established that whenever jurisdiction is denied or questioned by the party or a court, it is the duty of the party claiming that the court has jurisdiction to prove that the court does indeed have it. Bindell v. City of Harey, 212 Ill. App. 3d 1042, 571 N. E. 2d 1017, 1019 (1st Dist. 1991). In this respect, Defendant failed.

Further, when the trial judge issued a February 9, 2006 order, set a trial date of March 13, 2006 without a discovery and without a pretrial conference (A130), the instant case was processed as a small claim. Plaintiff's right of due process had been ignored as the statutory procedure was not followed. In Potenz Corp. v. Petrozzini, 170, Ill. App. 3d 617, 525 N. E. 2d 173, 175 (1988), the court holds that only an inspection of the record of the case showing the judge was without jurisdiction or violated a person's right, it is sufficient for an order to be void. And a void order may be attacked at any time, or in any court, either directly or collaterally.

2. Orders or Parts of Them Should Be Void or Voidable So Long As They Are Based on Void Orders

Illinois law establishes that once a proper motion for substitution of judge as of right is brought, any and all orders entered after the motion for substitution should have been granted are a nullity. In re Dominique F., 145 Ill 2d 311, 583 N. E. 2d 555, 561 (1991); In re C. M. A., 306, Ill. 3d 1061, 715 N. E. 2d 674, 679 (First Dist. 1999). In the instant suit, after Defendant's laborious maneuver in October of 2005, the case was re-assigned to Courtroom 1307, which Defendant had chosen before hand (Motion to Disqualify at ¶4, S460 and Exhibit C, S471). Because of this, plaintiff filed a motion for substitution of judge as of right on November 3, 2005 (S187-189). As a

result, all orders entered after that filing date of the motion should be void. Rodisch v. Esparza, 309 Ill. App. 3d 346, 722 N. E. 2d 326, 330 (2nd Dist. 1999). To hold otherwise, as the trial judge did (Notice of Appeal at ¶5, A124), would run counter to a line of precedents. Therefore, some orders or part of them, entered in 2006, shall be void or voidable as long as they are based on void orders entered in November of 2005 Austin v. Smith, 312 F 2d 337, 343 (1962).

B. Defendant Has Been in Default For Failure to Plead As to Plaintiff's Claims on Counts I – VIII

On June 7, 2005, plaintiff filed an Amended Complaint, in which eight counts were directed at the Dealer (S80-81). After the Dealer filed a Counterclaim (S124-127), plaintiff filed a Motion to Strike on July 12, 2005 (S138-143), and on October 7, 2005 plaintiff filed a Motion to Disqualify And/or Sanction Defendant's Counsel (S153-177). On October 20, 2005, the Dealer's motion to dismiss plaintiff's amended complaint was stricken in its entirety. Later, plaintiff filed a motion to sanction Defendant's counsel Ms. Elaine S. Vorberg, alleging Vorberg had been engaged in unlawful "judge shopping" activities (Motion to Disqualify. at ¶¶3-4, S460). Also plaintiff filled a motion for substitute of Judge as of right on November 3, 2005, and the motion was granted on December 8, 2005. As a result, all orders entered in November of 2005 shall be void; Defendant became in default from October 20, 2005 and thereafter for failure to plead; and plaintiff's motion to strike the Dealer's counterclaim, motion to disqualify and motion to sanction the Dealer's counsel should still be pending. National Bank of Monmouth v. Multi National Industries, Inc., 286

Ill. App. 3d 638, 640, 678 N. E. 2d 7, 9 (1997) ("Void orders are a complete nullity from their inception and have no legal effect [citation omitted]. Such orders may not change the status of a case [citation omitted]." (Emphasis Added.))

