

CAUSE NO. DC-16-15296

BENJAMIN THOMAS REAVIS and	§	IN THE DISTRICT COURT
KRISTI CAROL REAVIS,	§	
Individually and as Next Friends of	§	
E. R. and O. R.,	§	
Minor Children,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	DALLAS COUNTY, TEXAS
v.	§	
	§	
TOYOTA MOTOR SALES, USA, INC.;	§	
TOYOTA MOTOR CORPORATION;	§	
MICHAEL STEVEN MUMMAW, and	§	
MARK HOWELL	§	
	§	134th JUDICIAL DISTRICT
<i>Defendants.</i>	§	

PLAINTIFFS’ AMENDED PETITION AND JURY DEMAND

Plaintiffs Benjamin Thomas Reavis and Kristi Carol Reavis, Individually and as Next Friends of E. R. and O. R., their Minor Children (collectively, “*Plaintiffs*”) file their Amended Petition and Jury Demand against Defendants Toyota Motor Sales, U.S.A., Inc.; Toyota Motor Corporation; Michael Steven Mummaw; and Mark Howell (collectively, “*Defendants*”). In support hereof, Plaintiffs state the following:

I.

DISCOVERY CONTROL PLAN

1. Plaintiffs intend to pursue discovery in the above-styled and numbered cause under Level 3, pursuant to Texas Rules of Civil Procedure 190.1 and 190.4.

II.

JURY DEMAND

2. Plaintiffs have demanded a jury trial and tendered the jury fee.

III.

PARTIES

3. Plaintiff Benjamin Thomas Reavis is an individual residing in Dallas County, Texas. Mr. Reavis is the biological father of E. R. and O. R.

4. Plaintiff Kristi Carol Reavis is an individual residing in Dallas County, Texas. Mrs. Reavis is the biological mother of E. R. and O. R.

5. Defendant Toyota Motor Sales U.S.A., Inc. is a California corporation engaged in and doing business in Texas. Toyota Motor Sales U.S.A., Inc. has appeared and answered for all purposes and may be served through its counsel of record.

6. Defendant Toyota Motor Corporation is a foreign corporation with its home office and/or principal place of business located at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan. Defendant Toyota Motor Corporation has appeared and answered for all purposes and may be served through its counsel of record.

7. Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation will be referred to collectively hereinafter as the “*Toyota Defendants*.”

8. At all relevant times to the causes-of-action asserted herein, the non-resident Toyota Defendants have had continuous and systematic contacts with the State of Texas by delivering their products and services into the stream-of-commerce with the expectation that the products would reach consumers within the State of Texas. Further, the Toyota Defendants have had minimum contacts with Texas and is doing business in Texas by—among other things—entering into contracts, by mail or otherwise, with residents of the State of Texas; contracting for performance in Texas; recruiting Texas residents for employment inside and/or outside the State;

and committing torts in the State of Texas. The causes-of-action asserted herein arise from such contacts and business.

9. Defendant Michael Steven Mummaw is an individual residing in Jacksonville, Duval County, Florida. Mr. Mummaw has appeared and answered for all purposes and may be served through his counsel of record.

10. Defendant Mark Howell is an individual residing in Collin County, Texas. Mr. Howell has appeared and answered for all purposes and may be served through its counsel of record.

IV.

ASSUMED NAMES

11. Pursuant to Rule 28 of the Texas Rules of Civil Procedure, Plaintiffs hereby bring suit against all partnerships, unincorporated associations, individuals, entities, and private corporations doing business under the assumed name of or including the words: Toyota Motor Corporation, Toyota Motor, Toyota, and/or Lexus.

V.

JURISDICTION AND VENUE

12. Venue is proper in Dallas County—pursuant to Section 15.002(a) of the TEXAS CIVIL PRACTICE & REMEDIES CODE—because the collision made the basis of this lawsuit occurred in Dallas County.

13. This Court has jurisdiction over this matter because Plaintiffs' damages exceed the minimum jurisdictional limits of the Court.

VI.

