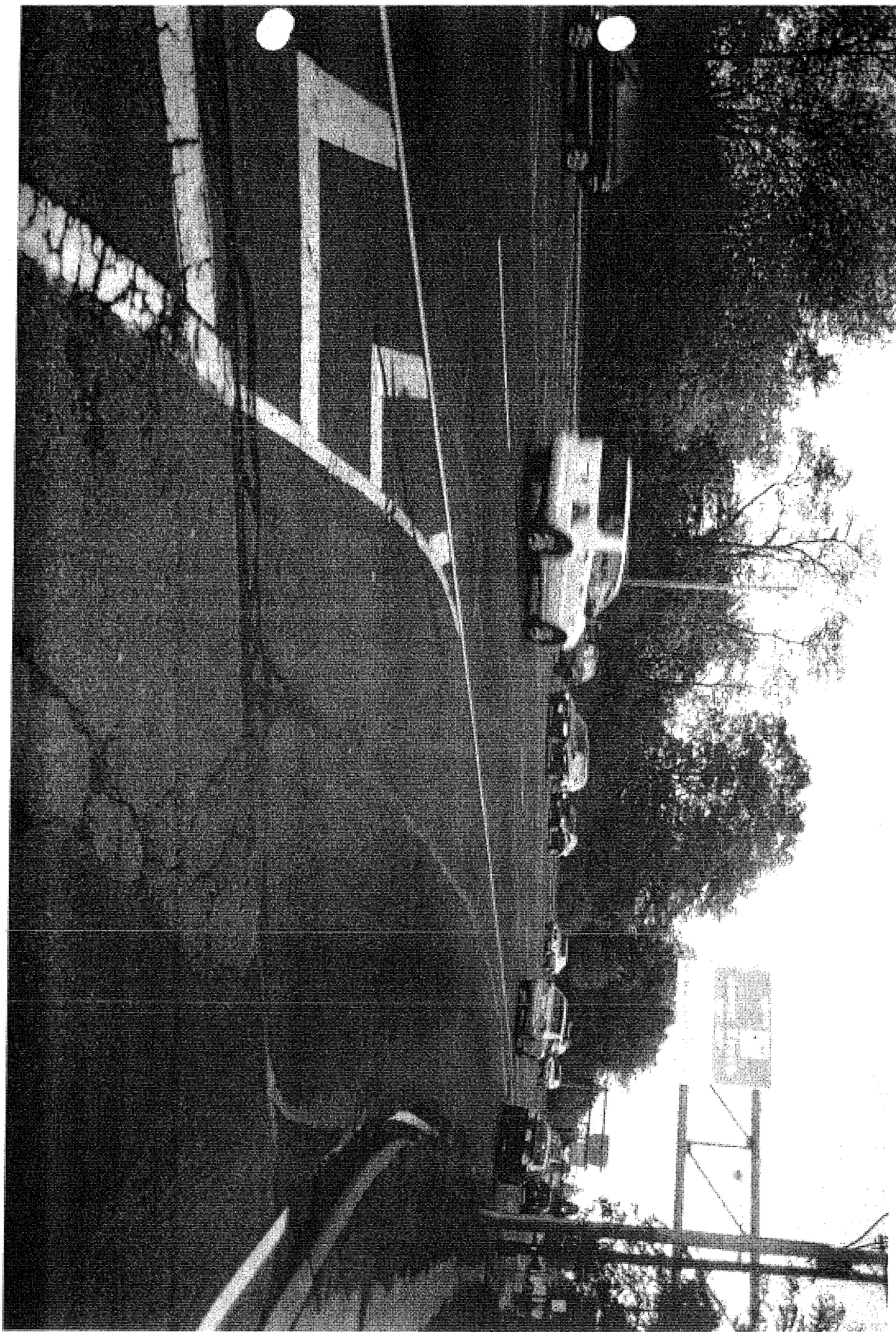
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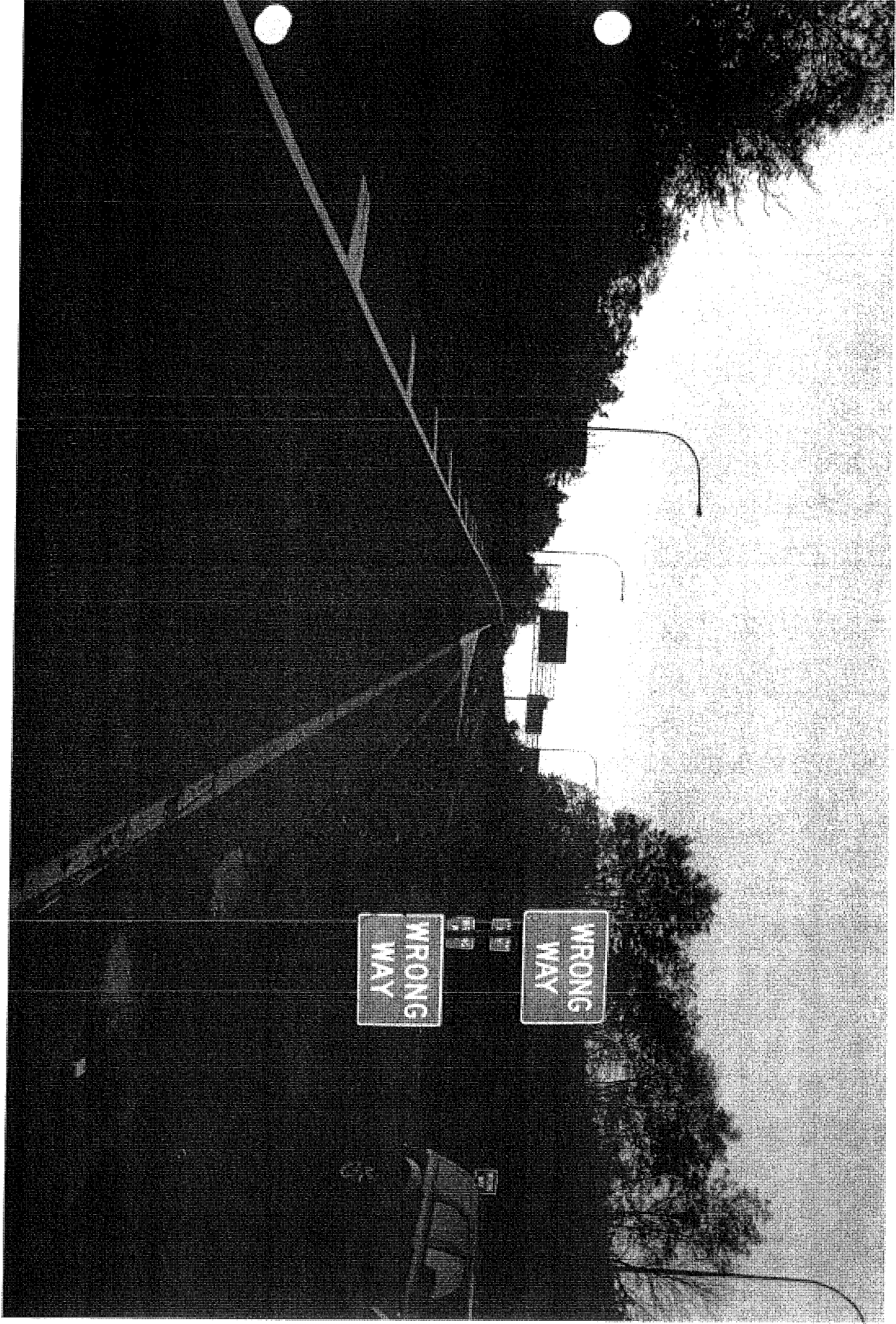


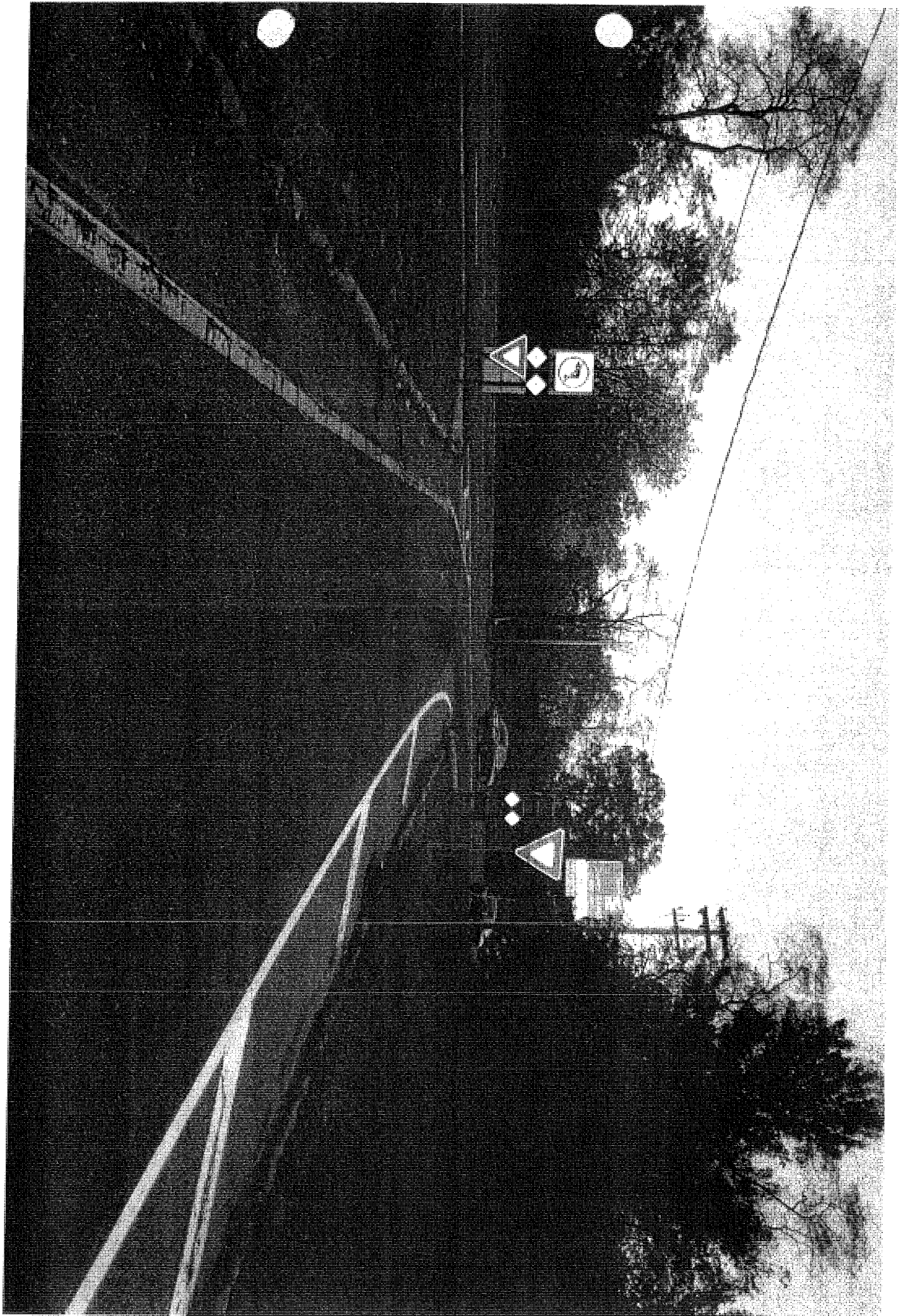


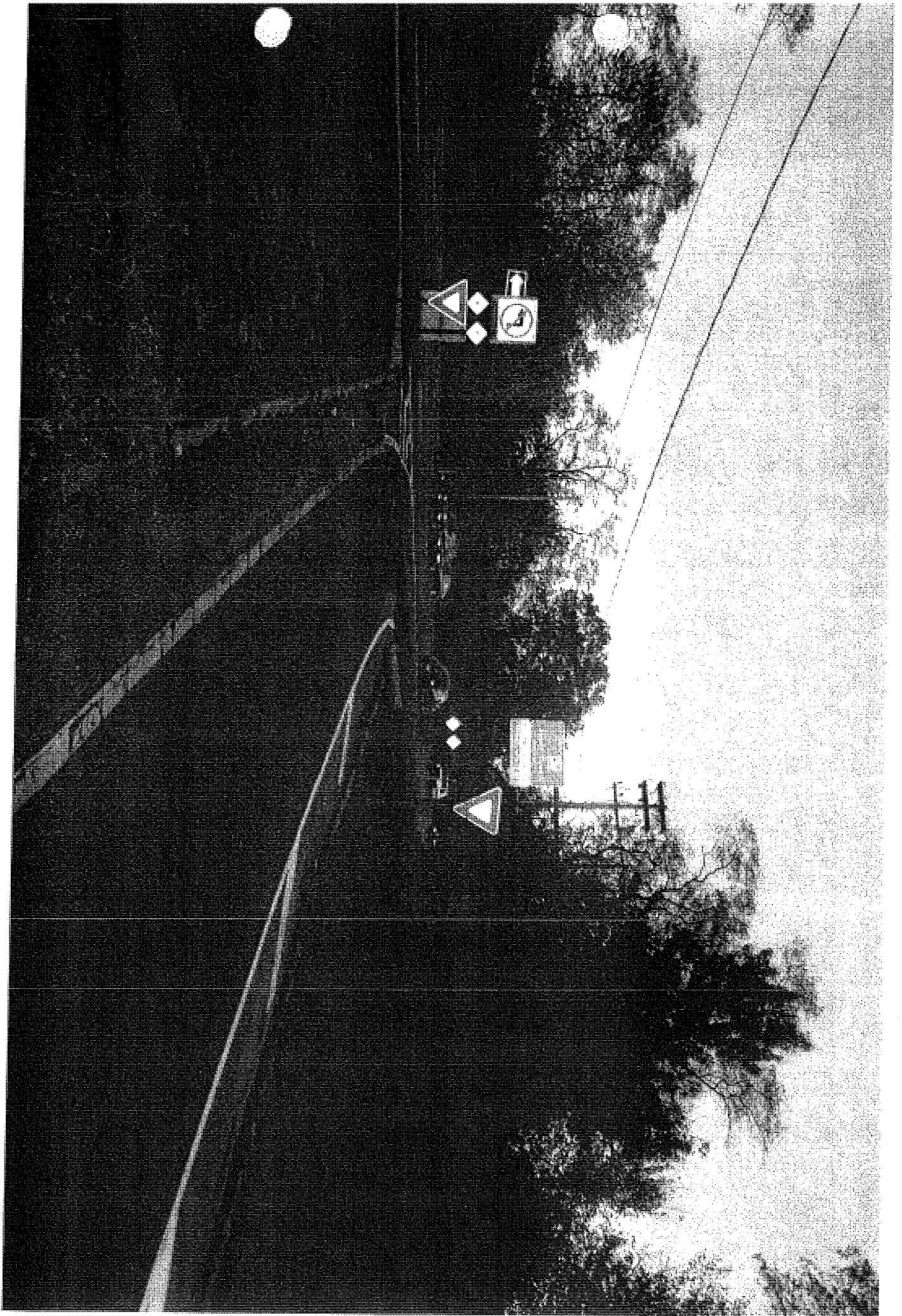


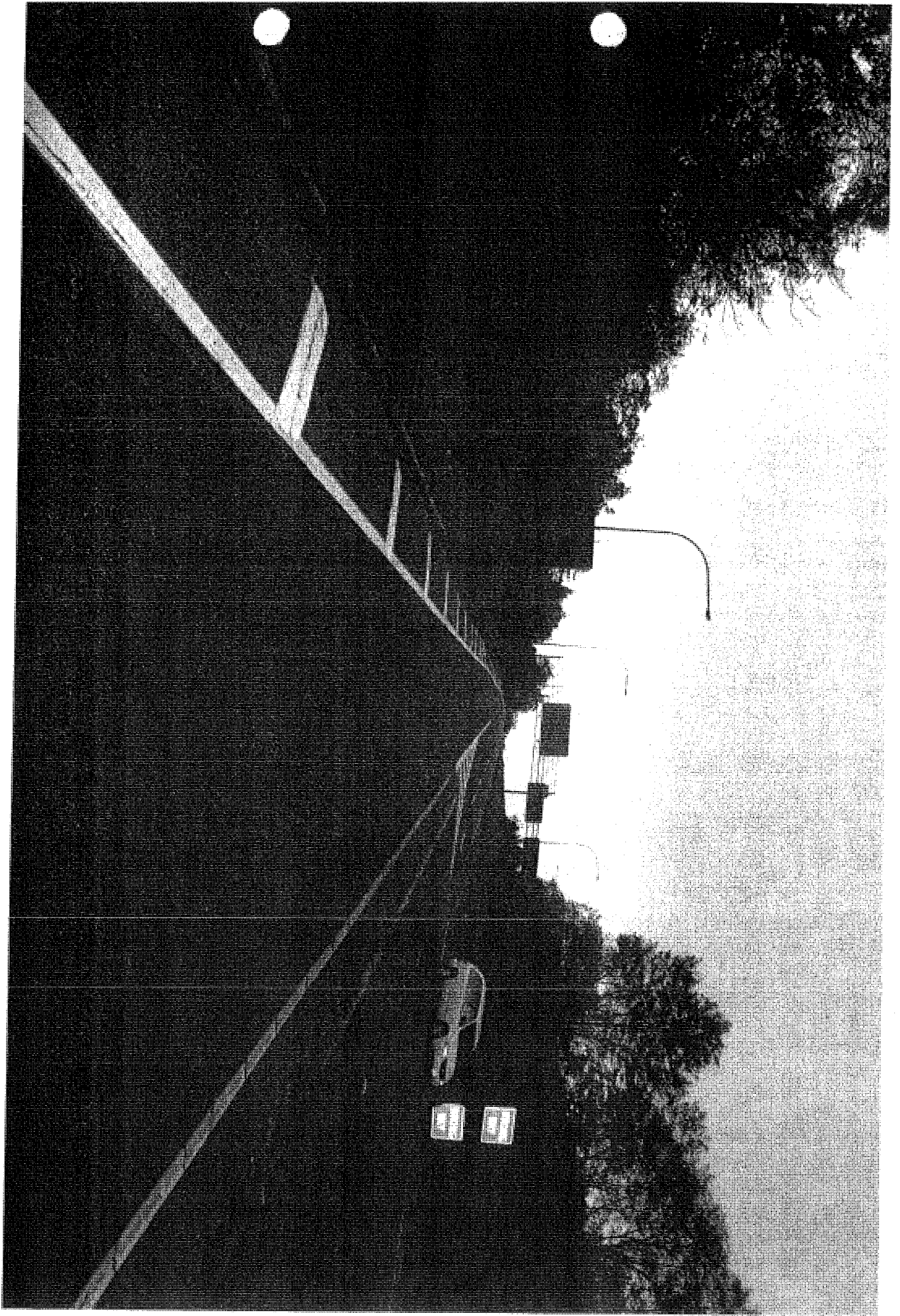
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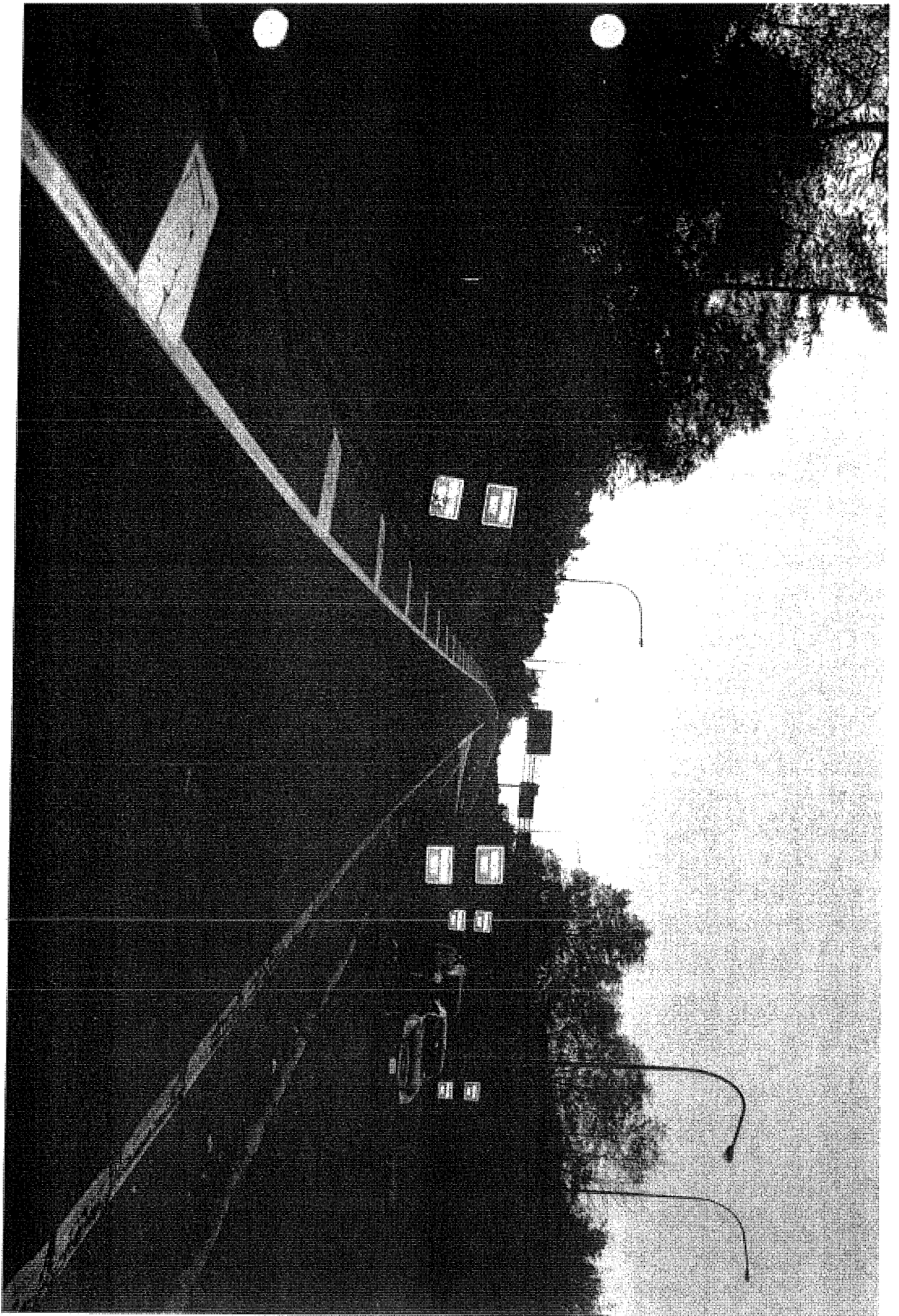


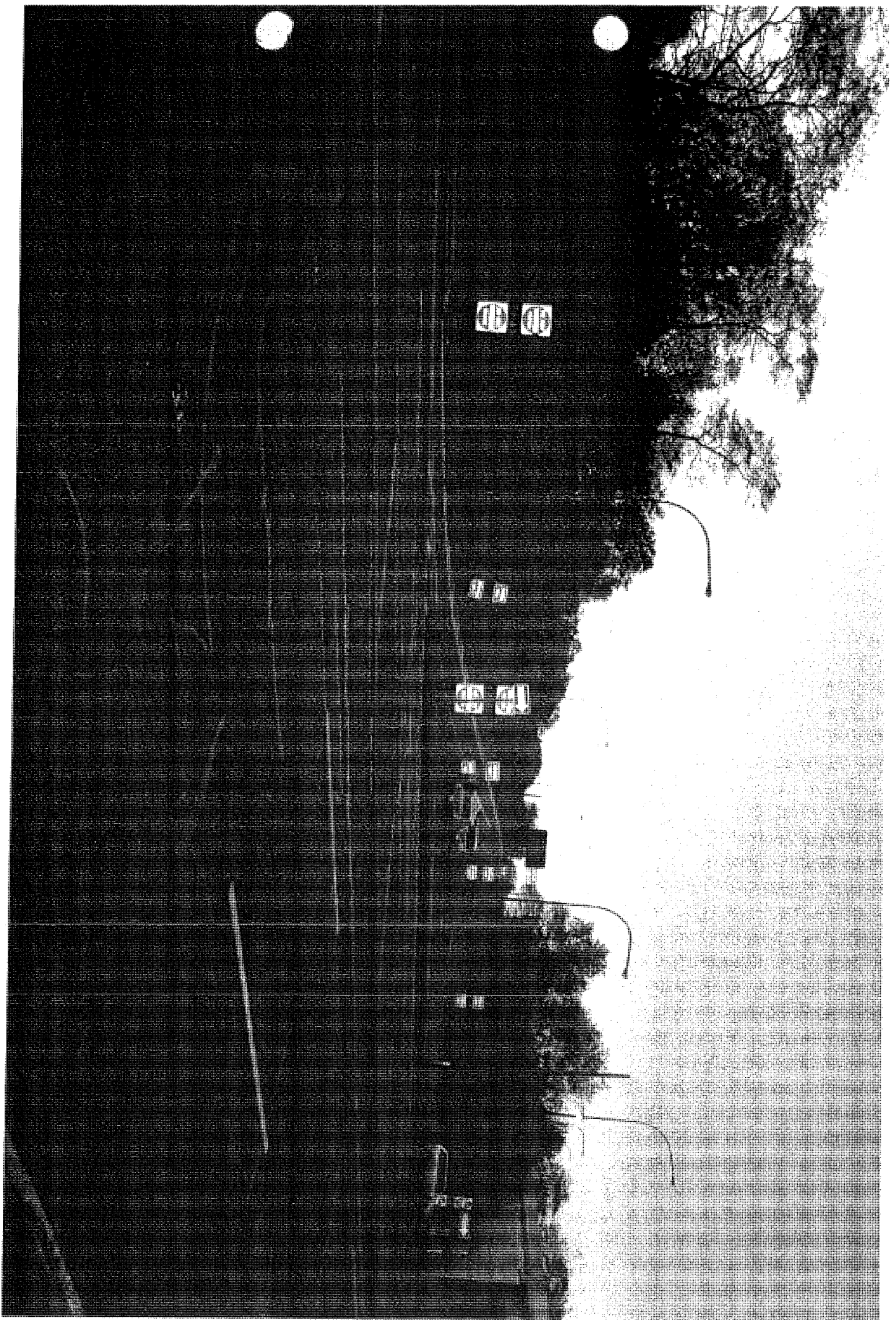


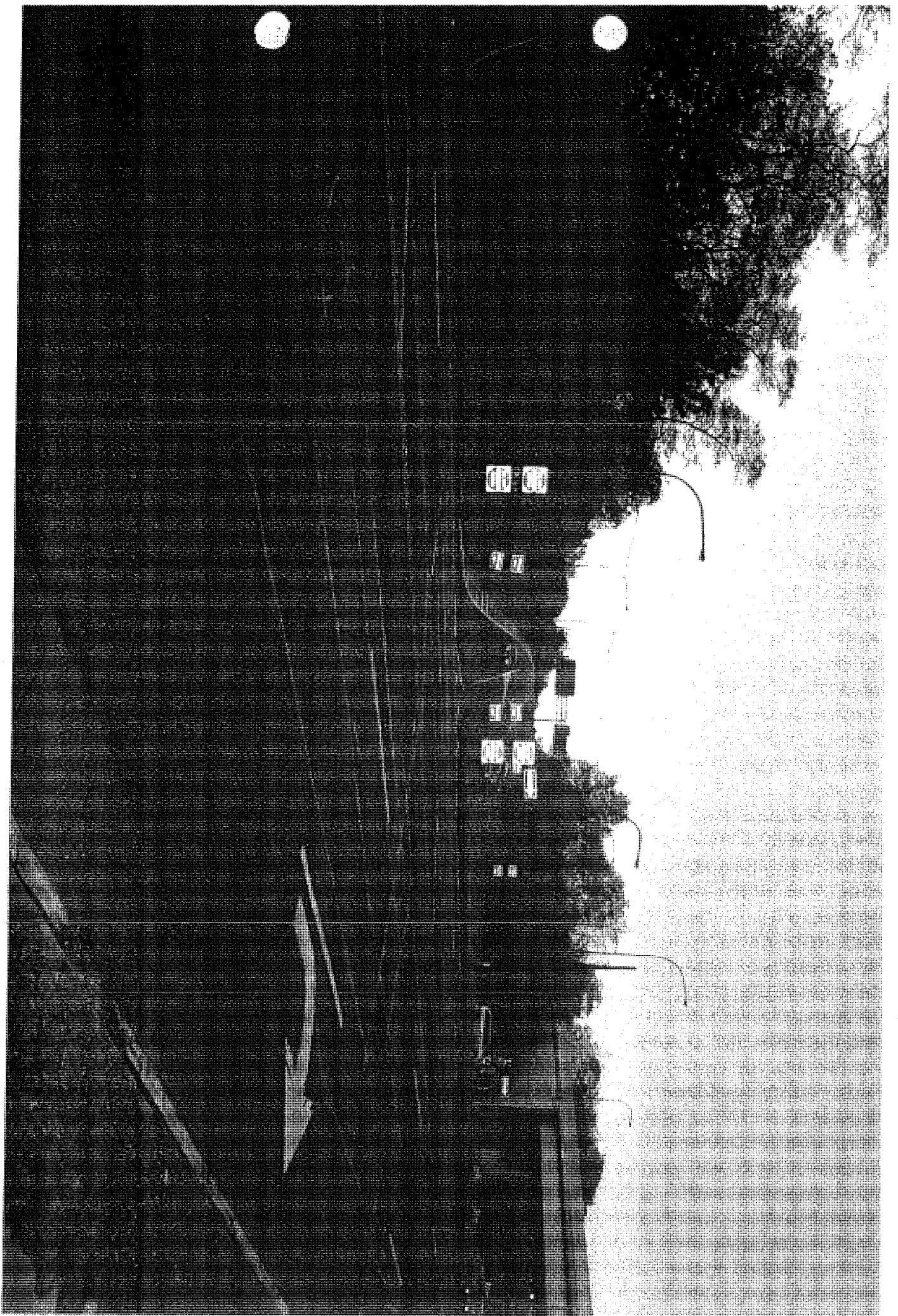


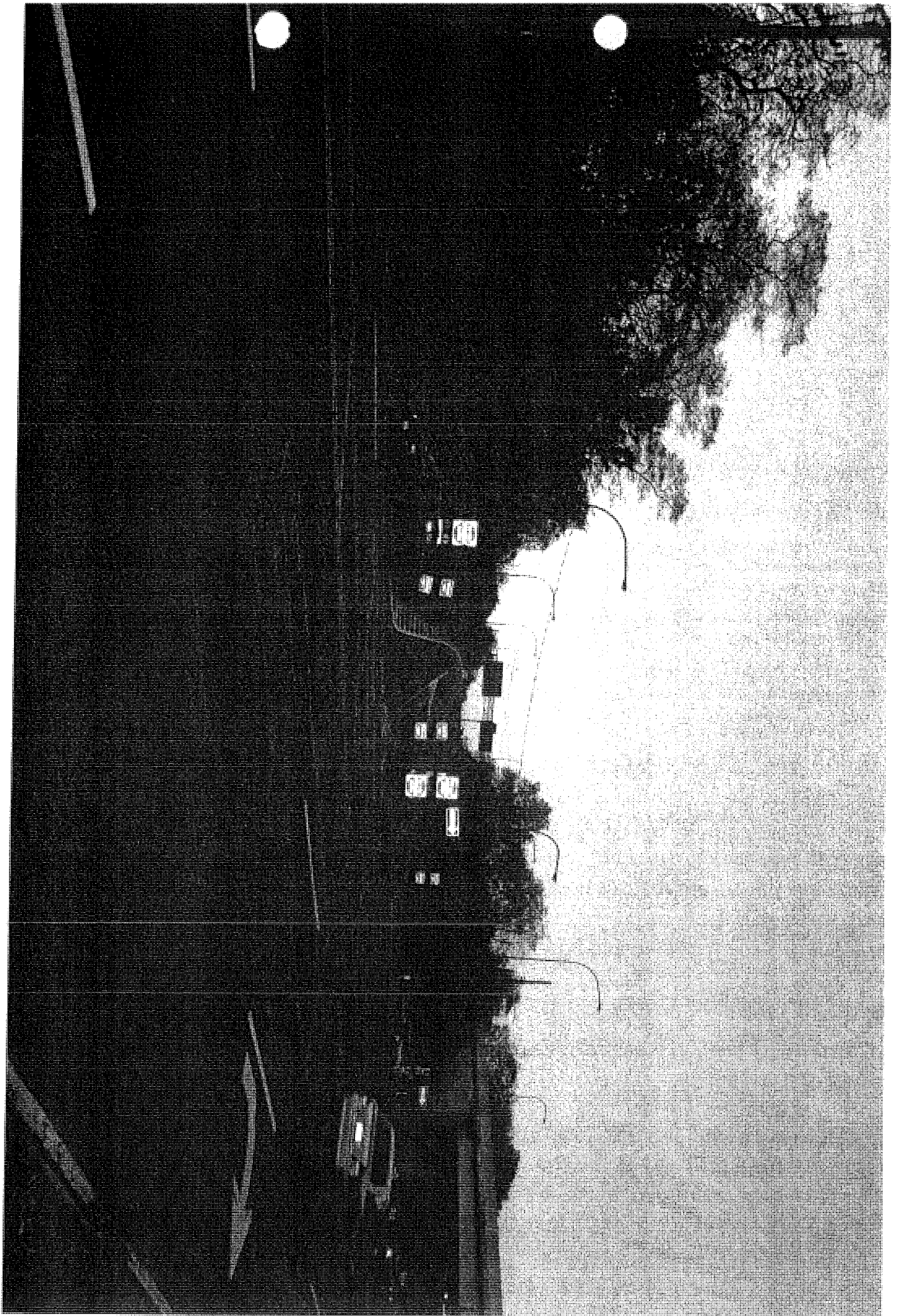




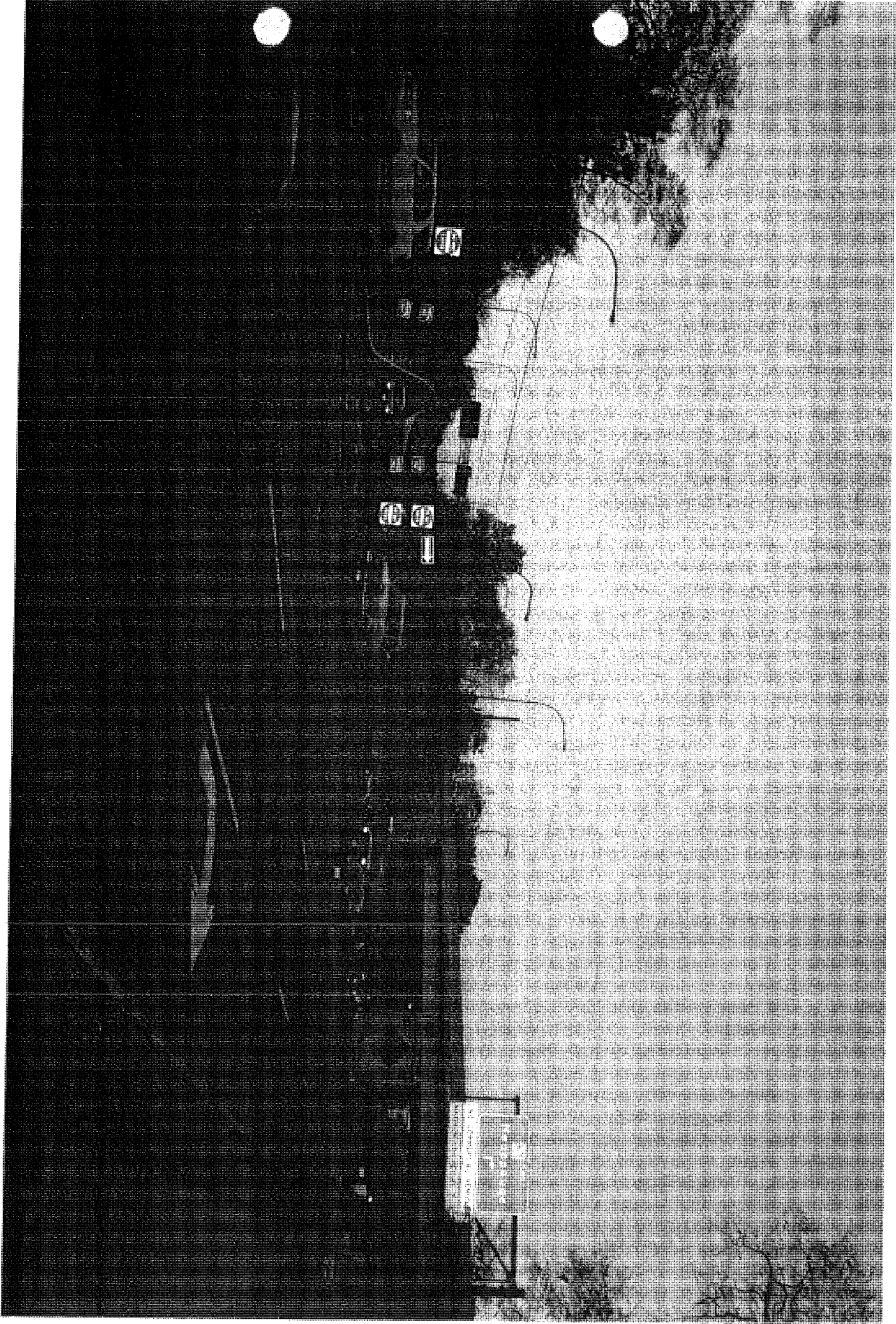


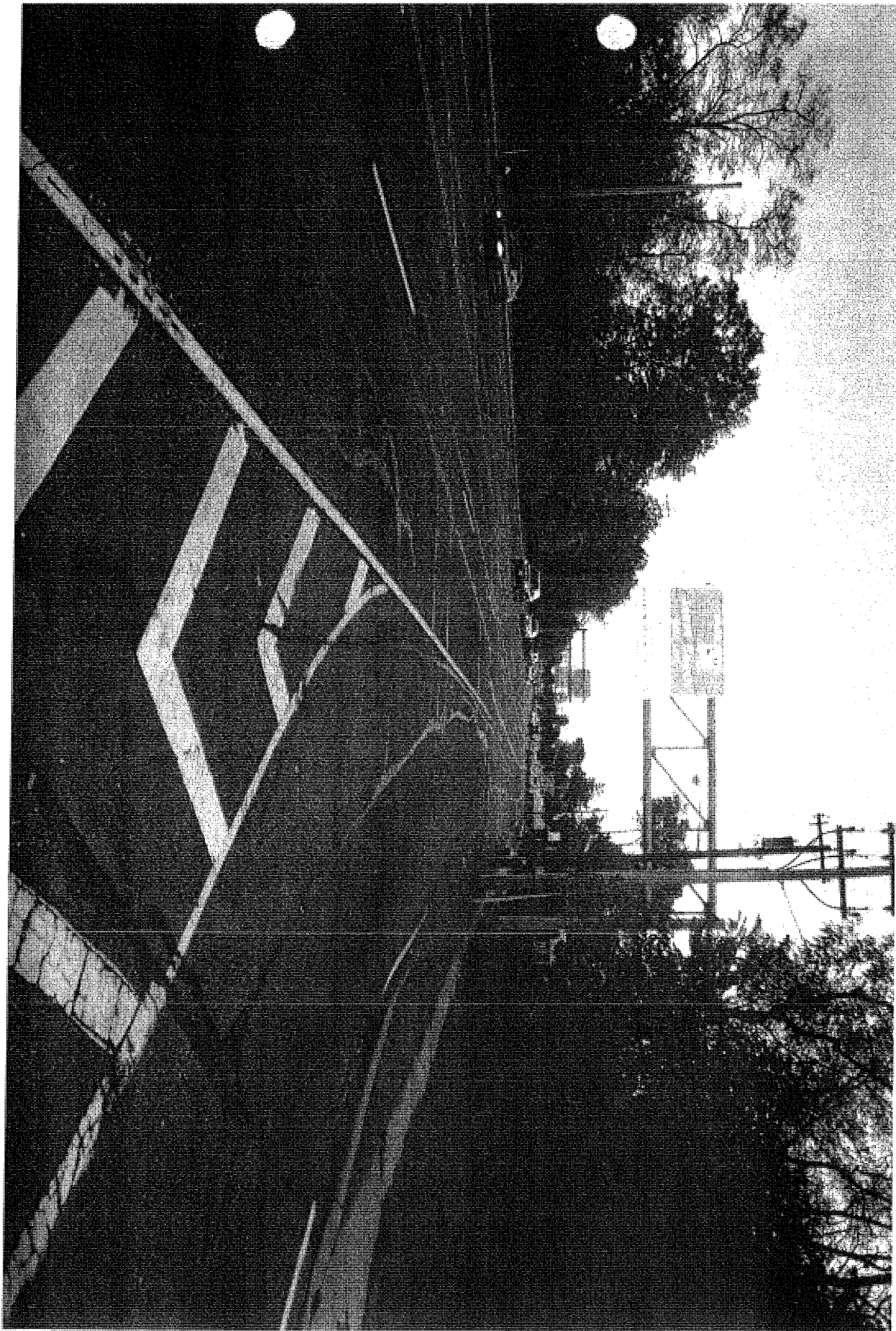


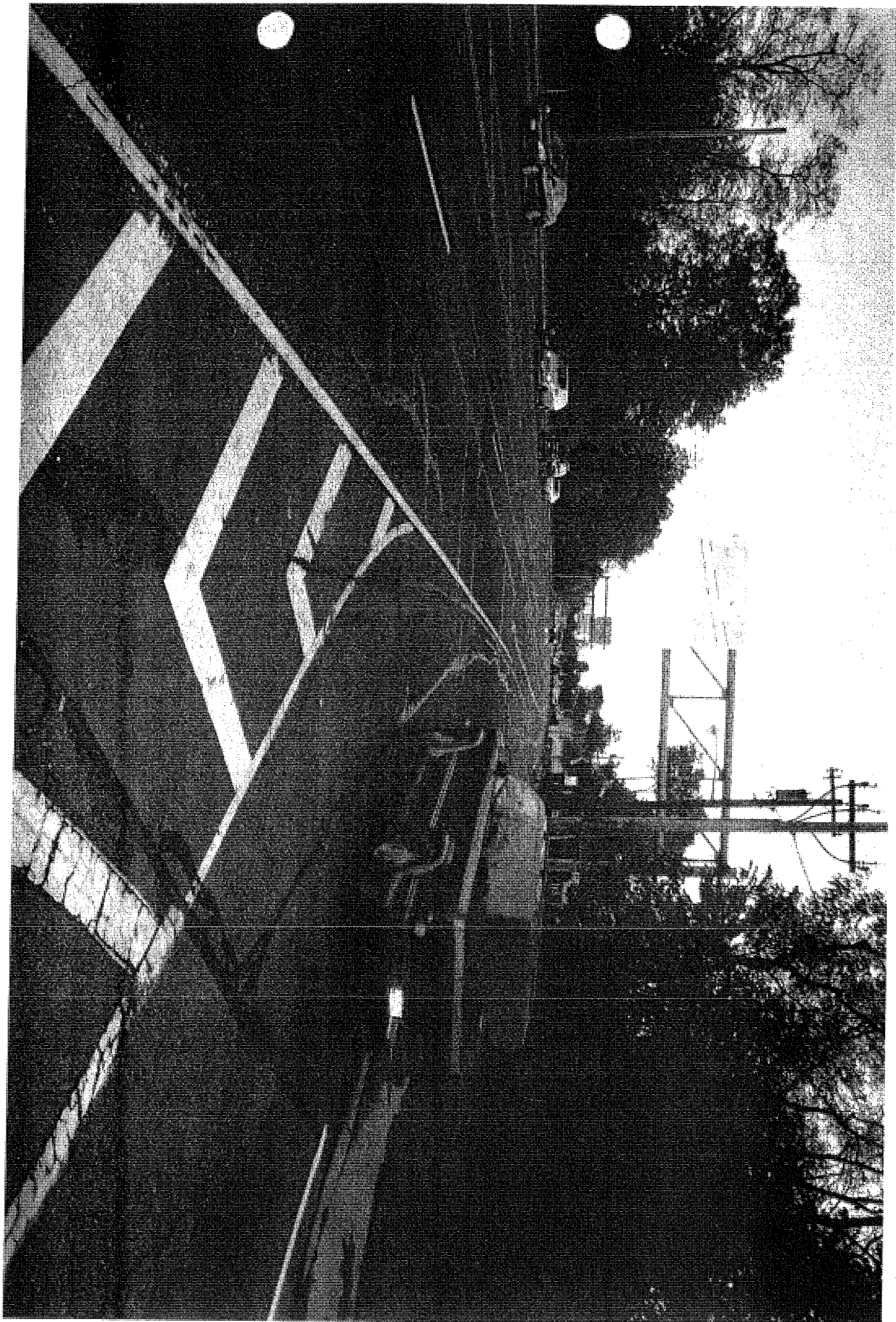




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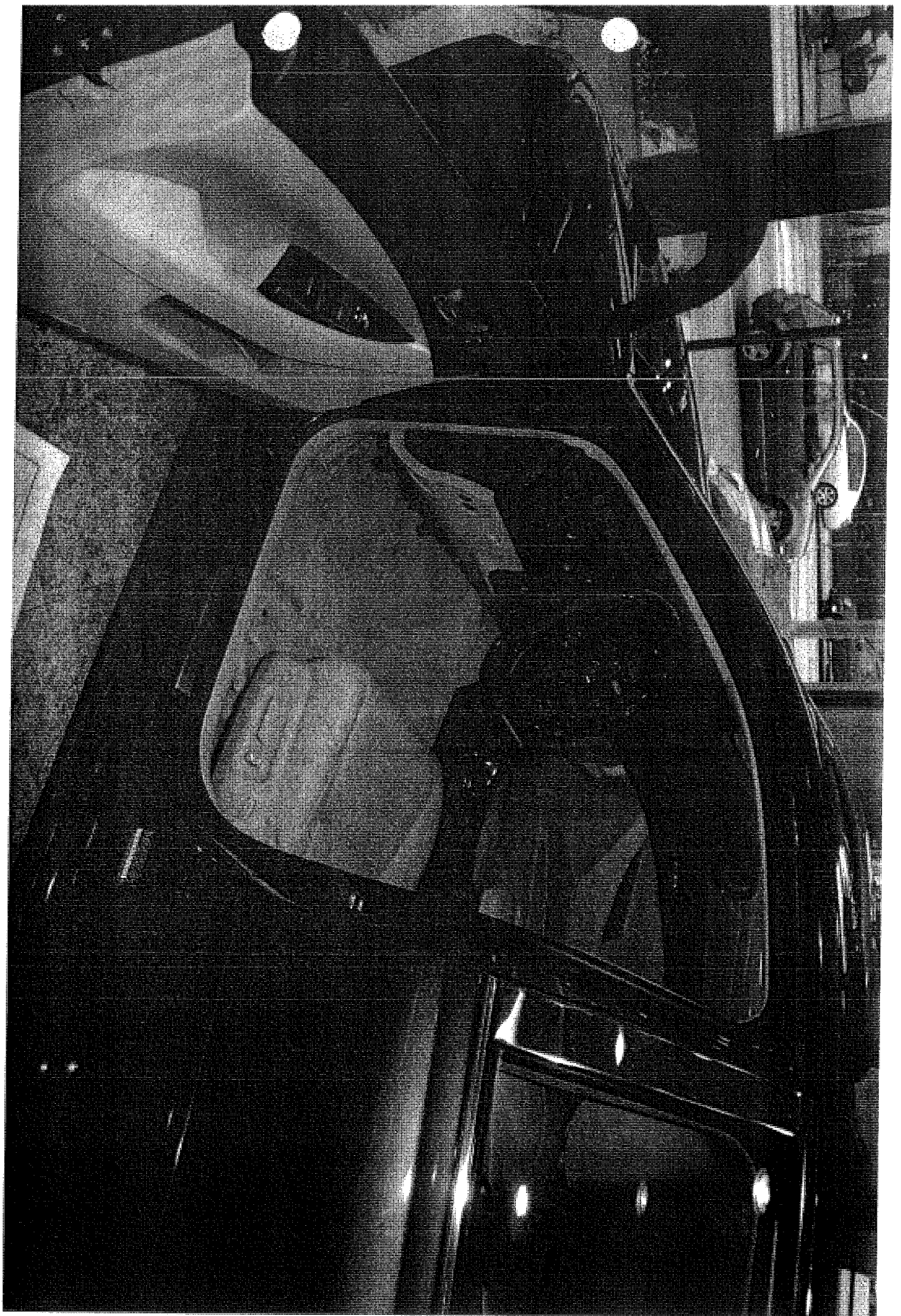




ES BISO EXEMPLAR

11/14/07

LEXUS OF QUEENS



MFD. BY: TOYOTA MOTOR CORPORATION 09/07
GVWR 4980LB GAWR FR 2668LB RR 2359LB
THIS VEHICLE CONFORMS TO ALL APPLICABLE
FEDERAL MOTOR VEHICLE SAFETY BUMPER AND
THEFT PREVENTION STANDARDS IN EFFECT ON
THE DATE OF MANUFACTURE SHOWN ABOVE.
JTB0J466082172755 PASS. CAR

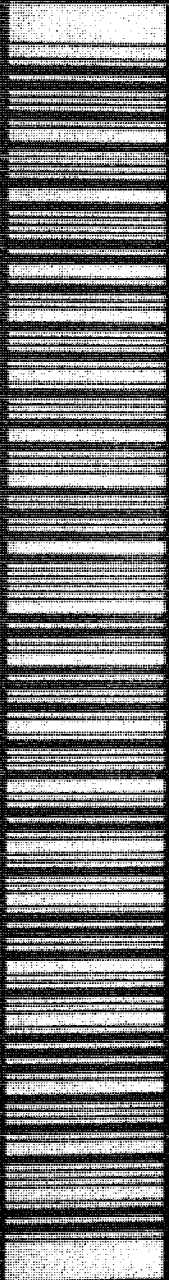


C/TR: 1G0/LA15 05V40L-BETGKA
A/TN: 01A7U680E MADE IN JAPAN

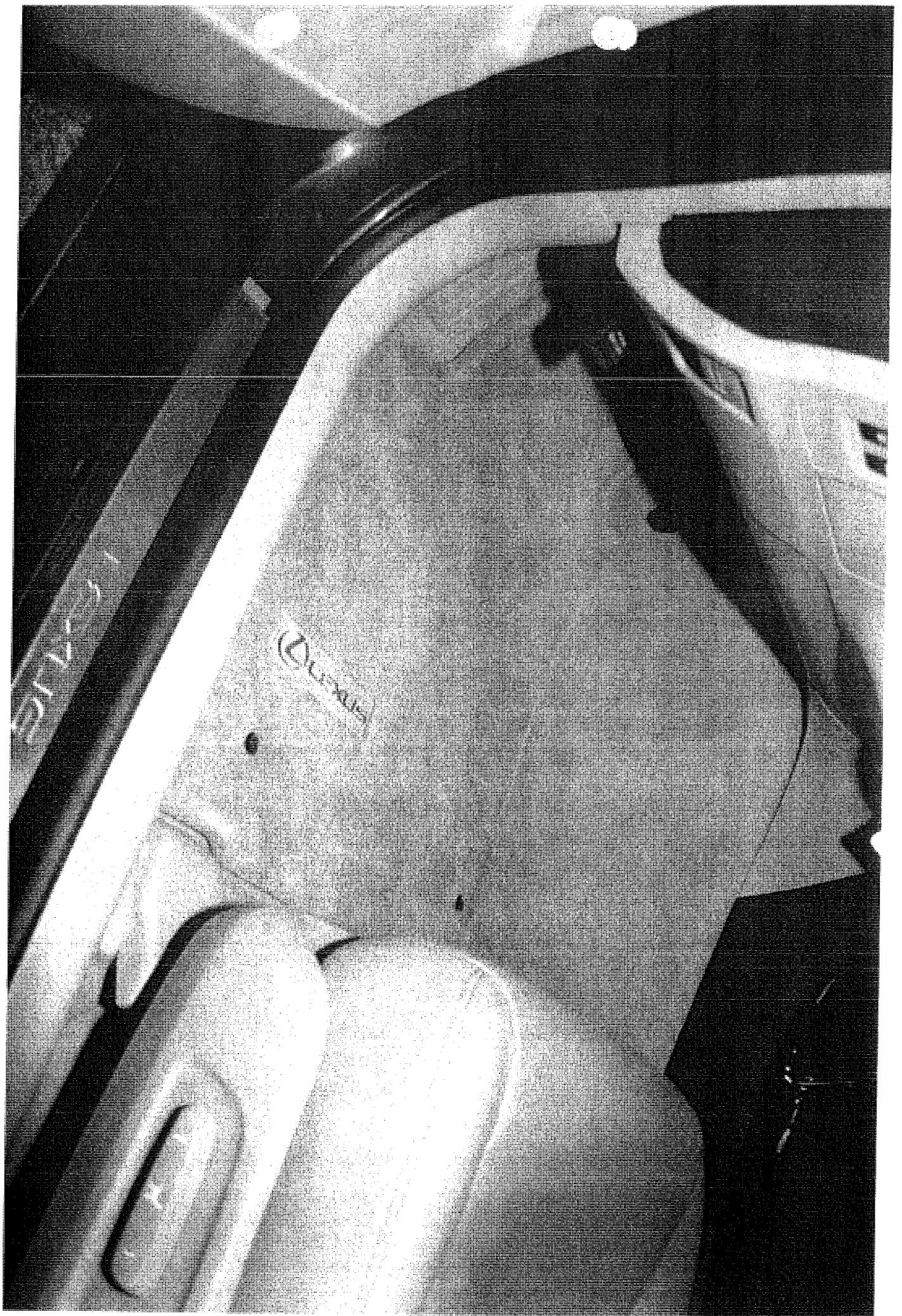
569 A

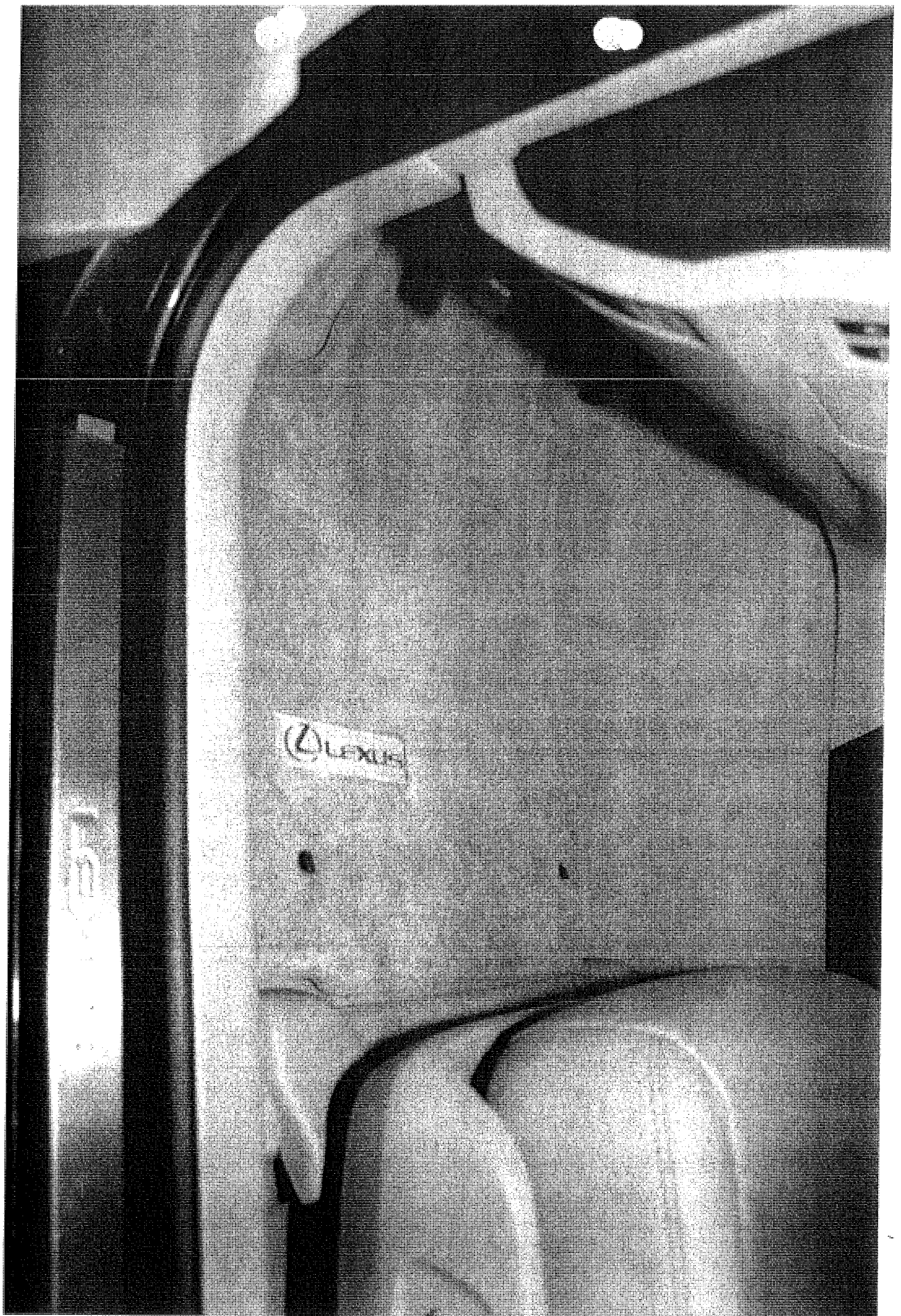


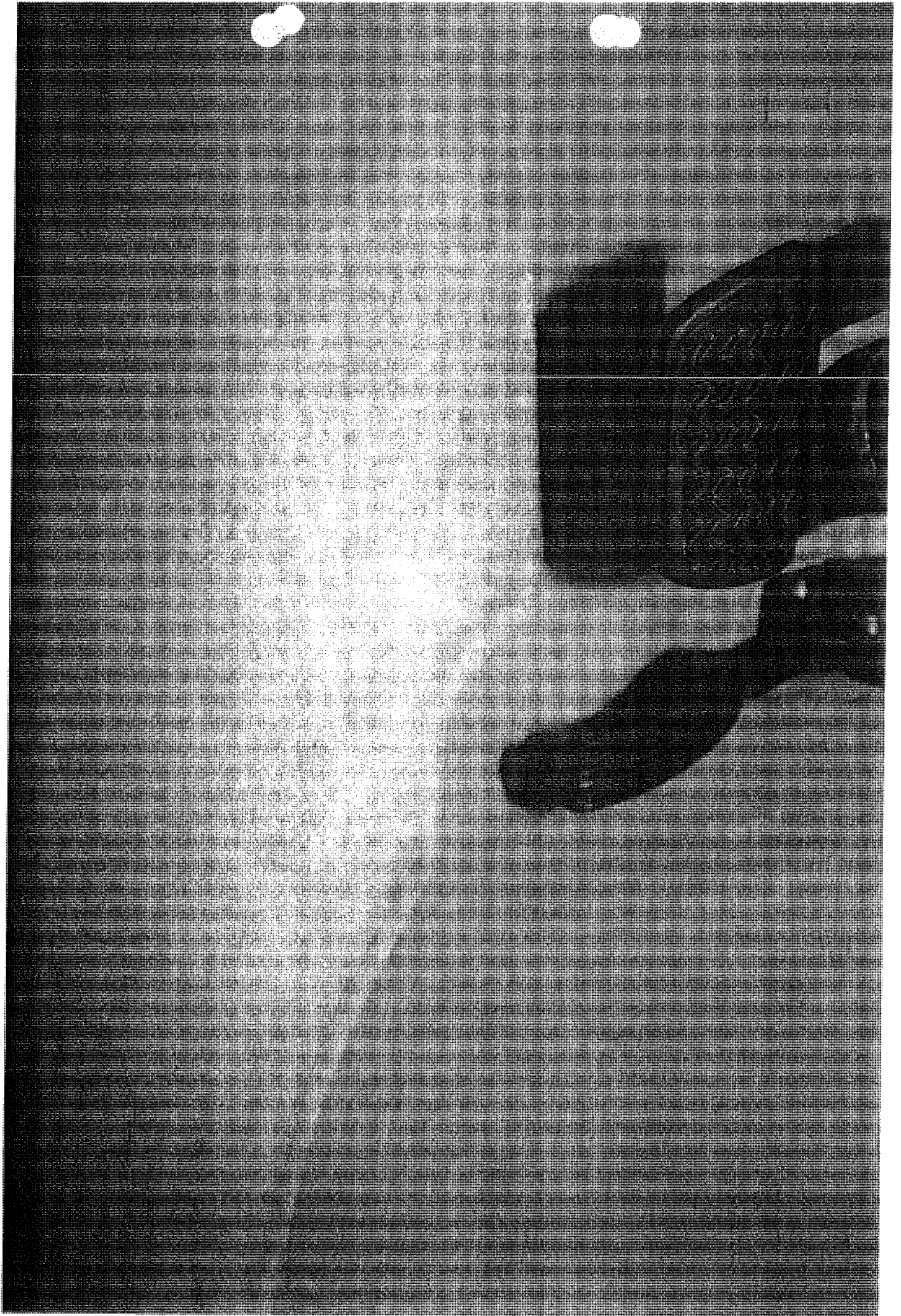
MFD. BY: TOYOTA MOTOR SALES, U.S.A., INC. CORPORATION 09/07
GWWR 4680LB GAWR FR 2668LB RR 2359LB
THIS VEHICLE CONFORMS TO ALL APPLICABLE
FEDERAL MOTOR VEHICLE SAFETY, BUMPER, AND
THEFT PREVENTION STANDARDS IN EFFECT ON
THE DATE OF MANUFACTURE SHOWN ABOVE.
JTHBU46G082172755 PASS. CAR



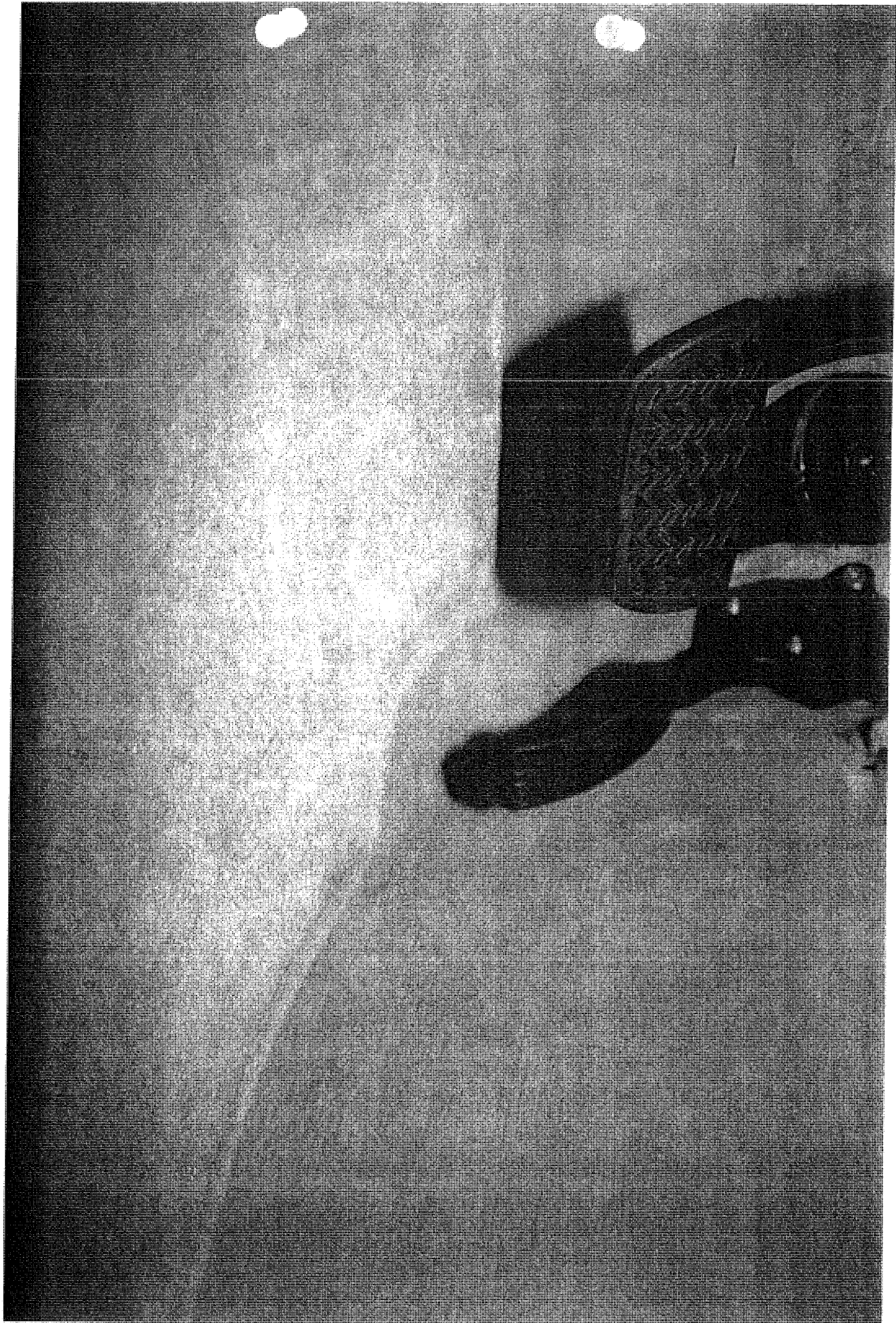
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A/TM: -01A7U660E MADE IN JAPAN

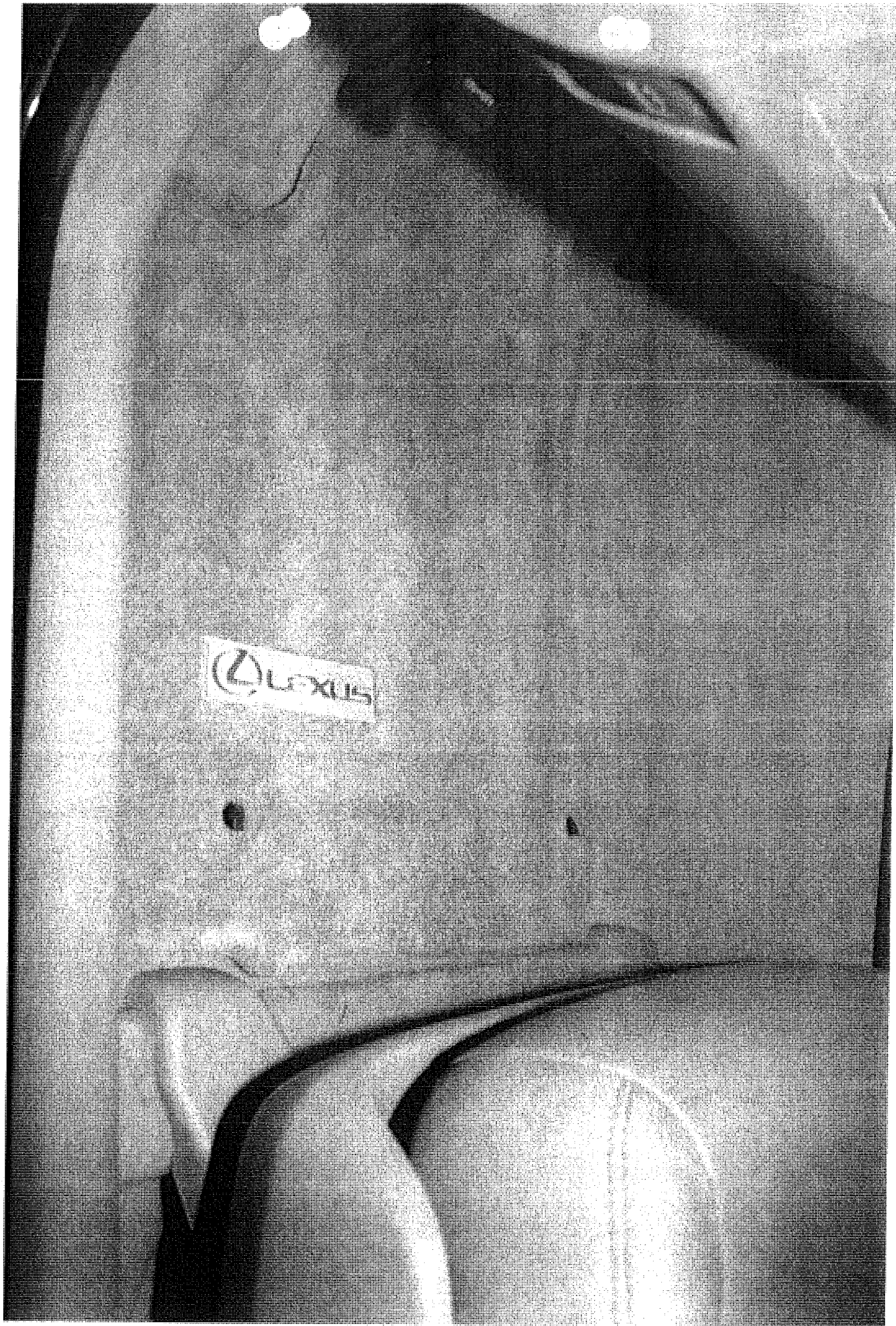


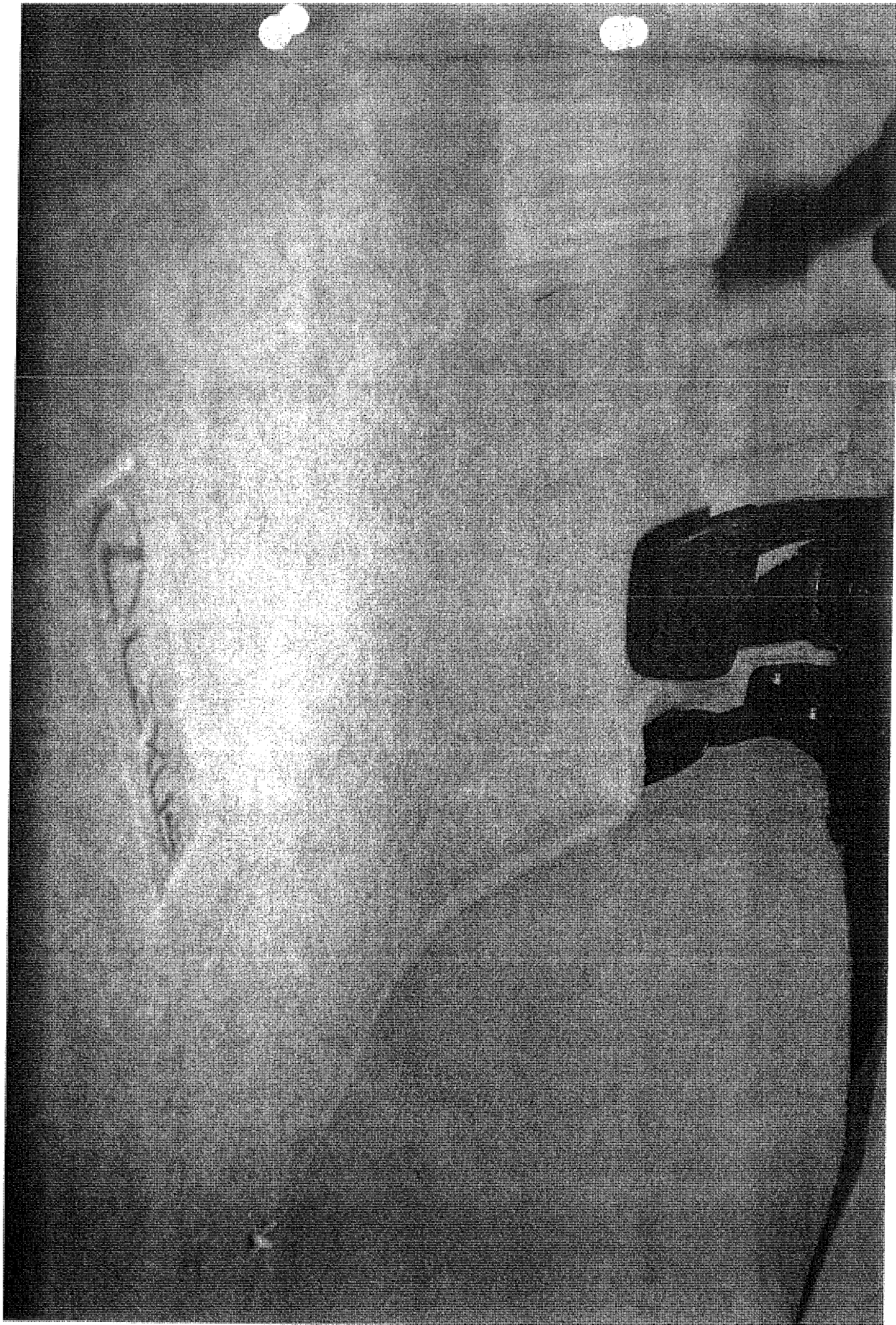


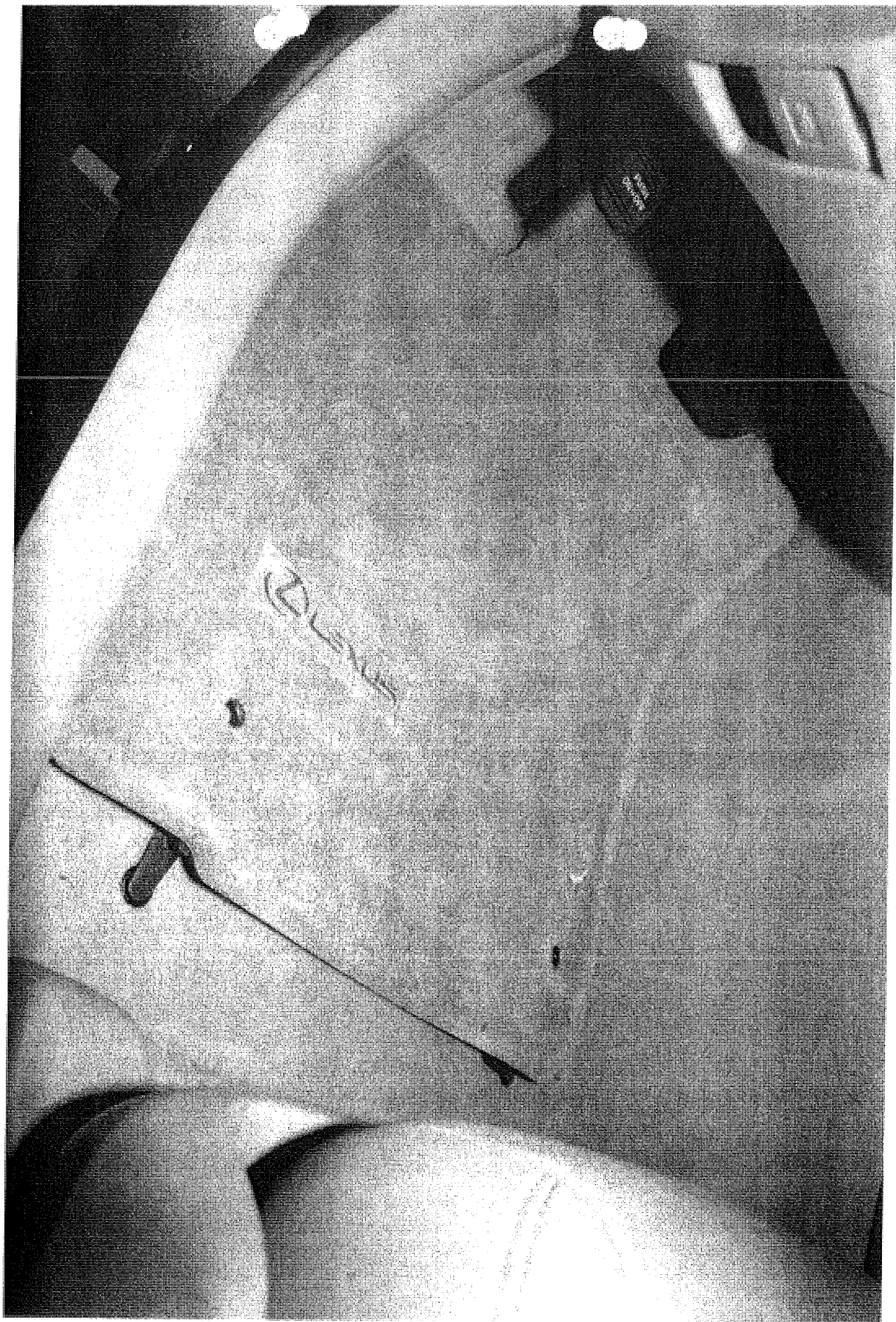


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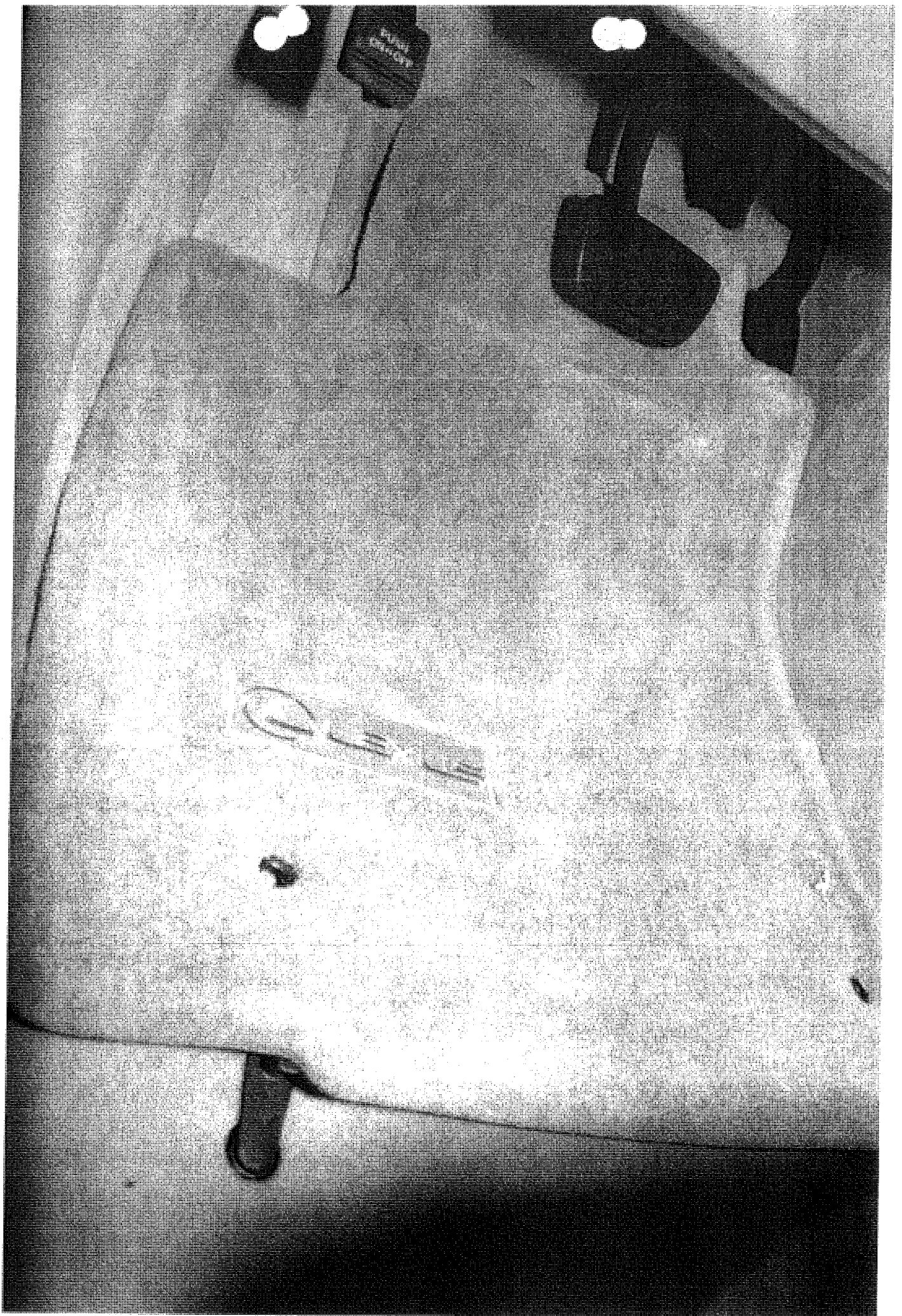