On November 8, 2005, ten months after the instant suit was initiated, the Dealer had not file an Answer yet, and it had no intention to submit one, but demanded a trial date, while vigorously arguing Defendant's motion to dismiss was still pending because it was stricken "without prejudice." Based on such an argument, an associate judge at Courtroom 1307 erroneously overruled an order issued by a Judge presiding court room 1501, dismissed plaintiff's claims on Counts VII and VIII, and ordered Defendant to file an Answer (Notice of Appeal at ¶1, A123). According to National Bank of Monmouth, the Dealer's November 28, 2005 Answer shall be a nullity because the November 8, 2005 order is void, and a void order cannot change the status of the case. Furthermore, the Dealer's November 28, 2005 Answer should have no legal effect for the following additional and independent reasons: (1) Defendant filed its motion to dismiss more than once, presented to three Judges on four occasions. "Court Order shopping" is a prohibited practice (Complaint at ¶171, A28); (2) since it is willfully false for the Dealer to argue that a stricken motion was still pending (Complaint at ¶172, A28 and Defendant's Response to Admission #114 at C162-163), the November 8, 2005 order procured by fraud shall be void. Evans v. Corporate Services, 207 Ill. App. 3d 197, 301 (1990); (3) in the circuit court, an associate judge had no authority to overrule an order previously issued by a Judge (Motion to Disqualify at ¶2 S459, and Exhibit A at ¶8, S469); (4) the associate judge cannot violate a rule set forth by himself (S244 at ¶II); (5) the dealer has never challenged the

validity of the October 20, 2005 court order directly, which was prepared by its counsel; (6) there is no legal ground to grant Defendant's motion to dismiss Counts VII and VIII of the Complaint, because the Dealer's motion to dismiss had already been stricken, and its argument therein flies in the face of Illinois Supreme Court's holding: Under Corgan v. Muehling, 574 N. E. 2d 602, 609 (1991), a plaintiff need not allege physical injury to recover for infliction of emotional distress.; (7) it is erroneous to dismiss Counts VII and VIII at pleading stage because plaintiff's pleadings showed, the Dealer failed to perform its duty, and its conduct was outrageous, and whether plaintiff suffered emotional distress was a jury issue; and (8) the Dealer failed to serve an official copy of its Answer until July 19, 2006 (Post-trial Motion. at ¶3, A75). Therefore, the Dealer became in default for failure to plead as to plaintiff's claims on Counts I -VIII since October 20, 2005. And it is a matter of law that a party retains counsel at its own peril. Bachman v. Kent, 293 Ill. App. 3d 1078, 1086 (1st Dist. 1997).

C. Part 1 of The "Final Judgment Order" Should Be Reversed as A Matter of Law

1. Documentary Evidence Shows The Dealer Violated MVICSA, And the Title Transfers of the Subject Vehicle from and to the Dealer Were Illegal

In the instant case, the Dealer identified itself to be a "transferor" on September 4, 2003, but it claimed to be a "transferee" on October 6, 2003. As such, according to 49 U. S. C. § 32702 (7), the Dealer did not legally own the vehicle at the time of the sale (Post-trial Motion at ¶13, A 77). During discovery, the Dealer submitted an Odometer Statement Form dated October 6, 2003, in which seven places were left

blank (Id. at ¶23, A79-80; Exhibit O, A119). This is in flagrant violation of 49 U. S. C. § 32705 (a)(3). The same odometer statement form also reveals that the title transfer to Defendant had not been completed after the Dealer towed back the car on September 8, 2003. Furthermore, 49 U. S. C. § 32705 (a)(2) states "[a] person transferring ownership of a motor vehicle may not violate a regulation prescribed under this section or give a false statement to the transferee in making the disclosure required by such a regulation." (Emphasis added). Under MVICSA, 49 C. F. R. § 580.5(c) requires a motor vehicle seller to reveal the mileage to the purchaser in writing on the title. In Owens v. Samkle Automotive Inc., 425 F. 3d 1318, 1321 n. 4 (11th Cir. 2005), the court holds "the language of § 32710(a) reflects Congressional intent to use civil suits by private individuals to enforce compliance with even the most 'technical' provisions of the Act. To be sure, violators are subject to both civil and criminal penalties for 'technical' violations even if they commit them without intent to defraud, *** 'unless a violation of the Act leads to civil liability, the Act is toothless' " Therefore, the Dealer violated MVICSA and Federal regulations under the Act, because Defendant did not have the title at the time of the sale (Report at ¶83, A66). And beyond any doubt, the Dealer fails to comply with 49 U. S. C. § 32705 (a)(1) even as of this day, since it has never produced a copy of the previous title of the subject car; and it has never produced any copy of documents it submitted to the Office of Secretary of State for the title transfer (Post-trial Motion at ¶44, A84). Furthermore, during discovery, the Dealer had to admit that it "bought" the vehicle from Precision Motors Inc., which was not a private consumer at all (Id. at ¶15, A 77). When the Dealer contended it was not in possession of related financial transaction