FACTS

14. On September 25, 2016, Plaintiff Benjamin Thomas Reavis was driving his family's 2002 Lexus ES 300 (VIN: JTHBF30G020029859) (the "*Vehicle*") on State Highway 75 in Dallas County, Texas. His wife Kristi Carol Reavis was restrained in the Vehicle's front passenger seat, and their minor children—E. R. and O. R.—were restrained in child safety seats in the Vehicle's back seat. The Toyota Defendants designed, marketed, and manufactured the Vehicle in question.

15. The Reavis Family's Vehicle was rear ended by a car driven by Defendant Michael Steven Mummaw and owned by Defendant Mark Howell. Mr. and Mrs. Reavis survived the rear-end impact without major injury. Defendant Michael Steven Mummaw and his passenger survived the impact without major injury.

16. However, in this otherwise survivable collision, as a result of this rear-end collision, the Vehicle's front driver's seat and front passenger's side seat and/or occupant restraints failed and collapsed rearward into the back seat and/or allowed intrusion into the rear-passenger compartment, where E. R. and O. R. were seated. As a result, E. R. and O. R.'s heads were struck by the collapsing seats themselves and/or their parents as the front seats collapsed into the back seat and/or the occupant restraints failed, allowing their parents to ramp rearward. In an otherwise survivable collision, E. R. and O. R. sustained skull fractures and traumatic brain injuries among other severe and permanent injuries.

17. The Toyota Defendants' Vehicle has defectively designed front seats and/or occupant restraints that can and do fail in rear-impact collisions. This defective design, among others, poses an unreasonable risk of severe and permanent injuries when the vehicle is rear ended.

18. The Vehicle in question had not been changed or altered and was in substantially the same condition at the time of this rear-end crash that it had been in when it left the control of the Toyota Defendants.

VII.

CAUSES OF ACTION

A. *Strict Products Liability (Against Toyota Defendants)*

19. Plaintiffs incorporate all prior and subsequent paragraphs as if fully restated and re-alleged herein.

20. The Vehicle at issue in this suit was originally designed, manufactured, marketed, sold, and distributed by the Toyota Defendants.

21. At all material times, the Toyota Defendants were a “Manufacturer” of the Vehicle, as defined in Texas Civil Practice & Remedies Code § 82.001(4).

22. The Vehicle and its related equipment were designed, manufactured, constructed, and/or distributed by and through the agents and/or representatives of the Toyota Defendants.

23. The Toyota Defendants were regularly engaged in the business of supplying or placing products—like the Vehicle in question—in the stream of commerce for use by the consuming public, including the Reavis Family. Further, such conduct was solely for commercial purposes.

24. The Vehicle in question and its parts remained unchanged from the time they were originally manufactured, distributed, and sold by the Toyota Defendants until they reached the Reavis Family and ultimately led to their minor children’s severe and permanent injuries. Stated another way, the Vehicle in question was defective and in an unreasonably dangerous condition when it left the hands of the Toyota Defendants and remained defective and unreasonably

dangerous at all times thereafter until the Vehicle ultimately caused E. R. and O. R.'s severe and permanent injuries.

25. With respect to the design of the Vehicle in question, at the time it left the control of the Toyota Defendants, there were safer alternative designs. Specifically, there were alternative designs that, in reasonable probability, would have prevented or significantly reduced the risk of injury to E. R. and O. R. Furthermore, such safer alternative designs were economically and technologically feasible at the time the Vehicle left the control of the Toyota Defendants by the application of existing or reasonably achievable scientific knowledge.

26. At the time the Vehicle was placed into the stream of commerce, it was, or should have been, reasonably expected and foreseeable that persons such as the Reavis Family would use the Vehicle in the manner and application in which it was being used at the time E. R. and O. R. sustained these severe and permanent injuries.

27. The Toyota Defendants designed the seat, seat back, and occupant restraint system utilized in the vehicles they manufactured, including the Vehicle in question. The system consists of manual and passive components, which include items such as seats, seat backs, sensors, modules, latch plates, pretensioners, and seatbelts.