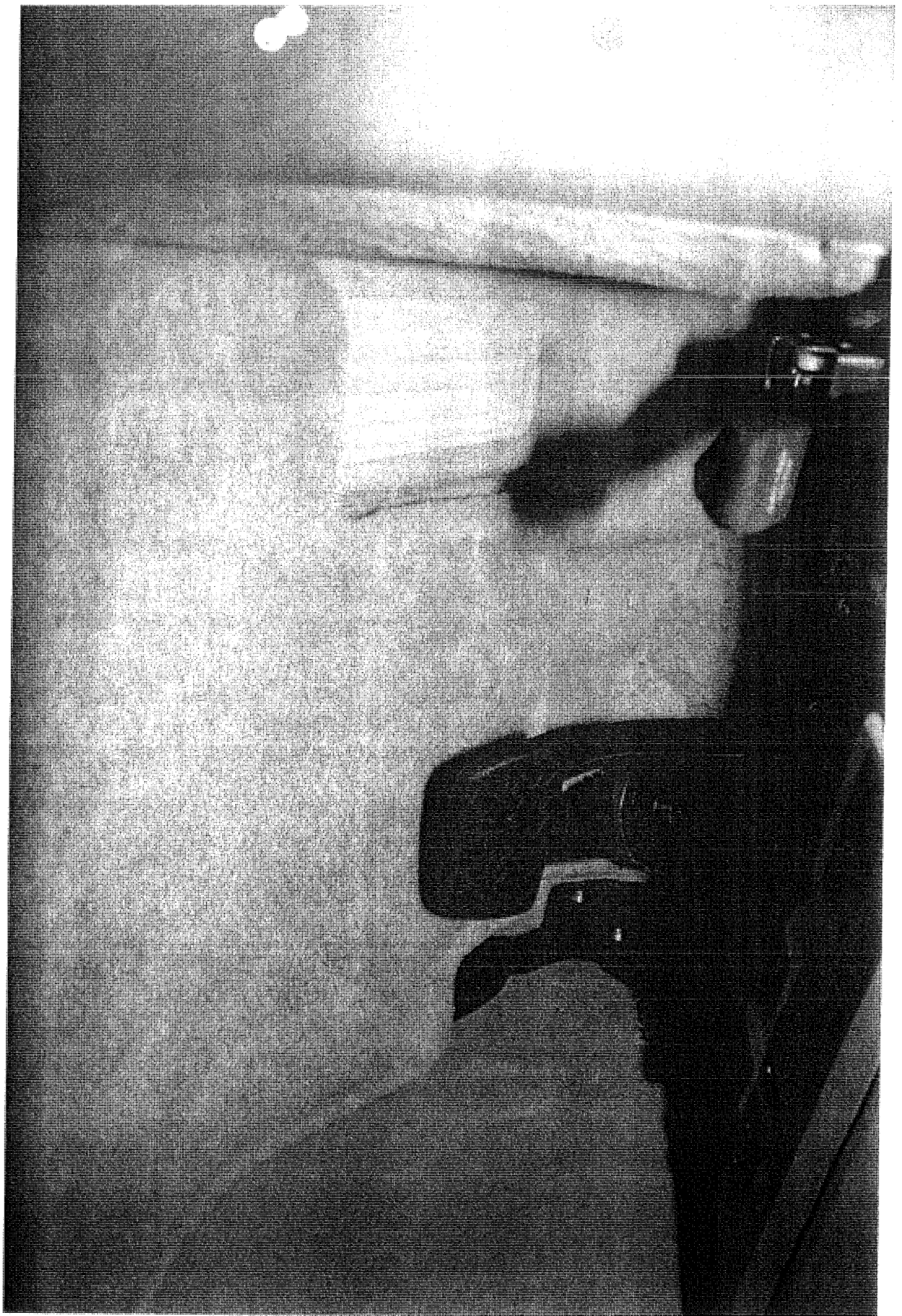




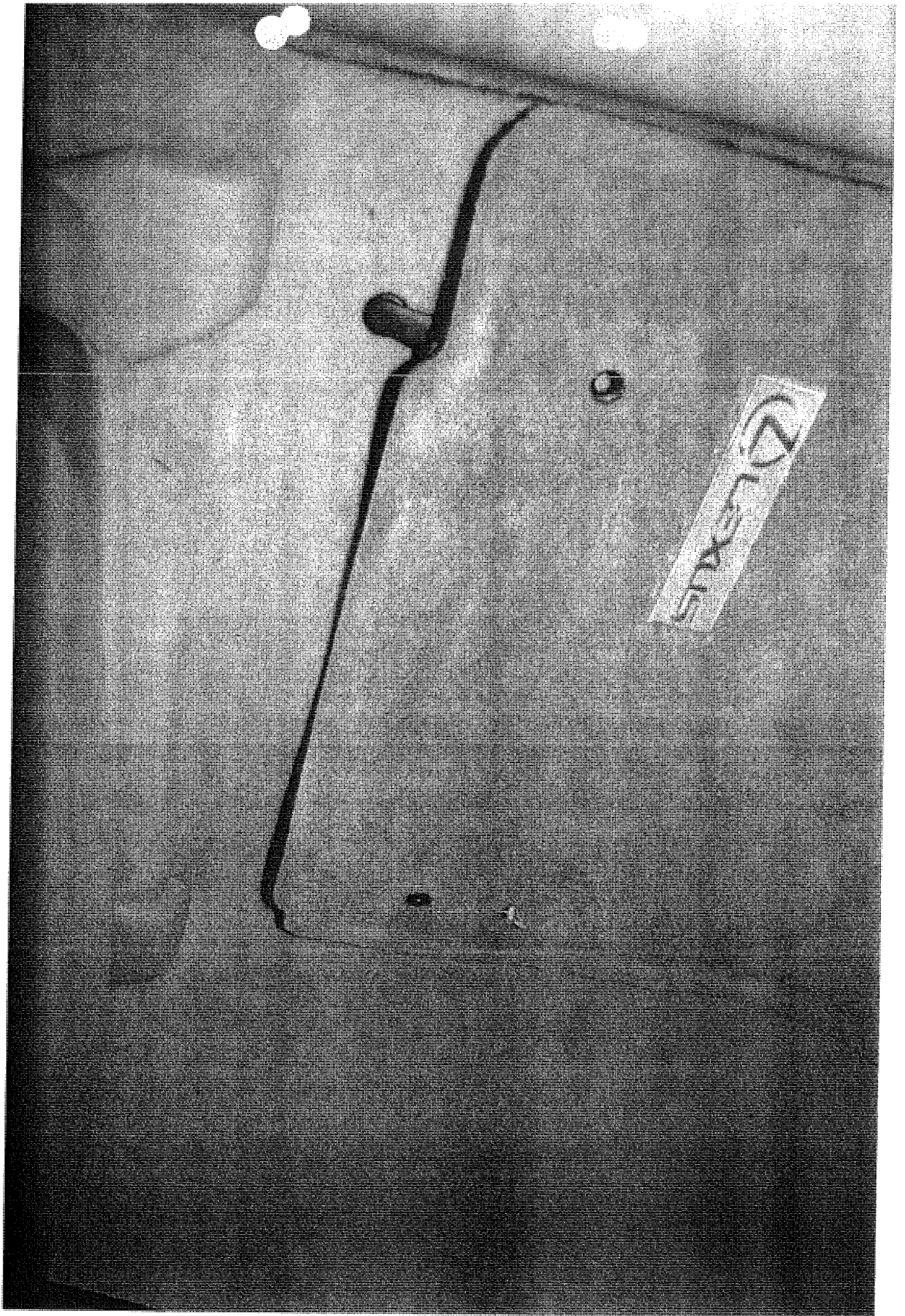


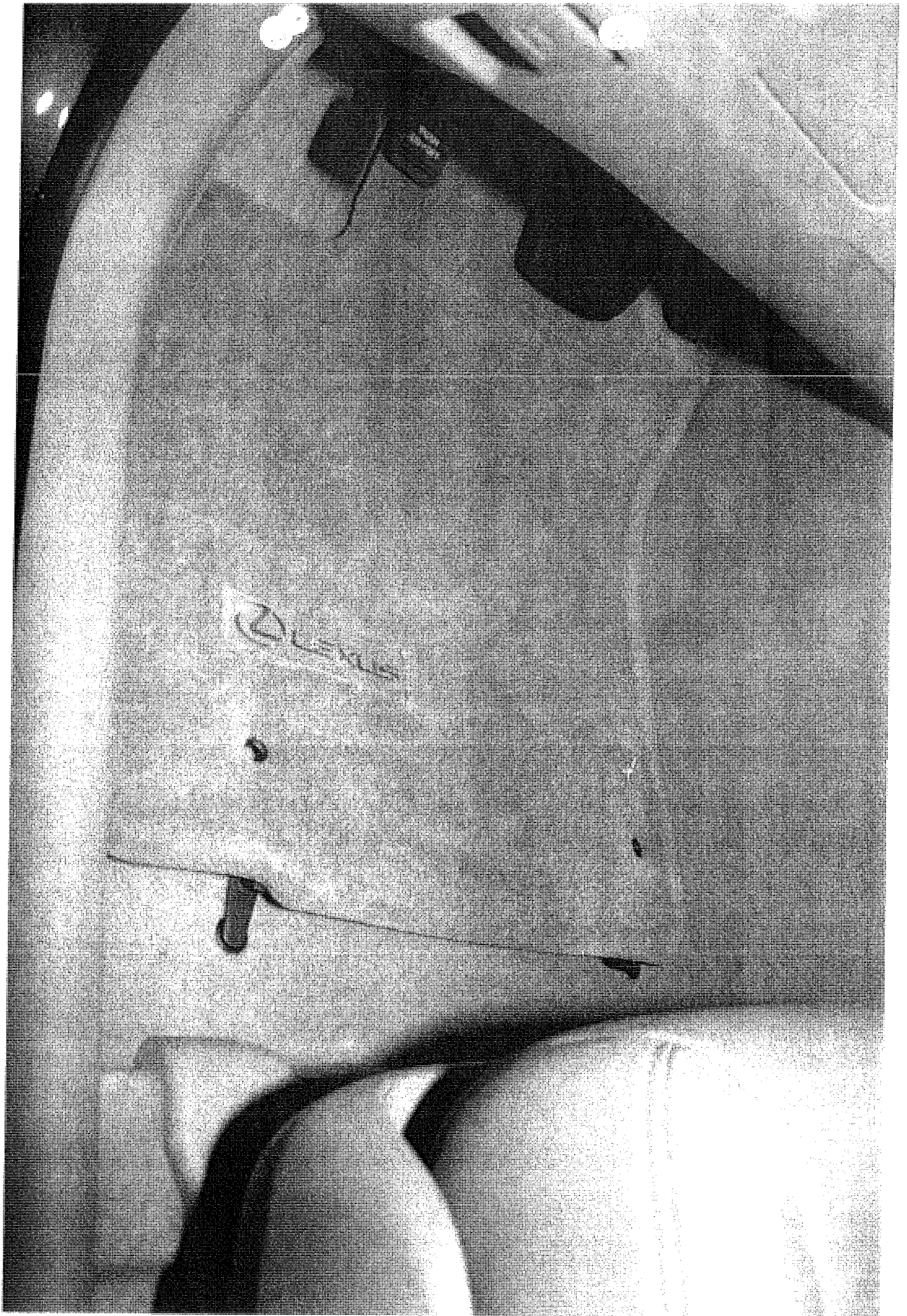
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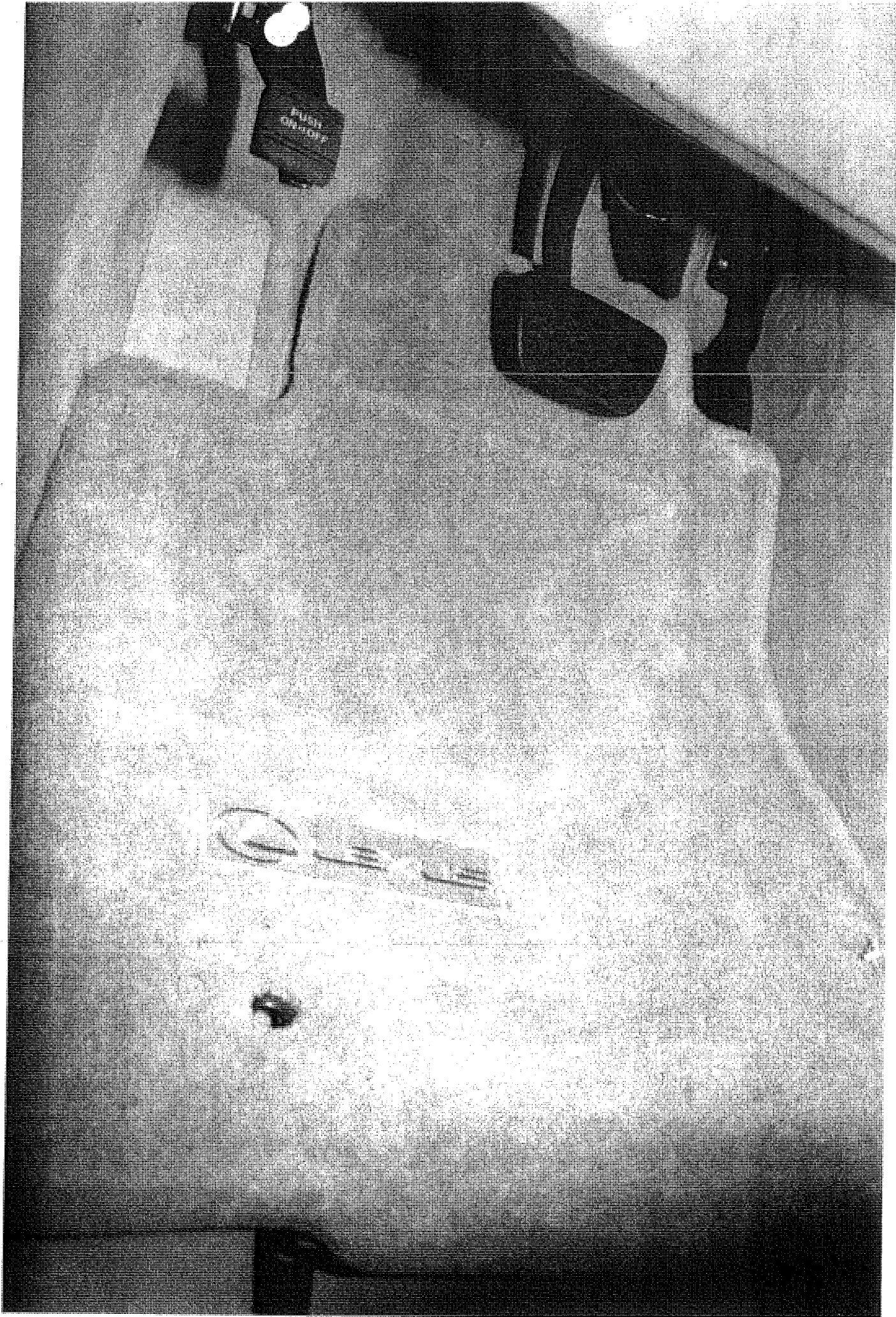




TOY-RQ-05E-00002708







TOY-RQ-05E-00002711

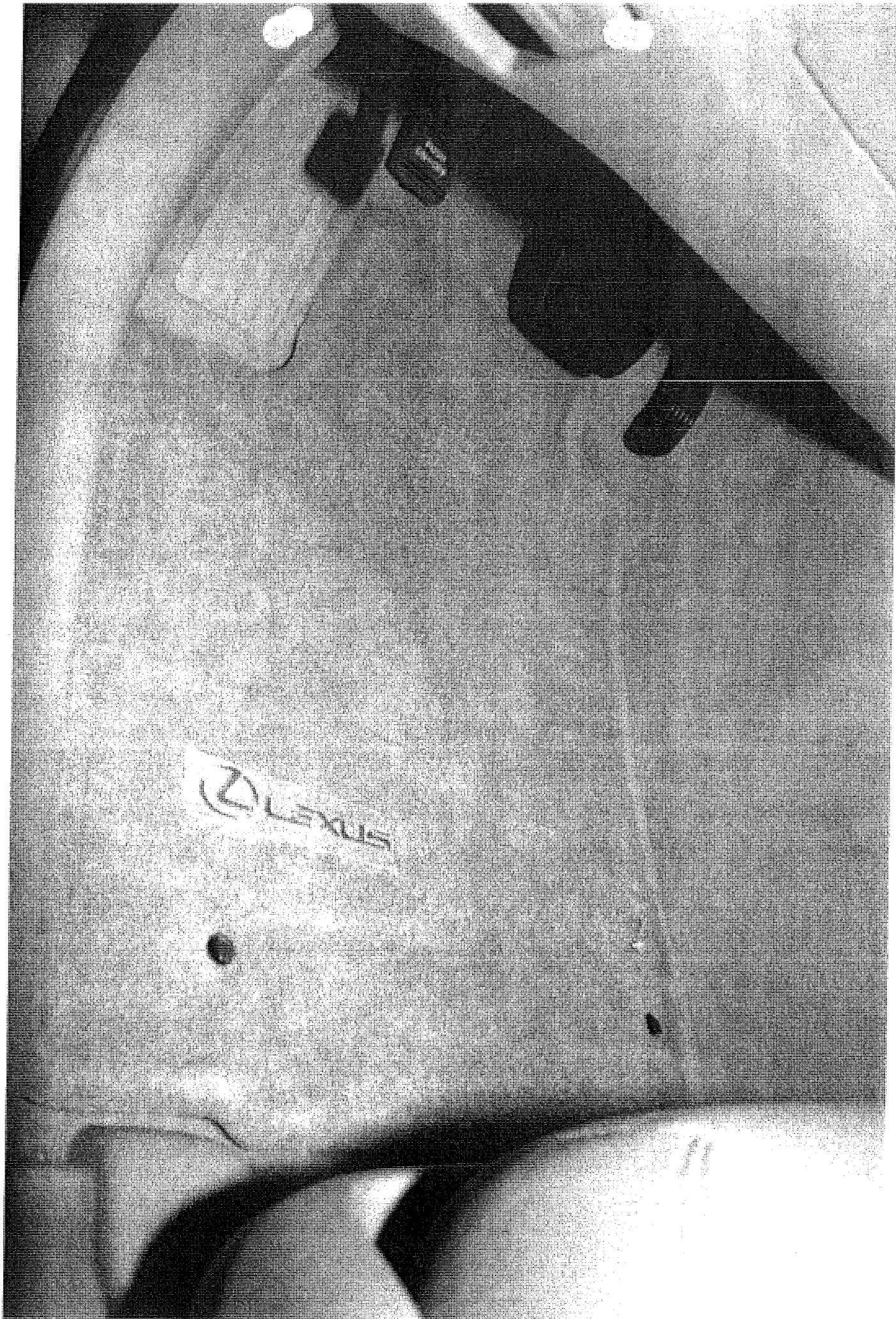




EXHIBIT “B”

8259503

91885

CARSBYTEL
 CARSBYTEL
 42-06 27TH STREET
 LONG IS CITY, NY 11101-4122
 HOME:
 BUS:

ACCOUNTING

LEXUS OF WESTPORT
 1317 POND
 WESTPORT, CT 06880

PAGE 1

SERVICE ADVISOR: 566 VILAVONG SAVONGDY

COLOR	YEAR	MAKE/MODEL	VIN	LICENSE	MILEAGE IN / OUT	TAG
ALMOND	07	LEXUS ES350	JTHBJA6G272071246		14/14	
DEL DATE	PROD DATE	WARR EXP	PROMISED	PO NO	RATE	PAYMENT
30DEC2006						
R/O OPENED	READY	OPTIONS:	STK:271157	DLR:60604	ENG:3.5 Liter	DOHC
08:15 05JAN07	08:20 05JAN07				VAR CASH	05JAN2007
LINE OPCODE	TECH TYPE	A/HRS	S/HRS	COST	SALE	COMP
A NEW CAR CLEAN 1.5						
N NEW CAR CLEAN 1.5						
775 INCC	1.50	1.50	1800	7500	75.00	75.00

****THANK YOU FOR CHOOSING LEXUS OF WESTPORT****

 YOU MAY RECEIVE A SURVEY FROM LEXUS USA
 PLEASE TAKE THE TIME TO COMPLETE THE SURVEY!
 IT IS VERY IMPORTANT TO US THAT YOU WOULD
 DEFINITELY RECOMMEND OUR SERVICE TO A FRIEND!

ACCOUNT	SALE	COST	CONTROL	ACCOUNT	SALE	COST	CONTROL
431	7500	1800		2320	7500	*****	

COST, SALE, & COMP TOTALS 1800 7500 0

I, BEHALF OF SERVICING DEALER, I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREON IS ACCURATE UNLESS OTHERWISE INDICATED. SERVICES DESCRIBED WERE PERFORMED AT NO CHARGE TO THE BUYER. THERE WAS NO INDICATION FROM THE APPEARANCE OF THE VEHICLE OR OTHERWISE, THAT ANY PART REPAIRED OR REPLACED WAS DEFECTIVE OR OTHERWISE CONNECTED IN ANY WAY WITH ANY ACCIDENT, NEGLIGENCE OR MISDAE. RECORDS SUPPORTING THIS CLAIM ARE AVAILABLE FOR (1) YEAR FROM THE DATE OF PAYMENT AT THE SERVICING DEALER FOR INSPECTION BY AN UNAFFILIATED REPRESENTATIVE.

STATEMENT OF DISCLAIMER
 The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The Seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

DESCRIPTION	TOTALS
LABOR AMOUNT	0.00
PARTS AMOUNT	0.00
GAS, OIL, LUBE	0.00
SUBLET AMOUNT	0.00
MISC. CHARGES	0.00
TOTAL CHARGES	0.00
LESS INSURANCE	0.00
SALES TAX	0.00
PLEASE PAY THIS AMOUNT	0.00

SIGNATURE _____ (DATE) _____
 DEALER, GENERAL MANAGER OR AUTHORIZED PERSON

CUSTOMER SIGNATURE _____

CUSTOMER #:

90409

WORKORDER

PAGE 1

LEXUS OF WESTPORT
1317 Post Road East
WESTPORT, CT. 06880

HOME:

BUS:

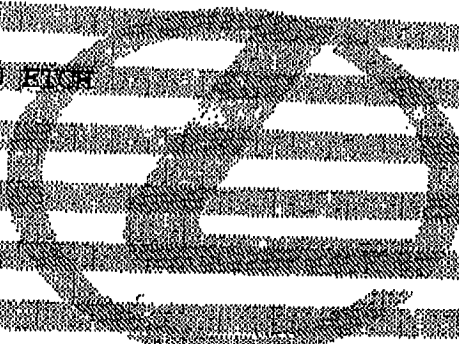
SERVICE ADVISOR: 915 DEVLIN, JODY

COLOR	YEAR	MAKE/MODEL	VIN	LICENSE	MILEAGE IN/CUT	TAG
	07	LEXUS ES350	JTHBJ46G272071246		1/14	
DEL/DAT	PROD DATE	WARR EXP	PROBISED	PO NO	RATE	PAYMENT
R.O. OPENED	READY	OPTIONS: STK:271157 DLR:60604 ENG:3.5 Liter DOHC		VAR	CASH	
14DEC2006 16:12						

VEHICLE SERVICE HISTORY

RO#	S/A	MILEAGE	OP CODE	TECH	TYPE	DESCRIPTION
-----	-----	---------	---------	------	------	-------------

LINE	OP CODE	TECH	TYPE	DESCRIPTIONS/INSTRUCTIONS
# A	PDI		WPDI	PRE-DELIVERY SERVICE FOR USA INS



EXCLUSION OF WARRANTIES

Any warranties on the parts and accessories sold hereby are made by the manufacturer. The undersigned purchaser understands and agrees that dealer makes no warranties of any kind, express or implied, and disclaims all warranties, including warranties of merchantability or fitness for a particular purpose, with regard to the parts and/or accessories purchased; and that in no event shall dealer be liable for incidental or consequential damages or commercial losses arising out of such purchase. The undersigned purchaser further agrees that the warranties excluded by dealer, include, but are not limited to any warranties that such parts and/or accessories are of merchantable quality or that they will enable any vehicle or any of its systems to perform with reasonable safety, efficiency, or comfort.

AUTHORIZATION FOR REPAIRS

I hereby authorize the repair work herein set forth to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in vehicle in case of fire, theft or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I hereby grant you and/or your employees permission to operate the vehicle herein described on streets, highways or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto. The dealership is not responsible for damages from freezing due to lack of antifreeze.

PRELIMINARY ESTIMATE \$ _____

AUTHORIZED BY X

REVISED ESTIMATE (1)	DATE	TIME	BY
REVISED ESTIMATE (2)			
REVISED ESTIMATE (3)			

I HEREBY ACKNOWLEDGE THAT I WAS NOTIFIED & GAVE ORAL APPROVAL OF THE ABOVE REVISED ESTIMATES:

X _____
CUSTOMER SIGNATURE

SERVICE COPY

90409

ACCOUNTING

LEXUS OF WESTPORT

1317 Post Road East
WESTPORT, CT. 06880

HOME:

BUS:

PAGE 1

SERVICE ADVISOR: 915 JODY DEVLIN

COLOR	YEAR	MAKE/MODEL	VIN	LICENSE	MILEAGE IN / OUT	TAG
ALMOND	07	LEXUS ES350	JTHEJ46G272071246			
DEL. DATE	PROD. DATE	WARR. EXP.	PROMISED	PO NO.	RATE	PAYMENT
						1/14
R.O. OPENED	READY	OPTIONS:	STK: ^	DLR: 60E04	ENG: 3.5	Liter DOHC
16:12	14DEC06	09:23	18DEC06			18DEC2006

LINE	OPCODE	TECH	TYPE	A/HRS	S/HRS	COST	SALE	COMP	LIST	NET	TOTAL
A											
A PRE-DELIVERY SERVICE FOR USA INS											
CAUSE: PDI											
PDI PRE-DELIVERY SERVICE FOR USA INS											
				290	WPDI	2.00	2.00	3000	20000		
					FC: PART#: COUNT:			0	0	TPARTS	200.00
					CLAIM TYPE: PD						200.00
					AUTH CODE:						
					B. VIN ETCH			3000	20000	TLABOR	
					V VIN ETCH						
					290 INC.	0.30	0.30	450	3000		30.00

THANK YOU FOR CHOOSING LEXUS OF WESTPORT

 YOU MAY RECEIVE A SURVEY FROM LEXUS USA
 PLEASE TAKE THE TIME TO COMPLETE THE SURVEY!
 IT IS VERY IMPORTANT TO US THAT YOU WOULD
 DEFINITELY RECOMMEND OUR SERVICE TO A FRIEND!

CCOUNT	SALE	COST	CONTROL	ACCOUNT	SALE	COST	CONTROL
440	20000	3000	71246	4430	3000	450	
210	20000	*****	71246	2320	3000	*****	

COST, SALE, & COMP TOTALS 3450 23000 0

ON BEHALF OF SERVICING DEALER, I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREON IS ACCURATE UNLESS OTHERWISE INDICATED. SERVICES DESCRIBED WERE PERFORMED AT NO CHARGE TO OWNER. THERE WAS NO INDICATION FROM THE APPEARANCE OF THE VEHICLE OR OTHERWISE, THAT ANY PART REPAIRED OR REPLACED UNDER THIS CLAIM HAD BEEN CONNECTED IN ANY WAY WITH ANY ACCIDENT, NEGLIGENCE OR MISUSE. RECORDS SUPPORTING THIS CLAIM ARE AVAILABLE FOR (1) YEAR FROM THE DATE OF PAYMENT NOTIFICATION AT THE SERVICING DEALER FOR INSPECTION BY MANUFACTURER'S REPRESENTATIVE.

STATEMENT OF DISCLAIMER
 This factory warranty constitutes all of the warranties with respect to the sale of this motor vehicle. The Seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item herein.

DESCRIPTION	TOTALS
LABOR AMOUNT	0.00
PARTS AMOUNT	0.00
GAS, OIL, LUBE	0.00
SUBLET AMOUNT	0.00
MISC. CHARGES	0.00
TOTAL CHARGES	0.00
LESS INSURANCE	0.00
SALES TAX	0.00
PLEASE PAY THIS AMOUNT	0.00

(SIGNED) DEALER, GENERAL MANAGER OR AUTHORIZED PERSON (DATE) CUSTOMER SIGNATURE

SERVICE FILE COPY

LEXUS, A DIVISION OF
 TOYOTA MOTORS SALES USA
 19001 S. WESTERN AVE.
 TORRANCE CALIF, USA



MEMORANDUM INVOICE
 INVOICE NO: 66440
 INVOICE DATE: 12/12/
 PORT/PLANT: NEWA
 DEALER CODE: 60804
SOLD TO:
 ESTREE, INC.
 DBA LEXUS OF WESTPO
 1317 POST ROAD EAST
 WESTPORT, CT 06880

PAID FOR BY:
 JPMORGAN CHASE BANK
 P.O. BOX 4911
 SYRACUSE, NY 13221

271157

MODEL	DESCRIPTION	YEAR	SERIAL NO.	C/C	ENGINE NO.	MSRP
9000A	ES350 4-DR SEDAN	2007	JTHB46G272071246	1	2GBA111812	
COLOR EXT/INT						
4T1 GOLDEN ALMOND METALL / LA05 IVORY LEA						
FACTORY INSTALLED EQUIPMENT						
BE - REAR SEAT SIDE AIRBAGS						250.00
FS - FULL SIZE SPARE						205.00
HL - HID HEADLAMPS WITH AFS						815.00
NV - NAVIGATION SYSTEM PACKAGE						2,650.00
PA - INTUITIVE PARKING ASSIST						500.00
PT - PREMIUM PLUS PACKAGE						2,480.00
WU - WOOD & LEATHER STEERING WHEEL						330.00
LM - TRUNK MAT						69.00
WL - WHEEL LOCKS						69.00
GN - CARGO NET						59.00
BASE VEHICLE PRICE >						33,170.00
<p style="text-align: center;"> <i>Att Chris</i> <i>From Fran</i> </p>						
<p>DEC 15 2006</p> <p>DEC 14 2006</p>						
<p>* DUE TO THE EXTENSIVE LIST OF STANDARD EQUIPMENT FOR THIS SERIES, PLEASE REFER TO THE LEXUS PRODUCT STANDARD EQUIPMENT ADDENDUM FOR THIS SERIES. * THIS INVOICE DOES NOT REFLECT THE DEALER'S ULTIMATE VEHICLE COST IN VIEW OF \$ 663.00 RESERVE AND \$ 331.00 WHOLESAL FINANCE RESERVE WHICH ARE RETURNED TO DEALER AND ANY REBATE, ALLOWANCE AND INCENTIVE, WHICH ARE PAID TO THE DEALER.</p>						
TOTAL F.I.E. >						7,427.00
TOTAL MODEL AND F.I.E. >						40,597.00
OTHER CHARGES >						
DELIVERY, PROCESSING AND HANDLING FEE >						715.00
SUB TOTAL >						41,312.00
LDA >						
TOTAL INVOICE >						41,312.00
TITLE AND OWNERSHIP PASSES TO DEALER UPON PAYMENT OF SAID GOODS AND ALL RISK OF LOSS OR DAMAGE PASSES TO DEALER UPON DELIVERY OF GOODS TO DEALER.						



ESTREE, Inc.

dba LEXUS OF WESTPORT

37405

NEW CAR SHOWROOM
1317 Post Road East
WESTPORT, CT. 06880
(203) 255-1531

PARTS & SERVICE CENTER
80 Old Kings Hwy. Cut-Off
FAIRFIELD, CT. 06430
(203) 579-4555

PRE-OWNED SHOWROOM
187 Old Kings Hwy. Cut-Off
FAIRFIELD, CT. 06430
(203) 336-6292

RETAIL PURCHASE ORDER FOR MOTOR VEHICLE

Date 12/29/06 Stock No. 27113
Salesperson Fleet Business Phone

Purchaser's Name: Cars Buy Tel Home Phone 7 Business Phone

Address: 42-06 27th St. City NY State Zip

NEW RENTAL VEHICLE USED DEMONSTRATOR PURCH. INFL. (YEAR & MAKE) (MODEL) (CYL.) Body Type Color Trim

Ident. No. JTHBJ46G-212071245 S.S. NO. Delivered On Or About

FILL OUT THIS SECTION IF USED CAR OR TRUCK IS TO BE TRADED IN AS PART PAYMENT AND DO NOT WARRANT THE TITLE THERETO TO BE FREE AND CLEAR EXCEPT FOR THE UNPAID BALANCE AS SHOWN AND TO THE BEST OF MY KNOWLEDGE. THE UNDERSIGNED, STATE THAT THE MILEAGE AS SHOWN ON THE ODOMETER IS THE ACTUAL MILEAGE WHICH THE CAR HAS DRIVEN.

MILEAGE Model Make & Year Used Cyl. Body Type Color Title No. Allowance \$ Balance Owed \$ Net Allowance \$ To Whom Owed

The appraisal on the trade-in vehicle described above expires 15 days from the date of this order

NO INSURANCE IS INCLUDED IN THIS ORDER

OTHER CHARGES: Enter My Order for insurance as follows: CREDIT INSURANCE AGREEMENT: The purchase of Accident & Health & Credit Life Insurance is voluntary and not required for credit.

Credit Life \$ Accident & Health \$ BUYER'S SIGNATURE My Ins. Co. is My Ins. ID. No. is

"AS IS" THIS VEHICLE IS SOLD "AS IS". THIS MEANS THAT YOU WILL LOSE YOUR IMPLIED WARRANTIES. YOU WILL HAVE TO PAY FOR ANY REPAIRS NEEDED AFTER SALE. IF WE HAVE MADE ANY PROMISES TO YOU, THE LAW SAYS, WE MUST KEEP THEM, EVEN IF WE SELL "AS IS". TO PROTECT YOURSELF, ASK US TO PUT ALL PROMISES INTO WRITING. CONSUMER SIGNATURE

Table with columns: NUMBER OF PAYMENTS, AMOUNT OF EACH PAYMENT, WHEN PAYMENTS ARE DUE. Includes 'THE DEALER CONVEYANCE FEE IS NOT PAYABLE TO THE STATE OF CT.'

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. A.P.R. % FINANCE CHARGE The dollar amount the credit will cost you. Amount Financed The amount of credit provided to you or on your behalf.

Total of Payments The amount you will have paid after you have made all the payments as scheduled. Total Sale Price The total cost of your purchase on credit, including your down-payment of \$ is

DRIVER'S LIC. NO. THE MILEAGE AS SHOWN ON THE ODOMETER OF THE MOTOR VEHICLE TO BE PURCHASE IS:

CASH PRICE AT SELLER'S PLACE OF BUSINESS: V.I.N. Etc. Service (Optional) \$197.50 YES NO (INIT.)

Factory Installed Options Iris Leviton 12 Ocean Ave Bay Shore, NY 11706 631-583-7886

TOTAL PRICE OF VEHICLE Less Trade-In TOTAL AMOUNT Dealer Conveyance Fee * TOTAL TAXABLE AMOUNT Sales Tax Luxury Tax Registration /Title Fee NET PAY-OFF ON TRADE-IN TOTAL Deposit (Minimum Required 10%) NO REFUND ON DEPOSIT BALANCE IN CASH OR CERTIFIED CHECK DUE ON DELIVERY UNPAID BALANCE AMOUNT FINANCED

BRING WITH YOU AT TIME OF DELIVERY: TITLE ON CAR TRADED CO. OF ON VEHICLE CURRENT REGISTRATION IN THE AMOUNT OF INSURANCE GARD FINAL PAYMENT CASH OR CERTIFIED CHECK

I have read the terms and conditions on the back hereof and agree to them as a part of this order the same as if they were printed above my signature. The front and back hereof comprise the entire agreement affecting this order and no other agreement or understanding of any nature concerning same has been made or entered into. I hereby acknowledge receipt of a copy of this order, and certify that I am of legal age.

FINAL PAYMENT CASH OR CERTIFIED CHECK

Purchaser's Signature: ESTREE, Inc. dba LEXUS OF WESTPORT Authorized Signature: (Name and Title) Date



ESTREE, Inc.
 d/b/a LEXUS OF WESTPORT

NEW CAR SHOWROOM
 1317 Post Road East
 WESTPORT, CT. 06880
 (203) 255-1531

PARTS & SERVICE CENTER
 80 Old Kings Hwy. Cut-Off
 FAIRFIELD, CT. 06824
 (203) 579-4555

PRE-OWNED SHOWROOM
 187 Old Kings Hwy. Cut-Off
 FAIRFIELD, CT. 06824
 (203) 336-6292

SOLD TO
 CARSBYTEL
 42-06 27TH STREET
 LONG IS CITY NY 1101-4122

DEAL-NO: 45342 MILEAGE 16

YEAR	MAKE	MODEL	NEW/USED/DEMO	VEHICLE IDENT OR SERIAL NO.	MILEAGE
2007	LEXUS	ES350	NEW	JTHBJ466272071246	16
SALESMAN HOUSE			COLOR		ALMON

THE DEALER CONVEYANCE FEE IS
 NOT PAYABLE TO THE STATE OF CT.

CREDIT LIFE N/A
 DISABILITY N/A
 LEXUS FACTORY WARRANTY IS 4 YEARS/50,000 MILES
 POWERTRAIN WARRANTY 6 YEARS/70,000 MILES

USED CARS TRADED

YEAR	MAKE	MODEL	VEHICLE IDENT. NO.	MILEAGE

Handwritten: PD off 1/5/07

DATE	12/30/2006	INVOICE NO.	39421	STOCK NO.	27157
DESCRIPTION	ES350 AFTERSALES	SALESMAN NUMBER	39421	SALE	36825.00
COST		ACCT NO.			
CAR DEAL NO.	0239303				
SALES TAX	3140				
LUXURY TAX	3150				
SERVICE CONTRACT	470				
LICENSE AND TITLE	3030				
DEALER CONVEYANCE FEE	8040				
ANNUAL PERCENTAGE RATE	% FINANCE CHARGE	TOTAL CASH PRICE	36825.00		
INSURANCE-VENDORS SINGLE INTEREST					
INSURANCE-ACCIDENT & HEALTH	6-90				
INSURANCE-CREDIT LIFE	6-90				
TOTAL TIME PRICE		36825.00			
DEPOSIT (NO REFUND OF DEPOSIT)	2110	36825.00			
CASH ON DELIVERY	2110				
FACTORY REBATES	2241				
USED CAR ALLOWANCE PAYMENTS					
MONTHS					
PER MONTH					
TOTAL		3010			
PAY OFF BAL OWING FINANCE CO.	USI	2471			
FINANCE CONTRACT		2030			
FINANCE INCOME		6280			
FIN. CO RECEIVABLE		227			
STOCK NOS.		2400			
		2400			

Index No. 107681/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

=====
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC. d/b/a
LEXUS OF WESTPORT and METRO AUTO LEASING, INC. d/b/a THE AUTOMALL

Defendants.

=====

RESPONSE TO PRELIMINARY CONFERENCE ORDER

=====

AHMUTY, DEMERS & McMANUS, ESQS.

Attorneys for Defendant

ESTREE, INC. d/b/a LEXUS OF WESTPORT

200 I.U. Willets Road

Albertson, New York 11507

(516) 294-5433

Our File No.: YCW 0962N7 JAE

To:

Attorney(s) for ESTREE, INC. d/b/a LEXUS OF WESTPORT

=====

*Service of a copy of the within RESPONSE TO NOTICE FOR DISCOVERY AND
INSPECTION is hereby admitted.*

Dated: June 17, 2008

=====

P

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA.,
INC., ESTREE, INC., D/B/A LEXUS OF WESTPORT, AND
METRO AUTO LEASING, INC., d/b/a THE AUTOMALL,

Defendant.

-----X
SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendant,

-----X
SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

- against -

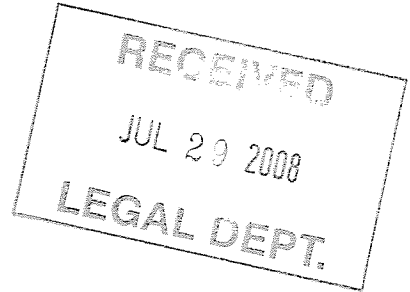
IRIS LEVITEN

Defendant,

-----X

Index No. 107681/07
ACTION NO. 1

NOTICE OF MOTION



Index 117118/07
ACTION NO.: 2

Index 102331/08
ACTION NO.: 3

PLEASE TAKE NOTICE, that upon the annexed Affirmation of Steven R. Kramer, Esq.,


dated July 25, 2008, the exhibits attached thereto, the annexed Affirmation of Good Faith, dated July 25, 2008, and upon all the prior pleadings and proceedings heretofore had herein, the undersigned will move this Court, at the Motion Support Office thereof, the Supreme Court, New York County Courthouse, 60 Centre Street, New York 10007, on the 25th day of August, 2008, at 9:30 a.m. or as soon thereafter as counsel may be heard, for an order:

- a. Pursuant to CPLR § 3126, striking plaintiffs' complaint due to their willful failure to comply with the order of this Court;
- b. Alternatively, pursuant to CPLR § 3126, precluding plaintiffs and their experts from relying on, or admitting into evidence, any of the outstanding discovery;
- c. Alternatively, pursuant to CPLR § 3124, compelling plaintiffs to comply with discovery;
- d. Pursuant to Uniform Trial 202.17, amending the court-ordered discovery schedule in light of plaintiff's non-compliance with discovery; and
- e. Such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that any answering affidavits are required to be served within seven (7) days of the return date of this motion pursuant to CPLR.

Dated: White Plains, New York
July 25, 2008

Yours etc.



By: STEVEN R. KRAMER, ESQ.
ECKERT SEAMANS CHERIN & MELLOTT, LLC.
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
S/H/A "LEXUS, A DIVISION OF TOYOTA
MOTORS SALES, U.S.A., INC."
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
Fax: (914) 949-5424

To: GAIR, GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff (Action #1)
80 Pine Street
New York, New York 10005
(212) 943-1090

AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant (Action #1)
ESTREE, INC.
D/B/A LEXUS OF WESTPORT
123 William Street
New York, New York 10038
(212) 513-7788

STEIN RISO MANTEL LLP
Attorneys for Defendant (Action #1 - Index # 11718/07)
METRO AUTO LEASING, INC.
D/B/A THE AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 599-1515

Dean A. Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant Iris Leviten
(Action #1 - Index # 11718/07)
875 Merrick Avenue
Westbury, NY 11590
516-229-4422
File # 08R0185

KELNER & KELNER, ESQS.
Attorneys for Plaintiff, Michael Doukas (Action #2 – Index #: 117118/07)
140 Broadway – 37th floor
New York, New York 10005
212-425-0700

Michael Cordoza, Esq.
Attorneys for Defendant Anthony Digirolamo,
New York City Department of Sanitation
and The City of New York – Action #2
100 Church Street
New York, New York 10007
212-788-0303

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA.,
INC., ESTREE, INC., D/B/A LEXUS OF WESTPORT, AND
METRO AUTO LEASING, INC., d/b/a THE AUTOMALL,

Defendant.

-----X
SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendant,

-----X
SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

- against -

IRIS LEVITEN

Defendant,

-----X

Index No. 107681/07
ACTION NO. 1

**AFFIRMATION
IN SUPPORT**

Index 117118/07
ACTION NO.: 2

Index 102331/08
ACTION NO.: 3

Steven R. Kramer, an attorney at law duly admitted to practice before all of the Courts of the

State of New York, hereby affirms the following under the penalties of perjury:

1. I am a member of the law firm of Eckert Seamans Cherin & Mellott, LLC., attorneys for defendant TOYOTA MOTOR SALES, U.S.A., INC., S/H/A "LEXUS, A DIVISION OF TOYOTA MOTORS SALES, U.S.A., INC." in this action and, as such, I am familiar with the facts and circumstances pertaining to this action, and the pleadings and proceedings herein.

2. I submit this affirmation in support of defendant's motion to: (i) strike plaintiff's complaint due to her willful failure to comply with the order of this Court; (ii) preclude plaintiff and her experts from relying on, or admitting into evidence, any of the outstanding discovery; (iii) compel plaintiff to comply with discovery; (iv) amend the court-ordered discovery schedule in light of plaintiff's non-compliance with discovery; and (v) such other and further relief as the Court may deem just and proper.

PROCEDURAL BACKGROUND

3. Plaintiff commenced this action by filing a Summons and Verified Complaint in the Clerk's office of New York County on June 1, 2007 (annexed hereto as Exhibit "A"). This is a products liability action in which plaintiffs allege that plaintiff was caused injury by reason of a defect in a 2007 Lexus Model number ES 350, Vehicle Identification number: JTHBJ46G272071246. The Lexus vehicle was involved in a collision with a Sanitation truck.

4. Issue was joined on August 13, 2007, by service of the defendant's answer (annexed hereto as Exhibit "B").

5. On May 19, 2008, my law firm was substituted as counsel for defendant (a copy of the consent to change attorney is annexed hereto as Exhibit "C").

6. By order dated, July 2, 2008, this action was consolidated with two other actions (annexed hereto as Exhibit "D").

THE PRIOR DISCOVERY ORDER

7. A preliminary conference was held on April 15, 2008, and plaintiff was ordered to:
- Identify all witnesses;
 - Produce adverse party statements;
 - Produce photographs;
 - Produce photographs and videotape of vehicle inspections;
 - Serve a supplemental response to Item No. 5 of TMS' Interrogatories;
 - State whether plaintiff is asserting a lost wage claim and, if yes, serve authorizations for the claim; and
 - Serve authorizations for medical, pharmacy, SSI, disability and employment records.

A copy of the order is attached hereto as Exhibit "E."

OTHER OUTSTANDING DISCOVERY

8. Plaintiff has also failed to serve a response to TMS' Notice for Discovery and Inspection, expert witness demand, collateral source demand and combine demands (collectively annexed hereto as Exhibit "F").

DEFENDANT'S GOOD FAITH ATTEMPT

9. On or about June 2, 2008, a correspondence was served upon the plaintiff as a good faith reminder that their responses were overdue and requesting a response to defendant's discovery demands (annexed hereto as Exhibit "G"). To date, plaintiff has failed to comply with the aforementioned outstanding demands.

PLAINTIFF HAS WILLFULLY FAILED TO COMPLY WITH DISCOVERY

10. Despite the Court's April 15, 2008 order and defendant's good faith attempt to resolve the matter, plaintiff has not responded to the Court's order and defendant's outstanding discovery demands. Thus, plaintiff has willfully disregarded the court's order and the complaint should be stricken.

11. It is undisputed that plaintiff has failed to comply with her discovery obligations. Accordingly, plaintiff's complaint should be stricken pursuant to CPLR § 3126. *See Merchants T & F, Inc. v. Kase & Druker*, 19 A.D.3d 134, 796 N.Y.S.2d 343 (1st Dept. 2005); *Sowerby v. Camarda*, 20A.D.3d 411, 798 N.Y.S.2d 125 (2nd Dept. 2005).

12. Alternatively, this Court should issue an order precluding plaintiff and her experts from relying on, or admitting into evidence, any of the outstanding discovery. Another alternative would be to issue an order compelling plaintiff to comply with discovery.

13. Given plaintiff's non-compliance and the recent consolidation of two cases into this action, TMS respectfully requests that the Court alter the discovery schedule set forth in the April 15, 2008 preliminary conference order.

WHEREFORE, defendant respectfully requests that this Court (i) strike plaintiff's complaint due to her willful failure to comply with the order of this Court; (ii) preclude plaintiff and her experts from relying on, or admitting into evidence, any of the outstanding discovery; (iii) compel plaintiff to comply with discovery and the recent consolidation order; (iv) amend the court-ordered discovery schedule in light of plaintiff's non-compliance with discovery and the recent

consolidation order; and (v) such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York
July 25, 2008

Yours, etc.



STEVEN R. KRAMER, ESQ

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,

-against-

AFFIRMATION IN
GOOD FAITH

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

Steven R. Kramer, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms, under penalties of perjury:

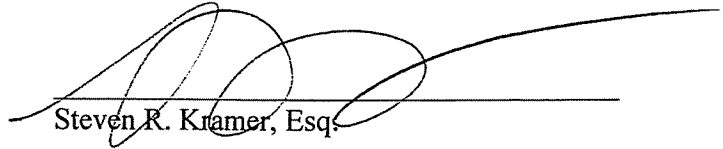
1. I am a member of the law firm of Eckert Seamans Cherin & Mellott, LLC, attorneys for the defendant, TOYOTA MOTOR SALES, U.S.A., INC., S/H/A "LEXUS, A DIVISION OF TOYOTA MOTORS SALES, U.S.A., INC.", and as such, I am fully familiar with the facts and circumstances pertaining to this action, and the pleadings and proceedings herein.

2. Efforts have been made to resolve the issues raised in the instant motion without Court intervention. Specifically, by letter dated June 2, 2008, wherein plaintiff was notified that the time to respond to the Court's preliminary conference order and defendant's discovery demands were overdue (See Exhibit "F" to Motion).

3. Accordingly, it is respectfully requested that the relief sought in the affirmation submitted herein be considered and provided.

Dated: White Plains, New York
July 25, 2008

Yours, etc.,



Steven R. Kramer, Esq.

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JUN 2 2007
LEGAL DEPT.

Index No.: 107681/07.
Date purchased 6/1/07.

IRIS LEVITEN,

Plaintiff,

Plaintiff(s) designate(s)
New York
County as place of trial

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

The place of venue is
Defendant's place of business

SUMMONS

Plaintiff resides at
6 Wood Ave., Albertson, NY 11507

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: June 1, 2007
New York, New York

GAIR, GAIR, CONASON, STEIGMAN & MACKAUF
Attorney(s) for Plaintiff(s)
Office and Post Office Address
80 Pine Street
New York, New York 10005

BY:

DANIEL A. GAIR

Defendants Addresses:

Metro Auto Leasing / Automall
The Corporation
350 Fifth Avenue
New York, New York 10118

Lexus, A Division of Toyota Motor
Sales The Prentice-Hall Corporation
Systems, Inc.
80 State Street
Albany, New York 122106

Estree / Lexus of Westport
1317 Post Road East
Westport, CT 06880

NOT COMPARED
WITH COPY FILE

JUN 11 2007

NEW YORK
COUNTY CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index number:

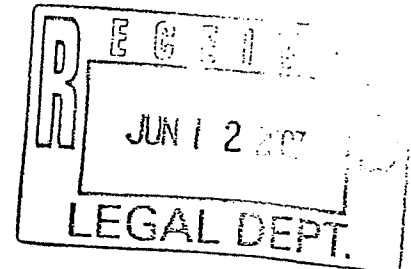
-----x
IRIS LEVITEN,

VERIFIED
COMPLAINT

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,



Defendants.
-----x

Plaintiff, complaining of the defendants, by
her attorneys, Gair, Gair, Conason, Steigman & Mackauf,
respectfully show to this Court and allege, upon information and
belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., is a corporation with its principal place of business in a state other than New York.
The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., does business in the State of New York.
3. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.

NOT COMPARED
WITH COPY FILE

JUN 11 2007

NEW YORK

4. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.
5. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, is a corporation with its principal place of business in a state other than New York.
6. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, does business in the State of New York.
7. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.
8. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.
9. The defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

10. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., was in the business of manufacturing vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
11. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES, INC., was in the business of designing motor vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
12. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., was in the business of selling and distributing, for public use, motor vehicles, including a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
13. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., sold, to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
14. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., transported to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

15. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., distributed to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
16. At some time thereafter, the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, sold to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
17. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, transported to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
18. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, distributed to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
19. On December 29, 2006, the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, leased a Lexus sedan motor vehicle, model number ES 350, bearing license plate DWW7794 vehicle identification number JTHBJ46G272071246 to the

plaintiff, IRIS LEVITEN.

20. On February 18, 2007, the plaintiff, IRIS LEVITEN, was involved in an automobile accident while driving a Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794 and vehicle identification number JTHBJ46G272071246 near the eastbound ramp of the Northern State Parkway near Glen Cove Road.
21. The aforesaid occurrence was caused and contributed to by the negligence of the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794, identification number JTHBJ46G272071246.
22. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, some of these injuries are of a permanent and lasting nature.

23. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

24. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A SECOND CAUSE OF ACTION

25. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "24", inclusive, with the same force and effect as if more fully set forth herein at length.

26. The defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL ATOMIC INDUSTRIES, INC., their agents, servants and employees warranted and represented to the plaintiff, IRIS LEVITEN, that Lexus sedan motor vehicle, model number ES 350, bearing the New York license plate number DWW7794 and identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, serviced, maintained, labeled, distributed, sold and purchased.

27. In designing, manufacturing, assembling, inspecting,

testing, repairing, servicing, maintaining, labeling, distributing and selling the vehicle Lexus model number ES 350, bearing New York State license plate number DWW7794 and vehicle identification number number JTHBJ46G272071246, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL ATOMIC INDUSTRIES, INC., their agents, servants and employees knew that the aforesaid product would be used by the public and that such users would rely upon the warranties and representations that the said product was safe, proper, merchantable and fit for its intended uses.

28. On December 29, 20069, the plaintiff, IRIS LEVITEN, relied on the aforementioned warranties and expected that the aforementioned product was safe, proper, merchantable and fit for its intended uses.
29. The aforementioned product was unsafe, not merchantable and unfit for its intended uses.
30. By reason of the foregoing, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, their agents, servants and employees, violated and breached the aforementioned warranties, in that the product was not reasonably fit, not of merchantable quality, unsafe, defective and constituted unreasonably dangerous

instrumentalities as designed, manufactured, assembled, inspected, repaired, serviced, maintained, tested, labeled, sold and distributed.

31. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting nature.
32. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
33. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A THIRD CAUSE OF ACTION

34. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "33", with the same force and effect as if more fully set forth herein at length.
35. By reason of the foregoing, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, their agents, servants and employees are strictly

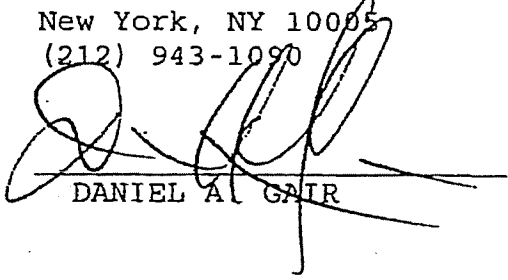
liable in tort to the plaintiff, IRIS LEVITEN, for the injuries sustained by her.

36. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting in nature.
37. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
38. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

W H E R E F O R E, plaintiff demands judgment against the defendants in the First, Second and Third Causes of Action against the defendants LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, together with the costs and disbursements of this action.

Dated: New York, New York
June 1, 2007

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiffs
Office & P.O. Address
80 Pine Street
New York, NY 10005
(212) 943-1090



DANIEL A. GAIR

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

VERIFIED ANSWER

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

Defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA., INC., by its attorneys, AARONSON RAPPAPORT
FEINSTEIN & DEUTSCH, LLP as and for its Verified Answer to plaintiff's Verified
Complaint, respectfully shows to this Court and alleges upon information and belief:

ANSWERING AS AND FOR A FIRST CAUSE OF ACTION

FIRST: Denies the allegations contained in Paragraphs "1", "2" and "3" in
the form alleged, except admit that TOYOTA MOTOR SALES, U.S.A., INC., s/h/a
LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC. has its principal offices
in the State of California and is licensed to do business in the State of New York.

SECOND: Denies the allegations contained in Paragraph "4" in the form
alleged.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "5", "6", "7", "8", "9", "16", "17", "18", "19" and "20".

FOURTH: Denies the allegations contained in Paragraphs "10", "11" and "12" in the form alleged, except admit that TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. imported and distributed a Lexus Model Number ES 350, motor vehicle bearing Vehicle Identification Number JTHBJ46G272071246.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "13", "14" and "15" and respectfully refer all questions of law and fact to the this Honorable Court.

SIXTH: Denies the allegations contained in Paragraphs "21", "22", "23" and "24".

ANSWERING AS AND FOR A SECOND CAUSE OF ACTION

SEVENTH: In response to Paragraph "25", repeats each admission or denial contained in Paragraphs "FIRST" through "SIXTH" herein as though fully set forth hereat.

EIGHTH: Denies the allegations contained in Paragraph "26", except admits that the Lexus ES350 sedan motor vehicle, bearing the New York license plate number DWW7794 and vehicle identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, services, maintained, labeled,

distributed, sold and purchased and refers to the warranties contained in the Owner's Manual.

NINTH: Denies the allegations contained in Paragraph "27" in the form alleged, except admits that the Lexus ES350 sedan motor vehicle, bearing the New York State license plate number DWW7794 and Vehicle Identification Number JTHBJ46G272071246 was safe, proper, merchantable and fit for its intended uses.

TENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "28".

ELEVENTH: Denies the allegations contained in Paragraphs "29", "30", "31", "32" and "33".

ANSWERING AS AND FOR A THIRD CAUSE OF ACTION

TWELFTH: In response to Paragraph "34", repeats each admission or denial contained in Paragraphs "FIRST" through "ELEVENTH" herein as though fully set forth hereat.

THIRTEENTH: Denies the allegations contained in Paragraphs "35", "36", "37" and "38".

ANSWERING AS AND FOR A SECOND AFFIRMATIVE DEFENSE.

FOURTEENTH: Pursuant to CPLR Article 16, the liability, if any, of the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. for non-economic loss shall not exceed its equitable shares of liability.


ANSWERING AS AND FOR A SECOND AFFIRMATIVE DEFENSE.

FIFTEENTH: If the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. should be found negligent, which negligence is denied, recovery on the claim set forth in the Complaint is diminished by plaintiff's negligence in failing to exercise due and proper care considering the circumstances existing at the time of the incident in issue, which negligence was greater than the negligence, if any, of the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. pursuant to the provisions of the Comparative Negligence Act.

WHEREFORE, defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. demands judgment dismissing the Complaint, together with the costs and disbursements of the within action.

DATED: New York, New York
August 13, 2007

Yours, etc.,


BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
 : ss:
COUNTY OF NEW YORK)

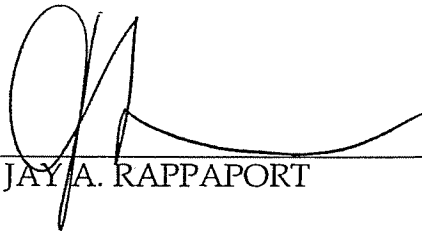
JAY A. RAPPAPORT, being duly sworn, deposes and says:

That I am a member in the firm of attorneys representing the defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.

That I have read the attached ANSWER and the same is true to my own belief, except as to matters alleged on information and belief, and as to those matters, I believe them to be true to the best of my knowledge.

My sources of information are a claims file containing statements, reports and records of investigation, investigators, parties and witnesses, with which I am fully familiar.

That this verification is made by me because my client does not reside within the county where I maintain my office.



JAY A. RAPPAPORT

Sworn to before me this
13th day of August, 2007.



Notary Public

Marlene Kelly
Notary Public, State of New York
No. 01KE5068190
Qualified in Queens County
Commission Expires October 28, 2010

Exhibit C

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

FILE COPY

-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Notice of Substitution
of Counsel

Defendant.
-----X

PLEASE TAKE NOTICE that, ECKERT SEAMANS CHERIN & MELLOTT, LLC.,
10 Bank Street, Suite 1061, White Plains, New York, (914) 949-2909, has been, pursuant to a
duly executed consent to change attorney form (attached as Exhibit "A"), substituted as attorneys
of record for defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION
OF TOYOTA MOTORS SALES, U.S.A., INC.

Dated: White Plains, New York
May 19, 2008

Yours etc



By: Steven R. Kramer, Esq.

Eckert Seamans Cherin & Mellott, LLC.

Attorneys for Defendant

Toyota Motor Sales, U.S.A., Inc., s/h/a Lexus, a

Division of Toyota Motors Sales, U.S.A.,

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

(914) 949-5424 (FAX)

To: GAIR, GAIR CONASON
STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005
212-943-1090

AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant Estree, Inc.
d/b/a Lexus of Westport
123 William Street
New York, New York 10038
212-513-7788

STEIN RISO MANTEL LLP
Attorneys for Defendant Metro Auto Leasing, Inc.
d/b/a The Automall
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
212-599-1515

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

- against -

**CONSENT TO CHANGE
ATTORNEY**

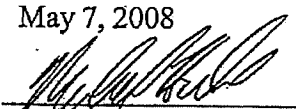
LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING,
INC., d/b/a THE AUTOMALL,

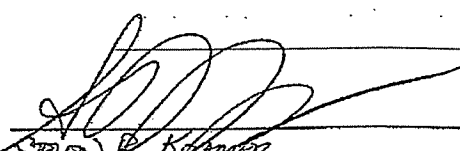
Index No.: 107681/07

Defendants.
-----X

IT IS HEREBY CONSENTED that the law firm of ECKERT, SEAMANS, CHERIN,
AND MELLOTT, INC., with offices located at 10 Bank Street, Suite 1061, White Plains, NY
10606, be substituted as attorneys of record for the defendant, TOYOTA MOTOR SALES,
U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA MOTOR SALES, U.S.A., INC. in
the above entitled action in place and stead of AARONSON RAPPAPORT FEINSTEIN &
DEUTSCH, LLP, with offices located at 757 Third Avenue, New York, New York 10017, as of
the date hereof, and that the substitution is effective without further notice.

Dated: New York, New York
May 7, 2008


By: Michael L. Burke, Esq.
AARONSON RAPPAPORT
FEINSTEIN & DEUTSCH, LLP
Out-Going Counsel
757 Third Avenue
New York, NY 10017
212-593-6700


By: Steven R. Kieffer
ECKERT, SEAMANS, CHERIN, AND
MELLOTT, INC.
In-Coming Counsel
10 Bank Street, Suite 1061,
White Plains, NY 10606
914-949-2909



By: Alicia T. McAndrews, Esq.
Managing Counsel
TOYOTA MOTOR SALES, U.S.A.,
INC., S/H/A LEXUS, A DIVISION OF
TOYOTA MOTOR SALES, U.S.A.,
INC.
19001 South Western Avenue
Torrance, CA 90501
310-468-4049

AFFIDAVIT OF SERVICE

STATE OF NEW YORK :
 : ss:
COUNTY OF WESTCHESTER :

Denise Falzerano, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Westchester County, New York.

On May 19, 2008, deponent served the within Notice of Substitution of Counsel upon:

GAIR, GAIR CONASON
STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005

AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant Estree, Inc.
d/b/a Lexus of Westport
123 William Street
New York, New York 10038

STEIN RISO MANTEL LLP
Attorneys for Defendant Metro Auto Leasing, Inc.
d/b/a The Automall
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

- By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York; and
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery


Denise Falzerano

Sworn to before me this
19th day of May, 2008

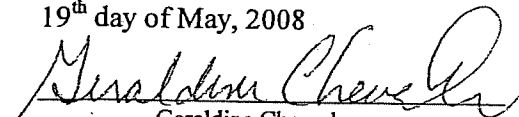

Geraldine Chevero
NOTARY PUBLIC, State of New York
No. 02CH61770101
Qualified in Putnam County
Commission Expires 7/2/2011

Exhibit D

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: HON. CAROL EDMOND

PART 35

Index Number : 107681/2007
LEVITTEN, IRIS
vs.
LEXUS
SEQUENCE NUMBER : 003
CONSOLIDATION/JOINT TRIAL

INDEX NO. _____
MOTION DATE 6/30/08
MOTION SEQ. NO. 003
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED _____

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...

Answering Affidavits - Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

It is hereby

ORDERED that the application of defendant Iris Leviten in the action *Michael Doukas v Iris Leviten, et al.*, Index No. 117118/07 ("Action 2") and defendant in action *Anthony Digirolamo v Iris Leviten*, Index No. 102331/08 ("Action 3") to consolidate Actions 2 and 3 with the instant action, *Iris Leviten v Lexus, et al.*, Index No. 107681/07 ("Action 1") for joint discovery and joint trial, pursuant to CPLR § 602 is granted; and it is further

ORDERED that the cross application of defendant in Action #1, Lexus, pursuant to CPLR §3103 is granted as follows:

- (1) the subject 2007 Lexus ES 350 vehicle, bearing vehicle identification number JTHBJ46G271246 (the "subject vehicle") shall be preserved in its post-accident condition throughout the entirety of this litigation, including appeal, and shall not be destroyed, and/or altered; nor shall any components of the subject vehicle be altered and/or destroyed;

Dated: _____

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
JUL 07 2008
COUNTY CLERK'S OFFICE
NEW YORK

- (2) the subject vehicle shall be preserved throughout this litigation, and any appeals, in a cool, dry indoor-covered environment;
- (3) no party, or any one acting on its behalf, shall conduct any destructive testing, destructive examination, or disassembly of the subject vehicle or any of its components unless all counsel of record mutually agree in writing to the destructive testing, destructive examination or disassembly, or the Court issue an order as a result of a motion made on notice to all counsel of record, permitting destructive testing, destructive examination or disassembly; and
- (4) All inspections of the subject vehicle must be on seven (7) days prior written notice to all counsel, and each party, including its counsel and experts, is permitted to attend any inspection of the subject vehicle; and it is further

ORDERED that counsel for plaintiff in Action 1 shall serve a copy of this Order with notice of entry within twenty days of entry on all counsel.

FILED

JUL 07 2008
 COUNTY CLERK'S OFFICE
 NEW YORK

Dated 7/2/08

ENTER:  J.S.C.

HON. CAROL EDMED

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

Exhibit E

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

INDIVIDUAL ASSIGNMENT PART [OR JUSTICE]

Iris Leviten

Plaintiff(s),

- against -

Lexus, et. al.

Defendant(s).

Index No.

107681 / 07

DCM Track

Complex

PRELIMINARY CONFERENCE ORDER

(202.8, 202.12 and 202.19 of the Uniform Rules)

APPEARANCES

Plaintiff(s): Diana Carnemolla for Gair, Gair

Defendant(s): TMS d/b/a Lexus by Ben Careathers of Aaronson, Rappaport & Weisbart by Primary Dem & Motion by Lexus METRO AUTO Leasing, INC. by Edward Wilson Stein Risa MANTER, LLP

It is hereby ORDERED that disclosure shall proceed as follows:

(1) Insurance Coverage: primary & excess or personal affidavits of none; If not already provided, shall be furnished by all OS on or before May 10, 2008.

(2) Bill of Particulars:

- (a) Demand for a bill of particulars shall be served by AS on or before 5/15/08
(b) Bill of particulars shall be served by on or before
(c) A supplemental bill of particulars shall be served by as to Items on or before

(3) Medical Reports and Authorizations:

Shall be served as follows: of all medical providers for injuries claimed herein; No Fault; medical insurance and other records; 2004 - present by May 9, 2008.

(4) Physical Examination:

- (a) Examination of TI shall be held within 45 days of completion of TI's deposition.
(b) A copy of the physician's report shall be furnished to plaintiff within 45 days of the examination.

(5) Depositions: Depositions of [X] Plaintiff(s) [] Defendant(s) [X] All Parties shall be held

TI to be deposed on or before 7/15/08.
Lexus to be deposed on or before 8/11/08.
Metro Auto Leasing on or before 9/11/08.

(6) Other Disclosure:

- (a) All parties, on or before 5/15/08, shall exchange names and addresses of all eye witnesses and notice witnesses, statements of opposing parties, and photographs, or, if none, provide an affirmation to that effect.
(b) Authorization for plaintiff(s)' employment records for the period 2004 - present (if claimed, see additional directives) shall be furnished on or before May 9, 2008.
(c) Demand for discovery and inspection shall be served by on or before. The items sought shall be produced to the extent not objected to, and objections, if any, shall be stated on or before.
(d) Other [interrogatories, etc.]

PRELIMINARY CONFERENCE ORDER

X. ADDITIONAL DIRECTIVES:

- ① All parties to conduct vehicle inspections of the vehicles involved in this accident on notice to all parties. ~~(scribble)~~
- ② All parties to exchange inspection [vehicle + scene] photographs and videotapes by May 15, 2008.
- ③ All parties to exchange sales/lease documents, repairs, maintenance and modification charges made to the vehicle documents; if any, by May 15, 2008.
- ④ T to provide current location of the T's vehicle by May 15, 2008.
- ⑤ T to ~~provide~~ ^{respond to A's request to} ~~provide~~ ^{provide} ~~response~~ ^{response} to TMS demand #5 [provide what the feasible safer alternative design is and how the floor mat should have been anchored] and # 10 [what the specific warning language should have been and where it should have been posted] by May 15, 2008.

Plaintiff shall notify A's w/in 30 days if she intends to claim lost wages and, if so, she shall serve A's for ~~her~~ this claim.

A's shall respond to all demands served by T including demands dated 10/28/07, 2/28/08, 4/4/08, & 4/11/08 w/in 30 days.

~~The inspection of vehicle w/in T's control shall be conducted after A's have paid their respective share for storage of said vehicle.~~

Plaintiff ~~respond~~ shall respond to A's request for A's to pharmacy, S.S.I., & disability records w/in 30 days.

X. ADDITIONAL DIRECTIVES

(7) End Date for All Disclosure: November 7, 2008

(8) Impleader: Shall be completed on or before 45 days of completion of all EBTs

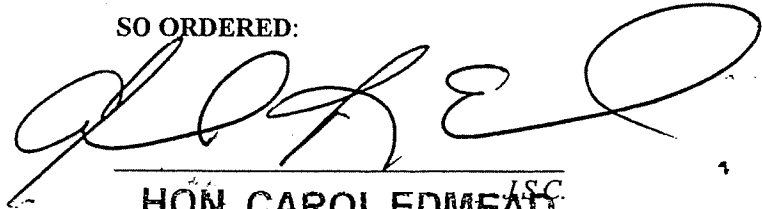
(9) Compliance Conference: Shall be held on December 2, 2008 @ 3 PM

(10) Motions: Any dispositive motion(s) shall be made on or before 60 days of the NOI.

(11) Note of Issue: Plaintiff shall file a note of issue/certificate of readiness on or before December 16, 2008. A copy of this order, an affirmation stating that the terms of the order have been complied with, and an affidavit of service of the affirmation and note of issue shall be served and filed with the note of issue on or before said date.

FAILURE TO COMPLY WITH ANY OF THESE DIRECTIVES MAY RESULT IN THE IMPOSITION OF COSTS OR SANCTIONS OR OTHER ACTION AUTHORIZED BY LAW.

SO ORDERED:



HON. CAROL EDM EAD ^{J.S.C.}

Dated:

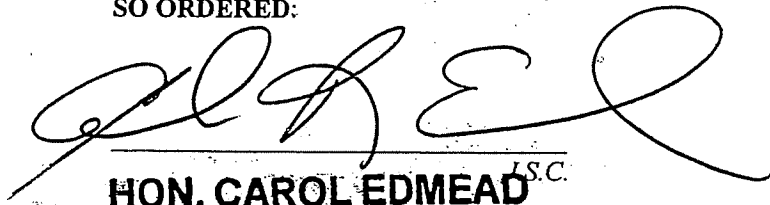
ADDITIONAL DIRECTIVES

In addition to the directives set forth above, it is further ORDERED as follows:

provide a response to ~~respond to~~ ITS demand for
Δ shall ~~provide~~ all documents, customer complaints, memos,
relating to the recall for the car mats w/in 30 days.

Dated:

SO ORDERED:



HON. CAROL EDM EAD ^{J.S.C.}

Exhibit F

TOY-RQ-05E-00002766

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

NOTICE OF DEPOSITION

Index No.: 107681/07

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that we will take the deposition of the following parties or persons, before a Notary Public not affiliated with any of the parties or their attorneys, on all relevant and material issues, as authorized by Article 31 of the CPLR:

Plaintiff - IRIS LEVITEN

DATE: November 20, 2007

TIME: 10:00 A.M.

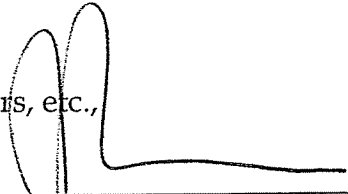
PLACE: AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP
757 Third Avenue
New York, New York 10017

PLEASE TAKE FURTHER NOTICE, that the persons to be examined are required to produce all books, records and papers in their custody and possession that

may be relevant to the issues herein.

DATED: New York, New York
August 13, 2007

Yours, etc.,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

**TOYOTA MOTOR SALES,
U.S.A., INC.'S FIRST SET
OF INTERROGATORIES
TO PLAINTIFF**

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING,
INC., d/b/a THE AUTOMALL,

Index No.: 107681/07

Defendants.
-----X

SIR/MADAM:

PLEASE TAKE NOTICE, that defendant, **TOYOTA MOTOR SALES, U.S.A., INC.**, s/h/a **LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.** hereby demands that plaintiff serve on the undersigned within twenty (20) days from the date of service hereof, Response to Interrogatories with respect to the following matters concerning the allegations in the complaint against the above named defendant:

1. State the (a) date and place of birth of plaintiff; (b) residence address of plaintiff at the time this action was commenced; (c) residence address of plaintiff's at the time of the alleged negligence;
2. Set forth the exact date and time of the alleged automobile accident, and a description of how the accident occurred.
3. The specific location of the act or occurrence with reference to addresses, landmarks, or other identifying points of reference, including the direction and distance there from.
4. Set forth every fact which the plaintiff will offer to prove at the time of trial in support of the claim that the **TOYOTA MOTOR SALES, U.S.A., INC.**, s/h/a **LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.** was negligent.
5. If the plaintiff is claiming a manufacturing or design defect, set forth the following:
 - (a) identify the alleged manufacturing defect with particularity; and
 - (b) set forth the manner in which plaintiff claims the product was negligently

manufactured; and

- (c) identify the alleged design defect with particularity; and
- (d) set forth the manner in which plaintiff claims the product was negligently designed; and
- (e) identify and particularize each and every alleged safer alternative design; and
- (f) a specific statement as to the changes in design alleged that support a claim for strict products liability;
- (g) the identification by make, serial number, etc., of any similar product whose design plaintiff, or others, allege that **TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.** should have followed giving rise to a cause of action for design defect.
- (h) particularize how each safer alternative design was both functionable and still cost efficient; and
- (i) identify how the vehicle was inherently dangerous.

6. If plaintiff is claiming a breach of a written express warranty attach hereto a true copy of each.

7. If any such express warranty was oral, set forth:

- (a) the date on which each such express warranty was made;
- (b) the place where each such express warranty was made;
- (c) by whom each such express warranty was made;
- (d) to whom each such express warranty was made;
- (e) the substance of each such express warranty.

8. Set forth each and every implied warranty allegedly made by **TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.** with respect to the subject vehicle and alleged defective component part in question. If any such implied warranty was in writing, attach hereto a true copy of each.

9. If any such implied warranty was oral, set forth:

- (a) the date on which each such implied warranty was made;

- (b) the place where each such implied warranty was made;
- (c) by whom each such implied warranty was made;
- (d) to whom each such implied warranty was made;
- (e) the substance of each such implied warranty.

10. Particularize the claim, if made, that inadequate warnings and instructions were made by **TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.** identifying:

- (a) the warnings and instructions given (and providing copies of any written documents);
- (b) how they were inadequate;
- (c) identify each warning and instruction which is claimed should have been given.
- (d) state where such warnings and instructions should have been posted.

11. Identify all owners and drivers of the subject vehicle and include their current address and relationship to the plaintiff.

- (a) State how many times each person drove the vehicle at issue.
- (b) Did any of the drivers of the vehicle ever experience any problems with the vehicle?
 - 1. If the answer to the above is "yes", describe the problem in detail, how many times it occurred, where it occurred, the time it occurred, the speed of the vehicle at the time of the occurrence and identities of all witnesses to each occurrence.
 - 2. Were any of these incidents reported to any agent or employee of the defendant?
 - 3. If "yes" identify each employee and/or agent of the defendant so informed, what they were told, when they were informed, how they were informed and produce all documentation relative to this.

12. Identify the present location of the vehicle.

- (a) Who is the current owner of the vehicle?
- (b) Were any repairs made to the vehicle since the incident in question?
 - 1. If so, describe what repairs were made.

2. Where was each repair made.
 3. Produce all documentation referable to such repairs.
 4. State how much the repair work cost.
13. Provide the current address of each and every plaintiff.
- (a) Identify all individuals who currently reside with each plaintiff; their relationship to the plaintiff and their age.
14. Provide the address for each plaintiff at the time of the incident.
- (a) Identify all individuals who resided with each plaintiff at that time; their relationship to the plaintiff and their age at the time.
15. Provide all other addresses each plaintiff may have resided at between the date of the occurrence and their current resident.
- (a) Identify all individuals who resided with each plaintiff at that time; their relationship to the plaintiff and their age at the time.
16. Identify all jobs each plaintiff has held since 2000 and provide the following:
- (a) The address of each job.
 - (b) The name of plaintiff's immediate supervisor;
 - (c) The length of time plaintiff worked at each job.
 - (d) The positions held by plaintiff.
 - (e) The job duties for each position held by plaintiff.
 - (f) Plaintiff's yearly salary at each job.
 - (g) The reason plaintiff left each job.
17. On the date of the incident, state where the plaintiff was going?
- (a) State where they were coming from?
 - (b) State the speed of the vehicle at the time the plaintiff first noticed a problem with the vehicle.
 - (c) State the speed limit in existence on the road the plaintiff's vehicle was

traveling on at the time of the incident.

- (d) How long had plaintiff been driving for prior to the incident occurring?
- (e) Describe the traffic conditions at the time of the incident?
- (f) Describe the road conditions at the time of the incident.

18. Describe how the vehicle's floor mats were defectively designed identifying each component which is claimed is defective.

- (a) Identify how each component should have been designed.
- (b) State the cost for each alternatively designed component.

19. Describe how the alleged defective design of the floor mats or any other alleged defective part(s) caused and/or contributed to this incident.

- (a) State how the safer alternative design would have prevented this incident.

20. Describe how the alleged design defect caused and/or contributed to this incident.

- (a) State how the safer alternative design would have prevented this incident.

21. Describe how the assembly of the vehicle was negligent.

- (a) State how the vehicle should have been assembled.

22. State how the assembly of this vehicle caused or contributed to this accident.

- (a) State how the better assembly would have prevented this incident.

23. Describe how the inspection of the vehicle was negligent.

24. State how the vehicle should have been inspected.

25. Describe how the labeling of the vehicle was defective.

- (a) Identify how the labeling for this vehicle should have been given.

26. Describe how the labeling caused and/or contributed to this incident.

- (a) State how the appropriate labeling would have prevented this incident.

27. Describe how the service of this vehicle was negligent.

28. State how the vehicle should have been serviced.

29. State how the service of this vehicle caused or contributed to this accident.

30. Describe how the maintenance of this vehicle was negligent.

(a) State how the vehicle should have been maintained.

31. State how the maintenance of this vehicle caused or contributed to this accident.

32. Was the subject vehicle in any prior accidents?

(a) If yes, please provide the following for each accident.

i. description of the accident;

ii. all individuals present and included in the accident;

iii. location of the accident;

iv. describe all repairs made to the vehicle as a result of the accident;

v. product copies of all documentation regarding any repairs;

vi. date and time of the accident.

33. Were any modifications made or added to the vehicle at any time prior to the date of the subject incident?

(a) If "yes", state which modifications were made and by who providing a complete name and address.

(b) Produce all documentation regarding the modifications;

(c) State when each modification was made.

34. State where and by whom the vehicle was regularly maintained.

35. If it is alleged the defendant breached or violated any statutes, standards, ordinances, or laws, provide all such statutes, standards ordinances or laws violated and state how they were violated.

36. State if anyone has inspected the vehicle.

(a) If so, provide the date, time and location of each inspection;

(b) Identify every individual who was present for each inspection.

37. Since the accident, state every location the vehicle has been and provide a chain of custody description for the vehicle and any of its component parts.

38. Was anyone utilizing a cell phone inside the vehicle at the time of the incident?

- a. If "yes", identify who was utilizing a cell phone, when in relation to the incident it was in use, provide the cell phone service provider and the cell phone number of the phone in use as well as the identity of the owner of the cell phone.

39. Provide the location of each passenger inside the vehicle just prior to the incident occurring.

40. Set forth whether any repairs or modifications were performed on the vehicle:

- (a) before the date of the accident and provide the identity of the repairman;
- (b) after the accident and provide the identity of the repairman;

41.. Identify by full name and exact location the individual or organization presently in possession, in whole or in part, of the subject vehicle and, if in part, specify the component part(s).

42. If either the subject vehicle or alleged defective part is no longer in plaintiff's actual or constructive possession, set forth:

- (a) the date on which the subject vehicle and/or alleged defective part was last in plaintiff's possession;
- (b) to whom was the subject vehicle and/or alleged defective part was transferred or released;
- (c) the purpose of the transfer or release; and
- (d) whether or not the subject vehicle or alleged defective part was, in whole or in part, destroyed and, if so, the corresponding date of destruction.

43. Set forth the odometer reading on the date of purchase or lease of the subject vehicle and at the time of the accident.

44. Set forth the full caption of each and every lawsuit brought on plaintiff's behalf to recover damages for any connected or aggravated injuries allegedly caused and sustained by reason of the acts of one or more preceding, joint, concurrent and/or succeeding tort feasons, including:

- (a) Court
- (b) Index Number

- (c) Calendar number
- (d) Names and addresses of all litigants
- (e) Names and addresses of all attorneys appearing for litigants.
- (f) Status of lawsuit
 - (1) if noticed for trial, specify the date.
 - (2) if settled, annex a copy of each release delivered indicating the amounts contributed by each defendant.
 - (3) if discontinued without payment, annex a copy of each stipulation so delivered to each defendant.
 - (4) if tried, annex a copy of the judgment with notice of entry
 - (5) if judgment was satisfied, set forth date and amount of payment and annex a copy of satisfaction of judgment.

