

**IN THE STATE COURT OF DOUGLAS COUNTY
STATE OF GEORGIA**

ADRIAN JOHNS and GWEN JOHNS,)	
)	
Plaintiffs,)	CIVIL ACTION FILE
)	
v.)	NO. 14-SV-00043
)	
SUZUKI MOTOR CORPORATION;)	
SUZUKI MOTOR OF AMERICA, INC.;)	
and NISSIN KOGYO CO., LTD,)	
)	
Defendants.)	
)	

CONSOLIDATED PRE-TRIAL ORDER

The following constitutes a Consolidated Pre-Trial order entered in the above-styled case after conference with counsel for the parties:

1. The name, address, and phone number of the attorneys who will conduct the trial are as follows:

Plaintiff:

**Randy Edwards
Paul A. Piland
COCHRAN & EDWARDS, LLC
2950 Atlanta Road, SE
Smyrna, Georgia 30080
(770) 435-2131**

**John Sherrod
SHERROD & BERNARD
8470 Price Avenue (30134)
P.O. Box 1154
Douglasville, Georgia 30133-1154
(770) 920-8350**

Defendants Suzuki Motor of America, Inc. and Suzuki Motor Corp.:

Michael Goldman

Zachary M. Wilson
HAWKINS, PARNELL, THACKSTON & YOUNG, LLP
4000 SunTrust Plaza
303 Peachtree Street NE
Atlanta, Georgia 30308

Randall R. Riggs
Jeff Mortier
FROST BROWN TODD, LLC
Post Office Box 44961
Indianapolis, Indiana 46244-096

Defendant Nissin Kogyo Co., Ltd.:

C. Bradford Marsh
Ashley W. Broach
SWIFT, CURRIE, MCGHEE & HIERS, LLP
1355 Peachtree Street, NE, Suite 300
Atlanta, GA 30309

2. The estimated time required for trial is approximately three (3) weeks.
3. There are no motions or other matters pending for consideration by the court

except as follows:

- (a) **Plaintiffs' Motions in Limine to Exclude Defendants' Uncertified English Translations of Japanese Documents;**
- (b) **Nissin's Omnibus Motion in Limine;**
- (c) **Nissin's Motion in Limine to Preclude Evidence and Argument Regarding the Size, Wealth, Resources and/or Financial Condition of Nissin;**
- (d) **Nissin's Motion in Limine to Exclude Evidence of Other Similar Transactions;**
- (e) **Defendants' Motion for Trifurcation;**
- (f) **Suzuki's Motion in Limine to Exclude Customer Complaints of Brake Failure;**
- (g) **Suzuki's Motion in Limine to Exclude Product Recall;**
- (h) **Suzuki's Motion in Limine to Exclude Evidence of Other Accidents;**

- (i) **Suzuki's Motion in Limine to Exclude Adrian Johns' Hearsay Statements;**
- (j) **Suzuki's Motion in Limine to Exclude Opinion Testimony of 30(b)(6) Witness; and**
- (k) **Suzuki's Omnibus Motion in Limine.**

4. The parties request that the jury be qualified as to relationship with the following:

Is any member of this panel related by blood or marriage to:

- (a) **Adrian Johns;**
- (b) **Gwen Johns;**
- (c) **Randy Edwards;**
- (d) **Scott Cochran;**
- (e) **Paul Piland;**
- (f) **John Sherrod;**
- (g) **Ken Bernard;**
- (h) **Burleigh Singleton;**

Is anyone an employee, officer, director, manager or shareholder of any of the following:

- (i) **American Suzuki Motor Corporation;**
- (j) **Suzuki Motor Corporation;**
- (k) **Suzuki Motor of America, Inc;**
- (l) **Nissin Kogyo Co., Ltd;**
- (m) **Toyoko Marine & Nichido Fire Insurance Co., Ltd;**
- (n) **Sompo Japan Insurance, Inc; and**

(o) **[all other insurers, reinsurers and excess insurers for each defendant]**

5. (a) All discovery has been completed, unless otherwise noted, and the Court will not consider any further motions to compel discovery except for good cause shown and except as otherwise provided herein. The parties, however, shall be permitted to take depositions of any person(s) for preservation of evidence for use at trial. Each party also reserves the right to take discovery deposition of any expert witness another party intends to call at trial.

(b) Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder or nonjoinder of any parties.

6. The following is Plaintiffs' brief and succinct outline of the case and contentions:

By the spring of 2013, Defendants Suzuki Motor Corp., Suzuki Motor Corporation of America (successor to American Suzuki Motor Corporation), and Nissin Kogyo, Co., Ltd., had been investigating problems of pressure loss in the front brakes of Suzuki GSX-R motorcycles for at least several years. More than six months earlier in the fall of 2012, they changed the design of the front brake for all new motorcycles to be manufactured beginning in June 2013. By April 2013, if not before, Defendants determined that (1) these front brakes were defective, (2) a recall of over 400,000 Suzuki GSX-R motorcycles sold worldwide between 2003 and 2013 was necessary, and (3) 200,000 redesigned replacement parts needed to be manufactured. Accordingly, in April 2013, Suzuki ordered 200,000 redesigned front brake master cylinders from Nissin.

The vast majority of motorcycle sales occur during spring and summer. Based on their experience with prior recalls, Defendants did not want this recall to interfere with their spring and summer selling season. As such, Defendants, motivated by profits rather than rider safety, made the conscious decision to delay announcing the recall until October 18, 2013.