record, then, the Dealer has never owned the subject car financially. Even as of this day, the Dealer avoids identifying what a "whole seller" Precision Motor Inc. was, and the Dealer has never submitted a copy of power of attorney form for the title transfer during the sale and in court proceedings. All these demonstrate that Defendant provided deliberate false statements of material facts at the time of the sale, and the transfers of the car title from and to Defendant were illegal, and such business practice is in stark violation of 49 U. S. C. § 32705 (a)(2) and/or 49 U. S. C. § 32705 (b)(2)(A).

2. Uncontested Or Incontestable Evidence Shows The Dealer Violated MVICSA with Intent to Defraud

During the sale, the Dealer did not and could not show the title of the subject car to plaintiff. The title would reveal the name of the previous owner, the history and the accurate mileage of the car, also the same title would reveal whether the Dealer owned the car legally and financially, etc. It is a fact that the Dealer affirmatively concealed all these vital information and made misleading and false statements in order to defraud plaintiff. During discovery, Defendant failed or objected to submit a copy of the previous title of the subject vehicle, whereas under MVICSA plaintiff was entitled to access it at the time of the sale; also Defendant refused to provide a copy of documents it sent to the Office of Secretary of State in order to cover up its wrongdoings as a routine business practice. During discovery and at trial, the Dealer had to confess the subject car was not a "trade-in" at Defendant as the Dealer previously claimed (Post-trial Motion. at ¶¶14-15, A77), and confronting documentary evidence, the Dealer was compelled to confess that there were repair records on the

vehicle (Id. at ¶93, A96 and Exhibit M, A115). In Yazzie v. Amigo Chevrolet Inc., 189 F. Supp. 2d 1245, 1248-49 (D. N. M. 2001), the Court holds that allegations of specific intent to defraud with respect to the vehicle's mileage are not required to bring suit under § 32710(a) where, as here, a dealer manipulated title procedure in violation of the Act to hide the identity of the vehicle's prior owner. The Courts interpreted 49 U. S. C. § 32705(a)(2) as providing a cause of action under the Act not just for errors in the odometer disclosure statement, but also for oral misrepresentation or written misrepresentation found elsewhere in the transfer documents. Hughes v. Box, 814 F. 2d 498, 502 (8th Cir. 1987); Ryan v. Edwards, 592 F. 2d 756, 760-61 (4th Cir. 1979); Kragull v. Chevrolet, 2004 WL. 1429963, at *5 (Ill. Cir. 2004).

Further, MVICSA imposes an affirmative duty on automobile dealers to disclose accurate odometer reading of the vehicle they sell. When answering the Complaint, the Dealer admitted the odometer reading of the subject car was 24514 miles on June 26, 2003 (Motion to Disqualify, ¶15, S463; Exhibit L, S483), and it asserted that the reading was 24520 miles on September 4, 2003. But Defendant "affirmatively states the reading was 24509 miles on October 6, 2003" (Id. ¶14, S462; Exhibit I, S480). And the Dealer went so far that it contended that it lacked the knowledge that the odometer reading should be lower for prior title transfer as compared to that of later ones (Id. at ¶16, S463, Exhibit M, S484; and Post-trial Motion at ¶19, A 78). During discovery, Defendant objected to respond Request for Admissions regarding the repair and mileage records of the subject car, based on purported irrelevancy (Post-trial Motion at ¶21, A79 and Exhibit B, A100-101). A Federal Court concludes that the