45. An itemization of all property damage claimed, if any, including the cost of repair or replacement of each item. Include the date of acquisition, state whether the item was acquired used or new and state in purchase price.

46. If it will be claimed that the aforesaid injuries necessitated any special educational, emotional, or vocational training or schooling, set forth the name and address of each organization and the dates.

47. Set forth the full names and addresses of each and every physician from whom the plaintiff has ever received medical treatment with respect to any **neurological vascular, urological, intestinal, orthopedic, or surgical** or related condition for the fifteen (15) years prior to the alleged negligence with dates of treatment.

48. Set forth the full names and addresses of each and every hospital, institution, facility or clinic in which plaintiff has ever received treatment with respect to any **neurological vascular, urological, intestinal, orthopedic, or surgical** or related condition for the fifteen (15) years prior to the alleged negligence with dates of confinement or outpatient treatment.

49. The nature, location, extent and duration of each injury which, it will be claimed was caused by the negligence of this defendant. If any injuries are claimed to be permanent or serious within the meaning of Insurance Law 5102(d), so specify.

50. Set forth the full name and address of each and every privately retained physician from whom medical treatment or consultation was sought by reason of the injuries allegedly sustained.

51. If it will be claimed that the aforesaid injuries necessitated any hospitalization, set forth the name and address of each hospital with dates of confinement or outpatient treatment.

52. If it will be claimed that the aforesaid injuries necessitated treatment at any other institution, set forth the name and address of each institution with dates of confinement.

53. If it will be claimed that the aforesaid injuries necessitated confinement to bed or home, set forth the following:

- (a) The dates of confinement to home.
- (b) The dates of confinement to bed.

54. If loss of earnings is claimed, set forth the following:

- (a) The name and address of claimants' employer at the time of the alleged negligence.
- (b) The capacity in which claimants were employed.
- (c) Claimants earnings for the year prior to the alleged negligence.
- (d) The last date claimants worked prior to the alleged negligence.
- (e) The name and address of claimants' present employer.
- (f) Loss of earnings claimed.
- (g) If the plaintiff was a student, please identify all schools attended and the dates she was unable to attend.

55. If any special damages are claimed, set forth, including but not limited to, the following:

- (a) The charges for the above named hospitals, separately listing each hospital bill.
- (b) Physicians' charges.
- (c) Charges for medicines, itemizing the medicines charged for.
- (d) Nursing.

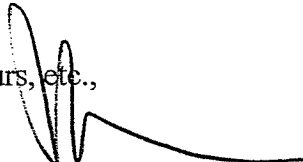
(e) Specify by category and amount any other special damages claimed.

56. Pursuant to CPLR 4545 identify the party who paid the damages claimed in paragraphs above, including the relationship of the injured claimant to that party. If the third party payments were made as a result of reimbursements through an insurance company, set forth the complete name and address of the company, the complete name of the person in whose name the policy is issued.

PLEASE TAKE FURTHER NOTICE, that in the event of the plaintiff's failure to comply with the foregoing Demand for Interrogatories within thirty (30) days, the third-party defendant, **TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.** will move to preclude the offering of any evidence as to the matters herein demanded and for costs of such motion.

DATED: New York, New York
August 13, 2007

Yours, etc.,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

DEMAND PURSUANT
TO CPLR §2103(5)

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

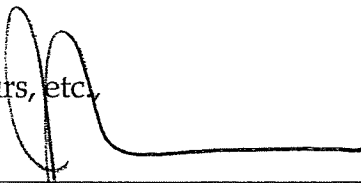
Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that pursuant to CPLR §2103(5), the defendant(s)
object to service of papers via electronic means.

DATED: New York, New York
August 13, 2007

Yours, etc.


BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

**DEMAND FOR COLLATERAL
SOURCE INFORMATION**

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----X

SIR/MADAM:

PLEASE TAKE NOTICE, that demand is hereby made upon you pursuant to
CPLR §4545 to produce and permit the undersigned attorneys to inspect and copy the
contents of:

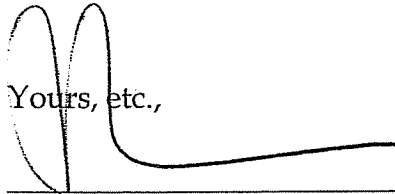
1. Each and every collateral source of payment, including but not limited to
insurance agreements (except life insurance), Social Security (except those benefits
provided under Title XVIII of the Social Security Act), Workers' Compensation or
employee benefit programs (except such collateral sources entitled by law to liens
against any recovery of the plaintiff), and any other collateral source of payment for
past or future costs or expenses alleged to have been incurred by the plaintiff(s) and for
which recovery is sought in the instant action, and

2. A written statement setting forth any and all such collateral sources and their amounts.

3. Provide an authorization to obtain a complete copy of all No-Fault records.

PLEASE TAKE FURTHER NOTICE, that failure to produce said collateral sources of payment at the offices of the undersigned within twenty (20) days from the date herein, will result in a motion for appropriate relief.

DATED: New York, New York
August 13, 2007

Yours, etc.,


BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

-against-

**NOTICE FOR DISCOVERY
& INSPECTION**

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that pursuant to §3012 of the Civil Practice Law and
Rules, you are hereby required to furnish the undersigned with the following:

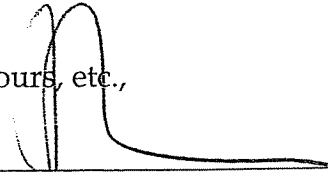
1. Production of the vehicle and all component parts for inspection.
2. Production of the clothes the passenger was wearing at the time of the incident.
3. Production of all photos and videos of the vehicle and the accident scene.
4. Provide authorizations for all EMS, ambulance, fire department and towing companies that responded to the accident.

PLEASE TAKE FURTHER NOTICE, that failure to provide the aforesaid
within twenty (20) days after the receipt of this notice, will leave you subject to the

provisions of the CPLR.

DATED: New York, New York
August 13, 2007

Yours, etc.,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

**DEMAND FOR EXPERT
WITNESS INFORMATION**

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that pursuant to CPLR §3101(d), if plaintiff intends to introduce expert testimony at the time of trial of the above captioned action, within thirty (30) days of the date herein, plaintiff is to set forth:

1. The identity of each such expert witness.
2. Set forth the qualifications of each of plaintiffs' medical experts as follows:
 - (a) Identify each medical school each expert attended with corresponding years.
 - (b) Identify each medical institution in which each expert served an internship with corresponding years.
 - (c) Identify each medical institution in which each expert served a residency and, if applicable, the residency of specialization, with corresponding years.
 - (d) Identify each medical institution in which each expert served a fellowship

and, if applicable, the fellowship of specialization, with corresponding years.

- (e) Identify each state in which each expert obtained his/her medical license and the corresponding year(s).
- (f) Identify each specialty in which each expert has been Board Certified and, if applicable, recertified, indicating the corresponding years and the states in which each expert has been so certified.
- (g) Identify each institution in which each expert maintains a teaching position, indicating the expert's actual or corresponding rank.
- (h) Identify the name of each hospital or other medically related facility with which each expert is presently affiliated.

3. The qualifications of each proposed non medical expert, including:

- (a) Identify each college or other educational institution each expert attended, with corresponding years and degrees awarded.
- (b) Identify each state in which each expert was awarded any professional license and the corresponding year(s).
- (c) Identify each certification or other special award reflecting the expert's expertise, organization by whom issued and year in which granted.
- (d) Identify each institution by full name and address in which each expert maintains a teaching position, indicating the actual and corresponding rank.

4. The corresponding subject matter to which each expert witness is expected to testify.

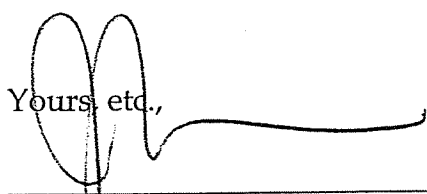
5. The corresponding substance of the facts and the corresponding substance of the opinions to which each expert is expected to testify.

6. A summary of the corresponding grounds for each such expert's testimony.
7. A copy of all reports, visual aids and documents generated and relied upon by the experts.

PLEASE TAKE FURTHER NOTICE, that non-compliance with the instant demand will result in this defendant's objection to and the request for an order precluding plaintiff from introducing, at the time of trial, any expert testimony concerning alleged departures from medical standards of care, proximately caused injuries, or economic damages.

DATED: New York, New York
August 13, 2007

Yours, etc.,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

-against-

**DEMAND FOR
AUTHORIZATIONS
FOR HOSPITAL AND
PHYSICIAN'S RECORDS**

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Index No.: 107681/07

Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that demand is hereby made that you serve upon the undersigned duly executed authorizations for the release of the records pertaining to the care and treatment rendered to the plaintiff in any and all hospitals.

Demand is additionally made that you serve upon the undersigned duly executed authorizations for the release of records of any and all treating physicians.

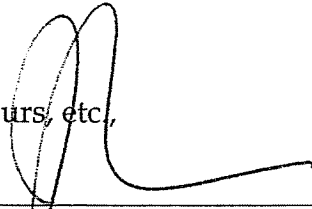
The aforementioned authorizations should include the full name and address of each institution and/or physician and the dates of confinement or treatment and should be in the form attached hereto or other HIPAA compliant form.

PLEASE TAKE FURTHER NOTICE, that failure to comply with this demand will serve as a basis for a motion to preclude the plaintiff upon the trial of this action from offering proof relative to medical damages, if such authorizations are not forthcoming

within twenty (20) days after service of a copy of the within Demand.

DATED: New York, New York
August 13, 2007

Yours, etc.,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

To: _____ ("the Practice")

AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION
(Note: This form cannot be used to authorize a release of HIV related information.)

Individual's Name: _____
Last First Middle

Home Address: _____

Home Telephone: _____ **Date of Birth:** _____

Social Security: _____

INFORMATION TO BE DISCLOSED: All treatment information and medical records including but not limited to, progress notes, consultation reports, operative reports, examination notes, patient history notes, medication list, x-rays, (including x-ray and imaging reports) laboratory results, photographs, etc. in your possession.

DATES OF CONFINEMENT OR TREATMENT: _____

I understand that the information in my health record may include information about behavioral or mental health services, and treatment for alcohol and drug abuse.

RECIPIENT: Name of person or class of persons to whom the Practice may disclose my health information:
Aaronson Rappaport Feinstein & Deutsch, LLP *and their record* *Record Access Corporation*
757 Third Avenue – New York, N.Y. 10017 *retrieval agent* *260 Fifth Ave, NY, NY 10001*

This Authorization will remain in effect: **Until the resolution of the claim(s) brought by, or on behalf of, the above referenced individual against:**
 _____ ("defendants")

PURPOSE: I authorize the Practice to use or disclose my health information (including the highly confidential information I selected above, if any) during the term of this Authorization for the following specific purpose(s): **Litigation**

I understand that once the Practice has disclosed my health information to the recipient, the Practice cannot guarantee that the recipient will not redisclose my health information to a third party. The third party may not be required to abide by this Authorization or applicable federal and state law governing the use and disclosure of my health information.

I understand that this Authorization will remain in effect until the term of this Authorization expires or I provide a written notice of revocation to the Practice's Privacy Officer. The revocation will be effective immediately upon the Practice's receipt of my written notice, except that the revocation will not have any effect on any action taken by the Practice in reliance on this Authorization before it received my written notice of revocation.

I have read and understand the terms of this Authorization. By my signature below, I hereby, knowingly and voluntarily, authorize the Practice to use or disclose my health information in the manner described above.

Signature of Patient Date

If the patient is a minor or is otherwise unable to sign this Authorization, obtain the following signature:

Signature of Personal Representative	Description of Authority	Date
STATE OF NEW YORK)		
	SS.:	
COUNTY OF _____)		

On the _____ day of _____, 200____, before me personally came and appeared _____ to me known and known to me to be the individual described in and who executed the foregoing instrument, and who duly acknowledged to me that he/she executed the same.

 Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

**COMBINED DEMAND NOTICE
FOR DISCOVERY & INSPECTION**

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that pursuant to Article 31 of the CPLR, the undersigned hereby demands that you produce for discovery the following items for inspection and reproduction at the offices of the undersigned within twenty days after your receipt of this demand as to the following:

1. The name and address of each person claimed to be a witness to the following: (a) the occurrence alleged in the plaintiff's complaint; (b) any acts, omissions, or conditions which allegedly caused said occurrence; (c) the nature and duration of any alleged condition which caused said occurrence; (d) any actual notice given to defendants or claimed to be given to defendants. If no such witnesses are known to you, then so state under oath in reply to this demand. The undersigned will object at the time of trial to the testimony of any persons not so identified.

2. Any and all statements made by or taken from the parties represented by the undersigned and/or their agents, servants, and/or employees, now in the possession, custody, or control of your office or the party represented by you. If no such statement is in the possession, custody, or control of your office or the party represented by you, then so state under oath in reply to this demand. The undersigned will object at the trial of this action to the admissibility of any documents not so identified.

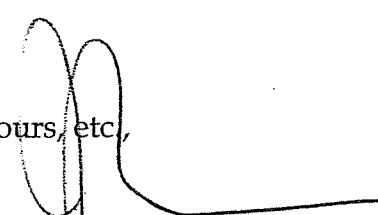
3. Any and all photographs depicting the conditions at the scene of the alleged occurrence. If no such photographs are in the possession, custody, or control of your office or the party represented by you, then so state under oath in reply to this demand. The undersigned will object at the trial of this action to the admissibility of any photographs not so identified.

4. Any and all accident reports made in connection with this incident. If no such accident reports are in the possession, custody, or control of your office or the party represented by you, then so state under oath in reply to this demand. The undersigned will object at the trial of this action to the admissibility of any accident report not so identified.

PLEASE TAKE FURTHER NOTICE, that the foregoing are continuing demands and supplemental responses up to the time of trial are required.

DATED: New York, New York
August 13, 2007

Yours, etc,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

**DEMAND FOR TAX RETURNS
AND EMPLOYMENT RECORDS**

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

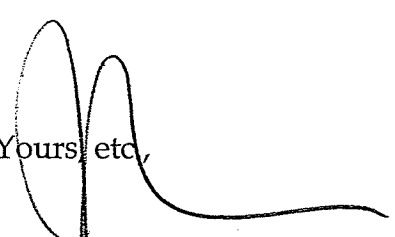
SIR/MADAM:

PLEASE TAKE NOTICE, that pursuant to Rule 34 of the CPLR, you are hereby required to furnish to the undersigned full and complete copies, or, authorizations to obtain full and complete copies of all employment and tax records referable the plaintiff

PLEASE TAKE FURTHER NOTICE, that failure to provide the aforesaid authorizations within twenty (20) days after receipt of this Notice will leave you subject to the provisions of the CPLR.

DATED: New York, New York
August 13, 2007

Yours, etc,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

**DEMAND FOR PHYSICAL
EXAMINATION**

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

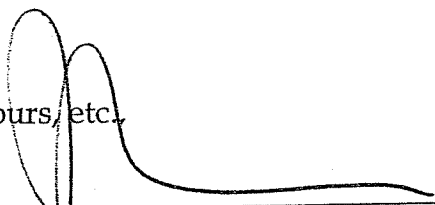
SIR/MADAM:

PLEASE TAKE NOTICE, that pursuant to CPLR 3121 of the Civil Practice Law and Rules, you are hereby required to produce the plaintiff, IRIS LEVITEN, for a physical examination by a physician designated by the defendant herein.

PLEASE TAKE FURTHER NOTICE, that failure to provide the aforesaid within twenty (20) days after receipt of this Notice, will leave you subject to the provisions of the CPLR.

DATED: New York, New York
August 13, 2007

Yours, etc.



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

Exhibit G

June 2, 2008

FILE COPY

Howard S. Hershenhorn, Esq.
GAIR, GAIR CONASON
STEIGMAN & MACKAUF
80 Pine Street
New York, New York 10005

Re: *Leviten v Lexus, et al.*
Supreme Court of the State of New York
New York County – Index No.: 107681/07
ESCM File No.: 292107.00040

Dear Mr. Hershenhorn:

As you know, we have been substituted as counsel of records for Lexus, a division of Toyota Motor Sales, U.S.A., Inc. (“TMS”).

We are writing regarding a number of issues:

I. Outstanding Discovery

Our review of the file indicates that plaintiff has not served a response to the Court’s preliminary conference order (which contained a significant number of additional directives). Please serve a response.

We also did not see in the file plaintiff’s response to TMS’ August 28, 2007 notice for discovery and inspection, expert witness demand, collateral source demand and combined demand for discovery and inspection.

II. Preservation of Vehicle

We believe that the subject vehicle should be preserved in its post-accident condition and no destructive testing/inspection be performed (unless agreed to by all parties). We therefore enclose a stipulation to preserve evidence. Please review it and, if acceptable, execute and return it to me.

Howard S. Hershenhorn, Esq.
June 2, 2008

Page 2


III. Additional Vehicle Inspection

We understand that, although an inspection was performed on behalf of TMS, plaintiff would not permit materials to be moved or removed from the driver compartment. It is imperative that TMS be able to move the material so that a complete inspection can be performed.

We propose to photo-document the location of the materials and then move them. A non-destructive inspection can be performed.

Please let us know your thoughts, and by copy of this letter to all counsel, we ask for counsels' input as well.

Very truly yours,



Steven R. Kramer
SRK/df

Enclosure

cc: AHMUTY, DEMERS & MCMANUS
123 William Street
New York, New York 10038

STEIN RISO MANTEL LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

AFFIDAVIT OF SERVICE

STATE OF NEW YORK :
 : ss:
COUNTY OF WESTCHESTER

Eileen Lavelle, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Westchester County, New York.

On July 25, 2008, deponent served the within **NOTICE OF MOTION** upon:

GAIR, GAIR CONASON
STEIGMAN & MACKAUF
Attorneys for Plaintiff (Action #1)
80 Pine Street
New York, New York 10005
(212) 943-1090

Dean A. Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant Iris Leviten
(Action #1 - Index # 11718/07)
875 Merrick Avenue
Westbury, NY 11590
516-229-4422
File # 08R0185

AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant (Action #1)
ESTREE, INC.
D/B/A LEXUS OF WESTPORT
123 William Street
New York, New York 10038
(212) 513-7788

KELNER & KELNER, ESQS.
Attorneys for Plaintiff, Michael Doukas (Action #2 - Index #: 117118/07)
140 Broadway - 37th floor
New York, New York 10005
212-425-0700

STEIN RISØ MANTEL LLP
Attorneys for Defendant
(Action #1 - Index # 11718/07)
METRO AUTO LEASING, INC.
D/B/A THE AUTOMALL
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 599-1515

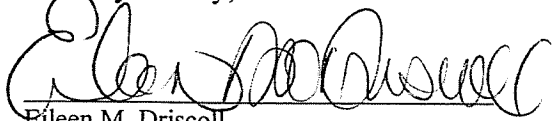
Michael Cordoza, Esq.
Attorneys for Defendant Anthony Digirolamo,
New York City Department of Sanitation
and The City of New York - Action #2
100 Church Street
New York, New York 10007
212-788-0303

by depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York; and



Eileen Lavelle

Sworn to before me this
25th day of July, 2008



Eileen M. Driscoll
NOTARY PUBLIC, State of New York
No. 01DR6023037
Qualified in Nassau County
Commission Expires 4/12/2011

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

NOTICE OF MOTION

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

Toyota Motor Sales, U.S.A., Inc., s/h/a Lexus, a

Division of Toyota Motors Sales, U.S.A.,

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

{V0001305.1}

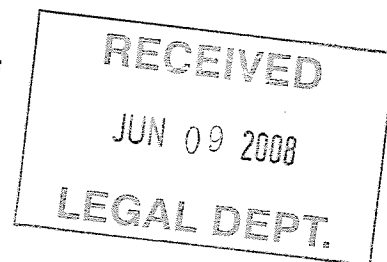
TOY-RQ-05E-00002802

P

LAW OFFICES OF
KAY AND GRAY

ATTORNEYS AND SUPPORT STAFF ARE EMPLOYEES OF
GOVERNMENT EMPLOYEES INSURANCE COMPANY

875 Merrick Avenue
Westbury, NY 11590
Phone: (516) 229-4400
Fax: (516) 229-4403



Writer's direct line: 516-229-4422

May 30, 2008

Eckert, Seamans, Cherin, & Mellott, LLC
10 Bank Street
Suite 1061
White Plains, NY 10606

Re: Leviten v. Lexus, Digirolamo v. Leviten, and Doukas v. Leviten
Claim Number: 0244514670101035 (J570)
Our File Number: 08R0448

Dear Counselor(s):

Enclosed please find our motion for consolidation with all exhibits attached. We have adjusted our records to reflect the substitution of counsel for Toyota Motor Sales.

Please refer to our file number when corresponding with this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dean A. Barbakoff".

Dean A. Barbakoff, Esq.

DAB/cw/lp

tc

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

IRIS LEVITEN

Plaintiff(s)

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA, INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL

Defendant(s)

NOTICE OF AMENDED MOTION
TO CONSOLIDATE

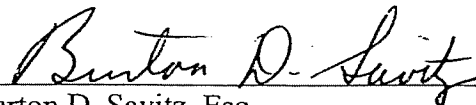
Action No. 1
Index #: 107681/08

COUNSELORS:

PLEASE TAKE NOTICE, that upon the annexed affirmation of Burton D. Savitz, Esq., dated May 20, 2008, and the exhibits attached thereto and upon all the prior pleadings and proceedings had herein, the defendant(s) in Action #2 and #3 will move this Court at the Submissions Part, Room 130, at the Courthouse located at 60 Centre Street, New York, NY, on the 30th day of June 2008 at 9:30 a.m. or as soon thereafter as counsel can be heard, for an Order consolidating the above-captioned action with Action #2 and Action #3 for the purpose of a joint trial, and for such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to C.P.L.R. § 2214(b), answering papers are required to be served at least seven (7) days prior to the return date of this motion.

DATED: Westbury, New York
May 20, 2008



Burton D. Savitz, Esq.
KAY & GRAY
Attorneys for Defendant
Iris Leviten (Action #2 and #3)
875 Merrick Avenue
Westbury, NY 11590
516-229-4422
Our File No.: 08R0185
Claim No.: 0244514670101035 (J570)

TO:

Kelner & Kelner, Esqs.
Attorneys for Plaintiff
Michael Doukas- Action #2
140 Broadway- 37th Floor
New York, NY 10005
(212) 425-0700

Michael Cordoza
Attorneys for Defendant
Anthony Digirolamo, New York City
Department of Sanitation and The City Of New York- Action #2
100 Church Street
New York, NY 10007
(212) 788-0303

Gair, Gair, Conason, Stegman & Mackauf
Attorneys for Plaintiff
Iris Leviten- Action #1
80 Pine Street
New York, NY 10005

Arronson, Rappaport, Feinstein & Deutsch, Esqs.
Attorneys for Defendant
Toyota Motor Sales, USA INC- Action #1
757 Third Avenue
New York, NY 10017

Ahmuty, Demers & McManus, Esqs.
Attorneys for Defendant
Estree, Inc., d/b/a Lexus of Westport- Action #1
200 I.U. Willets Road
Albertson, NY 11507

Richard Janowitz, Esq.
Attorneys for Plaintiff
Anthony Digirolomo- Action #3
229 Seventh St., Suit 304
Garden City, NY 11530

Stein, Riso, & Mantel
Attorneys for Defendant
Metro Auto Leasing, Inc.- Action #1
405 Lexington Ave.
New York, NY 10174

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

IRIS LEVITEN

Plaintiff(s)

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA, INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL

Defendant(s)

ATTORNEY'S AFFIRMATION
Action No. 1
Index #: 107681/08

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

MICHAEL DOUKAS,

Plaintiff(s)

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO
NEW YORK CITY DEPARTMENT
OF SANITATION and THE CITY OF NEW
YORK,

Defendant(s)

Action No. 2
Index #: 117118/07

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ANTHONY DIGIROLAMO

Plaintiff(s)

- against -

IRIS LEVITEN

Defendant(s)

Action No. 3
Index #: 102331/08

Burton D. Savitz, Esq., an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms upon information and belief the truth of the following under the penalties of perjury:

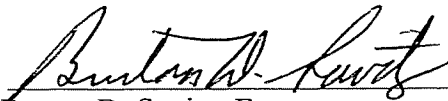
1. I am attorney associated with KAY & GRAY, attorneys for the defendant(s) herein, and as such, am familiar with the facts and circumstances herein of this action
2. I make this Affirmation in support of the within application for consolidation of the above-entitled actions for the purpose of joint trial pursuant to Section 602 of the CPLR.
3. All of the above-captioned actions arise from the same motor vehicle accident which took place on February 18, 2007.
4. Action no. 1 was commenced in Supreme Court, New York County by the purchase and filing of Index No. 107681/07 and by service of a summons and complaint. A copy of the summons and complaint is attached hereto as Exhibit "A". Issue in action no. 1 was joined by the service of defendant(s) Answer on or about August 13, 2007. See Exhibit "B".
5. Action no. 2 was commenced in Supreme Court, New York County by the purchase and filing of Index No. 117118/07 and by service of the summons and complaint. A copy of the summons and complaint in action no. 2 is attached hereto as Exhibit "C". Issue was joined by service of defendant(s) Answer on or about March 4, 2008. See Exhibit "D".
6. Action no. 3 was commenced in Supreme Court, New York County by the purchase and filing of Index No. 102331/08 and by service of the summons and

complaint. A copy of the summons and complaint in action no. 3 is attached hereto as Exhibit "E". Issue was joined by service of defendant(s) Answer on or about May 6, 2008. See Exhibit "F".

7. Since the actions arise out of the same accident and involve common questions of law and fact, it is respectfully requested that a joint trial of the above actions be granted to avoid a multiplicity of lawsuits and to save considerable time and expense of this Honorable Court.
8. There has been no prior application for the relief requested herein.

WHEREFORE, it is respectfully requested that the within Motion for be granted in its entirety and a joint trial ordered for all actions and for such other and further relief as to this Court may deem just and proper.

DATED: Westbury, New York
May 20, 2008



Burton D. Savitz, Esq.
KAY & GRAY

Party & Relation to Action	Nature of Action	Position and Identification of Vehicle	Date Action Commenced	Date Issue Joined
Iris Leviten ACTION 1- PLAINTIFF ACTION 2- OUR CLIENT, DEFENDANT ACTION 3- DEFENDANT	Personal injury, negligence	Allegedly ran red light and struck city sanitation truck.	ACTION 1: 6/1/07 ACTION 2: 12/27/07 ACTION 3: 2/11/08	ACTION 1: 9/17/07 ACTION 2: 3/4/08 ACTION 3: 5/6/08
Anthony DiGirolamo ACTION 2- CO-DEFENDANT ACTION 3- PLAINTIFF	Personal injury	Driver of sanitation truck		
New York City Dep't of Sanitation, The City of New York ACTION 2- CO-DEFENDANT		Owner of sanitation truck		
Michael Doukas ACTION 2- PLAINTIFF	Personal injury	Passenger in sanitation truck		
Lexus, A Division of Toyota Motor Sales USA, Inc., Estree, Inc., d/b/a Lexus of Westport, and Metro Auto Leasing, Inc., d/b/a The Automall ACTION 1- DEFENDANTS		Manufacturer/lessor of client's vehicle.		

A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.: 107681/07
Date purchased 6/1/07

IRIS LEVITEN,

Plaintiff,

Plaintiff(s) designate(s)
New York
County as place of trial

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

The place of venue is
Defendant's place of business

SUMMONS

Defendants.

Plaintiff resides at
6 Wood Ave., Albertson, NY 11507

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: June 1, 2007
New York, New York

GAIR, GAIR, CONASON, STEIGMAN & MACKAUF
Attorney(s) for Plaintiff(s)
Office and Post Office Address
80 Pine Street
New York, New York 10005

BY:

DANIEL A. GAIR

Defendants Addresses:

Metro Auto Leasing / Automall
The Corporation
350 Fifth Avenue
New York, New York 10118

Lexus, A Division of Toyota Motor
Sales The Prentice-Hall Corporation
Systems, Inc.
80 State Street
Albany, New York 122106

Estree / Lexus of Westport
1317 Post Road East
Westport, CT 06880

NEW YORK
COUNTY CLERK'S OFFICE

JUN 11 2007

NOT COMPARED
WITH COPY FILE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index number:

-----x
IRIS LEVITEN,

VERIFIED
COMPLAINT

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----x

Plaintiff, complaining of the defendants, by
her attorneys, Gair, Gair, Conason, Steigman & Mackauf,
respectfully show to this Court and allege, upon information and
belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., is a corporation with its principal place of
business in a state other than New York.
The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., does business in the State of New York.
3. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES
U.S.A., INC., regularly does or solicits business, or
engages in any other persistent course of conduct, or
derives substantial revenue from goods used or services
rendered in the State of New York.

NOT COMPARED
WITH COPY FILE

FJUN # 1 2000

NEW YORK
COUNTY OF NEW YORK

4. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.
5. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, is a corporation with its principal place of business in a state other than New York.
6. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, does business in the State of New York.
7. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York.
8. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York and the defendant derives substantial revenue from interstate or international commerce.
9. The defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

10. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., was in the business of manufacturing vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
11. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES, INC., was in the business of designing motor vehicles, including a Lexus model number ES 350, motor vehicle bearing vehicle identification number JTHBJ46G272071246.
12. The defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., was in the business of selling and distributing, for public use, motor vehicles, including a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
13. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., sold, to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
14. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., transported to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.

15. On December 12, 2006, the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., distributed to the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
16. At some time thereafter, the defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, sold to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
17. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, transported to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
18. The defendant, ESTREE, INC., d/b/a LEXUS OF WESTPORT, distributed to the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, for sale to a buyer of their choice, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246.
19. On December 29, 2006, the defendant, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, leased a Lexus sedan motor vehicle, model number ES 350, bearing license plate DWW7794 vehicle identification number JTHBJ46G272071246 to the

plaintiff, IRIS LEVITEN.

20. On February 18, 2007, the plaintiff, IRIS LEVITEN, was involved in an automobile accident while driving a Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794 and vehicle identification number JTHBJ46G272071246 near the eastbound ramp of the Northern State Parkway near Glen Cove Road.
21. The aforesaid occurrence was caused and contributed to by the negligence of the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794, identification number JTHBJ46G272071246.
22. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, some of these injuries are of a permanent and lasting nature.

23. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
24. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A SECOND CAUSE OF ACTION

25. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "24", inclusive, with the same force and effect as if more fully set forth herein at length.
26. The defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL ATOMIC INDUSTRIES, INC., their agents, servants and employees warranted and represented to the plaintiff, IRIS LEVITEN, that Lexus sedan motor vehicle, model number ES 350, bearing the New York license plate number DWW7794 and identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, serviced, maintained, labeled, distributed, sold and purchased.
27. In designing, manufacturing, assembling, inspecting,

testing, repairing, servicing, maintaining, labeling, distributing and selling the vehicle Lexus model number ES 350, bearing New York State license plate number DWW7794 and vehicle identification number number JTHBJ46G272071246, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., LEXUS INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL ATOMIC INDUSTRIES, INC., their agents, servants and employees knew that the aforesaid product would be used by the public and that such users would rely upon the warranties and representations that the said product was safe, proper, merchantable and fit for its intended uses.

28. On December 29, 20069, the plaintiff, IRIS LEVITEN, relied on the aforementioned warranties and expected that the aforementioned product was safe, proper, merchantable and fit for its intended uses.
29. The aforementioned product was unsafe, not merchantable and unfit for its intended uses.
30. By reason of the foregoing, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, their agents, servants and employees, violated and breached the aforementioned warranties, in that the product was not reasonably fit, not of merchantable quality, unsafe, defective and constituted unreasonably dangerous

instrumentalities as designed, manufactured, assembled, inspected, repaired, serviced, maintained, tested, labeled, sold and distributed.

31. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting nature.
32. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
33. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

AS AND FOR A THIRD CAUSE OF ACTION

34. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of the complaint marked and designated "1" through "33", with the same force and effect as if more fully set forth herein at length.
35. By reason of the foregoing, the defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, METRO AUTO LEASING INC., d/b/a THE AUTOMALL, their agents, servants and employees are strictly

liable in tort to the plaintiff, IRIS LEVITEN, for the injuries sustained by her.

36. By reason of the foregoing, the plaintiff, IRIS LEVITEN, sustained injuries to her head, limbs and body, including multiple fractures and surgeries to the her right foot and ankle; a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and, upon information and belief, the plaintiff's injuries are of a permanent and lasting in nature.
37. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.
38. The amount of the plaintiff's injuries exceeds jurisdictional limits of all lower courts.

W H E R E F O R E, plaintiff demands judgment against the defendants in the First, Second and Third Causes of Action against the defendants LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC., ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO LEASING, INC., d/b/a THE AUTOMALL, together with the costs and disbursements of this action.

B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

VERIFIED ANSWER

Index # 107681/07

ESTREE, INC. d/b/a LEXUS OF WESTPORT, by its attorneys, AHMUTY,
DEMERS & McMANUS, as and for its answer to the plaintiff's verified complaint, sets forth
the following:

AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION

1: Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "1", "2", "3", "4", "9", "10", "11", "12", "17", "18", "19", "20", "21", "22", "23" and "24" of the verified complaint and refers all questions of law to this Honorable Court.

2: Denies upon information and belief each and every allegation contained in paragraphs designated "6", "7", "8" of the verified complaint and refers all questions of law to this Honorable Court.

3: Denies upon information and belief each and every allegation contained in paragraph designated "13" of the verified complaint, except admits LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., sold, to the defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT,

a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246, and refers all questions of law to this Honorable Court.

4: Denies upon information and belief each and every allegation contained in paragraphs designated "14" of the verified complaint, except admits the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., transported to the defendant, ESTREE, INC., d/b/a ESTREE, INC., d/b/a LEXUS OF WESTPORT, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246, and refers all questions of law to this Honorable Court.

5: Denies upon information and belief each and every allegation contained in paragraph designated "15" of the verified complaint, except admits the defendant, LEXUS, A DIVISION OF TOYOTA MOTOR SALES INC., distributed to the defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ46G272071246, and refers all questions of law to this Honorable Court.

6: Denies upon information and belief each and every allegation contained in paragraph designated "16" of the verified complaint, except admits ESTREE, INC. d/b/a LEXUS OF WESTPORT, sold to the defendant, METRO AUTO LEASING INC. d/b/a THE AUTOMALL, a Lexus sedan motor vehicle, model number ES 350, bearing vehicle identification number JTHBJ456G272071246, and refers all questions of law to this Honorable Court.

AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION

7: Defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT, repeats, reiterates and realleges each and every denial in answer to paragraphs "1" through "24" as if more specifically

set forth in answer to paragraph designated "25" of the verified complaint and each and every part thereof.

8: Denies upon information and belief each and every allegation contained in paragraphs designated "26", "27" and "30" of the verified complaint as to this answering defendant, otherwise denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "26", "27" and "30" of the verified complaint and refers all questions of law to this Honorable Court.

9: Denies upon information and belief each and every allegation contained in paragraphs designated "28", "29", "31" and "32" of the verified complaint and refers all questions of law to this Honorable Court.

10: Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated "33" of the verified complaint and refers all questions of law to this Honorable Court.

AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION

11: Defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT, repeats, reiterates and realleges each and every denial in answer to paragraphs "1" through "33" as if more specifically set forth in answer to paragraph designated "34" of the verified complaint and each and every part thereof.

12: Denies upon information and belief each and every allegation contained in paragraph designated "35" of the verified complaint as to this answering defendant, otherwise denies having knowledge or information sufficient to form a belief as to each and every allegation contained in

paragraph designated "35" of the verified complaint and refers all questions of law to this Honorable Court.

13: Denies upon information and belief each and every allegation contained in paragraphs designated "36" and "37" of the verified complaint and refers all questions of law to this Honorable Court.

14: Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated "38" of the verified complaint and refers all questions of law to this Honorable Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

15: That the personal injuries and/or damages alleged to have been sustained by the plaintiff were caused entirely or in part through the culpable conduct of the plaintiff, without any negligence on the part of the answering defendant and the answering defendant seeks a dismissal or reduction in any recovery that may be had by the plaintiff in the proportion which the culpable conduct, attributable to the plaintiff, bears to the entire measure of responsibility for the occurrence.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

16: That the personal injuries and/or damages alleged to have been sustained by the plaintiff were caused entirely or in part through the culpable conduct of the co-defendants, without any negligence on the part of the answering defendant and the answering defendant seeks a dismissal or reduction in any recovery that may be had by the plaintiff in the proportion which the

culpable conduct, attributable to the co-defendants, bears to the entire measure of responsibility for the occurrence.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

17: Pursuant to CPLR 1603, this answering defendant asserts the limitations contained in CPLR 1601 and 1602 and all rights contained therein.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

18: Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiff for medical care, dental care, custodial care or rehabilitative services, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from collateral source as defined in Section 4545(c) of the New York Civil Practice Law and Rules.

19: If any damages are recoverable against said defendant, the amount of such damages shall be diminished by the amount of the funds which plaintiff has or shall receive from such collateral source.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

20: Defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT, specifically denies that it gave any warranties regarding the subject "Lexus". However, to the extent that plaintiff's verified complaint alleges a cause of action for breach of warranty, defendant alleges that plaintiff failed to give notice of any breach of warranty to the answering defendant within a reasonable time after discovery of such alleged breach of warranty.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

21: In the event a product or system described in plaintiff's verified complaint inspected, designed, manufactured, sold, imported, and/or distributed by the answering defendant, (which is denied) then any claims against said defendant are barred because said product was materially and substantially changed, modified or altered by parties in possession of the product subsequent to ESTREE, INC. d/b/a LEXUS OF WESTPORT.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

22: In the event a product or system described in plaintiff's verified complaint purportedly tested, inspected, designed, manufactured, sold, imported, and/or distributed by the answering defendant (which is denied) is identified as having caused or contributed to plaintiff's alleged damages, any claims against ESTREE, INC. d/b/a LEXUS OF WESTPORT are barred because said product was misused, abused, or altered by parties in possession of the product subsequent to said defendant.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

23: In the event a product or system described in plaintiff's verified complaint tested, inspected, designed, manufactured, sold, imported, and/or distributed by ESTREE, INC. d/b/a LEXUS OF WESTPORT (which is denied) is identified as having caused or contributed to plaintiff's alleged damages, any claims against said defendant are barred because the characteristics of said product were open and obvious to the purchasers and users of such products, and the plaintiff or others now not known to the defendant knowingly and voluntarily assumed the risk of damage allegedly sustained in the use or misuse of the product which is the subject of this action.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

24: In the event a product or system described in plaintiff's verified complaint purportedly tested, inspected, designed, manufactured, sold, imported, and/or distributed by ESTREE, INC. d/b/a LEXUS OF WESTPORT (which is denied) is identified as having caused or contributed to plaintiff's alleged damages, said product at all times conformed with the current state of the art or knowledge of trade customs and standards applicable at that time in the industry which produced such products.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

25: In the event a product or system described in plaintiff's complaint purportedly tested, inspected, designed, manufactured, sold, imported, and/or distributed by ESTREE, INC. d/b/a LEXUS OF WESTPORT (which is denied) is identified as having caused or contributed to plaintiff's alleged damages said damages were the result of the product having been used in a manner not intended by its manufacturer and not in accordance with instructions and labels provided by it or with known safety practices.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

26: The product which is the subject of plaintiff's verified complaint was designed and manufactured by parties, person or entities other than this answering defendant.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

27: That ESTREE, INC. d/b/a LEXUS OF WESTPORT was not a manufacturer, distributor or seller of the subject product.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

28: The product or system which is the subject of plaintiff's verified complaint was tested, inspected, designed, manufactured, sold, imported and/or distributed by parties, persons or entities, other than the answering defendant.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

29: That the plaintiff assumed the risk related to activity causing the injuries sustained.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

30: That the verified complaint fails to state a valid cause of action as against the answering defendant.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

31: That the plaintiff failed to mitigate, obviate, diminish or otherwise act to lessen or reduce the injuries, damages and disabilities alleged in plaintiff's verified complaint.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

32: Answering defendant reserves the right to move to dismiss the verified complaint on the grounds that plaintiff has failed to join a necessary party to the within action and, accordingly, the Court has no jurisdiction to grant the relief asserted by plaintiff.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

33: That the plaintiff has discharged other tort feasons from liability for the injury and the answering defendant is thereby entitled to a set-off as to any verdict in the plaintiff's favor as against this defendant as set forth in the General Obligations Law Section 15-108.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

34: That New York County is not the proper venue for the action as the proper County of venue is Nassau County.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

35: That the plaintiff breached the contract and/or lease in question.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

36: That plaintiff's right to recover is limited to the terms of the applicable contract, if any, between plaintiff and answering defendant.

**AS AND FOR A CROSS COMPLAINT OVER
AND AGAINST THE CO-DEFENDANTS,
LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC.
and METRO AUTO LEASING, INC. d/b/a THE AUTOMALL
THIS DEFENDANT, ESTREE, INC. d/b/a LEXUS OF WESTPORT,
ALLEGES UPON INFORMATION AND BELIEF:**

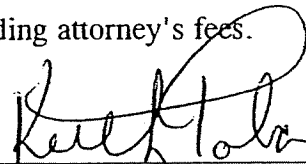
37: That if the plaintiff was caused to sustain personal injuries and resulting damages at the time and place set forth in the plaintiff's verified complaint and in the manner alleged therein, through any carelessness, recklessness, acts, omissions, negligence and/or breaches of duty and/or warranty and/or contract, other than of the plaintiff, then the said injuries and damages arose out of the several and joint carelessness, recklessness, acts, omissions, negligence and breaches of duty and/or obligation and/or Statute and/or Warranty and/or contract in fact or implied in law, upon the part of the co-defendants, with indemnification and save harmless agreement and/or responsibility by them in fact and/or implied in law and without any breaches or any negligence of the answering defendant contributing thereto; and if the answering defendant is found liable as to the plaintiff for the injuries and damages as set forth in the plaintiff's verified complaint, then, and in that event,

the relative responsibilities of all said defendants in fairness must be apportioned by a separate determination in view of the existing factual disparity, and the said co-defendants herein will be liable over jointly and severally to the answering defendant and bound to fully indemnify and hold the answering defendant harmless for the full amount of any verdict or judgment that the plaintiff herein may recover against the answering defendant in this action, including all costs of investigation, disbursements, expenses and attorney's fees incurred in the defense of this action and in the conduct of this cross complaint.

WHEREFORE, the defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT, demands judgment dismissing the plaintiff's verified complaint on the merits; and if the plaintiff, IRIS LEVITEN, is found to have contributed to the accident or damages, that any damages be reduced in proportion to which the plaintiff may be found to have so contributed to the accident or damages and further demands judgment over and against the co-defendants, LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC. and METRO AUTO LEASING, INC. d/b/a THE AUTOMALL, on the cross-claim, for the amount of any judgment obtained against the answering defendant by plaintiff or any other party or on the basis of the apportionment of responsibility in such amounts as a jury or Court may direct together with the costs, disbursements and expenses of this action including attorney's fees.

Dated: Albertson, New York
September 18, 2007

By:



KEITH V. TOLA
AHMUTY, DEMERS & McMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, NY 11507
(516) 294-5433
Our File No.: YCW0962N7 JAE

TO:

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiffs
80 Pine Street, 34th Floor
New York, NY 10005

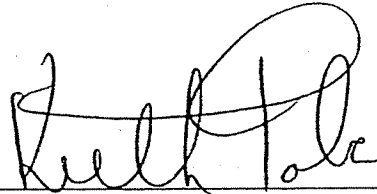
STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

KEITH V. TOLA, being duly sworn, deposes and says:

That he is an associate of the law firm of AHMUTY, DEMERS & McMANUS, the attorneys for the defendant, ESTREE, INC. d/b/a LEXUS OF WESTPORT, in the above entitled action; that he has read and knows the contents of the foregoing **VERIFIED ANSWER** and that same is true to his own knowledge, except as to those matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

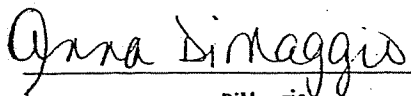
Deponent further says that the grounds for his belief as to all matters therein stated upon information and belief are statements made to him by the defendants and papers and documents received by deponent from the defendants or its representative and which are now in his possession.

Deponent further says that the reason why this verification is made by deponent and not by the defendants is that defendants are not within the County of New York, where deponent has his office.



KEITH V. TOLA

Sworn To Before Me This
21st Day of SEPTEMBER, 2007



Anna DiMaggio
Notary Public, State of New York
No. 01D15074216
Qualified in Kings County
Commission Expires March 10, 2011

Index No. 107681/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., ESTREE, INC. d/b/a
LEXUS OF WESTPORT and METRO AUTO LEASING, INC. d/b/a THE AUTOMALL

Defendants.

VERIFIED ANSWER

AHMUTY, DEMERS & McMANUS, ESQS.
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, New York 11507
(516) 294-5433
Our File No.: YCW0962N7 JAE

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

Attorneys for

SEP 25 2007

3. Denies the allegations contained in paragraphs 19, 21, 22 and 23 of the verified complaint.

RESPONSE TO THE SECOND CAUSE OF ACTION

4. In response to Paragraph 25 of the verified complaint, repeats and realleges paragraphs 1 to 3 of this Answer.

5. Denies the allegations contained in paragraphs 26, 27, 28, 29, 30, 31 and 32 of the verified complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the verified complaint.

RESPONSE TO THE THIRD CAUSE OF ACTION

7. In response to Paragraph 34 of the verified complaint, repeats and realleges paragraphs 1 to 6 of this Answer.

8. Denies the allegations contained in paragraphs 35, 36 and 37 of the verified complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the verified complaint.

FIRST AFFIRMATIVE DEFENSE

10. Plaintiff has failed to mitigate, minimize or avoid the damage about which she now complains.

SECOND AFFIRMATIVE DEFENSE

11. The verified complaint fails to state a claim upon which relief may be granted against the answering defendant.

THIRD AFFIRMATIVE DEFENSE

12. The injuries alleged to have been suffered by the plaintiff Iris Leviten were caused or contributed to or by the culpable conduct including contributory negligence, assumption of the risk and/or product misuse of persons over whom the answering defendant had no authority or control.

FOURTH AFFIRMATIVE DEFENSE

13. Pursuant to CPLR Article 16, the liability of the answering defendant to the plaintiff for non-economic loss shall not exceed the equitable share of this defendant determined in accordance with the relative culpability of each person/party causing or contributing to the total liability for non-economic loss.

FIFTH AFFIRMATIVE DEFENSE

14. Any recovery by plaintiff must be reduced by the amounts paid or reimbursed by collateral sources in accordance with CPLR § 4545.

SIXTH AFFIRMATIVE DEFENSE

15. Plaintiff's action against Defendant Metro Auto Leasing, Inc. is subject to, and limited by, the provisions of Articles 14 and 14-A of the CPLR and § 15-108 of the GOL of New York.

SEVENTH AFFIRMATIVE DEFENSE

16. Upon information and belief, any and all risks, hazards and dangers were open, obvious and apparent, natural and inherent and know to Plaintiff and Plaintiff assumed all risks.

EIGHTH AFFIRMATIVE DEFENSE

17. Defendant Metro Auto Leasing, Inc. had no actual or constructive notice of any alleged defective and/or dangerous condition.

FIRST CROSS-CLAIM

18. If plaintiff recovers against the answering defendant, then the answering defendant will be entitled to an apportionment of responsibility for damages between and among the parties to this action and will be entitled to recover from each other party for its/their proportional share commensurate with any judgment that may be awarded to plaintiff.

SECOND CROSS-CLAIM

19. If plaintiff recovers against the answering defendant then the answering defendant will be entitled to be indemnified and to recover the full amount of any judgment from the other defendants herein.

WHEREFORE, Defendant Metro Auto Leasing, Inc. demands judgment dismissing the verified complaint; for the costs, fees, expenses and disbursements incurred herein, and in the event judgment or settlement is recovered herein against Defendant Metro Auto Leasing, Inc. Defendant Metro Auto Leasing, Inc. demands judgment on its cross-claims; and for such other and further relief in favor of Defendant Metro Auto Leasing, Inc. as is just and proper.

Dated: January 4, 2008
New York, New York

STEIN RISO MANTEL, LLP

By: 

Gerard A. Riso

The Chrysler Building
405 Lexington Avenue
New York, New York 10174
212-599-1515
Attorneys for Defendant Metro
Auto Leasing, Inc.

To: Gair, Gair, Conason, Steigman & Mackauf
80 Pine Street
New York, New York 10005
Attorneys for Plaintiff

Estree/Lexus of Westport
1317 Post Road
Westport, CT 06880

Lexus, A Division of Toyota
Motor Sales USA
80 State Street
Albany, NY 12106

Index No. 107681-2007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS KEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL

Defendants.

ANSWER AND CROSS CLAIMS

STEIN RISO MANTEL LLP
Attorneys for Metro Auto Leasing, Inc.
The Chrysler Building
405 Lexington Avenue, 42nd Floor
New York, New York 10174
(212) 599-1515

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

VERIFIED ANSWER

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

Defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA., INC., by its attorneys, AARONSON RAPPAPORT
FEINSTEIN & DEUTSCH, LLP as and for its Verified Answer to plaintiff's Verified
Complaint, respectfully shows to this Court and alleges upon information and belief:

ANSWERING AS AND FOR A FIRST CAUSE OF ACTION

FIRST: Denies the allegations contained in Paragraphs "1", "2" and "3" in
the form alleged, except admit that TOYOTA MOTOR SALES, U.S.A., INC., s/h/a
LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC. has its principal offices
in the State of California and is licensed to do business in the State of New York.

SECOND: Denies the allegations contained in Paragraph "4" in the form
alleged.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "5", "6", "7", "8", "9", "16", "17", "18", "19" and "20".

FOURTH: Denies the allegations contained in Paragraphs "10", "11" and "12" in the form alleged, except admit that TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. imported and distributed a Lexus Model Number ES 350, motor vehicle bearing Vehicle Identification Number JTHBJ46G272071246.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "13", "14" and "15" and respectfully refer all questions of law and fact to the this Honorable Court.

SIXTH: Denies the allegations contained in Paragraphs "21", "22", "23" and "24".

ANSWERING AS AND FOR A SECOND CAUSE OF ACTION

SEVENTH: In response to Paragraph "25", repeats each admission or denial contained in Paragraphs "FIRST" through "SIXTH" herein as though fully set forth hereat.

EIGHTH: Denies the allegations contained in Paragraph "26", except admits that the Lexus ES350 sedan motor vehicle, bearing the New York license plate number DWW7794 and vehicle identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, services, maintained, labeled,

distributed, sold and purchased and refers to the warranties contained in the Owner's Manual.

NINTH: Denies the allegations contained in Paragraph "27" in the form alleged, except admits that the Lexus ES350 sedan motor vehicle, bearing the New York State license plate number DWW7794 and Vehicle Identification Number JTHBJ46G272071246 was safe, proper, merchantable and fit for its intended uses.

TENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "28".

ELEVENTH: Denies the allegations contained in Paragraphs "29", "30", "31", "32" and "33".

ANSWERING AS AND FOR A THIRD CAUSE OF ACTION

TWELFTH: In response to Paragraph "34", repeats each admission or denial contained in Paragraphs "FIRST" through "ELEVENTH" herein as though fully set forth hereat.

THIRTEENTH: Denies the allegations contained in Paragraphs "35", "36", "37" and "38".

ANSWERING AS AND FOR A SECOND AFFIRMATIVE DEFENSE.

FOURTEENTH: Pursuant to CPLR Article 16, the liability, if any, of the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. for non-economic loss shall not exceed its equitable shares of liability.

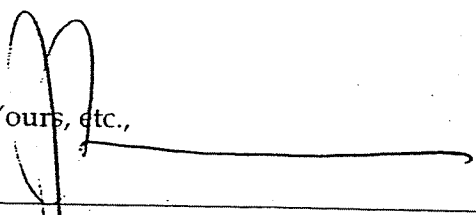
ANSWERING AS AND FOR A SECOND AFFIRMATIVE DEFENSE.

FIFTEENTH: If the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. should be found negligent, which negligence is denied, recovery on the claim set forth in the Complaint is diminished by plaintiff's negligence in failing to exercise due and proper care considering the circumstances existing at the time of the incident in issue, which negligence was greater than the negligence, if any, of the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. pursuant to the provisions of the Comparative Negligence Act.

WHEREFORE, defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. demands judgment dismissing the Complaint, together with the costs and disbursements of the within action.

DATED: New York, New York
August 13, 2007

Yours, etc.,


BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
): ss:
COUNTY OF NEW YORK)

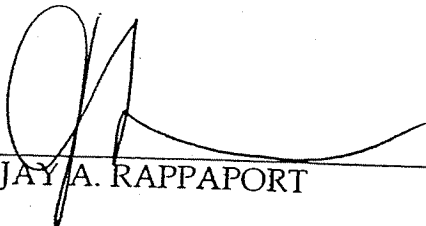
JAY A. RAPPAPORT, being duly sworn, deposes and says:

That I am a member in the firm of attorneys representing the defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.

That I have read the attached ANSWER and the same is true to my own belief, except as to matters alleged on information and belief, and as to those matters, I believe them to be true to the best of my knowledge.

My sources of information are a claims file containing statements, reports and records of investigation, investigators, parties and witnesses, with which I am fully familiar.

That this verification is made by me because my client does not reside within the county where I maintain my office.



JAY A. RAPPAPORT

Sworn to before me this
13th day of August, 2007.



Notary Public

Marlene Kelly
Notary Public, State of New York
No. 01KE5068190
Qualified in Queens County
Commission Expires October 28, 2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

NOTICE OF DEPOSITION

Index No.: 107681/07

SIR/MADAM:

PLEASE TAKE NOTICE, that we will take the deposition of the following parties or persons, before a Notary Public not affiliated with any of the parties or their attorneys, on all relevant and material issues, as authorized by Article 31 of the CPLR:

Plaintiff - IRIS LEVITEN

DATE: November 20, 2007

TIME: 10:00 A.M.

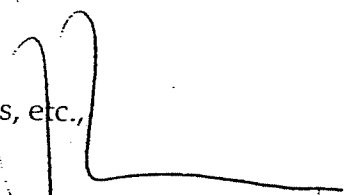
PLACE: AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP
757 Third Avenue
New York, New York 10017

PLEASE TAKE FURTHER NOTICE, that the persons to be examined are required to produce all books, records and papers in their custody and possession that

may be relevant to the issues herein.

DATED: New York, New York
August 13, 2007

Yours, etc.,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DiGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

Defendant(s).

Index No.: 07 117118
Date of Purchase: 12/28/07
Plaintiff designates
New York County
as the place of trial
The basis of the venue is
defendants, CITY OF NEW YORK
and NEW YORK CITY DEPARTMENT OF
SANITATION residence within New York
County

SUMMONS

Plaintiff resides at
2 Mehan Lane
Dix Hills, NY 11746
County of Suffolk

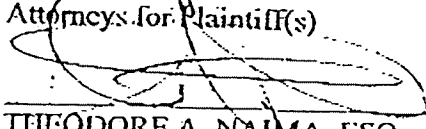
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To the above named Defendant(s):

.....
.....
.....
YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Garden City, New York
December 10, 2007

Yours, etc.,
LAW OFFICES OF GARY S. ALWEISS
Attorneys for Plaintiff(s)

By: 
THEODORE A. NAIMA, ESQ.
229 Seventh Street, Suite 300
Garden City, New York 11530
Tel.: (516) 746-6766

Defendants' Addresses:

IRIS LEVITEN, 6 Wood Avenue, Alberston, NY 11507
ANTHONY DiGIROLAMO, 114 10th Street, Hicksville, NY 11801
NEW YORK CITY DEPARTMENT OF SANITATION, 125 Worth Street, New York, NY 10013
THE CITY OF NEW YORK, 100 Church Street, New York, NY 10007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

COMPLAINT

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION
and THE CITY OF NEW YORK,

Index No.:

Defendants.
-----X

.....
S I R (S):
.....

..... PLEASE TAKE NOTICE, that plaintiff, MICHAEL DOUKAS, by and through
plaintiff's attorneys, the Law Offices of Gary S. Alweiss, complaining of IRIS LEVITEN,
ANTHONY DIGIROLAMO, NEW YORK CITY DEPARTMENT OF SANITATION and THE
CITY OF NEW YORK, the defendants herein, respectfully alleges as follows:

DICK 1. At all times hereinafter mentioned, plaintiff, MICHAEL DOUKAS, was and still
is a resident of the County of Suffolk, State of New York.

A 2. Upon information and belief, at all times hereinafter mentioned, defendant, IRIS
LEVITEN, was and still is a resident of the County of Nassau, State of New York.

DICK 3. Upon information and belief, at all times hereinafter mentioned, defendant,
ANTHONY DIGIROLAMO, was and still is a resident of the County of Nassau, State of New
York.

DICK 4. Upon information and belief, at all times hereinafter mentioned, the defendants,
NEW YORK CITY DEPARTMENT OF SANITATION, was and still is a body corporate and
politic constituting a public benefit corporation duly authorized and organized under the laws of

the State of New York.

DKI 5. Upon information and belief, at all times hereinafter mentioned, the defendants, THE CITY OF NEW YORK, was and still is a body corporate and politic constituting a public benefit corporation duly authorized and organized under the laws of the State of New York.

DKI 6. That plaintiff has served Notice of Claim upon The NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK within the specified statutory time period and manner. At least ninety (90) days have elapsed since Notice of Claim was presented to the NEW YORK CITY DEPARTMENT OF SANITATION and the CITY OF NEW YORK and the NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK have neglected or refused to make any adjustment of payment thereof. This action was commenced within one (1) year and ninety (90) days after the happening of the events upon which this claim is based.

DKI 7. Upon information and belief, at all times hereinafter mentioned, Glen Cove Road, and at or near the intersection of the Northern State Parkway, was and still is a public roadway located within the County of Nassau, State of New York.

DKI 8. Upon information and belief, at all times hereinafter mentioned, the plaintiff, MICHAEL DOUKAS, was a passenger in a 2002 Mac Truck bearing New York license plate number DWW 7794, which was being operated by the defendant, ANTHONY DIGIROLAMO, with the knowledge and consent of its owners, defendants, NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK.

DKI 9. Under the Laws of the State of New York, the defendants, NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK, as owners of the aforesaid

2002 Mac Truck, are liable for the negligence of the defendant driver, ANTHONY

DiGIROLAMO, said liability being joint and several.

DKI 10. Upon information and belief, at all times hereinafter mentioned, defendant, IRIS LEVITEN, owned and operated a 2007 Lexus automobile bearing New York license plate number DWW7794.

DKI 11. On or about February 18, 2007, at approximately 2:50 p.m. on Glen Cove Road, at or near the intersection of Northern State Parkway, the defendants, IRIS LEVITEN and ANTHONY DiGIROLAMO, were operating the aforesaid vehicles in such a negligent, careless, and reckless manner causing the aforesaid automobiles to crash, and causing plaintiff to suffer serious personal injuries hereinafter set forth.

D 12. The defendant operators were negligent, careless, and reckless in the operation, management, maintenance, supervision, and control of said automobiles in that said defendants operated said automobiles at an excessive and unlawful rate of speed; in that said defendants failed to have proper control over the automobiles; in that said defendants failed to be reasonably alert and attentive; in that said defendants failed to anticipate the condition of the road and travel conditions in general; in that said defendant failed to make proper use of the braking and steering systems or that the same were defective; in that said defendants failed to heed to traffic conditions then and there existing; in that said defendants violated the rules, regulations, and ordinances, and statutes applicable thereto; and the said defendants were otherwise negligent and careless.

D 13. That the said accident and the injuries sustained by plaintiff resulting therefrom were caused solely by the negligence of the defendants, jointly and severally, without any

negligence on the part of the plaintiff contributing thereto.

D 14. That as a result of the aforesaid occurrence, plaintiff sustained serious personal injuries, and nervous shock, was rendered sick, sore and disabled and has remained so since said occurrence; plaintiff has suffered and continues to suffer mental anguish, required medical care and treatment, and upon information and belief, will continue to require additional medical care and treatment in the future; plaintiff has been incapacitated from attending to plaintiff's normal duties, and upon information and belief, plaintiff may continue to be so incapacitated in the future.

D 15. Plaintiff sustained serious injuries and basic economic loss as defined by § 5102 of the Insurance Law of the State of New York and has the right of recovery against the defendants herein for personal injuries, basic economic loss and non-economic loss pursuant to § 5104 of the Insurance Law of the State of New York.

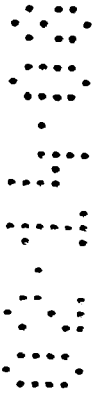
D 16. Plaintiff has sustained a serious injury as defined in subdivision (d) of § 5102 of the Insurance Law of the State of New York which, upon information and belief, will result in future economic loss greater than the basic economic loss as defined in subdivision (a) of § 5102 of the Insurance Law of the State of New York.

DK 17. The cause of action herein falls within one of the exceptions listed under C.P.L.R. §§ 1601 and 1602.

D 18. That by reason of the premises set forth above, the plaintiff, MICHAEL DOUKAS, has been damaged in a sum of money to be determined by the Court and jury which amount is in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this action.

WHEREFORE, plaintiff, MICHAEL DOUKAS, demands judgment, jointly and severally, against the defendants, IRIS LEVITEN, ANTHONY DiGIROLAMO, NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK, in a sum of money to be determined by the Court and jury which amount is in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this action; all together with interest, costs and disbursements of this action.


Dated: Garden City, New York
December 10, 2007



Yours, etc.,

LAW OFFICES OF GARY S. ALWEISS
Attorneys for Plaintiff(s)

By:



THEODORE A. NAIMA, ESQ.
229 Seventh Street, Suite 300
Garden City, New York 11530
Tel.: (516) 746-6766

D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff(s)

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO
NEW YORK CITY DEPARTMENT
OF SANITATION and THE CITY OF NEW
YORK,

Defendant(s)

VERIFIED ANSWER WITH
CROSS CLAIM
AND
DEMANDS

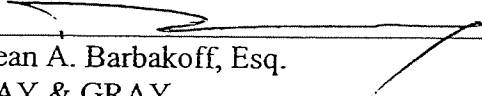
Index No: 117118/07

**CERTIFICATION PURSUANT TO SECTION 130-1.1a
OF THE RULES OF THE CHIEF ADMINISTRATOR (22NYCRR)**

The undersigned certifies the following documents pursuant to 22NYCRR Section 130-1.1a:

Verified Answer With Cross Claim and Demands, and Demand For a Verified Bill of Particulars, Combined Demand for Discovery and Inspection, Notice to Take Deposition Upon Oral Examination, Refusal to Accept Service by Facsimile Transmission and Notice to Submit to Physical Examination.

DATED: Westbury, New York
March 04, 2008


Dean A. Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4422
Our File No: 08R0185
Claim No: 0244514670101035 (J570)

Law Office of Gary Alweiss
Attorneys for Plaintiff(s)
229 Seventh Street
Suite 300
Garden City, NY 11530
516 746 6766

Michael Cordoza
Attorneys for Defendant(s)
100 Church Street
New York,
NY 10007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff(s)

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO
NEW YORK CITY DEPARTMENT OF
SANITATION and THE CITY OF NEW
YORK,

Defendant(s)

VERIFIED ANSWER
WITH
CROSS CLAIM

Index #: 117118/07

Defendant(s) Iris Leviten, by the undersigned answering the VERIFIED complaint of the plaintiff(s), upon information and belief, states as follows:

ANSWERING A FIRST CAUSE OF ACTION

FIRST: Denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered and designated as: 1,3,4,5,6,7,8,9,10,11,17

SECOND: Denies each and every allegation contained in paragraphs numbered and designated as: 12,13,14,15,16,18

THIRD: Admits each and every allegation contained in paragraphs numbered and designated as: 2

AS AND FOR AN AFFIRMATIVE DEFENSE – COMPARATIVE NEGLIGENCE

The personal injuries and/or property damage alleged to have been sustained by the plaintiff(s) were caused entirely or in part through the culpable conduct attributable to the plaintiff(s) and the defendant seeks a dismissal or reduction in any recovery had by the plaintiff in the proportion which the culpable conduct attributable to the plaintiff(s) bears to the culpable conduct which caused the damages.

AS AND FOR AN AFFIRMATIVE DEFENSE – SEAT BELT

The plaintiff(s) damages must be mitigated by the plaintiff(s) failure to use the available seat belts or infant restraining devices and that the damages claimed to have been sustained were caused by the lack of use of said seat belts and/or infant restraining devices.

AS AND FOR AN AFFIRMATIVE DEFENSE – PERSONAL JURISDICTION

Service of process was not in conformity with the C.P.L.R.; therefore this Court does not have jurisdiction over the person of the defendant.

AS AND FOR AN AFFIRMATIVE DEFENSE – COLLATERAL SOURCE

The costs incurred, or paid by plaintiff(s), if any, for medical care, dental care, custodial care or rehabilitation services, loss of earning or other economic loss, in the past or future, were or will, with reasonable certainty be replaced or indemnified, in whole or in part, from a collateral source of the type described in CPLR §4545 and defendant is entitled to have any award reduced in the amount of such payments.

AS AND FOR A CROSS CLAIM AGAINST THE CO-DEFENDANT(S)

Anthony Digirolamo New York City Department of Sanitation The City Of New York , IT IS ALLEGED:

That if the plaintiff(s) Michael Doukas, recover herein, it will be by virtue of the recklessness, carelessness and negligence of the co-defendant(s), Anthony Digirolamo New York City Department of Sanitation The City Of New York ,, above named, and not of the defendant(s) Iris Leviten, and that this answering defendant(s) Iris Leviten, demands judgment for contribution and/or indemnification in whole or in part and that the respective degrees of negligence of the co-defendant(s) Anthony Digirolamo New York City Department of Sanitation The City Of New York ,, be ascertained, determined and adjudicated and that the defendant(s) Iris Leviten, have judgment over and against the above-named co-defendant(s) Anthony Digirolamo New York City Department of Sanitation The City Of New York ,, as their proportionate share commensurate with their respective degrees of negligence as will be decided on at the trial herein.

WHEREFORE, the defendant(s) Iris Leviten, demands judgment dismissing the plaintiff(s) Michael Doukas, Complaint or in the alternative, that this answering defendant(s) Iris Leviten, have judgment for contribution and/or indemnification in whole or in part over and against the co-defendant(s) Anthony Digirolamo New York City Department of Sanitation The City Of New York ,, above named, to the degree and proportionate share of the plaintiff(s), Michael Doukas recovery as to their respective degrees of negligence as determined herein, with costs and disbursements of this action.

DATED: Westbury, New York
March 04, 2008

Dean A. Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4422
Our File No: 08R0185
Claim No: 0244514670101035 (J570)

VERIFICATION

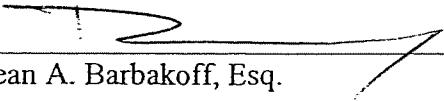
Dean A. Barbakoff, Esq., an attorney admitted to practice in the Courts of this State, and associated with the firm of KAY & GRAY, attorneys for the defendant(s) Iris Leviten, states:

That your affirmant has read the foregoing Answer and knows the contents thereof; that the same is true to your affirmant's own knowledge except as to the matters which are stated therein to be alleged on information and belief, and as to those matters your affirmant believes it to be true. The source of your affirmant's information and belief, is an investigation caused to be made with respect to the facts in this action.

That the reason this verification is made by affirmant and not by the defendant is because the defendant does not reside within the county where KAY & GRAY maintain their office.

The undersigned affirms that the foregoing statement is true, under penalties of perjury.

Date: Westbury, New York
March 04, 2008



Dean A. Barbakoff, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff(s)

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO
NEW YORK CITY DEPARTMENT
OF SANITATION and THE CITY OF NEW
YORK,

Defendant(s)

DEMAND FOR
A VERIFIED
BILL OF PARTICULARS

SIR(S):

PLEASE TAKE NOTICE that the defendant(s) Iris Leviten, hereby demands that you serve upon the undersigned within thirty days from date of service herein, a verified bill of particulars concerning the following matters:

1. Name, date of birth and social security number of plaintiff(s)
2. Post office and residence address of plaintiff in sufficient detail to permit ready location.
3. The date and approximate time of day of the occurrence.
4. The approximate location of the occurrence.
5. A general statement of the acts or omissions, constituting the negligence claimed. If any violation of any rule, law, custom, ordinance or statute is claimed, identify and specify the provision of same.
6. A statement of the injuries claimed to have been sustained as a result of the occurrence and the nature and extent thereof.
7. A statement of such injuries claimed to be permanent and the nature and extent thereof.
8. Length of time and dates confined to bed.
9. Length of time and dates confined to house.
10. Length of time totally incapacitated from employment and/or school.
11. Length of time partially incapacitated from employment and/or school.
12. Itemize all accounts claimed as special damages for (a) physician's services; (b) medical supplies; (c) hospital expenses; (d) nurse's services; (e) loss of earnings; (f) all other special damages; and (g) all out of pocket expenses.
13. Specify the monetary amount that will be claimed at trial for each and every element of damages.
14. State the name and address of plaintiff's employer and/or school at the time of the occurrence, if any.
15. If plaintiff was self-employed at the time of the occurrence, state the facts upon which plaintiff bases his claim for loss of earnings, if any.
16. If property damages are claimed, describe the article, the damage thereto, date of purchase, original cost, and cost of repair.

17. If property damage to automobile is claimed, state the following: (a) The make, style, model, year of manufacture, serial number and license number of plaintiff's motor vehicle; (b) The parts of the motor vehicle alleged to have been damaged and the cost of repair or replacement thereof; (c) Number of miles driven at time of occurrence.
18. In what respect plaintiff has sustained serious injury as defined in subdivision d of Sec. 5102 of the insurance law, or economic loss greater than basic economic loss, as defined in subdivision a of Sec.5102 of the insurance law.
19. State the source or sources of collateral reimbursements or benefits pursuant to CPLR 4545(c) and for each such source provide the following: (a) the name and address of the source; (b) the amount of the reimbursement; and (c) the date that reimbursement was given.
20. Pursuant to CPLR Section 3101(d);
 - a) Identify and state the qualifications of each person whom you expect to call at trial as an expert witness.
 - b) State the subject matter in reasonable detail upon which the expert is expected to testify.
 - c) Provide the facts and opinions upon which the expert is expected to testify.
 - d) Provide a summary of the grounds of each such opinion.
 - e) Provide a copy of the expert's report furnished to plaintiff.

PLEASE TAKE FURTHER NOTICE that unless this demand is complied with, the undersigned will move for (1) an order precluding plaintiff from giving evidence at the trial of the items of which particulars have not been furnished; (2) an order staying all proceedings in this action pursuant to Civil Practice Law and Rule 3042; and (3) such other and further relief as the court may deem just and proper.

DATED: Westbury, New York
March 04, 2008

Dean A. Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4422
File No: 08R0185
Claim No: 0244514670101035 (J570)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff(s)

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO
NEW YORK CITY DEPARTMENT
OF SANITATION and THE CITY OF NEW
YORK,

Defendant(s)

COMBINED DEMAND FOR
DISCOVERY AND INSPECTION

SIR(S):

PLEASE TAKE NOTICE that demand is hereby made upon you to serve upon the undersigned, the following:

DEMAND FOR INDEX NUMBER

Pursuant to the filing requirements of Section 306-a of the C.P.L.R. and the notice requirements of 22 N.Y.C.R.R. 202.5, you are to advise in writing of the County Clerk's Index Number assigned to this action.

DEMAND FOR ALL PARTIES APPEARING

A list of names of all parties that have appeared in this action, together with the names and addresses of their respective attorneys pursuant to Section 2103(e) of the C.P.L.R.

DEMAND FOR INSURANCE COVERAGE TO PLAINTIFF(S)
ON COUNTERCLAIM AND/OR CO-DEFENDANT(S)

Pursuant to C.P.L.R. 3101(f), you are to produce and permit the undersigned to inspect and copy the contents of any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of the judgment which may be entered in this action, or to indemnify or reimburse for payments made to satisfy the judgment which may be entered herein, including by not limited to excess and additional coverage. If there is no excess or additional coverage and there is the only one insurer liable to satisfy part or all of a judgment which may be entered in this action, then the undersigned demands a sworn affidavit from your client stating this.

DEMAND FOR WITNESSES

Pursuant to C.P.L.R. 3101(a) and this demand, you are requested to produce and permit discovery by the undersigned or another acting on their behalf of the following:

Names and addresses of all persons claimed by your client(s) to have either witnessed the occurrence or to have firsthand knowledge of same, or to have notice of the nature and duration of any alleged condition(s) proximately causing this occurrence, or to have witnessed or firsthand knowledge of any such notice given to the party(ies) we represent and/or any other party in this action, or having firsthand knowledge of facts and circumstances regarding this occurrence, whether obtained by your client(s) at the scene of the occurrence or thereafter obtained by your client(s) attorneys or representatives. If no such persons are known to your client(s) or your client(s) representatives, so state in reply to this demand. The undersigned will object at time of trial of this action to the testimony of any persons not so identified.

PLEASE TAKE FURTHER NOTICE that if your client(s) or client(s) representatives, obtain names and addresses of such persons subsequent to their response to this notice, such information is to be furnished to the undersigned whenever so obtained. The undersigned will object at the time of trial of this action the testimony of any persons not so identified.

DEMAND FOR EXPERT WITNESSES

1. The name and address of each expert witness which you expect to call at the trial of this action.
2. The subject matter in reasonable detail upon which each such expert is expected to testify.
3. The substance of the facts and opinions upon which each such expert is expected to testify.
4. The qualifications of each such expert witness.
5. A summary of the grounds for each such expert(s) opinion.
6. Provide a copy of each such expert's report furnished to you or your client(s).

PLEASE TAKE FURTHER NOTICE, that if any such expert which you expect to call as a witness on the trial of this action intends to rely upon or introduce into evidence any portion of any technical standard or learned treatise, you are hereby required to identify any such standard or treatise, including in the case of standards, the issuing body and the standard number; in the case of books, author, title, publication date and publisher; and in the case of journal articles, journal title, volume number, page, publication date and publisher.

DEMAND FOR ACCIDENT REPORTS

All accident reports and/or motor vehicle accident reports in your client(s)' possession, pursuant to C.P.L.R. 3101(g).

DEMAND FOR STATEMENT

Copy(ies) of each and every written statement or the transcript of each and every oral statement which it will be alleged was made by or attributed to the party(ies) we represent in this action. If none, so state.

DEMAND FOR PHOTOGRAPHS

Copy(ies) of all photographs, slides, video tapes and/or motion pictures in your client(s)' possession, pertaining to the accident site, defective conditions(s) claimed and/or instrumentality(ies) in issue.

DEMAND FOR INCOME TAX RETURNS

Copies of plaintiff(s) income tax returns for a period of three (3) years preceding the date of the accident as set forth in plaintiff(s) complaint to present as well as a duly executed, acknowledged and current authorization allowing this office to obtain the plaintiff's tax records for a period of three (3) years before the accident in question. This authorization must include two forms of identification, including one photo identification.

DEMAND FOR SCHOOL AUTHORIZATIONS

Set forth duly executed and acknowledged authorizations, pursuant to Section 3101(a) and Rule 3120 of the C.P.L.R., permitting the undersigned to obtain copies of the school records of the plaintiff(s) from the beginning of the school year preceding the date of accident as set forth in the complaint to the present.

DEMAND FOR EMPLOYMENT AUTHORIZATIONS

Set forth duly executed and acknowledged authorizations pursuant to Section 3101(a) and Rule 3120 of the C.P.L.R., permitting the undersigned to obtain copies of the employment records of the plaintiff(s) from three (3) years preceding the date of accident as set forth in plaintiff(s) complaint to the present.

DEMAND FOR NO-FAULT RECORDS

If a claim has been or will be made by plaintiff(s) pursuant to the terms of ARTICLE XVIII of the Insurance Law of the State of New York (No-Fault Law); with respect to each and every application and/or claim:

1. Set forth the name, address, policy number and claim number of each company to which a claim has been made or will be made.
2. Set forth duly executed and acknowledged written authorizations enabling the undersigned to obtain copies of the records relating to the plaintiff(s) from each company identified in the response to the above.

DEMAND FOR WORKER'S COMPENSATION RECORDS

If a claim has been made or will be made by plaintiff(s), pursuant to the terms of the Worker's Compensation Law, with respect to each and every application:

1. Set forth name, address, policy number to which a claim has been or will be made, together with the Worker's Compensation Board file number.
2. Set forth duly executed and acknowledged written authorizations enabling the undersigned to obtain copies of the records relating to the plaintiff(s) from each company identified in response to the above.

DEMAND FOR DISABILITY RECORDS

If a disability claim has been or will be made by plaintiff(s), pursuant to the terms of the Social Security Laws, with respect to each and every application and/or claim:

1. Set forth the claim office, address and the claim number assigned.
2. Set forth duly executed and acknowledged written authorizations enabling the undersigned to obtain copies of the records relating to the plaintiff(s).

DEMAND FOR INFORMATION ON COLLATERAL SOURCE

A statement pursuant to C.P.L.R. 4545(c), in writing, under oath, setting forth the following:

1. The amount of (a) medical, (b) dental, (c) custodial, (d) rehabilitative costs, (e) loss of earnings, or (f) other economic loss that was or will be replaced or indemnified by (a) insurance, (b) Social Security, (c) worker's compensation, (d) employee benefit programs or (e) other source, not including No-Fault basic economic loss in automobile cases, which the plaintiff(s) intend to prove as special damages.
2. The amounts the plaintiff(s) will claim as lawful liens against the plaintiff(s) recovery.
3. The amount of premiums actually paid by the plaintiff(s) in the two (2) year period preceding the accrual of his/her/their cause of action.

4. The amount of premiums actually paid by the plaintiff(s) between the accrual of his/her/their cause of action and the present date.
5. The projected future costs of the plaintiff(s) maintaining such benefits.

DEMAND FOR MEDICAL INFORMATION

1. The names and addresses of all physicians or other health care providers of every description who have consulted, examined or treated the plaintiff for each of the conditions alleged caused by, or exacerbated by, the occurrence described in the complaint including the date of such treatment or examination.
2. Duly executed and acknowledged written authorizations (HIPAA compliant) directed to any hospital(s), clinics, or other health care facility in which the plaintiff(s) herein claiming injury, is/are or was/were confined due to the occurrence set forth in the complaint, so as to permit the securing of a copy of the entire hospital record or records including x-rays and technicians' reports, by the undersigned.
3. Duly executed and acknowledged written authorizations (HIPAA compliant) to allow the undersigned to obtain copies of the complete office medical records relating to the plaintiff(s) from each physician or health care provider identified in (1) above.
4. Medical reports of those medical providers who have previously treated or examined the party seeking recovery. These shall include a recital of the injuries and conditions as to which testimony will be offered at the trial, referring to and identifying those x-ray and technicians' reports which will be offered at the trial, including a description of the injuries, a diagnosis and a prognosis.
5. If plaintiff claims exacerbation of a pre-existing injury then demand is hereby made for duly executed and acknowledged current authorizations to allow the undersigned to obtain:
 - (a) copies of the complete medical records, reports, notes, correspondence, etc. from all physicians, health care providers, hospitals, physical therapists, chiropractors, etc., that treated plaintiff as a result of the prior accident/injury;
 - (b) the films and reports of all diagnostic test (including, but not limited to MRIs, CT scans and x-rays) that were taken as a result of prior accident/injury;
 - (c) all records, reports, notes, correspondence, etc. from any pharmacy or drug store that filled a prescription for plaintiff as a result of the prior accident/injury; and
 - (d) copies of the complete legal files and no-fault files (if applicable) relating to the prior accident/injury.
6. If plaintiff claims injury to a body part that was previously injured, then demand is hereby made for duly executed and acknowledged current authorizations to allow the undersigned to obtain:

(a) copies of the complete medical records, reports, notes, correspondence, etc. from all physicians, health care providers, hospitals, physical therapists, chiropractors, etc., that treated plaintiff as a result of the prior accident/injury;

(b) the films and reports of all diagnostic test (including, but not limited to MRIs, CT scans and x-rays) that were taken as a result of prior accident/injury;

(c) all records, reports, notes, correspondence, etc. from any pharmacy or drug store that filled a prescription for plaintiff as a result of the prior accident/injury; and

(d) copies of the complete legal files and no-fault files (if applicable) relating to the prior accident/injury.