On the morning of August 12, 2013, two months before Defendants chose to notify the public of the brake defect, Plaintiff Adrian Johns left for work on his 2006 Suzuki GSX-R1000 motorcycle. As Mr. Johns rode past Yancey Caterpillar on Lee Industrial Boulevard within the posted speed limit, he noticed a tractor-trailer ahead of him. The tractor-trailer appeared to be either stopped or moving very slowly. When Mr. Johns applied his front brake, however, the bike failed to slow down. Mr. Johns' front brake had failed suddenly and without warning.

To avoid both the tractor-trailer and oncoming traffic, Mr. Johns swerved to the right. While attempting to straighten the bike up after his evasive maneuver, Mr. Johns lost control and crashed violently. As a result of the crash, Mr. Johns sustained permanent injuries to his neck, spine, and left hand. Mr. Johns underwent multiple surgeries to repair his injuries, including a complicated procedure on his spine. Mr. Johns spent over a month in the hospital recovering from his injuries. During this time, he had to learn how to walk again and how to perform simple daily activities while living with his permanent disabilities.

Shortly after being discharged from the hospital, Mr. Johns received a letter from Suzuki informing him that the front brake on his 2006 Suzuki GSX-R1000 motorcycle has "a defect which relates to motor vehicle safety." According to the

recall, “corrosion of the brake piston ... generates gas .. [that] can affect braking power by reducing proper fluid pressure transmission to the front brake” and, as a result, “stopping distances may be extended, increasing the risk of a crash.” The recall advised Mr. Johns that “[o]perating [his] motorcycle without having the recall service performed may increase the risk of a crash” and that “[t]o minimize the risk of a crash, [] not ride or allow anyone else to ride [his] motorcycle until this recall service has been completed.” The recall was, however, too late. By this time, Mr. Johns had already sustained life changing injuries resulting in him being disabled permanently.

For the past seventeen (17) years, Mr. Johns has been married to his wife, Plaintiff Gwen Johns. As a result of the crash and Mr. Johns’ injuries, Mrs. Johns’ life has been altered significantly. Aside from raising their two children, Mrs. Johns now must care for husband at home. Mrs. Johns has had to take on responsibility for all the chores around the house that her husband used to perform. Outside their home, Mrs. Johns is also responsible for ensuring her husband gets the medical care that he needs. This includes driving him to and from Augusta to see his doctors at the VA hospital. Unfortunately, the amount of time that Mrs. Johns now must spend caring for her husband has caused her to lose her job.

Plaintiffs contend:

(a) Adrian Johns’ crash was caused by a defect in the Nissin front brake master cylinder on his 2006 Suzuki GSX-R1000 motorcycle;

(b) Defendants knew, or should have known, for at least six months before Mr. Johns’ crash that the Nissin front brake master cylinders on over 200,000 Suzuki

GSX-R motorcycles sold in the United States between 2003 and 2013, including Mr. Johns' 2006 Suzuki GSX-R1000, were defective;

(c) Defendants knew, or should have known, the cause of the Defect and the planned fix for the Defect for a least six months prior to Mr. Johns' crash;

(d) No later than April 2013, if not sooner, Defendants assumed the duty to recall all 2003 to 2013 Suzuki GSX-R motorcycles equipped with a Nissin radial front brake master cylinder;

(e) Motor vehicle manufacturers are required by federal law to inform the National Highway Traffic Safety Administration within five (5) days of discovering a safety defect;

(f) Defendants intentionally chose to delay the recall until the fall of 2013 so as to not interfere with their profitable spring and summer selling season;

(g) Defendants engaged in a conspiracy of silence for at least six months to keep their customers and the United States government unaware of the defective front brake master cylinders on over 200,000 Suzuki GSX-R motorcycles sold in the United States, including Adrian Johns' 2006 Suzuki GSX-R1000;

(h) Defendants Suzuki Motor Corp. and Nissin Kogyo Co., Ltd. are liable to Plaintiffs for strict products liability;

(i) Once Defendants assumed the duty of conducting a recall, they had a duty to conduct the recall in a reasonable manner, including in a reasonable time;

(j) Defendants Suzuki Motor Corp., Suzuki Motor of America, Inc., and Nissin Kogyo Co., Ltd. are all liable to Plaintiffs for conducting the recall negligently;

(k) Defendants Suzuki Motor Corp., Suzuki Motor of America, Inc., and Nissin Kogyo Co., Ltd. are all liable to Plaintiffs for negligent failure to warn of the danger once it became apparent to them;

(l) Defendants are liable to Adrian Johns for compensatory damages in an amount to be determined by the enlightened conscience of an impartial jury;

(m) Defendants are liable to Gwen Johns for the loss of services, society, companionship, affection, and all matters of value related to her marriage with Adrian that his injuries have caused her;

(n) Defendants acted in bad faith in the underlying transaction, entitling both Adrian Johns and Gwen Johns to recover their attorneys' fees in an amount equal to an additional forty (40) percent of the compensatory damages awarded to each of them, plus their expenses of litigation, from Defendants;

(o) Defendants acted with conscious indifference to the consequences of their actions and, as a result thereof, Defendants must be punished by an award of punitive damages in an amount of not less than \$65,000,000.00.