28. At the time the Vehicle in question left control of the Toyota Defendants, it was defective and unreasonably dangerous in that it was not adequately designed, manufactured, or marketed to minimize the risk of injury or death. By way of example and without limitation, the Vehicle in question was unreasonably, dangerously defective in the following ways:

- a. The Vehicle was unreasonably dangerous and defectively designed in that it was not crashworthy and reasonably fit for clearly foreseeable accidents;
- b. The Vehicle was unreasonably dangerous and defectively designed in that the front seats and accompanying occupant restraint systems can and do fail during rear impact collisions. This made the Vehicle unreasonably,

dangerously, defectively designed for the Vehicle's intended and reasonably foreseeable uses;

- c. The Vehicle was unreasonably dangerous and defectively designed in that the front seats are inadequately attached or mounted to their base causing them to fail in clearly foreseeable uses of the Vehicle. This made the Vehicle unreasonably, dangerously, defectively designed for the Vehicle's intended and reasonably foreseeable uses;
- d. The Vehicle was unreasonably dangerous and defectively designed in that the front seats are intentionally designed to deform and deflect rearward in rear-end crashes. This made the Vehicle unreasonably, dangerously, defectively designed for the Vehicle's intended and reasonably foreseeable uses;
- e. The Vehicle was unreasonably dangerous and defectively designed in that the front seats may distort in relation to their base in rear impact collisions causing them to fail in clearly foreseeable uses of the Vehicle. This made the Vehicle unreasonably, dangerously, defectively designed for the Vehicle's intended and reasonably foreseeable uses;
- f. The vehicle was unreasonably dangerous and defectively designed in that the front seats may detach from their tracks or mounting in rear impact collisions causing them to fail in clearly foreseeable uses of the Vehicle. This made the Vehicle unreasonably, dangerously, defectively designed for the Vehicle's intended and reasonably foreseeable uses;
- g. The Vehicle was unreasonably dangerous and defectively designed to the extent that a seat and/or restraint failure can allow intrusion, deformation, and/or deflection into the rear passenger compartment in clearly foreseeable uses of the Vehicle. This condition made the vehicle unreasonably dangerous and defective for its intended and reasonably foreseeable uses;
- h. The Vehicle was unreasonably dangerous and defectively designed to the extent that a seat and/or restraint failure can allow front-seat passengers to intrude upon the rear passenger compartment by ramping rearward in clearly foreseeable uses of the Vehicle. This condition made the vehicle unreasonably dangerous and defective for its intended and reasonably foreseeable uses;
- i. The Vehicle was unreasonably dangerous and defectively designed to the extent that the occupant restraint system fails to prevent front-seat passengers from ramping rearward into the rear passenger compartment clearly foreseeable uses of the Vehicle. This condition made the vehicle unreasonably dangerous and defective for its intended and reasonably foreseeable uses;

- j. The Vehicle was unreasonably dangerous and defective in that it did not contain adequate instructions or warnings as to the manner to avoid risks and danger involved, in particular, with the dangerous propensity of the seats and/or restraints to fail upon rear impact. This failure made the Vehicle unreasonably dangerous and defective for its intended and reasonably foreseeable uses; and
- k. The Vehicle was unreasonably dangerous and defective in that it failed to warn of the risks and nature and extent of dangers associated with the dangerous propensity of its seats and/or restraints to fail in that the warnings and instructions provided, if any, were not in any form that could reasonably be expected to catch the attention of reasonably prudent person in the circumstances of the Vehicle's intended or reasonably foreseeable uses.

29. The Toyota Defendants knew of the problems with the seat, seat back, and occupant restraint system in the Vehicle in question and other Toyota and Lexus vehicles using the same or similar components. Despite this knowledge, the Toyota Defendants chose to ignore those problems and acted with conscious indifference and gross disregard to the motoring public and the Plaintiffs, including E.R. and O.R.