7. If since the date of the accident complained of in plaintiff's complaint, plaintiff has re-injured a body part that plaintiff claims was injured in this accident, then demand is hereby made for duly executed and acknowledged current authorizations to allow the undersigned to obtain:

(a) copies of the complete medical records, reports, notes, correspondence, etc. from all physicians, health care providers, hospitals, physical therapists, chiropractors, etc., that treated plaintiff as a result of the re-injury;

(b) the films and reports of all diagnostic test (including, but not limited to MRIs, CT scans and x-rays) that were taken as a result of re-injury;

(c) all records, reports, notes, correspondence, etc. from any pharmacy or drug store that filled a prescription for plaintiff as a result of the re-injury; and

(d) copies of the complete legal files and no-fault files (if applicable) relating to the re-injury.

PLEASE TAKE FURTHER NOTICE, that failure to comply with these demands will serve as a basis for a motion to preclude the plaintiff(s) upon the trial of this action from offering proof relative to medical damages if such information, authorizations and certificates are not provided in accordance with these demands.

PLEASE TAKE FURTHER NOTICE, that these are all continuing demands and should any of the information requested become available to or known in the future, then you are required to furnish same at such time.

DISCOVERY OF ALL THE ABOVE IS TO BE PRODUCED within twenty five (25) days of the date of these demands at the office of KAY & GRAY, 875 Merrick Avenue, Westbury, New York 11590.

COMPLIANCE may be effectuated by sending true copies of the requested material, where applicable, to the undersigned before the due date herein.

PLEASE TAKE FURTHER NOTICE, that upon your failure to comply with these demands, the party(ies) we represent shall make an application to stay all proceedings herein, in addition to sanctions and other relief to be granted.

DATED: Westbury, New York
March 04, 2008

Dean A. Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4422
File No: 08R0185
Claim No: 0244514670101035 (J570)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff(s)

- against -

IRIS LEVITEN, ANTHONY
DIGIROLAMO NEW YORK CITY
DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendant(s)

NOTICE TO TAKE DEPOSITION
UPON ORAL EXAMINATION

SIR(S):

Please take notice that, pursuant to Article 31 of the Civil Practice Law and Rules, the testimony, upon oral examination of the plaintiff(s) and co-defendant(s) as an Adverse Party(ies) will be taken before a Notary Public who is not an attorney, or employee of an attorney for any party or prospective party herein, and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, shall be taken at THE ABOVE CAPTIONED COURT HOUSE on a date and time to be set at a preliminary conference with respect to necessary evidence and material in the prosecution or defense of this action:

All of the relevant facts and circumstances in connection with the accident which occurred on February 18, 2007, including negligence, contributory negligence, liability and damages.

That the said person to be examined is required to produce at such examination the following: all relevant material.

DATED: Westbury, New York
March 04, 2008

Dean A. Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4422
Our File No: 08R0185
Claim No: 0244514670101035 (J570)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff(s)

- against -

IRIS LEVITEN, ANTHONY
DIGIROLAMO NEW YORK CITY
DEPARTMENT
OF SANITATION and THE CITY OF
NEW YORK,

Defendant(s)

REFUSAL TO ACCEPT SERVICE BY
FACSIMILE TRANSMISSION

Index No: 117118/07

PLEASE TAKE NOTICE that defendant(s) Iris Leviten, by attorneys, KAY & GRAY, hereby advise that inclusion upon this office's letterhead of a number for transmission of documents by electronic process ("FAX") is not to be deemed consent to service of litigation papers by such method, any provision of law or statute to the contrary notwithstanding; and

PLEASE TAKE FURTHER NOTICE that service of litigation papers in this or any other action upon the undersigned by "FAX" will not be accepted and is not authorized; except upon written permission given at least twenty-four (24) hours prior to such service.

Dated: Westbury, New York
March 04, 2008

Dean A. Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4422
Our File No: 08R0185
Claim No: 0244514670101035 (J570)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff(s)

- against -

IRIS LEVITEN, ANTHONY
DIGIROLAMO NEW YORK CITY
DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendant(s)

NOTICE TO SUBMIT TO PHYSICAL
EXAMINATION

Index No: 117118/07

PLEASE TAKE NOTICE that defendant(s), Iris Leviten, by attorneys, KAY & GRAY, require that plaintiff submit to physical examination(s) on a date after examination before trial are completed and after all pertinent medical information has been exchanged by plaintiff as per 22 N.Y.C.R.R. § 202.17.

PLEASE TAKE FURTHER NOTICE that your office will be contacted to schedule a date and location for the physical examinations.

Dated: Westbury, New York
March 04, 2008

Dean A. Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4422
Our File No: 08R0185
Claim No: 0244514670101035 (J570)

E

Index No. 117118/07

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

MICHAEL DOUKAS,

Plaintiff(s)

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO
NEW YORK CITY DEPARTMENT
OF SANITATION and THE CITY OF NEW
YORK,

Defendant(s)

VERIFIED ANSWER
WITH CROSS CLAIM
DEMANDS

KAY & GRAY
Attorneys for the Defendant(s)
Iris Leviten
Office and Post Office Address
875 Merrick Avenue
Westbury, New York 11590
516-229-4422

To:

Law Office of Gary Alweiss
Attorneys for Plaintiff(s)
229 Seventh Street
Suite 300
Garden City, NY 11530
516 746 6766

Michael Cordoza
Attorneys for Defendant(s)
100 Church Street
New York,
NY 10007

Due and timely service of a copy of the within _____ is hereby admitted.
Dated March 04, 2008

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant(s).
-----X

Index No.: 102331-08

Date of Purchase: 2/11/08

Plaintiff designates

New York County

as the place of trial

The basis of the venue is

defendant's residence

within New York County

SUMMONS

Plaintiff resides at

114 Tenth St.

Hicksville, NY 11801

County of Nassau

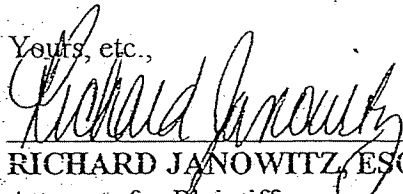
To the above named Defendant(s):

...
YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.
...

Dated: Garden City, New York

January 31, 2008

Yours, etc.,


RICHARD JANOWITZ, ESQ.

Attorney for Plaintiff

229 Seventh Street, Suite 304

Garden City, New York 11530

Tel.: (646) 522-4141

Defendant's Address:

IRIS LEVITEN, 6 Wood Avenue, Alberston, NY 11507

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

COMPLAINT

-against-

IRIS LEVITEN,

Index No.:

Defendants.
-----X

S I R (S):

PLEASE TAKE NOTICE, that plaintiff, ANTHONY DIGIROLAMO, by and through plaintiff's attorneys, Richard A. Janowitz, Esq., complaining of IRIS LEVITEN, the defendant herein, respectfully alleges as follows:

DKP 1. At all times hereinafter mentioned, plaintiff, ANTHONY DIGIROLAMO, was and still is a resident of the County of Nassau, State of New York.

A 2. Upon information and belief, at all times hereinafter mentioned, defendant, IRIS LEVITEN, was and still is a resident of the County of Nassau, State of New York.

DKP 3. Upon information and belief, at all times hereinafter mentioned, Glen Cove Road, and at or near the intersection of the Northern State Parkway, was and still is a public roadway located within the County of Nassau, State of New York.

DKP 4. Upon information and belief, at all times hereinafter mentioned, the plaintiff, ANTHONY DIGIROLAMO, was operating a 2002 Mac Truck bearing New York license plate number DWW 7794, with the knowledge and consent of its Owners, New York City Department of Sanitation and the City of New York.

A 5. Upon information and belief, at all times hereinafter mentioned, defendant, IRIS

LEVITEN, owned and operated a 2007 Lexus automobile bearing New York license plate number DWW7794.

D 6. On or about February 18, 2007, at approximately 2:50 p.m. on Glen Cove Road, at or near the intersection of Northern State Parkway, the defendant, IRIS LEVITEN, was operating the aforesaid vehicle in such a negligent, careless, and reckless manner causing the aforesaid vehicles to crash, and causing plaintiff to suffer serious personal injuries hereinafter set forth.

D 7. The defendant operator was negligent, careless, and reckless in the operation, management, maintenance, supervision, and control of said vehicle in that said defendant operated said vehicle at an excessive and unlawful rate of speed; in that said defendant failed to have proper control over the vehicle; in that said defendant failed to be reasonably alert and attentive; in that said defendant failed to anticipate the condition of the road and travel conditions in general; in that said defendant failed to make proper use of the braking and steering systems or that the same were defective; in that said defendant failed to heed to traffic conditions then and there existing; in that said defendant violated the rules, regulations, and ordinances, and statutes applicable thereto; and the said defendant was otherwise negligent and careless.

D 8. That the said accident and the injuries sustained by plaintiff resulting therefrom were caused solely by the negligence of the defendants, jointly and severally, without any negligence on the part of the plaintiff contributing thereto.

D 9. That as a result of the aforesaid occurrence, plaintiff sustained serious personal injuries, and nervous shock, was rendered sick, sore and disabled and has remained so since said occurrence; plaintiff has suffered and continues to suffer mental anguish, required medical care and treatment, and upon information and belief, will continue to require additional medical care

and treatment in the future; plaintiff has been incapacitated from attending to plaintiff's normal duties, and upon information and belief, plaintiff may continue to be so incapacitated in the future.

D 10. Plaintiff sustained serious injuries and basic economic loss as defined by § 5102 of the Insurance Law of the State of New York and has the right of recovery against the defendants herein for personal injuries, basic economic loss and non-economic loss pursuant to § 5104 of the Insurance Law of the State of New York.

D 11. Plaintiff has sustained a serious injury as defined in subdivision (d) of § 5102 of the Insurance Law of the State of New York which, upon information and belief, will result in future economic loss greater than the basic economic loss as defined in subdivision (a) of § 5102 of the Insurance Law of the State of New York.

D 12. The cause of action herein falls within one of the exceptions listed under C.P.L.R. §§ 1601 and 1602.

D 13. That by reason of the premises set forth above, the plaintiff, ANTHONY DIGIROLAMO, has been damaged in a sum of money to be determined by the Court and jury which amount is in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this action.

WHEREFORE, plaintiff, ANTHONY DIGIROLAMO, demands judgment, jointly and severally, against the defendant, IRIS LEVITEN, in a sum of money to be determined by the Court and jury which amount is in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this action; all together with interest, costs and disbursements of this action.

F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ANTHONY DIGIROLAMO,

Plaintiff(s)

- against -

IRIS LEVITEN,

Defendant(s)

VERIFIED ANSWER WITH
DEMANDS

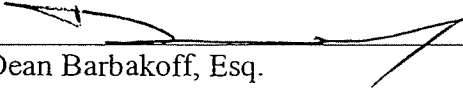
Index No: 102331-08

CERTIFICATION PURSUANT TO SECTION 130-1.1a
OF THE RULES OF THE CHIEF ADMINISTRATOR (22NYCRR)

The undersigned certifies the following documents pursuant to 22NYCRR Section 130-1.1a:

Verified Answer to Verified Complaint and Demand for a Verified Bill of Particulars, Combined Demand for Discovery and Inspection, Notice to Take Deposition Upon Oral Examination, Refusal to Accept Service by Facsimile Transmission and Notice to Submit to Physical Examination.

DATED: Westbury, New York
May 06, 2008


Dean Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4425
Our File No: 08R0448
Claim No: 0244514670101035 (J570)

Richard Janowitz, Esq.
Attorneys for Plaintiff(s)
229 Seventh Street, Suite 304
Garden City, NY 11530
646-522-4141

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ANTHONY DIGIROLAMO,

Plaintiff(s)

- against -

IRIS LEVITEN,

Defendant(s)

VERIFIED ANSWER

Index #: 102331-08

Defendant(s) Iris Leviten, by the undersigned answering the VERIFIED complaint of the plaintiff(s), upon information and belief, states as follows:

ANSWERING A FIRST CAUSE OF ACTION

FIRST: Denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered and designated as: 1,3,4,12

SECOND: Denies each and every allegation contained in paragraphs numbered and designated as: 6,7,8,9,10,11,13

THIRD: Admits each and every allegation contained in paragraphs numbered and designated as: 2,5

AS AND FOR AN AFFIRMATIVE DEFENSE – COMPARATIVE NEGLIGENCE

The personal injuries and/or property damage alleged to have been sustained by the plaintiff(s) were caused entirely or in part through the culpable conduct attributable to the plaintiff(s) and the defendant seeks a dismissal or reduction in any recovery had by the plaintiff in the proportion which the culpable conduct attributable to the plaintiff(s) bears to the culpable conduct which caused the damages.

AS AND FOR AN AFFIRMATIVE DEFENSE – SEAT BELT

The plaintiff(s) damages must be mitigated by the plaintiff(s) failure to use the available seat belts or infant restraining devices and that the damages claimed to have been sustained were caused by the lack of use of said seat belts and/or infant restraining devices.

AS AND FOR AN AFFIRMATIVE DEFENSE – PERSONAL JURISDICTION

Service of process was not in conformity with the C.P.L.R.; therefore this Court does not have jurisdiction over the person of the defendant.

AS AND FOR AN AFFIRMATIVE DEFENSE – COLLATERAL SOURCE

The costs incurred, or paid by plaintiff(s), if any, for medical care, dental care, custodial care or rehabilitation services, loss of earning or other economic loss, in the past or future, were or will,

with reasonable certainty be replaced or indemnified, in whole or in part, from a collateral source of the type described in CPLR §4545 and defendant is entitled to have any award reduced in the amount of such payments.

AS AND FOR AN AFFIRMATIVE DEFENSE – FAILURE TO SIGN COMPLAINT

Plaintiff(s) has failed to serve a signed complaint in accordance with the Rules of the Chief Administrator of the State of New York.

WHEREFORE, defendant(s) demand(s) judgment dismissing the plaintiff(s) complaint herein together with the costs and disbursements of this action.

DATED: Westbury, New York
May 06, 2008

Dean Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4425
Our File No: 08R0448
Claim No: 0244514670101035(J570)

VERIFICATION

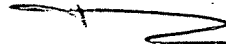
Dean Barbakoff, Esq., an attorney admitted to practice in the Courts of this State, and associated with the firm of KAY & GRAY, attorneys for the defendant(s) Iris Leviten, states:

That your affirmant has read the foregoing Answer and knows the contents thereof; that the same is true to your affirmant's own knowledge except as to the matters which are stated therein to be alleged on information and belief, and as to those matters your affirmant believes it to be true. The source of your affirmant's information and belief, is an investigation caused to be made with respect to the facts in this action.

That the reason this verification is made by affirmant and not by the defendant is because the defendant does not reside within the county where KAY & GRAY, maintain their office.

The undersigned affirms that the foregoing statement is true, under penalties of perjury.

Date: Westbury, New York
May 06, 2008



Dean Barbakoff, Esq.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ANTHONY DIGIROLAMO,

Plaintiff(s)

- against -

IRIS LEVITEN,

Defendant(s)

DEMAND FOR A VERIFIED
BILL OF PARTICULARS

COUNSELORS:

PLEASE TAKE NOTICE that the defendant(s) Iris Leviten, hereby demands that you serve upon the undersigned within thirty days from date of service herein, a verified bill of particulars concerning the following matters:

1. Name, date of birth and social security number of plaintiff(s).
2. Post office and residence address of plaintiff in sufficient detail to permit ready location.
3. The date and approximate time of day of the occurrence.
4. The approximate location of the occurrence.
5. A general statement of the acts or omissions, constituting the negligence claimed. If any violation of any rule, law, custom, ordinance or statute is claimed, identify and specify the provision of same.
6. A statement of the injuries claimed to have been sustained as a result of the occurrence and the nature and extent thereof.
7. A statement of such injuries claimed to be permanent and the nature and extent thereof.
8. Length of time and dates confined to bed.
9. Length of time and dates confined to house.
10. Length of time totally incapacitated from employment and/or school.
11. Length of time partially incapacitated from employment and/or school.
12. Itemize all accounts claimed as special damages for (a) physician's services; (b) medical supplies; (c) hospital expenses; (d) nurse's services; (e) loss of earnings; (f) all other special damages; and (g) all out of pocket expenses.
13. Specify the monetary amount that will be claimed at trial for each and every element of damages.
14. State the name and address of plaintiff's employer and/or school at the time of the occurrence, if any.
15. If plaintiff was self-employed at the time of the occurrence, state the facts upon which plaintiff bases his claim for loss of earnings, if any.
16. If property damages are claimed, describe the article, the damage thereto, date of purchase, original cost, and cost of repair.
17. If property damage to automobile is claimed, state the following: (a) The make, style, model, year of manufacture, serial number and license number of plaintiff's motor vehicle; (b) The parts of the motor vehicle alleged to have been damaged and the cost of repair or

replacement thereof; (c) Number of miles driven at time of occurrence.

18. In what respect plaintiff has sustained serious injury as defined in subdivision d of Sec. 5102 of the insurance law, or economic loss greater than basic economic loss, as defined in subdivision a of Sec. 5102 of the insurance law.

19. State the source or sources of collateral reimbursements or benefits pursuant to CPLR 4545(c) and for each such source provide the following: (a) the name and address of the source; (b) the amount of the reimbursement; and (c) the date that reimbursement was given.

20. Pursuant to CPLR Section 3101(d);

a) Identify and state the qualifications of each person whom you expect to call at trial as an expert witness.

b) State the subject matter in reasonable detail upon which the expert is expected to testify.

c) Provide the facts and opinions upon which the expert is expected to testify.

d) Provide a summary of the grounds of each such opinion.

e) Provide a copy of the expert's report furnished to plaintiff.

PLEASE TAKE FURTHER NOTICE that unless this demand is complied with, the undersigned will move for: (1) an order precluding plaintiff from giving evidence at the trial of the items of which particulars have not been furnished; (2) an order staying all proceedings in this action pursuant to Civil Practice Law and Rule 3042; and (3) such other and further relief as the court may deem just and proper.

DATED: Westbury, New York
May 06, 2008

Dean Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4425
Our File No: 08R0448
Claim No: 0244514670101035 (J570)

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ANTHONY DIGIROLAMO,

Plaintiff(s)

- against -

IRIS LEVITEN,

Defendant(s)

COMBINED DEMAND FOR
DISCOVERY AND INSPECTION

COUNSELORS:

PLEASE TAKE NOTICE that demand is hereby made upon you to serve upon the undersigned, the following:

DEMAND FOR INDEX NUMBER

Pursuant to the filing requirements of Section 306-a of the C.P.L.R. and the notice requirements of 22 N.Y.C.R.R. 202.5, you are to advise in writing of the County Clerk's Index Number assigned to this action.

DEMAND FOR ALL PARTIES APPEARING

A list of names of all parties that have appeared in this action, together with the names and addresses of their respective attorneys pursuant to Section 2103(e) of the C.P.L.R.

**DEMAND FOR INSURANCE COVERAGE TO PLAINTIFF(S) ON
COUNTERCLAIM AND/OR CO-DEFENDANT(S)**

Pursuant to C.P.L.R. 3101(f), you are to produce and permit the undersigned to inspect and copy the contents of any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of the judgment which may be entered in this action, or to indemnify or reimburse for payments made to satisfy the judgment which may be entered herein, including by not limited to excess and additional coverage. If there is no excess or additional coverage and there is the only one insurer liable to satisfy part or all of a judgment which may be entered in this action, then the undersigned demands a sworn affidavit from your client stating this.

DEMAND FOR WITNESSES

Pursuant to C.P.L.R. 3101(a) and this demand, you are requested to produce and permit discovery by the undersigned or another acting on their behalf of the following:

Names and addresses of all persons claimed by your client(s) to

have either witnessed the occurrence or to have firsthand knowledge of same, or to have notice of the nature and duration of any alleged condition(s) proximately causing this occurrence, or to have witnessed or firsthand knowledge of any such notice given to the party(ies) we represent and/or any other party in this action, or having firsthand knowledge of facts and circumstances regarding this occurrence, whether obtained by your client(s) at the scene of the occurrence or thereafter obtained by your client(s) attorneys or representatives. If no such persons are known to your client(s) or your client(s) representatives, so state in reply to this demand. The undersigned will object at time of trial of this action to the testimony of any persons not so identified.

PLEASE TAKE FURTHER NOTICE that if your client(s) or client(s) representatives, obtain names and addresses of such persons subsequent to their response to this notice, such information is to be furnished to the undersigned whenever so obtained. The undersigned will object at the time of trial of this action the testimony of any persons not so identified.

DEMAND FOR EXPERT WITNESSES

1. The name and address of each expert witness which you expect to call at the trial of this action.
2. The subject matter in reasonable detail upon which each such expert is expected to testify.
3. The substance of the facts and opinions upon which each such expert is expected to testify.
4. The qualifications of each such expert witness.
5. A summary of the grounds for each such expert(s) opinion.
6. Provide a copy of each such expert's report furnished to you or your client(s).

PLEASE TAKE FURTHER NOTICE, that if any such expert which you expect to call as a witness on the trial of this action intends to rely upon or introduce into evidence any portion of any technical standard or learned treatise, you are hereby required to identify any such standard or treatise, including in the case of standards, the issuing body and the standard number; in the case of books, author, title, publication date and publisher; and in the case of journal articles, journal title, volume number, page, publication date and publisher.

DEMAND FOR ACCIDENT REPORTS

All accident reports and/or motor vehicle accident reports in your client(s)' possession, pursuant to C.P.L.R. 3101(g).

DEMAND FOR STATEMENT

Copy(ies) of each and every written statement or the transcript of each and every oral statement which it will be alleged was made by or attributed to the party(ies) we represent in this action. If none, so state.

DEMAND FOR PHOTOGRAPHS

Copy(ies) of all photographs, slides, video tapes and/or motion pictures in your client(s)' possession, pertaining to the accident site, defective condition(s) claimed and/or instrumentality(ies) in issue.

DEMAND FOR INCOME TAX RETURNS

Copies of plaintiff(s) income tax returns for a period of three (3) years preceding the date of the accident as set forth in plaintiff(s) complaint to present, as well as a duly executed, acknowledged and current authorization allowing this office to obtain the plaintiff's tax records for a period of three (3) years before the accident in question. This authorization must include two forms of identification, including one photo identification.

DEMAND FOR SCHOOL AUTHORIZATIONS

Set forth duly executed and acknowledged authorizations, pursuant to Section 3101(a) and Rule 3120 of the C.P.L.R., permitting the undersigned to obtain copies of the school records of the plaintiff(s) from the beginning of the school year preceding the date of accident as set forth in the complaint to the present period of any disability claimed.

DEMAND FOR EMPLOYMENT AUTHORIZATIONS

Set forth duly executed and acknowledged authorizations pursuant to Section 3101(a) and Rule 3120 of the C.P.L.R., permitting the undersigned to obtain copies of the employment records of the plaintiff(s) from three (3) years preceding the date of accident as set forth in plaintiff(s) complaint to the present.

DEMAND FOR NO-FAULT RECORDS

If a claim has been or will be made by plaintiff(s) pursuant to the terms of ARTICLE XVIII of the Insurance Law of the State of New York (No-Fault Law); with respect to each and every application and/or claim:

1. Set forth the name, address, policy number and claim number of each company to which a claim has been made or will be made.
2. Set forth duly executed and acknowledged written authorizations enabling the undersigned to obtain copies of the records relating to the plaintiff(s) from each company identified in the response to the above.

DEMAND FOR WORKER'S COMPENSATION RECORDS

If a claim has been made or will be made by plaintiff(s), pursuant to the terms of the Worker's Compensation Law, with respect to each and every application:

1. Set forth name, address, policy number to which a claim has been or will be made, together with the Worker's Compensation Board file number.
2. Set forth duly executed and acknowledged written authorizations enabling the undersigned to obtain copies of the records relating to the plaintiff(s) from each company identified in response to the above.

DEMAND FOR DISABILITY RECORDS

If a disability claim has been or will be made by plaintiff(s), pursuant to the terms of the Social Security Laws, with respect to each and every application and/or claim:

1. Set forth the claim office, address and the claim number assigned.
2. Set forth duly executed and acknowledged written authorizations enabling the undersigned to obtain copies of the records relating to the plaintiff(s).

DEMAND FOR INFORMATION ON COLLATERAL SOURCE

A statement pursuant to C.P.L.R. 4545(c), in writing, under oath, setting forth the following:

1. The amount of (a) medical, (b) dental, (c) custodial, (d) rehabilitative costs, (e) loss of earnings, or (f) other economic loss that was or will be replaced or indemnified by (a) insurance, (b) Social Security, (c) worker's compensation, (d) employee benefit programs or (e) other source, not including No-Fault basic economic loss in automobile cases, which the plaintiff(s) intend to prove as special damages.
2. The amounts the plaintiff(s) will claim as lawful liens against the plaintiff(s) recovery.
3. The amount of premiums actually paid by the plaintiff(s) in the two (2) year period preceding the accrual of his/her/their cause of action.
4. The amount of premiums actually paid by the plaintiff(s) between the accrual of his/her/their cause of action and the present date.
5. The projected future costs of the plaintiff(s) maintaining such benefits.

DEMAND FOR MEDICAL INFORMATION

1. The names and addresses of all physicians or other health care providers of every description who have consulted, examined or treated the plaintiff for each of the conditions alleged caused by, or exacerbated by, the occurrence described in the complaint including the date of such treatment or examination.

2. Duly executed and acknowledged written authorizations (HIPAA compliant) directed to any hospital(s), clinics, or other health care facility in which the plaintiff(s) herein claiming injury, is/are or was/were confined due to the occurrence set forth in the complaint, so as to permit the securing of a copy of the entire hospital record or records including x-rays and technicians' reports, by the undersigned.

3. Duly executed and acknowledged written authorizations (HIPAA compliant) to allow the undersigned to obtain copies of the complete office medical records relating to the plaintiff(s) from each physician or health care provider identified in (1) above.

4. Medical reports of those medical providers who have previously treated or examined the party seeking recovery. These shall include a recital of the injuries and conditions as to which testimony will be offered at the trial, referring to and identifying those x-ray and technicians' reports which will be offered at the trial, including a description of the injuries, a diagnosis and a prognosis.

5. If plaintiff claims exacerbation of a pre-existing injury then demand is hereby made for duly executed and acknowledged current authorizations to allow the undersigned to obtain:

a) copies of the complete medical records, reports, notes, correspondence, etc. from all physicians, health care providers, hospitals, physical therapists, chiropractors, etc., that treated plaintiff as a result of the prior accident/injury;

b) the films and reports of all diagnostic tests (including, but not limited to MRIs, CT scans and x-rays) that were taken as a result of the prior accident/injury;

c) all records, reports, notes, correspondence, etc. from any pharmacy or drug store that filled a prescription for plaintiff as a result of the prior accident/injury; and

d) copies of the complete legal files and no-fault files (if applicable) relating to the prior accident/injury.

6. If plaintiff claims injury to a body part that was previously injured, then demand is hereby made for duly executed and acknowledged current authorizations to allow the undersigned to obtain:

a) copies of the complete medical records, reports, notes, correspondence, etc. from all physicians, health care providers, hospitals, physical therapists, chiropractors, etc. that treated plaintiff as a result of the prior accident/injury;

b) the films and reports of all diagnostic tests (including, but not limited to MRIs, CT scans, and x-rays) that were taken as a result of the prior accident/injury;

c) all records, reports, notes, correspondence, etc. from any pharmacy or drug store that filled a prescription for plaintiff as a result of the prior accident/injury; and

d) copies of the complete legal files and no-fault files (if applicable) relating to the prior accident/injury.

7. If since the date of the accident complained of in plaintiff's complaint, plaintiff has re-injured a body part that plaintiff claims was injured in this accident, then demand is hereby made for duly executed and acknowledged current authorizations to allow the undersigned to obtain:

a) copies of the complete medical records, reports, notes, correspondence, etc., all physicians, health care providers, hospitals, physical therapists, chiropractors, etc. that treated plaintiff as a result of the re-injury;

b) the films and reports of all diagnostic tests (including, but not limited to MRIs, CT scans, and x-rays) that were taken as a result of the re-injury;

c) all records, reports, notes, correspondence, etc. from any pharmacy or drug store that filled a prescription for plaintiff as a result of the re-injury; and

d) copies of the complete legal files and no-fault files (if applicable) relating to the re-injury.

PLEASE TAKE FURTHER NOTICE, that failure to comply with these demands will serve as a basis for a motion to preclude the plaintiff(s) upon the trial of this action from offering proof relative to medical damages if such information, authorizations and certificates are not provided in accordance with these demands.

PLEASE TAKE FURTHER NOTICE, that these are all continuing demands and should any of the information requested become available to or known in the future, then you are required to furnish same at such time.

DISCOVERY OF ALL THE ABOVE IS TO BE PRODUCED within twenty five (25) days of the date of these demands at the office of: KAY & GRAY, 875 Merrick Avenue, Westbury, New York 11590.

COMPLIANCE may be effectuated by sending true copies of the requested material, where applicable, to the undersigned before the due date herein.

PLEASE TAKE FURTHER NOTICE, that upon your failure to comply with these demands, the party(ies) we represent shall make an application to stay all proceedings herein, in addition to sanctions and other relief to be granted.

DATED: Westbury, New York
May 06, 2008

Dean Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4425
Our File No: 08R0448
Claim No: 0244514670101035 (J570)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ANTHONY DIGIROLAMO,

Plaintiff(s)

- against -

IRIS LEVITEN,

Defendant(s)

NOTICE TO TAKE DEPOSITION
UPON ORAL EXAMINATION

COUNSELORS:

Please take notice that, pursuant to Article 31 of the Civil Practice Law and Rules, the testimony, upon oral examination of the plaintiff(s) and co-defendant(s) as an Adverse Party(ies) will be taken before a Notary Public who is not an attorney, or employee of an attorney for any party or prospective party herein, and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, shall be taken at THE ABOVE CAPTIONED COURTHOUSE on a date and time to be set at a preliminary conference with respect to necessary evidence and material in the prosecution or defense of this action:

All of the relevant facts and circumstances in connection with the accident which occurred on February 18, 2007, including negligence, contributory negligence, liability and damages.

That the said person to be examined is required to produce at such examination the following: all relevant material.

DATED: Westbury, New York
May 06, 2008

Dean Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4425
Our File No: 08R0448
Claim No: 0244514670101035 (J570)

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ANTHONY DIGIROLAMO,

Plaintiff(s)

- against -

IRIS LEVITEN,

Defendant(s)

REFUSAL TO ACCEPT SERVICE BY
FACSIMILE TRANSMISSION

Index No: 102331-08

PLEASE TAKE NOTICE that defendant, Iris Leviten, by attorney, KAY & GRAY, hereby advises that inclusion upon this office's letterhead of a number for transmission of documents by electronic process ("FAX") is not to be deemed consent to service of litigation papers by such method, any provision of law or statute to the contrary notwithstanding; and

PLEASE TAKE FURTHER NOTICE that service of litigation papers in this or any other action upon the undersigned by "FAX" will not be accepted and is not authorized; except upon written permission given at least twenty-four (24) hours prior to such service.

DATED: Westbury, New York
May 06, 2008

Dean Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4425
Our File No: 08R0448
Claim No: 0244514670101035 (J570)

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ANTHONY DIGIROLAMO,

Plaintiff(s)

- against -

IRIS LEVITEN,

Defendant(s)

NOTICE TO SUBMIT TO PHYSICAL
EXAMINATION

Index No: 102331-08

PLEASE TAKE NOTICE that defendant, Iris Leviten, by attorney, KAY & GRAY, require that plaintiff submit to physical examination(s) on a date after examination(s) before trial are completed and after all pertinent medical information has been exchanged by plaintiff as per 22 N.Y.C.R.R. § 202.17.

PLEASE TAKE FURTHER NOTICE that your office will be contacted to reschedule a date and location for the physical examinations.

DATED: Westbury, New York
May 06, 2008

Dean Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten
875 Merrick Avenue
Westbury, New York 11590
516-229-4425
Our File No: 08R0448
Claim No: 0244514670101035 (J570)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK) SS.:
COUNTY OF NASSAU)

Patricia Kennedy, being duly sworn, deposes and says that she is not a party to this action and is employed by the attorneys for the within named defendant(s) herein. That on the 14 day of May, 2008, she served the annexed VERIFIED ANSWER and DEMAND FOR A VERIFIED BILL OF PARTICULARS, COMBINED DEMAND FOR DISCOVERY AND INSPECTION, NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION, REFUSAL TO ACCEPT SERVICE BY FACSIMILE TRANSMISSION AND NOTICE TO SUBMIT TO PHYSICAL EXAMINATION upon the following named attorney(s) and party(s) by depositing a true copy of the same securely enclosed in a post-paid wrapper in a Post Office Box regularly maintained by the United States Government at 875 Merrick Avenue, Westbury New York 11590, in said County of Nassau directed to said attorney(s) and party(s) at:

TO:

Richard Janowitz, Esq.
Attorneys for Plaintiff(s)
229 Seventh Street, Suite 304
Garden City, NY 11530
646-522-4141


that being the address within the State designated by them for that purpose upon the preceding papers in this action, or the place where they then kept an office, between which places there then was and now is a regular communication by mail.

Deponent is over the age of eighteen (18) years.


Patricia Kennedy

Sworn to before me this

14 day of May, 2008


Notary Public

DEAN BARBAKOFF
Notary Public, State of New York
No. 4997229
Qualified in Nassau County
Commission Expires June 1, 2010

Index No. 102331-08

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ANTHONY DIGIROLAMO,

Plaintiff(s)

- against -

IRIS LEVITEN,

Defendant(s)

VERIFIED ANSWER WITH
DEMANDS

KAY & GRAY
Attorneys for the Defendant(s)
Iris Leviten
Office and Post Office Address
875 Merrick Avenue
Westbury, New York 11590
516-229-4425

To

Richard Janowitz, Esq.
Attorneys for Plaintiff(s)
229 Seventh Street, Suite 304
Garden City, NY 11530
646-522-4141

Due and timely service of a copy of the within ANSWER AND DEMANDS is hereby admitted.
Dated May 06, 2008

Attorney(s) for

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK } SS.:
COUNTY OF NASSAU }

Cheryl Wilcox, being duly sworn, deposes and says that she is not a party to this action and is employed by the attorneys for the within named defendant(s), Iris Leviten, herein. That on the 23rd day of May, 2008, she served the within NOTICE OF AMENDED MOTION TO CONSOLIDATE AND ATTORNEYS AFFIRMATION upon the attorneys(s) for the within named party(ies), by depositing a true copy of the same securely enclosed in a post-paid wrapper in a Post Office Box regularly maintained by the United States Government at 875 Merrick Avenue, Westbury, NY 11590, in said County of Nassau directed to said attorney(s) at:

Gair, Gair, Conason, Stegman & Mackauf
Attorneys for Plaintiff
Iris Leviten- Action #1
80 Pine Street
New York, NY 10005

Ahmuty, Demers & McManus, Esqs.
Attorneys for Defendant
Estree, Inc., d/b/a Lexus of Westport- Action #1
200 I.U. Willets Road
Albertson, NY 11507

Michael Cordoza
Attorneys for Defendant
Anthony Digirolamo,
New York City Department of Sanitation and The City Of New York- Action #2
100 Church Street
New York, NY 10007
(212) 788-0303

Arronson, Rappaport, Feinstein & Deutsch, Esqs.
Attorneys for Defendant
Toyota Motor Sales, USA INC- Action #1
757 Third Avenue
New York, NY 10017


Richard Janowitz, Esq.
Attorneys for Plaintiff
Anthony Digirolomo- Action #3
229 Seventh St., Suit 304
Garden City, NY 11530

Kelner & Kelner, Esqs.
Attorneys for Plaintiff
Michael Doukas- Action #2
140 Broadway- 37th Floor
New York, NY 10005
(212) 425-0700


Stein, Riso, & Mantel
Attorneys for Defendant
Metro Auto Leasing, Inc.- Action #1
405 Lexington Ave.
New York, NY 10174

that being the address within the State designated by them for that purpose upon the preceding papers in this action, or the place where they then kept an office, between which places there then was and now is a regular communication by mail.

Deponent is over the age of eighteen (18) years


Cheryl Wilcox

Sworn to before me this
23rd day of May, 2008



NOTARY PUBLIC

BURTON D. SAVITZ
Notary Public, State Of New York
No. 02SA4871106
Qualified In Queens County
Commission Expires October 3, 2012

Index No. 117118/07
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN

Plaintiff(s)

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC.,
ESTREE, INC., d/b/a LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL

Defendant(s)

NOTICE OF AMENDED MOTION
TO CONSOLIDATE
AND ATTORNEY
AFFIRMATION
Action No. 1
Index #: 107681/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL DOUKAS,

Plaintiff(s)

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO NEW YORK CITY
DEPARTMENT
OF SANITATION and THE CITY OF NEW YORK,

Defendant(s)

Action No. 2
Index #: 117118/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ANTHONY DIGIROLAMO

Plaintiff(s)

- against -

IRIS LEVITEN

Defendant(s)

Action No. 3
Index #: 102331/08

KAY & GRAY
Attorneys for the Defendant(s) Iris Leviten
875 Merrick Avenue
Westbury, NY 11590

TO:

Gair, Gair, Conason,
Stegman & Mackauf
Attorneys for Plaintiff
Iris Leviten- Action #1
80 Pine Street
New York, NY 10005

Ahmuty, Demers &
McManus, Esqs.
Attorneys for Defendant
Estree, Inc., d/b/a Lexus of
Westport- Action #1
200 I.U. Willets Road
Albertson, NY 11507

Michael Cordoza
Attorneys for Defendant
Anthony Digirolamo,
New York City Department of Sanitation and The City
Of New York- Action #2
100 Church Street
New York, NY 10007
(212) 788-0303

Arronson, Rappaport, Feinstein & Deutsch, Esqs.
Attorneys for Defendant
Toyota Motor Sales, USA INC- Action #1
757 Third Avenue
New York, NY 10017

Richard Janowitz, Esq.
Attorneys for Plaintiff
Anthony Digirolomo- Action #3
229 Seventh St., Suit 304
Garden City, NY 11530

Kelner & Kelner, Esqs.
Attorneys for Plaintiff
Michael Doukas- Action #2
140 Broadway- 37th Floor
New York, NY 10005
(212) 425-0700

Stein, Riso, & Mantel
Attorneys for Defendant
Metro Auto Leasing, Inc.- Action #1
405 Lexington Ave.
New York, NY 10174

Due and timely service of a copy of the within _____ is hereby admitted.

Dated May 20, 2008

Attorney(s) for

RECEIVED

MAY 28 2008

LEGAL DEPT. MB

P

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN

Plaintiff(s)

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA, INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL

Defendant(s)

NOTICE OF MOTION
TO CONSOLIDATE

Action No. 1
Index #: 11748/07

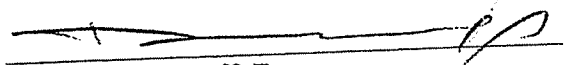
RECEIVED
2008 MAY 23 A 10:29
FEDERIN & DEUTSCH, LL

COUNSELORS:

PLEASE TAKE NOTICE, that upon the annexed affirmation of Dean A. Barbakoff, Esq., dated May 20, 2008, and the exhibits attached thereto and upon all the prior pleadings and proceedings had herein, the defendant(s) in Action #2 and #3 will move this Court at the Submissions Part, Room 130, at the Courthouse located at 60 Centre Street, New York, NY, on the 23rd day of June 2008 at 9:30 a.m. or as soon thereafter as counsel can be heard, for an Order consolidating the above-captioned action with Action #2 and Action #3 for the purpose of a joint trial, and for such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to C.P.L.R. § 2214(b), answering papers are required to be served at least seven (7) days prior to the return date of this motion.

DATED: Westbury, New York
May 20, 2008



Dean A. Barbakoff, Esq.
KAY & GRAY
Attorneys for Defendant(s)
Iris Leviten (Action #2 and #3)
875 Merrick Avenue
Westbury, NY 11590
516-229-4422
Our File No.: 08R0185
Claim No.: 0244514670101035 (J570)

TO:

Kelner & Kelner, Esqs.
Attorneys for Plaintiff
Michael Doukas- Action #2
140 Broadway- 37th Floor
New York, NY 10005
(212) 425-0700

Michael Cordoza
Attorneys for Defendant
Anthony Digirolamo, New York City
Department of Sanitation and The City
Of New York- Action #2
100 Church Street
New York, NY 10007
(212) 788-0303

Gair, Gair, Conason, Stegman & Mackauf
Attorneys for Plaintiff
Iris Leviten- Action #1
80 Pine Street
New York, NY 10005

Arronson, Rappaport, Feinstein & Deutsch, Esqs.
Attorneys for Defendant- Toyota Motor Sales, USA INC- Action #1
757 Third Avenue
New York, NY 10017

Ahmuty, Demers & McManus, Esqs.
Attorneys for Defendant
Estree, Inc., d/b/a Lexus of Westport- Action #1
200 I.U. Willets Road
Albertson, NY 11507

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

IRIS LEVITEN

Plaintiff(s)

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA, INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL

Defendant(s)

ATTORNEY'S AFFIRMATION
Action No. 1
Index #: 107681/07

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

MICHAEL DOUKAS,

Plaintiff(s)

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO
NEW YORK CITY DEPARTMENT
OF SANITATION and THE CITY OF NEW
YORK,

Defendant(s)

Action No. 2
Index #: 117118/07

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ANTHONY DIGIROLAMO

Plaintiff(s)

- against -

IRIS LEVITEN

Defendant(s)

Action No. 3
Index #: 102331/08

Dean A. Barbakoff, Esq., an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms upon information and belief the truth of the following under the penalties of perjury:

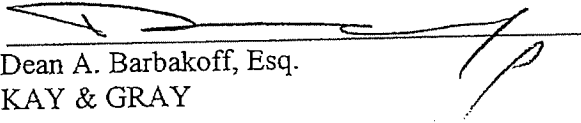
1. I am attorney associated with KAY & GRAY, attorneys for the defendant(s) herein, and as such, am familiar with the facts and circumstances herein of this action
2. I make this Affirmation in support of the within application for consolidation of the above-entitled actions for the purpose of joint trial pursuant to Section 602 of the CPLR.
3. All of the above-captioned actions arise from the same motor vehicle accident which took place on February 18, 2007.
4. Action no. 1 was commenced in Supreme Court, New York County by the purchase and filing of Index No. 107681/07 and by service of a summons and complaint. A copy of the summons and complaint is attached hereto as Exhibit "A". Issue in action no. 1 was joined by the service of defendant(s) Answer on or about August 13, 2007. See Exhibit "B".
5. Action no. 2 was commenced in Supreme Court, New York County by the purchase and filing of Index No. 117118/07 and by service of the summons and complaint. A copy of the summons and complaint in action no. 2 is attached hereto as Exhibit "C". Issue was joined by service of defendant(s) Answer on or about March 4, 2008. See Exhibit "D".
6. Action no. 3 was commenced in Supreme Court, New York County by the purchase and filing of Index No. 102331/08 and by service of the summons and

complaint. A copy of the summons and complaint in action no. 3 is attached hereto as Exhibit "E". Issue was joined by service of defendant(s) Answer on or about May 6, 2008. See Exhibit "F".

7. Since the actions arise out of the same accident and involve common questions of law and fact, it is respectfully requested that a joint trial of the above actions be granted to avoid a multiplicity of lawsuits and to save considerable time and expense of this Honorable Court.
8. There has been no prior application for the relief requested herein.

WHEREFORE, it is respectfully requested that the within Motion for be granted in its entirety and a joint trial ordered for all actions and for such other and further relief as to this Court may deem just and proper.

DATED: Westbury, New York
May 20, 2008



Dean A. Barbakoff, Esq.
KAY & GRAY

Party & Relation to Action	Nature of Action	Position and Identification of Vehicle	Date Action Commenced	Date Issue Joined
Iris Leviten ACTION 1- PLAINTIFF ACTION 2- OUR CLIENT, DEFENDANT ACTION 3- DEFENDANT	Personal injury, negligence	Allegedly ran red light and struck city sanitation truck.	ACTION 1: 6/1/07 ACTION 2: 12/27/07 ACTION 3: 2/11/08	ACTION 1: 9/17/07 ACTION 2: 3/4/08 ACTION 3: 5/6/08
Anthony DiGirolamo ACTION 2- CO-DEFENDANT ACTION 3- PLAINTIFF	Personal injury	Driver of sanitation truck		
New York City Dep't of Sanitation, The City of New York ACTION 2- CO-DEFENDANT		Owner of sanitation truck		
Michael Doukas ACTION 2- PLAINTIFF	Personal injury	Passenger in sanitation truck		
Lexus, A Division of Toyota Motor Sales USA, Inc., Estree, Inc., d/b/a Lexus of Westport, and Metro Auto Leasing, Inc., d/b/a The Automall ACTION 1- DEFENDANTS		Manufacturer/lessor of client's vehicle.		

Exhibit “A”

Previously Served

Additional copy will be supplied upon request.

Exhibit “B”

Previously Served

Additional copy will be supplied upon request.

Exhibit “C”

Previously Served

Additional copy will be supplied upon request.

Exhibit “D”

Previously Served

Additional copy will be supplied upon request.

Exhibit “E”

Previously Served

Additional copy will be supplied upon request.

Exhibit “F”

Previously Served

Additional copy will be supplied upon request.

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

FILE COPY

IRIS LEVITEN,

X
RECEIVED
MAY 27 2008
LEGAL DEPT.

Index No. 107681/07

Plaintiff,

-against-

Notice of Substitution
of Counsel

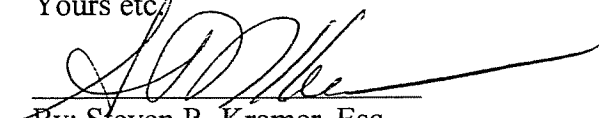
LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.

-----X-----
PLEASE TAKE NOTICE that, ECKERT SEAMANS CHERIN & MELLOTT, LLC.,
10 Bank Street, Suite 1061, White Plains, New York, (914) 949-2909, has been, pursuant to a
duly executed consent to change attorney form (attached as Exhibit "A"), substituted as attorneys
of record for defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION
OF TOYOTA MOTORS SALES, U.S.A., INC.

Dated: White Plains, New York
May 19, 2008

Yours etc



By: Steven R. Kramer, Esq.
Eckert Seamans Cherin & Meilott, LLC.
Attorneys for Defendant
Toyota Motor Sales, U.S.A., Inc., s/h/a Lexus, a
Division of Toyota Motors Sales, U.S.A.,
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
(914) 949-5424 (FAX)

To: GAIR, GAIR CONASON
STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005
212-943-1090

AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant Estree, Inc.
d/b/a Lexus of Westport
123 William Street
New York, New York 10038
212-513-7788

STEIN RISO MANTEL LLP
Attorneys for Defendant Metro Auto Leasing, Inc.
d/b/a The Automall
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
212-599-1515

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

- against -

**CONSENT TO CHANGE
ATTORNEY**

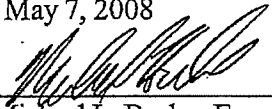
LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
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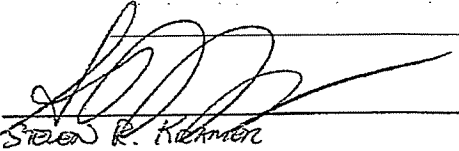
Index No.: 107681/07

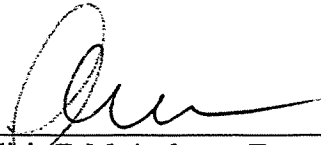
Defendants.
-----X

IT IS HEREBY CONSENTED that the law firm of ECKERT, SEAMANS, CHERIN,
AND MELLOTT, INC., with offices located at 10 Bank Street, Suite 1061, White Plains, NY
10606, be substituted as attorneys of record for the defendant, TOYOTA MOTOR SALES,
U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA MOTOR SALES, U.S.A., INC. in
the above entitled action in place and stead of AARONSON RAPPAPORT FEINSTEIN &
DEUTSCH, LLP, with offices located at 757 Third Avenue, New York, New York 10017, as of
the date hereof, and that the substitution is effective without further notice.

Dated: New York, New York
May 7, 2008

By: 
Michael L. Burke, Esq.
AARONSON RAPPAPORT
FEINSTEIN & DEUTSCH, LLP
Out-Going Counsel
757 Third Avenue
New York, NY 10017
212-593-6700

By: 
Steven R. Kiehm
ECKERT, SEAMANS, CHERIN, AND
MELLOTT, INC.
In-Coming Counsel
10 Bank Street, Suite 1061,
White Plains, NY 10606
914-949-2909



By: Albia T. McAndrews, Esq.
Managing Counsel
TOYOTA MOTOR SALES, U.S.A.,
INC., S/H/A LEXUS, A DIVISION OF
TOYOTA MOTOR SALES, U.S.A.,
INC.
19001 South Western Avenue
Torrance, CA 90501
310-468-4049

AFFIDAVIT OF SERVICE

STATE OF NEW YORK :
 : ss:
COUNTY OF WESTCHESTER :

Denise Falzerano, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Westchester County, New York.

On May 19, 2008, deponent served the within **Notice of Substitution of Counsel** upon:

GAIR, GAIR CONASON
STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005

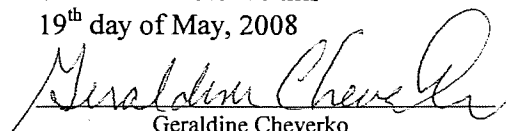
AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant Estree, Inc.
d/b/a Lexus of Westport
123 William Street
New York, New York 10038

STEIN RISO MANTEL LLP
Attorneys for Defendant Metro Auto Leasing, Inc.
d/b/a The Automall
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

- By depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York; and
- By transmitting the papers by electronic means to the telephone numbers listed above, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received.
- By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest designated by the overnight delivery service for overnight delivery


Denise Falzerano

Sworn to before me this
19th day of May, 2008



Geraldine Cheverko
NOTARY PUBLIC, State of New York
No. 02CH61770101
Qualified in Putnam County
Commission Expires 7/2/2011

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index No. 107681/07

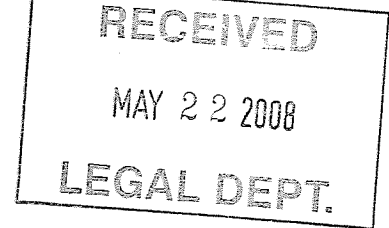
Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

**Notice of Substitution
of Counsel**



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OF TOYOTA MOTORS SALES, U.S.A., INC.

Dated: White Plains, New York
May 19, 2008

Yours etc,


By: Steven R. Kramer, Esq.

Eckert Seamans Cherin & Mellott, LLC.
Attorneys for Defendant
Toyota Motor Sales, U.S.A., Inc., s/h/a Lexus, a
Division of Toyota Motors Sales, U.S.A.,
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
(914) 949-5424 (FAX)

To: GAIR, GAIR CONASON
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Attorneys for Plaintiff
80 Pine Street
New York, New York 10005
212-943-1090

AHMUTY, DEMERS & MCMANUS

Attorneys for Defendant Estree, Inc.

d/b/a Lexus of Westport

123 William Street

New York, New York 10038

212-513-7788

STEIN RISO MANTEL LLP

Attorneys for Defendant Metro Auto Leasing, Inc.

d/b/a The Automall

The Chrysler Building

405 Lexington Avenue

New York, New York 10174

212-599-1515

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

- against -

**CONSENT TO CHANGE
ATTORNEY**

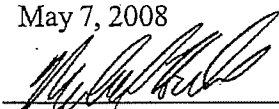
LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING,
INC., d/b/a THE AUTOMALL,


Index No.: 107681/07

Defendants.
-----X

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10606, be substituted as attorneys of record for the defendant, TOYOTA MOTOR SALES,
U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA MOTOR SALES, U.S.A., INC. in
the above entitled action in place and stead of AARONSON RAPPAPORT FEINSTEIN &
DEUTSCH, LLP, with offices located at 757 Third Avenue, New York, New York 10017, as of
the date hereof, and that the substitution is effective without further notice.

Dated: New York, New York
May 7, 2008

By: 
Michael L. Burke, Esq.
AARONSON RAPPAPORT
FEINSTEIN & DEUTSCH, LLP
Out-Going Counsel
757 Third Avenue
New York, NY 10017
212-593-6700

By: 
Steven R. Kiehl
ECKERT, SEAMANS, CHERIN, AND
MELLOTT, INC.
In-Coming Counsel
10 Bank Street, Suite 1061,
White Plains, NY 10606
914-949-2909



By: Alicia T. McAndrews, Esq.
Managing Counsel
TOYOTA MOTOR SALES, U.S.A.,
INC., S/H/A LEXUS, A DIVISION OF
TOYOTA MOTOR SALES, U.S.A.,
INC.
19001 South Western Avenue
Torrance, CA 90501
310-468-4049

AFFIDAVIT OF SERVICE

STATE OF NEW YORK :
 : ss:
COUNTY OF WESTCHESTER :

Denise Falzerano, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Westchester County, New York.

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STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005

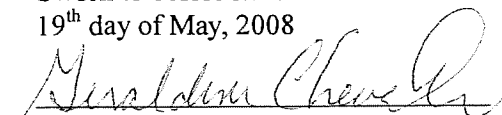
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123 William Street
New York, New York 10038

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The Chrysler Building
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New York, New York 10174

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Denise Falzerano

Sworn to before me this
19th day of May, 2008


Geraldine Chevero

NOTARY PUBLIC, State of New York
No. 02CH61770101
Qualified in Putnam County
Commission Expires 7/2/2011

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

NOTICE OF SUBSTITUTION OF COUNSEL

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

Toyota Motor Sales, U.S.A., Inc., s/h/a Lexus, a

Division of Toyota Motors Sales, U.S.A.,

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

- against -

**CONSENT TO CHANGE
ATTORNEY**

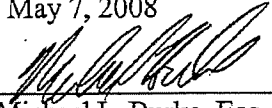
LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING,
INC., d/b/a THE AUTOMALL,

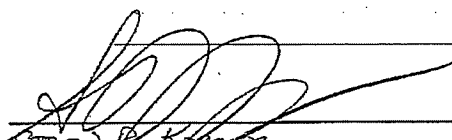
Index No.: 107681/07

Defendants.
-----X

IT IS HEREBY CONSENTED that the law firm of ECKERT, SEAMANS, CHERIN,
AND MELLOTT, INC., with offices located at 10 Bank Street, Suite 1061, White Plains, NY
10606, be substituted as attorneys of record for the defendant, TOYOTA MOTOR SALES,
U.S.A., INC., S/H/A LEXUS, A DIVISION OF TOYOTA MOTOR SALES, U.S.A., INC. in
the above entitled action in place and stead of AARONSON RAPPAPORT FEINSTEIN &
DEUTSCH, LLP, with offices located at 757 Third Avenue, New York, New York 10017, as of
the date hereof, and that the substitution is effective without further notice.

Dated: New York, New York
May 7, 2008


By: Michael L. Burke, Esq.
AARONSON RAPPAPORT
FEINSTEIN & DEUTSCH, LLP
Out-Going Counsel
757 Third Avenue
New York, NY 10017
212-593-6700


By: Steven R. Keenan
ECKERT, SEAMANS, CHERIN, AND
MELLOTT, INC.
In-Coming Counsel
10 Bank Street, Suite 1061,
White Plains, NY 10606
914-949-2909



By: Alicia T. McAndrews, Esq.
Managing Counsel
TOYOTA MOTOR SALES, U.S.A.,
INC., S/H/A LEXUS, A DIVISION OF
TOYOTA MOTOR SALES, U.S.A.,
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19001 South Western Avenue
Torrance, CA 90501
310-468-4049

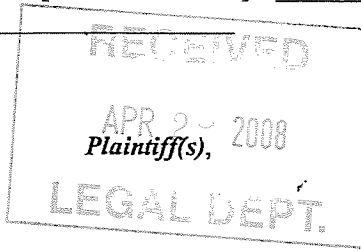
SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

INDIVIDUAL ASSIGNMENT PART [OR JUSTICE]

Iris Leviten

- against -

Lexus, et. al.



Index No. 107681 / 107

DCM Track complex

PRELIMINARY CONFERENCE ORDER

Defendant(s).

(202.8, 202.12 and 202.19 of the Uniform Rules)

APPEARANCES

Plaintiff(s): Diana Carnemolla for Gair, Gair

Defendant(s): TMS d/b/a Lexus by Ben Careathers of Argonson, Rappaport... METRO AUTO Leasing, INC. by Edward HANSON Stein RISA MANTEL, LLP

It is hereby ORDERED that disclosure shall proceed as follows:

(1) Insurance Coverage: primary excess or personal affidavits of none; If not already provided, shall be furnished by all OS on or before May 10, 2008.

(2) Bill of Particulars:

- (a) Demand for a bill of particulars shall be served by As on or before 5/15/08.
(b) Bill of particulars shall be served by on or before
(c) A supplemental bill of particulars shall be served by as to Items on or before

(3) Medical Reports and Authorizations:

Shall be served as follows: of all medical providers for injuries claimed herein; Medical insurance and... by May 9, 2008.

(4) Physical Examination:

- (a) Examination of TT shall be held within 45 days of completion of TT's deposition.
(b) A copy of the physician's report shall be furnished to plaintiff within 45 days of the examination.

(5) Depositions: Depositions of Plaintiff(s) Defendant(s) All Parties shall be held

TT to be deposed on or before 7/15/08.
TMS to be deposed on or before 8/10/08.
Lexus of Westport on or before 8/31/08.
Metro Auto Leasing on or before 9/10/08.

(6) Other Disclosure:

- (a) All parties, on or before 5/15/08, shall exchange names and addresses of all eye witnesses and notice witnesses, statements of opposing parties, and photographs, or, if none, provide an affirmation to that effect.
(b) Authorization for plaintiff(s)' employment records for the period 2004 - present (if claimed, see additional directives) shall be furnished on or before May 9, 2008.
(c) Demand for discovery and inspection shall be served by on or before. The items sought shall be produced to the extent not objected to, and objections, if any, shall be stated on or before.
(d) Other [interrogatories, etc.]

PRELIMINARY CONFERENCE ORDER

X. ADDITIONAL DIRECTIVES:

- ① All parties to conduct vehicle inspections of the vehicles involved in this accident on notice to all parties. ~~(scribble)~~
- ② All parties to exchange inspection [vehicle + scene] photographs and videotapes by May 15, 2008.
- ③ All parties to exchange sales/lease documents, repair, maintenance and modification charges made to the vehicle documents, if any, by May 15, 2008.
- ④ TT to provide current location of the TT's vehicle by May 15, 2008.
- ⑤ TT to ~~provide~~ ^{respond to} ~~request to~~ ^{respond to} TMS demand #5 [provide what the feasible safer alternative design is and how the floor mat should have been anchored] and # 10 [what the specific warning language should have been and where it should have been posted] by May 15, 2008.

Plaintiff shall notify Δ s w/in 30 days if she intends to claim lost wages and, if so, she shall serve Δ s for ~~her~~ this claim.

Δ s shall respond to all demands served by TT including demands dated 11/28/07, 2/28/08, 4/4/08 & 4/11/08 w/in 30 days.

~~The inspection of vehicle w/in TT's control shall be conducted after Δ s have paid their respective shares for storage of said vehicle.~~

Plaintiff ~~respond~~ shall respond to Δ s request for Δ s to pharmacy, S.S.T. & disability records w/in 30 days.

X. ADDITIONAL DIRECTIVES

(7) End Date for All Disclosure: November 7, 2008

(8) Impleader: Shall be completed on or before 45 days of completion of all EBT5

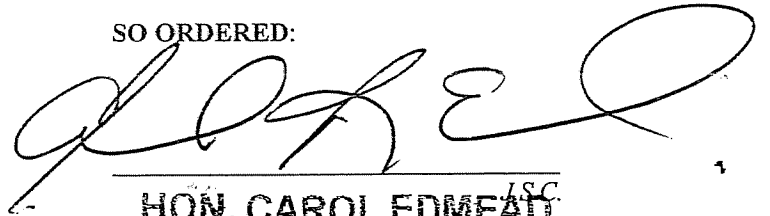
(9) Compliance Conference: Shall be held on December 2, 2008 @ 3 PM

(10) Motions: Any dispositive motion(s) shall be made on or before 60 days of the NCI

(11) Note of Issue: Plaintiff shall file a note of issue/certificate of readiness on or before December 16, 2008. A copy of this order, an affirmation stating that the terms of the order have been complied with, and an affidavit of service of the affirmation and note of issue shall be served and filed with the note of issue on or before said date.

FAILURE TO COMPLY WITH ANY OF THESE DIRECTIVES MAY RESULT IN THE IMPOSITION OF COSTS OR SANCTIONS OR OTHER ACTION AUTHORIZED BY LAW.

SO ORDERED:



HON. CAROL EDM^{J.S.C.}EAD

Dated:

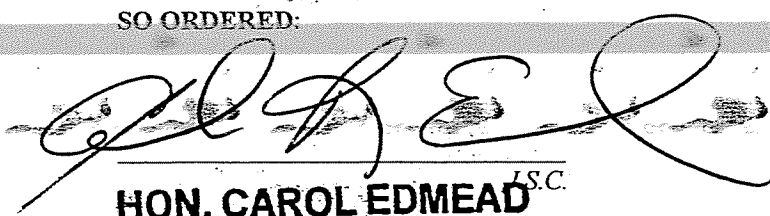
ADDITIONAL DIRECTIVES

In addition to the directives set forth above, it is further ORDERED as follows:

provide a response to ~~plaintiff's~~ ITS demand for All documents, customer complaints, memos, relating to the recall for the car mats w/in 30 days.

Dated:

SO ORDERED:



HON. CAROL EDM^{J.S.C.}EAD

Supreme Court of the State of New York
New York County Courthouse
60 Centre Street
New York, New York 10007-1474

P

0107681/2007

For Defendant

Mar 25, 2008

b/c

CASE OF LEVITTEN, IRIS
V LEXUS

RECEIVED
APR 23 2008
LEGAL DEPT.

Preliminary Conference: A preliminary conference will be held before the Hon. Carol R. Edmead, in Part 35, on April 15, 2008, at 2:15 p.m., located at 60 Centre St., New York, New York, 10007, Room 438.

ONLY COUNSEL FULLY FAMILIAR WITH AND AUTHORIZED TO SETTLE, STIPULATE, OR DISPOSE OF ACTIONS SHALL APPEAR AT THE CONFERENCE.

Mandatory Notification: The party who receives a copy of this notice shall transmit a copy to counsel for all parties who have appeared in the case and to all self-represented litigants by mail or by electronic means and bring proof of such notification to said conference.

Additionally, (if applicable depending on type of action and) if not previously furnished, the following shall be provided in accordance with the deadlines set forth below.

- (1) **Bill of Particulars/Interrogatories:** A demand shall be served by April 8, 2008. A bill(s) shall be served by April 15, 2008.
- (2) **Insurance Information:** All parties shall exchange insurance and coverage information by April 22, 2008.
- (3) **Authorization** Authorization for medical records and for employment records for two years prior to the accident shall be served by April 22, 2008.

Failure to comply with the terms of this notice may result in the imposition of sanctions!

NO ADJOURNMENTS WILL BE GRANTED WITHOUT PRIOR AUTHORIZATION BY THE COURT

If the matter has been resolved, complete the appropriate section below and return within five days by fax to Trial Support Office (212) 374-3282; Att: Darlene Massaria, or email to DMMASSARI@courts.state.ny.us

THIS MATTER HAS BEEN RESOLVED IN THE FOLLOWING MANNER:

SIGNATURE: _____ For Defendant

PRINT NAME: _____ (PURSUANT TO [22 NYCRR]-130-1.1)

FAX: _____ E-MAIL ADDRESS: _____

U.S. Pat. no. 6,095,107
FOR ORDERS PLEASE CALL FIRST AMERICAN BUSINESS PRODUCTS • 631-366-3737



CORPORATION SERVICE COMPANY

LEGAL SERVICES

JAN - 9 2008

GROUP RECEIVED

MIW / ALL

Transmittal Number: 5528417

Date Processed: 01/08/2008

Notice of Service of Process

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

Copy of transmittal only provided to: Dorothy Sutton

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

Entity Served: Lexus, a division of Toyota Motor Sales USA, Inc.

Title of Action: Iris Leviten vs. Lexus, a division of Toyota Motor Sales USA, Inc.

Document(s) Type: Answer

Nature of Action: Personal Injury

Court: New York Supreme Court, New York

Case Number: 107681-2007

Jurisdiction Served: New York

Date Served on CSC: 01/07/2008

Answer or Appearance Due: Other/NA

Originally Served On: CSC

How Served: Regular Mail

Sender Information: Gerard A. Riso
212-599-1515

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TOY-RQ-05E-00002933

3. Denies the allegations contained in paragraphs 19, 21, 22 and 23 of the verified complaint.

RESPONSE TO THE SECOND CAUSE OF ACTION

4. In response to Paragraph 25 of the verified complaint, repeats and realleges paragraphs 1 to 3 of this Answer.

5. Denies the allegations contained in paragraphs 26, 27, 28, 29, 30, 31 and 32 of the verified complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the verified complaint.

RESPONSE TO THE THIRD CAUSE OF ACTION

7. In response to Paragraph 34 of the verified complaint, repeats and realleges paragraphs 1 to 6 of this Answer.

8. Denies the allegations contained in paragraphs 35, 36 and 37 of the verified complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the verified complaint.

FIRST AFFIRMATIVE DEFENSE

10. Plaintiff has failed to mitigate, minimize or avoid the damage about which she now complains.

SECOND AFFIRMATIVE DEFENSE

11. The verified complaint fails to state a claim upon which relief may be granted against the answering defendant.

THIRD AFFIRMATIVE DEFENSE

12. The injuries alleged to have been suffered by the plaintiff Iris Leviten were caused or contributed to or by the culpable conduct including contributory negligence, assumption of the risk and/or product misuse of persons over whom the answering defendant had no authority or control.

FOURTH AFFIRMATIVE DEFENSE

13. Pursuant to CPLR Article 16, the liability of the answering defendant to the plaintiff for non-economic loss shall not exceed the equitable share of this defendant determined in accordance with the relative culpability of each person/party causing or contributing to the total liability for non-economic loss.

FIFTH AFFIRMATIVE DEFENSE

14. Any recovery by plaintiff must be reduced by the amounts paid or reimbursed by collateral sources in accordance with CPLR § 4545.

SIXTH AFFIRMATIVE DEFENSE

15. Plaintiff's action against Defendant Metro Auto Leasing, Inc. is subject to, and limited by, the provisions of Articles 14 and 14-A of the CPLR and § 15-108 of the GOL of New York.

SEVENTH AFFIRMATIVE DEFENSE

16. Upon information and belief, any and all risks, hazards and dangers were open, obvious and apparent, natural and inherent and know to Plaintiff and Plaintiff assumed all risks.

EIGHTH AFFIRMATIVE DEFENSE

17. Defendant Metro Auto Leasing, Inc. had no actual or constructive notice of any alleged defective and/or dangerous condition.

FIRST CROSS-CLAIM

18. If plaintiff recovers against the answering defendant, then the answering defendant will be entitled to an apportionment of responsibility for damages between and among the parties to this action and will be entitled to recover from each other party for its/their proportional share commensurate with any judgment that may be awarded to plaintiff.

SECOND CROSS-CLAIM

19. If plaintiff recovers against the answering defendant then the answering defendant will be entitled to be indemnified and to recover the full amount of any judgment from the other defendants herein.

WHEREFORE, Defendant Metro Auto Leasing, Inc. demands judgment dismissing the verified complaint; for the costs, fees, expenses and disbursements incurred herein, and in the event judgment or settlement is recovered herein against Defendant Metro Auto Leasing, Inc. Defendant Metro Auto Leasing, Inc. demands judgment on its cross-claims; and for such other and further relief in favor of Defendant Metro Auto Leasing, Inc. as is just and proper.

Dated: January 4, 2008
New York, New York

STEIN RISO MANTEL, LLP

By: 

Gerard A. Riso

The Chrysler Building
405 Lexington Avenue
New York, New York 10174
212-599-1515
*Attorneys for Defendant Metro
Auto Leasing, Inc.*

To: Gair, Gair, Conason, Steigman & Mackauf
80 Pine Street
New York, New York 10005
Attorneys for Plaintiff

Estree/Lexus of Westport
1317 Post Road
Westport, CT 06880

Lexus, A Division of Toyota
Motor Sales USA
80 State Street
Albany, NY 12106

Index No. 107681-2007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS KEVITEN,

Plaintiff,

- against -

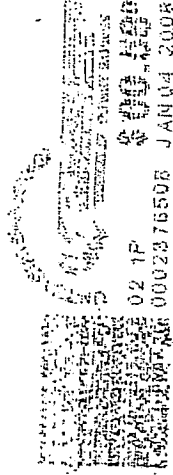
LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL

Defendants.

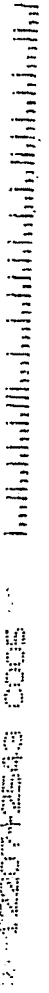
ANSWER AND CROSS CLAIMS

STEIN RISO MANTEL LLP
Attorneys for Metro Auto Leasing, Inc.
The Chrysler Building
405 Lexington Avenue, 42nd Floor
New York, New York 10174
(212) 599-1515

STEIN RISO MANTEL, LLP
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NEW YORK 10174



Lexus, A Division of Toyota
Motor Sales USA
80 State Street
Albany, NY 12106



APR 28 2008
LEGAL DEPT.

Gair, Gair, Conason, Steigman & Mackauf
80 Pine Street
New York, New York 10005-1768
212-943-1090

C O V E R

S H E E T

FAX

To: Aaronson Rappaport Feinstein & Deutsch, LLP
Jay A. Rappaport, Esq.
Fax #: 212-593-6970
Subject: Leviten v. Lexus, et al.
Date: June 25, 2007
Pages: 2, including this cover sheet.

COMMENTS:

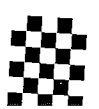
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From the desk of...

Judith Fleming
Legal Secretary
Gair, Gair, Conason, Steigman &
Mackauf
80 Pine Street
New York, New York 10005

212-943-1090
Fax: 212-425-7513

EMAIL: HSH@GAI RGAI R.COM



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA, INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.

**STIPULATION EXTENDING
TIME TO ANSWER**

Index No.: 107681/07

IT IS HEREBY STIPULATED AND AGREED that the defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC., may have an extension of time within which to ~~appear~~ answer ~~and/or answer to~~ the Summons and Complaint served in the above-entitled lawsuit up to and including September 18, 2007.

DATED: New York, New York
June 21, 2007

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF

BY: HOWARD HIRSCHENHORN, ESQ.
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street
New York, New York 10005-1768
Tel.: (212) 943-1090

AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP

BY: JAY A. RAPPAPORT, ESQ.
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC., ESTREE,
INC., d/b/a LEXUS OF WESTPORT,
and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

VERIFIED ANSWER AND VARIOUS DISCOVERY DEMANDS

AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP

Defendant

TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.

Office and Post Address

757 Third Avenue

New York, NY 10017

212-593-6700

To: ALL PARTIES

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

MERLINE E. KELLY, being duly sworn, deposes and says: that deponent is not a party to the action, is over 18 years of age and resides in Nassau County, New York.

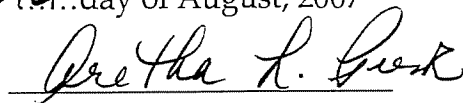
That on the *21st* day of August, 2007, deponent served the within VERIFIED ANSWER, TOYOTA MOTOR SALES, U.S.A., INC.'S FIRST SET OF INTERROGATORIES TO PLAINTIFF, , DEMAND FOR COLLATERAL SOURCE INFORMATION, NOTICE FOR DISCOVERY & INSPECTION, DEMAND FOR PHYSICAL EXAMINATION, NOTICE OF DEPOSITION, NOTICE (FACSIMILE), DEMAND FOR COLLATERAL SOURCE INFORMATION, DEMAND FOR EXPERT WITNESS INFORMATION, DEMAND FOR INDEX NUMBER RECEIPT, COMBINED DEMAND NOTICE FOR DISCOVERY & INSPECTION, DEMAND FOR TAX RETURNS AND EMPLOYMENT RECORDS AND DEMAND FOR AUTHORIZATIONS FOR HOSPITAL AND PHYSICIAN'S RECORDS ON BEHALF OF DEFENDANT, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. upon:

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768

at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

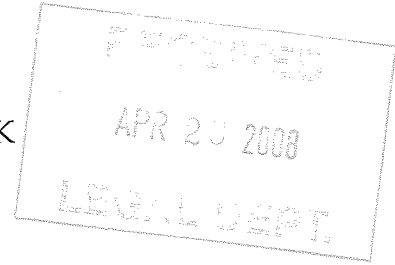

MERLINE E. KELLY

Sworn to before me this
21st day of August, 2007


Notary Public

ARETHA L. PIERRE
Notary Public, State Of New York
No. 01PI5039425
Certificate Filed in Westchester County
Commission Expires on Feb. 21, 2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK



-----x
IRIS LEVITEN,

Plaintiff,

VERIFIED ANSWER

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

Defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA., INC., by its attorneys, AARONSON RAPPAPORT
FEINSTEIN & DEUTSCH, LLP as and for its Verified Answer to plaintiff's Verified
Complaint, respectfully shows to this Court and alleges upon information and belief:

ANSWERING AS AND FOR A FIRST CAUSE OF ACTION

FIRST: Denies the allegations contained in Paragraphs "1", "2" and "3" in
the form alleged, except admit that TOYOTA MOTOR SALES, U.S.A., INC., s/h/a
LEXUS, A DIVISION OF TOYOTA MOTOR SALES U.S.A., INC. has its principal offices
in the State of California and is licensed to do business in the State of New York.

SECOND: Denies the allegations contained in Paragraph "4" in the form
alleged.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "5", "6", "7", "8", "9", "16", "17", "18", "19" and "20".

FOURTH: Denies the allegations contained in Paragraphs "10", "11" and "12" in the form alleged, except admit that TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. imported and distributed a Lexus Model Number ES 350, motor vehicle bearing Vehicle Identification Number JTHBJ46G272071246.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "13", "14" and "15" and respectfully refer all questions of law and fact to the this Honorable Court.

SIXTH: Denies the allegations contained in Paragraphs "21", "22", "23" and "24".

ANSWERING AS AND FOR A SECOND CAUSE OF ACTION

SEVENTH: In response to Paragraph "25", repeats each admission or denial contained in Paragraphs "FIRST" through "SIXTH" herein as though fully set forth hereat.

EIGHTH: Denies the allegations contained in Paragraph "26", except admits that the Lexus ES350 sedan motor vehicle, bearing the New York license plate number DWW7794 and vehicle identification number JTHBJ46G272071246 was safe, proper, merchantable and fit for the foreseeable and intended uses for which it was designed, manufactured, assembled, inspected, tested, repaired, services, maintained, labeled,

distributed, sold and purchased and refers to the warranties contained in the Owner's Manual.

NINTH: Denies the allegations contained in Paragraph "27" in the form alleged, except admits that the Lexus ES350 sedan motor vehicle, bearing the New York State license plate number DWW7794 and Vehicle Identification Number JTHBJ46G272071246 was safe, proper, merchantable and fit for its intended uses.

TENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "28".

ELEVENTH: Denies the allegations contained in Paragraphs "29", "30", "31", "32" and "33".

ANSWERING AS AND FOR A THIRD CAUSE OF ACTION

TWELFTH: In response to Paragraph "34", repeats each admission or denial contained in Paragraphs "FIRST" through "ELEVENTH" herein as though fully set forth hereat.

THIRTEENTH: Denies the allegations contained in Paragraphs "35", "36", "37" and "38".

ANSWERING AS AND FOR A SECOND AFFIRMATIVE DEFENSE.

FOURTEENTH: Pursuant to CPLR Article 16, the liability, if any, of the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. for non-economic loss shall not exceed its equitable shares of liability.

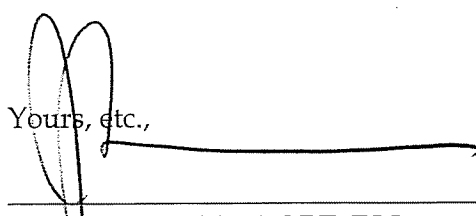
ANSWERING AS AND FOR A SECOND AFFIRMATIVE DEFENSE.

FIFTEENTH: If the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. should be found negligent, which negligence is denied, recovery on the claim set forth in the Complaint is diminished by plaintiff's negligence in failing to exercise due and proper care considering the circumstances existing at the time of the incident in issue, which negligence was greater than the negligence, if any, of the answering defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. pursuant to the provisions of the Comparative Negligence Act.

WHEREFORE, defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. demands judgment dismissing the Complaint, together with the costs and disbursements of the within action.

DATED: New York, New York
August 13, 2007

Yours, etc.,


BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
 : SS:
COUNTY OF NEW YORK)

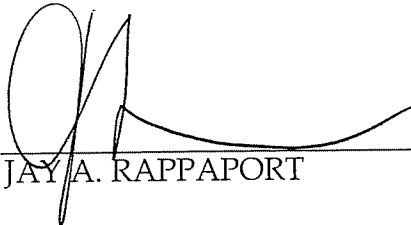
JAY A. RAPPAPORT, being duly sworn, deposes and says:

That I am a member in the firm of attorneys representing the defendant, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.

That I have read the attached ANSWER and the same is true to my own belief, except as to matters alleged on information and belief, and as to those matters, I believe them to be true to the best of my knowledge.

My sources of information are a claims file containing statements, reports and records of investigation, investigators, parties and witnesses, with which I am fully familiar.

That this verification is made by me because my client does not reside within the county where I maintain my office.



JAY A. RAPPAPORT

Sworn to before me this
13th day of August, 2007.



Notary Public

Mertine Kelly
Notary Public, State of New York
No. 01KE5068190
Qualified in Queens County
Commission Expires October 28, 2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

NOTICE OF DEPOSITION

Index No.: 107681/07

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that we will take the deposition of the following parties or persons, before a Notary Public not affiliated with any of the parties or their attorneys, on all relevant and material issues, as authorized by Article 31 of the CPLR:

Plaintiff - IRIS LEVITEN

DATE: November 20, 2007

TIME: 10:00 A.M.

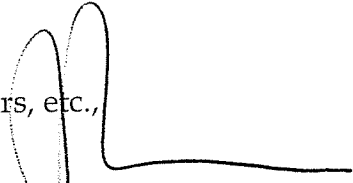
PLACE: AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP
757 Third Avenue
New York, New York 10017

PLEASE TAKE FURTHER NOTICE, that the persons to be examined are required to produce all books, records and papers in their custody and possession that

may be relevant to the issues herein.

DATED: New York, New York
August 13, 2007

Yours, etc.,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

**TOYOTA MOTOR SALES,
U.S.A., INC.'S FIRST SET
OF INTERROGATORIES
TO PLAINTIFF**

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a LEXUS
OF WESTPORT, and METRO AUTO LEASING,
INC., d/b/a THE AUTOMALL,

Index No.: 107681/07

Defendants.
-----X

SIR/MADAM:

PLEASE TAKE NOTICE, that defendant, **TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.** hereby demands that plaintiff serve on the undersigned within twenty (20) days from the date of service hereof, Response to Interrogatories with respect to the following matters concerning the allegations in the complaint against the above named defendant:

1. State the (a) date and place of birth of plaintiff; (b) residence address of plaintiff at the time this action was commenced; (c) residence address of plaintiff's at the time of the alleged negligence;
2. Set forth the exact date and time of the alleged automobile accident, and a description of how the accident occurred.
3. The specific location of the act or occurrence with reference to addresses, landmarks, or other identifying points of reference, including the direction and distance there from.
4. Set forth every fact which the plaintiff will offer to prove at the time of trial in support of the claim that the **TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.** was negligent.
5. If the plaintiff is claiming a manufacturing or design defect, set forth the following:
 - (a) identify the alleged manufacturing defect with particularity; and
 - (b) set forth the manner in which plaintiff claims the product was negligently

manufactured; and

- (c) identify the alleged design defect with particularity; and
- (d) set forth the manner in which plaintiff claims the product was negligently designed; and
- (e) identify and particularize each and every alleged safer alternative design; and
- (f) a specific statement as to the changes in design alleged that support a claim for strict products liability;
- (g) the identification by make, serial number, etc., of any similar product whose design plaintiff, or others, allege that **TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.** should have followed giving rise to a cause of action for design defect.
- (h) particularize how each safer alternative design was both functionable and still cost efficient; and
- (i) identify how the vehicle was inherently dangerous.

6. If plaintiff is claiming a breach of a written express warranty attach hereto a true copy of each.

7. If any such express warranty was oral, set forth:

- (a) the date on which each such express warranty was made;
- (b) the place where each such express warranty was made;
- (c) by whom each such express warranty was made;
- (d) to whom each such express warranty was made;
- (e) the substance of each such express warranty.

8. Set forth each and every implied warranty allegedly made by **TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.** with respect to the subject vehicle and alleged defective component part in question. If any such implied warranty was in writing, attach hereto a true copy of each.

9. If any such implied warranty was oral, set forth:

- (a) the date on which each such implied warranty was made;

- (b) the place where each such implied warranty was made;
- (c) by whom each such implied warranty was made;
- (d) to whom each such implied warranty was made;
- (e) the substance of each such implied warranty.