7. The following is Defendants' brief and succinct outline of the case and contentions:

Defendants Suzuki Motor Corporation and Suzuki Motor of America, Inc. ("Suzuki") contend the sole cause of Plaintiffs' injuries and damages was Plaintiff Adrian Johns' negligent operation of his 2006 Suzuki GSX-R 1000 motorcycle. More specifically, Mr. Johns placed himself in a position of peril from which he was unable to safely recover. Suzuki denies there was any failure of the front brake, as evidenced by Johns' repeated, successful front brake applications on the ride before the accident and

the post-accident examination of the front brake components. Suzuki contends that after Mr. Johns tried an unsafe driving maneuver, he inappropriately over-applied his rear brake, causing his rear wheel to lock-up and resulting in a loss of control. He reported at the time that he lost control because he slid on gravel in the road. As a result, he crashed.

Suzuki denies that the front brake master cylinder (“FBMC”) caused or contributed to the incident. Suzuki further contends that the recall condition--the generation of hydrogen gas as a result of prolonged poor brake maintenance--was not present in this brake system at the time of the accident, despite Johns’ failure to follow Suzuki safety recommendations regarding interval brake fluid changes. Suzuki also contends that the seal was not interrupted in the FBMC as hypothesized by Plaintiffs’ expert. Suzuki contends that the Johns front brake system was damaged in the crash as reflected in the post-crash brake inspections, and that the condition of the brake system at the time of the inspections was different than at the time of the crash.

With respect to Plaintiffs’ claim that the recall was handled improperly or untimely, Suzuki contends that the recall is irrelevant and inadmissible for the reasons set out in its Motion *in Limine*. Without waiving its legal positions on the recall, Suzuki contends it acted reasonably, together with the front brake master cylinder designer and manufacturer Nissin Kogyo, to determine why there were occasional field reports of “spongy front brake.” Given the infrequency of such reports, the lack of any injuries related thereto and the technical difficulty of determining the true cause(s), the solution and recall were timely and properly administered. Suzuki contends there was no history of any accidents caused by the slowly developing recall condition of “spongy

brakes,” which condition would be improved by motorcycle operation and brake application.

SMAI is not a manufacturer and is therefore not subject to strict liability. Nor is there any liability on behalf of SMC or SMAI for post-sale conduct or for an alleged failure to recall.

Suzuki contends Mr. Johns was not injured or damaged to the extent he claims. Suzuki contends that he is capable of gainful employment and the projections of Plaintiffs’ economist are based on faulty assumptions and improper methodology.

Suzuki denies all allegations of liability. Suzuki contends that it acted in good faith and there is no basis to conclude that any alleged action or inaction on its part supports a finding, by clear and convincing evidence, that punitive damages are appropriate.

Finally, SMAI contends that it has no liability to the Plaintiff arising from the distribution or sale of the motorcycle in question because SMAI had no involvement with the subject motorcycle.

Defendant Nissin Kogyo Co., Ltd. (“NK”) joins in the Suzuki Defendants’ outline of the facts in the first two paragraphs above, specifically that Johns’ actions caused the incident giving rise to this lawsuit and that Plaintiffs and their experts have not shown any condition of the FBMC caused or related to the incident.

NK is a Japanese corporation with its headquarters in Tomi City, Nagano Prefecture, Japan and its principal place of business in Ueda City, Nagano Prefecture, Japan. NK manufactures front brake master cylinders and other brake components for two-wheeled and four-wheeled vehicles. NK manufactures front brake master cylinders

and other brake components at its Naoetsu factory in Japan, and assembles them with pistons manufactured at the Shandong Nissin Industry Co., Ltd. factory in China. NK delivers front brake master cylinders and other brake components as uninstalled parts to its manufacturing customers, including SMC, from its Naoetsu Factory in Japan. These parts are delivered to SMC in Japan. Once the NK parts are delivered, NK has no control over them, including where the installed components and/or finished vehicles are shipped.

NK manufactured the front brake master cylinder and certain other brake components for the 2006 Suzuki GSX-R1000K6 motorcycle at issue in this case. NK manufactured the front brake master cylinder for the 2006 Suzuki GSX-R1000K6 motorcycle pursuant to specifications and instructions received from SMC. SMC and NK were responsible for the design of the front brake master cylinder. The design work for the front brake master cylinder occurred in Japan. The front brake master cylinder and brake components for the 2006 Suzuki GSX-R1000K6 motorcycle were delivered to SMC in Japan. At the time the component part was delivered to Suzuki, it was reasonably suited for the use intended and was not defective. NK had no contact with and no direct dealings with Plaintiffs.

With respect to Plaintiffs' claim that the recall was handled negligently, NK states these claims are not applicable to NK since it had no duty to recall, assumed no duty to recall and was not involved in any recall or decision to recall the motorcycles at issue.

NK objects to Plaintiffs' outline of the case and specifically denies Plaintiff's contentions (a) –(o), denies any and all liability to Plaintiffs, denies any bad faith

conduct and specifically denies Plaintiff is entitled to punitive damages in any amount whatsoever, and NK reasserts its defenses to punitive damages stated in its answer.

Suzuki adopts the comments in the preceding paragraph.