30. Plaintiffs further contend that the Toyota Defendants are not entitled to a rebuttal presumption that they are not liable for any injury to E. R. and/or O. R. caused by the formulation, labeling, or design of the Vehicle because they have not established that the Vehicle's formulation, labeling, or design complied with the mandatory standards adopted by the DOT. Additionally, in the event that Defendant does establish compliance with FMVSS, Plaintiff will present evidence that the standard is inadequate to protect the public from unreasonable risks of injury or damage.

31. The above unreasonably dangerous defects in the Vehicle were the proximate and producing causes of E. R. and O. R.'s severe and permanent injuries and Plaintiffs' damages.

B. *Negligence (Defendants Michael Steven Mummaw and Mark Howell)*

32. Plaintiffs incorporate all prior and subsequent paragraphs as if fully restated and re-alleged herein.

33. Upon information and belief, Mummaw's negligence includes, without limitation, failure to use ordinary care and prudence and/or a high degree of care and prudence.

34. Upon information and belief, Howell was negligent in entrusting the vehicle owned by Howell and operated by Mummaw to Mummaw, who Howell and/or his agent knew or should have known would operate the vehicle entrusted to him in an unsafe manner.

35. Specifically, Defendant Michael Steven Mummaw was negligent in his operation of his motor vehicle. Defendant Mummaw was negligent in, at least, the following ways:

- a. Failing to maintain control of his vehicle;
- b. Failing to properly and timely apply his brakes;
- c. Traveling at an excessive rate of speed;
- d. Driving while distracted;
- e. Rear ending the Vehicle in which the Reavis Family was riding; and
- f. Other acts of negligence which may be shown at the time of trial.

36. Each of the foregoing acts or omissions, singularly or in combination with others, constituted negligence, which were a producing and/or proximate cause of the above-referenced occurrence and Plaintiff's injuries and damages.

C. Negligence and Gross Negligence (Against the Toyota Defendants)

37. Plaintiffs incorporate all prior and subsequent paragraphs as if fully restated and re-alleged herein.

38. The Toyota Defendants had a duty to manufacture, distribute, and sell products that are not unreasonably dangerous. The Toyota Defendants committed acts of omission and commission, which collectively and severally, constituted negligence, which negligence was a

proximate cause of the serious and permanent injuries suffered by E.R. and O.R. and the injuries and damages to Plaintiffs.

39. The Toyota Defendants, both individually and/or acting by and through their agents and/or representatives, breached their duties and were thereby negligent and grossly negligent, careless and reckless in designing, manufacturing, marketing, distributing, and selling the defective and unreasonably dangerous Vehicle in question.

40. As a proximate result of one or more of the aforementioned negligent and grossly negligent acts or omissions of the Toyota Defendants, E. R. and O. R. sustained severe and permanent injuries and Plaintiffs sustained damages as outlined below.

D. *Section 402B Misrepresentation (Against the Toyota Defendants)*

41. Plaintiffs incorporate all prior and subsequent paragraphs as if fully restated and re-alleged herein.

42. The Toyota Defendants misrepresented the character and quality of the Vehicle in question. The misrepresentations were of such a nature as to render the Toyota Defendants strictly liable for the injuries to Plaintiffs.

43. The Toyota Defendants engaged in a course of advertising, marketing, and promoting this line of Toyota and Lexus vehicles, including the Vehicle in question. The Toyota Defendants made false representations, which included express and implied misrepresentations of material fact concerning the character and quality of the product and materials used in constructing the Vehicle in question. These misrepresentations were made through advertising, marketing, and promoting the Vehicle, the totality of which taken as a whole, falsely misrepresented that the Vehicle was safe for use in the manner indicated by the Toyota Defendants to be suitable for

consumers such as the Plaintiffs, and Plaintiffs justifiably relied upon the Toyota Defendants' misrepresentations.

E. *Breach of Warranty (Against the Toyota Defendants)*

44. Plaintiffs incorporate all prior and subsequent paragraphs as if fully restated and re-alleged herein.

45. The Toyota Defendants, by and through the sale of the Vehicle in question, expressly and impliedly warranted to the public generally, and the Plaintiffs specifically, that the vehicle was fit for the purposes for which it was intended. Plaintiffs made use of the Vehicle as alleged herein and relied on these express and implied warranties.