transferee need not show the transferor acted with specific intent to deceive, the transferee, the plaintiff, need only show "reckless disregard by the transferor" Haynes v Manning, 917, 917 F. 2d 450, 453 (10th Cir. 1990). Under this standard, a transferor need not have actual knowledge that the odometer statement was false before liability may be imposed. Rather, intent to defraud may be inferred if a transferor lacks such knowledge only because he "display[ed] a reckless disregard for the truth" or because he "clos[ed] his eyes to the truth." Id. (quoting Tusa v. Omaha Auto Auction Inc., 712 F. 2d 1248 1253-54 (8th Cir. 1983)). Also the failure to take any steps to independently verify the accuracy of an odometer reading constitutes reckless disregard for the purpose of the Act. Heiffler v. Joe Bells Auto Serv., 946 F. Supp. 348, 352 (E. D. Pa. 1996). And in Oettinger v. Lakeview Motors, Inc., 675 F. Supp. 1488, 1494 (E. D. Va. 1988), the court held "[T]o make affirmative claims about mileage without knowledge is either intentionally deceitful or reckless ***." Therefore, conclusion should be reached in the instant suit that the Dealer violated MVICSA with intent to defraud, even when applying an overly narrowed interpretation of the MVICSA. Owens, 425 F. 3d 1318, 1321 n. 4 (11th Cir. 2005).

3. Uncontested or Incontestable Evidence Shows The Dealer Violated Magnuson-Moss Act And Illinois UCC

At the time of the sale, only WARRANTY box was checked on the Buyer's Guide, plaintiff was told the subject car was under 100 percent, full warranty, she was induced to believe that, at the very least, she would get a better deal than that from CarMax – one month free parts and labor, five days money back warranty (Post-trial

Motion at ¶24, A80; Report at ¶¶19-20, A58). During discovery, Defendant submitted two more versions of a Buyer's Guide with different contents and handwritings from at least three persons (Post-trial Motion. at ¶25, A80, Exhibit C and D, A102-103; Motion to Disqualify at ¶¶17-22, S463-464; Exhibits F, N, O and P referred thereto). Even three years after the sale, the Dealer still fails to produce one single piece of paper – an exact copy of the original Buyer's Guide with front and rear sides. According to Currie v. Spencer, 772 S. W. 2d 309. 310-311 (Ark. 1989), the failure to provide a "Buyer's Guide" was a clear violation of Magnuson-Moss Act, while in the instant case what Defendant did was worse than that, by playing trick with it. Under 15 U. S. C §2310(d)(1), causes of action exist for violations of prohibition or failure to comply with a requirement of the Act or rules under it, for breach of "obligations" under FTC Used Car Rule 16 CFR § 455 1 (a) and (b).

During discovery, Defendant was compelled to confess that the subject car had repair records (Post-trial Motion at ¶93, A96, Exhibit M, A115) and it was not a trade-in at Defendant. Additionally, the Dealer has attempted to assert an affirmative defense that all implied warranty had been disclaimed for the subject car (Complaint at ¶141, A24). This is an express violation of the Magnuson-Moss Act and Illinois UCC (810 ILCS 5/2-314 and 315), because here the Dealer is essentially contending the subject car was sold "As Is" according to 15 U. S. C. § 2308. Further, Defendant filed a counterclaim demanding "storage fees" from the first day the Dealer towed back the car (¶9 at S126), and such a fee was not included in any of the sales documents. The

nondisclosure, deceptive business practice and/or frivolous court filing all constitute fraud and violation of a written warranty under Federal and State law.

4. Uncontested Or Incontestable Evidence Shows The Dealer Violated ICFA, Illinois UCC And Committed Common Law Fraud

At the time of the sale, plaintiff was told the subject car was a one-owner, a trade-in, the previous owner sold the car at low mileage because "some people are rich" (Report at ¶24, A59). During discovery, surprisingly, the Dealer asserted that it "bought" the subject car not from a private consumer (Id. at ¶88, A 67); also the Dealer refused to produce documents it sent to the Secretary of State for the title transfer; it fails to produce a copy of the original car title, intending to conceal the identity of the previous owner and the history of the subject car. And contrary to the Dealer's statement during the sale, the vehicle does have multiple repair records. It is well established that "used car dealerships have reason to know that the history of a car is of concern to purchasers," Miller v. William Chevrolet/Geo, Inc. 326 Ill. 3d 642, 655; 762 N. E. 2d 1, 8 (1st Dist. 2001). When the Dealer contended it did not have financial transaction record when it "bought" the car, then, Defendant financially did not owned the vehicle and it would be illegal to sell it. At the time of the sale, only WARRANTY box was checked on the Buyer's Guide, and plaintiff was told the subject car was under 100 percent warranty, full warranty. During discovery, Defendant submitted two more versions of a Buyer's Guide for a single used car with different contents. At the time of the sale, plaintiff requested a mechanical check-up on the vehicle, but during discovery the Dealer was compelled to confess it did not