8. The issues for determination by the jury are as follows:

By Plaintiffs:

- (a) **Whether Defendant SMAI owed Plaintiffs any duties.**
- (b) **Whether Defendant SMAI breached any duties owed to Plaintiffs.**
- (c) **Whether Defendant SMAI's conduct was reckless, wanton, or in conscious disregard for the safety of others.**
- (d) **Whether Defendant SMC owed Plaintiffs any duties.**
- (e) **Whether Defendant SMC breached any duties owed to Plaintiffs.**
- (f) **Whether Defendant SMC's conduct was reckless, wanton, or in conscious disregard for the safety of others.**
- (g) **Whether Defendant Nissin owed Plaintiffs any duties.**
- (h) **Whether Defendant Nissin breached any duties owed to Plaintiffs.**
- (i) **Whether Defendant Nissin's conduct was reckless, wanton, or in conscious disregard for the safety of others.**
- (j) **Proximate cause of the incident and the injuries suffered by Plaintiffs.**
- (k) **The amount of damages sustained by Plaintiffs.**
- (l) **Whether the Plaintiffs should recover their attorneys' fees and expenses of litigation, and if so, the amount.**

(m) Whether punitive damages are warranted and, if so, the amount thereof.

By Defendants:

(a) Whether Mr. Johns was negligent in the operation of his motorcycle.

(b) Whether there was a defect in the motorcycle's front brake master cylinder that caused the crash.

(c) Whether Plaintiffs' admitted complete lack of brake system maintenance constituted alteration and/or modification of the brake system.

(d) Whether the unforeseeable intervening cause of plaintiffs' complete lack of brake system maintenance broke the chain of proximate causation.

(e) Whether the condition that allegedly caused the crash existed in the Johns motorcycle "when sold."

(f) If there was a defect in the motorcycle's front brake master cylinder that caused the crash, then is there liability based on strict liability.

(g) If there was a defect in the motorcycle's front brake master cylinder that caused the crash, then is there liability based on negligence.

(h) Apportionment of fault.

(i) Whether Plaintiff is entitled to compensatory damages – and the amount, if any.

(j) Whether Plaintiff is entitled to punitive damages against SMAI– and the amount, if any. (note: Suzuki contends that SMAI is subject to the

statutory punitive damage cap as it neither designed nor manufactured the subject motorcycle)

(k) Whether Plaintiff is entitled to punitive damages against SMC— and the amount, if any.

(l) Whether Plaintiff is entitled to punitive damages against NK— and the amount, if any.

9. Specifications of negligence including applicable code sections are as follows:

Plaintiffs:

(a) O.C.G.A. § 51-1-11 (strict products liability).

(b) 49 C.F.R. 573.6 (manufacturer must notify NHTSA within 5 working days after a defect in a vehicle or item of equipment has been determined to be safety related).

(c) O.C.G.A. § 51-1-6 (breach of legal duty gives action).

(d) *Blossman Gas Co. v. Williams*, 189 Ga. App. 195 (1988) (manufacturer who assumes duty to conduct a recall must do so in a reasonable manner); *see also, Ford Motor Co., v. Reese*, 300 Ga. App. 82, note 2 (2009); RESTATEMENT (THIRD) PRODUCTS LIABILITY, § 11.

(e) O.C.G.A. § 51-12-5.1(e)(1) (in cases arising from product liability, there shall be no limitation regarding the amount which may be awarded as punitive damages).

(f) *Mack Trucks, Inc. v. Conkle*, 263 Ga. App. 539, 541 (1993) (\$250,000 limitation on punitive damages in O.C.G.A. § 51-12-5.1(g) does not apply in product liability case based on negligence).

(g) *Home Depot USA., Inc. v. Tvrdeich*, 268 Ga. App. 579 (2004); *U-Haul Company of Western Georgia v. Ford*, 171 Ga. App. 744 (1984); *Old Equity Life Insurance Co. v. Barnard*, 120 Ga. App. 596 (1969) (An award of attorneys' fees may be based on a contingent fee agreement and the amount of the contingent fee may be awarded in addition to the compensatory damages award).

Defendants:

Mr. Johns was negligent in the operation of his motorcycle by traveling at a speed that was too great for the prevailing conditions, by attempting to pass on the right, by traveling in an acceleration lane, by failing to keep a proper lookout ahead and by failing to maintain control of his motorcycle. Plaintiff Adrian Johns violated the following statutes, which constitutes negligence *per se*:

- **O.C.G.A. 40-6-180 (2010) Basic Rules**
 - *No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing.*
- **O.C.G.A. 40-6-49 (2010) Following Too Closely**
 - *(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.*
- **O.C.G.A. 40-6-42. Overtaking and Passing Generally**

- *The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules stated in this article:*
 - (1) *The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle;*
- **O.C.G.A. 40-6-48 (2010) Driving on Roadways Laned for Traffic**
 - *Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent with this Code section, shall apply:*
 - (1) *A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;*
- **O.C.G.A. 40-6-180 (2010) Basic Rules**
 - *No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. Consistently with the foregoing, every person shall drive at a reasonable and prudent speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching and traversing a hill crest, when traveling upon any narrow or winding roadway, and when special hazards*

exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

- **O.C.G.A. 40-6-241 (2010) Driver to Exercise Due Care; Proper Use of Radios and Mobile Telephones Allowed**

- *A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions which shall distract such driver from the safe operation of such vehicle,*

Specifications of negligence and applicable Code sections may be added based upon the evidence presented at trial. Other applicable Code sections are: Plaintiff's contributory negligence O.C.G.A. § 51-11-7; Negligence and strict liability, O.C.G.A. § 51-1-2 et seq.; Negligence of others, O.C.G.A. § 51-1-2 et seq.; O.C.G.A. § 51-12-33; Ordinary negligence, O.C.G.A. § 51-1-2; Apportionment. O.C.G.A. § 51-12-33