46. The Toyota Defendants breached their express and implied warranties, and such breach was a producing cause of the occurrence in question. Further, the Toyota Defendants' breach of warranties rendered the Vehicle in question unreasonably dangerous and was a proximate cause of the injuries to E.R. and O.R. and the injuries and damages suffered by Plaintiffs. Finally, the Toyota Defendants' conduct was done knowingly.

F. *Malice and Gross Neglect (Against the Toyota Defendants)*

47. Plaintiffs incorporate all prior and subsequent paragraphs as if fully restated and re-alleged herein.

48. The Toyota Defendants committed acts of omission and commission, which collectively and severally, constitute malice and gross neglect, which malice and gross neglect was a proximate cause of the injuries to E.R. and O.R. and the injuries and damages suffered by Plaintiffs.

VIII.

DAMAGES

49. The unlawful acts and practices by the Defendants are and were a producing and proximate cause of the severe and permanent injuries sustained by E. R. and O. R. as well as Plaintiffs' damages. Accordingly, Defendants are liable to the Plaintiffs for all Plaintiffs' damages.

50. As applicable to each, Plaintiffs seek personal injury damages in amounts the jury deems to be fair and reasonable consisting of the following:

- Past and future physical pain and mental anguish;
- Past and future loss of earnings and earning capacity;
- Past and future disfigurement;
- Past and future physical impairment;
- Past and future medical and healthcare expenses and mental care expenses; and/or
- Any other actual or compensatory damages allowable by law.

51. Plaintiffs also seeks recovery for all costs of court and prejudgment and post-judgment interest at the maximum rates allowed by law.

IX.

EXEMPLARY DAMAGES

52. Plaintiffs are entitled to exemplary damages under Chapter 41 of the Texas Civil Practice and Remedies Code, because the Toyota Defendants' acts and/or omissions, when viewed objectively from the standpoint of the Toyota Defendants at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and the Toyota Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others.

53. The Toyota Defendants are liable for exemplary damages because they committed acts of omission and commission and/or the Toyota Defendants ratified or approved those acts, which collectively and severally, constitute malice and gross neglect, which malice and gross neglect was a proximate cause of the injuries to E.R. and O.R. and the injuries and damages suffered by Plaintiffs, and/or Defendants ratified or approved those acts.

X.

**RULE 47 STATEMENT OF
MONETARY RELIEF SOUGHT**

54. Plaintiffs request that the jury award damages in amounts that it believes to be fair and reasonable. Accordingly, to ensure their eligibility to recover an amount *more than* \$1,000,000 and because it is expressly required by Texas Rule of Civil Procedure 47, Plaintiffs affirmatively plead that they are seeking monetary relief in an amount (i) that the jury determines to be fair and reasonable and (ii) that is *more than* \$1,000,000.

XI.

PRAYER

WHEREFORE, Plaintiffs request that this Court enter judgment against Defendants and award Plaintiffs the following relief:

- (i) A sum of money—as determined by a jury to be fair and reasonable—within the jurisdictional limits of this Court for the damages indicated above;
- (ii) Pre-judgment and post-judgment interest at the maximum amount allowed by law;
- (iii) Exemplary damages—as determined by the jury’s discretion—in an amount sufficient to penalize or punish the Toyota Defendants;
- (iv) Costs of suit; and
- (v) Such other and further relief to which Plaintiffs may be justly entitled.

RESPECTFULLY SUBMITTED:

THE LAW OFFICES OF
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/s/ Chip Brooker

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BENJAMIN THOMAS REAVIS and
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as Next Friends of E. R. and O. R., Their
Minor Children

CERTIFICATE OF SERVICE

This is to certify that on February 7, 2018, a true and correct copy of this document was served on all counsel of record via the Court's electronic filing system.

/s/ Chip Brooker

Chip Brooker