10. Particularize the claim, if made, that inadequate warnings and instructions were made by **TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.** identifying:

- (a) the warnings and instructions given (and providing copies of any written documents);
- (b) how they were inadequate;
- (c) identify each warning and instruction which is claimed should have been given.
- (d) state where such warnings and instructions should have been posted.

11. Identify all owners and drivers of the subject vehicle and include their current address and relationship to the plaintiff.

- (a) State how many times each person drove the vehicle at issue.
- (b) Did any of the drivers of the vehicle ever experience any problems with the vehicle?
 - 1. If the answer to the above is "yes", describe the problem in detail, how many times it occurred, where it occurred, the time it occurred, the speed of the vehicle at the time of the occurrence and identities of all witnesses to each occurrence.
 - 2. Were any of these incidents reported to any agent or employee of the defendant?
 - 3. If "yes" identify each employee and/or agent of the defendant so informed, what they were told, when they were informed, how they were informed and produce all documentation relative to this.

12. Identify the present location of the vehicle.

- (a) Who is the current owner of the vehicle?
- (b) Were any repairs made to the vehicle since the incident in question?
 - 1. If so, describe what repairs were made.

2. Where was each repair made.
 3. Produce all documentation referable to such repairs.
 4. State how much the repair work cost.
13. Provide the current address of each and every plaintiff.
 - (a) Identify all individuals who currently reside with each plaintiff; their relationship to the plaintiff and their age.
 14. Provide the address for each plaintiff at the time of the incident.
 - (a) Identify all individuals who resided with each plaintiff at that time; their relationship to the plaintiff and their age at the time.
 15. Provide all other addresses each plaintiff may have resided at between the date of the occurrence and their current resident.
 - (a) Identify all individuals who resided with each plaintiff at that time; their relationship to the plaintiff and their age at the time.
 16. Identify all jobs each plaintiff has held since 2000 and provide the following:
 - (a) The address of each job.
 - (b) The name of plaintiff's immediate supervisor;
 - (c) The length of time plaintiff worked at each job.
 - (d) The positions held by plaintiff.
 - (e) The job duties for each position held by plaintiff.
 - (f) Plaintiff's yearly salary at each job.
 - (g) The reason plaintiff left each job.
 17. On the date of the incident, state where the plaintiff was going?
 - (a) State where they were coming from?
 - (b) State the speed of the vehicle at the time the plaintiff first noticed a problem with the vehicle.
 - (c) State the speed limit in existence on the road the plaintiff's vehicle was

traveling on at the time of the incident.

- (d) How long had plaintiff been driving for prior to the incident occurring?
- (e) Describe the traffic conditions at the time of the incident?
- (f) Describe the road conditions at the time of the incident.

18. Describe how the vehicle's floor mats were defectively designed identifying each component which is claimed is defective.

- (a) Identify how each component should have been designed.
- (b) State the cost for each alternatively designed component.

19. Describe how the alleged defective design of the floor mats or any other alleged defective part(s) caused and/or contributed to this incident.

- (a) State how the safer alternative design would have prevented this incident.

20. Describe how the alleged design defect caused and/or contributed to this incident.

- (a) State how the safer alternative design would have prevented this incident.

21. Describe how the assembly of the vehicle was negligent.

- (a) State how the vehicle should have been assembled.

22. State how the assembly of this vehicle caused or contributed to this accident.

- (a) State how the better assembly would have prevented this incident.

23. Describe how the inspection of the vehicle was negligent.

24. State how the vehicle should have been inspected.

25. Describe how the labeling of the vehicle was defective.

- (a) Identify how the labeling for this vehicle should have been given.

26. Describe how the labeling caused and/or contributed to this incident.

- (a) State how the appropriate labeling would have prevented this incident.

27. Describe how the service of this vehicle was negligent.

28. State how the vehicle should have been serviced.

29. State how the service of this vehicle caused or contributed to this accident.

30. Describe how the maintenance of this vehicle was negligent.

(a) State how the vehicle should have been maintained.

31. State how the maintenance of this vehicle caused or contributed to this accident.

32. Was the subject vehicle in any prior accidents?

(a) If yes, please provide the following for each accident.

i. description of the accident;

ii. all individuals present and included in the accident;

iii. location of the accident;

iv. describe all repairs made to the vehicle as a result of the accident;

v. product copies of all documentation regarding any repairs;

vi. date and time of the accident.

33. Were any modifications made or added to the vehicle at any time prior to the date of the subject incident?

(a) If "yes", state which modifications were made and by who providing a complete name and address.

(b) Produce all documentation regarding the modifications;

(c) State when each modification was made.

34. State where and by whom the vehicle was regularly maintained.

35. If it is alleged the defendant breached or violated any statutes, standards, ordinances, or laws, provide all such statutes, standards ordinances or laws violated and state how they were violated.

36. State if anyone has inspected the vehicle.

(a) If so, provide the date, time and location of each inspection;

(b) Identify every individual who was present for each inspection.

37. Since the accident, state every location the vehicle has been and provide a chain of custody description for the vehicle and any of its component parts.

38. Was anyone utilizing a cell phone inside the vehicle at the time of the incident?

- a. If "yes", identify who was utilizing a cell phone, when in relation to the incident it was in use, provide the cell phone service provider and the cell phone number of the phone in use as well as the identity of the owner of the cell phone.

39. Provide the location of each passenger inside the vehicle just prior to the incident occurring.

40. Set forth whether any repairs or modifications were performed on the vehicle:

- (a) before the date of the accident and provide the identity of the repairman;
- (b) after the accident and provide the identity of the repairman;

41.. Identify by full name and exact location the individual or organization presently in possession, in whole or in part, of the subject vehicle and, if in part, specify the component part(s).

42. If either the subject vehicle or alleged defective part is no longer in plaintiff's actual or constructive possession, set forth:

- (a) the date on which the subject vehicle and/or alleged defective part was last in plaintiff's possession;
- (b) to whom was the subject vehicle and/or alleged defective part was transferred or released;
- (c) the purpose of the transfer or release; and
- (d) whether or not the subject vehicle or alleged defective part was, in whole or in part, destroyed and, if so, the corresponding date of destruction.

43. Set forth the odometer reading on the date of purchase or lease of the subject vehicle and at the time of the accident.

44. Set forth the full caption of each and every lawsuit brought on plaintiff's behalf to recover damages for any connected or aggravated injuries allegedly caused and sustained by reason of the acts of one or more preceding, joint, concurrent and/or succeeding tort feasons, including:

- (a) Court
- (b) Index Number

- (c) Calendar number
- (d) Names and addresses of all litigants
- (e) Names and addresses of all attorneys appearing for litigants.
- (f) Status of lawsuit
 - (1) if noticed for trial, specify the date.
 - (2) if settled, annex a copy of each release delivered indicating the amounts contributed by each defendant.
 - (3) if discontinued without payment, annex a copy of each stipulation so delivered to each defendant.
 - (4) if tried, annex a copy of the judgment with notice of entry
 - (5) if judgment was satisfied, set forth date and amount of payment and annex a copy of satisfaction of judgment.

45. An itemization of all property damage claimed, if any, including the cost of repair or replacement of each item. Include the date of acquisition, state whether the item was acquired used or new and state in purchase price.

46. If it will be claimed that the aforesaid injuries necessitated any special educational, emotional, or vocational training or schooling, set forth the name and address of each organization and the dates.

47. Set forth the full names and addresses of each and every physician from whom the plaintiff has ever received medical treatment with respect to any **neurological vascular, urological, intestinal, orthopedic, or surgical** or related condition for the fifteen (15) years prior to the alleged negligence with dates of treatment.

48. Set forth the full names and addresses of each and every hospital, institution, facility or clinic in which plaintiff has ever received treatment with respect to any **neurological vascular, urological, intestinal, orthopedic, or surgical** or related condition for the fifteen (15) years prior to the alleged negligence with dates of confinement or outpatient treatment.

49. The nature, location, extent and duration of each injury which, it will be claimed was caused by the negligence of this defendant. If any injuries are claimed to be permanent or serious within the meaning of Insurance Law 5102(d), so specify.

50. Set forth the full name and address of each and every privately retained physician from whom medical treatment or consultation was sought by reason of the injuries allegedly sustained.

51. If it will be claimed that the aforesaid injuries necessitated any hospitalization, set forth the name and address of each hospital with dates of confinement or outpatient treatment.

52. If it will be claimed that the aforesaid injuries necessitated treatment at any other institution, set forth the name and address of each institution with dates of confinement.

53. If it will be claimed that the aforesaid injuries necessitated confinement to bed or home, set forth the following:

(a) The dates of confinement to home.

(b) The dates of confinement to bed.

54. If loss of earnings is claimed, set forth the following:

(a) The name and address of claimants' employer at the time of the alleged negligence.

(b) The capacity in which claimants were employed.

(c) Claimants earnings for the year prior to the alleged negligence.

(d) The last date claimants worked prior to the alleged negligence.

(e) The name and address of claimants' present employer.

(f) Loss of earnings claimed.

(g) If the plaintiff was a student, please identify all schools attended and the dates she was unable to attend.

55. If any special damages are claimed, set forth, including but not limited to, the following:

(a) The charges for the above named hospitals, separately listing each hospital bill.

(b) Physicians' charges.

(c) Charges for medicines, itemizing the medicines charged for.

(d) Nursing.

(e) Specify by category and amount any other special damages claimed.

56. Pursuant to CPLR 4545 identify the party who paid the damages claimed in paragraphs above, including the relationship of the injured claimant to that party. If the third party payments were made as a result of reimbursements through an insurance company, set forth the complete name and address of the company, the complete name of the person in whose name the policy is issued.

PLEASE TAKE FURTHER NOTICE, that in the event of the plaintiff's failure to comply with the foregoing Demand for Interrogatories within thirty (30) days, the third-party defendant, **TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC.** will move to preclude the offering of any evidence as to the matters herein demanded and for costs of such motion.

DATED: New York, New York
August 13, 2007

Yours, etc.,

BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street – 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

-against-

**DEMAND PURSUANT
TO CPLR §2103(5)**

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

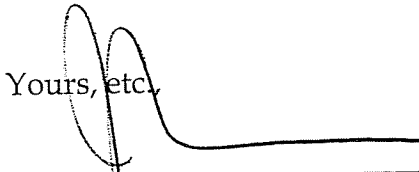
Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that pursuant to CPLR §2103(5), the defendant(s)
object to service of papers via electronic means.

DATED: New York, New York
August 13, 2007

Yours, etc.


BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

**DEMAND FOR COLLATERAL
SOURCE INFORMATION**

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that demand is hereby made upon you pursuant to
CPLR §4545 to produce and permit the undersigned attorneys to inspect and copy the
contents of:

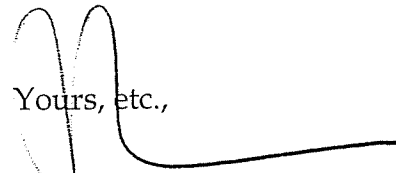
1. Each and every collateral source of payment, including but not limited to
insurance agreements (except life insurance), Social Security (except those benefits
provided under Title XVIII of the Social Security Act), Workers' Compensation or
employee benefit programs (except such collateral sources entitled by law to liens
against any recovery of the plaintiff), and any other collateral source of payment for
past or future costs or expenses alleged to have been incurred by the plaintiff(s) and for
which recovery is sought in the instant action, and

2. A written statement setting forth any and all such collateral sources and their amounts.

3. Provide an authorization to obtain a complete copy of all No-Fault records.

PLEASE TAKE FURTHER NOTICE, that failure to produce said collateral sources of payment at the offices of the undersigned within twenty (20) days from the date herein, will result in a motion for appropriate relief.

DATED: New York, New York
August 13, 2007

Yours, etc.,


BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

**NOTICE FOR DISCOVERY
& INSPECTION**

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.

-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that pursuant to §3012 of the Civil Practice Law and Rules, you are hereby required to furnish the undersigned with the following:

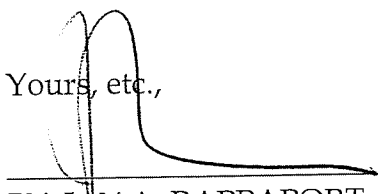
1. Production of the vehicle and all component parts for inspection.
2. Production of the clothes the passenger was wearing at the time of the incident.
3. Production of all photos and videos of the vehicle and the accident scene.
4. Provide authorizations for all EMS, ambulance, fire department and towing companies that responded to the accident.

PLEASE TAKE FURTHER NOTICE, that failure to provide the aforesaid within twenty (20) days after the receipt of this notice, will leave you subject to the

provisions of the CPLR.

DATED: New York, New York
August 13, 2007

Yours, etc.,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

**DEMAND FOR EXPERT
WITNESS INFORMATION**

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that pursuant to CPLR §3101(d), if plaintiff intends to introduce expert testimony at the time of trial of the above captioned action, within thirty (30) days of the date herein, plaintiff is to set forth:

1. The identity of each such expert witness.
2. Set forth the qualifications of each of plaintiffs' medical experts as follows:
 - (a) Identify each medical school each expert attended with corresponding years.
 - (b) Identify each medical institution in which each expert served an internship with corresponding years.
 - (c) Identify each medical institution in which each expert served a residency and, if applicable, the residency of specialization, with corresponding years.
 - (d) Identify each medical institution in which each expert served a fellowship

and, if applicable, the fellowship of specialization, with corresponding years.

- (e) Identify each state in which each expert obtained his/her medical license and the corresponding year(s).
- (f) Identify each specialty in which each expert has been Board Certified and, if applicable, recertified, indicating the corresponding years and the states in which each expert has been so certified.
- (g) Identify each institution in which each expert maintains a teaching position, indicating the expert's actual or corresponding rank.
- (h) Identify the name of each hospital or other medically related facility with which each expert is presently affiliated.

3. The qualifications of each proposed non medical expert, including:

- (a) Identify each college or other educational institution each expert attended, with corresponding years and degrees awarded.
- (b) Identify each state in which each expert was awarded any professional license and the corresponding year(s).
- (c) Identify each certification or other special award reflecting the witness' expertise, organization by whom issued and year in which granted.
- (d) Identify each institution by full name and address in which each expert maintains a teaching position, indicating the actual and corresponding rank.

4. The corresponding subject matter to which each expert witness is expected to testify.

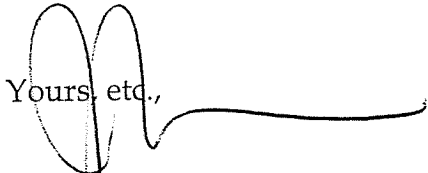
5. The corresponding substance of the facts and the corresponding substance of the opinions to which each expert is expected to testify.

6. A summary of the corresponding grounds for each such expert's testimony.
7. A copy of all reports, visual aids and documents generated and relied upon by the experts.

PLEASE TAKE FURTHER NOTICE, that non-compliance with the instant demand will result in this defendant's objection to and the request for an order precluding plaintiff from introducing, at the time of trial, any expert testimony concerning alleged departures from medical standards of care, proximately caused injuries, or economic damages.

DATED: New York, New York
August 13, 2007

Yours, etc.,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

-against-

**DEMAND FOR
AUTHORIZATIONS
FOR HOSPITAL AND
PHYSICIAN'S RECORDS**

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Index No.: 107681/07

Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that demand is hereby made that you serve upon the undersigned duly executed authorizations for the release of the records pertaining to the care and treatment rendered to the plaintiff in any and all hospitals.

Demand is additionally made that you serve upon the undersigned duly executed authorizations for the release of records of any and all treating physicians.

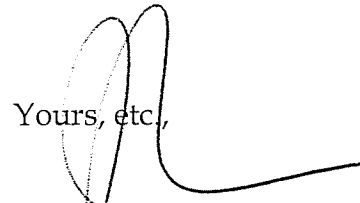
The aforementioned authorizations should include the full name and address of each institution and/or physician and the dates of confinement or treatment and should be in the form attached hereto or other HIPAA compliant form.

PLEASE TAKE FURTHER NOTICE, that failure to comply with this demand will serve as a basis for a motion to preclude the plaintiff upon the trial of this action from offering proof relative to medical damages, if such authorizations are not forthcoming

within twenty (20) days after service of a copy of the within Demand.

DATED: New York, New York
August 13, 2007

Yours, etc.,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

-against-

**COMBINED DEMAND NOTICE
FOR DISCOVERY & INSPECTION**

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

SIR/MADAM:

PLEASE TAKE NOTICE, that pursuant to Article 31 of the CPLR, the undersigned hereby demands that you produce for discovery the following items for inspection and reproduction at the offices of the undersigned within twenty days after your receipt of this demand as to the following:

1. The name and address of each person claimed to be a witness to the following: (a) the occurrence alleged in the plaintiff's complaint; (b) any acts, omissions, or conditions which allegedly caused said occurrence; (c) the nature and duration of any alleged condition which caused said occurrence; (d) any actual notice given to defendants or claimed to be given to defendants. If no such witnesses are known to you, then so state under oath in reply to this demand. The undersigned will object at the time of trial to the testimony of any persons not so identified.

2. Any and all statements made by or taken from the parties represented by the undersigned and/or their agents, servants, and/or employees, now in the possession, custody, or control of your office or the party represented by you. If no such statement is in the possession, custody, or control of your office or the party represented by you, then so state under oath in reply to this demand. The undersigned will object at the trial of this action to the admissibility of any documents not so identified.

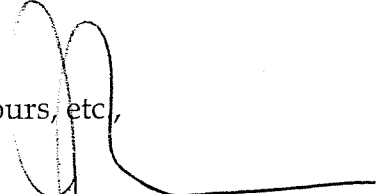
3. Any and all photographs depicting the conditions at the scene of the alleged occurrence. If no such photographs are in the possession, custody, or control of your office or the party represented by you, then so state under oath in reply to this demand. The undersigned will object at the trial of this action to the admissibility of any photographs not so identified.

4. Any and all accident reports made in connection with this incident. If no such accident reports are in the possession, custody, or control of your office or the party represented by you, then so state under oath in reply to this demand. The undersigned will object at the trial of this action to the admissibility of any accident report not so identified.

PLEASE TAKE FURTHER NOTICE, that the foregoing are continuing demands and supplemental responses up to the time of trial are required.

DATED: New York, New York
August 13, 2007

Yours, etc,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

**DEMAND FOR TAX RETURNS
AND EMPLOYMENT RECORDS**

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

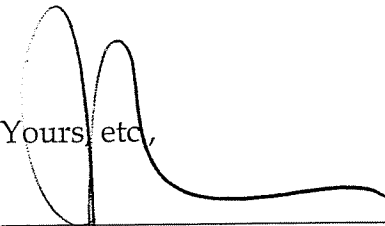
SIR/MADAM:

PLEASE TAKE NOTICE, that pursuant to Rule 34 of the CPLR, you are hereby required to furnish to the undersigned full and complete copies, or, authorizations to obtain full and complete copies of all employment and tax records referable the plaintiff

PLEASE TAKE FURTHER NOTICE, that failure to provide the aforesaid authorizations within twenty (20) days after receipt of this Notice will leave you subject to the provisions of the CPLR.

DATED: New York, New York
August 13, 2007

Yours, etc,



BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

**DEMAND FOR PHYSICAL
EXAMINATION**

-against-

Index No.: 107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
-----x

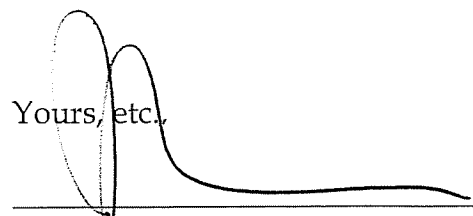
SIR/MADAM:

PLEASE TAKE NOTICE, that pursuant to CPLR 3121 of the Civil Practice Law and Rules, you are hereby required to produce the plaintiff, IRIS LEVITEN, for a physical examination by a physician designated by the defendant herein.

PLEASE TAKE FURTHER NOTICE, that failure to provide the aforesaid within twenty (20) days after receipt of this Notice, will leave you subject to the provisions of the CPLR.

DATED: New York, New York
August 13, 2007

Yours, etc.


BY: JAY A. RAPPAPORT, ESQ.
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF
Attorneys for Plaintiff
Office & P.O. Address
80 Pine Street - 34th Floor
New York, New York 10005-1768
Tel.: (212) 943-1090

①

NEW CASE MATTER

TO: ATM

FR: D. Sutton

RE: Leviten, Iris

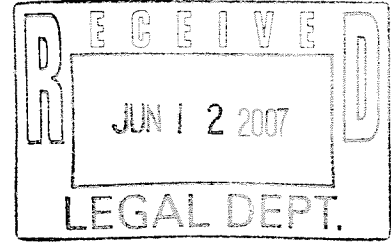
REFERRED TO COUNSEL ON: _____

ANSWER DUE ON: 6/28/07

INITIALS: _____



CORPORATION SERVICE COMPANY



MWM / ALL
Transmittal Number: 5186786
Date Processed: 06/11/2007

Notice of Service of Process

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

Copy of transmittal only provided to: Dorothy Sutton

Entity:	Toyota Motor Sales, U.S.A., Inc. Entity ID Number 0290437
Entity Served:	Lexus. A Division of Toyota Motor Sales USA., Inc.
Title of Action:	Iris Leviten vs. Lexus
Document(s) Type:	Summons/Complaint
Nature of Action:	Personal Injury
Court:	New York Supreme Court, New York
Case Number:	107681/07
Jurisdiction Served:	New York
Date Served on CSC:	06/08/2007
Answer or Appearance Due:	20 Days
Originally Served On:	CSC
How Served:	Personal Service
Plaintiff's Attorney:	Daniel A Gair 212-943-1090

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

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SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

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-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,
-against-

REQUEST FOR
PRODUCTION OF
DOCUMENTS

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

LEGAL SERVICES

JUN - 6 2008

Defendant.
-----X

GROUP RECEIVED

The below named defendant by its attorneys, ECKERT SEAMANS CHERIN & MELLOTT, LLC, hereby requests that all parties, pursuant to Section 3120 of the CPLR, produce the following documents and tangible objects at the offices of ECKERT SEAMANS CHERIN & MELLOTT, LLC, 10 Bank Street, Suite 1061, White Plains, New York, 10606:

DEFINITIONS

- (1) "Documents" is an all-inclusive term referring to any writing and/or recorded or graphic matter, however produced or reproduced. The term documents includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. Documents also include any preliminary notes and drafts of all the foregoing, in whatever form, for example, printed, typed, longhand, shorthand, on paper, paper tape, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form.
- (2) "Concerning" means relating to, referring to, describing, evidencing or constituting.
- (3) "And/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
- (4) "Subject Vehicle" means the 2005 Lexus model number ES 350, bearing vehicle identification number JTHBJ46G272071246 identified in plaintiffs' Complaint.
- (5) "Incident" and "accident" mean the February 18, 2007 incident referred to in plaintiff's

Complaint.

ITEMS TO BE PRODUCED

1. Copies of any and all advertisements or product brochures, in your possession, authored by this answering defendant which you claim that you relied upon.
2. Copies of all invoices, receipts, warranties, or other writings concerning the purchase, ownership, registration, or title of the subject vehicle.
3. Copies of all work orders, receipts, warranties, or other documents concerning the service, repair, or maintenance of the subject vehicle.
4. All documents concerning the towing, storage, and disposition of the subject vehicle subsequent to the accident.
5. Duplicate original copies of any and all photographs, films, or videotapes, which depict or purport to depict the accident scene or any aspect of the accident scene in this case.
6. Duplicate original copies of any and all photographs, films, or videotapes, which depict or purport to the subject vehicle.
7. Duplicate original copies of any and all photographs, films, or videotapes, which depict or purport the other vehicle involved in the accident.
8. Duplicate original copies of any and all photographs, films, or videotapes, in your possession, which depict or purport to depict any aspect of plaintiff's injuries herein.
9. All reports, memos, and/or documentation prepared by any municipal, county, or state law enforcement agency or other agency relating to the subject vehicle or accident.
10. All documents concerning the events which led to the alleged discovery of what you contend are defects in the subject vehicle as described in plaintiff's Complaint.
11. Any repair estimates, property damage appraisals, or other documents reflecting damage to the subject vehicle as a result of the accident.
12. Any repair estimates, property damage appraisals, or other documents reflecting

damage to the other vehicle involved in the accident as a result of the accident.

13. The subject vehicle and any component parts thereof.

14. The operator's manual and any other materials concerning the operation, maintenance, or service of the subject vehicle.


15. All documents concerning any warranty or representation made by this defendant concerning the subject vehicle.

16. All pleadings or other documents in any legal or administrative proceeding other than this litigation arising out of the accident.

17. Any release, covenant not to sue, or other documents entered into by plaintiff, which relieves another person, party, or entity for liability and/or damages to plaintiff for losses and/

Dated: White Plains, New York
June 2, 2008

Yours etc.



By: Steven R. Kramer, Esq.

Eckert Seamans Cherin & Mellott, LLC.

Attorneys for Defendant

*Toyota Motor Sales, U.S.A., Inc., s/h/a Lexus, a
Division of Toyota Motors Sales, U.S.A.,*

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

(914) 949-5424 (FAX)

To: GAIR, GAIR CONASON STEIGMAN & MACKAUF
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New York, New York 10174
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SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Index No. 107681/07

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

REQUEST FOR PRODUCTION OF DOCUMENTS

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant
Toyota Motor Sales, U.S.A., Inc., s/h/a Lexus, a
Division of Toyota Motors Sales, U.S.A.,
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
Fax (914) 949-5424

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN, Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----x

S I R S : Plaintiff, for her response to the interrogatories
propounded by the defendants TOYOTA MOTOR SALES, U.S.A., INC.,
s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. alleges
as follows, upon information and belief:

1. State the (a) date and place of birth of plaintiff; (b)
residence address of plaintiff at the time this action was
commenced; (c) residence address of plaintiffs at the time of the
alleged negligence.

ANSWER:

The plaintiff, IRIS LEVITEN, was born on July 22, 1945,
resides at 6 Wood Avenue, Albertson, New York, 11507, and at the
time of the alleged occurrence resided at the same address.

2. Set forth the exact date and time of the alleged
automobile accident, and a description of how the accident
occurred.

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APR 29 2008

LEGAL DEPT.

Index number:
108013/07

RESPONSES TO
INTERROGATORIES

ANSWER:

The accident occurred on February 18, 2007 at or about 2:50 p.m., when the plaintiff, when getting off Northern State Parkway and crossing south-bound Glen Cover Road, plaintiff's motor vehicle, collided with a sanitation truck, owned by the Department of Sanitation and operated by Anthony Digirolamo, which was going north-bound on Glen Cove Road, County of Nassau, State of New York.

3. The specific location of the act or occurrence with reference to addresses, landmarks, or other identifying points of reference, including the direction and distance therefrom.

ANSWER:

The accident occurred at Glen Cove Road Carle Place at intersection with Northern State Parkway east-bound ramp, in the town of North Hempstead, County of Nassau, State of New York.

4. Set forth every fact which the plaintiff will offer to prove at the time of trial in support of the claim that the TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. was negligent.

ANSWER:

The plaintiff objects to this demand as it is overbroad and seeking information outside of scope of interrogatories, however, without waiving such objection, the aforesaid occurrence was caused and contributed to by the negligence of the defendants, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A

DIVISION OF TOYOTA MOTOR SALES USA., INC., its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794, identification number JTHBJ46G272071246; in designing, manufacturing, distributing and selling an inherently and unreasonably dangerous and defective product and instrumentality; in designing, manufacturing, distributing, and selling a vehicle without adequate lower leg protection and which was not crush worthy; in failing to properly warn of the dangerous and hazardous potential of the aforesaid product; in manufacturing and selling a product which did not meet consumer expectations; in placing on the market a product which they knew or should have known was inherently defective, hazardous and unsafe; in failing to ensure that the floor mat and carpeting were properly and adequately secured on the driver's side of the subject motor vehicle; in failing to properly and appropriately secure the floor mat and carpeting on the driver's side of the subject motor vehicle; in failing to use proper and appropriate material to secure the floor mat and carpeting on the driver's side of the subject motor vehicle; in using improper and inappropriate material to secure the floor mat and carpeting on

the driver's side of the subject motor vehicle; in failing to properly and appropriately install the retention hooks on the driver side of the subject motor vehicle; in failing to follow the proper pre delivery requirements in installation of the floor mat; in failing to install the retention hooks in accordance with safety requirements; in causing, permitting and allowing the floor mat and carpeting on the driver's side of the subject motor vehicle to become and be unsecured; in failing to properly and appropriately inspect the interior of the subject motor vehicle; in causing, permitting, and allowing the unsecured floor mat and carpeting to interfere with the subject motor vehicle operation; in failing to ensure that the floor mats and carpeting were properly secured as to not interfere with the driver's ability to safely operate the subject motor vehicle; in causing, permitting, and allowing the subject motor vehicle to become and be unsafe in operation; in failing to properly and appropriately inspect the interior of the subject motor vehicle for possible unfastened retention hooks that secure the floor mat and carpeting; in failing to properly and appropriately install and secure the driver's side carpeting and floor mat; in allowing the driver's side floor mat and carpeting to interfere with the driver's ability to use the accelerator; in creating a dangerous and unsafe condition which caused the vehicle to rapidly accelerate;

in negligently causing, permitting and allowing the plaintiff's motor vehicle to have an unintended acceleration; in failing to perform pre-delivery checks of the interior of the subject motor vehicle to ensure safety of its users; in performing improper and insufficient pre-delivery checks of the subject motor vehicle; in failing to properly follow all of the itemized safety inspection requirements; and in causing, permitting, and allowing the plaintiff to suffer injuries alleged herein.

5. If the plaintiff is claiming a manufacturing or design defect, set forth the following:

- (a) identify the alleged manufacturing defect with particularity; and
- (b) set forth the manner in which plaintiff claims the product was negligently manufactured; and
- (c) identify the alleged design defect with particularity; and
- (d) set forth the manner in which plaintiff claims the product was negligently designed; and
- (e) identify and particularize each and every alleged safer alternative design; and
- (f) a specific statement as to the changes in design alleged that support a claim for strict products liability;
- (g) the identification by make, serial number, etc., of any similar product whose design plaintiff, or others, allege that

TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA., INC., should have followed giving rise
to a cause of action for design defect.

(h) particularize how each safer alternative design was both
functionable and still cost efficient; and

(i) identify how the vehicle was inherently dangerous.

ANSWER:

See response number "4" herein.

6. If plaintiff is claiming a breach of a written
express warranty attach hereto a true copy of each.

ANSWER:

See response number "4" herein.

7. If any such express warranty was oral, set forth:

(a) the date on which each such express warranty was made;

(b) the place where each such express warranty was made;

(c) by whom each such express warranty was made;

(d) to whom each such express warranty was made;

(e) the substance of each such express warranty.

ANSWER:

See response number "4" herein.

8. Set forth each and every implied warranty allegedly
made by TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION
OF TOYOTA MOTOR SALES USA., INC. with respect to the subject
vehicle and alleged defective component part in question. If any

such implied warranty was in writing, attach hereto a true copy of each.

ANSWER:

To be provided upon completion of discovery.

9. If any such implied warranty was oral, set forth:
- (a) the date on which each such implied warranty was made;
 - (b) the place where each such implied warranty was made;
 - (c) by whom each such implied warranty was made;
 - (d) to whom each such implied warranty was made;
 - (e) the substance of each such implied warranty.

ANSWER:

To be provided upon completion of discovery.

10. Particularize the claim, if made, that inadequate warnings and instructions were made by TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC. identifying:

- (a) the warnings and instructions given (and providing copies of any written documents);
- (b) how they were inadequate;
- (c) identify each warning and instruction which is claimed should have been given.
- (d) state where such warnings and instructions should have been posted.

ANSWER:

See response number "4" herein.

11. Identify all owners and drivers of the subject vehicle and include their current address and relationship to the plaintiff

(a) State how many times each person drove the vehicle at issue.

(b) Did any of the drivers of the vehicle ever experience any problems with the vehicle?

1. If the answer to the above is "yes", describe the problem in detail, how many times it occurred, where it occurred, the time it occurred, the speed of the vehicle at the time of the occurrence and identities of all witnesses to each occurrence.

2. Were any of these incidents reported to any agent or employee of the defendant?

3. If "yes" identify each employee and/or agent of the defendant so informed, what they were told, when they were informed, how they were informed and produce all documentation relative to this.

ANSWER:

(a) The subject motor vehicle is owned by the plaintiff, IRIS LEVITEM. The plaintiff resides at 6 Wood Avenue, Albertson, New York, 11507. The plaintiff is the only driver of the subject motor vehicle.

(b) 1. Upon information and belief, the plaintiff incurred a problem with the subject vehicle wipers. Upon examination by the

dealership employee, it was determined that the wipers did not work because of the ice accumulation.

2. The vehicle was examined at Lexus dealership located in Glen Cove, New York.

3. Attached herein is a copy of the receipt identifying the name of the agent and the repairs done.

12. Identify the present location of the vehicle.

(a) Who is the current owner of the vehicle?

(b) Were any repairs made to the vehicle since the incident in question?

1. If so, describe what repairs were made.

2. Where was each repair made.

3. Produce all documentation referable to such repairs

4. State how much the repair work cost.

ANSWER:

The motor vehicle is presently stored at the parking garage located at 945 Cortland Avenue, Bonx, NY.

(a) The plaintiff is the owner of the motor vehicle.

(b) The vehicle was damaged beyond repair. No repairs were made.

13. Provide the current address of each and every plaintiff.

(a) Identify all individuals who currently reside with each plaintiff; their relationship to the plaintiff and their age.

ANSWER:

The plaintiff resides alone at 6 Wood Avenue, Albertson, New York, 11507.

14. Provide the address for each plaintiff at the time of the incident.

(a) Identify all individuals who resided with each plaintiff at that time; their relationship to the plaintiff and their age at the time.

ANSWER:

At the time of the accident the plaintiff resided alone at 6 Wood Avenue, Albertson, New York, 11507.

15. Provide all other addresses each plaintiff may have resided at between the date of the occurrence and their current residence.

(a) Identify all individuals who resided with each plaintiff at that time; their relationship to the plaintiff and their age at the time.

ANSWER:

None, other than the plaintiff's address mentioned in the response number "14".

(a) Plaintiff resides alone, and at the time of the accident also resided alone.

16. Identify all jobs each plaintiff has held since 2000 and provide the following:

(a) The address of each job.

- (b) The name of plaintiffs immediate supervisor.
- (c) The length of time plaintiff worked at each job.
- (d) The positions held by plaintiff.
- (e) The job duties for each position held by plaintiff.
- (f) Plaintiff's yearly salary at each job.
- (g) The reason plaintiff left each job.

ANSWER:

Since the year 2000 the plaintiff was employed by Supreme Court Queens County as a senior court reporter, and as a real estate agent at Prudential Ellisman Real Estate since 2004.

(a) Supreme Court Queens County, 25-10 Court Square, Long Island City, New York; Prudential Douglas Elliman Real Estate, 475 Port Washington Boulevard, Port Washington, New York.

(b) The plaintiff's immediate supervisor at the Supreme Court Queens County was Teresa Silkie; at Prudential Elliman Real Estate, the plaintiff's immediate supervisor is Molly Grossman.

(c) The plaintiff was employed by the Supreme Court Queens County from 1977 to 2002. And she is employed by Prudential Douglas Elliman Real Estate from 2003 until present.

(d) The plaintiff was employed by the Supreme Court Queens County as a senior court reporter, and she is presently employed by Prudential Elliman Real Estate as a real estate agent.

(e) As a senior court reporter the plaintiff's duties included: recording and transcribing court proceedings when required, reading testimony to the jury, filing, storage of transcripts,

supervising a group of eight court reporters, including scheduling of times and specific courtrooms for the proceedings for the court reporters to cover.

As a real estate agent, the plaintiff's duties include: showing rental and sales properties, client contact, completing necessary documentation.

(f) As a senior court reporter, the plaintiff's salary plus minutes was approximately \$110,000.00 per year; as a real estate agent the plaintiff earned in 2006 approximately \$20,000.00.

(g) Plaintiff retired from her position as senior court reporter in 2002.

17. On the date of the incident, state where the plaintiff was going?

(a) State where they were coming from?

(b) State the speed of the vehicle at the time the plaintiff first noticed a problem with the vehicle,

(c) State the speed limit in existence on the road the plaintiff's vehicle was traveling on at the time of the incident.

(d) How long had plaintiff been driving for prior to the incident occurring?

(e) Describe the road conditions at the time of the incident.

ANSWER:

At the time of the incident the plaintiff was going to Best Buy located on 1100 Old Country Road, Westbury, New York.

(a) At the time of the incident the plaintiff was coming from

home.

(b-f) The plaintiff objects to this demand as evidentiary in nature and beyond the scope of interrogatories.

18. Describe how the vehicle's floor mats were defectively designed identifying each component which is claimed is defective.

(a) Identify how each component should have been designed.

(b) State the cost for each alternatively designed component.

ANSWER:

See response number "4" herein.

19. Describe how the alleged defective design of the floor mats or any other alleged defective part(s) caused and/or contributed to this incident.

(a) State how the safer alternative design would have prevented this incident.

ANSWER:

See response number "4" herein.

20. Describe how the alleged design defect caused and/or contributed to this incident.

(a) State how the safer alternative design would have prevented this incident.

ANSWER:

See response number "4" herein.

21. Describe how the assembly of the vehicle was negligent.

(a) State how the vehicle should have been assembled:

ANSWER:

Upon information and belief, the vehicle was not equipt with proper and adequate material and/or equipment to secure the floor mat and carpeting to the floor on the driver's side.

(a) The vehicle should have been assembled including the proper and adequate material and/or equipment to secure the floor mat and carpeting to the floor on the driver's side.

22. State how the assembly of this vehicle caused or contributed to this accident.

(a) State how the better assembly would have prevented this incident.

ANSWER:

Upon information and belief, the assembly of this vehicle caused and contributed to the subject accident, in that, the subject motor vehicle was not equipped with proper and adequate retention hooks and/or clips and/or other material to properly and appropriately secure a floor mat and carpeting to the floor on the driver's side of the plaintiff's vehicle, so that it became grossly misplaced and interfered with the plaintiff's ability to use the accelerator, covered and depressed the gas pedal, abstracted the plaintiff's ability to safely operate her motor vehicle and caused the plaintiff to be involved in a motor vehicle accident and suffer serious permanent injuries, also see

paragraph number "4" herein.

(a) Should the floor mat and carpeting be properly and adequately secured to the floor, by the proper and adequate retention hooks and/or clips and/or other material and not become grossly misplaced and interfere with the plaintiff's ability to use the accelerator, cover and depressed the gas pedal, abstract the plaintiff's ability to safely operate her motor vehicle and she would not be involved in a motor vehicle accident and suffer serious permanent injuries, also see paragraph number "4" herein.

23. Describe how the inspection of the vehicle was negligent.

ANSWER:

Upon information and belief, the inspection of the vehicle was negligent in that, the defendants, their agents, servants, employees and representatives failed to perform pre-delivery checks of the interior of the subject motor vehicle to ensure safety of its users; in performing improper and insufficient pre-delivery checks of the subject motor vehicle; in failing to properly follow all of the itemized safety inspection requirements. Also, see paragraph "4" herein.

24. State how the vehicle should have been inspected.

ANSWER:

It is claimed that the vehicle should have been inspected to ensure: that it is not inherently defective,

hazardous and unsafe in its operating and use; that the floor mat and carpeting are properly and appropriately secured to the floor; that the retention hooks and/or clips and/or other material are properly and appropriately fastening the floor mat and carpeting to the floor; that the floor mat and carpeting may not become grossly misplaced and interfere with the plaintiff's ability to use the accelerator; that the floor mat and carpeting may not cover and depress the gas pedal, and interfere with safe operating of the motor vehicle.

25. Describe how the labeling of the vehicle was defective.

(a) Identify how the labeling for this vehicle should have been given.

ANSWER:

See response number "4" herein.

26. Describe how the labeling caused and/or contributed to this incident.

(a) State how the appropriate labeling would have prevented this incident.

ANSWER:

See response number "4" herein.

27. Describe how the service of this vehicle was negligent.

ANSWER:

See response number "4" herein

28. State how the vehicle should have been serviced.

ANSWER:

See response number "4" herein

29. State how the service of this vehicle caused or contributed to this accident.

ANSWER:

See response number "4" herein

30. Describe how the maintenance of this vehicle was negligent.

(a) State how the vehicle should have been maintained

ANSWER:

See response number "4" herein

31. State how the maintenance of this vehicle caused or contributed to this accident.

ANSWER:

See response number "4" herein

32. Was the subject vehicle in any prior accidents?

(a) If yes, please provide the following for each accident.

i. description of the accident;

ii. all individuals present and included in the accident;

iii. location of the accident;

iv. describe all repairs made to the vehicle as a result of the accident;

v. product copies of all documentation regarding any repairs;

vi. date and time of the accident.

ANSWER:

The subject motor vehicle was not involved in any prior accidents:

33. Were any modifications made or added to the vehicle at any time prior to the date of the subject incident?

(a) If "yes", state which modifications were made and by who providing a complete name and address.

(b) Produce all documentation regarding the modifications:

(c) State when each modification was made.

ANSWER:

None.

34. State where and by whom the vehicle was regularly maintained.

ANSWER:

Upon information and belief the plaintiff's vehicle was not maintained during the period from January 16, 2007, when she received the vehicle, and the date of this occurrence, February 18, 2007.

35. If it is alleged the defendant breached or violated any statutes, standards, ordinances, or laws, provide all such statutes, standards ordinances or laws violated and state how they were violated.

ANSWER:

The Court will be asked to take notice of all statutes,

standards, ordinances, and laws violated by defendants.

36. State if anyone has inspected the vehicle.

~~(a)~~ If so, provide the date, time and location of each inspection:

(b) Identify every individual who was present for each inspection.

ANSWER:

Upon information and belief the plaintiff's vehicle was not inspected during the period from January 16, 2007, when she received the vehicle, and the date of this occurrence, February 18, 2007.

37. Since the accident, state every location the vehicle has been and provide a chain of custody description for the vehicle and any of its component parts.

ANSWER:

After the subject occurrence, the vehicle was towed to Nuzzi Brothers Auto Collision Inc., located at 77 Jericho Turnpike, New Hyde Park, New York, 11040. The vehicle was stored at Aladdin Auto Body, located at 8613 Ditmas Avenue, Brooklyn, New York, 11236 until December 19, 2007. Presently the vehicle is stored at the parking garage located at 945 Cortland Avenue, Bronx, NY.

38. Was anyone utilizing a cell phone inside the vehicle at the time of the incident?

a. If "yes", identify who was utilizing a cell phone, when in relation to the incident it was in use, provide the cell phone service provider and the cell phone number of the phone in use as well as the identity of the owner of the cell phone.

ANSWER:

Upon information and belief, the plaintiff was not utilizing a cell phone.

39. Provide the location of each passenger inside the vehicle just prior to the incident occurring.

ANSWER:

The plaintiff was alone in the car at the time of the occurrence.

40. Set forth whether any repairs or modifications were performed on the vehicle:

- (a) before the date of the accident and provide the identity of the repairman;
- (b) after the accident and provide the identity of the repairman;

ANSWER:

(a) other than taking ice off from the plaintiff's vehicle wipers, no repairs and/or modifications were done to the plaintiff's vehicle.

(b) the vehicle was damaged beyond repair in the subject accident, no subsequent repairs were done.

41. Identify by full name and exact location the individual or organization presently in possession, in whole or in part, of the subject vehicle and, if in part, specify the component part(s).

ANSWER:

The subject vehicle is presently stored at the parking garage located at 945 Cortland Avenue, Bronx, NY.

42. If either the subject vehicle or alleged defective part is no longer in plaintiffs actual or constructive possession, set forth:

- (a) the date on which the subject vehicle and/or alleged defective part was last in plaintiffs possession;
- (b) to whom was the subject vehicle and/or alleged defective part was transferred or released;
- (c) the purpose of the transfer or release; and
- (d) whether or not the subject vehicle or alleged defective part was, in whole or in part, destroyed and, if so, the corresponding date of destruction.

ANSWER:

See response number "41" herein.

43. Set forth the odometer reading on the date of purchase or lease of the subject vehicle and at the time of the accident.

ANSWER:

Upon information and belief, the odometer read 81 miles when

plaintiff purchased her vehicle. Odometer reading at the time of the accident is to be provided.

44. ~~Set forth the full caption of each and every lawsuit~~ brought on plaintiffs behalf to recover damages for any connected or aggravated injuries allegedly caused and sustained by reason of the acts of one or more preceding, joint, concurrent and/or succeeding tort feasons, including:

- (a) Court
 - (b) Index Number
 - (c) Calendar number
 - (d) Names and addresses of all litigants
 - (e) Names and addresses of all attorneys appearing for litigants.
 - (f) Status of lawsuit
- (1) if noticed for trial, specify the date.
 - (2) if settled, annex a copy of each release delivered indicating the amounts contributed by each defendant.
 - (3) if discontinued without payment, annex a copy of each stipulation so delivered to each defendant.
 - (4) if tried, annex a copy of the judgment with notice of entry
 - (5) if judgment was satisfied, set forth date and amount of payment and annex a copy of satisfaction of judgment.

ANSWER:

None.

45. An itemization of all property damage claimed, if any, including the cost of repair or replacement of each item. Include the date of acquisition, state whether the item was acquired used or new and state in purchase price.

ANSWER:

The subject vehicle was damaged beyond repair, no repairs were made.

46. If it will be claimed that the aforesaid injuries necessitated any special educational, emotional, or vocational training or schooling, set forth the name and address of each organization and the dates.

ANSWER:

Not applicable.

47. Set forth the full names and addresses of each and every physician from whom the plaintiff has ever received medical treatment with respect to any neurological vascular, urological, intestinal, orthopedic, or surgical or related condition for the fifteen (15) years prior to the alleged negligence with dates of treatment.

ANSWER:

The plaintiff objects to this demand as palpably improper. However, without waiving said objection, duly executed HIPAA compliant authorizations for all applicable medical records and

containing plaintiff's treating physicians and their complete addresses are provided under separate cover.

48. ~~Set forth the full~~ names and addresses of each and every hospital, institution, facility or clinic in which plaintiff has ever received treatment with respect to any neurological vascular, urological, intestinal, orthopedic, or surgical or related condition for the fifteen (15) years prior to the alleged negligence with dates of confinement or outpatient treatment.

ANSWER:

The plaintiff objects to this demand as palpably improper. However, without waiving said objection, duly executed HIPAA compliant authorizations for all applicable medical records and containing all hospitals, institutions and clinics where plaintiff received medical care and treatment for the injuries sustained in the subject accident are provided under separate cover.

49. The nature, location, extent and duration of each injury which, it will be claimed was caused by the negligence of this defendant. If any injuries are claimed to be permanent or serious within the meaning of Insurance Law 5 102(d), so specify.

ANSWER:

As a result of this occurrence, the plaintiff suffered the

following serious injuries, which are permanent and lasting in nature:

Severely comminuted, impacted fractures of the distal tibia, distal and calcaneus of the right ankle; distraction of the ankle with at least 1.2 cm overlap of the distal tibia cortices; 0.8cm medial and 1.1 cm posterior displacement of the distal tibia; several fragments of cortex extending in the intramedullary space of the distal tibia; proximal distraction of the distal fibula with at least a 1.7 cm overlap of the distal fibular cortices; 1.0 cm medial displacement of the distal fibula; extraarticular distal tibia fracture of the pilon; right third metatarsal fracture; left metatarsal fracture; several right side ribs fractures; contusion/ecchymosis in the fat in the region of the left groin; pleuritic chest pain, pain and swelling in her right distal tibia/ankle joint lower extremity, bulge on the right thigh.

Upon information and belief, the plaintiff will develop osteoarthritis in the areas of the fracture sites and will necessitate further surgeries, including removal of the plates from the right leg.

All of the foregoing injuries are claimed to be permanent and lasting in nature.

Surgical intervention on February 18, 2007 in the nature of

irrigation and debridement of open distal tibia/fibula fracture with application of a spanning external fixator in delta frame configuration; ~~involving reducing of the fracture by manual~~ method, using C-arm intensification; locating of the inside out open injury at the anterolateral aspect of the ankle; thorough irrigation and debridement of the distal and proximal aspect of the open injury; inserting two parallel 5-mm titanium self-drilling Schanz pins from anteromedial to posterolateral under C-arm intensification; constructing a delta frame with a transcalcaneal pin inserted from medial to lateral; performing manual reduction of the fracture, and securing fixation of the external fixator; suturing the extensions to the open fracture using #3-0 nylon sutures; and placing sterile dressing; injuries to the nerves, muscles, tissues, ligaments, tendons and blood vessels in the areas of the surgical intervention; sensory disturbance in the areas of the surgical intervention; stapling and suturing in the areas of the surgical intervention; scarring, cosmetic defect and deformity in the areas of the surgical intervention;

Surgical intervention on February 21, 2007 in the nature of irrigation and debridement of right open tibia and fibular fracture; open reduction and internal fixation of right distal fibula; revision external fixation of right tibia with removal of

external fixator, right calcaneous, involving posterolateral incision to the distal fibula; finding the comminuted distal fibular fracture; contouring a 12 hole 1/3 tubular plate along the lateral aspect of the fibula and effecting a proper reduction using reduction forceps; placing screws distally and proximally to hold the plate to the fibula; making an incision between tibialis anterior and extensor hallucis longus; placing Shanz pin from anterior to posterior; irrigating of the wound; placing a ConstaVac drain; suturing of the wound and removing the Shanz pin and applying postoperative dressing; injuries to the nerves, muscles, tissues, ligaments, tendons and blood vessels in the areas of the surgical intervention; sensory disturbance in the areas of the surgical intervention; stapling and suturing in the areas of the surgical intervention; scarring, cosmetic defect and deformity in the areas of the surgical intervention;

Surgical intervention on February 28, 2007, in the nature of right tibial removal of external fixator; open reduction and internal fixation of distal tibia and bone grafting, involving making a 2 cm distal incision at the distal aspect of the distal tibia; performing a closed reduction maneuvers to obtain the correct alignment, length and rotation; placing an additional Shantz pin through the previous open fracture site; placing a screw in the second to most proximal hole to hold the plate in

place; placing a screw in the distal most hole; placing two additional screws in the distal fragment; inserting a proximal screw and placing it distal to the previously placed screw, then placing a screw in the proximal most screw; making an additional incision to place one additional screw adjacent to the proximal aspect of the fracture; placing the Grafton flex chips in the fracture site; irrigating of the wound; closing of the subcutaneous tissues using 2-0 Vicryl sutures and the overlying skin with nylon; applying dressing to the wound; injuries to the nerves, muscles, tissues, ligaments, tendons and blood vessels in the areas of the surgical intervention; sensory disturbance in the areas of the surgical intervention; stapling and suturing in the areas of the surgical intervention; scarring, cosmetic defect and deformity in the areas of the surgical intervention;

While hospitalized the plaintiff necessitated numerous X-rays, CT scans, intra-venously administered medications; large doses of antibiotics, placing and subsequent removing of ConstaVac drain and Foley catheter and suffered injuries to the nerves, muscles, tissues, ligaments, tendons and blood vessels in the areas of incisions, impairment of circulation and sensory disturbances in the areas of incisions, pain, swelling, stiffness, numbness and tenderness in the places of incisions.

While hospitalized, the plaintiff also necessitated physical therapy and was started toe-touch weightbearing with a CAM boot.

After discharge from the Hospital for Special Surgery, the plaintiff was transferred for rehabilitation to Amsterdam Nursing Home, where she underwent restorative physical therapy and occupational therapy, geri-gym program and floor ambulation program.

50. Set forth the full name and address of each and every privately retained physician from whom medical treatment or consultation was sought by reason of the injuries allegedly sustained.

ANSWER:

As a result of this occurrence the plaintiff has been treated by David L. Helfet, M.D. from the date of the occurrence until present.

51. If it will be claimed that the aforesaid injuries necessitated any hospitalization, set forth the name and address of each hospital with dates of confinement or outpatient treatment.

ANSWER:

As a result of this occurrence, the plaintiff was admitted at Winthrop University Hospital located at 259 1st Street, Mineola, New York, 11501-3987 from February 18, 2007 to February

21, 2007; the Hospital for Special Surgery located at 535 East 70th Street, New York, New York 10021 from February 21, 2007 to March 6, 2007; and to Amsterdam Nursing Home, located at 1060 Amsterdam Avenue, New York, New York 10025 from March 6, 2007 to April 26, 2007.

~~52. If it will be claimed that the aforesaid injuries necessitated treatment at any other institution, set forth the name and address of each institution with dates of confinement.~~

ANSWER:

See response number "51" herein.

53. If it will be claimed that the aforesaid injuries necessitated confinement to bed or home, set forth the following:

- (a) The dates of confinement to home.
- (b) The dates of confinement to bed.

ANSWER:

As a result of this occurrence the plaintiff was:

- (a) Confined to home, other than attending her doctor's appointment, physical therapy sessions, and light chores, from the date of her discharge from Amsterdam Nursing home on April 26, 2007 until present.
- (b) The plaintiff was confined to bed, other than attending her doctor's appointment, physical therapy sessions, and following prescribed by her doctors home exercise routine from the date of

her discharge from Amsterdam Nursing home on April 26, 2007 for approximately five (5) months.

54. If loss of earnings is claimed, set forth the following:

(a) The name and address of claimant's employer at the time of the alleged negligence.

~~(b) The capacity in which claimant was employed.~~

(c) Claimant's earnings for the year prior to the alleged negligence.

(d) The last date claimant worked prior to the alleged negligence.

(e) the name and address of claimant's present employer.

~~(f) Loss of earnings claimed.~~

(g) If the plaintiff was a student, please identify all schools attended and the dates she was unable to attend.

ANSWER:

(a) At the time of the accident the plaintiff was employed by Prudential Douglas Elliman Real Estate, 475 Port Washington Boulevard, Port Washington, New York.

(b) At the time of the accident the plaintiff was employed as a sales agent.

(c) The plaintiff's earnings for the year 2006 were approximately \$20,000.

(d) The plaintiff last worked on February 17, 2007.

(e) The plaintiff is presently employed by Prudential Douglas Elliman Real Estate, 1528 Old Northern Boulevard, Roslin, New York, 11576.

(f) To be provided.

(g) Not applicable.

55. If any special damages are claimed, set forth, including but not limited to, the following:

(a) The charges for the above named hospitals, separately listing each hospital bill;

(b) Physicians' charges.

(c) Charges for medicines, itemizing the medicines charged for.

(d) Nursing.

(e) Specify by category and amount any other special damages claimed.

ANSWER:

(a-e) Duly executed HIPAA compliant authorization to obtain the plaintiff's no-fault file, containing the amounts spent for hospital and medical care, medicines, and nursing is provided under separate cover.

56. Pursuant to CPLR 4545 identify the party who paid the damages claimed in paragraphs above, including the relationship of the injured claimant to that party. If the third party payments were made as a result of reimbursements through an

insurance company, set forth the complete name and address of the company the complete name of the person in whose name the policy is issued.

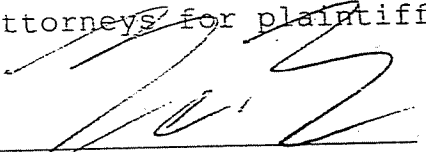
ANSWER:

The plaintiff's hospital and medical care was paid in whole and/or in part by her no-fault insurance carrier, GEICO, under the claim number: 024451467-0101-035, located at 750 Woodbury Road, Woodbury, New York 111797-2589. Duly executed HIPAA compliant authorization to obtain a copy of the plaintiff's no-fault file is provided under separate cover.

Dated: New York, New York

January 27, 2008

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF,
Attorneys for plaintiff

By 
HOWARD S. HERSHENHORN
80 Pine Street
New York, New York 10005
(212) 943-1090

To:
JAY A. RAPPAPORT, ESQ
AARONSON RAPPAPORT FEINSTEN &
DEUTSCH, LLP
Attorneys for defendant TOYOTA
MOTOR SALES, USA INC
757 Third Avenue
New York, New York 10017

AHMUTY, DEMERS & McMANUS

Attorneys for defendant
ESTREE, INC., d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, NY 11507

STEIN RISO and MANTEL LLP
405 Lexington Avenue
New York, NY 10174

STATE OF NEW YORK)
 : s.s.:
COUNTY OF)

IRIS LEVITEN, being duly sworn, deposes and
says:

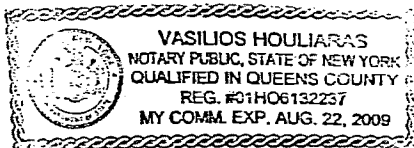
I am the plaintiff in the within action;

I have read the foregoing Answers to Interrogatories and
know the contents thereof; that the same is true to my own
knowledge, except as to the matters therein stated to be alleged
on information and belief, and as to those matters, I believe
them to be true.

IRIS LEVITEN
IRIS LEVITEN

Sworn to before me this
27th day of January, 2008

Vasilios Houliaras
Notary Public



Index Number: 10813/07

SUPREME COURT OF THE STATE OF NEW YORK
~~COUNTY OF NEW YORK~~
IRIS LEVITTEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC.,
d/b/a LEXUS OF WESTPORT, and METRO
AUTO LEASING, INC., d/b/a THE
AUTOMALL,

Defendants.

RESPONSES TO INTERROGATORIES

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for Plaintiff(s)

80 Pine Street, 34th Floor
New York, New York 10005-1768
212.943.1090

To :

Attorney for:

Service of a copy of the within

is hereby admitted.

Dated,

Attorney for

Sir : Please take notice that the within is a
(certified) true copy of a
duly covered in the office of the clerk of the within named
court on 20
Dated, Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for

80 Pine Street, 34th Floor
New York, New York 10005-1768

To:
Attorney for

Sir : Please take notice that an order

of which the within is a true copy will be presented for
settlement to the Hon.

one of the judges of the within named Court, at

on the day of 20
at M.

Dated,

Yours, etc.

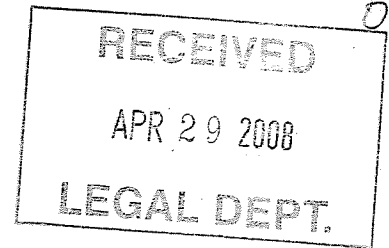
**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for

80 Pine Street, 34th Floor
New York, New York 10005-1768

To
Attorney for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK



-----x
IRIS LEVITEN,

Plaintiff,

-against-

Index number:
108013/07

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

**RESPONSES TO
INTERROGATORIES**

Defendants.
-----x

S I R S :

Plaintiff, for her response to the interrogatories propounded by the defendants ESTREE, INC., d/b/a LEXUS OF WESTPORT allege as follows, upon information and belief:

1. Identify all persons, other than your attorneys, who provided you with any information used in answering these interrogatories, and state the particular information each person supplied.

ANSWER:

Plaintiff objects to this demand as it is improper to the extent that it calls for testimonies of non-parties, however, without waiving this objection, none.

2. Identify by full name and current home and work address, all persons, except experts, on whose testimony plaintiff intends to rely at trial, and summarize the facts to which each such person will testify.

ANSWER:

Plaintiff objects to this demand as it is improper to the extent that it calls for testimony of non-parties.

3. Identify specifically, or attach copies of, all document(s) of which the plaintiff or his attorney is aware or has information or knowledge of, which support any of the allegations in the complaint.

ANSWER:

Plaintiff objects to this demand as improper for interrogatories.

4. Identify and state all laws, rules, regulations and/or ordinances that are claimed to have been violated by ESTREE, INC. d/b/a ESTREE, INC., d/b/a LEXUS OF WESTPORT.

ANSWER:

The Court will be asked to take judicial notice of all applicable rules, regulations, statutes and ordinances.

5. Please describe in complete detail all inspections or examinations of the vehicle which have been conducted or caused to be conducted by plaintiff or any agent thereof, including the date of said inspection or examination, the name and address of the person(s) conducting each such inspection or examination, the results of said examinations or inspections, as well as copies of any documents and/or photographs generated concerning such inspection or examinations.

ANSWER:

Upon information and belief, the plaintiff's vehicle was not inspected prior to the occurrence. After the occurrence, the

vehicle inspection was conducted on March 1, 2007, March 8, 2007 and November 13, 2007.

6. Please state fully and in complete detail all that ESTREE, INC, d/b/a LEXUS OF WESTPORT did or failed to do which in any way caused or contributed to cause the alleged occurrence.

ANSWER:

The aforesaid occurrence was caused and contributed to by the negligence of the defendants, ESTREE, INC., d/b/a LEXUS OF WESTPORT, its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794, identification number JTHBJ46G272071246; in designing, manufacturing, distributing and selling an inherently and unreasonably dangerous and defective product and instrumentality; in designing, manufacturing, distributing, and selling a vehicle without adequate lower leg protection and which was not crush worthy; in failing to properly warn of the dangerous and hazardous potential of the aforesaid product; in manufacturing and selling a product which did not meet consumer expectations; in placing on the market a product which they knew or should have known was inherently defective, hazardous and unsafe; in failing to ensure that the floor mat and carpeting were properly and adequately secured on the driver's side of the subject motor

vehicle; in failing to properly and appropriately secure the floor mat and carpeting on the driver's side of the subject motor vehicle; in failing to use proper and appropriate material to secure the floor mat and carpeting on the driver's side of the subject motor vehicle; in using improper and inappropriate material to secure the floor mat and carpeting on the driver's side of the subject motor vehicle; in failing to properly and appropriately install the retention hooks on the driver side of the subject motor vehicle; in failing to follow the proper pre delivery requirements in installation of the floor mat and carpeting; in failing to install the retention hooks in accordance with safety requirements; in causing, permitting and allowing the floor mat and carpeting on the driver's side of the subject motor vehicle to become and be unsecured; in failing to properly and appropriately inspect the interior of the subject motor vehicle; in causing, permitting, and allowing the unsecured floor mat and carpeting to interfere with the subject motor vehicle operation; in failing to ensure that the floor mats and carpeting were properly secured as to not interfere with the driver's ability to safely operate the subject motor vehicle; in causing, permitting, and allowing the subject motor vehicle to become and be unsafe in operation; in failing to properly and appropriately inspect the interior of the subject motor vehicle for possible unfastened retention hooks that secure the floor mat and carpeting; in failing to properly and appropriately install

and secure the driver's side carpeting and floor mat; in allowing the driver's side floor mat and carpeting to interfere with the driver's ability to use the accelerator; in creating a dangerous and unsafe condition which caused the vehicle to rapidly accelerate; in negligently causing, permitting and allowing the plaintiff's motor vehicle to have an unintended acceleration; in failing to perform pre-delivery checks of the interior of the subject motor vehicle to ensure safety of its users; in performing improper and insufficient pre-delivery checks of the subject motor vehicle; in failing to properly follow all of the itemized safety inspection requirements; and in causing, permitting, and allowing the plaintiff to suffer injuries alleged herein.

7. Does plaintiff contend that vehicle at issue deviated in any way from the prevalent safety, technical, mechanical, scientific and industry standards in existence at the time of the manufacture of the product? If so, set forth with particularity the reasons for this contention and attach any and all written documents, including articles, journals, pamphlets, testimony, or any other written materials of any nature that the plaintiff or any of its experts will utilize in support of this contention?

ANSWER:

See response number "6" herein.

8. Does plaintiff contend that there was any defect or a defective condition of the vehicle which caused or contributed to

cause the alleged occurrence?

ANSWER:

See response number "6" herein.

9. If the answer to the preceding interrogatory is in the affirmative, as to each such defect or defective condition, please:

- (a) specifically describe the defect or defective condition,
- (b) state all reasons leading plaintiff to believe that the defect or defective condition existed,
- (c) explain the causal relationship between the defect or defective condition and the alleged occurrence, and
- (d) explain how ESTREE, INC. cl/b/a LEXUS OF WESTPORT is allegedly responsible for the defect or defective condition.

ANSWER:

The Plaintiff objects to this demand as palpably improper and evidentiary in nature, however, without waiving this objection, see response number "6" herein.

10. Does plaintiff claim that the vehicle as designed or manufactured was in any way dangerous or inadequate from the normal purpose or use as intended?

ANSWER:

See response number "6" herein.

11. If the answer to the preceding interrogatory is in the affirmative, please:

(a) describe as accurately as possible in what way the vehicle was dangerous or inadequate from the normal purpose or use as intended,

(b) describe why and how the condition described in response to subsection (a) of this interrogatory contributed to or caused the alleged occurrence.

(c) Set forth the name(s) of all witnesses, including experts, plaintiff will utilize at the time of trial in support of the above contention(s).

ANSWER:

(a & b) See response number "10" herein.

(c) Plaintiff retained C. Bruce Gambardella, P.C., Consultant Automotive Engineer as a consultant. In the event Mr. Gambardella is called as a witness, the plaintiff's expert's response will be served under separate cover.

12. Does plaintiff allege that ESTREE, INC., d/b/a LEXUS OF WESTPORT in any way violated or failed to comply with any trade, industry, quality or safety standard, or any statutes, rules, regulations, or ordinances relating to:

(a) the design of the vehicle,

(b) the production, manufacture or assembly process of the vehicle,

(c) the pre-market testing or inspection of the vehicle,

- (d) the storage of the vehicle,
 - (e) the sale or distribution of or warnings about the vehicle,
- and
- (f) the use, installation or handling of the vehicle.

ANSWER:

See response number "6" herein.

13. If the answer to the preceding interrogatory is in the affirmative, set forth each such trade, industry, quality or safety standard, or any statutes, rules, regulations, or ordinances which ESTREE, INC. d/b/a LEXUS OF WESTPORT allegedly violated, and how each such violation contributed to the alleged occurrence.

ANSWER:

The Court will be asked to take notice of all applicable trade, industry, quality or safety standard, statutes, rules and regulations that were violated by the defendants.

14. If plaintiff alleges or contends that ESTREE, INC. d/b/a LEXUS OF WESTPORT or any other defendant was in any way negligent in connection with the use of an improper or unsuitable design for the vehicle, please identify the party charged and describe precisely:

- (a) the design used;
- (b) every manner in which each such design was improper or unsuitable,
- (c) the precise manner in which each such design caused or

contributed to cause the plaintiff's alleged injuries or damages,
(d) any and all alternative designs known to plaintiff which plaintiff alleges or contends that the defendants should have or could have used in the manufacture or assembly of the product or component ingredients of the product, and
(e) the first date that each such alternate design should have been used, and
(f) enclosed copies of all documents in support of these allegations.

ANSWER:

Plaintiff objects to this demand as improper for interrogatories, however, without waiving this objection, see response number "6" herein.

15. Please state fully and in complete detail every act or omission on the part of ESTREE, INC. d/b/a LEXUS OF WESTPORT, which plaintiff alleges, constitutes negligence.

ANSWER:

See response number "6" herein.

16. If it is alleged that ESTREE, INC., d/b/a LEXUS OF WESTPORT made any warranties to plaintiff or any other party and/or entity, identify:

- (a) the substance of said warranties, if oral
- (b) provide a copy, if written,
- (c) the name of the person making said warranties.

ANSWER:

See response number "6" herein.

17. Does plaintiff allege or contend that the vehicle failed to satisfy any implied warranty or representation concerning its potential use or its standards of performance or that it its intended use?

ANSWER:

Plaintiff alleges that the defendants failed to satisfy implied warranty and/or representation in designing, manufacturing, distributing and selling an inherently and unreasonably dangerous and defective product and instrumentality; in failing to properly warn of the dangerous and hazardous potential of the aforesaid product the subject vehicle failed to satisfy any implied warranty or representation concerning its potential use or its standards of performance in that, the floor mat and carpeting on the driver's side of the said vehicle was not properly and appropriately secured into the retention hooks

18. If the answer to the preceding interrogatory is in the affirmative, please state:

- (a) fully the content of each such representation or warranty which allegedly was not fulfilled,
- (b) state the source of each such representation or warranty,
- (c) explain how plaintiff relied upon each representation or warranty, and
- (d) explain how each such representation or warranty was not fulfilled, and the manner in which the vehicle is alleged to have

been unfit.

ANSWER:

See response number "6" herein.

19. If plaintiff contends that ESTREE, INC., d/b/a LEXUS OF WESTPORT breached any warranty of fitness of the product, please set forth all facts on which plaintiff bases this contention.

ANSWER:

The plaintiff alleges that the defendants breached the warranty of fitness of the product in that, that they sold the vehicle without properly and appropriately inspecting the vehicle for potential hazards, in failing to ensure that the retention hooks were properly and sufficiently securing the floor mat and carpeting on the driver's side of the subject motor vehicle. Also see response number "6" herein.

20. Identify each witness who will testify on behalf of the plaintiff at the time of trial in support of the claims made in the plaintiffs complaint and the substance of the testimony each such witness is expected to provide.

ANSWER:

To be provided.

21. Set forth in sufficient detail each and every act of omission or commission of the alleged negligence and/or culpable conduct of ESTREE, INC. d/b/a LEXUS OF WESTPORT as alleged in the plaintiff's complaint.

ANSWER:

See response number "6" herein.

22. Identity the name, job position, employer, and address of each witness who possesses any knowledge, information and/or documentation pertaining to any and all of the allegations contained in the defendant/third-party plaintiff's Second Cause of Action.

ANSWER:

Not applicable.

23. Set forth the basis for alleging that the vehicle at issue was defective and caused the alleged injuries and damages referred to in plaintiff's complaint.

ANSWER:

See response number "6" herein.

24. Set forth the basis for the allegation that ESTREE, INC., d/b/a LEXUS OF WESTPORT breached any/all express and/or implied warranties and that the subject vehicle was neither fit for the particular and ordinary purpose for which it was intended, nor was it of good and merchantable quality.

ANSWER

See response number "6" herein.

25. Set forth the basis for the allegation that ESTREE, INC., d/b/a LEXUS OF WESTPORT or any defendant improperly and defectively designed, manufactured, produced, supplied and sold the subject vehicle.

ANSWER

See response number "6" herein.

26. Set forth the basis for the allegation that ESTREE, INC. d/b/a LEXUS OF WESTPORT breached any/all express and/or implied warranties.

ANSWER:

See response number "6" herein.

27. Do you, your attorney or anyone acting on your behalf, have possession of any photographs, slides, prints, negatives, motion picture or videotape of the vehicle in question? If so, please state the following:

- a. the number of photographs;
- b. the name and address of the photographer;
- c. the dates that the photographs were taken; and
- d. the place the photographs were taken.

28. Enclose all photographs, slides, prints, negatives, motion pictures or videotapes and any documents describing or relating thereto referred to in the preceding interrogatory.

ANSWER:

Plaintiff objects to this demand as improper for interrogatories, however, copies of the photographs of the plaintiff's vehicle will be provided under separate cover.

Dated: New York, New York

January 27, 2008

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF,

Attorneys for plaintiff

By 

HOWARD S. HERSHENHORN
80 Pine Street
New York, New York 10005

To:
JAY A. RAPPAPORT, ESQ
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Attorneys for defendant TOYOTA
MOTOR SALES, USA INC
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Albertson, NY 11507


STEIN RISO and MANTEL LLP
405 Lexington Avenue
New York, NY 10174

STATE OF NEW YORK)
 : s.s.:
COUNTY OF)

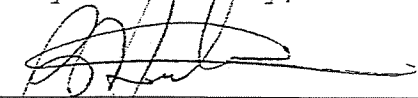
IRIS LEVITEN, being duly sworn, deposes and
says:

I am the plaintiff in the within action;

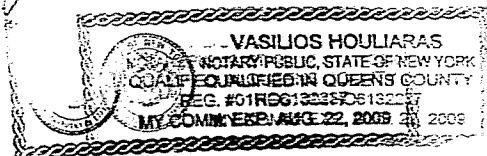
I have read the foregoing Answers to Interrogatories and
know the contents thereof; that the same is true to my own
knowledge, except as to the matters therein stated to be alleged
on information and belief, and as to those matters, I believe
them to be true.


IRIS LEVITEN

Sworn to before me this
27th day of January, 2008



Notary Public



Index Number: 10813/07
SUPREME COURT OF THE STATE OF NEW YORK
~~COUNTY OF NEW YORK~~
IRIS LEVITEN,
Plaintiff,

-against-
LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC.,
d/b/a LEXUS OF WESTPORT, and METRO
AUTO LEASING, INC., d/b/a THE
AUTOMALL,
Defendants.

RESPONSES TO INTERROGATORIES

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**
Attorneys for Plaintiff(s)
80 Pine Street, 34th Floor
New York, New York 10005-1768
212.943.1090

To:
Attorney for:
Service of a copy of the within
Dated,
Attorney for

is hereby admitted.

Sir: Please take notice that the within is a
(certified) true copy of a
duly entered in the office of the clerk of the within named
court on 20
Dated, Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**
Attorneys for
80 Pine Street, 34th Floor
New York, New York 10005-1768

To: Attorney for

Sir: Please take notice that an order

of which the within is a true copy will be presented for
settlement to the Hon.

one of the judges of the within named Court, at
on the day of 20
at M.

Dated, Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**
Attorneys for
80 Pine Street, 34th Floor
New York, New York 10005-1768

To
Attorney for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x

IRIS LEVITEN,

Plaintiff,

-against-

Index number:
107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

**SUPPLEMENTAL
RESPONSES TO
INTERROGATORIES**

Defendants.

RECEIVED
JUL 18 2009
LEGAL DEPT.

-----x

S I R S :

Plaintiff, as and for her Supplemental Responses to
Interrogatories, alleges as follows, upon information and belief:

1. In addition to the injuries stated in the plaintiff's
responses to the defendants' demands for Interrogatories, the
plaintiff suffered the following injuries, all of which are of a
permanent and lasting nature:

Pain in the sites of the hardware in the right lower
extremity as a result of the fracture of the right tibia
sustained in the subject occurrence; ectopic bone formation of
the right tibia and fibular;

Surgical intervention on 27th of December, 2008
involving removal of hardware from right distal fibula and right
distal tibia with excision of ectopic bone from medial tibia,
that included opening previous incision; sharp dissection down
through the subcutaneous tissue to the distal half of the
incision; maintaining hemostasis with electrocautery; elevating

scar tissue; removing six 3.5 mm screws; removing one third of tubular pate; re-opening and dissecting of the previous incisions with a 10 blade scalpel; a 6 cm incision into the location of the ectopic bone; debridement of the surface of the plate; identifying and removing 12 cm of ectopic bone overgrowth; removing seven 3.5 mm cortical screws; freeing and removing the plate from the bone through distal incision; inspecting the distal tibia; irrigating the wound with saline; suturing of the wound; injuries to the nerves, muscles, tissues, ligaments, tendons and blood vessels in the areas of the surgical intervention and procedure, sensory disturbance in the areas of the surgical intervention and procedure, suturing in the areas of the surgical intervention, scarring, cosmetic defect and deformity in the areas of the surgical intervention and procedure.

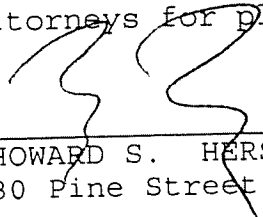
As a result of this surgery, the plaintiff necessitated physical therapy from December 2008 until present.

2. Authorizations for the plaintiff's surgical and physical therapy records will be provided under separate cover.

Dated: New York, New York

June 18, 2009

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF,
Attorneys for plaintiff

By 
HOWARD S. HERSHENHORN
80 Pine Street

New York, New York 10005
(212) 943-1090

To:
JAY A. RAPPAPORT, ESQ
AARONSON RAPPAPORT FEINSTEN &
DEUTSCH, LLP
Attorneys for defendant TOYOTA
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Attorneys for Plaintiff - Doukas
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Michael Cardozo, Esq.
Attorneys for Defendants
Anthony Digirolamo, New York City Dept. of Sanitation
and the City of New York
100 Church Street
New York, NY 10007
(212) 788-0303

Connors & Connors,
66 Castleton Avenue,
Staten Island, New York 10310-9003,
718-442-1700

STATE OF NEW YORK)
 : s.s. :
COUNTY OF NASSAU)

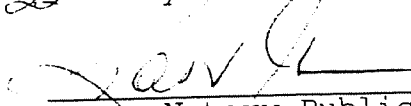
IRIS LEVITEN, being duly sworn, deposes and
says:

I am the plaintiff in the within action;
I have read the foregoing Answers to Interrogatories and
know the contents thereof; that the same is true to my own
knowledge, except as to the matters therein stated to be alleged
on information and belief, and as to those matters, I believe
them to be true.



IRIS LEVITEN

Sworn to before me this
20th day of June, 2009



Notary Public

KATHLEEN ANDRES
Notary Public, State of New York
No. 01AN5051913
Qualified in Nassau County
Commission Expires Nov. 13, 2017

Sir : Please take notice that the within is a
(certified) true copy of a
duly entered in the office of the clerk of the within named
court on 20
Dated,

Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for

80 Pine Street, 34th Floor
New York, New York 10005-1768

To:
Attorney for

Sir : Please take notice that an order

of which the within is a true copy will be presented for
settlement to the Hon.

one of the judges of the within named Court, at

on the day of 20
at M.

Dated,

Yours, etc.

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for

80 Pine Street, 34th Floor
New York, New York 10005-1768

To

Attorney for

Index Number: 10813/07

SUPREME COURT OF THE STATE OF NEW YORK
~~COUNTY OF NEW YORK~~
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC.,
d/b/a LEXUS OF WESTPORT, and METRO
AUTO LEASING, INC., d/b/a THE
AUTOMALL,

Defendants.

**SUPPLEMENTAL RESPONSES TO
INTERROGATORIES**

**GAIR, GAIR, CONASON
STEIGMAN & MACKAUF**

Attorneys for Plaintiff(s)
80 Pine Street, 34th Floor
New York, New York 10005-1768
212.943.1090

To :

Attorney for:

Service of a copy of the within

is hereby admitted.

Dated,

Attorney for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
IRIS LEVITEN,

Plaintiff,

Index No.: 107681/07

Action No. 1

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

**RESPONSES TO TMS
INTERROGATORIES**

-----x
MICHAEL DOUKAS,

Plaintiff,

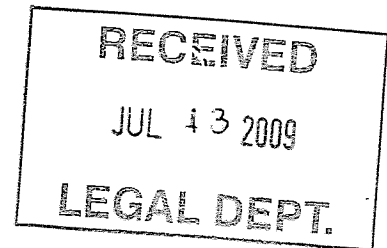
Index No.: 117118/07

Action No. 2

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE, INC.,
d/b/a LEXUS OF WESPORT and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.



-----x
COUNSELORS:

Plaintiff, as and for his response to the interrogatories put forward by the defendants
TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC. alleges as follows, upon information and belief:

1. Give the names and addresses of the following persons:
 - (a) those who witnessed the occurrence giving rise to this suit; and
 - (a) those who have any information or knowledge concerning the facts, events, circumstances or conditions surrounding the happening of said occurrence.

ANSWER:

(a-b) Iris Leviten, Michael Doukas, Anthony Digirolamo.

2. State whether any person gave any statement or prepared any document, memorandum, drawing or any other tangible thing pertaining to the occurrence giving rise to this suit.

- (a) If your answer is in the affirmative, as to each person state the following:
 - (1) Identify each person;
 - (2) Describe the nature of what was done or produced; and
 - (3) Give the name and address of the person having custody of each item described above.

ANSWER: Plaintiff Michael Doukas gave a written statement for his employer.

3. State whether any photographs were taken of the site of the occurrence, the subject vehicle or persons involved in the incident:

- (a) If your answer is in the affirmative, state:
 - (1) the subject matter of the photographs;
 - (2) the date and time of day said photographs were taken;
 - (3) the name, address and job classification of the person taking same, and the name and address of his employer, if not in your employ; and
 - (4) the name, address and classification of the person having custody of the same.

ANSWER: Plaintiff Doukas is not in possession of any photographs of the accident location. Photographs of the subject vehicle operated by plaintiff leviten are available and will be provided shortly.

4. State whether any plans, drawings, blueprints, sketches or diagrams exist or were made of the site of the occurrence or the subject vehicle involved herein.

- (a) If your answer is in the affirmative, state:
 - (1) the identity of each said plan, drawing, blueprint, sketch or diagram by subject matter;
 - (2) the date and time of day when each of the same was made if subsequent to the occurrence;
 - (3) the name, address and job classification of the person making same, if made subsequent to the occurrence; and
 - (1) the name, address and job classification of the person having custody of the plans, drawings, blueprints, sketches or diagrams.

ANSWER: Negative.