By Plaintiffs:

10. If the case is based on a contract, either oral or written, the terms of the contract are as follows: **Not Applicable.**

11. The types of damages and the applicable measure of those damages are stated as follows:

By Plaintiffs:

(a) **Compensatory damages for Adrian Johns, including past medical bills and lost wages, measured by the actual costs of the bills and wages, future medical bills and lost wages as shown by the evidence, and past, present and future pain and suffering, in an amount to be determined by the enlightened conscience of an impartial jury.**

(b) **Compensatory damages for Gwen Johns for loss of consortium, also called the loss of services of her spouse, measured by their reasonable value in an amount to be determined by the enlightened conscience of an impartial jury.**

(c) **Attorneys' fees in an amount equal to forty (40) percent of the amount award to each Plaintiff as compensatory damages.**

(d) **Punitive damages in an amount to be determined by the enlightened conscience of an impartial jury.**

By Defendants:

Defendants deny that Plaintiffs are entitled to compensatory and punitive damages as set forth in Paragraph 7.

NK denies it is liable to Plaintiffs and denies Plaintiffs are entitled to any compensatory or punitive damages under O.C.G.A. § 51-12-5. and reasserts its defenses to punitive damages, which include the following:

- 1. There is no basis in law or fact for the imposition of punitive damages with respect to Plaintiff's claims against Defendant. There is no clear and convincing evidence Defendant was guilty of willful misconduct, malice, fraud, wantonness, oppression, or entire want of care that would raise the presumption of conscious indifference to the consequences and, accordingly, Plaintiff is not entitled to recover punitive damages in any sum whatsoever.**
- 2. Plaintiff's punitive damages claim violates Defendant's right to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of Georgia, and therefore fails to state a cause of**

action or set forth a claim upon which such damages can be awarded. The claim for “punitive damages” is barred by the provisions of Article VI of the Constitution of the United States.

- 3. NK is a Japanese company with no connection to this court or state, and thus, Japanese law should apply. Japanese law strictly prohibits punitive damages in tort cases.**

The Suzuki Defendants adopt the foregoing introductory paragraph and paragraphs 1 and 2. Defendant Suzuki Motor Corporation adopts paragraph number 3.

12. If the case involves divorce, each party shall present to the court at the pre-trial conference the affidavits required by Rule 24.2. **Not Applicable.**

13. The following facts are stipulated:

The crash happened on August 12, 2013 on Lee Industrial Blvd. near its intersection with Six Flags Pkwy., in Cobb County, Georgia. Adrian Johns was the owner of the 2006 Suzuki GSX-R1000 motorcycle he was operating. Adrian Johns and Gwen Johns were married on the accident date and remain married.

14. The following is a list of all documentary and physical evidence that will be tendered at trial by Plaintiffs or Defendants. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

(a) **By Plaintiffs: SEE ATTACHED EXHIBIT A.** Plaintiffs reserve the right to supplement this item prior to trial. Plaintiffs reserve the right to object to the proposed documentary and physical evidence to be presented by the Defendants until

Plaintiffs' counsel has had an opportunity to examine the same and until the same has been properly identified and tendered.

(b) **By Defendants:**

(1) **English Translations of Japanese Documents Produced by Defendant and the Original Japanese Source Documents Produced in Accordance with the Final Amended Scheduling Order**

(2) **Plaintiff's Medical Records**

(3) **Photographs, notes, Faro scan data from July 29, 2014 DRE Site Inspection**

(a) **Full Res Photographs 001-421**

(b) **Lower Res Photographs 001-421**

(c) **Notes – 1 Page**

(d) **13 Faro Scans**

(e) **13 Faro Scan Images**

(4) **Photographs, notes, Faro scan data, videos, data from July 30, 2014 DRE Subject Motorcycle Inspection**

(a) **Card 1 Full Res Photographs 001-239**

(b) **Card 1 Lower Res Photographs 001-239**

(c) **Card 2 Full Res Photographs 001-475**

(d) **Card 2 Lower Res Photographs 001-475**

(e) **Front Brake Lever Force / Displacement Data – 5 Tests**

(f) **Front Brake Lever Force / Displacement Plots – 6 Pages**

(g) **Notes – 17 Pages**

- (h) Tire Inspection Videos – 5 Videos**
 - (i) 13 Faro Scans**
 - (j) 13 Faro Scan Images**
- (5) Photographs from October 27, 2014 Subject Front Brake System Inspection & Removal from Motorcycle**
 - (a) Full Res Photographs IMG_0979-1060**
- (6) Photographs, notes, from January 6, 2015 Subject Motorcycle Front Brake System Inspection & Disassembly**
 - (a) Full Res Photographs 001-027**
 - (b) Lower Res Photographs 001-027**
 - (c) Macro Full Res Photographs 028-439**
 - (d) Macro Lower Res Photographs 028-439**
 - (e) Notes – 4 Pages**
- (7) Photographs, notes, videos, from August 17, 2015 Subject Motorcycle Component Testing**
 - (a) HPS & Piston Full Res Photographs 001-025**
 - (b) HPS & Piston Lower Res Photographs 001-025**
 - (c) LPS Full Res Photographs 001-010**
 - (d) LPS Lower Res Photographs 001-010**
 - (e) General Full Res Photographs 001-075**
 - (f) General Lower Res Photographs 001-075**
 - (g) Macro Full Res Photographs 001-115**
 - (h) Macro Lower Res Photographs 001-115**