possess any record to show it had ever done that (Post-trial Motion ¶32, A81, Exhibit E, A104). As a proximate result of the Dealer's failure to perform its duty, the subject car stalled at highway speed. It is well settled that "a defect may be proven inferentially by direct or circumstantial evidence" Tweedy v. Wright Ford Sales, Inc., 64 Ill. 2d 570, 574 357 N. E. 2d 449, 452 (1976). This is a uniform and consistent holding in courts from all jurisdictions (Post-trial Motion at ¶46, A85 and citations therein). And an automobile is not merchantable if it is not in safe condition. Lipinski v. Martin J. Kelly Oldsmobile, Inc., 325 Ill. App. 3d 1139, 1149, 759 N. E. 2d 66, 74 (2001). Therefore, beyond dispute, the Dealer violated ICFA, Illinois UCC and committed common law fraud, as fraud has been said to comprise anything calculated to deceive. Russow v. Bobola, 2 Ill. App. 3d 837, 277 N. E. 2d 769, 771 (1972).

In the instant case, when inducing plaintiff to purchase the subject car and let her to have a false sense of safety, the Dealer knew all the falsity of its statements regarding the warranty terms, repair record, the previous owner, the alleged mechanical check-up, the history of the subject vehicle and its condition; further, Defendant certainly knew it did not own the vehicle at the time of the sale. It is a matter of law that all statements of material facts from the Dealer are enforceable under Illinois UCC 810 ILCS 5/2-313. At the dealership, on September 4, 2003, several salesmen surrounded plaintiff, she could not imagine that Defendant would provide fraudulent statements on all these material facts. When the Dealer claimed the subject car was a "trade-in" at Defendant because some people were rich, plaintiff had no opportunity to check this out and she had to rely on the Dealer's statement when making a purchase decision. And a consumer is not supposed to suspect whether a

dealer owned the subject car when it put the vehicle on sale. And plaintiff had no reason to suspect a car dealer had not performed an independent inspection of its own on the vehicle, and plaintiff had no way to know that the Dealer would provide false statement about the mechanical check-up and ignore customers' safety to such an extent or in such an outrageous way. Further, the salesmen convinced plaintiff that the subject car was in excellent condition and "safety is guaranteed." In Carter v. Mueller, 120 Ill. App. 3d 314, 319, 457 N. E. 2d 1335, 1340 (1983), the court held: "where the person making the statement has inhibited plaintiff's inquires *** by creating a false sense of security," the failure to inquire into facts that could be made available to the plaintiff is not fatal. At trial, plaintiff demonstrated all elements of common law fraud had been proven in the instant suit as in the case of Miller 762 N. E. 2d 1, 7 (1st Dist. 2001). Beyond any doubt, at the time of the sale, the Dealer violated FTC Used Car Rule 16 C. F. R. Ch. I § 455.1 (a) and (b), when it misrepresented the mechanical condition of the subject car, the terms of a warranty, and played tricks on a Buyer's Guide. In Illinois, such practice is per se violation of the ICFA 815 ILCS 505/2.et. seq., as the ICFA offers " a clear mandate to the Illinois courts to utilize the Act to the greatest extent possible to eliminate all forms of deceptive or unfair business practice and provide appropriate relief to consumers." Totz v. Du Page Acura, , 236 Ill. App. 3d 891, 602 N. E. 2d 1374, 1380 (1992). Under ICFA, innocent mispresentations or material omissions intended to induce the plaintiff's reliance are actionable. Duran v. Leslie Oldsmobile, Inc., 229 Ill. App. 3d 1032, 1039, 594 N. E. 2d 1355, 1361 (1992). Also the ICFA distinguishes between "unfair or deceptive acts or practice." The test for unfair acts is different from that for deceptive acts. The prevailing authority is that