5. State the following with respect to the plaintiff:

- (a) age:
 - (1) at the time of the incident here involved: **46 years old**
 - (2) at the present time: **48 years old**
- (b) date of birth: **11-7-1960**
- (c) place of birth: **USA**
- (d) marital status: **Married as to #1/2**
 - (1) at the time of the incident here involved; and
 - (2) at the present time;
- (e) number of children or other dependents: **2 grown children**
 - (1) at the time of the incident here involved; and
 - (2) at the present time;
- (f) Plaintiff's Social Security Number: **092-52-4953**

(g) Plaintiff's Veteran's Claim Number, if any; N/A

(h) name and policy number of any health and accident coverage in existence at the time of the occurrence here involved, if any: **Plaintiff was insured by the City of New York at the time of the accident.**

(i) name and policy number of any insurance coverage providing benefits for the injuries or medical expenses alleged to be involved in this action, if any. **See (H)**

ANSWER: See Above

6. State in detail and with particularity the injuries you allege were sustained as a result of the occurrence here involved.

ANSWER:

A) Posterior herniation at the C3 to C7 disc level, abutting the anterior aspect of the cord at this level, and impinging the anterior aspect of the spinal cord at the C4-5; C5-6 and C6-7 disc levels;

B) Plaintiff was forced to undergo surgical intervention under general endotracheal anesthesia on June 25, 2008 which consisted of multi level fusion, specifically:

- 1) anterior discectomy at C4-5,
- 2) interbody prosthesis arthrodesis C4-5,
- 3) anterior discectomy at C5-6,
- 4) interbody prosthesis arthrodesis C5-6,
- 5) anterior discectomy at C6-7,
- 6) interbody prosthesis arthrodesis C6-7,

7) anterior cervical plating with segmental fixation to C4, C5, C6, C7 with
Atlantis plate,

C) Subligamentous posterior herniation at the L5-S1 disc level, impinging on the
anterior aspect of the spinal canal with retrolisthesis at this level;

D) Sprain of the medial collateral ligament of the right knee;

E) Pain in cervical spine;

F) Pain in right knee;

G) Limited range of motion of neck;

H) Discomfort;

I) Need for ongoing physical therapy;

J) Need for prescriptive pain medication;

K) Cervical muscle spasms;

L) Cervical tenderness;

M) Headaches;

N) Weakness in upper extremities;

O) Tendency to drop items held by hands;

P) Hypoesthesia and weakness in left arm;

Q) Giveaway weakness of right leg;

R) The above injuries were accompanied by and productive of severe pain in the
cervical spine and right leg regions; stiffness; tenderness; limitation and restriction of
motion; inflammation; post-traumatic arthritis and/or arthritic changes; change of weather
sensations; difficulty sleeping due to pain; deformity and total disability.

S) In addition, there was injury to surrounding muscles, tendons, ligaments,
nerves, blood vessels, supportive and connective tissue, with resulting pain,
tenderness, weakness, restriction and limitation of motion and loss of use of the
effected parts.

T) Future development and progression of arthritic, osteoarthritic and
degenerative changes in associated joints, tendons, ligaments and supportive and
connective tissue.

7. State the name and address of each physician, hospital, clinic, nursing home or other
institution/medical provider to which you have gone for examination and/or treatment or in
which you have been confined as a result of the injuries alleged to have been sustained in the
occurrence involved in this action.

ANSWER:

1. Winthrop University Hospital;
2. North Shore University Hospital;
3. Mitchell E. Levine, M.D.;
4. Dov J. Berkowitz, M.D.;
5. Borimir J. Darakchiev, M.D.;
6. Perry Physical Medicine & Rehabilitation, P.C.;
7. All County Open MRI & Diagnostic Radiology;
8. New York City Department of Sanitation Medical Clinic;
9. Advanced Medical MRI, P.C.;
10. Astoria General Hospital;
11. Arthur Thompson, M.D.;
12. Christina Panetta, P.T..

8. At the time of the occurrence here involved, what was the nature of your employment and/or occupation?

(a) Give the name and address of your employer at the time of the occurrence here involved: **NEW YORK CITY DEPARTMENT OF SANITATION, 125 WORTH STREET, NY, NY 10013**

(b) If self-employed, state the address of your usual place of business and the name under which you operate it.: N/A

(c) If you are claiming loss of earnings, state the total amount of such loss and the computation used to arrive at that sum: Plaintiff, MICHAEL DOUKAS, has been unable to return to his usual occupation as a Sanitation Worker for the NYC Department of Sanitation since the surgery in June 2008 to present. Plaintiff has lost significant overtime as a result of the accident to date in the approximate amount of \$12,000.00. Upon information and belief, plaintiff DOUKAS will not return to full duty. Based upon plaintiff's age, occupation and contractual salary with overtime, plaintiff claims future lost earnings in the approximate amount of \$2,000,000.00. Plaintiff reserves his right to supplement this response.

(d) If you are claiming a loss of earning capacity, state the total amount of such loss, the basis for the claim and the computation of the loss.

ANSWER: See Above

9. Identify all persons whom you claim to have, or who claim to have a subrogation interest in the outcome of this litigation and for each such person, state the dollar value of the subrogation interest.

ANSWER: to be provided, if applicable.

10. Give the year, model, and serial number, of the subject vehicle at the time of the incident in question.

ANSWER: Plaintiff was passenger in a 2002 Mack Truck, serial number unknown. The subject vehicle operated by plaintiff LEVITEN was a 2007 Lexus.

11. State the date that the subject vehicle was purchased.

- (a) Identify the individual or entity which sold said vehicle;
- (b) Identify the individual or entity which purchased said vehicle;
- (c) Indicate whether said vehicle was purchased new or refurbished:
 - (1) if the vehicle was purchased refurbished, state the condition of the vehicle at the time of its last sale; and
- (d) Identify each previous owner of the subject vehicle from the date of its

purchase until the time of the incident in question.

ANSWER: Information pertaining to the purchase of the subject Lexus is in the possession of co-plaintiff Leviten.

12. If anyone to your knowledge ever observed, noticed, or experienced anything unusual or complained about the subject vehicle prior to the incident in question:

- (a) Identify each such person;
- (b) State with particularity what was observed, noticed, or experienced about said vehicle; and
- (c) State when such observation was made.

ANSWER: Plaintiff defers to co-plaintiff Leviten and hereby adopts plaintiff Leviten's answers.

13. Identify each individual or business entity which performed any maintenance or repairs on the subject vehicle from the date of its acquisition to the present:

- (a) Set forth the date of each such maintenance or repair; and
- (b) Identify the precise work done.

ANSWER: Plaintiff defers to co-plaintiff Leviten and hereby adopts plaintiff Leviten's answers.

14. Trace the location of the subject vehicle from the date of the incident to the present.

- (a) Identify the dates when the subject vehicle was at each location; and
- (b) Identify the person or organization owning and/or having possession of or control over the subject vehicle.

ANSWER: Plaintiff defers to co-plaintiff Leviten and hereby adopts plaintiff Leviten's answers.

15. Trace the location of any component part removed from the subject vehicle from the date of the incident to the present.

- (a) Identify the dates when the component part was at each location; and
- (b) Identify the person or organization owning and/or having possession of or control over the component part.

ANSWER: Plaintiff defers to co-plaintiff Leviten and hereby adopts plaintiff Leviten's answers.

16. State whether the subject vehicle or any of its component parts has been examined, inspected, or tested since the time of the incident in question.

- (a) Identify each such person or entity conducting such examination, inspection, or testing;
- (b) Identify the parts of the vehicle examined, inspected, or tested;

- (c) Indicate the date of each such examination, inspection, or test; and
- (d) State whether a written report of same has been submitted to you or to anyone

acting on your behalf.

ANSWER: Plaintiff defers to co-plaintiff Leviten and hereby adopts plaintiff Leviten's answers.

17. Identify each component part of the subject vehicle which you contend either was defective or malfunctioned at the time of the incident in question.

ANSWER: Plaintiff asserts that the floor mat was defective and/or malfunctioned at the time of the incident and additionally hereby relies upon co-plaintiff's response.

18. State in detail the defective condition that allegedly existed in the subject vehicle and the manner in which said condition caused the incident in question.

ANSWER:

The plaintiff objects to this demand as it is overbroad and seeking information outside of scope of interrogatories, however, without waiving such objection, the aforesaid occurrence was caused and contributed to by the negligence of the defendants, TOYOTA MOTOR SALES, U.S.A., INC., s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA., INC., its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794, identification number JTHBJ46G272071246; in designing, manufacturing, distributing and selling an inherently and unreasonably dangerous and defective product and instrumentality; in designing, manufacturing, distributing,; in failing to properly warn of the dangerous and hazardous potential of the aforesaid product; in manufacturing and selling a product which did not meet consumer expectations; in placing on the market a product

which they knew or should have known was inherently defective, hazardous and unsafe; in failing to ensure that the floor mat and carpeting were properly and adequately secured on the driver's side of the subject motor vehicle; in failing to properly and appropriately secure the floor mat and carpeting on the driver's side of the subject motor vehicle; in failing to use proper and appropriate material to secure the floor mat and carpeting on the driver's side of the subject motor vehicle; in using improper and inappropriate material to secure the floor mat and carpeting on the driver's side of the subject motor vehicle; in failing to properly and appropriately install the retention hooks on the driver side of the subject motor vehicle; in failing to follow the proper pre delivery requirements in installation of the floor mat; in failing to install the retention hooks in accordance with safety requirements; in causing, permitting and allowing the floor mat and carpeting on the driver's side of the subject motor vehicle to become and be unsecured; in failing to properly and appropriately inspect the interior of the subject motor vehicle; in causing, permitting, and allowing the unsecured floor mat and carpeting to interfere with the subject motor vehicle operation; in failing to ensure that the floor mats and carpeting were properly secured as to not interfere with the driver's ability to safely operate the subject motor vehicle; in causing, permitting, and allowing the subject motor vehicle to become and be unsafe in operation; in failing to properly and appropriately inspect the interior of the subject motor vehicle for possible unfastened retention hooks that secure the floor mat and carpeting; in failing to properly and appropriately install and secure the driver's side carpeting and floor mat; in allowing the driver's side floor mat and carpeting to interfere with the driver's ability to use the accelerator; in creating a dangerous and unsafe condition which caused the vehicle to rapidly accelerate; in negligently causing, permitting and allowing the plaintiff LEVITEN motor vehicle to have an unintended acceleration causing it to strike the vehicle occupied by plaintiff

DOUKAS; in failing to perform pre-delivery checks of the interior of the subject motor vehicle to ensure safety of its users; in performing improper and insufficient pre-delivery checks of the subject motor vehicle; in failing to properly follow all of the itemized safety inspection requirements; and in causing, permitting, and allowing plaintiff DOUKAS to suffer injuries alleged herein as a result.

19. Do you contend that any aspect of the design of the subject vehicle was improper? If so:

- (a) Identify each part that was improperly designed; and
- (b) Identify the specific elements of the design which were unsafe.

ANSWER: See Response to "18" herein .

20. Do you contend that, at the time of this incident, there was being sold, on the public marketplace, an alternate design(s) to the subject vehicle (or component or subcomponent thereof) which would have either prevented or reduced your injury? If so:

- (a) Identify each and every alternate design. (Please include the year, model number(s), and/or serial number(s)).

ANSWER: unknown at this time.

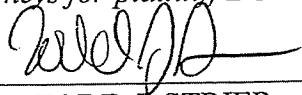
21. Do you contend that this answering defendant breached any warranty, whether express or implied, that it made concerning the subject vehicle. If so:

- (a) State whether the warranty was written or oral;
- (b) If oral, identify who made the warranty or representation;
- (c) If oral, identify when the warranty or representation was made;
- (d) If oral, identify where the warranty or representation was made; and
- (e) State the terms of the warranty or representation.

ANSWER: See Response to Number "18" above. Plaintiff reserves right to supplement this response at the completion of discovery.

Dated: New York, New York
June 9, 2009

KELNER & KELNER
Attorneys for plaintiff DOUKAS

By 
TODD J. STRIER

140 Broadway, 37th Floor
New York, NY 10005
212-425-0700

TO: **AHMUTY, DEMERS & McMANUS**
Attorneys for Defendant in Action #1
ESTREE, INC., d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, New York 11507
(516) 294-5433
File No. YCW0962N7JAE

STEIN RISO MANTEL, LLP
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THE AUTO MALL
405 Lexington Avenue
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(212) 599-1515

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant in Actions #1 & 2
TOYOTA MOTOR SALES, USA INC.
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, USA, INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

MICHAEL A. CARDOZO, ESQ.

Corporation Counsel

Attorney for Defendants in Action #2

ANTHONY DIGIROLAMO, NEW YORK

CITY DEPARTMENT OF SANITATION &

THE CITY OF NEW YORK

100 Church Street, 4th Floor

New York, New York 10007

(212) 788-0303

LD no. 2008-001345

CONNORS & CONNORS, P.C.

Attorneys for Defendant Iris Leviten Action #2

766 Castleton Avenue

Staten Island, New York 10310

(718) 442-1700

GAIR GAIR CONASON STEIGMAN & MACKAUF

Attorneys for Plaintiff in Action #1

IRIS LEVITEN

80 Pine Street

New York, New York 10005

(212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF **NEW YORK**

IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.

RESPONSE TO INTERROGATOIRES

[Defendant TOYOTA MOTOR SALES]

KELNER & KELNER, ESQS.
Attorney for Plaintiff in Action #2
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.
-----X

Index no. 107681/07

Action #1

**RESPONSE TO NOTICE
FOR DISCOVERY AND
INSPECTION**
[Def TMS]

Index no. 117118/07

Action #2

LD no. 2008-001345

C O U N S E L O R S :

PLEASE TAKE NOTICE, that plaintiff MICHAEL DOUKAS, by his attorneys,
KELNER & KELNER, ESQS., as and for his Request for Production of Documents
dated April 16, 2009 of **defendant Toyota Motor Sales**, hereby submits the following,
upon information and belief:

1. Plaintiff does not have any advertisements or brochures.
2. Plaintiff defers to co-plaintiff Leviten.
3. Plaintiff defers to co-plaintiff Leviten.
4. Plaintiff defers to co-plaintiff Leviten.
5. Plaintiff does not have photographs of the accident scene.

6. Photographs of the subject vehicle were taken by all parties involved. If said defendant wishes to have photographs taken by representative of plaintiff DOUKAS, then kindly send a written request and same will be responded to.

7. None in our possession.

8. None at present.

9. No reports in our possession about the subject vehicle beyond what has already been exchanged by all sides.

10. Plaintiff defers to co-plaintiff Leviten.

11. Plaintiff defers to co-plaintiff Leviten.

12. Plaintiff is not the owner of the vehicle he occupied. As such, said information is available by contacting the City of New York.

13. Requires further clarification to respond.

14. Requires further clarification to respond.

15. Plaintiff defers to co-plaintiff Leviten.

16. Plaintiff defers to co-plaintiff Leviten.

17. Unknown.

18. None.

19. To be provided.

20. Plaintiff defers to co-plaintiff Leviten.

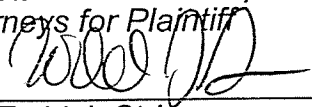
21. Plaintiff defers to co-plaintiff Leviten.

Dated: New York, New York
June 9, 2009

Yours, etc.

KELNER & KELNER, ESQS.

Attorneys for Plaintiff

By: 

Todd J. Strier
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TO: **AHMUTY, DEMERS & McMANUS**
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200 I.U. Willets Road
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(516) 294-5433
File No. YCW0962N7JAE

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(212) 788-0303
LD no. 2008-001345

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GAIR GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff in Action #1
IRIS LEVITEN
80 Pine Street
New York, New York 10005
(212) 943-1090

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.
-----X

COUNSELORS:

Plaintiff, for his response to the interrogatories propounded by the defendants

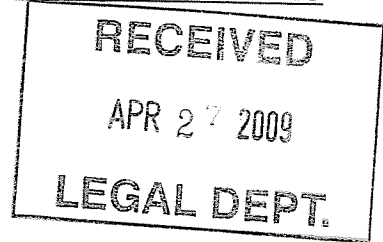
ESTREE, INC., d/b/a LEXUS OF WESTPORT allege as follows, upon information and
belief:

1. Identify all persons, other than your attorneys, who provided you with any
information used in answering these interrogatories, and state the particular information
each person supplied.

Index no. 107681/07

Action #1

**RESPONSE TO
INTERROGATORIES**



Index no. 117118/07

Action #2

LD no. 2008-001345

478 52 5008

ANSWER:

Plaintiff objects to this demand as it is improper to the extent that it calls for testimonies of non-parties, however, without waiving this objection, none.

2. Identify by full name and current home and work address, all persons, except experts, on whose testimony plaintiff intends to rely at trial, and summarize the facts to which each such person will testify.

ANSWER:

Plaintiff objects to this demand as it is improper to the extent that it calls for testimony of non-parties.

3. Identify specifically, or attach copies of, all document(s) of which the plaintiff or his attorney is aware or has information or knowledge of, which support any of the allegations in the complaint.

ANSWER:

Plaintiff objects to this demand as improper for interrogatories.

4. Identify and state all laws, rules, regulations and/or ordinances that are claimed to have been violated by ESTREE, INC. d/b/a ESTREE, INC., d/b/a LEXUS OF WESTPORT.

ANSWER:

The Court will be asked to take judicial notice of all applicable rules, regulations, statutes and ordinances.

5. Please describe in complete detail all inspections or examinations of the vehicle which have been conducted or caused to be conducted by plaintiff or any agent thereof, including the date of said inspection or examination, the name and

address of the person(s) conducting each such inspection or examination, the results of said examinations or inspections, as well as copies of any documents and/or photographs generated concerning such inspection or examinations.

ANSWER:

Objection, this answer is referred to plaintiff IRIS LEVITEN.

6. Please state fully and in complete detail all that ESTREE, INC, d/b/a LEXUS OF WESTPORT did or failed to do which in any way caused or contributed to cause the alleged occurrence.

ANSWER:

The aforesaid occurrence was caused and contributed to by the negligence of the defendants, ESTREE, INC., d/b/a LEXUS OF WESTPORT, its agents, servants and employees in the research, design, manufacture, assembly, inspection, installation, repair, servicing, maintenance, testing, labeling, distribution and sale of the aforementioned Lexus sedan motor vehicle, model number ES 350, bearing the New York State license plate DWW7794, identification number JTHBJ46G272071246; in designing, manufacturing, distributing and selling an inherently and unreasonably dangerous and defective product and instrumentality; in failing to properly warn of the dangerous and hazardous potential of the aforesaid product; in manufacturing and selling a product which did not meet consumer expectations; in placing on the market a product which they knew or should have known was inherently defective, hazardous and unsafe; in failing to ensure that the floor mat and carpeting were properly and adequately secured on the driver's side of the subject motor vehicle; in failing to properly and appropriately secure the floor mat and carpeting on the driver's side of the

subject motor vehicle; in failing to use proper and appropriate material to secure the floor mat and carpeting on the driver's side of the subject motor vehicle; in using improper and inappropriate material to secure the floor mat and carpeting on the driver's side of the subject motor vehicle; in failing to properly and appropriately install the retention hooks on the driver side of the subject motor vehicle; in failing to follow the proper pre-delivery requirements in installation of the floor mat and carpeting; in failing to install the retention hooks in accordance with safety requirements; in causing, permitting and allowing the floor mat and carpeting on the driver's side of the subject motor vehicle to become and be unsecured; in failing to properly and appropriately inspect the interior of the subject motor vehicle; in causing, permitting, and allowing the unsecured floor mat and carpeting to interfere with the subject motor vehicle operation; in failing to ensure that the floor mats and carpeting were properly secured as to not interfere with the driver's ability to safely operate the subject motor vehicle; in causing, permitting, and allowing the subject motor vehicle to become and be unsafe in operation thus causing impact to plaintiff MICHAEL DOUKAS vehicle; in failing to properly and appropriately inspect the interior of the subject motor vehicle for possible unfastened retention hooks that secure the floor mat and carpeting; in failing to properly and appropriately install and secure the driver's side carpeting and floor mat; in allowing the driver's side floor mat and carpeting to interfere with plaintiff IRIS LEVITEN'S ability to use the accelerator; in creating a dangerous and unsafe condition which caused the vehicle to rapidly accelerate and strike plaintiff MICHAEL DOUKAS's vehicle; in negligently causing, permitting and allowing Plaintiff LEVITEN's motor vehicle to have an unintended acceleration; in failing to perform pre-delivery checks of

the interior of the subject motor vehicle to ensure safety of its users; in performing improper and insufficient pre-delivery checks of the subject motor vehicle; in failing to properly follow all of the itemized safety inspection requirements; and in causing, permitting, and allowing the plaintiff DOUKAS to suffer injuries alleged herein.

7. Does plaintiff contend that vehicle at issue deviated in any way from the prevalent safety, technical, mechanical, scientific and industry standards in existence at the time of the manufacture of the product? If so, set forth with particularity the reasons for this contention and attach any and all written documents, including articles, journals, pamphlets, testimony, or any other written materials of any nature that the plaintiff or any of its experts will utilize in support of this contention?

ANSWER:

See response number "6" herein.

8. Does plaintiff contend that there was any defect or a defective condition of the vehicle which caused or contributed to cause the alleged occurrence?

ANSWER:

See response number "6" herein.

9. If the answer to the preceding interrogatory is in the affirmative, as to each such defect or defective condition, please:
- (a) specifically describe the defect or defective condition,
 - (b) state all reasons leading plaintiff to believe that the defect or defective condition existed,
 - (c) explain the causal relationship between the defect or defective condition and the

alleged occurrence, and

(d) explain how ESTREE, INC. c/b/a LEXUS OF WESTPORT is allegedly responsible for the defect or defective condition.

ANSWER:

The Plaintiff objects to this demand as palpably improper and evidentiary in nature, however, without waiving this objection, see response number "6" herein.

10. Does plaintiff claim that the vehicle as designed or manufactured was in any way dangerous or inadequate from the normal purpose or use as intended?

ANSWER:

See response number "6" herein.

11. If the answer to the preceding interrogatory is in the affirmative, please:

(a) describe as accurately as possible in what way the vehicle was dangerous or inadequate from the normal purpose or use as intended,

(b) describe why and how the condition described in response to subsection (a) of this interrogatory contributed to or caused the alleged occurrence.

(c) Set forth the name(s) of all witnesses, including experts, plaintiff will utilize at the time of trial in support of the above contention(s).

ANSWER:

(a &b) See response number "10" herein.

(c) Plaintiff has not retained an expert at this time.

12. Does plaintiff allege that ESTREE, INC., d/b/a LEXUS OF WESTPORT in any way violated or failed to comply with any trade, industry, quality or safety standard, or any statutes, rules, regulations, or ordinances relating to:

- (a) the design of the vehicle,
- (b) the production, manufacture or assembly process of the vehicle,
- (c) the pre-market testing or inspection of the vehicle,
- (d) the storage of the vehicle,
- (e) the sale or distribution of or warnings about the vehicle, and
- (f) the use, installation or handling of the vehicle.

ANSWER:

See response number "6" herein.

13. If the answer to the preceding interrogatory is in the affirmative, set forth each such trade, industry, quality or safety standard, or any statutes, rules, regulations, or ordinances which ESTREE, INC. d/b/a LEXUS OF WESTPORT allegedly violated, and how each such violation contributed to the alleged occurrence.

ANSWER:

The Court will be asked to take notice of all applicable trade, industry, quality or safety standard, statutes, rules and regulations that were violated by the defendants.

14. If plaintiff alleges or contends that ESTREE, INC. d/b/a LEXUS OF WESTPORT or any other defendant was in any way negligent in connection with the use of an improper or unsuitable design for the vehicle, please identify the party charged and describe precisely:

- (a) the design used;
- (b) every manner in which each such design was improper or unsuitable,
- (c) the precise manner in which each such design caused or contributed to cause the plaintiff's alleged injuries or damages,
- (d) any and all alternative designs known to plaintiff which plaintiff alleges or contends that the defendants should have or could have used in the manufacture or assembly of the product or component ingredients of the product, and
- (e) the first date that each such alternate design should have been used, and
- (f) enclosed copies of all documents in support of these allegations.

ANSWER:

Plaintiff objects to this demand as improper for interrogatories, however, without waiving this objection, see response number "6" herein.

15. Please state fully and in complete detail every act or omission on the part of ESTREE, INC. d/b/a LEXUS OF WESTPORT, which plaintiff alleges, constitutes negligence.

ANSWER:

See response number "6" herein.

16. If it is alleged that ESTREE, INC., d/b/a LEXUS OF WESTPORT made any warranties to plaintiff or any other party and/or entity, identify:
- (a) the substance of said warranties, if oral
 - (b) provide a copy, if written,
 - (c) the name of the person making said warranties.

ANSWER:

See response number "6" herein.

17. Does plaintiff allege or contend that the vehicle failed to satisfy any implied warranty or representation concerning its potential use or its standards of performance or that it its intended use?

ANSWER:

Plaintiff DOUKAS alleges that the defendants failed to satisfy implied warranty and/or representation in designing, manufacturing, distributing and selling an inherently and unreasonably dangerous and defective product and instrumentality; in failing to properly warn of the dangerous and hazardous potential of the aforesaid product the subject vehicle failed to satisfy any implied warranty or representation concerning its potential use or its standards of performance in that, the floor mat and carpeting on the driver's side of the said vehicle was not properly and appropriately secured into the retention hooks

18. If the answer to the preceding interrogatory is in the affirmative, please state:

(a) fully the content of each such representation or warranty which allegedly was not fulfilled,

(b) state the source of each such representation or warranty,

(c) explain how plaintiff relied upon each representation or warranty, and

(d) explain how each such representation or warranty was not fulfilled, and the manner in which the vehicle is alleged to have been unfit.

ANSWER:

See response number "6" herein.

19. If plaintiff contends that ESTREE, INC., d/b/a LEXUS OF WESTPORT breached any warranty of fitness of the product, please set forth all facts on which plaintiff bases this contention.

ANSWER:

The plaintiff alleges that the defendants breached the warranty of fitness of the product in that, that they sold the vehicle to plaintiff IRIS LEVITEN without properly and appropriately inspecting the vehicle for potential hazards, in failing to ensure that the retention hooks were properly and sufficiently securing the floor mat and carpeting on the driver's side of the subject motor vehicle. Also see response number "6" herein.

20. Identify each witness who will testify on behalf of the plaintiff at the time of trial in support of the claims made in the plaintiffs complaint and the substance of the testimony each such witness is expected to provide.

ANSWER:

To be provided.

21. Set forth in sufficient detail each and every act of omission or commission of the alleged negligence and/or culpable conduct of ESTREE, INC. d/b/a LEXUS OF WESTPORT as alleged in the plaintiff's complaint.

ANSWER:

See response number "6" herein.

22. Identify the name, job position, employer, and address of each witness who possesses any knowledge, information and/or documentation pertaining to any and all of the allegations contained in the defendant/third-party plaintiff's Second Cause of Action.

ANSWER:

Not applicable.

23. Set forth the basis for alleging that the vehicle at issue was defective and caused the alleged injuries and damages referred to in plaintiff's complaint.

ANSWER:

See response number "6" herein.

24. Set forth the basis for the allegation that ESTREE, INC., d/b/a LEXUS OF WESTPORT breached any/all express and/or implied warranties and that the subject vehicle was neither fit for the particular and ordinary purpose for which it was intended, nor was it of good and merchantable quality.

ANSWER

See response number "6" herein.

25. Set forth the basis for the allegation that ESTREE, INC., d/b/a LEXUS OF WESTPORT or any defendant improperly and defectively designed, manufactured, produced, supplied and sold the subject vehicle.

ANSWER

See response number "6" herein.

26. Set forth the basis for the allegation that ESTREE, INC. d/b/a LEXUS OF WESTPORT breached any/all express and/or implied warranties.

ANSWER:

See response number "6" herein.

27. Do you, your attorney or anyone acting on your behalf, have possession of any photographs, slides, prints, negatives, motion picture or videotape of the vehicle in question? If so, please state the following:

- a. the number of photographs;
- b. the name and address of the photographer;
- c. the dates that the photographs were taken; and
- d. the place the photographs were taken.

ANSWER:

Plaintiff DOUKAS is in possession of photographs taken at the 12/2/08 car inspection of the Leviten vehicle. A copy of said photographs will be provided upon request. Said photographs were taken by Todd Strier of Kelner & Kelner.

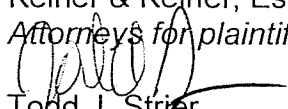
28. Enclose all photographs, slides, prints, negatives, motion pictures or videotapes and any documents describing or relating thereto referred to in the preceding interrogatory.

ANSWER:

Plaintiff objects to this demand as improper for interrogatories, however, copies of the photographs of the plaintiff LEVITENS vehicle will be provided under separate cover.

Dated: New York, New York
March 23, 2009

Kelner & Kelner, Esqs.
Attorneys for plaintiff DOUKAS


Todd J. Strier
140 Broadway, 37th Fl
New York, NY 10005 212-425-0700

TO: **CONNORS & CONNORS, P.C.**
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(516) 294-5433
File No. YCW0962N7JAE

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s/h/a LEXUS, A DIVISION OF TOYOTA
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White Plains, NY 10606
(914) 949-2909

MICHAEL A. CARDOZO, ESQ.
Corporation Counsel
Attorney for Defendants in Action #2
ANTHONY DIGIROLAMO, NEW YORK
CITY DEPARTMENT OF SANITATION &
THE CITY OF NEW YORK
100 Church Street, 4th Floor
New York, New York 10007
(212) 788-0303
LD no. 2008-001345

VERIFICATION

STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

MICHAEL DOUKAS, being duly sworn, deposes and says:

I am the plaintiff in the within action;

I have read the foregoing Answers to Interrogatories and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.


MICHAEL DOUKAS

Sworn to before me this
19th day of March, 2009


Notary Public

TODD J. STRIER
Notary Public, State of New York
No. 02515083960
Qualified in M County
Commission Expires July 15, 2010

Index no. 117118/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Index no. 107681/07

Plaintiff,

Action #1

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

MICHAEL DOUKAS,

Index no. 117118/07

Plaintiff,

Action #2

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

LD no. 2008-001345

Defendants.

RESPONSE TO INTERROGATORIES

[Defendant ESTREE]

KELNER & KELNER, ESQS.
Attorney for Plaintiff in Action #2
Office and Post Office Address, Telephone
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,-----X

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.-----X

MICHAEL DOUKAS,-----X

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.-----X

C O U N S E L O R S :

PLEASE TAKE NOTICE, that the plaintiff MICHAEL DOUKAS, by his attorneys,
KELNER & KELNER, ESQS., as and for his Verified Bill of Particulars in response to
the demand of **defendant CITY OF NEW YORK**, hereby alleges the following, upon
information and belief:

1. February 18, 2007 at approximately 2:50 pm.
2. This incident occurred on Glen Cove Road, at or near its intersection with
Northern State Parkway East Bound ramp, County of Nassau and State of New York.
3. The plaintiff sustained the following injuries:
 - A) Posterior herniation at the C3 to C7 disc level, abutting the anterior
aspect of the cord at this level, and impinging the anterior aspect of the
spinal cord at the C4-5; C5-6 and C6-7 disc levels;
 - B) Plaintiff was forced to undergo surgical intervention under general
endotracheal anesthesia on June 25, 2008 which consisted of multi level
fusion, specifically:

- 1) anterior discectomy at C4-5,

Index no. 107681/07

Action #1

VERIFIED BILL OF PARTICULARS RECEIVED
[City of NY]

APR 29 2009

LEGAL DEPT.

Index no. 117118/07

Action #2

LD no. 2008-001345

- 2) interbody prosthesis arthrodesis C4-5,
- 3) anterior discectomy at C5-6,
- 4) interbody prosthesis arthrodesis C5-6,
- 5) anterior discectomy at C6-7,
- 6) interbody prosthesis arthrodesis C6-7,
- 7) anterior cervical plating with segmental fixation to C4, C5, C6, C7 with Atlantis plate,

- C) Subligamentous posterior herniation at the L5-S1 disc level, impinging on the anterior aspect of the spinal canal with retrolisthesis at this level;
- D) Sprain of the medial collateral ligament of the right knee;
- E) Pain in cervical spine;
- F) Pain in right knee;
- G) Limited range of motion of neck;
- H) Discomfort;
- I) Need for ongoing physical therapy;
- J) Need for prescriptive pain medication;
- K) Cervical muscle spasms;
- L) Cervical tenderness;
- M) Headaches;
- N) Weakness in upper extremities;
- O) Tendency to drop items held by hands;
- P) Hypoesthesia and weakness in left arm;
- Q) Giveaway weakness of right leg;
- R) The above injuries were accompanied by and productive of severe pain in the cervical spine and right leg regions; stiffness; tenderness; limitation and restriction of motion; inflammation; post-traumatic arthritis and/or arthritic changes; change of weather sensations; difficulty sleeping due to pain; deformity and total disability.
- S) In addition, there was injury to surrounding muscles, tendons, ligaments, nerves, blood vessels, supportive and connective tissue, with resulting pain, tenderness, weakness, restriction and limitation of motion and loss of use of the effected parts.
- T) Future development and progression of arthritic, osteoarthritic and degenerative changes in associated joints, tendons, ligaments and supportive and connective tissue.

4. All of the foregoing injuries to the plaintiff are permanent in nature and scope, and are progressive.

5. The plaintiff was totally incapacitated from returning to full duty in his employment, specifically he was incapacitated from date of accident till May 2007, then again from March 2008 to present.

6. Plaintiff is presently unaware of his special damages due to the fact all expenses are presently covered by defendant THE CITY OF NEW YORK pursuant to his contract. Any expenses not covered by his employer were covered by his private health insurance. As of March 2009, plaintiff has not incurred any out of pocket expenses. Plaintiff reserves his right to supplement this response.

7. a) New York City Sanitation Worker;
- b) NYC Dept of Sanitation; 125 Worth Street, New York, NY
- c) Plaintiff earns approximately \$57,392 yearly without overtime.
- d) Plaintiff was totally disabled initially for 3 months following the

occurrence, then again following surgery in June 2008, wherein he never returned to full duty to present.

e) Plaintiff, MICHAEL DOUKAS, has been unable to return to his usual occupation as a Sanitation Worker for the NYC Department of Sanitation since the surgery in June 2008 to present. Plaintiff has lost significant overtime as a result of the accident to date in the approximate amount of \$12,000.00. Upon information and belief, plaintiff DOUKAS will not return to full duty. Based upon plaintiff's age, occupation and contractual salary with overtime, plaintiff claims future lost earnings in the approximate amount of \$2,000,000.00. Plaintiff reserves his right to supplement this response.

f) Plaintiff lost 7.5 months after the initial accident and surgery, then was put on sick status as of 3/18/09 and has not returned to date in any capacity.

g) N/A

h) N/A

8. 2 Mehan Lane, Dix Hills, New York 11746.

9. None

10. November 7, 1960, social security no. 092-52-4953.

11. N/A

12. See Paragraph #3

13. N/A

14. Plaintiff objects, as palpably improper, to any demand to "[s]tate the manner in which it is claimed the accident occurred." Said demand is evidentiary in nature, and is therefore not properly includable in a bill of particulars. See, e.g., *State of New York v. Horsemen's Benevolent Protective Assoc.*, 34 A.D.2d 769, 311 N.Y.S.2d 511 (1st Dept. 1970).

15. Defendant ANTHONY DIGIROLAMO was negligent, reckless and careless in the operation, management, maintenance and control of the vehicle owned, managed, maintained and controlled by defendants NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK; in traveling at a dangerous rate of speed for conditions then and there existing; in failing to avoid the happening of this occurrence; in failing to make adequate use of braking and steering mechanisms; in negligently, recklessly and carelessly failing and omitting to provide or make prompt and timely use of braking and steering mechanisms of said vehicle; in failing to signal approach by horn, bell or otherwise; in failing or refusing to look; in failing to see; in failing to see that which was there to be seen; in failing to be reasonably alert; in negligently, recklessly and carelessly failing to keep said vehicle under sufficient control so that life and limb of persons, and in particular this plaintiff would not be endangered; in failing or refusing to operate said vehicle in a reasonable manner under the conditions then and there prevailing; in failing to comply with all the applicable statutes, ordinances, rules and regulations of the State of New York, and in failing to use due care and caution so as to avoid the happening of the occurrence complained of and the resulting injuries to this plaintiff.

Defendants NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK, by and through their agents, servant or employees was negligent, careless and reckless in the hiring, training and employing of defendant ANTHONY DIGIROLAMO; in hiring and employing inept, incompetent or inexperienced personnel to operate or control their vehicles in the furtherance of their business; in causing, allowing or permitting defendant ANTHONY DIGIROLAMO to operate or control their vehicle in the furtherance of their business; in failing to adequately train defendant ANTHONY DIGIROLAMO in the operation or control of said vehicle; in improperly training defendant ANTHONY DIGIROLAMO in the operation or control of said vehicle; in negligently, careless or recklessly supervising defendant ANTHONY DIGIROLAMO in the operation or control of said vehicle; in causing, permitting or

allowing defendant ANTHONY DIGIROLAMO to operate said vehicle at a dangerous rate of speed for conditions then and there existing; in failing to have adequate and sufficient safeguards in place regarding operation of said vehicle; in failing to adequately supervise its agents, servants or employees; in failing to adequately train its agents, servants or employees including, but not limited to defendant ANTHONY DIGIROLAMO; in negligently, recklessly and carelessly causing, allowing and permitting the said vehicle to be operated in an inept, incompetent, inexperienced and unskilled manner in failing or refusing to maintain the braking and steering mechanisms of said vehicle in a proper state of repair, and in violating the pertinent and applicable rules, regulations, ordinance, promulgations and statutes pertaining to vehicular traffic on the roadways of the State of New York. Plaintiff will also rely upon the doctrine of *Res Ipsa Loquitur*.

16. There are no claim of intentional wrongs.

17. Sanitation Worker Anthony Digirolamo.

18. N/A.

19. Plaintiffs are not presently aware of any repairs being made prior to the happening of this incident to either vehicle.

20. Refer to response no. 19. Plaintiff reserves his right to supplement this response upon completion of discovery.

21. Notice is not a prerequisite to bringing this action.

22. Refer to response no. 21.

23. Refer to response no. 21.

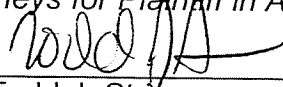
24. Defendant CITY violated NYS Vehicle & Traffic Law Sections: 1100; 1140; 1142; 1143; 1146 and NYC DOT, Traffic Rules and Regulations: Article 3, 4, 5, 6,7, 10 and 13. Plaintiff reserves his right to supplement this response upon completion of discovery.

25. Defendant CITY failed to train its employee in proper defensive driving techniques.

- 26. N/A.
- 27. N/A.
- 28. N/A.
- 29. N/A.
- 30. N/A. (Defamation)
- 31. N/A.(False Arrest)
- 32. N/A.(Lead Paint)
- 33-38. N/A (Wrongful Death)

Dated: New York, New York
March 20, 2009

Yours, etc.
KELNER & KELNER, ESQS.
Attorneys for Plaintiff in Action #2

By: 

Todd J. Strier
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

TO: **CONNORS & CONNORS, P.C.**
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(516) 294-5433
File No. YCW0962N7JAE

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THE CITY OF NEW YORK
100 Church Street, 4th Floor
New York, New York 10007
(212) 788-0303
LD no. 2008-001345


ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

The undersigned, an attorney admitted to practice law before the Courts of the State of New York, hereby affirms as true under the penalty of perjury that affirmant is an attorney for the plaintiff in this action; that affirmant has read the foregoing **BILL OF PARTICULARS** and knows the contents thereof; that same is true to affirmant's own knowledge, except as to those matter stated upon information and belief, and that those matters affirmant believes to be true. Affirmant further says that the reason this affirmation is made by affirmant and not by the plaintiff is that the plaintiff does not reside within the County where affirmant has his office.

The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are as follows: investigation made under affirmant's supervision and information and records in the case file.

Dated: New York, New York:
March 20, 2009



Todd J. Strier

Index no. **117118/07**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF **NEW YORK**

IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

-----X
MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.

Index no. 107681/07

Action #1

Index no. 117118/07

Action #2

LD no. 2008-001345

VERIFIED BILL OF PARTICULARS

[Defendant CITY OF NEW YORK]

KELNER & KELNER, ESQS.
Attorney for Plaintiff in Action #2
Office and Post Office Address, Telephone
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.
-----X

Index no. 107681/07

Action #1

**VERIFIED BILL OF
PARTICULARS**

Index no. 117118/07

Action #2

LD no. 2008-001345

C O U N S E L O R S :

PLEASE TAKE NOTICE, that the plaintiff MICHAEL DOUKAS, by his attorneys,
KELNER & KELNER, ESQS., as and for his Verified Bill of Particulars in response to
the demand of **defendant IRIS LEVITEN**, hereby alleges the following, upon
information and belief:

1. Michael Doukas, November 7, 1960, social security no. 092-52-4953.
2. 2 Mehan Lane, Dix Hills, New York 11746.
3. February 18, 2007 at approximately 2:50 pm.
4. This incident occurred on Glen Cove Road, at or near its intersection with
Northern State Parkway East Bound ramp, County of Nassau and State of New York.
5. Defendant IRIS LEVITEN was negligent, reckless and careless in the
ownership, operation, management, maintenance and control of her vehicle; in
traveling at a dangerous rate of speed for conditions then and there existing; in failing to

yield to traffic; in failing to stop; in failing to stop at the stop sig., or other traffic control device; in failing to pull over and avoid impact; in failing to avoid the happening of this occurrence; in failing to make adequate use of braking and steering mechanisms; in negligently, recklessly and carelessly failing and omitting to provide or make prompt and timely use of braking and steering mechanisms of said vehicle; in failing to warn of impending impact; in failing to use horn; in failing to flash lights; in failing to utilize the vehicle's emergency brake; in failing to make any attempt to downshift the vehicle in an attempt to stop; in failing or refusing to look; in failing to see; in failing to see that which was there to be seen; in failing to be reasonably alert; in negligently, recklessly and carelessly failing to keep said vehicle under sufficient control so that life and limb of persons, and in particular plaintiff DOUKAS would not be endangered; in failing or refusing to operate said vehicle in a reasonable manner under the conditions then and there prevailing; in failing to pay attention; in failing to properly maintain the floor mats of defendant LEVITEN's vehicle; in failing to properly secure the floor mats of defendant LEVITEN's vehicle; in failing to remove the protective covering on said floor mats; in failing to report defective floor mats to the dealership; in failing to comply with all the applicable statutes, ordinances, rules and regulations of the State of New York, and in failing to use due care and caution so as to avoid the happening of the occurrence complained of and the resulting injuries to plaintiff DOUKAS.

6. The plaintiff sustained the following injuries:

A) Posterior herniation at the C3 to C7 disc level, abutting the anterior aspect of the cord at this level, and impinging the anterior aspect of the spinal cord at the C4-5; C5-6 and C6-7 disc levels;

B) Plaintiff was forced to undergo surgical intervention under general endotracheal anesthesia on June 25, 2008 which consisted of multi level fusion, specifically:

- 1) anterior discectomy at C4-5,
- 2) interbody prosthesis arthrodesis C4-5,
- 3) anterior discectomy at C5-6,
- 4) interbody prosthesis arthrodesis C5-6,
- 5) anterior discectomy at C6-7,
- 6) interbody prosthesis arthrodesis C6-7,
- 7) anterior cervical plating with segmental fixation to C4, C5, C6, C7 with Atlantis plate,

C) Subligamentous posterior herniation at the L5-S1 disc level, impinging on the anterior aspect of the spinal canal with retrolisthesis at this level;

- D) Sprain of the medial collateral ligament of the right knee;
- E) Pain in cervical spine;
- F) Pain in right knee;
- G) Limited range of motion of neck;
- H) Discomfort;
- I) Need for ongoing physical therapy;
- J) Need for prescriptive pain medication;
- K) Cervical muscle spasms;
- L) Cervical tenderness;
- M) Headaches;
- N) Weakness in upper extremities;
- O) Tendency to drop items held by hands;
- P) Hypoesthesia and weakness in left arm;
- Q) Giveaway weakness of right leg;
- R) The above injuries were accompanied by and productive of severe pain in the cervical spine and right leg regions; stiffness; tenderness; limitation and restriction of motion; inflammation; post-traumatic arthritis and/or arthritic changes; change of weather sensations; difficulty sleeping due to pain; deformity and total disability.
- S) In addition, there was injury to surrounding muscles, tendons, ligaments, nerves, blood vessels, supportive and connective tissue, with resulting pain, tenderness, weakness, restriction and limitation of motion and loss of use of the effected parts.
- T) Future development and progression of arthritic, osteoarthritic and degenerative changes in associated joints, tendons, ligaments and supportive and connective tissue.

7. All of the foregoing injuries to the plaintiff are permanent in nature and scope, and are progressive.

8. The plaintiff was confined to bed for approximately two (2) months.

9. The plaintiff was confined to his home from the date of the incident up through May 2007 and again from March 2008 to October 2008 and lastly from March 2009 to present.

10/11. The plaintiff was totally incapacitated from returning to full duty in his employment, specifically he was incapacitated from date of accident till May 2007, then again from March 2008 to present.

12. Plaintiff is presently unaware of his special damages due to the fact all expenses are presently covered by defendant THE CITY OF NEW YORK pursuant to his contract. Any expenses not covered by his employer were covered by his private health insurance. As of March 2009, plaintiff has not incurred any out of pocket expenses. Plaintiff reserves his right to supplement this response.

13. Plaintiff claims damages for pain and suffering, lost earnings (both past and future) and cost of past and future medical expenses as a result of the defendants' negligence in the amount of FIVE MILLION (\$5,000,000.00) DOLLARS.

14. Plaintiff is employed by the New York City Department of Sanitation, 125 Worth Street, New York, New York 10013.

15. At the time of this incident, the plaintiff was not self-employed.

16. There is no claim for property damage.

17. Refer to response no. 16.

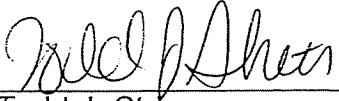
18. The plaintiff sustained a "serious injury" as defined in §5102 et seq. of the Insurance Law of the State of New York in that he suffered multiple herniations including, but not limited to C3-C7 and L5-S1 disc levels, which required surgical intervention in the form of an cervical fusion all under general endotracheal anesthesia on June 25, 2008. Plaintiff has permanent restrictions in his cervical spine which are permanent and a direct result of defendant LEVITEN's negligence.

19. Plaintiff receives full benefits from his employer, however he has filed a no-fault application with the City of New York.

20. At such time as an expert is retained, the plaintiff will provide a response in accordance with the applicable provisions of the CPLR.

Dated: New York, New York:
March 19, 2009

Yours, etc.
KELNER & KELNER, ESQS.
Attorneys for Plaintiff in Action #2

By: 
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File No. YCW0962N7JAE

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THE CITY OF NEW YORK
100 Church Street, 4th Floor
New York, New York 10007
(212) 788-0303
LD no. 2008-001345

Index no. 117 . 18/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRIS LEVITEN,

Plaintiff,

Index no. 107681/07

Action #1

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

-----X
MICHAEL DOUKAS,

Plaintiff,

Index no. 117118/07

Action #2

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

LD no. 2008-001345

Defendants.

VERIFIED BILL OF PARTICULARS

[Defendant IRIS LEVITEN]

KELNER & KELNER, ESQS.
Attorney for Plaintiff in Action #2
Office and Post Office Address, Telephone
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

Index no. **117118/07**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF **NEW YORK**

IRIS LEVITEN,

Index no. 107681/07

Plaintiff,

Action #1

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

-----X
MICHAEL DOUKAS,

Index no. 117118/07

Plaintiff,

Action #2

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

LD no. 2008-001345

Defendants.

**RESPONSE TO NOTICE FOR DISCOVERY AND
INSPECTION**

[Defendant ESTREE, INC. d/b/a LEXUS OF WESTPORT]

KELNER & KELNER, ESQS.
Attorney for Plaintiff in Action #2
Office and Post Office Address, Telephone
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.
-----X

C O U N S E L O R S :

PLEASE TAKE NOTICE, that plaintiff MICHAEL DOUKAS, by his attorneys,
KELNER & KELNER, ESQS., as and for his Response to Notice for Discovery and
Inspection of **defendant ESTREE, INC. d/b/a LEXUS OF WESTPORT**, hereby submits
the following, upon information and belief:

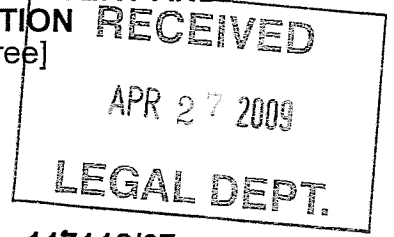
November 6, 2008 Demand:

1. Police Accident report and Sanitation report attached.
2. The plaintiff is not presently in possession of any photographs depicting
the vehicles involved in this incident at the accident scene. If defendant wishes to
obtain copies of digital pictures taken at 12/2/08 inspection of Leviten vehicle, please

Index no. 107681/07

Action #1

**RESPONSE TO NOTICE
FOR DISCOVERY AND
INSPECTION RECEIVED**
[Def Estree]



Index no. 117118/07

Action #2

LD no. 2008-001345

contact office with said demand and a fee letter will be generated.

3. The plaintiff is not presently in possession of any photographs or video depicting the location of the occurrence.

4. The plaintiff is not presently in possession of any reports regarding investigation of this incident besides reports attached.

5. Not applicable.

6. Any such reports, investigations or similar documents are in the sole and exclusive possession or control of the agents, servants or employees of defendants NEW YORK CITY DEPARTMENT OF TRANSPORTATION and/or THE CITY OF NEW YORK.

January 21, 2009 Demand:

A) NOTICE FOR DISCOVERY AND INSPECTION:

1) The plaintiff identifies defendant ANTHONY DIGIROLAMO as an event witness, Defendant IRIS LEVITEN and police blotter witness: Andrew Beadle.

2) None.

3) Plaintiff intends on relying upon photographs taken at the 12/2/08 inspection of the Leviten vehicle. If defendant wishes to obtain copies of digital pictures taken at 12/2/08 inspection of Leviten vehicle, please contact office with said demand and a fee letter will be generated.

4) See response to No. 3 above.

5) The plaintiff is not presently in possession of any photographs or video depicting his injuries.

6) Employment authorizations have been requested of plaintiff and will be forwarded upon receipt.

7) NYC Comptroller, 1 Centre Street, New York, New York., Claim No.: 2007NF010381.

8) No Fault authorizations have been requested of plaintiff and will be forwarded upon receipt.

9) Plaintiff was not self-employed on the date of the accident and hence objects to production of Tax Returns. An authorization for employment records will be provided shortly.

10) Attached.

11) Plaintiff is not in possession of any violations or tickets issued to either defendant Leviten or Digirolamo.

12) Attached.

13) N/A, Plaintiff Doukas did not own the vehicle he was a passenger in.

14) Not in plaintiff's possession.

15) Not in plaintiff's possession.

B) NOTICE RE: MEDICALS

- 1) Winthrop University Hospital;
North Shore University Hospital;
Mitchell E. Levine, M.D.;
Dov J. Berkowitz, M.D.;
Borimir J. Darakchiev, M.D.;
Perry Physical Medicine & Rehabilitation, P.C.;
All County Open MRI & Diagnostic Radiology;
New York City Department of Sanitation Medical Clinic;
Advanced Medical MRI, P.C.;
Astoria General Hospital;
Arthur Thompson, M.D.;
Christina Panetta, P.T..

* Full addresses and authorizations provided on February 24, 2009.

2) Provided on February 24, 2009.

3) Provided on February 24, 2009.

C) DEMAND FOR EXPERTS: Plaintiff has not retained an expert, but will disclose said expert(s) pursuant to CPLR.

D) DEMAND FOR COLLATERAL SOURCE: Plaintiff is still presently employed by defendant CITY OF NEW YORK. All expenses to date have been covered by his

employer. Plaintiff is not collecting any additional benefits beyond salary and medical coverage by the city of new york at present. Plaintiff reserves his right to supplement this response prior to trial.

E) PROOF OF INDEX NUMBER: ACTION NO. 2: 117118/07

F) DEMAND FOR INSURANCE INFORMATION: Objection, plaintiff was a passenger in the defendant CITY's vehicle.

G) See Response to F. Plaintiff does not collect Workers' Compensation.

H) DEMAND PURSUANT TO CPLR 3017(C): Plaintiff hereby demands of all defendants for pain and suffering, past and future, past and future medical expenses, if applicable and lost earnings past and future in the total sum of \$5,000,000.

I) NOTICE TO PRESERVE: Objection, this demand should be addressed to defendant THE CITY OF NEW YORK and defendant LEVITEN.

PLEASE TAKE NOTICE, the plaintiff reserves his right to supplement and or amend his responses to defendant ESTREE, INC. d/b/a LEXUS OF WESTPORT's Notice for Discovery and Inspection.

Dated: New York, New York
March 23, 2009

Yours, etc.

KELNER & KELNER, ESQS.

Attorneys for Plaintiff

By: 

Todd J. Strier

140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

TO: **AHMUTY, DEMERS & McMANUS**
Attorneys for Defendant in Action #1
ESTREE, INC., d/b/a LEXUS OF WESTPORT
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Albertson, New York 11507
(516) 294-5433
File No. YCW0962N7JAE

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LD no. 2008-001345

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(212) 943-1090

Page 1 of 1 Page

Local Codes 3-818-07

New York State Department of Motor Vehicles POLICE ACCIDENT REPORT

MV-104A (6/04)

AMENDED REPORT DMY COPY

Accident Date: Month 2, Day 18, Year 2007, Day of Week Su, Military Time 1450, No. of Vehicles 2, No. Injured 3, No. Killed 0

VEHICLE 1 - Driver License ID Number 793 706 540, State of Lic NY, Driver Name LEVITEN, IRIS L, Address SIX WOOD AVE, City of Town ALBERTSON, State NY, Zip Code 11507

VEHICLE 2 - Driver License ID Number 946 352 386, State of Lic NY, Driver Name DIGIROLAND, ANTHONY, Address 114 Tenth ST, City of Town HICKSVILLE, State NY, Zip Code 11701

Plate Number DLW 7794, State of Reg NY, Vehicle Year & Make 2007 Lexus, Vehicle Type 4dscd, Wgt. Code 140, Plate Number K 36 751, State of Reg NY, Vehicle Year & Make 2002 MERC, Vehicle Type S1

VEHICLE 1 DAMAGE CODES: Box 1 - Point of Impact 3, Box 2 - Most Damage 3. VEHICLE 2 DAMAGE CODES: Box 1 - Point of Impact 1, Box 2 - Most Damage 12. ACCIDENT DIAGRAM showing vehicle positions and directions.

VEHICLE DAMAGE CODING: 14. UNDERCARRIAGE, 15. TRAILER, 16. OVERTURNED, 17. DEMOLISHED, 18. NO DAMAGE, 19. OTHER. Cost of repairs to any one vehicle will be more than \$1000. [] Unknown/Unable to Determine [X] Yes [] No

Place Where Accident Occurred: County MASSACHUSETTS, City/Village/Town of NORTH HAMPSHIRE, Road on which accident occurred Glen Ave Rd CARL PALE at 1) Intersecting street NORTHERN STATE EAST BOUND ramp

Accident Description/Officer's Notes: All four were on a highway. Both vehicles were towed from scene by Authority of Operator. WITNESS Andrew Beadle 516 375-0223

Table with columns: A, 9, 10, 11, 12, 13, 14, 15, 16, 17, BY, TO, 18, Names of all involved, Date of Death Only. Rows A-F containing driver and witness information.

Officer's Rank and Signature: PO KELLERMAN, Badge ID No. 250, NCIC No. 02200, Precinct/Post/Troop/Zone 3, Station/Beat/Section 313, Date/Time Reviewed 3/6/07

PEDESTRIAN/BICYCLIST/OTHER PEDESTRIAN LOCATION
 1. Pedestrian/Bicyclist/Other Pedestrian at Intersection
 2. Pedestrian/Bicyclist/Other Pedestrian Not at Intersection

PEDESTRIAN/BICYCLIST/OTHER PEDESTRIAN ACTION
 1. Crossing, With Signal
 2. Crossing, Against Signal
 3. Crossing, No Signal, Marked Crosswalk
 4. Crossing, No Signal, Marked Crosswalk
 5. Riding/Walking/Stating Along Highway With Traffic
 6. Riding/Walking/Stating Along Highway Against Traffic
 7. Emerging from in Front of/Behind Parked Vehicle
 8. Going to/From Stopped School Bus
 9. Getting On/Off Vehicle Other Than School Bus
 11. Working in Roadway
 12. Playing in Roadway
 13. Other Action in Roadway*
 14. Not in Roadway (Indicate)*

TRAFFIC CONTROL
 1. None
 2. Traffic Signal
 3. Stop Sign
 4. Flashing Light
 5. Yield Sign
 6. Officer/Guard
 7. No Passing Zone
 8. RR Crossing Sign
 9. RR Crossing Flashing Light
 10. RR Crossing Gates
 11. Stopped School Bus-Red Lights Flashing
 12. Construction Work Area
 13. Maintenance Work Area
 14. Utility Work Area
 15. Police/Fire Emergency
 16. School Zone
 20. Other*

LIGHT CONDITIONS
 1. Daylight
 2. Dawn
 3. Dusk
 4. Dark-Road Lighted
 5. Dark-Road Unlighted

ROADWAY CHARACTER
 1. Straight and Level
 2. Straight and Grade
 3. Straight and Hilly
 4. Curve and Level
 5. Curve and Grade
 6. Curve and Hilly

ROADWAY SURFACE CONDITION
 1. Dry
 2. Wet
 3. Muddy
 4. Snow/Ice
 5. Slush
 6. Flooded
 8. Other*

WEATHER
 1. Clear
 2. Cloudy
 3. Rain
 4. Snow
 5. Sleet/Hail/Freezing Rain
 6. Fog/Smog/Smoke
 8. Other*

WHICH VEHICLE OCCUPIED
 1. Vehicle No. 1 A. All-Terrain Vehicle (ATV) C. Other*
 2. Vehicle No. 2 E. Bicyclist P. Pedestrian
 3. In-Line Skater S. Snowmobiler

POSITION IN/ON VEHICLE
 1. Driver 2-7. Passengers
 8. Riding/Hanging on Outside

SAFETY EQUIPMENT USED
 1. None
 2. Lap Belt
 3. Harness
 4. Lap Belt/Harness
 5. Child Restraint Only
 6. Helmet (Motorcycle Only)
 7. Air Bag Deployed
 8. Air Bag Deployed/Lap Belt
 9. Air Bag Deployed/Harness
 A. Air Bag Deployed/Lap Belt/Harness
 B. Air Bag Deployed/Child Restraint

EJECTION FROM VEHICLE
 1. Not Ejected
 2. Partially Ejected
 3. Ejected

AGE 11 **SEX** 12 **M/F** 13

TYPE OF PHYSICAL COMPLAINT
 1. Head
 2. Face
 3. Eye
 4. Neck
 5. Chest
 6. Back
 7. Shoulder-Upper Arm
 8. Elbow-Lower Arm-Hand
 9. Abdomen - Pelvis
 10. Hip-Upper Leg
 11. Knee-Lower Leg-Foot
 12. Entire Body

TYPE OF PHYSICAL COMPLAINT
 1. Amputation
 2. Concussion
 3. Internal
 4. Minor Bleeding
 5. Severe Bleeding
 6. Minor Burn
 7. Moderate Burn
 8. Severe Burn
 9. Fracture - Dislocation
 10. Contusion - Bruise
 11. Abrasion
 12. Complaint of Pain
 13. None Visible
 14. Whiplast

VICTIM'S PHYSICAL AND EMOTIONAL STATUS
 1. Apparent Death
 2. Unconscious
 3. Semiconscious
 4. Incoherent
 5. Shock
 6. Conscious

INJURED TAKEN
 17 BY TO 18

APPARENT CONTRIBUTING FACTORS
Human
 2. Alcohol Involvement
 3. Packing Unsafe
 4. Driver Inattention/Distracted
 5. Driver Inexperience
 6. Drugs (Illegal)
 7. Failure to Yield Right-of-Way
 27. Failure to Keep Right
 21. Fatigued/Drunk
 8. Fell Asleep
 9. Following Too Closely
 10. Illness
 11. Lost Consciousness
 12. Passenger Distraction
 13. Passing or Lane Usage Improper
 14. Pedestrian/Bicyclist/Other Pedestrian Error/Confusion
 15. Physical Disability
 16. Prescription Medication
 17. Traffic Control Disregarded
 18. Turning Improperly
 19. Unsafe Speed
 20. Unsafe Lane Changing
 22. Cell Phone (hand-held)
 23. Cell Phone (hands-free)
 24. Other Electronic Device
 25. Outside Car Distraction
 26. Reaction to Other Involved Vehicle
 28. Aggressive Driving/Road Rage

Vehicular
 41. Accelerator Defective
 42. Brakes Defective
 43. Headlights Defective
 44. Other Lighting Defects
 45. Overized Vehicle
 46. Steering Failure
 47. Tire Failure/Inadequate
 48. Tow Hitch Defective
 49. Windshield Inadequate
 50. Driverless/Runway Vehicle
 60. Other Vehicular

Environmental
 61. Animal's Action
 62. Glass
 63. Lane Marking Improper/Inadequate
 64. Obstruction/Debris
 65. Pavement Defective
 66. Pavement Slippery
 67. Shoulders Defective/Improper
 68. Traffic Control Device Improper/Non-Working
 69. View Obstructed/Limited

DIRECTION OF TRAVEL:

PRE-ACCIDENT VEHICLE ACTION
 1. Going Straight Ahead
 2. Making Right Turn
 18. Making Right Turn on Red
 3. Making Left Turn
 17. Making Left Turn on Red
 4. Making U Turn
 5. Starting from Parking
 6. Starting in Traffic
 7. Slowing or Stopping
 8. Stopped in Traffic
 9. Entering Parked Position
 10. Parked
 11. Avoiding Object in Roadway
 12. Changing Lanes
 13. Passing
 14. Merging
 15. Backing
 18. Police Pursuit
 20. Other*

LOCATION OF FIRST EVENT
 1. On Roadway 2. Off Roadway

TYPE OF ACCIDENT - COLLISION WITH
 1. Other Motor Vehicle
 2. Pedestrian
 3. Bicyclist
 4. Animal
 5. Railroad Train
 6. In-Line Skater
 7. Deer
 8. Other Pedestrian
 10. Other Object (Not Fixed)

COLLISION WITH FIXED OBJECT
 11. Light Support/Utility Pole
 12. Guide Rail-Not At End
 25. Guide Rail-End
 13. Crash Cushion
 14. Sign Post
 15. Tree
 16. Building/Wall
 17. Curbing
 18. Fence
 19. Bridge Structure
 20. Culvert/Head Wall
 21. Median-Not At End
 22. Median-End
 27. Barrier
 22. Snow Embankment
 23. Earth Embankment/Rock Cut/Ditch
 24. Fire Hydrant
 30. Other Fixed Object*

NO COLLISION
 31. Overturned
 32. Fire/Explosion
 33. Submerison
 34. Ran Off Roadway Only
 40. Other*

**Department of Motor Vehicles
 POLICE ACCIDENT REPORT
 MV-104A (6/04)**

***EXPLAIN IN ACCIDENT DESCRIPTION**
 If a question DOES NOT APPLY, enter a dash (-).
 If an answer is UNKNOWN, enter an "X".

THE CITY OF NEW YORK Department of Sanitation
LINE-OF-DUTY INJURY REPORT (DS 807 (Rev. 4/95))

<input checked="" type="checkbox"/> Investigating Supervisor: Check here if incident involved a moving vehicle	EMPLOYEE'S SOCIAL SECURITY NO. 09252495B
---	--

Caution to supervisors: Injured employee and witnesses: Disciplinary Code Rule 6: Making false reports or entries in or on any Departmental or other official record or in connection with any Departmental operation or activity will result in disciplinary action.

INSTRUCTIONS: This report must be received by the Medical Division within 48 hours of the incident. The necessary witness reports must be detached and given to the injured employee immediately upon completion of Sections 1, 2 and 3. Injured employee must submit this report to the Sign-in Window within 24 hours.

DATE OF INJURY 2-18-07	TIME OF INJURY 1506 pm	LOCATION WHERE INCIDENT OCCURRED Missau County	BOROUGH RE	STREET NAME(S) Glen Cove Rd
INJURED EMPLOYEE'S (Last, First, MI) Doukas Michael	WORK LOCATION ON DAY OF INCIDENT	BOROUGH RE	DISTRICT 11	SECTION 112
AGE 46	APPOINTMENT DATE 3-6-89	INJURED EMPLOYEE'S PAYROLL LOCATION	BOROUGH RE	DISTRICT 11
SECTION 111	TITLE Sanitation Worker		SUPERVISOR'S NAME AND WORK LOCATION T. Horisewski	
NAME OF HOSPITAL Winthrop University		HOSPITAL'S ADDRESS 259 1st Street Mineola N.Y. 11501		
ATTENDING PHYSICIAN'S NAME Ed Mintz M.D		PHYSICIAN'S ADDRESS 259 1st Street Mineola N.Y.		
PHYSICIAN'S TELEPHONE NUMBER 516		TYPE OF WORK ASSIGNED (Refer to cover sheet of this form) Collection L5, T1		
INJURED PART OF BODY AT13		NATURE OF INJURY N5		
TYPE OF INCIDENT AT13		TYPE OF UNSAFE ACTION		
DID INJURED EMPLOYEE CONTINUE TO WORK? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		WAS MEDICAL CARE PROVIDED IMMEDIATELY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (WHEN PROVIDED) s/w taken by Ambulance 2/18/07 to hospital		
WAS THE INCIDENT WITNESSED BY SUPERVISOR? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		DID INCIDENT OCCUR DURING PERFORMANCE OF DUTY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
		WAS INCIDENT INVESTIGATED BY SAFETY DIVISION? <input checked="" type="checkbox"/> YES 'If yes' give Date: 2/18/07 Time: _____		

Additional remarks on any information not covered above:

If incident resulted from unsafe condition, what corrective action was taken?

If incident resulted from unsafe action, what discussion took place with employee?

INVESTIGATING OFFICER'S SIGNATURE B. Ortiz	OFFICER'S SOCIAL SECURITY NUMBER 087-58-5321	BOROUGH DE	DISTRICT 11	SECTION 140
--	--	----------------------	-----------------------	-----------------------

SECTION 2 - Injured Employee	Injured employee's own description of the incident, including part of body affected, and circumstances surrounding the incident s/w Doukas was traveling in 25cu255 N/B on Glen Cove Rd. Passenger Vehicle Driven by Female Civilian Collided Causing Fire Damage and Body Damage to Vehicle 142
How could the injury have been prevented?	
HAVE YOU BEEN INJURED IN THE PAST? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	NUMBER OF TIMES INJURED 2
	INJURED EMPLOYEE'S SIGNATURE Michael Doukas
	DATE 2/18/07

SECTION 3 - Witnesses	Statement of first eyewitness		
	1st EYEWITNESS'S SIGNATURE	ADDRESS	DATE
Statement of second eyewitness			
	2nd EYEWITNESS'S SIGNATURE	ADDRESS	DATE

SECTION 4 - Supl.	Superintendent's comments			
	SUPERINTENDENT'S SIGNATURE Ryan	SUPT'S SOCIAL SECURITY NUMBER 451	BOROUGH DE	DISTRICT DE11
SECTION 5 - Borough Safety Officer	BOROUGH SAFETY OFFICER'S SIGNATURE	DATE		

RECEIVED
 NYC SANITATION
 MEDICAL DIVISION
 2007 FEB 20 A 9:25

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.
-----X

Index no. 107681/07

Action #1

**RESPONSE TO
COMBINED
DEMANDS**
[Defendant LEVITEN]

Index no. 117118/07

Action #2

LD no. 2008-001345

C O U N S E L O R S :

PLEASE TAKE NOTICE, that the plaintiff MICHAEL DOUKAS, by his attorneys, KELNER & KELNER, ESQS., as and for his Response to the General Demands of defendants, IRIS LEVITEN, hereby submits the following, upon information and belief:

1. Index Number is **107681/07** for action number one; Index Number is **117118/07** for action number two.
2. N/A, plaintiff Michael Doukas was a passenger.
3. Witnesses: Defendant ANTHONY DIGIORLAMO, Defendant IRIS LEVITEN and Andrew Beadle, police blotter witness.

WV: 10-1-07

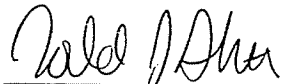
4. At such time as an expert witness is retained, the plaintiff will supplement this response in accordance with the applicable provisions of the CPLR.
5. Attached hereto is a copy of the NYC police accident report and the NYC Department of Sanitation Line of Duty Injury Report.
6. Plaintiff is not in possession of any transcribed oral statements.
7. Plaintiff is only in possession of inspection photographs of defendant IRIS LEVITEN's vehicle from 12/2/08. Any party wishing to have a copy of said photographs should send a letter to plaintiff's office demanding same and a fee letter will be generated.
8. Plaintiff was not self-employed on the date of the accident and hence objects to production of Tax Returns. An authorization for employment records will provided shortly.
9. School Authorization: N/A
10. Employment Authorization: An authorization for plaintiff's employment records will be provided from 2005 to present.
11. No-Fault Authorization: An authorization for plaintiff's no-fault record will be provided. File Number is: 2007NF010381.
12. Workers' Compensation records: N/A.
13. Disability Records: An authorization for plaintiff's disability file at NYCERS will be provided. A copy of said application is attached.
14. Plaintiff is still presently employed by defendant CITY OF NEW YORK and has not received any benefits other than his contractual salary and benefits afforded to him by virtue of his contract.
15. A full medical exchange was provided on February 24, 2009.
 - A) Plaintiff has not re-injured any of the same body parts since the accident.

PLEASE TAKE NOTICE, the plaintiff reserves his right to supplement and or amend his responses to this demand.

Dated: New York, New York
March 21, 2009

Yours, etc.

KELNER & KELNER, ESQS.
Attorneys for Plaintiff in Action #2

By: 
Todd J. Strier
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

TO: **MICHAEL A. CARDOZO, ESQ.**
Corporation Counsel
Attorney for Defendants in Action #2
ANTHONY DIGIROLAMO, NEW YORK
CITY DEPARTMENT OF SANITATION &
THE CITY OF NEW YORK
100 Church Street, 4th Floor
New York, New York 10007
(212) 788-0303
LD no. 2008-001345

CONNORS & CONNORS, P.C.
Attorneys for Defendant Iris Leviten Action #2
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700

GAIR GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff in Action #1
IRIS LEVITEN
80 Pine Street
New York, New York 10005
(212) 943-1090

AHMUTY, DEMERS & McMANUS
Attorneys for Defendant in Actions #1 & 2
ESTREE, INC., d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, New York 11507
(516) 294-5433
File No. YCW0962N7JAE

STEIN RISO MANTEL, LLP

Attorneys for Defendant in Actions #1 & 2

METRO AUTO LEASING, INC., d/b/a

THE AUTO MALL

405 Lexington Avenue

New York, New York 10174

(212) 599-1515

ECKERT SEAMANS CHERIN & MELLOTT, LLC

Attorneys for Defendant in Actions #1 & 2

TOYOTA MOTOR SALES, USA INC.

s/h/a LEXUS, A DIVISION OF TOYOTA

MOTOR SALES, USA, INC.

10 Bank Street, Suite 1061

White Plains, NY 10606

(914) 949-2909

THE CITY OF NEW YORK Department of Sanitation
LINE-OF-DUTY INJURY REPORT

Investigating Supervisor:
Check here if incident involved
a moving vehicle

EMPLOYEE'S SOCIAL SECURITY NO.
09252495B

Caution to supervisors:
Injured employee and witnesses:
Disciplinary Code Rule 6: Making false reports or
omitting or on any Departmental or other official
record or in connection with any Departmental
duty or activity will result in disciplinary action.

INSTRUCTIONS
This report must be received by the Medical Division within 48 hours of the incident.
The true copy of this report must be detached and given to the injured employee immedi-
ately upon completion of Sections 1, 2 and 3.
Injured employee must return this copy to Clerk's Window within 24 hours.

DATE OF INJURY 2-18-07	TIME OF INJURY 1500 pm	LOCATION WHERE INCIDENT OCCURRED NASSAU COUNTY of Northern State PKWY	BOROUGH RE	DISTRICT 11	SECTION 112
INJURED EMPLOYEE'S (Last, First, MI) Doukas Michael	WORK LOCATION ON DAY OF INCIDENT	INJURED EMPLOYEE'S PAYROLL LOCATION	BOROUGH RE	DISTRICT 11	SECTION 111
AGE 46	APPOINTMENT DATE 3-6-89	TITLE Sanitation Worker	SUPERVISOR'S NAME AND WORK LOCATION T. Horisewski		SUPERVISOR'S TELEPHONE NUMBER 718-289-2591
NAME OF HOSPITAL Winthrop University		HOSPITAL'S ADDRESS 259 1st Street Mineola N.Y. 11501		PHYSICIAN'S TELEPHONE NUMBER 516	
ATTENDING PHYSICIAN'S NAME Ed Mintz M.D.		PHYSICIAN'S ADDRESS 259 1st Street Mineola N.Y.		NATURE OF INJURY NS	
To complete the items at right, enter the code numbers from the cover sheet of this form:			TYPE OF WORK ASSIGNED (Relay) Collection	INJURED PART OF BODY L5, T1	NATURE OF INJURY NS
			TYPE OF INCIDENT AT 13	TYPE OF UNSAFE ACT	TYPE OF UNSAFE CONDITION
DID INJURED EMPLOYEE CONTINUE TO WORK? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		WAS MEDICAL CARE PROVIDED IMMEDIATELY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (WHEN PROVIDED) <i>slw taken by ambulance 2/18/07 to hospital</i>			
WAS THE INCIDENT WITNESSED BY SUPERVISOR? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		DID INCIDENT OCCUR DURING PERFORMANCE OF DUTY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		WAS INCIDENT INVESTIGATED BY SAFETY DIVISION? <input checked="" type="checkbox"/> YES 'If yes' give Date: 2/18/07 Time: _____	

Additional remarks on any information not covered above

If incident resulted from unsafe condition, what corrective action was taken?

If incident resulted from unsafe action, what discussion took place with employee?

INVESTIGATING OFFICER'S SIGNATURE: B. Ortiz
OFFICER'S SOCIAL SECURITY NUMBER: 087-58-5321
BOROUGH: DE DISTRICT: 11 SECTION: 140

SECTION 2 - Injured Employee
Injured employee's own description of the incident, including part of body affected, and circumstances surrounding the incident.
slw Doukas was traveling in a scu 255 N/B on Glen Cove Rd. Passenger Vehicle Driven by female Civilian Collided Causing Fire Damage and Body Damage to Vehicle 142

How could the injury have been prevented?

HAVE YOU BEEN INJURED IN THE PAST?
 YES NO

NUMBER OF TIMES INJURED: 2
INJURED EMPLOYEE'S SIGNATURE: *Michael Doukas*
DATE: 2/18/07

SECTION 3 - Witnesses
Statement of first eyewitness
1st EYEWITNESS'S SIGNATURE: _____ ADDRESS: _____ DATE: _____
Statement of second eyewitness
2nd EYEWITNESS'S SIGNATURE: _____ ADDRESS: _____ DATE: _____

SECTION 4 - Supl.
Superintendent's comments
SUPERINTENDENT'S SIGNATURE: _____
SUPT'S SOCIAL SECURITY NUMBER: 451
BOROUGH: DE DISTRICT: DE SECTION: GST

SECTION 5 - Borough Safety Officer
BOROUGH SAFETY OFFICER'S SIGNATURE: _____ DATE: _____

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NYC SANITATION
MEDICAL DIVISION
2007 FEB 20 A 9:25

Page 1 of 1 Page

Local Code 3-818-07

New York State Department of Motor Vehicles POLICE ACCIDENT REPORT

MV-104A (6/04)

DMV COPY

AMENDED REPORT

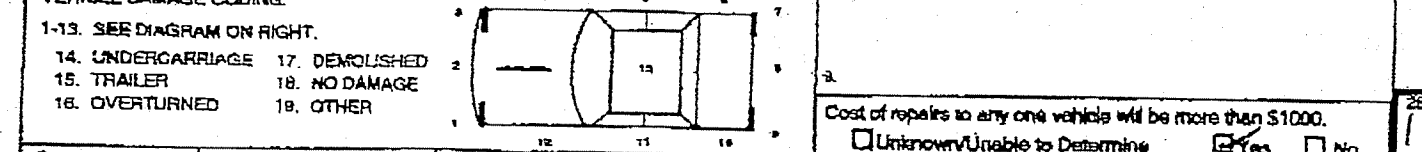
Accident Date: 2/18/2007, Day of Week: Su, Military Time: 1450, No. of Vehicles: 2, No. Injured: 3, No. Killed: 0

VEHICLE 1 - Driver: LEVITEN, IRIS L, License: 793 706 540, Address: 516 Wood Ave, City: ALBERTSON, NY 11507

VEHICLE 2 - Driver: DIGIROLAMO, Anthony, License: 946 352 386, Address: 114 Tenth St, City: HICKSVILLE, NY 11801

Plate Number: DLW 7794, Vehicle Year & Make: 2007 Lexus 4dscd, License: K 36 751, Vehicle Year & Make: 2003 MERC 51

VEHICLE DAMAGE CODES: Box 1 - Point of Impact, Box 2 - Most Damage. Includes towing information for both vehicles.



Place Where Accident Occurred: County: ALBANY, Road: Glen Cove Rd, at 1) Intersecting street: NORTHEN STATE EAST

Accident Description/Officer's Note: ... FROM SCENE BY AUTHORITY OF OPERATORS. WITNESS Andrew Beadle 516 375-0223

Table with columns for Driver Name, License, Date of Birth, Sex, Height, Weight, Eyes, Hair, and Date of Death. Includes entries for IRIS L. LEVITEN and ANTHONY DIGIROLAMO.

Officer's Rank and Signature: PO KELLERMAN, Badge ID No. 250, NCIC No. 02200, Station/Block: 3 313, Date/Time Reviewed: 2/21/07

New York State Department of Motor Vehicles POLICE ACCIDENT REPORT MV-104A (6/04)

EXPLAIN IN ACCIDENT DESCRIPTION
If a question DOES NOT APPLY, enter a dash (-).
If an answer is UNKNOWN, enter an "X".