- (i) Notes – 3 Pages
 - (j) 7 Total Videos: 3 General, 2 Bore, 2 Piston
- (8) Photographs from February 9, 2016 Subject Helmet Inspection
 - (a) Full Res Photographs 001-144
 - (b) Lower Res Photographs 001-144
- (9) Photographs, raw data, data plots, raw video footage, and edited videos of testing from February 10, 2016 DRE & Safety Engineering Associates (SEA) Exemplar Dynamic Testing at Site and Site Drive
 - (a) Photographs
 - i. Full Res Photographs 001-119
 - ii. Lower Res Photographs 001-119
 - (b) Raw Data Files
 - i. Site Ride – 10 files
 - ii. Testing at Site – 6 files
 - (c) Data Plots – 4 files
 - (d) Raw Video Files
 - i. DRE Cameras
 - a. Brake Stop Front View – 1 Video
 - b. Brake Stop Left-Hand Side View – 1 Video
 - c. Site Drive Chase View – 2 Videos
 - d. Site Drive Stationary View – 1 Video
 - ii. SEA Cameras

- (o) Motorcycle Inspection Photo Analysis – Overall Damage**
- (p) Motorcycle Inspection Photo Analysis – Scratch Pattern Analysis**
- (q) Motorcycle Inspection Photo Analysis – Rim & Tire Damage**
- (r) Analysis of Subject Front Brake Master Cylinder Testing Conducted by Hyatt**
- (s) Analysis of Subject Front Brake Master Cylinder Disassembly**
- (t) Analysis of Subject Front Brake Master Cylinder Bore**
- (u) Analysis of Subject Front Brake Master Cylinder Cat Scans**
- (v) Helmet Inspection Photo Analysis – Overall Damage**
- (w) Helmet Inspection Photo Analysis – Impact Damage**
- (x) Analysis of Mr. Johns’ Path of Travel**
- (y) Comparison of Scene Photographs taken by Plaintiffs and between DRE Site Inspection & Site Drive**
- (z) Analysis of DRE Site Drive Photographs**
- (aa) Exemplar Motorcycle Photographs - Overall**
- (bb) Exemplar Motorcycle Photographs – Tires**
- (cc) Exemplar Motorcycle Photographs - Instrumentation**
- (dd) Placement of Subject Helmet at Site**
- (ee) Motorcycle Information – Subject Motorcycle**
- (ff) Raw data files from DRE / SEA Site Drive on February 10, 2016 – 16 Data Files**

- (d) **Traffic Accident Investigation Manual Volume 2 of The Traffic Accident Investigation Manual - Northwestern University Traffic Institute - Authored by Lynn B. Fricke**
- (e) **The Traffic Collision Investigation Manual - Northwestern University Traffic Institute - Authored by J. Stannard Baker & Lynn B. Fricke**
- (24) **Weather Report for Date of Crash**
- (25) **Exemplar and the subject Johns Motorcycle – see infra Paragraph 20**
- (26) **Scale model of accident scene**
- (27) **This list of exhibits does not include those exhibits that may be necessary for impeachment or rebuttal.**

NK's List of Documents:

- (1) **Plaintiff's Medical Records**
- (2) **All exhibits to depositions taken and all documents referred to and/or relied upon by defendant's witnesses and expert witnesses in their prior reports and/or in giving their deposition testimony in this case.**
- (3) **All documents produced in response to requests for production between the parties.**
- (4) **NK's English translations produced pursuant to the Amended Scheduling Order**
- (5) **Police Accident Report**

- (6) All inspection photographs taken by all experts (Hyatt/ ATS, Hoover and Breen)**
- (7) Exemplar and subject motorcycle and any photographs taken of same**
- (8) Complete Expert file of Jeffrey Hyatt**
- (9) Complete Expert File of Todd Hoover**
- (10) Complete Expert File of Kevin Breen including:**
 - (a) All photographs, videos, tests, logs, notes and data for each inspection of subject motorcycle and FBMC**
 - (b) All photographs taken of exemplar motorcycles and exemplar FBMC**
 - (c) Photographs, videos, tests, logs, notes and data for various exemplar FBMC disassembly and testing on different dates**
 - (d) Photographs, videos, tests, logs, notes and data for various exemplar testing of master cylinder primary seal on different dates**
 - (e) Data from CT scans**
 - (f) Photos, video and data from various fluid testing**
 - (g) Videos, data, photographs and logs from test runs**
 - (h) Analysis documents**
 - (i) Notes**
 - (j) Research**
 - (k) Relevant literature**

- (l) **Owner's Manual**
 - (m) **Chart brake fluid subject motorcycle v. new**
 - (n) **Chart brake fluid**
 - (o) **Chart motorcycle brake fluid maintenance**
 - (p) **Diagram subject brake system**
 - (q) **Cut away subject brake system**
 - (r) **Acrylic brake system**
 - (s) **Video of acrylic brake system operation**
 - (t) **Timeline of brake design**
 - (u) **Timeline of subject MC**
 - (v) **Chart Claims/unit sold**
 - (w) **Photographs exemplar brake systems**
 - (x) **Photographs comparison brake systems**
 - (y) **Photographs test master cylinder**
 - (z) **Photograph test brake fluid**
 - (aa) **Charts ESI testing**
 - (bb) **Video/animation FBMC operation**
 - (cc) **Chart braking performance**
 - (dd) **Photographs test brake primary seal**
 - (ee) **Charts test brake primary seal**
 - (ff) **Video test brake primary seal**
- (11) **Defendant NK respectfully reserves the right to amend or supplement this list any time prior to trial. Defendant NK further**

reserves the right to introduce documents for rebuttal and/or impeachment purposes.