one may plead unfair acts or practice without pleading deception. Robinson v. Toyota Motor Credit Corp., 351 Ill. App. 3d 1086, 735 N. E. 2d 724, 733 (1st Dist. 2000). In the instant case, when it has been demonstrated that Defendant committed fraud, plaintiff should prevail under ICFA as well. Siegal v. Levy Organization Development Co., 153 Ill. 2d 534, 543, 607 N. E. 2d 194, 198 (1992). And in Williams v. Bruno Appliance & Furniture Mart, Inc., 62 Ill. App. 3d 219, 222, 379 N. E. 2d 52, 54 (1st Dist, 1978), the court holds that under ICFA even the "unthinking, the ignorant and credulous" are protected from deceptive conduct.

5, Contrary to Defendant's Argument, Revocation of Acceptance Is A Cause of Action under Magnuson-Moss Act, ICFA And Illinois UCC

The Magnuson-Moss Act requires a warrantor to specify whether a written warranty is a full or limited warranty (15 U. S. C. § 2303(a)). Pearson v. Daimler-Chrysler Corp., 349 Ill. App. 3d 688, 13 N. E. 2d 230, 235 (1st District, 2004). A plaintiff's may request for revocation of acceptance pursuant to section 2310(d)(1), and State law is used for determination of damages. Lara v Hundai Motor America, 331 Ill. App. 3d 53, 62, 770 N. E. 2d 721, 727 (2002). As 810 ILCS 5/2-608 explicitly states, revocation of acceptance is a cause of action, and 810 ILCS 5/2-721 provides it as a remedy for fraud. Further, 815 ILCS505/2 prohibits all "unfair or deceptive acts or practices," and a consumer can apply the test of unfairness and seek revocation under ICFA. Gaddy v. Galarza Motor Sport Ltd., 2000 WL 1364451 at *3 (N. D. Ill.2000). In the instant suit, after plaintiff showed all the elements listed in the 810 ILCS 5/2-608 have been satisfied, at a minimum, plaintiff should prevail on Count IV. Beyond dispute, engine stall at highway speed could cause deaths or serious bodily

injury. The courts recognize that, "[A]ny defect that shakes buyer's faith or undermine his confidence in reliability and integrity of purchased item is deemed to work a substantial impairment of item's value." See e.g. Innis v. Methot-Buick Opel, Inc., 506 A. 2d 212, 219 (Me.1986). In addition, plaintiff has another car for years, its market value in 2003 was less than $3500 and plaintiff has never experienced engine stall at highway speed with it, as the subject car did. During discovery, the Dealer admitted the subject vehicle had no market value in 2006 (Defendant's Response to Interrogatory#15, S379). Also after 20 months of "investigation" on the car, Defendant failed to pinpoint defective parts while suggesting flat tire etc for the car stall at trial, this further demonstrated that either the Dealer lacked the ability to fix the car, or it was impractical for any repair to be done. Moreover, the Dealer had never contacted plaintiff to arrange an inspection on the vehicle before plaintiff initiated the instant suit --- when the Dealer expected to collect storage fees in the amount of $30/day, there was simply no incentive for Defendant to do anything on the inoperable vehicle. Therefore, under either 810 ILCS 5/2-721, or 815 ILCS 505/2, or 810 ILCS 5/2-608, plaintiff should prevail, as a court stated, "[I]t was not intended that the right to 'cure' is a limitless one to be controlled only by the will of the seller." Zabriskie Chevrolet, Inc., v. Smith, 240 A. 2d 195, 205 (N. J.1968). In Illinois, 810 ILCS 5/2-719 (2) provides: "Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act."

In its motion to dismiss filed on June 21, 2005, the Dealer asserted there was no private cause of action under the Magnuson-Moss Act (Complaint at ¶139, A24). On November 25, 2005, again, attempting to assert an affirmative defense, the Dealer