PEDESTRIAN/BICYCLIST/OTHER PEDESTRIAN LOCATION
1. Pedestrian/Bicyclist/Other Pedestrian at Intersection
2. Pedestrian/Bicyclist/Other Pedestrian Not at Intersection

PEDESTRIAN/BICYCLIST/OTHER PEDESTRIAN ACTION
1. Crossing, With Signal
2. Crossing, Against Signal
3. Crossing, No Signal, Marked Crosswalk
4. Crossing, No Signal or Crosswalk
5. Riding/Walking/Skating Along Highway With Traffic
6. Riding/Walking/Skating Along Highway Against Traffic
7. Emerging from in Front of/Behind Parked Vehicle
8. Going to/From Stopped School Bus
9. Getting On/Off Vehicle Other Than School Bus
10. Working in Roadway
11. Playing in Roadway
12. Other Action in Roadway*
13. Not in Roadway (Indicate)*

TRAFFIC CONTROL
1. None
2. Traffic Signal
3. Stop Sign
4. Flashing Light
5. Yield Sign
6. Officer/Guard
7. No Passing Zone
8. RR Crossing Sign
9. RR Crossing Flashing Light
10. RR Crossing Gates
11. Stopped School Bus
12. Construction Work Area
13. Maintenance Work Area
14. Utility Work Area
15. Police/Fire Emergency
16. School Zone
17. Red Lights Flashing
18. Other*

LIGHT CONDITIONS
1. Daylight
2. Dawn
3. Dusk
4. Dark-Road Lighted
5. Dark-Road Unlighted

ROADWAY CHARACTER
1. Straight and Level
2. Straight and Grade
3. Straight at Hillcrest
4. Curve and Level
5. Curve and Grade
6. Curve at Hillcrest

ROADWAY SURFACE CONDITION
1. Dry
2. Wet
3. Muddy
4. Snow/Ice
5. Slush
6. Flooded
7. Other*

WEATHER
1. Clear
2. Cloudy
3. Rain
4. Snow
5. Sleet/Hail/Freezing Rain
6. Fog/Smoke
7. Other*

WHICH VEHICLE OCCUPIED
1. Vehicle No. 1 A. All-Terrain Vehicle (ATV) C. Other*
2. Vehicle No. 2 B. Bicyclist P. Pedestrian
3. In-Line Skater S. Snowmobiler

POSITION IN VEHICLE
1. Driver 2-7. Passengers
8. Riding/Hanging on Outside

SAFETY EQUIPMENT USED
1. None
2. Lap Belt
3. Harness
4. Lap Belt/Harness
5. Child Restraint Only
6. Helmet (Motorcycle Only)
7. Air Bag Deployed
8. Air Bag Deployed/Lap Belt
9. Air Bag Deployed/Harness
A. Air Bag Deployed/Lap Belt/Harness
B. Air Bag Deployed/Child Restraint
C. Other*

EJECTION FROM VEHICLE
1. Not Ejected
2. Partially Ejected
3. Ejected

AGE **SEX**
M/F

INJURED TAKEN
17 BY TO 18

APPARENT CONTRIBUTING FACTORS
Human
1. Alcohol Involvement
2. Backing Unsafely
3. Driver inattention/Distracted*
4. Driver Inexperience*
5. Drugs (Illegal)
6. Failure to Yield Right-of-Way
7. Failure to Keep Right
8. Fatigued/Distracted
9. Fall Asleep
10. Following Too Closely
11. Illness
12. Lost Consciousness
13. Passenger Distracted
14. Passing or Lane Usage Improper
15. Pedestrian/Bicyclist/Other Pedestrian Error/Confusion
16. Physical Disability
17. Prescription Medication
18. Traffic Control Disregarded
19. Turning Improperly
20. Unsafe Speed
21. Unsafe Lane Changing
22. Cell Phone (hand-held)
23. Cell Phone (hands-free)
24. Other Electronic Device
25. Outside Car Distraction
26. Reaction to Other Uninvolved Vehicle
27. Aggressive Driving/Road Rage*

Vehicle 1
1. Accelerator Defective
2. Brakes Defective
3. Headlights Defective
4. Other Lighting Defects
5. Overloaded Vehicle
6. Steering Failure
7. Tire Failure/Inadequate
8. Windshield Inadequate
9. Driverless/Runaway Vehicle
10. Other Vehicle
11. Environmental
12. Animal's Action
13. Glare
14. Lane Marking Improper/Inadequate
15. Obstruction/Debris
16. Pavement Defective
17. Pavement Slippery
18. Shoulders Defective/Improper
19. Traffic Control Device Improper/Non-Working
20. View Obstructed/Limited

Vehicle 2
1. Accelerator Defective
2. Brakes Defective
3. Headlights Defective
4. Other Lighting Defects
5. Overloaded Vehicle
6. Steering Failure
7. Tire Failure/Inadequate
8. Windshield Inadequate
9. Driverless/Runaway Vehicle
10. Other Vehicle
11. Environmental
12. Animal's Action
13. Glare
14. Lane Marking Improper/Inadequate
15. Obstruction/Debris
16. Pavement Defective
17. Pavement Slippery
18. Shoulders Defective/Improper
19. Traffic Control Device Improper/Non-Working
20. View Obstructed/Limited

Vehicle 3
1. Accelerator Defective
2. Brakes Defective
3. Headlights Defective
4. Other Lighting Defects
5. Overloaded Vehicle
6. Steering Failure
7. Tire Failure/Inadequate
8. Windshield Inadequate
9. Driverless/Runaway Vehicle
10. Other Vehicle
11. Environmental
12. Animal's Action
13. Glare
14. Lane Marking Improper/Inadequate
15. Obstruction/Debris
16. Pavement Defective
17. Pavement Slippery
18. Shoulders Defective/Improper
19. Traffic Control Device Improper/Non-Working
20. View Obstructed/Limited

DIRECTION OF TRAVEL:
N, NE, E, SE, S, SW, W, NW

PRE-ACCIDENT VEHICLE ACTION
1. Going Straight Ahead
2. Making Right Turn
3. Making Left Turn
4. Making U Turn
5. Starting from Parking
6. Starting in Traffic
7. Slowing or Stopping
8. Stopped in Traffic
9. Entering Parked Position
10. Parked
11. Avoiding Object in Roadway
12. Changing Lanes
13. Passing
14. Merging
15. Backing
16. Police Pursuit
17. Other*

LOCATION OF FIRST EVENT
1. On Roadway 2. Off Roadway

TYPE OF ACCIDENT - COLLISION WITH
1. Other Motor Vehicle
2. Pedestrian
3. Bicyclist
4. Animal
5. Railroad Train
6. In-Line Skater
7. Deer
8. Other Pedestrian
9. Other Object (Not Fixed)*

COLLISION WITH FIXED OBJECT
11. Light Support/Utility Pole
12. Guide Rail-Not At End
13. Guide Rail-End
14. Crash Cushion
15. Sign Post
16. Building/Wall
17. Curbing
18. Fence
19. Bridge Structure
20. Culvert/Head Wall
21. Median-Not At End
22. Median-End
23. Barrier
24. Snow Embankment
25. Earth Embankment/Rock Cut/Ditch
26. Fire Hydrant
27. Other Fixed Object*

NO COLLISION
31. Overtaken
32. Fire/Explosion
33. Submersion
34. Ran Off Roadway Only
35. Other*

INJURED TAKEN
17 BY TO 18

COV SHE

NYCERS

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

MAIL ONLY:
335 ADAMS STREET,
SUITE 2300
BROOKLYN, NY 11201-3751

ALL OTHER SERVICES:
340 JAY STREET,
MEZZANINE LEVEL
BROOKLYN, NY 11201-3751

TEL: (347) 643-3000

EXECUTIVE DIRECTOR: DIANE D'ALESSANDRO

RETIREMENT AND BENEFITS

INR-ISSUED

RECEIPT FOR DISABILITY RETIREMENT APPLICATION

Please refer to [REDACTED]

Name [REDACTED] Title Sanitation Worker

Membership # 900892 Agency D-05

This will acknowledge receipt of the Disability Retirement Application filed with the New York City Employees' Retirement System on 12/29/8.

REC'D NYCERS MEDICAL
 08 DEC 29 PM 2:19

Processing of the Disability Retirement Application

The NYCERS' Medical Division will determine your eligibility. You will be notified in writing, if you are not eligible. If eligible, in order for your application to be processed, you must provide sufficient medical evidence to support the claim for Disability Retirement.

Upon receipt of the required medical evidence, the Medical Division will schedule you to appear before the NYCERS' Medical Board for an interview and/or examination.

If the Medical Board recommends approval of the application, you will be entitled to receive an advance disability payment until your case is finalized.

If the Medical Board recommends denial of the application, we will provide you with a copy of the Medical Board report, which will state the reasons for the denial. You will also be notified of the appeal process if it is applicable in your case.

Issued by: NYCERS Medical Division
340 Jay Street
Mezzanine Level

NYCERS

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

MAIL ONLY:
335 ADAMS STREET,
SUITE 2300
BROOKLYN, NY 11201-3751

ALL OTHER SERVICES:
340 JAY STREET,
MEZZANINE LEVEL
BROOKLYN, NY 11201-3751
TEL: (347) 643-3000

EXECUTIVE DIRECTOR: DIANE D'ALESSANDRO

RETIREMENT AND BENEFITS

FOR OFFICE USE ONLY

CLOCK-IN-DATE

Application for Disability Retirement

Tier 4 Members

Membership Number 9,00,872

Social Security Number [REDACTED]

Select a Benefit:

Be sure to read the requirements in the TERMS section to determine for which you qualify. You may be eligible for more than one; please mark all of those that apply to you.

I am applying for:

- Disability Retirement (605)
- 3/4 Sanitation Accidental Disability (605-b)
- Uniformed Sanitation Heart Bill (207-r)
- Performance-of-Duty Disability Retirement EMS Titles only (607b)
- EMS/EMT Titles Only Heart Bill (207-q)
- Deputy Sheriffs only (605-c)

This application is for Tier 4 members who wish to apply for Disability Retirement. In order for NYCERS to process this application, this form must be filled out in its entirety and notarized before submitting it for review. You must read and understand the requirements for filing for Disability Retirement, found in the TERMS section of this document.

In addition to this form, you must also submit (to NYCERS' Medical Board):

- ✓ Applicants Report of Personal Disability (form 605)
- ✓ Physician's Report of Disability (form 606)
- ✓ General Authorization for Release Medical Information (form 608)
- ✓ NYCERS Questionnaire (form 609)

Should you have any questions, please contact our Medical Unit at 347-643-3000.

If you joined NYCERS on or after July 27, 1976 but before September 1, 1983, you are a Tier 4 member with Tier 3 rights and may apply for Ordinary or Accidental Disability with Tier 3 rights. To request your application be processed under Tier 3, please read and understand the requirements found in the TERMS section on of this document, and check the appropriate box below:

- I request that this application also be processed under Tier 3 Ordinary Disability (506).
- I request that this application also be processed under Tier 3 Accidental Disability (507).

First Name [REDACTED] Middle Initial [REDACTED]
 Last Name [REDACTED] Home Phone # [REDACTED]
 Address [REDACTED] Apt. Number [REDACTED]
 City Dix Hills State NY Zip Code [REDACTED]
 Agency Sanitation Date of Birth [REDACTED]
 Title Sanitation Worker

Federal Tax Withholding

Federal tax law provides that all payers are required to withhold Federal income tax on periodic payments (similar to wages), unless you elect to be excluded from such withholding. This election will remain in effect until revoked by you. If you do not complete this election, Federal income tax will be withheld at the rate of a married individual claiming three exemptions. Please indicate your withholding election by marking the appropriate choice below:

- Do Not Withhold Federal Income Tax
- Withhold Based On Number of Exemptions Using The Following Status:
(Check one only) Single Married
- In addition to the amount withheld based on my exemptions and filing status, I would like to withhold \$ Per Month.

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Membership Number 90,087.2

Social Security # [REDACTED]

Select an Option: This section allows you to select a temporary option, which determines what will happen to your benefit if you should die before the date of your first full payment. If you select either the Ten Year Certain or 100% Joint-And-Survivor option, you must select a beneficiary below. If you should die before selecting an option, or if you fail to name a beneficiary, **NO DEATH BENEFIT WILL BE PAYABLE FROM NYCERS.** If you wish to select a different option, please contact NYCERS to get detailed information. Please choose only one of the following:

- The Maximum Retirement Allowance:** This option provides the greatest benefit payment to you while you are retired, for as long as you live. However, under the Maximum Retirement Allowance, no further payments will be made after your death. Please do not list a beneficiary if you choose this option.
- Ten Year Certain:** Under this option, if you die within ten years of your retirement, the reduced monthly retirement benefit will be paid to your surviving primary beneficiary for the unexpired balance of the ten-year period. If the designated primary beneficiary predeceases you, the balance of the payment continues to your contingent beneficiary. If none exists, it is paid in a lump-sum to your estate. Should a primary beneficiary die after receiving payments, the balance will be paid in a lump-sum to your contingent beneficiary. If none exists, the lump-sum balance is paid to the estate of the primary beneficiary. You may nominate both a primary and a contingent beneficiary under this option.
- 100% Joint-and-Survivor:** This option assures you and your designated beneficiary a reduced benefit for lifetime. Should you die, your designated beneficiary will receive a percentage of your benefit. Because this option guarantees two specific people an income for life, the life expectancies of the retiree as well as the beneficiary are taken into consideration. Therefore, once you designate a beneficiary and the option is in force, you cannot change your beneficiary designation, even if he/she precedes you in death. You may only nominate a primary beneficiary under this option.

Select a Beneficiary

The person whom I wish to nominate to receive my Ordinary Death Benefits is:

Primary Beneficiary

First Name [REDACTED] Middle Initial [REDACTED]
 Last Name [REDACTED] Social Security # [REDACTED]
 Relationship Wife Date of Birth [REDACTED]
 Address [REDACTED] Apt. Number [REDACTED]
 City Dix Hills State NY Zip Code 11746

If this beneficiary is a minor, check here and complete the guardian information on Form 137

If you have chosen the Ten-Year Certain Option, please also designate a contingent beneficiary below. Should my primary designated beneficiary die before the Ten Year period expires, the contingent beneficiary whom I nominate to receive benefits is:

Contingent Beneficiary

First Name _____ Middle Initial _____
 Last Name _____ Social Security # _____
 Relationship _____ Date of Birth _____
 Address _____ Apt. Number _____
 City _____ State _____ Zip Code _____

If this beneficiary is a minor, check here and complete the guardian information on Form 137

NYCERS

RETIREMENT AND BENEFITS

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EXECUTIVE DIRECTOR: DIANE D'ALESSANDRO

FOR OFFICE USE ONLY

CLOCK-IN DATE

Membership Number

900872

Social Security

[REDACTED] 53

I, the undersigned, request to make application for Disability Retirement.

Signature of Member

[REDACTED]

Date

[REDACTED]

This form must be acknowledged before a Notary Public or Commissioner of Deeds

State of NY County of NY

On this 29 day of December, 2008, personally appeared before me the above named,

[REDACTED], to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he or she acknowledged to me that he or she executed the same, and that the statements contained therein are true.

If you have an official seal, affix it.

Signature of Notary Public or Commissioner of Deeds Todd J. Strier

Official Title

Notary
5/15/10

Expiration Date of Commission

TODD J. STRIER
Notary Public, State of New York
No. 02ST5063080
Qualified in NY County
Commission Expires July 15, 2010

TERMS:

To file for 605 and 605-b you must file this application while you are being paid on the payroll or on approved Medical Leave, or within 3 months from the last day you were being paid on the payroll, or no later than 12 months from the date you receive notice that your employment has been terminated, provided you were on a medical leave of absence at the time you stopped receiving a regular paycheck.

Disability Retirement (605):

If you have 10 or more years of credited service, 2 of which must be membership service, you will be awarded Disability Retirement Benefit, at any age, if NYCERS Medical Board determines that you were incapacitated at the time you ceased your duties and that you remain unable to perform such duties.

There is no minimum service requirement if you apply for this benefit based on a line of duty injury. However, you must be incapacitated from the performance of City service as a natural and proximate result of the accidental injury in such City Service, while you are a member of NYCERS and not as the result of your own willful negligence.

3/4 Sanitation Accidental Disability for uniformed-force of the Department of Sanitation (605-b) :

A uniformed-force Sanitation member of NYCERS is eligible to apply for a performance of duty disability retirement (3/4) if you become incapacitated on or after September 17, 2002 from the performance of City service as a natural and proximate result of the accidental injury sustained in Sanitation service, while you are a member of NYCERS and not as the result of your own willful negligence. You will have two years after the occurrence of the accident to apply for this benefit.

You may also apply for Disability Retirement under 605 if you have 10 years of credited service.

Uniformed Sanitation Heart Bill (207-r):

Uniformed Sanitation members are eligible to apply for a 3/4 disability retirement benefit under the Heart Bill for heart disease which will be presumed to have been contracted in the course of your performance duty.

You may apply for Disability Retirement under 605.

If you joined NYCERS on or after July 27, 1976 but before September 1, 1983, you may apply for Ordinary or Accidental Disability with Tier 3 rights. Please read the different requirements for the various laws to determine which will benefit you the most.

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RETIREMENT AND BENEFITS

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CLOCK-IN DATE

Applicant's Report of Personal Disability

Please return with member's application for disability retirement.

Membership Number 900,872 Social Security # [REDACTED] Date 1,2/29/2008
M M D D Y Y Y Y

First Name [REDACTED] Middle Initial [REDACTED]

Last Name [REDACTED]

Address [REDACTED] Apt. Number [REDACTED]

City Dix Hills State NY Zip Code [REDACTED]

To NYCERS' Medical Board:

I, the undersigned, believe that I am incapacitated for further service as a

Title Sanitation Worker

in the Department of Sanitation

because due to my car accident and the resulting spinal surgery to my neck - I never regained the strength or range of motion to do my job duties. The pain continues to be disabling in my neck and lower back

I am being treated for this condition by the following doctor(s):

Name of Doctor(s) and Addresses

Mitchell E Levine MD 900 Northern Blvd, Great Neck NY 11021

Note: The Physician's Report of Disability must be completed by each doctor listed above and submitted with your application.

I have been hospitalized and/or treated for this condition at the following hospital(s) and/or medical group(s):

Name of Hospital(s) and/or Medical Group(s) and Addresses

Treatment Dates

Winthrop University Hospital - 259 First St, Mineola NY 2/18/2007
M M D D Y Y Y Y

Northshore Univ. Hosp.; 303 Community Dr, Manhasset, NY 6/25/2008
M M D D Y Y Y Y

Note: An appropriate authorization for release of medical information must be completed for each hospital and/or medical group listed above, and submitted with your application.

I will appear before NYCERS' Medical Board at 340 Jay Street, Mezzanine Level, in downtown Brooklyn when necessary for me to be examined.

Note: If you are unable to appear before NYCERS' Medical Board for examination, please forward your physician's certificate stating why.

Signature of Member [REDACTED]

Date 1,2/29/2008
M M D D Y Y Y Y

In use beginning November 2005

Applicant's Report of Personal Disability

Form #605

Page 1 of 1

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RETIREMENT AND BENEFITS

Questionnaire

Applicants for Disability Retirement

CLOCK-IN-DATE

This application is to accompany your application for Disability Retirement. Please be sure you read and understand the questions asked on this form before answering. Should you have any questions, please contact our Call Center at 347-643-3000.

Membership Number 9,00,872

Last 4 Digits of Social Security #

First Name

Middle Initial

Last Name

This section must be completed by ALL members applying for Disability Retirement.

1. What is (are) the disabling condition(s) which is (are) the basis for your applying for disability retirement?

Due to my accident and surgery in June 2008, I still have pain, very limited Range of motion, trouble sitting long period of time, headaches, inability to lift required depressed standards - eg-14 tons/day. Lower Back pain continues.

2. Check all relevant circles that indicate your symptoms:

Pain Weakness Difficulty walking
 Weight loss Depression Other: poor range of motion, headaches, trouble sitting, trouble lifting & driving.

3. When did symptoms begin? 02/18/2007

M M D D Y Y Y Y

4. Please list the name(s), address(es) and frequency of persons and/or institutions from whom you are receiving treatment.

Mitchell Leuze MD, 900 Northern Blvd, Great Neck NY

Perry Physical Medicine & Rehab 2033 Deer Park Ave, Deer Park NY

5. Nature of treatment, including medications being taken.

diagnostics, Rx, Surgery -> not successful.

6. Check circles below to indicate tests performed: (Bring a copy of ALL REPORTS, if possible.)

Blood and Urine X-Rays EMG (Electromyogram)
 EKG (Electrocardiogram) Myelogram CT Scan
 Stress Test Pulmonary Function Studies Pathology or Biopsy Reports
 Other: MRI (1)

7. Hospital admission(s): (Hospital Reports must be supplied to this office.)

(A) Name of hospital(s):

1) Wintrop Univ. Hosp

2) North Shore Univ Hosp

In use beginning September 2007

Questionnaire - Disability Applicant

Form # 609

Page 1 of 4

NYCERS

RETIREMENT AND BENEFITS

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

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TEL: (347) 643-3000

EXECUTIVE DIRECTOR: DIANE D'ALESSANDRO

Membership Number 9,008,72

Last 4 Digits of Social Security # [REDACTED]

(B) Dates of admission and discharge:

1) 02/18/2007

2) 06/25/2008

(C) Diagnosis(es):

1) Cervical Injury & Lower back Injury

2) Surgery

Was surgery performed? Yes No If Yes, give dates and type of surgery performed.

1) Anterior Cervical discectomy, fusion with plating

06/25/2008
M M D D Y Y Y Y

2) _____

M M D D Y Y Y Y

8. Check all relevant boxes that your job requires.

Lifting Working outdoors Walking Climbing Other: shoveling snow - operating heavy machinery

9. Do you feel that you are totally and permanently disabled from performing the usual duties of your title?

Yes No

Could you do other work? Yes No

10. Are you working now? Yes No Light duty

If Not, when did you stop? _____
M M D D Y Y Y Y

11. What is the name of your union, and local? Local 831

12. Are you receiving Social Security Disability Benefits? Yes No

13. Please give a daytime telephone number where you can be reached. [REDACTED]

14. Did you have previous service with New York City or New York State? Yes No

If yes, When?

M M D D Y Y Y Y

M M D D Y Y Y Y

M M D D Y Y Y Y

In use beginning September 2007

Questionnaire - Disability Applicant

Form # 609

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NYCERS

RETIREMENT AND BENEFITS

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Membership Number

900872

Last 4 Digits of Social Security #

This section is to be completed ONLY by members applying for disability retirement as a result of an accidental injury during the performance of their duties while in City service.

15. What is your date of birth? [REDACTED] (Attach a copy of your Birth Certificate.)

M M D D Y Y Y Y

16. What was the date of the injury? 02/18/2007

M M D D Y Y Y Y

17. What part of your body was injured?

Cervical spine & lumbar spine

18. What were you doing when you were injured?

my normal job duties

19. Were you on full duty at the time of the injury? Yes No

20. Were you performing any unusual work at that time? Yes No

If Yes, describe.

21. What is the nature of the injury?

significant cervical herniations abutting spinal cord at C3/4, C4/5, C5/6, C6/7 + L5 herniations

22. How were you injured?

~~as~~ I was passenger in my truck which was struck by a private motorist

23. Were there any witnesses to the incident when you were injured? Yes No

If Yes, give Name, Title and Address (if known).

Partner: [REDACTED]

24. When did you stop working because of the injury? 02/18/2007 initially, returned a short period but could not further - went out 3 months later

M M D D Y Y Y Y

25. Do you have proof of this occurrence? Yes No

26. When were you first treated for the injury referred to above, and by whom?

Date 02/18/2007

M M D D Y Y Y Y

By Whom? ER

Place? Westrup Univ.

27. State the name of medical persons or institutions who treated you for the injury described. State dates and frequency.

Name of Person or Institution Westrup Univ. Date 02/18/2007

M M D D Y Y Y Y

Name of Person or Institution Nextshore Date 06/25/2008

M M D D Y Y Y Y

Name of Person or Institution Levene MD - Surgeon - ongoing Date

M M D D Y Y Y Y

In use beginning September 2007

Form # 609

Questionnaire - Disability Applicant

Page 3 of 4

NYCERS

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Membership Number 9,00,872

Last 4 Digits of Social Security # [REDACTED]

28. Have you had any similar disability before the injury? Yes No *but resolved.*

29. Have you had any other accidents or injuries on the job (either before or after the injury claimed herein)?
 Yes No

If Yes, give dates and description of injury. Fell at work, hit head & neck *Resolved Back to work*
MM/DD/YYYY 03/16/1992

30. Have you had any accidents or injuries off the job? Yes No

If Yes, give date(s) and description(s) of injury. 04/2003 *fr leg*
MM/DD/YYYY

31. Did you return to full duty after the injury herein claimed? Yes No

If Yes, When? 05/2007 *For 3 months then back out due to pain. never returned to full duty after 4/08*
MM/DD/YYYY

32. Did you return to light duty after the injury herein claimed? Yes No

If Yes, When? _____
MM/DD/YYYY

33. Are you being treated for any other injuries/disorders? Yes No

If Yes, describe injury/disorder and treatment.

34. Do you drink alcohol regularly (one-half pint or more per-week)? Yes No

Do you drink occasionally? Yes No

If yes, how often? _____

How much? _____

35. Do you take any medications daily? Yes No

If Yes, What? Darvocet, Advil & Tylenol PM

36. Do you use any recreational drugs? Yes No

If Yes, What and how often? _____

37. Did you file a Workers' Compensation claim? Yes No *N/A*

Are you receiving Workers' Compensation payments? Yes No *N/A*

38. If Yes, how much bi-weekly? _____

Signature of Member [REDACTED]

Date 12/29/2009
MM/DD/YYYY

In use beginning September 2007

Questionnaire - Disability Applicant

Form # 609

Page 4 of 4

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CLOCK-IN-DATE

RETIREMENT AND BENEFITS

General Authorization for Medical Information

This form authorizes NYCERS to obtain medical information pertaining to those filing for disability. NYCERS understands that information about your health is personal and we are committed to protecting your privacy. Please be sure you understand how NYCERS will use your medical information prior to signing this form. Should you have any questions, please contact our Call Center at 347-643-3000.

Membership

Number

9.09872

Date of Birth

11.0.760

Social

Security #

[REDACTED]

First Name

[REDACTED]

Middle Initial

Last Name

Address

[REDACTED]

Apt. Number

City

Dix Hills

State

NY

Zip

Code

[REDACTED]

Name of Hospital or
Medical Group

Winthrop University

Dates of treatment/service:

02/18/07

MM DD YY

MM DD YY

MM DD YY

Expiration date of this authorization:

12/31/2009

Please initial each of the following to state your understanding of this form.

I understand that by completing this form in full, I authorize the use and disclosure of my medical records for the purpose of applying for disability retirement.

I understand that this information may be re-disclosed if the recipient(s) described on this form is not required by applicable law to protect the privacy of the information and such information is no longer protected by federal health information privacy regulations.

I understand that my medical records may contain information relating to Alcohol or Drug Abuse, genetic testing, psychiatric care and /or confidential HIV/AIDS related information.

I understand that if I am authorizing the use or disclosure of HIV/AIDS related information, the recipient is prohibited from using or redisclosing any HIV/AIDS related information without my authorization unless permitted to do so under federal or state law. I also understand that I have a right to request a list of people who may receive or use my HIV/AIDS related information without authorization. If I experience discrimination because of the use or disclosure of HIV/AIDS related information, I may contact New York State Division of Human Rights at 212-480-2493 or the New York City Commission of Human Rights at 212-306-7450. These agencies are responsible for protecting my rights.

I have read this form and all of my questions about this form have been answered. By signing below I acknowledge that I have read and accept all of the above and hereby authorize any hospital, medical group, or other organization to disclose all information to the New York City Employees' Retirement System.

Signature of Member

[REDACTED]

Date

12/29/2008

In use beginning November 2005

General Authorization for Medical Information

Form # 608

Page 1 of 1

VERIFICATION

STATE OF NEW YORK)
 : s.s.:
COUNTY OF NEW YORK)

MICHAEL DOUKAS, being duly sworn, deposes and says:

I am the plaintiff in the within action;

I have read the foregoing BILL OF PARTICULARS and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.


MICHAEL DOUKAS

Sworn to before me this
19th day of March, 2009


Notary Public

TODD J. STRIER
Notary Public, State of New York
No. 02ST5063030
Qualified in County
Commission Expires July 15,

Index no. 117118/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF **NEW YORK**

IRIS LEVITEN,

Plaintiff,

Index no. 107681/07

Action #1

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

-----X
MICHAEL DOUKAS,

Plaintiff,

Index no. 117118/07

Action #2

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

LD no. 2008-001345

Defendants.

RESPONSE TO GENERAL DEMANDS

[Defendants LEVITEN]

KELNER & KELNER, ESQS.
Attorney for Plaintiff in Action #2
Office and Post Office Address, Telephone
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.
-----X

C O U N S E L O R S :

PLEASE TAKE NOTICE, that the plaintiff MICHAEL DOUKAS, by his attorneys,
KELNER & KELNER, ESQS., as and for his Response to the General Demands of
defendants, ANTHONY DIGIROLAMO, NEW YORK CITY DEPARTMENT OF
SANITATION and THE CITY OF NEW YORK, hereby submits the following, upon
information and belief:

GENERAL DEMANDS

1. The plaintiff identifies the New York City Department of Sanitation, their
agents, employees or servants.

Index no. 107681/07

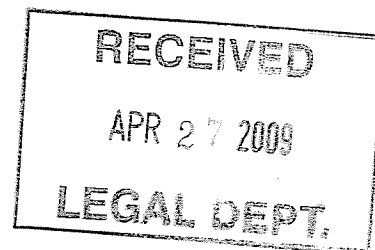
Action #1

**RESPONSE TO COMBINED
DEMANDS**
[DEF CITY OF NEW YORK]

Index no. 117118/07

Action #2

LD no. 2008-001345



2. The plaintiff identifies defendant ANTHONY DIGIROLAMO as an event witness, Defendant IRIS LEVITEN and police blotter witness: Andrew Beadle.

3. Not applicable.

4. At such time as an expert witness is retained, the plaintiff will supplement this response in accordance with the applicable provisions of the CPLR.

5. The plaintiff, pursuant to a contract with the defendant THE CITY OF NEW YORK, has received reimbursement of medical expenses and lost wages during the course of his employment following the February 18, 2007 incident. The plaintiff reserves the right to supplement this response upon completion of discovery.

6. The plaintiff identifies defendant ANTHONY DIGIORLAMO as an event witness.

7. Enclosed is a copy of plaintiff's Line-of-Duty Injury Report & NYPD Accident report.

8. The plaintiff is not presently aware of any unrecorded oral statements given to any agent, servant or employee of defendants NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK.

9. An authorization for NYCERS will be provided. A copy of said application is attached.

10. No FOIL requests have been made to date.

11. No subpoenas have been served to date.

12-13. Annexed herewith is a copy of the plaintiff's 50-h transcript.

14. Refer to response no. 7.

15. Not applicable.

16. The plaintiff is not presently in possession of any photographs or video depicting the location of the occurrence.

17. The plaintiff is not presently in possession of any photographs or video depicting his injuries.

18. Declined. The plaintiff made no claim for loss of services.

19. This is not a representative action.

20. An authorization for plaintiff's W-2's for calendar years 2005 through present will be provided.

21. There is no claim for wrongful death.

22. See the plaintiff's Initial Medical Exchange.

23. Plaintiff does not claim an exacerbation of any pre-existing condition.

24. Refer to response no. 22.

25. At the time of the incident, the plaintiff was not a student.

26. Plaintiff MICHAEL DOUKAS (Action #2) is represented by Kelner & Kelner, Esqs., 140 Broadway 37th Floor, New York, New York 10005; defendants ANTHONY DIGIROLAMO, NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK (Action #2) are represented by Michael A. Cardozo, Esq., Corporation Counsel, 100 Church Street, New York, New York 10007; defendant IRIS LEVITEN (Action #2) is represented by Connors & Connors, P.C., 766 Castleton Avenue, Staten Island, New York 10310; plaintiff IRIS LEVITEN (Action #1) is represented by Gair Gair Conason Steigman & Mackauf, 80 Pine Street, New York, New York 10005; defendant ESTREE, INC., d/b/a LEXUS OF WESTPORT (Actions #1 & 2) is represented by Ahmuty, Demers & McManus, 200 I.U. Willets Road, Albertson, New York 11507; defendant METRO AUTO LEASING, INC. d/b/a THE AUTO MALL (Actions #1 & 2) is represented by Stein Riso Mantel, LLP, 405 Lexington Avenue, New York, New York 10174; defendant TOYOTA MOTOR SALES, USA INC. s/h/a LEXUS, A DIVISION OF TOYOTA MOTOR SALES, USA, INC. (Actions #1 & 2) is represented by Eckert Seamans Cherin & Mellott, LLC, 10 Bank Street, Suite 1061, White Plains,

New York 10606 respectively.

27. There are no other action on the plaintiff's behalf.

28/31. There is no claim of police misconduct.

32/34. There is no claim for property damage.

35/42. There is no claim of negligent supervision.

43/46. Not applicable.

47. The title for the vehicle is in the sole and exclusive possession and control of the agents, servants or employees of defendants NEW YORK CITY DEPARTMENT OF SANITATION and/or THE CITY OF NEW YORK.

48. Declined. At the time of this incident the plaintiff was a passenger.

49. The registration for the vehicle in which the plaintiff was traveling is in the sole and exclusive possession and control of the agents, servants or employees of defendants NEW YORK CITY DEPARTMENT OF SANITATION and/or THE CITY OF NEW YORK.

50. Any such repair and maintenance records are in the sole and exclusive possession and control of the agents, servants or employees of defendants NEW YORK CITY DEPARTMENT OF SANITATION and/or THE CITY OF NEW YORK.

51. Refer to response no. 48.

52. Any such recall notices are in the sole and exclusive possession and control of the agents, servants or employees of defendants NEW YORK CITY DEPARTMENT OF SANITATION and/or THE CITY OF NEW YORK.

53. Any such bills for repairs are in the sole and exclusive possession and control of defendants NEW YORK CITY DEPARTMENT OF SANITATION and/or THE CITY OF NEW YORK, their agents, servants or employees.

54. Any such photographs depicting the vehicle are in the sole and exclusive possession and control of the agents, servants or employees of defendants NEW YORK CITY DEPARTMENT OF SANITATION and/or THE CITY OF NEW YORK.

55. Any such estimates for repair are in the sole and exclusive possession and control of the agents, servants or employees of defendant NEW YORK CITY DEPARTMENT OF SANITATION and/or THE CITY OF NEW YORK.

56. Any such receipts for towing are in the sole and exclusive possession and control of the agents, servants or employees of defendants NEW YORK CITY DEPARTMENT OF SANITATION and/or THE CITY OF NEW YORK.

57. Declined. The plaintiff was a passenger and is not required to file an MV-104 by law.

58. See Response to Number 7.

59. The plaintiff is not presently in possession of any notes or memorandum.

60. Not applicable.

61. Not applicable.

62. Upon information and belief, defendant THE CITY OF NEW YORK is self-insured.

63. An authorization for plaintiff's no-fault file will be provided.

64/68. There is no claim for defamation.

69/78. There is no claim for lead-based paint.

DEMANDS TO OTHER DEFENDANT(S) AND THIRD-PARTY PLAINTIFF(S)

79/86. Not applicable to plaintiff DOUKAS.

87/90. Not applicable to plaintiff DOUKAS.


91/105. Not applicable to plaintiff DOUKAS.

PLEASE TAKE NOTICE, the plaintiff reserves his right to supplement and or amend his responses to defendants ANTHONY DIGIROLAMO, NEW YORK CITY DEPARTMENT OF SANITATION and THE CITY OF NEW YORK's general demands.

Dated: New York, New York
March 21, 2009

Yours, etc.

KELNER & KELNER, ESQS.
Attorneys for Plaintiff in Action #2

By: 

Todd J. Strier
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

TO: **MICHAEL A. CARDOZO, ESQ.**
Corporation Counsel
Attorney for Defendants in Action #2
ANTHONY DIGIROLAMO, NEW YORK
CITY DEPARTMENT OF SANITATION &
THE CITY OF NEW YORK
100 Church Street, 4th Floor
New York, New York 10007
(212) 788-0303
LD no. 2008-001345

CONNORS & CONNORS, P.C.
Attorneys for Defendant Iris Leviten Action #2
766 Castleton Avenue
Staten Island, New York 10310
(718) 442-1700

GAIR GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff in Action #1
IRIS LEVITEN
80 Pine Street
New York, New York 10005
(212) 943-1090

AHMUTY, DEMERS & McMANUS

Attorneys for Defendant in Actions #1 & 2
ESTREE, INC., d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, New York 11507
(516) 294-5433

File No. YCW0962N7JAE

STEIN RISO MANTEL, LLP

Attorneys for Defendant in Actions #1 & 2
METRO AUTO LEASING, INC., d/b/a
THE AUTO MALL
405 Lexington Avenue
New York, New York 10174
(212) 599-1515

ECKERT SEAMANS CHERIN & MELLOTT, LLC

Attorneys for Defendant in Actions #1 & 2
TOYOTA MOTOR SALES, USA INC.
s/h/a LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, USA, INC.
10 Bank Street, Suite 1061
White Plains, NY 10606
(914) 949-2909

Page 1 of 1 Page

Local Code 3-818-07

New York State Department of Motor Vehicles POLICE ACCIDENT REPORT

MV-104A (6/04)

DMV COPY

AMENDED REPORT

1 Accident Date: Month 2, Day 18, Year 2007, Day of Week SU, Military Time 1450, No. of Vehicles 2, No. Injured 3, No. Killed 0, Not Investigated at Scene, Last Scene, Police Protect, Accident Reconstructed, Yes/No

2 VEHICLE 1 - Driver: License ID Number 793 706 540, State of Lic NY, Driver Name LEVITEN, IRIS L, Address 516 WOOD AVE, City ALBERTSON, State NY, Zip Code 11507. VEHICLE 2 - Driver: License ID Number 946 352 386, State of Lic NY, Driver Name DIGIROLAMO, Anthony, Address 114 Tenth ST, City HICKSVILLE, State NY, Zip Code 11801.

3 Date of Birth: VEHICLE 1: 7/22/45, F, Unlicensed, No. of Occupants 1, Public Property Damaged. VEHICLE 2: 2/5/86, M, Unlicensed, No. of Occupants 2, Public Property Damaged. Name: VEHICLE 1: SAME AS DRIVER, VEHICLE 2: Dept. of Sanitation. Address: VEHICLE 1: 125 WORTH ST, City of Town NY, State NY, Zip Code 11803.

4 Plate Number: VEHICLE 1: DLW 7794, State of Reg NY, Vehicle Year & Make 2007 Lexus, Vehicle Type 4dr sed, Reg. Code 140. VEHICLE 2: K 36 751, State of Reg NY, Vehicle Year & Make 2003 MERC, Vehicle Type S1, Reg. Code X.

5 Check if involved vehicle is: more than 85 inches wide, more than 34 feet long, operated with an overweight permit, operated with an overdimension permit. VEHICLE 1 DAMAGE CODES: Box 1 - Point of Impact 3, Box 2 - Most Damage 3. VEHICLE 2 DAMAGE CODES: Box 1 - Point of Impact 1, 2, Box 2 - Most Damage 12, 12. Enter up to three more Damage Codes: 9, 2, 3.

6 Accident Diagram: Circle the diagrams below that describes the accident, or draw your own diagram in space #3. Number the vehicles. Diagram shows Vehicle 1 (1) and Vehicle 2 (2) with arrows indicating movement. VEHICLE DAMAGE CODING: 1-13. SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED, 15. TRAILER 18. NO DAMAGE, 16. OVERTURNED 18. OTHER. Cost of repairs to any one vehicle will be more than \$1000. Unknown/Unable to Determine, Yes, No.

7 Reference Marker, Coordinates (if available), Latitude/Northing, Longitude/Easting, Piece Where Accident Occurred: County MASSACHUSETTS, City/Village/Town of NORTH HAMPSHIRE, Road on which accident occurred GLEN AVE, CARL PALE, at 1) Intersecting street NORTHEN STATE EAST BOUND ramp, (House Number or Street Name), (Route Number or Street Name).

8 Accident Description/Officer's Notes: MVA and MVA were in a collision. Both vehicles were towed from scene by Authority of Operators. Witness Andrew Beadle 516 375-0223.

Table with columns: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AB, AC, AD, AE, AF, AG, AH, AI, AJ, AK, AL, AM, AN, AO, AP, AQ, AR, AS, AT, AU, AV, AW, AX, AY, AZ, BA, BB, BC, BD, BE, BF, BG, BH, BI, BJ, BK, BL, BM, BN, BO, BP, BQ, BR, BS, BT, BU, BV, BW, BX, BY, BZ, CA, CB, CC, CD, CE, CF, CG, CH, CI, CJ, CK, CL, CM, CN, CO, CP, CQ, CR, CS, CT, CU, CV, CW, CX, CY, CZ, DA, DB, DC, DD, DE, DF, DG, DH, DI, DJ, DK, DL, DM, DN, DO, DP, DQ, DR, DS, DT, DU, DV, DW, DX, DY, DZ, EA, EB, EC, ED, EE, EF, EG, EH, EI, EJ, EK, EL, EM, EN, EO, EP, EQ, ER, ES, ET, EU, EV, EW, EX, EY, EZ, FA, FB, FC, FD, FE, FF, FG, FH, FI, FJ, FK, FL, FM, FN, FO, FP, FQ, FR, FS, FT, FU, FV, FW, FX, FY, FZ, GA, GB, GC, GD, GE, GF, GG, GH, GI, GJ, GK, GL, GM, GN, GO, GP, GQ, GR, GS, GT, GU, GV, GW, GX, GY, GZ, HA, HB, HC, HD, HE, HF, HG, HH, HI, HJ, HK, HL, HM, HN, HO, HP, HQ, HR, HS, HT, HU, HV, HW, HX, HY, HZ, IA, IB, IC, ID, IE, IF, IG, IH, II, IJ, IK, IL, IM, IN, IO, IP, IQ, IR, IS, IT, IU, IV, IW, IX, IY, IZ, JA, JB, JC, JD, JE, JF, JG, JH, JI, JJ, JK, JL, JM, JN, JO, JP, JQ, JR, JS, JT, JU, JV, JW, JX, JY, JZ, KA, KB, KC, KD, KE, KF, KG, KH, KI, KJ, KK, KL, KM, KN, KO, KP, KQ, KR, KS, KT, KU, KV, KW, KX, KY, KZ, LA, LB, LC, LD, LE, LF, LG, LH, LI, LJ, LK, LL, LM, LN, LO, LP, LQ, LR, LS, LT, LU, LV, LW, LX, LY, LZ, MA, MB, MC, MD, ME, MF, MG, MH, MI, MJ, MK, ML, MM, MN, MO, MP, MQ, MR, MS, MT, MU, MV, MW, MX, MY, MZ, NA, NB, NC, ND, NE, NF, NG, NH, NI, NJ, NK, NL, NM, NN, NO, NP, NQ, NR, NS, NT, NU, NV, NW, NX, NY, NZ, OA, OB, OC, OD, OE, OF, OG, OH, OI, OJ, OK, OL, OM, ON, OO, OP, OQ, OR, OS, OT, OU, OV, OW, OX, OY, OZ, PA, PB, PC, PD, PE, PF, PG, PH, PI, PJ, PK, PL, PM, PN, PO, PP, PQ, PR, PS, PT, PU, PV, PW, PX, PY, PZ, QA, QB, QC, QD, QE, QF, QG, QH, QI, QJ, QK, QL, QM, QN, QO, QP, QQ, QR, QS, QT, QU, QV, QW, QX, QY, QZ, RA, RB, RC, RD, RE, RF, RG, RH, RI, RJ, RK, RL, RM, RN, RO, RP, RQ, RR, RS, RT, RU, RV, RW, RX, RY, RZ, SA, SB, SC, SD, SE, SF, SG, SH, SI, SJ, SK, SL, SM, SN, SO, SP, SQ, SR, SS, ST, SU, SV, SW, SX, SY, SZ, TA, TB, TC, TD, TE, TF, TG, TH, TI, TJ, TK, TL, TM, TN, TO, TP, TQ, TR, TS, TT, TU, TV, TW, TX, TY, TZ, UA, UB, UC, UD, UE, UF, UG, UH, UI, UJ, UK, UL, UM, UN, UO, UP, UQ, UR, US, UT, UY, UZ, VA, VB, VC, VD, VE, VF, VG, VH, VI, VJ, VK, VL, VM, VN, VO, VP, VQ, VR, VS, VT, VU, VV, VW, VX, VY, VZ, WA, WB, WC, WD, WE, WF, WG, WH, WI, WJ, WK, WL, WM, WN, WO, WP, WQ, WR, WS, WT, WU, WV, WW, WX, WY, WZ, XA, XB, XC, XD, XE, XF, XG, XH, XI, XJ, XK, XL, XM, XN, XO, XP, XQ, XR, XS, XT, XU, XV, XW, XX, XY, XZ, YA, YB, YC, YD, YE, YF, YG, YH, YI, YJ, YK, YL, YM, YN, YO, YP, YQ, YR, YS, YT, YU, YV, YW, YX, YZ, ZA, ZB, ZC, ZD, ZE, ZF, ZG, ZH, ZI, ZJ, ZK, ZL, ZM, ZN, ZO, ZP, ZQ, ZR, ZS, ZT, ZU, ZV, ZW, ZX, ZY, ZZ.

PEDESTRIAN/BICYCLIST/OTHER PEDESTRIAN LOCATION
 1. Pedestrian/Bicyclist/Other Pedestrian at Intersection
 2. Pedestrian/Bicyclist/Other Pedestrian Not at Intersection

PEDESTRIAN/BICYCLIST/OTHER PEDESTRIAN ACTION
 1. Crossing, With Signal
 2. Crossing, Against Signal
 3. Crossing, No Signal, Marked Crosswalk
 4. Crossing, No Signal or Crosswalk
 5. Riding/Walking/Sliding Along Highway With Traffic
 6. Riding/Walking/Sliding Along Highway Against Traffic
 7. Emerging from in Front of/Behind Parked Vehicle
 8. Going to/From Stopped School Bus
 9. Getting On/Off Vehicle Other Than School Bus
 11. Working in Roadway
 12. Playing in Roadway
 13. Other Actions in Roadway*
 14. Not in Roadway (Indicate)*

TRAFFIC CONTROL
 1. None
 2. Traffic Signal
 3. Stop Sign
 4. Flashing Light
 5. Yield Sign
 6. Officer/Guard
 7. No Passing Zone
 8. RR Crossing Sign
 9. RR Crossing Flashing Light
 10. RR Crossing Gates
 11. Stopped School Bus-Red Lights Flashing
 12. Construction Work Area
 13. Maintenance Work Area
 14. Utility Work Area
 15. Police/Fire Emergency
 16. School Zone
 20. Other*

LIGHT CONDITIONS
 1. Daylight
 2. Dawn
 3. Dusk
 4. Dark-Road Lighted
 5. Dark-Road Unlighted

ROADWAY CHARACTER
 1. Straight and Level
 2. Straight and Grade
 3. Straight at Intersection
 4. Curve and Level
 5. Curve and Grade
 6. Curve at Hillcrest

ROADWAY SURFACE CONDITION
 1. Dry
 2. Wet
 3. Muddy
 4. Snow/Ice
 5. Slush
 6. Flooded
 0. Other*

WEATHER
 1. Clear
 2. Cloudy
 3. Rain
 4. Snow
 5. Sleet/Hail/Freezing Rain
 6. Fog/Smog/Smoke
 0. Other*

WHICH VEHICLE OCCUPIED
 1. Vehicle No. 1 A. All-Terrain Vehicle (ATV) O. Other*
 2. Vehicle No. 2 B. Bicyclist P. Pedestrian
 3. In-Line Skater S. Snowmobiler

POSITION (IN) ON VEHICLE
 1. Driver 2-7. Passengers
 8. Riding/Hanging on Outside

SAFETY EQUIPMENT USED
 1. None
 2. Lap Belt
 3. Harness
 4. Lap Belt/Harness
 5. Child Restraint Only
 6. Helmet (Motorcycle Only)
 7. Air Bag Deployed
 8. Air Bag Deployed/Lap Belt
 9. Air Bag Deployed/Harness
 A. Air Bag Deployed/Lap Belt/Harness
 B. Air Bag Deployed/Child Restraint

EJECTION FROM VEHICLE
 1. Not Ejected
 2. Partially Ejected
 3. Ejected

AGE SEX M/F

INJURED TAKEN BY TO 18

APPARENT CONTRIBUTING FACTORS
Human
 2. Alcohol Involvement
 3. Backing Unsafely
 4. Driver Inattention/Distracted
 5. Driver Inexperience*
 6. Drugs (Illegal)
 7. Failure to Yield Right-of-Way
 27. Failure to Keep Right
 24. Fatigued/Driveway
 8. Fall Asleep
 9. Following Too Closely
 10. Illness
 11. Lost Consciousness
 12. Passenger Distraction
 13. Pushing of Lane Usage Improper
 14. Pedestrian/Bicyclist/Other Pedestrian Error/Confusion
 15. Physical Disability
 16. Prescription Medication
 17. Traffic Control Disregarded
 18. Turning Improperly
 19. Unsafe Speed
 20. Unsafe Lane Changing
 22. Cell Phone (hand-held)
 23. Cell Phone (hands-free)
 24. Other Electronic Device
 25. Outside Car Distraction
 26. Reaction to Other Uninvolved Vehicle
 28. Aggressive Driving/ Road Rage*

Vehicle
 41. Accelerator Defective
 42. Brakes Defective
 43. Headlights Defective
 44. Other Lighting Defects
 45. Overized Vehicle
 46. Steering Failure
 47. Tire Failure/Inadequate
 48. Tow Hitch Defective
 49. Windshield Inadequate
 50. Driverless/Runaway Vehicle
 80. Other Vehicular*
Environmental
 61. Animal's Action
 62. Glare
 63. Lane Marking Improper/ Inadequate
 64. Obstruction/Debris
 65. Pavement Defective
 66. Pavement Slippery
 67. Shoulders Defective/ Improper
 68. Traffic Control Device Improper/Non-Working
 69. View Obstructed/Limited

DIRECTION OF TRAVEL:
 (Compass diagram showing directions NW, N, NE, W, E, SW, S, SE)

PRE-ACCIDENT VEHICLE ACTION
 1. Going Straight Ahead
 2. Making Right Turn
 16. Making Right Turn on Red
 3. Making Left Turn
 17. Making Left Turn on Red
 4. Making U Turn
 5. Starting from Parking
 6. Starting in Traffic
 7. Slowing or Stopping
 8. Stopped in Traffic
 9. Entering Parked Position
 10. Parked
 11. Avoiding Object in Roadway
 12. Changing Lanes
 13. Passing
 14. Merging
 15. Backing
 18. Police Pursuit
 20. Other*

LOCATION OF FIRST EVENT
 1. On Roadway 2. Off Roadway

TYPE OF ACCIDENT - COLLISION WITH
 1. Other Motor Vehicle* 6. In-Line Skater
 2. Pedestrian 7. Deer
 3. Bicyclist 8. Other Pedestrian
 4. Animal 10. Other Object (Not Food)*
 5. Railroad Train

COLLISION WITH FIXED OBJECT
 11. Light Support/Utility Pole
 12. Guide Rail-Not At End
 25. Guide Rail-End
 13. Crash Cushion
 14. Sign Post
 15. Tree
 16. Building/Wall
 17. Curb/ing
 18. Fence
 19. Bridge Structure
 20. Culvert/Head Wall
 21. Median-Not At End
 26. Median-End
 27. Barrier
 22. Snow Embankment
 23. Earth Embankment/Rock Cut/Ditch
 24. Fire Hydrant
 30. Other Fixed Object*

NO COLLISION
 37. Overturned
 32. Fire/Explosion
 33. Submerision
 34. Ran Off Roadway Only
 40. Other*

INJURED TAKEN BY TO 18

Vehicle 1
Vehicle 2
Vehicle 3
First Event
Second Event
COV SHE

THE CITY OF NEW YORK Department of Sanitation
LINE-OF-DUTY INJURY REPORT

Investigating Supervisor: Check how it happened involved a moving vehicle
EMPLOYEE'S SOCIAL SECURITY NO. 092524953

Caution to supervisors, injured employee and witnesses: Disciplinary Code Rule 6: Making false reports or entries in or on any Departmental or other official record or in connection with any Departmental operation or activity will result in disciplinary action.

INSTRUCTIONS: This report must be received by the Medical Division within 48 hours of the incident. The necessary injury report must be detached and given to the injured employee immediately upon completion of Sections 1, 2 and 3. Injured employee must submit this report to the Safety Office within 24 hours.

DATE OF INJURY 2-18-07	TIME OF INJURY 1506 pm	LOCATION WHERE INCIDENT OCCURRED Middletown	BOROUGH DE	STREET NUMBER 11	SECTION 112
INJURED EMPLOYEES (Last, First, MI) Doukas Michael	WORK LOCATION ON DAY OF INCIDENT	INJURED EMPLOYEES PAYROLL LOCATION	BOROUGH DE	DISTRICT 11	SECTION 111
AGE 46	APPOINTMENT DATE 3-6-89	TITLE Sanitation Worker	SUPERVISOR'S NAME AND WORK LOCATION T. Horisewski		SUPERVISOR'S TELEPHONE NUMBER 718-209-8595
NAME OF HOSPITAL Wintrop University		HOSPITAL'S ADDRESS 259 1st Street Mineola N.Y. 11501		PHYSICIAN'S NAME Ed Mintz M.D.	
ATTENDING PHYSICIAN'S NAME		PHYSICIAN'S ADDRESS 259 1st Street Mineola N.Y.		PHYSICIAN'S TELEPHONE NUMBER 516	
To complete the items at right, enter the code numbers from the cover sheet of this form:		TYPE OF WORK ASSIGNED Collection	INJURED PART OF BODY L5, T1	NATURE OF INJURY N5	
		TYPE OF INCIDENT AT13	TYPE OF UNSAFE ACT	TYPE OF UNSAFE CONDITION	
DID INJURED EMPLOYEE CONTINUE TO WORK? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		WAS MEDICAL CARE PROVIDED IMMEDIATELY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (WHEN PROVIDED) <i>SW taken by Ambulance</i>			
WAS THE INCIDENT WITNESSED BY SUPERVISOR? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		DID INCIDENT OCCUR DURING PERFORMANCE OF DUTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		WAS INCIDENT INVESTIGATED BY SAFETY OFFICER? <input checked="" type="checkbox"/> YES 'if you give Date: 2/18/07 Time:	

Additional remarks on any information not covered above

If incident resulted from unsafe condition, what corrective action was taken?

If incident resulted from unsafe action, what discussion took place with employees?

INVESTIGATING OFFICER'S SIGNATURE: B. Ortiz
OFFICER'S SOCIAL SECURITY NUMBER: 087-58-5321
BOROUGH: DE DISTRICT: 11 SECTION: 140

SECTION 2 - Injured Employee
Injured employee's own description of the incident, including part of body affected, and circumstances surrounding the incident:
SW Doukas was traveling in 25CU255 N/B on Glen Cove Rd. Passenger Vehicle Driven by Female Civilian Collided Causing Fire Damage and Body Damage to Vehicle 142

How could the injury have been prevented?

HAVE YOU BEEN INJURED IN THE PAST?
 YES NO

NUMBER OF TIMES INJURED: 2
INJURED EMPLOYEE'S SIGNATURE: Michael Doukas
DATE: 2/18/07

SECTION 3 - Witnesses
Statement of first eyewitness
1st EYEWITNESS'S SIGNATURE: ADDRESS: DATE:
Statement of second eyewitness
2nd EYEWITNESS'S SIGNATURE: ADDRESS: DATE:

SECTION 4 - Supl.
Superintendent's comments

SUPERINTENDENT'S SIGNATURE: SUPERINTENDENT'S SOCIAL SECURITY NUMBER: 4151
BOROUGH: DE DISTRICT: DE SECTION: 651

SECTION 5 - Borough Safety Officer
BOROUGH SAFETY OFFICER'S SIGNATURE: NAME:

RECEIVED
NYC SANITATION
MEDICAL DIVISION
2007 FEB 20 A 9:25

NYCERS

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

MAIL ONLY:
335 ADAMS STREET,
SUITE 2300
BROOKLYN, NY 11201-3751

ALL OTHER SERVICES:
340 JAY STREET,
MEZZANINE LEVEL
BROOKLYN, NY 11201-3751

TEL: (347) 643-3000

EXECUTIVE DIRECTOR: DIANE D'ALESSANDRO

RETIREMENT AND BENEFITS

INR-ISSUED

RECEIPT FOR DISABILITY RETIREMENT APPLICATION

Please retain this document for future reference.

Name

[REDACTED]

Title

Sanitation Worker

Membership #

900892

Agency

DOS

This will acknowledge receipt of the Disability Retirement Application filed with the New York City Employees' Retirement System on 12/29/18.

REC'D NYCERS MEDICAL
08 DEC 29 PM 2:19

Processing of the Disability Retirement Application

The NYCERS' Medical Division will determine your eligibility. You will be notified in writing, if you are not eligible. If eligible, in order for your application to be processed, you must provide sufficient medical evidence to support the claim for Disability Retirement.

Upon receipt of the required medical evidence, the Medical Division will schedule you to appear before the NYCERS' Medical Board for an interview and/or examination.

If the Medical Board recommends approval of the application, you will be entitled to receive an advance disability payment until your case is finalized.

If the Medical Board recommends denial of the application, we will provide you with a copy of the Medical Board report, which will state the reasons for the denial. You will also be notified of the appeal process if it is applicable in your case.

Issued by: NYCERS Medical Division
340 Jay Street
Mezzanine Level

NYCERS

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM
 MAIL ONLY: 335 ADAMS STREET, SUITE 2300, BROOKLYN, NY 11201-3751
 ALL OTHER SERVICES: 340 JAY STREET, MEZZANINE LEVEL, BROOKLYN, NY 11201-3751
 TEL: (347) 643-3000
 EXECUTIVE DIRECTOR: DIANE D'ALESSANDRO

FOR OFFICE USE ONLY

RETIREMENT AND BENEFITS

Application for Disability Retirement

Tier 4 Members

CLOCK-IN-DATE

Membership Number 9,00,87,2

Social Security Number [REDACTED]

Select a Benefit:

Be sure to read the requirements in the TERMS section to determine for which you qualify. You may be eligible for more than one; please mark all of those that apply to you.

I am applying for:

- Disability Retirement (605)
- 3/4 Sanitation Accidental Disability (605-b)
- Uniformed Sanitation Heart Bill (207-r)
- Performance-of-Duty Disability Retirement EMS Titles only (607b)
- EMS/EMT Titles Only Heart Bill (207-q)
- Deputy Sheriffs only (605-c)

This application is for Tier 4 members who wish to apply for Disability Retirement. In order for NYCERS to process this application, this form must be filled out in its entirety and notarized before submitting it for review. You must read and understand the requirements for filing for Disability Retirement, found in the TERMS section of this document.

In addition to this form, you must also submit (to NYCERS' Medical Board):

- ✓ Applicants Report of Personal Disability (form 605)
- ✓ General Authorization for Release Medical Information (form 608)
- ✓ Physician's Report of Disability (form 606)
- ✓ NYCERS Questionnaire (form 609)

Should you have any questions, please contact our Medical Unit at 347-643-3000.

If you joined NYCERS on or after July 27, 1976 but before September 1, 1983, you are a Tier 4 member with Tier 3 rights and may apply for Ordinary or Accidental Disability with Tier 3 rights. To request your application be processed under Tier 3, please read and understand the requirements found in the TERMS section on of this document, and check the appropriate box below:

- I request that this application also be processed under Tier 3 Ordinary Disability (506).
- I request that this application also be processed under Tier 3 Accidental Disability (507).

First Name [REDACTED] Middle Initial [REDACTED]
 Last Name [REDACTED] Home Phone # [REDACTED]
 Address [REDACTED] Apt. Number [REDACTED]
 City Dix Hills State NY Zip Code [REDACTED]
 Agency Sanitation Date of Birth 1/1
 Title Sanitation Worker M M D D Y Y Y Y

Federal Tax Withholding
 Federal tax law provides that all payers are required to withhold Federal income tax on periodic payments (similar to wages), unless you elect to be excluded from such withholding. This election will remain in effect until revoked by you. If you do not complete this election, Federal income tax will be withheld at the rate of a married individual claiming three exemptions.
Please indicate your withholding election by marking the appropriate choice below:

- Do Not Withhold Federal Income Tax
- Withhold Based On Number of Exemptions Using The Following Status:
 (Check one only) Single Married
- In addition to the amount withheld based on my exemptions and filing status, I would like to withhold \$ Per Month.

NYCERS

RETIREMENT AND BENEFITS

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM
MAIL ONLY: 335 ADAMS STREET, SUITE 2300, BROOKLYN, NY 11201-3751
ALL OTHER SERVICES: 340 JAY STREET, MEZZANINE LEVEL, BROOKLYN, NY 11201-3751
TEL: (347) 643-3000
EXECUTIVE DIRECTOR: DIANE D'ALESSANDRO

FOR OFFICE USE ONLY
CLOCK-IN DATE

Membership Number 900872

Social Security # [REDACTED]

Select an Option: This section allows you to select a temporary option, which determines what will happen to your benefit if you should die before the date of your first full payment. If you select either the Ten Year Certain or 100% Joint-And-Survivor option, you must select a beneficiary below. If you should die before selecting an option, or if you fail to name a beneficiary, **NO DEATH BENEFIT WILL BE PAYABLE FROM NYCERS.** If you wish to select a different option, please contact NYCERS to get detailed information. Please choose only one of the following:

- The Maximum Retirement Allowance:** This option provides the greatest benefit payment to you while you are retired, for as long as you live. However, under the Maximum Retirement Allowance, no further payments will be made after your death. Please do not list a beneficiary if you choose this option.
- Ten Year Certain:** Under this option, if you die within ten years of your retirement, the reduced monthly retirement benefit will be paid to your surviving primary beneficiary for the unexpired balance of the ten-year period. If the designated primary beneficiary predeceases you, the balance of the payment continues to your contingent beneficiary. If none exists, it is paid in a lump-sum to your estate. Should a primary beneficiary die after receiving payments, the balance will be paid in a lump-sum to your contingent beneficiary. If none exists, the lump-sum balance is paid to the estate of the primary beneficiary. You may nominate both a primary and a contingent beneficiary under this option.
- 100% Joint-and-Survivor:** This option assures you and your designated beneficiary a reduced benefit for lifetime. Should you die, your designated beneficiary will receive a percentage of your benefit. Because this option guarantees two specific people an income for life, the life expectancies of the retiree as well as the beneficiary are taken into consideration. Therefore, once you designate a beneficiary and the option is in force, you cannot change your beneficiary designation, even if he/she precedes you in death. You may only nominate a primary beneficiary under this option.

Select a Beneficiary

The person whom I wish to nominate to receive my Ordinary Death Benefits is:

Primary Beneficiary

First Name [REDACTED] Middle Initial [REDACTED]
Last Name [REDACTED] Social Security # [REDACTED]
Relationship Wife Date of Birth [REDACTED]
Address [REDACTED] Apt. Number [REDACTED]
City Dix Hills State NY Zip Code [REDACTED]

If this beneficiary is a minor, check here and complete the guardian information on Form 137

If you have chosen the Ten-Year Certain Option, please also designate a contingent beneficiary below. Should my primary designated beneficiary die before the Ten Year period expires, the contingent beneficiary whom I nominate to receive benefits is:

Contingent Beneficiary

First Name [REDACTED] Middle Initial [REDACTED]
Last Name [REDACTED] Social Security # [REDACTED]
Relationship [REDACTED] Date of Birth [REDACTED]
Address [REDACTED] Apt. Number [REDACTED]
City [REDACTED] State [REDACTED] Zip Code [REDACTED]

If this beneficiary is a minor, check here and complete the guardian information on Form 137

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CLOCK-IN DATE

Membership Number 900872

Social Security

I, the undersigned, request to make application for Disability Retirement.

Signature of Member

Date 12/29/2008
M M D D Y Y Y Y

This form must be acknowledged before a Notary Public or Commissioner of Deeds

State of NY County of NY

On this 29 day of December 2008, personally appeared before me the above named, _____, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he or she acknowledged to me that he or she executed the same, and that the statements contained therein are true.

If you have an official seal, affix it.

Signature of Notary Public or Commissioner of Deeds Todd J. Strier

Official Title

Notary
7/15/10

Expiration Date of Commission

TODD J. STRIER
Notary Public, State of New York
No. 02ST5063080
Qualified in NY County
Commission Expires July 15, 2010

TERMS:

To file for 605 and 605-b you must file this application while you are being paid on the payroll or on approved Medical Leave, or within 3 months from the last day you were being paid on the payroll, or no later than 12 months from the date you receive notice that your employment has been terminated, provided you were on a medical leave of absence at the time you stopped receiving a regular paycheck.

Disability Retirement (605):

If you have 10 or more years of credited service, 2 of which must be membership service, you will be awarded Disability Retirement Benefit, at any age, if NYCERS Medical Board determines that you were incapacitated at the time you ceased your duties and that you remain unable to perform such duties.

There is no minimum service requirement if you apply for this benefit based on a line of duty injury. However, you must be incapacitated from the performance of City service as a natural and proximate result of the accidental injury in such City Service, while you are a member of NYCERS and not as the result of your own willful negligence.

3/4 Sanitation Accidental Disability for uniformed-force of the Department of Sanitation (605-b):

A uniformed-force Sanitation member of NYCERS is eligible to apply for a performance of duty disability retirement (3/4) if you become incapacitated on or after September 17, 2002 from the performance of City service as a natural and proximate result of the accidental injury sustained in Sanitation service, while you are a member of NYCERS and not as the result of your own willful negligence. You will have two years after the occurrence of the accident to apply for this benefit.

You may also apply for Disability Retirement under 605 if you have 10 years of credited service.

Uniformed Sanitation Heart Bill (207-r):

Uniformed Sanitation members are eligible to apply for a 3/4 disability retirement benefit under the Heart Bill for heart disease which will be presumed to have been contracted in the course of your performance duty.

You may apply for Disability Retirement under 605.

If you joined NYCERS on or after July 27, 1976 but before September 1, 1983, you may apply for Ordinary or Accidental Disability with Tier 3 rights. Please read the different requirements for the various laws to determine which will benefit you the most.

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EXECUTIVE DIRECTOR: DAINE D'ALESSANDRO

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CLOCK-IN-DATE

Applicant's Report of Personal Disability

Please return with member's application for disability retirement

Membership Number 900,872 Social Security # [REDACTED]

Date 12/29/2008
M M D D Y Y Y Y

First Name [REDACTED] Middle Initial [REDACTED]

Last Name [REDACTED]

Address [REDACTED] Apt. Number [REDACTED]

City Dix Hills State NY Zip Code [REDACTED]

To NYCERS' Medical Board:

I, the undersigned, believe that I am incapacitated for further service as a

Title Sanitation Worker

in the Department of Sanitation

because due to my car accident and the resulting spinal surgery to my neck - I never regained the strength or range of motion to do my job duties. The pain continues to be disabling in my neck and lower back

I am being treated for this condition by the following doctor(s):

Name of Doctor(s) and Addresses

Mitchell E Levine MD 900 Northern Blvd, Great Neck NY 11021

Note: The Physician's Report of Disability must be completed by each doctor listed above and submitted with your application.

I have been hospitalized and/or treated for this condition at the following hospital(s) and /or medical group(s):

Name of Hospital(s) and/or Medical Group(s) and Addresses

Treatment Dates

Winthrop University Hospital - 259 First St, Mineola NY 2/18/2007
M M D D Y Y Y Y

Northshore Univ. Hosp.: 303 Community Dr, Manhasset, NY 6/25/2008
M M D D Y Y Y Y

Note: An appropriate authorization for release of medical information must be completed for each hospital and/or medical group listed above, and submitted with your application.

I will appear before NYCERS' Medical Board at 340 Jay Street, Mezzanine Level, in downtown Brooklyn when necessary for me to be examined.

Note: If you are unable to appear before NYCERS' Medical Board for examination, please forward your physician's certificate stating why.

Signature of Member [REDACTED]

Date 12/29/2008
M M D D Y Y Y Y

In use beginning November 2005

Applicant's Report of Personal Disability

Form #605

Page 1 of 1

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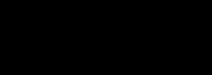
CLOCK IN DATE


RETIREMENT AND BENEFITS


Questionnaire

Applicants for Disability Retirement

This application is to accompany your application for Disability Retirement. Please be sure you read and understand the questions asked on this form before answering. Should you have any questions, please contact our Call Center at 347-643-3000.

Membership Number 9,00,872 Last 4 Digits of Social Security # 

First Name  Middle Initial

Last Name 

This section must be completed by ALL members applying for Disability Retirement.

1. What is (are) the disabling condition(s) which is (are) the basis for your applying for disability retirement?
Due to my Accident and Surgery in June 2008, I still have pain, very limited Range of motion, trouble sitting long period of time, headaches, inability to lift required depressed standards - eg - 14 tons/day. Lower Back pain continues.

2. Check all relevant circles that indicate your symptoms:
 Pain Weakness Difficulty walking
 Weight loss Depression Other: poor range of motion, headaches, trouble sitting, trouble lifting + driving.

3. When did symptoms begin? 02/18/2007
 M M D D Y Y Y Y

4. Please list the name(s), address(es) and frequency of persons and/or institutions from whom you are receiving treatment.
Mitchell Leuze MD, 900 Northern Blvd, Great Neck NY
Perry Physical Medicine & Rehab 2033 Deer Park Ave, Deer Park NY

5. Nature of treatment, including medications being taken.
diagnostics, Rx, Surgery -> not successful.

6. Check circles below to indicate tests performed: (Bring a copy of ALL REPORTS, if possible.)
 Blood and Urine X-Rays EMG (Electromyogram)
 EKG (Electrocardiogram) Myelogram CT Scan
 Stress Test Pulmonary Function Studies Pathology or Biopsy Reports
 Other: MRI (S)

7. Hospital admission(s): (Hospital Reports must be supplied to this office.)
 (A) Name of hospital(s):
 1) Wintrop Univ. Hosp
 2) North Shore Univ Hosp

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Membership Number 9,00872

Last 4 Digits of Social Security # [REDACTED]

(B) Dates of admission and discharge:

- 1) 02/18/2007
2) 06/25/2008

(C) Diagnosis(es):

- 1) Cervical Injury & Lower back Injury
2) Surgery

Was surgery performed? Yes No If Yes, give dates and type of surgery performed.

- 1) Anterior Cervical discectomy, fusion with plating 06/25/2008
M M D D Y Y Y Y
2) _____ M M D D Y Y Y Y

8. Check all relevant boxes that your job requires.

- Lifting Working outdoors Walking Climbing Other: shoveling snow - operating heavy machinery

9. Do you feel that you are totally and permanently disabled from performing the usual duties of your title?

- Yes No

Could you do other work? Yes No

10. Are you working now? Yes No Light duty

If Not, when did you stop? _____
M M D D Y Y Y Y

11. What is the name of your union, and local? Local 831

12. Are you receiving Social Security Disability Benefits? Yes No

13. Please give a daytime telephone number where you can be reached. (631) 243-3455

14. Did you have previous service with New York City or New York State prior to your current membership?

- Yes No

If yes, When?

_____ M M D D Y Y Y Y _____ M M D D Y Y Y Y _____ M M D D Y Y Y Y

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Membership Number

900872

Last 4 Digits of Social Security #

This section is to be completed ONLY by members applying for disability retirement as a result of an accidental injury during the performance of their duties while in City service.

15. What is your date of birth? 11/07/1960 (Attach a copy of your Birth Certificate.)
M M D D Y Y Y Y

16. What was the date of the injury? 02/18/2007
M M D D Y Y Y Y

17. What part of your body was injured?
Cervical spine + lumbar spine

18. What were you doing when you were injured?
my normal job duties

19. Were you on full duty at the time of the injury? Yes No

20. Were you performing any unusual work at that time? Yes No
If Yes, describe.

21. What is the nature of the injury?

significant cervical herniations obliterating spinal cord at C3/4, C4/5, C5/6, C6/7 + L5

22. How were you injured?

I was passenger in my truck which was struck by a private motorist

23. Were there any witnesses to the incident when you were injured? Yes No

If Yes, give Name, Title and Address (if known).

Partner: Anthony DiSirolema

24. When did you stop working because of the injury? 02/18/2007 initially, returned a short period but could not function well out 3 months later
M M D D Y Y Y Y

25. Do you have proof of this occurrence? Yes No

26. When were you first treated for the injury referred to above, and by whom?

Date 02/18/2007
M M D D Y Y Y Y

By Whom? ER

Place? Wentrop Univ.

27. State the name of medical persons or institutions who treated you for the injury described. State dates and frequency.

Name of Person or Institution Wentrop Univ. Date 02/18/2007
M M D D Y Y Y Y

Name of Person or Institution Nexta Shore Date 06/25/2008
M M D D Y Y Y Y

Name of Person or Institution Leone MD - Surgeon - ongoing Date _____
M M D D Y Y Y Y

In use beginning September 2007

Form # 609

Questionnaire - Disability Applicant

Page 3 of 4

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RETIREMENT AND BENEFITS

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

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Membership Number 9,00,872

Last 4 Digits of Social Security # [REDACTED]

28. Have you had any similar disability before the injury? Yes No *but resolved.*

29. Have you had any other accidents or injuries on the job (either before or after the injury claimed herein)?
 Yes No

If Yes, give dates and description of injury. Fell at work, hit head & neck *Resolved Back to work*
03/16/1992
M M D D Y Y Y Y
M M D D Y Y Y Y

30. Have you had any accidents or injuries off the job? Yes No

If Yes, give date(s) and description(s) of injury. 04/2003 *fx leg*
M M D D Y Y Y Y M M D D Y Y Y Y

31. Did you return to full duty after the injury herein claimed? Yes No

If Yes, When? 05/2007 *For 3 months then back out due to pain. never returned to full duty after 4/08*
M M D D Y Y Y Y

32. Did you return to light duty after the injury herein claimed? Yes No

If Yes, When? _____
M M D D Y Y Y Y

33. Are you being treated for any other injuries/disorders? Yes No

If Yes, describe injury/disorder and treatment.

34. Do you drink alcohol regularly (one-half pint or more per-week)? Yes No

Do you drink occasionally? Yes No

If yes, how often? _____

How much? _____

35. Do you take any medications daily? Yes No

If Yes, What? Darvocet, Advil & Tylenol PM

36. Do you use any recreational drugs? Yes No

If Yes, What and how often? _____

37. Did you file a Workers' Compensation claim? Yes No *NIA*

Are you receiving Workers' Compensation payments? Yes No *NIA*

38. If Yes, how much bi-weekly? _____

Signature of Member [REDACTED] Date 2/29/2009
M M D D Y Y Y Y

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TEL: (347) 643-3000

EXECUTIVE DIRECTOR: DIANE D'ALESSANDRO

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RETIREMENT AND BENEFITS

General Authorization for Medical Information

CLOCK-IN DATE

This form authorizes NYCERS to obtain medical information pertaining to those filing for disability. NYCERS understands that information about your health is personal and we are committed to protecting your privacy. Please be sure you understand how NYCERS will use your medical information prior to signing this form. Should you have any questions, please contact our Call Center at 347-643-3000.

Membership

Number

9.09872

Date of Birth

[REDACTED]

Social

Security #

[REDACTED]

First Name

[REDACTED]

Middle Initial

[REDACTED]

Last Name

[REDACTED]

Address

[REDACTED]

Apt. Number

[REDACTED]

City

Dix Hills

State

NY

Zip

Code

[REDACTED]

Name of Hospital or
Medical Group

Winthrop University

Dates of treatment/service:

02/18/07

[REDACTED]

[REDACTED]

[REDACTED]

Expiration date of this authorization:

12/31/2009

Please initial each of the following to state your understanding of this form.

I understand that by completing this form in full, I authorize the use and disclosure of my medical records for the purpose of applying for disability retirement.

I understand that this information may be re-disclosed if the recipient(s) described on this form is not required by applicable law to protect the privacy of the information and such information is no longer protected by federal health information privacy regulations.

I understand that my medical records may contain information relating to Alcohol or Drug Abuse, genetic testing, psychiatric care and /or confidential HIV/AIDS related information.

I understand that if I am authorizing the use or disclosure of HIV/AIDS related information, the recipient is prohibited from using or re-disclosing any HIV/AIDS related information without my authorization unless permitted to do so under federal or state law. I also understand that I have a right to request a list of people who may receive or use my HIV/AIDS related information without authorization. If I experience discrimination because of the use or disclosure of HIV/AIDS related information, I may contact New York State Division of Human Rights at 212-480-2493 or the New York City Commission of Human Rights at 212-306-7450. These agencies are responsible for protecting my rights.

I have read this form and all of my questions about this form have been answered. By signing below I acknowledge that I have read and accept all of the above and hereby authorize any hospital, medical group, or other organization to disclose all information to the New York City Employees' Retirement System.

Signature of Member

[REDACTED]

Date

12/29/2009

In use beginning November 2005

Form # 608

General Authorization for Medical Information

Page 1 of 1

-----X
IN THE MATTER OF THE CLAIM OF MICHAEL :
DOUKAS.

Claimant.

-against-

THE CITY OF NEW YORK AND THE NEW YORK
CITY DEPARTMENT OF SANITATION.

Respondents.

CLAIM NO. 2007PI011125

-----X
26 Court Street
Brooklyn, New York 11242

June 27, 2007
3:40 p.m.

EXAMINATION UNDER OATH of MICHAEL DOUKAS.
the Claimant herein, taken by the Respondents,
pursuant to 50-H of the General Municipal Law
and Notice, before a Stenotype Reporter and
Notary Public within and for the State of New
York.

ORIGINAL

JAY DEITZ & ASSOCIATES, LTD.
(516)678-0700 (212)374-7700 (718)527-7700

JAY DEITZ & ASSOCIATES
516-678-0700 212-374-7700 718-527-7700 516-678-4488

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A P P E A R A N C E S:

LAW OFFICES OF GARY S. ALWEISS, ESQ.
Attorney for Claimant
229 Seventh Street - Suite 300
Garden City, New York 11530

BY: TED NAIMA, ESQ.

LAW OFFICE OF DANIEL L. SCHNEIDER, ESQ.
Attorney for Respondents
49 Walworth Avenue
Scarsdale, New York 11231

BY: ANN MARESCA, ESQ.

JAY DEITZ & ASSOCIATES
516-678-0700 212-374-7700 718-527-7700 516-678-4488

M I C H A E L D O U K A S, after first
having been duly sworn by David P. Yuni, a
Stenotype Reporter and Notary Public in and for
the State of New York, was examined and
testified as follows:

EXAMINATION BY
MS. MARESCA:

Q State your name for the record.

A Michael Doukas.

Q What is your current address?

A 2 Mehan Lane in Dix Hills, New York
11746.

MS. MARESCA: Good afternoon, Mr.
Doukas. My name is Ann Maresca, and I
represent the City of New York in this
claim. I will ask you some questions. If
you don't understand the question please
let me know, and I will rephrase it.

Q How long have you lived at that
address?

A Ten years..

Q Are you married?

A Yes.

Q What is your wife's name?

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A Linda.
Q Do you have any children?
A Yes.
Q How many?
A Two.
Q How old are they?
A 17 and 20.
Q What is your date of birth?
A 11/7/60.
Q Your Social Security number?
A 092-52-4953.
Q Have you ever been convicted of a
crime?
A No.
Q Are you employed?
A Yes.
Q By whom?
A City of New York Department of
Sanitation.
Q How long have you been employed by
them?
A 18 years.
Q What is the nature of your work?
A Sanitation worker.

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1
2 Q How much do you presently earn?
3 A Base salary I am not sure.
4 MR. NAIMA: Ballpark it for her.
5 A Ballpark I would say \$65,000.
6 Q Is that the base salary?
7 A No. That would be everything.
8 Q What would that include?
9 A Overtime, yes. That is with
10 overtime. Snow removal, et cetera.
11 Q What was the date of your accident?
12 A February 18, 2007.
13 Q What time did the accident happen?
14 A I believe it was 3:30.
15 Q In the afternoon?
16 A Yes.
17 Q Do you remember what the weather was
18 like?
19 A I believe it was clear.
20 Q Were you working at the time?
21 A Yes.
22 Q Where were you going?
23 A Back to our sanitation depot.
24 Q Where was the depot?
25 A In Queens.

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1
2 Q Do you know where in Queens?
3 A Douglaston.
4 Q Where were you coming from?
5 A They call it an an MTS. It is a
6 sanitation dump.
7 Q Where was that MTS?
8 A Hempstead.
9 Q What were your work hours that day?
10 A I believe we started 8:00 in the
11 morning, and I think that shift is an 8 to 4
12 shift.
13 Q Were you a passenger in a vehicle at
14 the time?
15 A Correct.
16 Q What type of a vehicle was it?
17 A Sanitation truck.
18 Q Who was driving?
19 A Tony DiGirolamo.
20 Q Was that vehicle equipped with seat
21 belts?
22 A Yes.
23 Q Were you wearing a seat belt?
24 A That's correct.
25 Q Can you describe what type of truck

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1
2 that was?
3 A It is called a cab over.
4 Q Had you taken any medication within
5 24 hours before the accident?
6 A No.
7 Q Were you being treated for any
8 medical conditions at that time?
9 A No.
10 Q Did you have anything of an
11 alcoholic nature to drink within 24 hours
12 before?
13 A No.
14 Q Where did the accident happen?
15 A Glen Cove Road.
16 Q Is that a one-way or a two-way
17 street?
18 A A two way.
19 Q How many lanes are there for moving
20 vehicles in each direction?
21 A I believe it is two and two, so it
22 would be total of a four-lane road.
23 Q Where on Glen Cove Road did the
24 accident occur?
25 A The cross street, you mean?

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1
2 Q Yes.
3 A I don't know.
4 Q Did the accident occur at an
5 intersection?
6 A Yes.
7 Q Was there any traffic control device
8 at that intersection?
9 A Yes.
10 Q What type of device?
11 A Traffic light.
12 Q Did you observe that traffic light
13 at any time before the accident happened?
14 A Yes.
15 Q What color was the light for
16 vehicles traveling on Glen Cove Road?
17 A We had a red light.
18 Q Did your vehicle stop at that red
19 light?
20 A We were at a full stop.
21 Q Were any vehicles stopped ahead of
22 you?
23 A I don't recall.
24 Q What lane were you in?
25 A Right lane.

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1
2 Q Were there any vehicles stopped in
3 the left lane next to you?
4 A No.
5 Q Can you tell me how the accident
6 occurred?
7 A No. I don't mean to be -- I can't.
8 Q When the accident happened was your
9 vehicle moving or was it stopped?
10 A To be honest? I don't recall.
11 Q When you were stopped at that
12 traffic light did you ever see the light turn
13 green?
14 A The problem is it happened so fast
15 that the light -- we were at the light, and then
16 we were kind of unconscious so it was that type
17 of -- that's why I am not trying to be rude. It
18 was just lights out.
19 Q Can you tell me approximately how
20 long you were stopped at that light?
21 A For the duration of the light.
22 Q And after you stopped for the light
23 did your vehicle proceed at all before it was
24 struck?
25 A I believe the light had turned

1
2 green. He started to roll. Again, we are in a
3 collection truck so there is really no speed
4 involved. We started to roll, and then we had
5 an impact.
6 Q Do you know what type of vehicle
7 impacted your vehicle?
8 A 2007 Lexus.
9 Q Do you know what street the Lexus
10 was traveling on?
11 A She came -- from what I was told she
12 came off the Northern State Parkway.
13 Q How far was the Northern State
14 Parkway from where you were?
15 A On the opposite side of Glen Cove
16 Road there is an exit coming off the Northern
17 State. She came off that exit from what we were
18 told and started to meet with us.
19 Q And which portion of your vehicle
20 did the Lexus come into contact with?
21 A The front of the truck.
22 Q Was it the entire front of the
23 truck, or the front left, the front right?
24 A She actually came into the front
25 left.