15. Special authorities relied upon by Plaintiffs relating to peculiar evidentiary or other legal questions are as follows: **See paragraph 9 above.**

16. Special authorities relied upon by Defendants relating to peculiar evidentiary or other legal questions are as follows:

Defendants incorporate by reference their currently pending Motions *in Limine* and Motion for Trifurcation, as well as all arguments otherwise set forth herein. Suzuki also contends that no private right of action exists for Plaintiffs' "failure to recall" claim. The authority to issue and supervise recalls is expressly within the province of the National Highway Traffic Safety Administration (NHTSA). See National Traffic and Motor Safety Act, 49 U.S.C. § 30118, *et seq.* Federal law does not create a private right of action in favor of consumers, or individual plaintiffs based on a regulated product manufacturer's alleged violation of the Act. See, e.g., *In Re: Bridgestone/Firestone, Inc.*, 260 F. Supp. 2d 722 (S.D. Ind. 2003).

Defendant NK incorporates its currently pending Motions *in Limine* and Motion for Trifurcation. Additionally, NK reasserts that jurisdiction is lacking over NK. Further, since all of NK's conduct that is in any way related to this lawsuit occurred in Japan, Japanese law should apply to Plaintiffs' claims against NK. *State Farm Mut. Auto. Ins. Co. v. Campbell et al.*, 538 U.S. 408, 421 (2003). Plaintiff's burden of proof in a Japanese civil case is akin to the "beyond a reasonable doubt" standard used in criminal cases in the United States. Furthermore, as it pertains to a parts supplier like NK, the plaintiff must prove that the parts supplier was negligent (i.e., there is no strict

liability against a parts supplier). In addition, a parts supplier can avoid liability by proving that it complied with the manufacturer's instructions/specifications with respect to the production of the parts at issue. Finally, Japanese law strictly prohibits punitive damages in tort cases. In fact, Japanese courts will refuse to enforce a judgment for punitive damages issued in the United States because such damages are against the public policy of Japan.

17. All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

18. The testimony of the following persons may be introduced by depositions:

By Plaintiffs:

Plaintiffs reserve the right to take and use at trial any depositions taken for use at trial or to use any depositions taken (or to be taken) by any party to this case, as well as the cases of *Winkler vs. Suzuki Motor Corporation, Nissin Kogyo Co., Ltd., et al*, case no. 16-2014-CA-004130, Circuit Court, Fourth Judicial Circuit, Duval County Florida; *Schall v. Suzuki Motor of America, Inc. et al*, U.S.D.C., Western District of KY, case no. 4:14-cv-00074-JHM; *Stubblefield vs. Suzuki Motor Corporation Nissin Kogyo Co., Ltd.*, U.S.D.C., Southern District of MS, 3:15cv18HTW-LBA and *Soulliere vs. Suzuki Motor Corp., et al*, Superior Court of Orange County, Ca., case no. 30-2015-00790644, and Plaintiffs reserve the right to supplement this list prior to trial. Any objections to the depositions or questions or arguments in the depositions shall be called to the attention of the Court prior to presentation of the deposition at trial.

(1) Alex Butt

- (2) Takao Kudo**
- (3) Steve Muthig, SMAI 30(b)(6) designee**
- (4) Josh Knepper**
- (5) Sergio Nichols**
- (6) Derek Girard**
- (7) Kristin Trujillo**
- (8) Somige Augustine**
- (9) Bradley Stubblefield**
- (10) Derek Schall**
- (11) Scott Winkler**
- (12) Thomas Soulliere**
- (13) Dr. Paul King**
- (14) Dr. David Spearman**
- (15) Dr. Keith Tansey**
- (16) Ed Eskew**
- (17) Chris MacDonald**
- (18) Mark Eastman**
- (19) Brian Malyszek**
- (20) Mario Quiroga**
- (21) Yoshinobu Matsumoto**
- (22) Kenichi Fujii**
- (23) Defendant NK objects to Plaintiffs' use of depositions that have not been taken in the Johns case. NK contends that Depositions of witnesses, taken**

in unrelated cases pending in another jurisdiction without the presence of counsel appearing in Johns, are not admissible for use at trial in this matter.