1
2 MR. NAIMA: When you say front left
3 do you mean like the front bumper? When
4 you say front we will think front bumper.
5 When you say front I think you are meaning
6 the cab versus --
7 A The cab part she actually -- the car
8 was underneath. She hit us with such an impact
9 that the car was underneath us.
10 MR. NAIMA: Would that be the
11 driver's side?
12 THE WITNESS: The driver's side.
13 Q Was she traveling in the opposite
14 direction on Glen Cove Road before the impact?
15 A It is my understanding that she came
16 off the Northern State Parkway, came across all
17 of the lanes of traffic and broadsided our
18 vehicle.
19 Q Do you know which portion of the
20 Lexus came into contact with your vehicle?
21 A I would have to say the whole thing.
22 MR. NAIMA: What portion you think
23 initially struck the vehicle? That would
24 be the front end?
25 A Yes, the front of her vehicle struck

1
2 the driver's side portion of our vehicle and
3 then proceeded underneath it and blew into
4 flames.
5 Q Did you see the Lexus before the
6 impact?
7 A Not at all.
8 Q Did the operator of your vehicle say
9 anything to you just prior to the impact?
10 A No.
11 Q Did you hear any sounding of any
12 horns?
13 A No skidding, no horn, no nothing,
14 just impact.
15 MR. NAIMA: Wait until he finishes
16 the question.
17 Q Did your vehicle move at all as a
18 result of the impact?
19 A Yes.
20 Q In which direction?
21 A We were in the right lane, and we
22 ended up on the sidewalk so we moved further to
23 the right which would be a lane over to the
24 right. I think they said that we were pinned
25 under an overpass.

1
2 Q At the time of the impact did any
3 part of your body come into contact with
4 anything inside of your vehicle?

5 A I was knocked unconscious so I
6 imagine that I hit something.

7 Q Were you bleeding from any part of
8 your body?

9 A My leg.

10 Q Which leg?

11 A The right leg.

12 Q Where were you when you regained
13 consciousness?

14 A Being removed from the sanitation
15 truck when I started to come to.

16 Q Any idea how long that was that you
17 were unconscious?

18 A No.

19 Q Are there any witnesses to the
20 accident that you were aware of?

21 A Yes.

22 Q Who witnessed the accident?

23 A I don't know his name. Do you have
24 the police report?

25 MR. NAIMA: It is right after the

1 description.

2 Q Do you know an Andrew Beadle?

3 A I don't know him.

4 Q Do you know him to be a witness?

5 A Do I --

6 Q Well, other than what is on the
7 police report?

8 A Other than what is on there --

9 Q Did you ever have a conversation
10 with Andrew Beadle?

11 A No.

12 Q Did you have any conversation with
13 anyone at the scene?

14 A Yes.

15 Q Who did you speak to?

16 A My job responded, and the assistant
17 borough commissioner came down. I spoke with
18 him.

19 Q What is his name?

20 A I don't know his name.

21 MR. NAIMA: Assistant what?

22 THE WITNESS: Assistant Hickey.

23 MR. NAIMA: What was his title?

24 THE WITNESS: Chief. It is Chief
25

1 Hickey.

2 Q Did you have any conversation with
3 Mr. Hickey at the scene?

4 A Other than the fact that I remember
5 him saying, "I am amazed you are still alive,"
6 other than that, no. That's all I kept remember
7 him saying.

8 Q Did anyone tell you after the
9 accident how the accident had occurred?

10 A In the hospital they did.

11 Q Who told you?

12 A Chief Hickey was one of the guys.

13 Q What did he tell you?

14 A He said that she was exiting the
15 Northern State Parkway, and there is a ramp
16 where you can either go north or go south, and
17 she evidently continued to go straight, and
18 that's how the impact happened.

19 Q Did you observe any damage to the
20 sanitation truck?

21 A At the time I was -- no.

22 Q Do you know if they repaired the
23 truck?

24 A Subsequently the truck was totalled.
25

1 She totalled the truck. We were told that
2 afterwards.

3 Q How were you removed from the truck?

4 A I don't remember.

5 Q Were you complaining of any pain
6 while you were still at the scene?

7 A Yes.

8 Q Where was the pain?

9 A Neck, back, and leg.

10 Q Which leg?

11 A Right.

12 Q Were any photographs taken of the
13 sanitation truck that you are aware of?

14 A I don't know.

15 Q When did the police arrive at the
16 scene?

17 A I don't know.

18 Q Did they get there before or after
19 Mr. Hickey?

20 A Sorry. Again, I don't know.

21 Q Where did you go from the scene?

22 A Winthrop Hospital by the ambulance.

23 Q What did they do for you at Winthrop
24 Hospital?
25

1
2 A Nine million tests.
3 Q Do you know what type of tests?
4 A Everything from MRI's to CAT scans
5 to cleaning up wounds.
6 Q Where were the wounds?
7 A Primarily those wounds were the leg.
8 Q Your right leg?
9 A Correct.
10 Q Do you know how you got those
11 wounds?
12 A If I can sum it up in one word, the
13 impact.
14 Q Do you know if you hit your right
15 leg on something in the vehicle?
16 A I don't know what I hit. I hit
17 something.
18 Q Did you have any sutures to any part
19 of your body?
20 A No.
21 Q Do you know what part of your body
22 was tested of the MRI's and the CAT scans?
23 A Neck and back.
24 Q Which part of your back?
25 A The lower back.

1
2 A Do you have that name? The initial
3 orthopedist?
4 A Yes.
5 MR. NAIMA: Yes, I do. It is
6 Richard Weiss of North Shore Orthopedic
7 Surgery and Sports Medicine, P.C.
8 Q Do you know the address?
9 A (No answer).
10 MR. NAIMA: I have it. 237 Commack
11 Road, Commack, New York 11725.
12 Q Did anyone recommend Dr. Weiss to
13 you?
14 A My wife.
15 Q What were your complaints when you
16 saw him for the first time?
17 A My neck, my back, and my right leg.
18 Q What did he do for you?
19 A He prescribed physical therapy and
20 said, "Let's see where that takes us." and to
21 come back and have follow-ups.
22 Q Did you go for the physical therapy?
23 A Yes.
24 Q Where?
25 A Perry Physical Therapy.

1
2 Q Were you told the results of the
3 tests?
4 A I was told that I had to see the
5 specialist.
6 Q Did they tell you what the results
7 were?
8 A I don't remember. They probably
9 did, I'm sorry.
10 Q Did you see the specialist?
11 A Yes.
12 Q Was it that day?
13 A Not that day. I believe it was the
14 next day.
15 Q Did they do anything else for you on
16 that next day at Winthrop Hospital?
17 A They stabilized me and told me to
18 pursue it with a specialist.
19 Q How long were you at the hospital on
20 the date of the accident?
21 A I was there for several hours.
22 Q Where did you go the next day?
23 A An orthopedist.
24 Q What is the name of your
25 orthopedist?

1
2 Q Where is that located?
3 MR. NAIMA: 2033 Deer Park Avenue,
4 Deer Park, New York 11729.
5 Q When did you start the physical
6 therapy?
7 A (No answer).
8 Q Approximately?
9 A Approximately right after the
10 accident, give it a couple of days.
11 Q How often did you go?
12 A Three days a week.
13 Q For how long?
14 A For at least two months.
15 Q Was it always three times a week?
16 A Yes.
17 Q Can you describe the therapy that
18 you received?
19 A Neck, back, and right leg, massage,
20 electric stim, and as I progressed a light range
21 of motion exercises.
22 Q How did you get back and forth to
23 the physical therapy?
24 A In the beginning my wife, and then
25 it was not far from my house so I drove.

1
2 Q How long did each session last?
3 A Approximately an hour.
4 Q Did you have any other diagnostic
5 tests other than at Winthrop Hospital?
6 A Yes.
7 Q When was that?
8 A (No answer).
9 Q Approximately.
10 MR. NAIMA: Just ballpark it for me.
11 A Ballpark? After that I went for an
12 MRI.
13 Q Of what part of your body?
14 A Neck, back, and right leg.
15 Q Where did you have the MRI's?
16 A I just saw the sheet.
17 MR. NAIMA: Do you want it by
18 counsel? All County Open MRI and
19 Diagnostic Radiology. The address is 510-
20 524 Old Country Road, Suite 520,
21 Plainview, New York 11803.
22 Q Were you told the results of the
23 MRI's?
24 A Yes.
25 Q What were you told?

1
2 A Herniations to disks in my neck and
3 in my back and right leg. A tear in something
4 in my right knee.
5 Q Any other tests other than what you
6 have described?
7 A No.
8 Q Did you see any other doctors or
9 health care providers for this accident other
10 than the ones that you have mentioned?
11 A Yes.
12 Q Who else?
13 A I saw a neck and back specialist.
14 Q What is the name of the specialist?
15 A Do you have that?
16 MR. NAIMA: I don't have that.
17 A I can --
18 MR. NAIMA: His wife has it in a
19 report outside. We will leave a space in
20 the record. We can go out and get it now.
21 I can give it to you later.
22 MS. MARESCA: If you have it.
23 MR. NAIMA: Okay. I have the first
24 name is Borimir, and the last name is
25 Darakchiev, M.D.

1
2 MS. MARESCA: Do you have an
3 address?
4 MR. NAIMA: Yes. 1175 Montauk
5 Highway, Suite 6, West Islip, New York
6 11795.
7 Q And who recommended Dr. Darakchiev
8 to you?
9 A I don't recall.
10 Q How many times did you see him?
11 A Once.
12 Q What did he do for you?
13 A He reviewed my MRI's.
14 Q Did he have any recommendations?
15 A Yes.
16 Q What did he recommend?
17 A Fusing my neck together. The term
18 is spinal fusion.
19 Q Did you have that procedure?
20 A I am a little scared. No. At this
21 time, no.
22 Q Are you planning to?
23 A I am hoping that -- no. I plan to
24 if need be.
25 Q How many times did you see Dr.

1
2 Weiss?
3 A Once.
4 Q Did you see any other doctors, other
5 health care providers for this accident?
6 A Other than what I mentioned?
7 Q Yes.
8 A No.
9 MR. NAIMA: How about your knee?
10 A Oh, yes. I'm sorry.
11 Q Who else?
12 A Do you have his name?
13 MR. NAIMA: Dov Berkowitz.
14 MS. MARESCA: Is that D-O-V?
15 MR. NAIMA: Yes. Let's see where
16 his office is. We have a main office of
17 80-02 Kew Gardens Road, the third floor,
18 Kew Gardens, New York 11415.
19 Q How many times did you see Dr.
20 Berkowitz?
21 A Twice.
22 Q And what did he do for you?
23 A He examined my right knee, and he
24 prescribed physical therapy.
25 Q Did you have any additional physical

1
2 therapy to your right knee other than with Dr.
3 Perry?
4 A Perry handled all of the physical
5 therapy.
6 Q Was that over a two-month period?
7 A Correct.
8 Q Did you have any other physical
9 therapy after that?
10 A I have been prescribed to go back.
11 I just have to see now go back, doing it.
12 Q Who prescribed you to go back?
13 A The neck specialist.
14 MR. NAIMA: The Russian guy, Dr.
15 Darakchiev?
16 THE WITNESS: Yes.
17 Q Are you planning to go back for this
18 neck therapy?
19 A Yes.
20 Q Did Dr. Berkowitz do anything else
21 for you?
22 A Recommended therapy as well, and
23 other than that said, "See how that progresses,
24 and we will take action if need be after that."
25 Q Were you given a brace or

1
2 immobilizer for any part of your body?
3 A No.
4 Q Did you ever use crutches, or a
5 cane, or anything to assist you with walking
6 after the accident?
7 A A cane. Cane/crutches, yes.
8 Q How long did you use the cane?
9 A I would say roughly four weeks.
10 Q When did you use crutches?
11 A Initially after it happened, if I
12 wanted to go to the bathroom.
13 Q How long did you use the crutches?
14 A I would say two out of the four.
15 Q So a total of four weeks you were
16 using crutches or a cane?
17 A Correct.
18 Q Do you have any appointments in the
19 future to see any doctor or health care provider
20 with regard to this accident?
21 A Yes.
22 Q Who are you seeing?
23 A I would like to continue to see the
24 therapist, and that would be -- and from there
25 see how -- I have another appointment to see the

1
2 neck specialist.
3 Q When is that?
4 A You have to ask my wife, sorry.
5 Q Did you take any prescription
6 medication after the accident?
7 A Painkillers initially.
8 Q For how long?
9 A Approximately three weeks.
10 Q Where did you get your prescriptions
11 filled?
12 MR. NAIMA: Will you have to ask
13 your wife?
14 THE WITNESS: Yes.
15 MR. NAIMA: We will leave a space in
16 the record for the name and address of the
17 pharmacy.
18 (Insert)-----
19 Q Did you miss any more time from
20 work after this accident?
21 A Yes.
22 Q How much time did you miss?
23 A I believe it was about two and a
24 half months.
25 Q Were you paid for the time that you

1
2 missed?
3 A Yes.
4 Q Full salary?
5 A Minus overtime and -- it was base
6 salary, full base salary.
7 Q How much overtime did you work
8 before the accident during a week?
9 A I have a list of the time that I
10 missed. I don't have it with me, but I missed
11 overtime. I couldn't give you an amount,
12 though.
13 Q Generally how often did you work
14 overtime before the accident?
15 A It is our busiest time of the year
16 because of the winter? So I missed a
17 considerable amount.
18 MR. NAIMA: Give her an estimate of
19 how much overtime you would have done last
20 year at this particular time that you lost
21 that monthly income.
22 THE WITNESS: In hours or in
23 dollars and cents?
24 MR. NAIMA: In hours.
25 Q In hours.

1
2 A I would probably say a minimum of 40
3 hours.
4 MR. NAIMA: Per week or per during
5 that course of period of time?
6 A During that course of the time.
7 Q How much did you earn for overtime?
8 A I think an eight-hour day is \$500.
9 Q Were you confined to bed for any
10 period of time after the accident?
11 A Yes.
12 Q How long?
13 A I would say for three weeks I had a
14 rough time getting around.
15 Q Were you confined to your home for
16 any period of time after the accident?
17 A The entire time.
18 Q Until you went back to work?
19 A Correct.
20 Q When you went back to work did you
21 return to your usual duties?
22 A Yes.
23 Q Did you return to your usual hours?
24 A Yes.
25 Q Did you start working overtime again

1
2 when you went back to work?
3 A Yes.
4 Q Did you have any expenses as a
5 result of this accident, anything you had to pay
6 for yourself that you were not reimbursed for?
7 A Other than transportation? To and
8 from doctors/physical therapists?
9 Q Yes.
10 A That would be an expense, and pretty
11 much that would be the expense.
12 Q Have you ever had any injury to your
13 neck, your back, or your right leg before this
14 accident?
15 A Yes.
16 Q When?
17 A I had an accident to my right leg
18 approximately three years ago.
19 Q What type of accident was it?
20 A A motorcycle accident.
21 Q What was the injury to your right
22 leg at that time?
23 A A broken tibia, fibula.
24 Q Where was that treated?
25 A Brookhaven Hospital.

1
2 Q Did you have any physical therapy
3 after that accident?
4 A Yes, I did.
5 Q Where?
6 A My health care provider is H.I.P. in
7 Hicksville.
8 Q Do you know the address in
9 Hicksville?
10 A No.
11 MS. MARESCA: We will leave a space
12 in the record.
13 (Insert)-----
14 Q Did you have any other treatment
15 after that accident?
16 A No.
17 Q Were you still having any problems
18 with your right leg from that accident when you
19 had the accident in February of 2007?
20 A I'm sorry. Repeat the question.
21 Q Were you still having any problems
22 with your right leg from that first accident
23 when you had the accident in February of 2007?
24 A No.
25 Q Did you have any surgery after the

1
2 motorcycle accident?
3 A Yes.
4 Q What type of surgery?
5 A I have a rod, implants in my leg.
6 Q Did you see any other doctors or
7 health care providers other than at Brookhaven
8 Hospital and the H.I.P. Center in Hicksville for
9 that accident?
10 A No.
11 (At this time, there was a
12 discussion held off the record).
13 Q Who was the surgeon?
14 A My wife knows.
15 MS. MARESCA: We will leave a space
16 in the record for his name and address.
17 (Insert)-----
18 Q Which portion of your right leg did
19 you injure in the February of 2007 accident?
20 A My knee.
21 Q Any injury to any other part of your
22 right leg?
23 A No.
24 Q Any other previous injuries to your
25 neck, your back, or your right leg other than

1
2 from the motorcycle accident three years ago?
3 A Yes.
4 Q When?
5 A It was approximately -- you will
6 love this one. 17 years ago.
7 Q What type of injury was that?
8 A I don't recall. It was to my neck,
9 and it was a line of duty injury as well.
10 Q Where were you treated?
11 A I believe the initial care was
12 Astoria General.
13 Q How did you injure your neck?
14 A I slipped off a piece of equipment
15 in the sanitation garage.
16 Q Did you injure any other part of
17 your body other than your neck at that time?
18 A No.
19 Q Were you seen by anyone other than
20 by Astoria General after that accident?
21 A The follow-up care was the H.I.P. in
22 Hicksville, the health care provider.
23 Q How long were you treated?
24 A I believe the physical therapy and
25 the treatment lasted six months.

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1
2 Q Did you have any MRI of your neck
3 at that time?
4 A I don't recall any MRI's.
5 Q Were you still having any problems
6 with your neck from that accident when you had
7 the accident in February of 2007?
8 A No.
9 Q Any other injuries to your back,
10 neck, or right leg?
11 A No.
12 Q Had you ever had any back pain
13 before this accident?
14 A No.
15 Q After the accident of February of
16 2007 have you had any further injury to your
17 neck, your back, or to your right leg?
18 A No.
19 Q How tall are you?
20 A Five foot six.
21 Q Your present weight?
22 A 165.
23 Q How much did you weigh at the time
24 of the accident?
25 A I would say approximately the same.

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1
2 Q Have you received public assistance?
3 A No.
4 Q Are you aware of any judgments or
5 liens against you by the City of New York?
6 A No.
7 MS. MARESCA: Counsel, are you
8 pursuing this matter against any other
9 parties?
10 MR. NAIMA: Yep. No lawsuit has
11 been filed to date, but there was an
12 action that is contemplated against the
13 driver of the Lexus vehicle.
14 Q Have you ever filed a claim against
15 the City of New York or any city agency before?
16 A No.
17 Q In your accident 17 years ago did
18 that result in any kind of a claim?
19 A No.
20 Q At the present time do you have any
21 physical complaints resulting from the accident?
22 A Yes.
23 Q What complaints do you have?
24 A Neck, back, and right leg problem,
25 pain.

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1
2 Q How often do you have problems with
3 your neck?
4 A As we speak. I would say if I don't
5 move it I am okay.
6 Q And how often do you have any
7 problem with your back?
8 A I would say constant.
9 Q Which part of your back is affected?
10 A The lower back.
11 Q And how often do you have a problem
12 with your right leg?
13 A Constant.
14 Q And the knee?
15 A And the knee, too.
16 Q Are there any activities that you
17 can't perform or have difficulty performing as a
18 result of the accident?
19 A Yes.
20 Q What activities?
21 A I was very active before this
22 accident, and now I find myself not able to do.
23 My golf game is destroyed. I coach an ice
24 hockey team for the high school where my kids
25 went to. I don't believe I am going to continue

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able 36:22 accident 5:11,13 7:5,14,24 8:4,13 9:5,8 13:20,22 15:10,10 18:20 20:10 22:29 24:5 26:6,20 27:6,20 28:8,14 29:10,16 30:5,14,17,19,20 31:3,15,18,19,22 31:23 32:2,9,19 33:2,20 34:6,7,13 34:15,24 35:17,21 36:18,22 accurate 40:13 action 25:24 35:12 40:16 active 36:21 activities 36:16,20 37:12 additional 24:25 address 3:11,21 19:8 21:19 23:3 27:16 31:8 32:16 39:4,5 afternoon 40:9 afternoon 3:14 5:15 agency 35:15 ago 30:18 33:2,6 35:17 ahead 8:21 alcoholic 7:11 alive 15:6 ALWEISS 2:4 amazed 15:6 ambulance 16:23 amount 28:11,17 Andrew 14:3,11 Ann 2:11 3:15 answer 19:9 20:7 21:8 anymore 37:13 appointment 26:25 appointments	26:18 approximately 9:19 20:8,9 21:3,9 27:9 30:18 33:5 34:25 38:2 arrive 16:16 assist 26:5 assistance 35:2 assistant 14:17,22 14:23 ASSOCIATES 1:24 Astoria 33:12,20 Attorney 2:4,9 Avenue 2:9 20:3 aware 13:20 16:14 35:4	blew 12:3 blood 40:16 body 13:3,8 17:19 17:21 21:13 26:2 33:17 Borimir 22:24 borough 14:18 brace 25:25 broad-sided 11:17 broken 30:23 Brookhaven 30:25 32:7 Brooklyn 1:10 bumper 11:3,4 busiest 28:15	coach 36:23 collection 10:3 color 8:15 come 10:20 13:3,15 19:21 coming 6:4 10:16 Commack 19:10,11 commencement 40:11 commissioner 14:18 complaining 16:6 complaints 19:15 35:21,23 conditions 7:8 confined 29:9,15 consciousness 13:13 considerable 28:17 constant 36:8,13 contact 10:20 11:20 13:3 contemplated 35:12 continue 26:23 36:25 continued 15:18 control 8:7 conversation 14:10 14:13 15:3 convicted 4:13 correct 6:15,24 17:9 25:7 26:17 29:19 couch 37:15 counsel 21:18 35:7 Country 21:20 County 21:18 couple 20:10 course 29:5,6 Court 1:10 Cove 7:15,23 8:16 10:15 11:14 37:23 37:24 crime 4:14 cross 7:25	crossed 38:5 crutches 26:4,10,13 26:16 current 3:11
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JAY DEITZ & ASSOCIATES
516-678-0700 212-374-7700 718-527-7700 516-678-4488

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JAY DEITZ & ASSOCIATES
516-678-0700 212-374-7700 718-527-7700 516-678-4488

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JAY DEITZ & ASSOCIATES
516-678-0700 212-374-7700 718-527-7700 516-678-4488

Index no. 117118/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF **NEW YORK**

IRIS LEVITEN,

Plaintiff,

- against -

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA, INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

Index no. 107681/07

Action #1

-----X
MICHAEL DOUKAS,

Plaintiff,

- against -

IRIS LEVITEN, ANTHONY DIGIROLAMO,
NEW YORK CITY DEPARTMENT OF SANITATION,
THE CITY OF NEW YORK, LEXUS, A DIVISION OF
TOYOTA MOTOR SALES USA, INC., ESTREE,
INC. d/b/a LEXUS OF WESTPORT and METRO
AUTO LEASING, INC. d/b/a THE AUTOMALL,

Defendants.

Index no. 117118/07

Action #2

LD no. 2008-001345

RESPONSE TO GENERAL DEMANDS

[Defendants ANTHONY DIGIROLAMO, NEW YORK CITY DEPARTMENT
OF SANITATION and THE CITY OF NEW YORK, LEXUS]

KELNER & KELNER, ESQS.
Attorney for Plaintiff in Action #2
Office and Post Office Address, Telephone
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

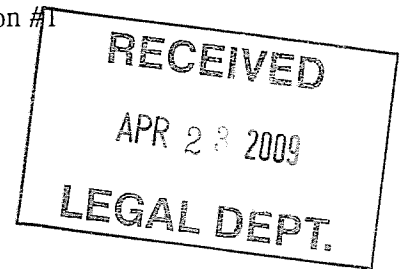
Defendant.

-----X

Index No.: 107681/07

**NOTICE FOR DISCOVERY
AND INSPECTION**

Action #1



Index No.: 117118/07

Action #2


Index No.: 102331/08

Action #3

PLEASE TAKE NOTICE, that the undersigned hereby demands that the plaintiff, **MICHAEL DOUKAS**, produce at the office of the undersigned within twenty days (20) hereof at 9:30 a.m. the following:

1. Authorizations to obtain all of the plaintiff, Michael Doukas', medical records relative to his work-related injuries sustained in or about March of 1992.
2. An authorization to obtain the plaintiff, Michael Doukas', Workers Compensation Board records for the March 1992 injury.
3. An authorization to obtain the plaintiff, Michael Doukas', Workers Compensation Carrier records for the March 1992 injury.

Dated: Albertson, New York
April 10, 2009



THOMAS G. CHOJNACKI, ESQ.
AHMUTY, DEMERS & McMANUS
Attorneys for Defendant
ESTREE, INC. d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, NY 11507
(516) 294-5433
Our File No.: YCW 0962N7 JAE

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File No.: 2008-001345

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Attorneys for Defendant in Action No. 1
TOYOTA MOTOR SALES, USA, INC.
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(646) 522-4141

Index No. 117118/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

=====

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DiGIROLAMO, NEW YORK CITY DEPARTMENT OF
SANITATION, THE CITY OF NEW YORK, LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA, INC., ESTREE, INC. d/b/a LEXUS OF WESTPORT and METRO AUTO
LEASING, INC. d/b/a THE AUTOMALL

Defendants.

=====

NOTICE FOR DISCOVERY AND INSPECTION

=====

AHMUTY, DEMERS & McMANUS, ESQS.

Attorneys for Defendant

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200 I.U. Willets Road

Albertson, New York 11507

(516) 294-5433

Our File No.: YCW 0962N7 JAE

=====

Attorney(s) for ESTREE, INC., d/b/a LEXUS OF WESTPORT

=====

Dated: April 13, 2009

=====

Index No. 117118/07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

=====

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW YORK CITY DEPARTMENT OF
SANITATION, THE CITY OF NEW YORK, LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA, INC., ESTREE, INC. d/b/a LEXUS OF WESTPORT and METRO AUTO
LEASING, INC. d/b/a THE AUTOMALL

Defendants.

=====

RESPONSE TO COMBINED NOTICE AND DEMANDS

=====

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(516) 294-5433

Our File No.: YCW 0962N7 JAE

=====

Attorney(s) for ESTREE, INC., d/b/a LEXUS OF WESTPORT

=====

Dated: April 13, 2009

=====

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

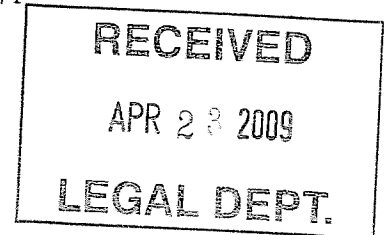
IRIS LEVITEN,

Defendant.
-----X

Index No.: 107681/07

**RESPONSE TO COMBINED
NOTICE AND DEMANDS**

Action #1



Index No.: 117118/07

Action #2

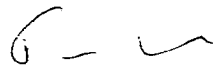
Index No.: 102331/08

Action #3

PLEASE TAKE NOTICE, that the defendant, **ESTREE, INC. d/b/a LEXUS OF WESTPORT**, by its attorneys, **AHMUTY, DEMERS & McMANUS**, as and for its response to plaintiff's combined notice and demands, sets forth the following upon information and belief:

1. Responding defendant is not in possession of any repair or maintenance records for either motor vehicle involved in this accident.
2. See response to # 1.
3. Responding defendant is not in possession of any MV-104 accident reports for this incident.
4. Responding defendant is not in possession of any accident reports for this incident, other than the Police Accident Report which is a public record.
5. Responding defendant is not in possession of any cell phone records for the drivers of the various motor vehicles.
6. Responding defendant is in possession of numerous photographs taken of the Leviten motor vehicle and inspections conducted after the accident, which photographs can be reproduced at a cost of the requesting party.
7. Responding defendant is not aware of any witnesses to the accident other than those already disclosed in this litigation.
8. Responding defendant is not in possession of any adverse party statements.
9. Responding defendant is not in possession of any surveillance material.
10. Responding defendant will provide expert witness information under separate cover.
11. Responding defendant claims coverage under a policy of insurance issued by Granite State Insurance Company.

Dated: Albertson, New York
April 10, 2009



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AHMUTY, DEMERS & McMANUS
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Our File No.: YCW 0962N7 JAE

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New York, New York 10007
File No.: 2008-001345

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s/h/a LEXUS A DIVISION OF TOYOTA
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Attorney for Defendant in Action No. 2 and No. 3
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Garden City, New York 11530
(646) 522-4141

-----X

IRIS LEVITEN,

Plaintiff,

Index No. 107681/07

-against-

Action #1

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.

-----X

MICHAEL DOUKAS,

Plaintiff,

Index No.: 117118/07

-against-

Action #2

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X

ANTHONY DIGIROLAMO,

Plaintiff,

Index No.: 102331/08

-against-

Action #3

IRIS LEVITEN,

Defendant.

-----X.

REQUEST FOR PRODUCTION OF DOCUMENTS

ECKERT SEAMANS CHERIN & MELLOTT, LLC.
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.
s/h/a LEXUS, A DIVISION OF
TOYOTA MOTORS SALES, U.S.A.
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White Plains, New York 10606
(914) 949-2909
Fax (914) 949-5424

RECEIVED
APR 22 2009
LEGAL DEPT.

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.

-----X

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X

ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.

-----X

Index No. 107681/07

Action #1

**REQUEST FOR
PRODUCTION OF
DOCUMENTS**

Index No.: 117118/07

Action #2

Index No.: 102331/08

Action #3

Defendant, TOYOTA MOTOR SALES, U.S.A., INC. s/h/a LEXUS, A DIVISION OF
TOYOTA MOTORS SALES, U.S.A. ("TMS"), by its attorneys, Eckert Seamans Cherin &
Mellott, LLC, hereby requests that plaintiff, MICHAEL DOUKAS, pursuant to Section 3120 of
the CPLR, produce the following documents and tangible objects at the offices of Eckert
Seamans Cherin & Mellott, LLC , 10 Bank Street, Suite 1061, White Plains, New York, 10606:

DEFINITIONS

(1) “Documents” is an all-inclusive term referring to any writing and/or recorded or graphic matter, however produced or reproduced. The term documents includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, test, test reports, test films and other electronic media, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. Documents also include any preliminary notes and drafts of all the foregoing, in whatever form, for example, printed, typed, longhand, shorthand, on paper, paper tape, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form.

(2) “Concerning” means relating to, referring to, describing, evidencing or constituting.

(3) “And/or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

(4) “Subject vehicle” means a certain 2007 Lexus ES 350 bearing Vehicle Identification Number JTHBJ46G272071246, and any of its component parts identified in plaintiff’s Complaint.

(5) “Incident” and “accident” mean the February 18, 2007 incident referred to in plaintiff’s Complaint.


ITEMS TO BE PRODUCED

1. Copies of any and all advertisements or vehicle brochures, in your possession, authored by this answering defendant, which you claim that you relied upon.
2. Copies of all invoices, receipts, warranties, or other writings concerning the purchase, ownership, registration, or title of the subject vehicle.
3. Copies of all work orders, receipts, warranties, or other documents concerning the service, repair, or maintenance of the subject vehicle.
4. All documents concerning the towing, storage, and disposition of the subject vehicle subsequent to the accident.
5. Duplicate original copies of any and all photographs, films, or videotapes, which depict or purport to depict the accident scene or any aspect of the accident scene in this case.
6. Duplicate original copies of any and all photographs, films, or videotapes, which depict or purport to the subject vehicle.
7. Duplicate original copies of any and all photographs, films, or videotapes, which depict or purport the other vehicles involved in the accident.
8. Duplicate original copies of any and all photographs, films, or videotapes, in your possession, which depict or purport to depict any aspect of plaintiff's injuries herein.
9. All reports, memos, and/or documentation prepared by any municipal, county, or state law enforcement agency or other agency relating to the subject vehicle or accident.
10. All documents concerning the events which led to the alleged discovery of what you contend are defects in the subject vehicle as described in plaintiff's Complaint.
11. Any repair estimates, property damage appraisals, or other documents reflecting damage to the subject vehicle as a result of the accident.

12. Any repair estimates, property damage appraisals, or other documents reflecting damage to the other vehicles involved in the accident as a result of the accident.
13. The subject vehicle and any component parts thereof.
14. The other vehicles involved in the accident.
15. The operator's manual and any other materials concerning the operation, maintenance, or service of the subject vehicle.
16. All documents concerning any warranty or representation made by this answering defendant concerning the subject vehicle.
17. All pleadings or other documents in any legal or administrative proceeding other than this litigation arising out of the accident.
18. Any release, covenant not to sue, or other documents entered into by plaintiff, which relieves another person, party, or entity for liability and/or damages to plaintiff for losses and/or injuries arising out of the accident, giving rise to this litigation.
19. All documents which plaintiff contends substantiate his claim for loss of income or earning capacity arising out of the accident.
20. Documents depicting plaintiff's alternative design(s).
21. Tests and test reports concerning plaintiff's alternative design(s).

Dated: White Plains, New York
April 16, 2009

Yours, etc.



Steven R. Kramer, Esq.
ECKERT-SEAMANS CHERIN & MELLOTT, LLC
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TOYOTA MOTOR SALES, U.S.A., INC.
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LEXUS OF WESTPORT
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(212) 513-7788

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Attorneys for Defendant (Action #2, #3)
IRIS LEVITEN
766 Castleton Avenue
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(718) 442-1700

Jessica Giambrone, Esq.
CORPORATION COUNSEL
Attorneys for Defendants (Action #2)
ANTHONY DIGIROLOMO,
NYC DEPT OF SANITATION
and THE CITY OF NEW YORK
100 Church Street
New York, New York 10007
(212) 788-1204

-----X

IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.

-----X

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X

ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.

-----X

Index No. 107681/07

Action #1

Index No.: 117118/07

Action #2

Index No.: 102331/08

Action #3

NOTICE TO PRODUCE

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

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

s/h/a LEXUS, A DIVISION OF

TOYOTA MOTORS SALES, U.S.A.

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
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MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.
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ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.
-----X

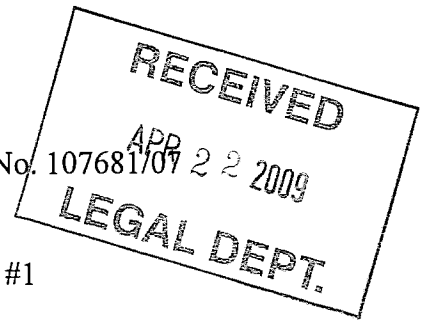
PLEASE TAKE NOTICE, that defendant, TOYOTA MOTOR SALES, U.S.A., INC.

s/h/a LEXUS, A DIVISION OF TOYOTA MOTORS SALES, U.S.A., by its attorneys,

ECKERT SEAMANS CHERIN & MELLOTT, LLC, hereby demand that the plaintiffs serve
upon and deliver to the undersigned attorneys the following documents:

1. Production of any file or materials regarding the purchase of the subject vehicle as
testified to during plaintiff's March 20, 2009 deposition.

{V0018244.1}



Index No. 107681/07

Action #1

NOTICE TO PRODUCE

Index No.: 117118/07

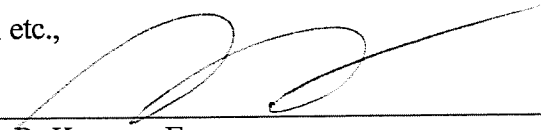
Action #2

Index No.: 102331/08

Action #3

Dated: White Plains, New York
April 16, 2009

Yours, etc.,



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.
s/h/a LEXUS, A DIVISION OF
TOYOTA MOTORS SALES, U.S.A.
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TO: Diana M.A. Carnemolla, Esq.
GAIR GAIR CONASON STEIGMAN & MACKAUF
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STEIN RISO MANTEL LLP
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(212) 788-1204

-----X
IRIS LEVITEN,

Plaintiff,

Index No. 107681/07

-against-

Action #1

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

MICHAEL DOUKAS,

Plaintiff,

Index No.: 117118/07

-against-

Action #2

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.
-----X

ANTHONY DIGIROLAMO,

Plaintiff,

Index No.: 102331/08

-against-

Action #3

IRIS LEVITEN,

Defendant.
-----X

INTERROGATORIES ADDRESSED TO PLAINTIFF DOUKAS

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

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

s/h/a LEXUS, A DIVISION OF

TOYOTA MOTORS SALES, U.S.A.

10 Bank Street, Suite 1061

White Plains, New York 10606

(914) 949-2909

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RECEIVED
APR 22 2009
LEGAL DEPT.

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.

-----X

Defendant, TOYOTA MOTOR SALES, U.S.A., INC. s/h/a LEXUS, A DIVISION OF
TOYOTA MOTORS SALES, U.S.A. ("TMS"), by its attorneys, Eckert Seamans Cherin &
Mellott, LLC , hereby requests that the plaintiff MICHAEL DOUKAS answer fully, in writing
and under oath, the following interrogatories pursuant to Article 31 of the CPLR.

Index No. 107681/07

Action #1

**INTERROGATORIES
ADDRESSED TO
PLAINTIFF DOUKAS**

Index No.: 117118/07

Action #2

Index No.: 102331/08

Action #3

DEFINITIONS AND INSTRUCTIONS

Unless negated by the context of the interrogatory, the following definitions are to be considered to be applicable to all interrogatories contained herein:

(A) "Documents" is an all-inclusive term referring to any writing and/or recorded or graphic matter, however produced or reproduced. The term documents includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, test, test reports, test films and other electronic media, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. Documents also include any preliminary notes and drafts of all the foregoing, in whatever form, for example, printed, typed, longhand, shorthand, on paper, paper tape, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form.

(B) With respect to documents, the term "identify" means to give the date, title, author and addressee; identify with respect to documents further means:

- (I) to describe a document sufficiently well to enable the interrogator to know what such document is and to retrieve it from a file or wherever it may be located;
- (II) to describe it in a manner suitable for use as a description in a subpoena;
- (III) to give the name, address, position or title of the person(s) who has custody of the document and/or copies thereof.

(C) "Identify" when used in reference to an individual means:

- (I) to state his/her full name;
- (II) present residence address or last known residence;
- (III) present or last known business address;
- (IV) present employer or last known employer; and
- (V) whether ever employed by any party to this action and, if so, the dates he (she) was employed by such party, the name of such party, and the last position held as an employee of such party.

(D) Whenever the expression “and/or” is used in these interrogatories, the information called for should be set out in the conjunctive and disjunctive, and wherever the information is set out in the disjunctive, it should be given separately for each and every element sought.

(E) Whenever a date, amount or other computation or figure is requested, the exact date, amount or other computation or figure is to be given unless it is not known; and then the approximate date, amount or other computation or figure should be given or the best estimate thereof; and the answer shall state that the date, amount or other computation or figure is an estimate or approximation.

(F) No answer is to be left blank. If the answer to an interrogatory or subparagraph of an interrogatory is “none” or “unknown,” such statement must be written in the answer. If the question is inapplicable, “N/A” must be written in the answer. If an answer is omitted because of the claim of privilege, the basis of the privilege is to be stated.

(G) These interrogatories are continuing, and any information secured subsequent to the filing of your answers which would have been includable in the answers had it been known or available, are to be supplied by supplemental answers.

(H) “Plaintiff” means MICHAEL DOUKAS, or any person or entity acting on his behalf.

(I) “Subject vehicle” MEANS a certain 2007 Lexus ES 350 bearing Vehicle Identification Number JTHBJ46G272071246, and any of its component parts.

(J) “Subject accident” means the February 18, 2007 accident described in plaintiff’s complaint.

INTERROGATORIES ADDRESSED TO PLAINTIFF

1. Give the names and addresses of the following persons:
 - (a) those who witnessed the occurrence giving rise to this suit; and
 - (b) those who have any information or knowledge concerning the facts, events, circumstances or conditions surrounding the happening of said occurrence.

ANSWER:

2. State whether any person gave any statement or prepared any document, memorandum, drawing or any other tangible thing pertaining to the occurrence giving rise to this suit.

- (a) If your answer is in the affirmative, as to each person state the following:
 - (1) Identify each person;
 - (2) Describe the nature of what was done or produced; and
 - (3) Give the name and address of the person having custody of each item described above.

ANSWER:

3. State whether any photographs were taken of the site of the occurrence, the subject vehicle or persons involved in the incident:

- (a) If your answer is in the affirmative, state:
 - (1) the subject matter of the photographs;
 - (2) the date and time of day said photographs were taken;
 - (3) the name, address and job classification of the person taking same, and the name and address of his employer, if not in your employ; and

- (4) the name, address and classification of the person having custody of the same.

ANSWER:

4. State whether any plans, drawings, blueprints, sketches or diagrams exist or were made of the site of the occurrence or the subject vehicle involved herein.

(a) If your answer is in the affirmative, state:

- (1) the identity of each said plan, drawing, blueprint, sketch or diagram by subject matter;
- (2) the date and time of day when each of the same was made if subsequent to the occurrence;
- (3) the name, address and job classification of the person making same, if made subsequent to the occurrence; and
- (4) the name, address and job classification of the person having custody of the plans, drawings, blueprints, sketches or diagrams.

ANSWER:

5. State the following with respect to the plaintiff:

(a) age:

- (1) at the time of the incident here involved; and
- (2) at the present time;

(b) date of birth;

(c) place of birth;

(d) marital status:

- (1) at the time of the incident here involved; and

- (2) at the present time;
- (e) number of children or other dependents:
 - (1) at the time of the incident here involved; and
 - (2) at the present time;
- (f) Plaintiff's Social Security Number, if any;
- (g) Plaintiff's Veteran's Claim Number, if any;
- (h) name and policy number of any health and accident coverage in existence at the time of the occurrence here involved, if any; and
- (i) name and policy number of any insurance coverage providing benefits for the injuries or medical expenses alleged to be involved in this action, if any.

ANSWER:

6. State in detail and with particularity the injuries you allege were sustained as a result of the occurrence here involved.

ANSWER:

7. State the name and address of each physician, hospital, clinic, nursing home or other institution/medical provider to which you have gone for examination and/or treatment or in which you have been confined as a result of the injuries alleged to have been sustained in the occurrence involved in this action.

ANSWER:

8. At the time of the occurrence here involved, what was the nature of your employment and/or occupation?

(a) Give the name and address of your employer at the time of the occurrence here involved.

(b) If self-employed, state the address of your usual place of business and the name under which you operate it.

(c) If you are claiming loss of earnings, state the total amount of such loss and the computation used to arrive at that sum.

(d) If you are claiming a loss of earning capacity, state the total amount of such loss, the basis for the claim and the computation of the loss.

ANSWER:

9. Identify all persons whom you claim to have, or who claim to have a subrogation interest in the outcome of this litigation and for each such person, state the dollar value of the subrogation interest.

ANSWER:

10. Give the year, model, and serial number, of the subject vehicle at the time of the incident in question.

ANSWER:

11. State the date that the subject vehicle was purchased.

- (a) Identify the individual or entity which sold said vehicle;
- (b) Identify the individual or entity which purchased said vehicle;
- (c) Indicate whether said vehicle was purchased new or refurbished:
 - (1) if the vehicle was purchased refurbished, state the condition of the vehicle at the time of its last sale; and
- (d) Identify each previous owner of the subject vehicle from the date of its purchase until the time of the incident in question.

ANSWER:

12. If anyone to your knowledge ever observed, noticed, or experienced anything unusual or complained about the subject vehicle prior to the incident in question:

- (a) Identify each such person;
- (b) State with particularity what was observed, noticed, or experienced about said vehicle; and
- (c) State when such observation was made.

ANSWER:

13. Identify each individual or business entity which performed any maintenance or repairs on the subject vehicle from the date of its acquisition to the present:

- (a) Set forth the date of each such maintenance or repair; and
- (b) Identify the precise work done.

ANSWER:

14. Trace the location of the subject vehicle from the date of the incident to the present.

(a) Identify the dates when the subject vehicle was at each location; and

(b) Identify the person or organization owning and/or having possession of or control over the subject vehicle.

ANSWER:

15. Trace the location of any component part removed from the subject vehicle from the date of the incident to the present.

(a) Identify the dates when the component part was at each location; and

(b) Identify the person or organization owning and/or having possession of or control over the component part.

ANSWER:

16. State whether the subject vehicle or any of its component parts has been examined, inspected, or tested since the time of the incident in question.

(a) Identify each such person or entity conducting such examination, inspection, or testing;

(b) Identify the parts of the vehicle examined, inspected, or tested;

(c) Indicate the date of each such examination, inspection, or test; and

(d) State whether a written report of same has been submitted to you or to anyone acting on your behalf.

ANSWER:

17. Identify each component part of the subject vehicle which you contend either was defective or malfunctioned at the time of the incident in question.

ANSWER:

18. State in detail the defective condition that allegedly existed in the subject vehicle and the manner in which said condition caused the incident in question.

ANSWER:

19. Do you contend that any aspect of the design of the subject vehicle was improper?

If so:

- (a) Identify each part that was improperly designed; and
- (b) Identify the specific elements of the design which were unsafe.

ANSWER:

20. Do you contend that, at the time of this incident, there was being sold, on the public marketplace, an alternate design(s) to the subject vehicle (or component or subcomponent thereof) which would have either prevented or reduced your injury? If so:

- (a) Identify each and every alternate design. (Please include the year, model number(s), and/or serial number(s)).

ANSWER:


21. Do you contend that this answering defendant breached any warranty, whether express or implied, that it made concerning the subject vehicle. If so:

- (a) State whether the warranty was written or oral;
- (b) If oral, identify who made the warranty or representation;
- (c) If oral, identify when the warranty or representation was made;
- (d) If oral, identify where the warranty or representation was made; and
- (e) State the terms of the warranty or representation.

ANSWER:

Dated: White Plains, New York
April 16, 2009

Yours, etc.



Steven R. Kramer, Esq.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.
s/h/a LEXUS, A DIVISION OF
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SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

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IRIS LEVITEN,

Plaintiff,

Index No. 107681/07

-against-

Action #1

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

MICHAEL DOUKAS,

Plaintiff,

Index No.: 117118/07

-against-

Action #2

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.
-----X

ANTHONY DIGIROLAMO,

Plaintiff,

Index No.: 102331/08

-against-

Action #3

IRIS LEVITEN,

Defendant.
-----X

**DEFENDANT, TOYOTA MOTOR SALES, U.S.A., INC.'S
RESPONSE TO PLAINTIFF MICHAEL DOUKAS' FIRST NOTICE FOR DISCOVERY AND INSPECTION**

ECKERT SEAMANS CHERIN & MELLOTT, LLC.

Attorneys for Defendant

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

s/h/a LEXUS, A DIVISION OF

TOYOTA MOTORS SALES, U.S.A.

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White Plains, New York 10606

(914) 949-2909

Fax (914) 949-5424

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.
-----X

MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.
-----X

ANTHONY DIGIROLAMO,

Plaintiff,

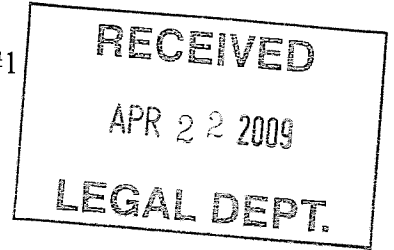
-against-

IRIS LEVITEN,

Defendant.
-----X

Index No. 107681/07

Action #1



Index No.: 117118/07

Action #2

Index No.: 102331/08

Action #3

**DEFENDANT, TOYOTA MOTOR SALES, U.S.A., INC.'S
RESPONSE TO PLAINTIFF MICHAEL DOUKAS' FIRST NOTICE FOR DISCOVERY AND INSPECTION**

Defendant, Toyota Motor Sales, U.S.A., Inc. ("TMS") s/h/a "LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC.," through its counsel, Eckert Seamans Cherin & Mellott, LLC, responds to Plaintiff Michael Doukas' First Notice for Discovery and Inspection as follows:

PREFATORY STATEMENT AND OBJECTIONS

Defendant TMS hereby responds to plaintiff Michael Doukas' First Notice for Discovery and Inspection. These responses are made specifically subject to the General Objections and any specific objection contained within an individual response.

So far as TMS is aware, according to the information available to TMS at the present time, these responses are complete and correct. TMS reserves the right to object to future discovery on the same or related matters and does not waive any objection by providing the information reflected in these responses. TMS further reserves the right to object to the admissibility of any of these responses or the documents produced or related matters, in whole or in part, at trial in this action, on any grounds, including, but not limited to, materiality, relevance, and privilege.

PREFATORY STATEMENT

TMS is the authorized importer and a distributor, in certain geographic areas, of Toyota motor vehicles in the continental United States. TMS does not manufacture, design or assemble Toyota motor vehicles in the ordinary course of its business and, therefore, was not the designer, manufacturer or assembler of the subject vehicle. TMS does not service Toyota motor vehicles in the ordinary course of its business for the general public. Accordingly, TMS does not have sufficient information or documentation to completely and accurately respond to many of these discovery requests.

GENERAL OBJECTIONS

To the extent applicable, the following are incorporated in the response to each individual request:

(a) TMS objects generally to these discovery requests to the extent they seek information which is not within TMS' possession, custody or control. These responses are made

on behalf of TMS only. TMS objects to this discovery to the extent it seeks information from any other entity.

(b) TMS objects generally to these discovery requests to the extent they seek information directed towards vehicle, topics and issues beyond the components of the subject 2007 Toyota Lexus ES350 about which plaintiff makes allegations in the Complaint on the grounds that such discovery requests are overly broad, unduly burdensome, and seek information which is not relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

(c) TMS objects generally to these discovery requests to the extent they seek information which unrelated to the defect allegations raised by plaintiff in this action on the grounds that such discovery requests are overly broad, unduly burdensome, and seek information that is not reasonably calculated to lead to the discovery of admissible evidence.

(d) TMS objects generally to these discovery requests to the extent they may seek information protected by the attorney-client privilege or the work product doctrine.

(e) TMS objects generally to these discovery requests to the extent they may seek competitively sensitive or trade secret materials.

(f) TMS objects generally to these discovery requests to the extent that plaintiff has refused to produce documentation requested by TMS.

(g) TMS objects generally that its investigation and discovery are ongoing and not complete. Therefore, these responses are limited to the information presently available and TMS reserves its right to conduct further investigation and discovery. TMS specifically reserves the right to present subsequently discovered facts or evidence at trial.

DISCOVERY RESPONSES

1. True, legible and complete copies, if any, of all repair or maintenance records for the defendants' motor vehicles for a period of one (1) year prior to the date of this occurrence, including repairs or maintenance or replacement of braking and steering mechanisms and component parts, tires, suspension systems, turn signal lamps, electrical connections and indicators and component parts, steering linkage and component parts.

RESPONSE: TMS incorporates its response to Request No.: 5 of TMS' May 28, 2008 supplemental response to the Court's preliminary conference order

2. True, legible and complete copies, if any, of all repair or maintenance records for the defendants' motor vehicles for repairs performed as a result of this occurrence.

RESPONSE: TMS does not maintain or generate this information.

3. True, legible and complete copy, if any, of all New York State Department of Motor Vehicles Form MV-104, in your possession or in the possession of your client(s), relating to this occurrence.

RESPONSE: TMS objects to this request because it seeks publicly available documents. Without waiving that objection, TMS does not maintain or generate this information.

4. True, legible and complete copies, if any, of all written accident or incident reports relating to this occurrence prepared in the ordinary course of business.

RESPONSE: TMS objects to this discovery request as it is vague, ambiguous and potentially seeks material from disclosure by the attorney client and/or work product privilege. Without waiving those objections, TMS is not in possession of any accident report relating to the subject

accident other than the police accident report produced previously by plaintiff Iris Leviten.

5. If the defendants' operators possessed a cellular phone(s) installed in the vehicles which were involved in the subject accident, or a cellular phone which was on the person of the defendants' or in the defendants' vehicles at the time of the accident, and said cellular phone(s), as applicable, was operational on the date of the accident, then demand is hereby made for the cellular phone billing records for the date of this occurrence.

RESPONSE: TMS does not maintain or general this requested information.

DEMAND FOR PHOTOGRAPHS & VIDEOS

6. Pursuant to *Reese v. Long Island Railroad*, 46 Misc.2d 5, 46 AD 581; *Murdick v. Bush*, 254 NYS2d 54 and *Hayward v. Willard Mountain, Inc.*, 266 NYS2d 475, provide all photographs of the plaintiff, the scene of the occurrence, the instrumentality, or the condition or conditions described in the pleadings herein, ALL INSPECTIONS or bearing on any fact or on either the issue of liability or damages herein.

RESPONSE: TMS incorporates its response to Request No.: 1 of TMS' May 1, 2008 response to plaintiff Iris Leviten's notice for discovery and inspection and response to Request No.: 4 of TMS' May 28, 2008 supplemental response to the Court's preliminary conference order.

DEMAND FOR NAME(S) & ADDRESS(ES) OF ANY WITNESS(ES)

7. Pursuant to the decision in *Zayas v. Morales*, 45 AD2d 610, 360 NYS2d 279, kindly provide the name(s) and address(es) of any witness(es) to the occurrence or event that resulted in the instant litigation, or to any fact bearing on the issue of liability or damages herein, including, but not limited to, surveillance or observations made of the plaintiff at any time prior

to the trial of this action.

RESPONSE: TMS is not aware of any witnesses to the accident other than the individuals indentified in the police report.

DEMAND FOR ANY STATEMENT(S)

8. Pursuant to CPLR §3101 (e), all statements of plaintiff(s), signed or unsigned, recorded on tape electronically, magnetically or otherwise, made by any defendant in this action, taken by or on behalf of or in the possession of your client(s).

RESPONSE: TMS is not in possession of any statement taken from plaintiff Michael Doukas relating to the accident.

DEMAND FOR ANY STATEMENT(S) FROM CO-DEFENDANTS

9. Full statement(s) signed or unsigned, recorded on tape electronically or electro-magnetically or otherwise, made by each defendant in this action, taken by or on behalf of or in the possession of your client(s).

RESPONSE: TMS is not in possession of statements taken from any of the parties to the case relating to the accident.

DEMAND FOR SURVEILLANCE INFORMATION

10. Pursuant to CPLR §3101(i), all films, photographs, video tapes or audio tapes, including transcripts or memoranda thereof, involving the plaintiff, or any other document, record or thing resulting from or relating to any surveillance conducted of the plaintiff here in, including out-takes, at any time up to the trial of this action by or on behalf of or in the

possession of the defendants, their attorneys, insurers, agents, servants or employees, regardless of whether or not said defendants intend to use same upon the trial of this action.

RESPONSE: TMS does not maintain or general this requested information.

DEMAND FOR EXPERT WITNESS INFORMATION

11. a. Pursuant to CPLR §3101(d), the name and address of each expert witness whom you expect to call at the trial of this action;
- b. The name and address of the company, firm or other legal entity by whom and/or with which each such expert is employed or associated;
- c. A detailed statement of the subject matter upon which each of such experts is expected to testify;
- d. The substance of the facts and opinions upon which each such expert is expected to testify;
- e. The full qualifications of each such expert witness including a copy of the resume and/or curriculum vitae;
- f. A summary of the grounds for each opinion as to which each of such experts is expected to testify;
- g. If any of such experts intends to rely upon, refer to or introduce into evidence any portion of any technical standard or learned treatise or journal or article, you are hereby required to identify the same, including, in the case of standards , the issuing body and the standard number, and in the case of treatises, the author, title, publication date, publisher and page reference within the treatise, and in the case of journals or articles, the title of the publication, volume number, page number, publication date and publisher.

RESPONSE: TMS objects to this request as its scope exceeds C.P.L.R. § 3101(d). Without waiving that objection, TMS has not yet determined which expert witnesses it will call at trial.

TMS will serve a supplemental response in compliance with the Court's scheduling order.

DEMAND FOR INSURANCE AGREEMENTS

12. a. Pursuant to CPLR §3101(f), the defendants shall provide true, legible and complete copies, if any, of each and every primary, contributing or excess insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment;

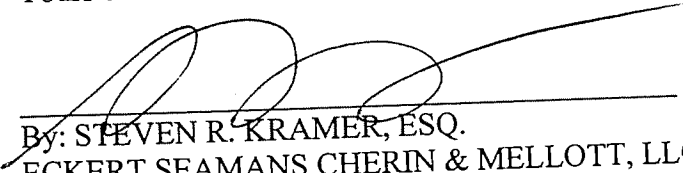
b. True, legible and complete copies, if any, of each and every insurance agreement in which the insurer is obligated to defend this action;

c. If there are no applicable contributing or excess insurance policies, the defendant(s) shall submit a personal affidavit to this effect.

RESPONSE: TMS is self-insured for the first \$12,000,000 per occurrence and has insurance coverage for sums in excess of said amount sufficient to cover any reasonable adverse judgment which might be entered in this case.

Dated: White Plains, New York
April 16, 2009

Yours etc.



By: STEVEN R. KRAMER, ESQ.
ECKERT SEAMANS CHERIN & MELLOTT, LLC.
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
S/H/A "LEXUS, A DIVISION OF TOYOTA
MOTORS SALES, U.S.A., INC."
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
Fax: (914) 949-5424

To: Todd Strier, Esq.
KELNER & KELNER, ESQS.
Attorneys for Plaintiff Michael Doukas
140 Broadway - 37th floor
New York, New York 10005
T: (212) 425-0700
F: (212) 425-0007

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F: (212) 599-6155

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Jessica Giambrone, Esq.
CORPORATION COUNSEL
*Attorneys for Defendants Anthony Digirolomo, NYC Department of Sanitation and The
City of New York*
100 Church Street
New York, New York 10007
T: (212) 788-1204
F: (212) 788-0367

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IRIS LEVITEN,

Plaintiff,

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., D/B/A LEXUS OF
WESTPORT, AND METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

Defendant.

-----X
MICHAEL DOUKAS,

Plaintiff,

-against-

IRIS LEVITEN, ANTHONY DIGIROLAMO, NEW
YORK CITY DEPARTMENT OF SANITATION and
THE CITY OF NEW YORK,

Defendants.

-----X
ANTHONY DIGIROLAMO,

Plaintiff,

-against-

IRIS LEVITEN,

Defendant.

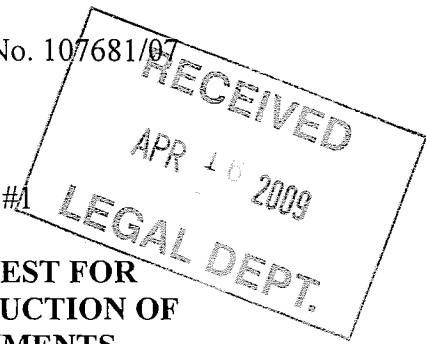
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PLEASE TAKE NOTICE, that Defendant, Toyota Motor Sales, U.S.A., Inc. ("TMS")
s/h/a "LEXUS, A DIVISION OF TOYOTA MOTOR SALES USA, INC.," through its counsel,
ECKERT SEAMANS CHERIN & MELLOTT, LLC, demands that the undersigned produce the
following documents at the offices of ECKERT SEAMANS CHERIN & MELLOTT, LLC , 10
Bank Street, Suite 1061, White Plains, New York, 10606:

Index No. 107681/07

Action #1

**REQUEST FOR
PRODUCTION OF
DOCUMENTS**



Index No.: 117118/07

Action #2

Index No.: 102331/08

Action #3

1. Produce a copy of the file maintained by Ms. Leviten for the purchase of the 2007 Lexus ES-350.
2. Duly executed, acknowledged and properly addressed HIPAA compliant authorization to obtain plaintiff's insurance records from Empire.
3. Duly executed, acknowledged and properly addressed HIPAA compliant authorization to obtain plaintiff's records from GEICO.
4. Duly executed, acknowledged and properly addressed HIPAA compliant authorization to obtain plaintiff's records from Social Security Disability Administration.
5. Duly executed, acknowledged and properly addressed HIPAA compliant authorization to obtain plaintiff's records from Dr. Gail.
6. Duly executed, acknowledged and properly addressed HIPAA compliant authorization to obtain plaintiff's records from Dr. Silverman.
7. Duly executed, acknowledged and properly addressed HIPAA compliant authorization to obtain plaintiff's records from Dr. Charles.
8. Duly executed, acknowledged and properly addressed HIPAA compliant authorization to obtain plaintiff's records from Dr. Lewis.
9. Duly executed, acknowledged and properly addressed HIPAA compliant authorization to obtain plaintiff's updated records from Dr. Heflet.
10. Duly executed, acknowledged and properly addressed HIPAA compliant authorization to obtain plaintiff's updated records from the Hospital for Special Surgery.
11. Identify any and all agencies that provided and/or continue to provide home healthcare to plaintiff.
12. Duly executed, acknowledged and properly addressed HIPAA compliant authorization to obtain the records from the home healthcare agencies.


13. Provide the name of the physical therapist who conducted private physical therapy to plaintiff.
14. Provide the name of the agency that employed the private physical therapist for plaintiff.
15. Duly executed, acknowledged and properly addressed HIPAA compliant authorization to obtain the records from the private physical therapist.
16. Duly executed, acknowledged and properly addressed HIPAA compliant authorization to obtain plaintiff's pharmacy records.
17. Duly executed, acknowledged and properly addressed HIPAA compliant authorization to obtain the repair records from Rally Automotive.

PLEASE TAKE NOTICE, that these authorizations are to include a **current, complete and accurate address for the above-named entities, including zip codes** to expedite procurement of the aforementioned records.

PLEASE TAKE FURTHER NOTICE, that plaintiffs' failure to supply these documents and authorizations within twenty days from the date hereof at the office of the undersigned will be a condition for the preclusion of any evidence at the time of trial relating to any item for which an authorization is hereby demanded.

Dated: White Plains, New York
April 13, 2009

Yours etc.



By: STEVEN R. KRAMER, ESQ.
ECKERT SEAMANS CHERIN & MELLOTT, LLC.
Attorneys for Defendant
TOYOTA MOTOR SALES, U.S.A., INC.,
S/H/A "LEXUS, A DIVISION OF TOYOTA
MOTORS SALES, U.S.A., INC."
10 Bank Street, Suite 1061
White Plains, New York 10606
(914) 949-2909
Fax: (914) 949-5424

To: Diana M.A. Carnemolla, Esq.
GAIR GAIR CONASON STEIGMAN & MACKAUF
Attorneys for Plaintiff (Action #1)
IRIS LEVITEN
80 Pine Street
New York, New York 10005
T: (212) 943-1090
F: (212) 425-7513

STEIN RISO MANTEL LLP
Attorneys for Defendant (Action #1)
METRO AUTO LEASING, INC.
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Thomas G. Chojnacki, Esq.
AHMUTY, DEMERS & MCMANUS
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LEXUS OF WESTPORT
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T: (212) 513-7788
F: (212) 513-7843
File No.: YCW 0962N7 JAE

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F: (212) 425-0007

Jessica Giambrone, Esq.
CORPORATION COUNSEL
Attorneys for Defendants (Action #2)
ANTHONY DIGIROLOMO,
NYC DEPT OF SANITATION
and THE CITY OF NEW YORK
100 Church Street
New York, New York 10007
T: (212) 788-1204
F: (212) 788-0367

AFFIDAVIT OF SERVICE

STATE OF NEW YORK :
 :
 : ss:
COUNTY OF WESTCHESTER

Carolyn Garcia, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Westchester County, New York. On April 13, 2009, deponent served the within DEFENDANT, TOYOTA MOTOR SALES, U.S.A., INC.'S REQUEST FOR PRODUCTION OF DOCUMENTS upon:

Diana M.A. Carnemolla, Esq.
GAIR GAIR CONASON STEIGMAN &
MACKAUF
Attorneys for Plaintiff (Action #1)
IRIS LEVITEN
80 Pine Street
New York, New York 10005
T: (212) 943-1090
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STEIN RISO MANTEL LLP
Attorneys for Defendant (Action #1)
METRO AUTO LEASING, INC.
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New York, New York 10174
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F: (212) 599-6155

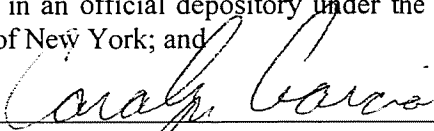
Thomas G. Chojnacki, Esq.
AHMUTY, DEMERS & MCMANUS
Attorneys for Defendant (Action #1)
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LEXUS OF WESTPORT
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KELNER & KELNER, ESQS.
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Jessica Giambrone, Esq.
CORPORATION COUNSEL
Attorneys for Defendants (Action #2)
ANTHONY DIGIROLOMO,
NYC DEPT OF SANITATION
and THE CITY OF NEW YORK
100 Church Street
New York, New York 10007
T: (212) 788-1204
F: (212) 788-0367

by depositing a true copy thereof in a post-paid wrapper, in an official depository under the care and custody of the United States Postal Service within the State of New York; and



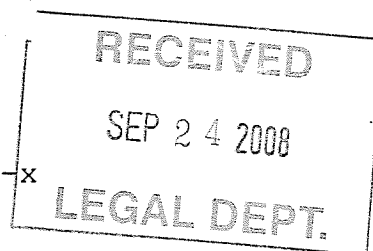
Carolyn Garcia

Sworn to before me this
13th day of April, 2009



NOTARY PUBLIC
Eileen Lavelle
NOTARY PUBLIC, State of New York
No. 01LA6197308
Qualified in Westchester County
Commission Expires 11/24/2012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK



-----x
IRIS LEVITEN,

Plaintiff,

-against-

Index number:
107681/07

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., INC., ESTREE, INC., d/b/a LEXUS OF
WESTPORT, and METRO AUTO LEASING, INC.,
d/b/a THE AUTOMALL,

**RESPONSES TO
THE PRELIMINARY
CONFERENCE ORDER**

Defendants.
-----x

S I R S :

The plaintiff, by her attorneys, GAIR, GAIR, CONASON, STEIGMAN &
MACKAUF, responding to the Preliminary Conference Order:

1. Plaintiff is unaware of any witnesses other than the parties to this action and those listed on the police accident report generated in connection with this matter.
2. Plaintiff is not in the possession of any or all adverse party statements.
- 3&4. Color copies of the photographs may be obtained directly from Bruce Gambardella, 199 McNamara Road, Spring Valley, New York 10977, telephone number 845 354-0585, who was present and took photographs at the plaintiff's vehicle inspections.
5. The plaintiff responded to the interrogatory #5 on January 27, 2008 and reserves her right to supplement her response if appropriate.
6. At the time of the underlying occurrence, the plaintiff was self-employed real estate agent, IRS authorization will be

provided under separate cover.

7. Authorizations for the plaintiff's medical, pharmacy, and no-fault records have been served on February 21, 2008, however, a new set addressed to the defendants, TOYOTA MOTOR SALES, is annexed herein.

Dated: New York, New York

September 4, 2008

GAIR, GAIR, CONASON,
STEIGMAN & MACKAUF,
Attorneys for plaintiff

By 

HOWARD S. HERSHENHORN
80 Pine Street
New York, New York 10005
(212) 943-1090

To:

ECKERT, SEAMANS, CHERIN AND MELLOTT
Attorneys for defendant TOYOTA
MOTOR SALES, USA INC
10 Bank Street, Ste 1061
White Plains, NY 10606

AHMUTY, DEMERS & McMANUS
Attorneys for defendant
ESTREE, INC., d/b/a LEXUS OF WESTPORT
200 I.U. Willets Road
Albertson, NY 11507

STEIN RISO and MANTEL LLP
Attorneys for defendant
METRO AUTO LEASING, Inc.
405 Lexington Avenue
New York, NY 10174

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X Index No. 107681/07

IRIS LEVITEN,

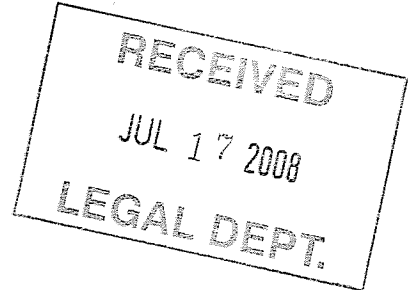
Plaintiff,

RESPONSE TO
DEMAND FOR DISCOVERY
AND INSPECTION

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., ESTREE, INC., d/b/a LEXUS OF WESTPORT,
and METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL,

Defendants.



-----X
Defendant, Metro Auto Leasing, Inc., through its attorneys, Stein Riso Mantel, LLP,
as and for its response to Plaintiff's Notice for Discovery & Inspection, responds as follows:

GENERAL OBJECTIONS

1. Defendant objects to the requests to the extent they seek information prepared in anticipation of litigation and/or trial preparation material and/or protected by the attorney-client privilege, the attorney work product, or other privileges or immunities from disclosure.

2. Defendant, in providing the response, does not waive any objection based on relevance, materiality, competence, privilege, immunity from disclosure, admissibility or other grounds. Nor does Defendant waive any of the privileges or immunities set forth in paragraph 1 above. Defendant also reserves the right to object to any additional discovery efforts that Plaintiff might make in this litigation relating to the matters covered by this response. Neither an indication that documents will be produced nor an objection to an interrogatory indicates that any such document exists or is in

Defendant's custody, possession or control. Defendant will not be obligated to create documents that do not otherwise exist.

3. Inadvertent production of any information or privileged or objectionable document shall not be deemed a waiver of such privilege or objection. Defendant reserves the right to require the return of any document produced inadvertently and all copies thereof.

4. Defendant objects to the requests to the extent it seeks documents already provided in discovery in this litigation by another party, and Defendant will not duplicate any such documentation in response to these requests.

RESPONSES

1. Defendant does not have responsive documents in its custody, possession or control.

2. Defendant does not have responsive documents in its custody, possession or control.

3. Defendant does not have responsive documents in its custody, possession or control.

4. Defendant does not have responsive documents in its custody, possession or control.

5. Defendant does not have responsive documents in its custody, possession or control.


6. Defendant does not have responsive documents in its custody, possession or control.

7. Defendant does not have responsive documents in its custody, possession or control.

8. Defendant does not have responsive documents in its custody, possession or control.

DATED: New York, New York
June 26, 2008

Stein Riso Mantel, LLP

By: 
Edward R. Minson

Attorneys for Metro Auto Leasing, Inc.
405 Lexington Avenue, 42nd Fl.
New York, New York 10174
(212) 599-1515

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X Index No. 107681/07

IRIS LEVITEN,

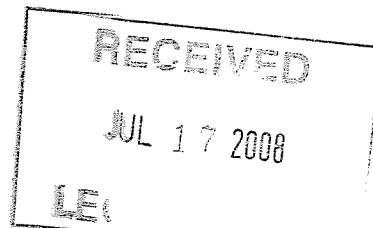
Plaintiff,

RESPONSE TO
DEMAND FOR EXPERT
WITNESS

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., ESTREE, INC., d/b/a LEXUS OF WESTPORT,
and METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL,

Defendants.



-----X
Defendant, Metro Auto Leasing, Inc., through its attorneys, Stein Riso Mantel, LLP,
as and for its response to Plaintiff's Demand for Expert Witness, pursuant to CPLR
3101(d), responds as follows:

1. Defendant has not retained a trial expert at this time; however Defendant reserves its right to retain an expert at a later date.
2. See Response to No. 1.
3. See Response to No. 1.
4. See Response to No. 1.
5. See Response to No. 1.
6. See Response to No. 1.

DATED: New York, New York
June 26, 2008

Stein Riso Mantel, LLP

By: Edward R. Minson

Edward R. Minson

Attorneys for Metro Auto Leasing, Inc.

405 Lexington Avenue, 42nd Fl.

New York, New York 10174

(212) 599-1515

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X Index No. 107681/07

IRIS LEVITEN,

Plaintiff,

BILL OF
PARTICULARS AS TO
AFFIRMATIVE
DEFENSES

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR SALES
USA., ESTREE, INC., d/b/a LEXUS OF WESTPORT,
and METRO AUTO LEASING, INC., d/b/a THE
AUTOMALL,

Defendants.

-----X

Defendant, Metro Auto Leasing, Inc. d/b/a The Automall, by its attorneys, Stein Riso Mantel, LLP, as and for its response to plaintiff's Demand For A Verified Bill of Particulars, responds as follows:

Demand As To The First Affirmative Defense:

State in what manner it is claimed that the plaintiff could have mitigated, minimized or avoided the damages claimed.

Response to Demand As To the First Affirmative Defense

If the plaintiff sustained any injuries as alleged in the Complaint and Verified Bill of Particulars, said injuries were caused or contributed to by the negligence, culpable fault and wrong doing of the plaintiff in carelessly and negligently causing and permitting her automobile to be operated in a negligent manner; in failing and omitting to have said automobile under reasonable and proper control; in carelessly and negligently causing and permitting her automobile to be operated

over and along the public highway at a high and excessive rate of speed and/or at a greater rate of speed that care and caution would permit under the circumstances then and there existing; in failing and omitting to operate the said automobile with due regard for the safety of herself and others; in carelessly and negligently failing and omitting to provide and/or make prompt and timely use of adequate and efficient brakes, signaling devices and steering mechanisms; in carelessly and negligently failing and omitting to keep and to maintain a proper look out and to be reasonably alert; in carelessly and negligently causing and permitting her automobile to be operated in such a negligent and reckless manner so as to precipitate the accident herein; in failing to properly inspect and to maintain the automobile; in failing to utilize the available seat belt which would have prevented and/or mitigated any injuries she claims to have sustained; in failing to exercise due care and caution for her own safety in view of the conditions allegedly then and there in existence; in failing to utilize that degree of care and caution that a reasonable person would utilize under the circumstances then and there existing; that in the exercise of care and caution plaintiff knew or should have known of the conditions at the time and place of the occurrence and with such knowledge, consciously disregarded same and the danger allegedly posed thereby and/or assumed the risk thereof; and the plaintiff was wholly negligent and careless in failing and omitting to take proper and suitable precautions to avoid the said incident.

Demand As To the Second Affirmative Defense:

State in detail the basis of the claim that the complaint fails to state a claim upon which relief may be granted.

Response to Demand As To The Second Affirmative Defense:

The Complaint does not adequately plead a basis to hold Defendant responsible for any of the alleged defects with regard to the automobile.

Demand As To The Third Cause of Action:

State the manner in which the aforementioned items of negligence, carelessness or culpable conduct caused or contributed to the plaintiff(s)' injuries. Set forth in specific detail the dangers and risks which were open, obvious, apparent and known to the plaintiffs.

State the risks which it is claimed the plaintiff(s) assumed.

Response to Demand As To The Third Cause of Action:

See Answer to *Response to Demand As To the First Affirmative Defense*.

Demand As To The Fourth Cause of Action:

Set forth in detail the provisions of Article 16 of the CPLR with regard to the limitation of joint and several liability the defendants will rely upon.

Response to Demand As To The Fourth Cause of Action:

The determination as to the applicability of Article 16 is best left for the Court and responding defendant specifically reserves its right to amend and/or supplement this response upon completion of discovery.

Demand As To The Fifth Affirmative Defense:

Set forth in detail the provisions of Section 4545 of the Civil Practice Law and Rules, which would require that any verdict or judgment recovered by plaintiff against the defendant be reduced.

Response to Demand As To The Fifth Affirmative Defense:

Responding defendant is not in possession of sufficient information at this point to properly respond to this demand and reserves the right to amend and/or supplement this response upon completion of discovery.

Demand As To The Sixth Affirmative Defense:

Set forth in detail the basis for the claim in which the answering defendant asserts Section 15-108 of the General Obligations Law.

Set forth in detail the basis that the answering defendant be entitled to a set-off for any settlements, releases or discontinuances.

Response to Demand As To The Sixth Affirmative Defense:

Currently responding defendant is unaware of any settlement agreements which would reduce plaintiff's recovery, however, should any of the named defendants or any current non-parties settle with plaintiff, defendant will claim a reduction in terms of plaintiff's total recovery pursuant to GOL 15-108 and therefore defendant reserves the right to amend and/or supplement this response.

Demand As To The Seventh Affirmative Defense:

Set forth in specific detail the dangers and risks which were open, obvious, apparent and known to the plaintiff.

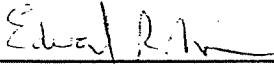
State the risks which it is claimed the plaintiff(s) assumed

Response to Demand As To The Seventh Affirmative Defense:

Responding defendant is not in possession of sufficient information at this point to properly respond to this demand and reserves the right to amend and/or supplement this response upon completion of discovery.

DATED: New York, New York
June 26, 2008

Stein Riso Mantel, LLP

By: 

Edward R. Minson
Attorneys for Metro Auto Leasing, Inc
The Chrysler Building
405 Lexington Avenue, 42nd Fl.
New York, New York 10174
(212) 599-1515

TO: GAIR, GAIR, CONASON, STEIGMAN & MACKAUF
Attorneys for Plaintiff
80 Pine Street
New York, New York 10005-1768

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

RECEIVED

-----X
IRIS LEVITEN,

7000 JUN 24 10:23 AM '07
Index # 108013/07

Plaintiff,

STEVAN M. RABINOWITZ
FORSTEN & D. AFFIRMATION IN
SUPPORT

-against-

LEXUS, A DIVISION OF TOYOTA MOTOR
SALES USA., INC., ESTREE, INC., d/b/a
LEXUS OF WESTPORT, and METRO AUTO
LEASING, INC., d/b/a THE AUTOMALL,

Defendants.
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THOMAS G. CHOJNACKI, an attorney duly admitted to practice law in the State of New York, hereby affirms the truth of the following under the penalties of perjury:

1. That I am an associate with the firm of AHMUTY, DEMERS & McMANUS, ESQS., attorneys for the defendants in this matter, and as such, I am fully familiar with the facts and circumstances surrounding this matter.

2. I submit this Affirmation in Support of the cross-motion served by counsel for Toyota Motor Sales seeking an Order pursuant to CPLR §3103 to prevent the destruction and/or alteration of the vehicle and/or its components and further for the issuance of a protocol regarding the inspection of the subject vehicle.

3. So as not overburden the Court with excessive paper, your affirmant respectfully adopts the arguments set forth by Steven R. Kramer on behalf of the Law Firm of Eckert Siemens Cherin & Mallot in support of that cross-motion.

4. In addition to the argument set forth by Mr. Kramer, your affirmant wishes to point out to the Court that it appears that the plaintiff (who has possession of the vehicle has moved same on multiple occasions without notice to defense counsel in this matter.

5. Initially, the vehicle was removed from the accident scene and taken to an unknown location. Thereafter, it remained in that location for an unknown period of time and was eventually transported to an auto body facility in Brooklyn. Whether it was also transported to an additional location in the interim is currently unknown.

6. Counsel for Toyota Motor Sales, Lexus of Westport, and the plaintiff were all present (along with their experts) for an inspection of the vehicle at this facility in Brooklyn. Thereafter, without any notice to the defendants, the vehicle was moved to its presumably current location at 945 Cortland Avenue in the Bronx.

7. It is unknown whether the plaintiff videotaped or photographed any portion of the transporting including the connection to a towing vehicle during this trip from Brooklyn to the Bronx, or whether any changes to the vehicle occurred during this trip.

8. Your affirmant should point out that during the inspection of the vehicle in Brooklyn it was clear that the vehicle was not being properly preserved. Obvious rust on the vehicle was observed and the vehicle was filled with leaves, branches and other debris, as it was clear that the vehicle had not been properly covered and/or protected during its time at the Brooklyn facility.

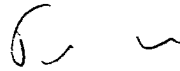
9. Herein, plaintiff claims that a floor mat in the vehicle moved forward causing the vehicle to suddenly accelerate. Unfortunately, during the inspection of the vehicle at the Brooklyn facility, the damage to the vehicle was such that it prevented any of the experts from

actually observing whether the floor mat was attached to the hooks designed to anchor the floor mat in place. As such, it was agreed amongst all parties at that time that a further inspection of the vehicle would be conducted after an appearance was made by the sole defendant who was not present, Metro Auto Leasing.

10. From the prospective of my client, it is crucial that a further inspection of the vehicle be conducted, and that no further damage or changes to the vehicle occur in the interim.

WHEREFORE, it is respectfully requested that this Court issue an Order granting that cross-motion of Toyota Motor Sales in its entirety and granting such other and further relief as this Court deems just and proper.

Dated: Albertson, New York
June 12, 2008



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4 of —

--- LEVITEN, IRIS

DSC TO TOYOTA

— LEVTEN, IRIS

EXPERT DEPOS —

LEVITEN, IRIS

OTHER DEPOS

— LEVITEN, IRIS

PLEADINGS

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LEVTEN, Iris
1 of 2

DSC to OTHERS

Leviten, Iris
Police/Investigation

Leviten, Iris

Technical

Leviten, Iris
Parts Request

Leviten, Iris

Vehicle Data

To protect the privacy of individuals, NHTSA does not make medical records available to the public without authorization. For this reason, documents falling into this category have not been included in this complaint record.