By Defendants:

- **Carter Cooper**
- **Keith Tansley, M.D.**

19. The following are lists of witnesses the

(a) Plaintiffs **will** have present at trial:

- (1) **Adrian Johns**
- (2) **Gwen Johns**
- (3) **Jeff Hyatt**
- (4) **Suzuki 30(b)(6) witness**

(b) Plaintiffs **may** have present at trial:

- (1) **Norris Freeman**
- (2) **William Buckley**
- (3) **Andrew McArthur**
- (4) **Karen Taylor**
- (5) **William Beatty**
- (6) **Jason Gilmore**
- (7) **Josh Knepper**
- (8) **Adam Ward**
- (9) **Ivan Valenzuela**

- (10) Jason Farrier**
- (11) Kristen Trujillo**
- (12) Derek Girard**
- (13) Joseph Stowell**
- (14) Mark Neubauer**
- (15) Andrew Blagaich**
- (16) Christian Lujan**
- (17) Peter Abdelmisseh**
- (18) Sergio Nichols**
- (19) Mak Demetry**
- (20) Nathaniel Dozier**
- (21) Bradley Stubblefield**
- (22) Thomas Soulliere**
- (23) Somige Augustine**
- (24) Pedro Fondur**
- (25) Ritchie Howard**
- (26) Cleve Banks**
- (27) Cynthia Patterson**
- (28) Tommie Jackson**
- (29) Rodney Holloway**
- (30) Anthony Redding**
- (31) Shelia Redding**
- (32) Tommie Carter**

- (33) Michael Hunt**
- (34) Montel Hamilton**
- (35) Deidre McClain**
- (36) Ed Eskew**
- (37) Chris MacDonald**
- (38) Mark Eastman**
- (39) Brian Malyszek**
- (40) Mario Quiroga**
- (41) Yoshinobu Matsumoto**
- (42) Kenichi Fujii**
- (43) Randy Edwards (as to attorneys' fees and expenses of litigation only)**
- (44) John Sherrod (as to attorneys' fees and expenses of litigation only)**
- (45) Corporate representative of SMC**
- (46) Corporate representative of SMAI**
- (47) Corporate representative of Nissin**
- (48) Any witness listed by any Defendant**
- (49) Any witness necessary for rebuttal or impeachment.**

Plaintiffs reserve the right to add additional witnesses to this list with sufficient notice to opposing counsel prior to the trial of this case.

- (c) Suzuki Defendants **will** have present at trial:
 - **Todd Hoover**

- **Yoshinobu Matsumoto**

NK **will** have present at trial:

- **None.**

(d) Suzuki Defendants **may** have present at trial:

- **Takao Kudo**
- **Steve Muthig**
- **Kenichi Fujii**
- **Kevin Breen**
- **Chris Kinsey**
- **Detective Doug Maxwell**

NK **may** have present at trial:

- **Kenichi Fujii**
- **Kevin Breen**
- **Representative of NK**

Opposing counsel may rely on representation that the designated party will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his/her testimony by other means.

20. The form of all possible verdicts to be considered by the jury are as follows:

The parties are working on a verdict form and will submit one once they know the issues, theories and claims which will be submitted to the jury.

21. (a) The possibilities of settling this case are: **unknown at this time, mediation is scheduled for January 11, 2017.**

(b) The parties **do** want the case reported.

(c) The cost of take-down will be shared equally by those who choose to participate.

(d) Other matters: Plaintiffs ask that all documents produced by the defendants and marked as “Confidential” and/or “Proprietary or Confidential Information – Subject to Protective Order” be downgraded to avoid requiring these documents be filed under seal or otherwise restricting their use at trial and the public’s right to observe the proceedings and/or review court records. Plaintiffs further request that all documents previously filed under seal in this case be unsealed. While no doubt embarrassing to the Defendants, none of the documents anticipated to be used as evidence in this trial contain any trade secrets or proprietary information. There is no legitimate need to keep them designated as confidential or restrict the public’s access thereto.

Suzuki would like the Court to issue an order allowing it to bring an exemplar motorcycle into the courtroom. Suzuki also asks Plaintiffs to have the subject Johns motorcycle available for trial. Suzuki has also notified Plaintiffs’ counsel of the inadvertent production of certain privileged documents. Suzuki would like to discuss these matters at the pretrial conference.

This ___ day of December, 2017.

Submitted by:

Randy Edwards
Georgia Bar No. 241525
Paul Piland

Michael J. Goldman
Georgia Bar No. 300100
HAWKINS, PARNELL, THACKSTON &

Georgia Bar no. 558748
COCHRAN & EDWARDS, LLC
2950 Atlanta Road SE
Smyrna, Georgia 30080-3655
(770) 435-2131
(770) 436-6877 (*facsimile*)
randy@cochranedwardsllaw.com
paul@cochranedwardsllaw.com

YOUNG, LLP
303 Peachtree Street, NE
Suite 4000
Atlanta, Georgia 30308-3243
(404) 614-7400
(404) 614-7500 (*facsimile*)
mgoldman@hptyllaw.com

John Sherrod
Georgia Bar No. 642360
SHERROD & BERNARD
8470 Price Avenue (30134)
P.O. Box 1154
Douglasville, Georgia 30133-1154
(770) 920-8350
(770) 920-8974 (*facsimile*)

*Attorney for Plaintiffs
Adrian and Gwen Johns*

Randy Riggs
Jeff Mortier
FROST BROWN TODD, LLC
Post Office Box 44961
Indianapolis, Indiana 46244-096
rriggs@fbtlaw.com
jmortier@fbtlaw.com

*Attorneys for Defendants
Suzuki Motor of American, Inc. and Suzuki
Motor Corporation*

C. Bradford Marsh
Georgia Bar no. 471280
Ashley W. Broach
Georgia Bar no. 083593
SWIFT, CURRIE, MCGHEE & HIERS, LLP
1355 Peachtree Street, Suite 300
Atlanta, Georgia 30309
(404) 888-6119
(404) 614-7500 (*facsimile*)

*Attorneys for Defendants
Nissin Kogyo Co. Ltd.*